

(h) *Effective/applicability date.* Except as otherwise provided, for applicability dates for this section for certain reporting corporations, see § 1.6038A-1(n). Paragraph (b)(8) of this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006.

**Kevin M. Brown,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 2, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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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.”.

**Guy R. Traynor,**

*Federal Register Liaison, Legal Processing Division, Publication & Regulations Branch, Associate Chief Counsel (Procedure & Administration).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 31

[TD 9337]

RIN 1545-BE21

#### Withholding Exemptions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W-4, “Employee’s Withholding Allowance Certificate.” The regulations provide rules for income tax withholding when the IRS notifies the employer and the employee of the maximum number of withholding exemptions permitted. The regulations also provide rules for the use of substitute forms and preserve the IRS’s ability to require the submission of certain copies of withholding exemption certificates. The regulations primarily affect taxpayers who are employers and employees.

**DATES: Effective Date:** These regulations are effective July 13, 2007.

**Applicability Date:** Except as provided in section 31.3402(f)(2)-1(g)(5), section 31.3402(f)(2)-1(g) applies on April 14, 2005. Section 31.3402(f)(2)-1(g)(2)(iii)(A), (B), and (C) and section 31.3402(f)(2)-1(g)(2)(ix) apply on October 11, 2007, except taxpayers may rely on such paragraphs for notices issued prior to such date. Section 31.3402(f)(5)-1(a)(1) applies on April 14, 2005. Section 31.3402(f)(5)-1(a)(2) applies October 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ilya Enkishev, (202) 622-0047 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

These regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W-4 contained in the regulations under section 6001 (§ 31.6001-5; OMB Control No. 1545-0798) and in the regulations under section 3402 (§ 31.3402(f)(2)-1; OMB Control No. 1545-0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

##### Background

Under section 3402(f)(2)(A) of the Internal Revenue Code, every employee is required to furnish his or her employer with a signed withholding exemption certificate on or before commencing employment. The regulations prescribe the form of the certificate as the Form W-4. The maximum number of withholding exemptions to which an employee is entitled depends upon the employee’s marital status, the employee’s filing status, the number of the employee’s dependents, the number of exemptions claimed by the employee’s spouse (if any) on a Form W-4, and the amount of the employee’s estimated itemized deductions, tax credits, and certain other deductions from income.

For many years, the regulations under section 3402(f) required employers to submit to the IRS a copy of each Form W-4 on which an employee claimed more than a certain number of withholding exemptions. Employers had to also submit a copy of each Form

W-4 on which the employee claimed a complete exemption from withholding for the taxable year if the employer reasonably expected, when the Form W-4 was received, that the employee’s wages from that employer would usually be \$200 or more per week. The regulations also provided that the IRS could notify an employer that a named employee was not entitled to claim a complete exemption from withholding and was not entitled to claim more withholding exemptions than the number specified by the IRS in the notice. The IRS issued this notice (often called a “lock-in letter”) if the IRS found that the withholding exemption certificate contained a materially incorrect statement or if the IRS found, after written request to the employee for verification of the statements on the certificate, that the IRS lacked sufficient information to determine if the certificate was correct. In these cases, the employer was required to withhold tax based on the number of withholding exemptions specified in the notice from the IRS unless otherwise notified by the IRS.

On April 14, 2005, the Department of Treasury published temporary regulations (TD 9196) in the **Federal Register** (70 FR 19694) under section 3402(f) modifying the rules relating to the submission of Forms W-4 and relating to the IRS’ notification of the number of withholding exemptions permitted. The Department of Treasury also published a notice of proposed rulemaking (REG-162813-04) cross-referencing the temporary regulations in the **Federal Register** on the same day.

Effective when published, the temporary regulations changed the procedures for submitting copies of Forms W-4 to the IRS. Specifically, under the temporary regulations employers were no longer routinely required to submit a copy of any Form W-4 on which an employee claimed more than 10 withholding exemptions. In addition, employers were no longer routinely required to submit a copy of any Form W-4 on which an employee claimed complete exemption from withholding for the taxable year if the employer reasonably expected, when the Form W-4 was received, that the employee’s wages from that employer would usually be \$200 or more per week. Rather, the temporary regulations provided that employers must submit copies of Forms W-4 only if instructed to do so in published guidance or in a written notice to the employer from the IRS. At this time, the IRS has not issued any published guidance requiring the submission of Forms W-4 to the IRS.