

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-158080-04]

RIN 1545-BE79

Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on Tuesday, October 4, 2005 (70 FR 57930) regarding the application of section 409A to nonqualified deferred compensation plans. The regulations affect service providers receiving amounts of deferred compensation, and the service recipients for whom the service providers provide services.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney, (202) 927-9639 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-158080-04) that is the subject of these corrections are under section 409A of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-158080-04) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-158080-04), that was the subject of FR Doc. 05-19379, is corrected as follows:

1. On page 57930, column 3, in the preamble under the paragraph heading AB. Section 457 Plans”, second paragraph, third line from the bottom of the column, the language, “under §1.409A-1(b)(5) of these” is corrected to read “under §1.409A-1(b)(4) or (5)”.
2. On page 57931, column 1, in the preamble under the paragraph heading “B. Section 457 Plans”, first paragraph of the column, third line from the bottom, the language, “1(a)(4) of these proposed regulations to” is corrected to read “1(a)(5) of these proposed regulations to”.
3. On page 57933, column 1, in the preamble under the paragraph heading “B. Short-Term Deferrals”, first paragraph of the column, last of the paragraph, the language, “in year 10.” is corrected to read “in Year 10.”.
4. On page 57934, column 2, in the preamble under the paragraph heading “2. Definition of Service Recipient Stock”, second paragraph of the column, fourth line, the language, “provider stock may include American” is corrected to read “recipient stock may include American”.
5. On page 57937, column 1, in the preamble under the paragraph heading “D. Restricted Property”, second paragraph of the column, line 21, the language, “payment for purposes section 409A,” is corrected to read “payment for purposes of section 409A,”.
6. On page 57948, column 2, in the preamble under the paragraph heading “E. Change in Ownership or Effective Control of the Corporation”, last paragraph of the column, line 13, the language, “3(g)(5)(iv)) or a change in the ownership” is corrected to read “3(g)(5)(v)) or change

in the ownership”.

7. On page 57948, column 3, in the preamble under the paragraph heading “E. Change in Ownership or Effective Control of the Corporation”, first paragraph of the column, line 2, the language “§1.409A-3(g)(5)(vi) may be applied by” is corrected to read “§1.409A-3(g)(5)(vii) may be applied by”.

9. On page 57953, column 1, in the preamble under the “B. Effective Dates— Calculation of Grandfathered Amount”, first paragraph, line 7, the language, “set forth in Notice 2005-1, Q&A-16.” is corrected to read “set forth in Notice 2005-1, Q&A,-17.”.

10. On page 57953, column 2, in the preamble under the “B. Effective Dates— Calculation of Grandfathered Amount”, first full paragraph, line 3, the language, “contained in Notice 2005-1, Q&A-16” is corrected to read “contained in Notice 2005-1, Q&A-17”.

§1.409A-1 [Corrected]

11. On page 57959, column 2, §1.409A-1(b)(4)(i), line 5, the language, “election under §1.409A-2(a)(4) to” is corrected to read “election under §1.409A-2(a)(3) to”.

12. On page 57961, column 1, §1.409A-1(b)(5)(iii)(B), last line of the paragraph, the language, “service provider stock.” is corrected to read “service recipient stock.”.

13. On page 57961, column 2, §1.409A-1(b)(5)(iii)(D)(1), line 25, the language, “constitute service provider stock with” is corrected to read “constitute service recipient stock with”.

14. On page 57962, column 2, §1.409A-1(b)(5)(iv)(B)(2)(iii), line 5, the language, “(b)(5)(B)(iv)(1) of this section, of an” is corrected to read “(b)(5)(iv)(B)(1) of this section, of an”.

15. On page 57962, column 2, §1.409A-1(b)(5)(iv)(B)(2)(iii), lines 5 and 6 from the bottom of the paragraph, the language, “§1.409A-3(g)(5)(iv) or §1.409A-3(g)(5)(vi) or make a public offering of” is corrected to read “§1.409A-3(g)(5)(v) or §1.409A-3(g)(5)(vii) or make a public offering of”.

16. On page 57962, column 3, §1.409A-1(b)(5)(iv)(B)(3), line 9 from the bottom of the paragraph, the language, “the service provider stock to which the” is corrected to read “the service recipient stock to which the”.

17. On page 57963, column 2, §1.409A-1(b)(5)(v)(E), line 7, the language, “exercised is not a material modification” is corrected to read “exercised is not a modification”.

18. On page 57963, column 2, §1.409A-1(b)(5)(v)(E), line 13, the language, “§1.409A-3(c). Additionally, no”. is corrected to read “§1.409A-3(h). Additionally, no”.

19. On page 57964, column 1, §1.409A-1(b)(v)(J)(6)(ii), line 14, the language, “purposes section 409A, including for” is corrected to read “purposes of section 409A, including for”.

20. On page 57964, column 2, §1.409A-1(b)(v)(J)(8)(ii)(B), line 7, the language, “the compensation would have been” is corrected to read “and the compensation would have been”.

21. On page 57965, column 1, §1.409A-1(b)(v)(9)(iii)(A)(1), line 3, the language, §1.415-1(d)(2)) for services provided to” is corrected to read “§1.415-2(d) for services provided to”.

22. On page 57965, column 1, §1409A-1(b)(v)(9)(iii)(A)(1), line 7, the language, “1402(a)(1) for services provided to the” is corrected to read “1402(a) for services provided to the”.

23. On page 57968, column 1, §1.409A-1(f)(3)(i)(C), last line of the paragraph, the language, “sections 267(b)(1) and 707(b)(1).” is corrected to read “sections 267(b) and 707(b)(1).”.

24. On page 57969, column 1, §1.409A-1(h)(2)(ii), line 2, the language, “paragraph (b)(2) of this section, the plan” is corrected to read “paragraph (h)(2)(i) of this section, the plan”.

25. On page 57969, column 1, §1.409A-1(h)(2)(ii), lines 4 through 8, the language, “described in paragraph (a) of this section that no amounts deferred under the plan be paid or made available to the participant before the participant has a separation from service with the” is corrected to read “described in §1.409A-3(a)(1) that amounts deferred under the plan may be paid or made available to the participant upon a separation from service with the”.

§1.409A-2 [Corrected]

26. On page 57971, column 3, §1.409A-2(a)(9), line 3, the language, “1(b)(9)(i) due to an actual involuntary” is corrected to read “1(m) due to an actual involuntary”.

27. On page 57973, column 1, §1.409A-2(b)(3), line 5, the language, “contained in §1.409A-3(c), the” is corrected to read “contained in §1.409A-3(h), the”.

1.409A-3 [Corrected]

28. On page 57975, column 3, §1.409A-3(b), line 26, the language, “§1.409A-1(b)(4). An arrangement may” is corrected to read “§1.409A-2(b). An arrangement may”.

29. On page 57977, column 2, §1.409A-3(g)(3)(i), line 12 from the top of the column, the language, “insurance, for example, not as a result” is corrected to read “insurance, for example, as a result”.

30. On page 57977, column 3, 1.409A-3(g)(4)(i)(A), line 6, the language, “result in

death or can be expect to last” is corrected to read “result in death or can be expected to last”.

31. On page 57981, column 1, §1.409A-3(h)(4)(viii)(B), line 6, the language, “defined in §1.409A-2(g)(4)(i). For”. is corrected to read “defined in §1.409A-3(g)(5)(i). For”.

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