The IRS will exercise its authority under section 6724(a) of the Code to waive penalties under sections 6721 and 6722 with respect to reporting of payments if persons required to file Form 1099-DIV make a good faith effort to report payments consistent with the rules summarized above and described in detail in sections 3.01 through 3.06 of Notice 2003–79. A person required to make a return under section 6042 may report a distribution in Box 1b as a qualified dividend even if the distribution does not satisfy these simplified information reporting procedures, subject to the applicable penalty provisions, as described in detail in section 3.07 of Notice 2003–79.

.03 Recipients of Form 1099-DIV.

For taxable years beginning in 2005 and future tax years, a recipient of Form 1099-DIV may treat amounts reported in Box 1b as qualified dividends, unless and to the extent the recipient knows or has reason to know that such amounts are not qualified dividends, as described in detail in section 3.08 of Notice 2003–79.

SECTION 4. EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2005.

SECTION 5. COMMENTS

Treasury and the IRS continue to invite interested persons to comment on the information reporting procedures contained in this notice and the certification procedures outlined in Section 5 of Notice 2003–79. Written comments may be submitted to CC:PA:LPD:PR (Notice 2006–3), room 5207, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 5 pm to: CC:PA:LPD:PR (Notice 2006–3), Courier’s desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the following e-mail address:

Notice.Comments@irsounsel.treas.gov.

Please include “Notice 2006–3” in the subject line of any electronic communications.

SECTION 6. PAPERWORK REDUCTION ACT

The information collection referenced in this notice has been previously reviewed and approved by the Office of Management and Budget as part of the promulgation of Form 1099-DIV. See OMB Control Number 1545–0110. This notice merely provides additional guidance regarding the proper filing of such returns and furnishing of such statements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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.

SECTION 7. CONTACT INFORMATION

The principal author of this notice is Karen A. Rennie of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact David Lundy at (202) 622–3880 (not a toll-free call).

Interim Guidance With Respect to the Application of Section 409A to Outstanding Stock Rights

Notice 2006–4

I. Background

Section 409A was added to the Internal Revenue Code as part of the American Jobs Creation Act of 2004. Pub. Law 108–357, § 409A, 118 Stat. 1451, 1471–B (2004) (Pl 108–357). Section 409A imposes restrictions on elections to defer Federal income tax on compensation, including the amount of such compensation, that is subject to certain vesting requirements and is paid to a “key employee” of an “eligible plan,” and provides that such compensation is includible in income when paid, regardless of the expiration of the deferral period or the satisfaction of any other conditions of the deferral. Section 409A was added to the Internal Revenue Code as part of the American Jobs Creation Act of 2004. Pub. Law 108–357, § 409A, 118 Stat. 1451, 1471–B (2004) (Pl 108–357). Section 409A imposes restrictions on elections to defer Federal income tax on compensation, including the amount of such compensation, that is subject to certain vesting requirements and is paid to a “key employee” of an “eligible plan,” and provides that such compensation is includible in income when paid, regardless of the expiration of the deferral period or the satisfaction of any other conditions of the deferral. Section 409A was added to the Internal Revenue Code as part of the American Jobs Creation Act of 2004. Pub. Law 108–357, § 409A, 118 Stat. 1451, 1471–B (2004) (Pl 108–357). Section 409A imposes restrictions on elections to defer Federal income tax on compensation, including the amount of such compensation, that is subject to certain vesting requirements and is paid to a “key employee” of an “eligible plan,” and provides that such compensation is includible in income when paid, regardless of the expiration of the deferral period or the satisfaction of any other conditions of the deferral.
Standards of § 1.422–2(e)(2)

B. Application of the Good Faith

... acting and thus no guidance with respect to
... section 409A had not been en-
... that at the time such stock rights were
... that the time the option was granted depends on
... whether the stock right is ex-
... price at not less than the fair market value
... the time the option was granted, then
... the time of grant depends on the relevant facts and circumstances.

Until further guidance is issued, with respect to a stock right issued before January 1, 2005, for purposes of determining whether the stock option results in a deferral of compensation pursuant to Notice 2005–1, Q&A–4(d)(ii), or the stock appreciation right results in a deferral of compensation pursuant to § 1.409A–1(b)(5)(i)(B) of the proposed regulations, principles similar to those set forth in § 1.422–2(e)(2) will be applied. Accordingly, where there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the relevant facts and circumstances.

III. Stock Rights Issued on or after January 1, 2005 and Continued Application of Notice 2005–1, Q&A–4(d)(ii)

With respect to stock options granted on or after January 1, 2005 and before the effective date of final regulations, Notice 2005–1, Q&A–4(d)(ii) remains applicable guidance. Taxpayers may also rely on § 1.409A–1(b)(5)(i)(B) of the proposed regulations for purposes of determining whether the stock right is excluded from the requirements applicable to deferred compensation under section 409A.

IV. Request for Additional Comments regarding Application of Final Regulations to Outstanding Stock Rights

Final regulations may establish more detailed standards for valuation in the context of stock rights than those provided in this notice and Notice 2005–1. The Treasury Department and the IRS continue to request comments with respect to the proposed regulations, and specifically how the standards proposed with respect to the determination of the fair market value of stock subject to stock rights may be improved both to meet commentators’ requests for more certainty with respect to the valuation requirement, and the legislative intent that only stock rights with exercise prices that may not be lower than the fair market value of the underlying stock on the date of grant be excluded from coverage under section 409A. See H.R. Conf. Rep. No. 108–755, at 735 (2004).

In addition, commentators have expressed concerns relating to the definition of service recipient stock for purposes of the exclusions from coverage under section 409A for certain stock rights, and the treatment of modifications, extensions and renewals of otherwise excluded stock rights. The Treasury Department and the IRS are considering comments on these issues, and invite further comments with respect to the rules proposed under the proposed regulations, as well as any additional transitional relief that may be provided in Notice 2005–1.

Section 1.422–2(e)(2) generally provides that if a share of stock is transferred to an individual pursuant to the exercise of an option which fails to qualify as an incentive stock option merely because there was a failure of an attempt, made in good faith, to meet the option price requirements of § 1.422–2(e)(1), those option price requirements are considered to have been met. Whether there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the relevant facts and circumstances.

Until further guidance is issued, with respect to a stock right issued before January 1, 2005, for purposes of determining whether the stock option results in a deferral of compensation pursuant to Notice 2005–1, Q&A–4(d)(ii), or the stock appreciation right results in a deferral of compensation pursuant to § 1.409A–1(b)(5)(i)(B) of the proposed regulations, principles similar to those set forth in § 1.422–2(e)(2) will be applied. Accordingly, where there was a good-faith attempt to set the exercise price of a stock right granted before January 1, 2005, at a price not less than the fair market value of the stock subject to the stock right at the time the stock right was granted, then such exercise price will be treated as being not less than the fair market value of the stock at the time of grant for purposes of determining whether the stock right is excluded from the requirements applicable to deferred compensation under section 409A.

Accordingly, where there was a good-faith attempt to set the exercise price of a stock right granted before January 1, 2005, at a price not less than the fair market value of the stock subject to the stock right at the time the stock right was granted, then such exercise price will be treated as being not less than the fair market value of the stock at the time of grant for purposes of determining whether the stock right is excluded from the requirements applicable to deferred compensation under section 409A.

B. Application of the Good Faith Standards of § 1.422–2(e)(2)

Section 1.422–2(e)(2) generally provides that except as provided by § 1.422–2(e)(2), the option price of an incentive stock option must not be less than the fair market value of the stock subject to the option at the time the option is granted. Section 1.422–2(e)(2) generally provides that if a share of stock is transferred to an individual pursuant to the exercise of an option which fails to qualify as an incentive stock option merely because there was a failure of an attempt, made in good faith, to meet the option price requirements of § 1.422–2(e)(1), those option price requirements are considered to have been met. Whether there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the relevant facts and circumstances.

Until further guidance is issued, with respect to a stock right issued before January 1, 2005, for purposes of determining whether the stock option results in a deferral of compensation pursuant to Notice 2005–1, Q&A–4(d)(ii), or the stock appreciation right results in a deferral of compensation pursuant to § 1.409A–1(b)(5)(i)(B) of the proposed regulations, principles similar to those set forth in § 1.422–2(e)(2) will be applied. Accordingly, where there was a good-faith attempt to set the exercise price of a stock right granted before January 1, 2005, at a price not less than the fair market value of the stock subject to the stock right at the time the stock right was granted, then such exercise price will be treated as being not less than the fair market value of the stock at the time of grant for purposes of determining whether the stock right is excluded from the requirements applicable to deferred compensation under section 409A.
appropriate in conjunction with the implementation of the final regulations. For information regarding the submission of comments, see the “Comments and Public Hearing” section of the preamble to the proposed regulations.

V. Drafting Information

The principal author of this guidance is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Stephen Tackney at (202) 927–9639 (not a toll-free call).

26 CFR 1.263A–1T: Uniform capitalization of costs (temporary).
(Also Part I, §§ 446(e); 1.263A–2T; 1.446–1.)

Rev. Proc. 2006–11

SECTION 1. PURPOSE


SECTION 2. BACKGROUND

.01 Under §§ 446(e) and 1.446–1(e), a taxpayer generally must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. To obtain the Commissioner’s consent to a change in method, § 1.446–1(e)(3)(i) generally requires a taxpayer to file Form 3115, Application for Change in Accounting Method, during the taxable year in which the taxpayer desires to make the proposed change. Section 1.446–1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures that provide the terms and conditions necessary for a taxpayer to obtain consent to change a method of accounting. The terms and conditions the Commissioner may prescribe include whether the change is to be made with a § 481(a) adjustment, and if so, the § 481(a) adjustment period, or on a cut-off basis.

.02 Section 481(c) and §§ 1.446–1(e)(3)(ii) and 1.481–4 provide that the adjustment required by § 481(a) may be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer.

.03 This revenue procedure applies only for a taxpayer’s first taxable year ending on or after August 2, 2005, for a change in method of accounting to comply with § 1.263A–1T or 1.263A–2T. A change in method of accounting under this revenue procedure requires a § 481(a) adjustment, and the § 481(a) adjustment period is two taxable years for a net positive adjustment. It is expected that this two-year adjustment period for a net positive § 481(a) adjustment will apply to changes in methods of accounting made in future years to comply with the rules in §§ 1.263A–1T and 1.263A–2T, and the successor final regulations.

.04 Rev. Proc. 97–27 provides the general procedures under §§ 446(e) and 1.446–1(e) for obtaining the consent of the Commissioner to change a method of accounting for federal income tax purposes. Except as specifically provided in section 4.02 of Rev. Proc. 97–27 or other published guidance, Rev. Proc. 97–27 applies to all taxpayers requesting the Commissioner’s consent to change a method of accounting for federal income tax purposes. See Rev. Proc. 97–27, sections 1.01 and 4.01.

.05 Section 4.02(1) of Rev. Proc. 97–27 provides that Rev. Proc. 97–27 does not apply if the change in method of accounting is required to be made pursuant to a published automatic change procedure.

.06 Rev. Proc. 2002–9 provides procedures under §§ 446(e) and 1.446–1(e) for obtaining the automatic consent of the Commissioner to change certain methods of accounting for federal income tax purposes. Specifically, Rev. Proc. 2002–9 applies to a taxpayer requesting the Commissioner’s consent to change to a method of accounting described in the APPENDIX of such revenue procedure. Rev. Proc. 2002–9 is the exclusive procedure for a taxpayer within its scope to obtain the Commissioner’s consent. See Rev. Proc. 2002–9, sections 1 and 4.01.

.07 T.D. 9217 contains final and temporary regulations relating to the capitalization of costs under the simplified service cost method provided by § 1.263A–1(h) and the simplified production method provided by § 1.263A–2(b). Specifically, the regulations under § 1.263A–1T and § 1.263A–2T clarify what property qualifies as self-constructed assets produced on a routine and repetitive basis for purposes of the simplified service cost method or the simplified production method, respectively.

.08 Section 1.263A–1T(k)(1) provides that a change in a taxpayer’s treatment of mixed service costs to comply with § 1.263A–1T is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply. Section 1.263A–1T(k)(1) further provides that for a taxpayer’s first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with § 1.263A–1T, provided the taxpayer follows the administrative procedures issued under § 1.446–1(e)(3)(ii), as modified by § 1.263A–1T(k)(2) through (4), for obtaining the Commissioner’s automatic consent to a change in accounting method.

.09 Section 1.263A–2T(e)(1) provides that a change in a taxpayer’s treatment of additional § 263A costs to comply with § 1.263A–2T is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply. Section 1.263A–2T(e)(1) further provides that for a taxpayer’s first taxable year ending on or after August 2, 2005, the taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with § 1.263A–2T, provided the taxpayer follows the administrative procedures issued under § 1.446–1(e)(3)(ii), as modified