

LAW OFFICES
**Couzens, Lansky, Fealk, Ellis,
Roeder & Lazar, P.C.**

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TERIANN M. SCHMIDT

OF COUNSEL

HAROLD A. LARSON
DONALD C. HARMS
MONICA D. MOONS
KENNETH F. POSNER
LAWRENCE F. SCHILLER

COUNTRY CLUB OFFICE CENTRE
39395 WEST TWELVE MILE ROAD, SUITE
200
FARMINGTON HILLS, MICHIGAN 48331

TELEPHONE (248) 489-8600
TELECOPIER (248) 489-4156

-Detroit Office-
645 GRISWOLD STREET, SUITE 1301
DETROIT, MICHIGAN 48226
TELEPHONE (313) 967-9000
TELECOPIER (313) 967-0344

www.couzens.com

URGENT ALERT

To Our Clients, Professional Advisors and Friends

We want to alert you of recent developments impacting arrangements that defer compensation into the future. The Internal Revenue Service recently finalized regulations regarding deferred compensation arrangements, requiring action before December 31, 2007.

The new law applies to **any arrangement** where an employee receives a legally binding right to compensation in one year, but will not actually or constructively receive that income until a later year. As long as a payment could be made after the end of the taxable year in which the legally binding right is created, there is a deferral of compensation even though that compensation could also be paid in the same taxable year. A legally binding right to compensation may exist even if the right is subject to various conditions, such as substantial risks of forfeiture.

Compliance with the new rules is important, as there are significant and adverse tax implications for a violation of Section 409A. The cost is imposed solely on the plan participant and other employees covered under similar deferred compensation arrangements. In the event of any violation, all affected employees must pay tax in the year of the violation on all deferred income through that date, plus a 20% excise tax on that amount. The tax will also be subject to interest at 1% above the current federal underpayment rate.

Section 409A applies to numerous types of deferred compensation arrangements, including, *but not limited to*: elective deferred compensation plans, severance and termination agreements, employment agreements, bonus and incentive plans, stock options, phantom stock and stock appreciation plans, non-compete agreements and supplemental employee retirement programs. Certain plans are exempt from Section 409A, including qualified pension plans, Section 401(k) plans, Section 403(b) plans, reimbursement arrangements for non-taxable amounts, deductible business expenses, outplacement and moving expenses, indemnification payments, medical expense reimbursements paid during the applicable COBRA period, certain split dollar agreements, and settlements of bona fide legal claims for wrongful termination, employment discrimination, or workers compensation statutes. The

final regulations include an exemption for certain educational benefits and agreements to “gross up” an employee’s income.

In light of the compliance deadline of December 31, 2007, every agreement, promise, or arrangement that results in income being earned currently to be paid in future years should be reviewed and analyzed. In addition to conducting an inventory of all compensation arrangements to be reviewed, you should consult with your accountant and financial planning advisors to confirm that all potential arrangements have been identified. Once all arrangements have been identified, you should meet with us to determine which arrangements are subject to the provisions of Section 409A. We will be pleased to update any documents to comply with Section 409A and to provide advice and assistance in ensuring that all required forms and elections are established, as required by the regulations.

Please note that the regulations provide transitional relief through December 31, 2007. While corrective action may be taken in 2008, there is much less flexibility in modifying existing agreements, plans, and arrangements at that time and any 409A violations will have to be reported.

The law also requires the reporting of deferred compensation on Form W-2 for employees and Form 1099-MISC for independent contractors. The Department of Treasury has indicated that more detailed guidance will be provided as to reporting and withholding requirements. This additional guidance is expected before the end of this year.

Since you may have existing arrangements not prepared by us, and we do not know if prior arrangements are still in effect, we are unable to determine which, if any, of your agreements, plans, or arrangements fall subject to Section 409A. Therefore it is imperative that you determine any agreements, plans, and arrangements in existence and contact us as soon as possible.

We look forward to being of assistance regarding these new rules. We encourage all of our clients, friends, and professional advisors to contact Eric Gould, who is coordinating the firm’s Section 409A efforts, with any questions or concerns they may have. After you have identified these plans and arrangements, please contact us to schedule an appointment to review the documents and develop an appropriate action plan.

Very truly yours,

**COUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.**