

I.	INTRODUCTION TO CLOSELY-HELD COMPANY DEFERRED COMPENSATION.....	1
II.	WHAT IS A NONQUALIFIED DEFERRED COMPENSATION PLAN AND WHY USE IT?	3
A.	PURPOSE.....	3
B.	ADVANTAGES AND DISADVANTAGES	3
1.	Avoids Most Internal Revenue Code and ERISA Restrictions	3
2.	Limits on Security and Delay of Deductions.....	4
C.	FLEXIBILITY.....	4
1.	Persons Covered	4
2.	Incentive Plans.....	4
3.	Retention.....	4
D.	GENERAL TYPES OF PLANS.....	4
1.	Elective Deferral Plans	4
2.	Supplemental Executive Retirement Plan (SERP)	5
3.	Plans Linked to Qualified Plans	5
III.	INCOME TAXATION OF NONQUALIFIED DEFERRED COMPENSATION PLANS IN A NUTSHELL	5
A.	GENERAL RULES FOR NONINCLUSION IN EMPLOYEE INCOME	5
1.	Vested but Unfunded	5
2.	Funded but not Vested	5
B.	POTENTIAL IRS ARGUMENTS FOR CURRENT TAXATION OF DEFERRED COMPENSATION	6
1.	Constructive Receipt Doctrine.....	6
2.	Economic Benefit Doctrine	6
3.	Section 83	6

4.	Section 409A	6
IV.	CONSTRUCTIVE RECEIPT DOCTRINE	6
A.	DEFINITION.....	6
B.	SECTION 409A HAS SIGNIFICANTLY IMPACTED THE CONSTRUCTIVE RECEIPT DOCTRINE	6
1.	Substantial Limitations or Restrictions.....	6
2.	Timing of Deferral Election	7
3.	What If Section 409A Does Not Apply?	7
V.	ECONOMIC BENEFIT DOCTRINE AND SECTION 83.....	8
A.	ECONOMIC BENEFIT DOCTRINE	8
1.	Application	8
2.	Based on Judicial and IRS Interpretation of Section 61	8
3.	Examples of Deferred Compensation Funding Equivalent to An Economic Benefit	8
4.	Risk of Forfeiture Exception	8
5.	Unsecured Creditor Exception.....	8
6.	Applicability After Section 83.....	9
B.	SECTION 83	9
1.	Application	9
2.	Unfunded Deferred Compensation.....	9
3.	Funded Deferred Compensation.....	9
4.	Exception To Funded Deferred Compensation - Substantial Risk of Forfeiture.....	10
5.	Section 402(b) - Special Rules for Nonqualified Employees' Trust.....	12
6.	Section 403(c) - Special Rules For Nonqualified Employee Annuity	14

C.	INTERRELATIONSHIP OF SECTION 83 AND THE ECONOMIC BENEFIT DOCTRINE	16
1.	Similarities.....	16
2.	Section 83 Transfer of Property Requirement	16
3.	Perhaps Economic Benefit More Comprehensive.....	17
VI.	A THUMBNAIL SKETCH OF 409A AND FINAL REGULATIONS	17
A.	EXPANSION OF CONSTRUCTIVE RECEIPT RULES	17
1.	Restrictions on Distributions	17
2.	No Acceleration of Benefits	17
3.	Restrictions on Deferral and Redeferral Elections	18
B.	EXPANSION OF THE FUNDING RULES OF SECTION 83	18
1.	Offshore Rabbi Trusts	18
2.	Employer Financial Health Triggers	18
3.	Domestic Rabbi Trusts Established or Funded During Restricted Period of a Defined Benefit Plan.....	18
C.	PLANS EXCLUDED FROM 409A.....	19
1.	Qualified Employer Plans.....	19
2.	Welfare Benefit Plan	19
3.	Certain Foreign Plans	19
D.	WHAT IS A COVERED NONQUALIFIED DEFERRED COMPENSATION PLAN?.....	19
E.	WHAT CONSTITUTES DEFERRED COMPENSATION?.....	20
F.	ITEMS EXCLUDED FROM DEFERRED COMPENSATION BY FINAL REGULATIONS	20
1.	Payroll Period Exception	20
2.	Short Term Deferrals.....	20
3.	Statutory Stock Options.....	20

4.	Certain Non-Statutory Stock Options.....	20
5.	Certain SARs	20
6.	Restricted Property	21
7.	Certain Separation Pay Plans.....	21
8.	Certain Indemnification and Liability Insurance Plans	22
9.	Legal Settlements	22
10.	Certain Educational Benefits.....	23
11.	Benefits Otherwise Nontaxable.....	23
G.	IMPORTANT DEFINITIONS	23
1.	Substantial Risk of Forfeiture.....	23
2.	Service Provider	23
3.	Service Recipient.....	24
H.	VIOLATIONS OF SECTION 409A – INCOME INCLUSION, PENALTY TAX AND INTEREST	24
1.	Income Inclusion	24
2.	Additional Tax.....	24
3.	Interest	24
I.	EFFECTIVE DATE AND GRANDFATHERING RULES	25
1.	When Did Section 409A Become Effective?	25
2.	Grandfathered Deferrals	25
3.	Material Modification Exception to Grandfathering	25
J.	TRANSITION RULES THROUGH DECEMBER 31, 2008	26
1.	Four-Year Transition or Grace Period.....	26
2.	Amendments to Provide New Payment Elections	26
3.	Substitutions of Non-Discounted Stock Options and SARs for Discounted Stock Options and SARs	26

4.	Payment Elections of Nonqualified Deferred Compensation Linked to Qualified Plans	26
VII.	DEDUCTION TO EMPLOYER	27
A.	WHAT IS DEDUCTIBLE?.....	27
1.	Employee Deferred Compensation - Section 404(a).....	27
2.	Independent Contractor Deferred Compensation - Section 404(d).....	27
3.	Otherwise Deductible - Section 162 or 212.....	27
B.	WHEN DEDUCTIBLE	27
1.	When Includable In Gross Income - Section 404(a)(5).....	27
2.	Separate Account Requirement For Certain Funded Plans	28
3.	Only Contributions Deductible.....	28
4.	Interest Not Deductible.....	28
VIII.	WHEN IS A DEFERRED COMPENSATION PLAN “FUNDED”?	28
A.	FUNDING FOR INTERNAL REVENUE CODE PURPOSES	28
1.	Unfunded Unsecured Promise to Pay	28
2.	Informal funding.....	28
3.	Rabbi Trusts.....	29
B.	FUNDING FOR ERISA PURPOSES	30
1.	Relationship of ERISA with Internal Revenue Code	30
2.	Application of ERISA to Nonqualified Deferred Compensation	30
3.	Consequences if ERISA is Applicable	30
4.	Top Hat Plan Exception.....	31
IX.	CAREFUL IF S CORPORATION WITH ESOP IS INVOLVED	37
A.	WARNING	37

B.	GENERAL RULES.....	37
1.	S Corporation Appeal to Closely-Held Business	37
2.	ESOP Permissible Shareholder	37
3.	UBIT Not Applicable	37
C.	ANTI-ABUSE RULES OF S CORPORATION ESOP UNDER SECTION 409(P)	37
1.	Purpose of ESOP	37
2.	Early Perceived Abuses	37
3.	Consequences Imposed by 409(p).....	38
X.	LIFE INSURANCE ALTERNATIVE TO DEFERRED COMPENSATION AGREEMENT	39
A.	CONCEPT.....	39
B.	TRADITIONAL SECTION 162 EXECUTIVE BONUS PLAN.....	39
1.	Description.....	39
2.	Purpose	40
3.	Income Tax Consequences	41
4.	Is ERISA Applicable?	41
C.	RESTRICTED ACCESS EXECUTIVE BONUS PLANS	44
1.	Purpose	44
2.	Elements of Restricted Access Executive Bonus Plans.....	44
3.	Income Tax Consequences of Restricted Access Executive Bonus Plan.....	46
4.	Is the Restricted Access Executive Bonus Plan a pension benefit plan rather than a welfare benefit plan under ERISA?	51
5.	Can IRC Section 409A Apply?	53
6.	Reflection on Restricted Access Executive Bonus Plans	54

XI.	TAX DEFERRED ANNUITY ALTERNATIVE TO DEFERRED COMPENSATION AGREEMENT	55
A.	CONCEPT	55
1.	Arrangement	55
2.	Advantages	55
3.	Disadvantages.....	55
B.	TAX CONSEQUENCES	55
1.	Executive Tax Consequences	55
2.	Employer Deduction.....	55
3.	Application of ERISA?.....	55
4.	Source of Executive Tax Payment.....	56
5.	Deferred Compensation?	56
C.	CONCERNED ABOUT THE EXECUTIVE CONTROLLING THE ANNUITY?	56
1.	Rely Upon Pre-Mature Distribution Penalties.....	56
2.	Annuity Owned by Executive Grantor Trust (Secular Trust).....	56