

KELLY, HANNAFORD & BATTLES P.A.

ANTHONY R. BATTLES
JULE M. HANNAFORD IV
A. DAVID KELLY
JOHN W. HAINE
SONJA LEMMER MARTENS

MARK D. MEYER
THEODORE K. RICE
OF COUNSEL

ATTORNEYS AT LAW
3900 CAMPBELL MITHUN TOWER
222 SOUTH NINTH STREET
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 341-0881
FACSIMILE (612) 341-1041
KHBLAW.COM

WRITER'S DIRECT DIAL:
612/455-6084
TRice@KHBlaw.com

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**Re: IRS Suspends Code §409A Requirement to Report 2005 Deferred
Compensation on Form W-2 or 1099**

Dear Clients and Other Friends:

Yesterday, in Notice 2005-94, the IRS announced it is suspending the requirement that employers and other payors report deferred compensation subject to Code §409A on Form W-2 or 1099. This is good news, because it has been unclear exactly what amounts were supposed to be reported on the 2005 W-2 and 1099 Forms which must be distributed in January.

You will recall that the American Jobs Creation Act of 2004 requires employers to report the gross amount of compensation deferred for a year on Form W-2 (for employees) or Form 1099 (for directors and other non-employee service providers). The Act also requires employers to separately report any deferred compensation that becomes currently taxable. Yesterday's Notice suspends these requirements for 2005.¹

The Notice says that in cases where deferred compensation subject to Code §409A was taxable in 2005, future guidance to be published by the IRS may require an employer or other payor to file a corrected W-2 or 1099 and furnish it to the employee or other service provider.

Notice 2005-94 notes that because certain types of taxable deferred compensation for 2005 will not be included on the employee's W-2 (or on a non-employee service provider's 1099), it may be difficult for the individual to correctly report the right amount of taxable income on their 2005 return. Future IRS guidance on this subject will include a way for employees and other service providers to pay such taxes later without incurring a penalty.

The Notice says the IRS is working on guidance regarding reporting and withholding requirements applicable to deferred compensation, and that such guidance is expected to be issued in the first half of 2006. In the meantime, employers and payors should keep detailed

¹ The obligation to currently withhold income tax on amounts that became currently taxable due to a violation of Code §409A was also suspended by the Notice.

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records of §409A compensation paid in 2005 so as to satisfy future reporting requirements issued by the IRS.

Notice 2005-94 does not affect the longstanding requirement that employers report certain deferred compensation as FICA wages and pay applicable FICA and Medicare tax on such compensation. Also, any deferred compensation which was actually paid during 2005 should be reported on the recipient's W-2 or 1099.

Please let us know if you have any questions about these or other §409A matters.

Sincerely,

Ted Rice

TKR/jks