

A. Amounts reportable on Form 941 and Form W-2

- For calendar year 2005, an employer is not required to report deferrals for the year under a nonqualified deferred compensation plan as § 409A deferrals in box 12 of Form W-2 using code Y.
- For calendar year 2005, an employer is not required to include in the total amount of wages as defined in § 3401(a) amounts includible in the gross income of an employee under § 409A that the employee has neither actually nor constructively received during the calendar year. Thus, an employer may exclude such amounts from wages for income tax withholding purposes and is not required to report such amounts as wages paid to the employee in box 2 of Form 941 or in box 1 of Form W-2. Additionally, an employer is not required to report such amounts as § 409A income in box 12 of Form W-2 using code Z. However, see paragraph III.C. of this notice regarding an employer's potential obligation to file a corrected information return and to furnish a corrected payee statement.

B. Amounts reportable on Form 1099

- For calendar year 2005, a payer is not required to report deferrals for the year under a nonqualified deferred compensation plan as § 409A deferrals in box 15a of Form 1099-MISC.
- For calendar year 2005, a payer is not required to report amounts includible in the gross income of a nonemployee under § 409A that the nonemployee has neither actually nor constructively received during the calendar year. Thus, a payer is not required to report such amounts as nonemployee compensation in box 7 of Form 1099-MISC or as § 409A income in box 15b of Form 1099-MISC. However, see paragraph III.C. of this notice regarding a payer's potential obligation to file a corrected information return and to furnish a corrected payee statement.

C. Corrected Information Return and Corrected Payee Statement

Future published guidance may require an employer or payer to file a corrected information return and to furnish a corrected payee statement for calendar year 2005 reporting any previously unreported amounts includible in gross income under § 409A.

IV. SERVICE PROVIDER REQUIREMENTS WITH RESPECT TO AMOUNTS INCLUDIBLE IN GROSS INCOME UNDER § 409A

A service provider must file a return and pay any taxes due relating to amounts includible in gross income under § 409A for calendar year 2005. However, the IRS understands that it is likely that service providers will find it difficult to determine the correct amount and timing of inclusions under § 409A without reporting from the employer or payer. The IRS is working on guidance regarding the employers' and payers' reporting and withholding requirements, and that guidance is expected to be issued in the first half of 2006. Consequently, the IRS will not assert penalties under §§ 6651(a)(1) and (2), 6654, and 6662 with respect to amounts includible in gross income under § 409A for calendar year 2005 if the service provider reports and pays any taxes due with respect to such amounts in accordance with future published guidance. Such future guidance will provide a period during which the service provider may report and pay any taxes due with respect to amounts includible in gross income under § 409A without incurring such penalties. However, interest imposed under Chapter 67 of the Code will apply to any underpayments of tax resulting from a service provider's failure to include amounts includible in gross income under § 409A for calendar year 2005.

V. EFFECT ON OTHER DOCUMENTS

This notice suspends employers' and payers' reporting and wage withholding requirements for calendar year 2005 with respect to deferrals of compensation within the meaning of § 409A as set forth in Notice 2005-1.

VI. EFFECTIVE DATE

This notice is effective with respect to employers' and payers' reporting and wage withholding requirements for calendar year 2005 and with respect to service providers' filing requirements and tax payment obligations relating to amounts includible in gross income under § 409A for calendar year 2005.

VII. DRAFTING INFORMATION

The principal author of this notice is Frederick L. Wesner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), though other Treasury and IRS officials participated. For further information regarding this notice, contact Mr. Wesner at (202) 622-6040 (not a toll-free number).

Weighted Average Interest Rates Update

Notice 2005-96

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II), and the weighted average interest rate and permissible ranges of interest rates based on the 30-year Treasury securities rate.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004, provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 or 2005 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate