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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9321]

RIN 1545-BE79

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

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: This document contains corrections to final regulations that were published in the Federal Register on Tuesday, April 17, 2007 (73 FR 19234), relating to section 409A.

DATES: This correction is effective April 17, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney, (202) 622-9639 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 409A of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9321) contain errors that may prove misleading and are in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9321), which were the subject of FR Doc. 07-1820, is corrected as follows:

1. On page 19235, column 3, in the preamble the paragraph heading III. the language "Definition of Nonqualified Deferred Compensation Plan", is corrected to read "Definition of Deferral of Compensation".
2. On page 19243, column 1, in the preamble, paragraph E., the last sentence in the first paragraph, the language "The final regulations adopt this suggestion, so long as the risk of forfeiture to which the stock is subject constitutes a substantial risk of forfeiture for purposes of section 409A." is corrected to read "The final regulations adopt this suggestion."

3. On page 19243, column 2, paragraph G., line 2 from the bottom of the paragraph, the language "Q&A-7 and section II.E. of the preamble" is corrected to read "Q&A-7 and sections II.E. and VI.E. of the preamble."
4. On page 19247, column 2, in the preamble, lines 3 and 4 from the bottom of the last paragraph, the language "limited period of time not to exceed one year following the initial existence of" is corrected to read "limited period of time not to exceed two years following the initial existence of".
5. On page 19258, column 2, in the preamble the tenth line from the bottom of the column, the language "average level of bona fide service" is corrected to read "average level of bona fide services".
6. On page 19264, column 1, in the preamble, paragraph D. line 9 from the bottom of the first paragraph, the language "with section 409A if the service" is corrected to read "with section 409A only if the service".
7. On page 19264, column 2, in the preamble, paragraph D., the last sentence of the top paragraph, the language "For a discussion of the ability to provide for different times and forms of payment due to different types of separations from service, including separations from service due to certain disabilities, see section VII.C. 4 of this preamble." is removed.
8. On page 19265, column 1, in the preamble under paragraph G., the third sentence of the paragraph, the language "The final regulations clarify that for these purposes, the availability of payments due to the unforeseeable emergency under any other nonqualified deferred compensation plan as defined for purposes of section 409A, including plans that would be nonqualified deferred compensation plans for purposes of section 409A except due to the effective date of the statute, or under any qualified plan (including any assets available by obtaining a loan under a qualified plan), need not be considered in determining whether an emergency is or may be relieved through other means." is corrected to read "The final regulations clarify that for these purposes, the availability of payments under any qualified plan (including any amount available by obtaining a loan under a qualified plan), or under any other nonqualified deferred compensation plan due to the unforeseeable emergency, including plans that would be nonqualified deferred compensation plans for purposes of section 409A except due to the effective date of the statute, need not be considered in determining whether an emergency is or may be relieved through other means."
9. On page 19265, column 1, in the preamble under paragraph G., lines 1 through 5 from the bottom of the first paragraph, the language "qualified plan, from a grandfathered nonqualified deferred compensation plan, or from another nonqualified deferred compensation plan that is subject to section 409A." is corrected to read "qualified plan, or from another nonqualified deferred compensation plan (including a grandfathered plan) due to the unforeseeable emergency."
10. On page 19267, column 2, in the preamble under paragraph B., lines 4 and 5 from the bottom of the column, the language "Where the change in control event consists of an asset purchase, the" is corrected to read "Solely for purposes of this rule, the".

11. On page 19270, column 2, in the preamble under paragraph A., lines 2, 3, and 4 from the top of the paragraph, the language "contributions, each up to the section 402(g) dollar limit on elective deferrals, are separate, additive limits and are not" is corrected to read "contributions is subject to two separate, additive limits and not".
12. On page 19272, column 1, in the preamble, the paragraph heading of paragraph XII., the language "Effective Date of Final Regulations" is corrected to read "Applicability Date of Final Regulations".
13. On page 19272, column 2, in the preamble under paragraph B., line 2, the language "effective January 1, 2008. For periods" is corrected to read "applicable January 1, 2008. For periods".
14. On page 19272, column 2, in the preamble, paragraph B., line 7 from the top of the first paragraph, the language "relief for periods before the effective" is corrected to read "relief for periods before the applicability".
15. On page 19272, column 2, in the preamble, paragraph B., line 3 from the top of the second paragraph, the language "becoming effective January 1, 2008, on" is corrected to read "becoming applicable January 1, 2008, on".
16. On page 19272, column 2, in the preamble, paragraph C., line 5 from the top of the paragraph, the language "rights issued before the effective date of" is corrected to read "rights issued before the applicability date of".
17. On page 19273, column 1, in the preamble, paragraph C., line 13 from the top of the second paragraph, the language "2005) or on or before the effective date" is corrected to read "2005) or on or before the applicability date".
18. On page 19273, column 1, in the preamble, paragraph C., line 16 from the bottom of the paragraph, the language "effective date of the regulations. In" is corrected to read "applicability date of the regulations. In".
19. On page 19273, column 2, in the preamble, paragraph D., line 4 of the second paragraph, the language "established before the effective date of" is corrected to read "established before the applicability date of".
20. On page 19273, column 2, in the preamble, paragraph E., line 7 of the first paragraph, the language "the time such regulations were effective." is corrected to read "the time such regulations were applicable."

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