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## FOR YOUR INFORMATION

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June 2008

News for School Clients

### Update: IRC § 409A Deadline Approaches

This is an update of the “For Your Information” newsletter dated August 2007 and entitled “Teacher Election to Annualize Compensation under IRC § 409A”. This update is being provided because the deadline is approaching for compliance with the Internal Revenue Service rules related to employee elections to annualize their compensation. If your school district allows employees who work less than 12 months (for example, regular school year employees, or ten month or eleven month employees) to elect to be paid over a 12 month period (known as annualization of pay), then § 409A applies to your school district. Under Internal Revenue Code (“IRC”) § 409A, if an employee is allowed to elect to annualize compensation, *the employee must make that election prior to the first paid workday for that work period (e.g., the school year)*. The election is irrevocable for that school year. This may mean that certain employees who provide services to the school district in the summer months may need to make an election prior to July 1, 2008 (e.g., a ten month principal whose contract year runs from July 1, 2008, through June 30, 2009, and who can elect to annualize pay).

Consider the following steps in connection with IRC § 409A:

1. Determine if your school district allows employees to elect annualization of pay. Remember that this rule may apply not only to teachers, but also to other employees.
2. Identify the employees who are allowed to elect annualization of pay.
3. Consider whether any employees who can elect to annualize pay will be providing services to the school district during the summer months under a new contract and, therefore, may be required to make their election prior to July 1. Employees whose services are extended into the summer months from the prior school year are not part of this group.
4. Send a letter and an election form to those employees who may elect annualization of pay prior to their first work day of their new contract year.

Please open and review the August 2007 newsletter “Teacher Election to Annualize Compensation under IRC § 409A ([\2007-AUG.pdf](#))”. Attorney David Weller is happy to assist with the preparation of the letter to employees who can elect annualization of pay or of the election form itself.

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*If you have any questions regarding this topic or if you would like assistance in determining the application of IRC § 409A to school district employees, please call David Weller of Lathrop & Clark LLP at 608-257-7766. Attorney Weller provides counsel in the areas of taxation and employee benefits to our school law clients.*

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