

ADVISORY

SULLIVAN & WORCESTER EMPLOYMENT & BENEFITS ADVISORY

IRS Suspends 409A Reporting and Withholding Requirements for 2005

The Internal Revenue Service has announced a suspension of employers' and payors' reporting and withholding requirements for calendar year 2005 with respect to deferrals of compensation subject to Internal Revenue Code Section 409A. Earlier this year, the IRS published guidance on the income reporting requirements of amounts deferred under a nonqualified deferred compensation plan. Employers will eventually need to report on a Form W-2: (1) the total amount of deferrals for all years under all nonqualified deferred compensation plans covered under Section 409A; and (2) any nonqualified deferred compensation includible in an employee's gross income under Section 409A ("409A Income"). In addition, an employer must withhold income tax from any 409A Income. The employee, in turn, must report 409A Income as gross income for federal income tax purposes. (Similar reporting obligations apply to nonemployer service recipients and providers.)

As a result of the new IRS guidance, employers and payors are not required to report deferrals of compensation on Forms W-2 and 1099 issued for calendar year 2005 compensation, and employers are not required to withhold with respect to deferrals of compensation during 2005. (Employers and payors may, however, need to file a corrected information return for 2005 in accordance with future IRS guidance.) Employees and other service providers are still required to report and pay tax on amounts includible in gross income under Section 409A for calendar year 2005. However, the new guidance provides that the IRS will not for 2005 assert failure to file, failure to report, accuracy and estimated tax penalties as a result of a failure to report such amounts and pay such taxes until future guidance is issued (although interest will continue to accrue).

For additional information about Section 409A, please refer to the materials on our website.

IF YOU WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT:

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