

The following article is being reprinted with permission of Greenberg Traurig.

IRS Suspends Section 409A Reporting and Withholding Requirements for 2005

The American Jobs Creation Act of 2004 (the "Jobs Act"), pursuant to which Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") was enacted, imposed new reporting and withholding requirements for amounts actually deferred after December 31, 2004 pursuant to non-qualified deferred compensation arrangements.

Under these new rules, a plan sponsor is required to separately report all deferrals of compensation on a Form W-2 (for employees) or Form 1099-MISC (for non-employees), regardless of whether the compensation is taxable for that year under Section 409A. Notice 2005-1 issued by the Internal Revenue Service as interpretive guidance under Section 409A, states that the total amount of deferrals should be reported in Box 12 of Form W-2 using Code Y, in the case of deferrals by an employee, and in Box 15a of Form 1099-MISC in the case of deferrals by a non-employee.

"...the Internal Revenue Service issued Notice 2005-94, which suspends the foregoing new reporting and withholding requirements for the calendar year 2005."

The Jobs Act also amended Section 3401(a) of the Code to provide that "wages" subject to income tax withholding include any amounts includable in the gross income of an employee under Section 409A. Notice 2005-1 indicates that the amounts so includable in the income of an employee must be included as wages in Box 1 of Form W-2, as part of the total wages, tips and other compensation paid to the employee during the year and in Box 12 of Form W-2 using Code Z. In the case of non-employees, those taxable amounts are to be reported in Box 7 of Form 199-MISC and in Box 15(b) of Form 1099-MISC.

On December 9, 2005, the Internal Revenue Service issued Notice 2005-94, which suspends the foregoing new reporting and withholding requirements for the calendar year 2005. Notice 2005-94 cautions, however, that the relief it provides does not affect an employer's obligations under pre-existing law with regard to the withholding of income and employment taxes on deferred compensation of employees. Thus, for example, an employer must still treat deferred compensation as wages for employment taxes as of the later of (i) when the services are performed or (ii) when the rights to such compensation is no longer subject to a substantial risk of forfeiture.

© 2006 Greenberg Traurig

The opinions, estimates, charts and/or projections contained hereafter are as of the date of this presentation/material(s) and may be subject to change without notice. RCG endeavors to ensure that the contents have been compiled or derived from sources RCG believes to be reliable and contain information and opinions that RCG believes to be accurate and complete. However, RCG makes no representation or warranty, expressed or implied, in respect thereof, takes no responsibility for any

errors and omissions contained therein and accepts no liability whatsoever for any loss arising from any use of, or reliance on, this presentation/material(s) or its contents. Information may be available to RCG or its affiliates that are not reflected in its presentation/materials(s). Nothing contained in this presentation constitutes a solicitation, recommendation, endorsement, or offer to buy or sell any investment product. Investing entails the risk of loss of principal and the investor alone assumes the sole responsibility of evaluating the merits and risks associated with investing or making any investment decisions.

Retirement Capital Group, Inc. (RCG) neither acts as legal counsel, tax advisor nor provides accounting services. Recommendations should be reviewed with appropriate tax advisor or counsel. This report contains proprietary and confidential information belonging to RCG (www.retirementcapital.com). Acceptance of this report constitutes acknowledgement of the confidential nature of the information contained within.