

Eligible Transactions and Corrections Under IRS Notice 2007-100

Transaction: <i>Failed Deferrals Corrected in the Same Tax Year</i>		
Under the terms of the plan and any applicable deferral election, an amount should not have been made available to an employee in a tax year, but was made available in that year due to an <u>unintentional operational failure</u> .		
Correction	Relief	Examples
<p>Correction Option A</p> <p>The employee must:</p> <ul style="list-style-type: none"> • Repay to the employer the amount that was erroneously made available to the employee on or before the last day of the employee's tax year in which such amount was made available. • Immediately after such repayment the employee must have a legally binding right under the plan to be paid the amount that would have been due if such amount had not been erroneously made available to the employee during such tax year, at the same time and in the same form of payment. • If the total of all amounts that were erroneously made available in an employee's tax year exceeds the qualified plan 402(g) deferral limit for the year in which the erroneous payment was made and the employee is an <u>Insider</u>, the employee must also pay interest to the employer at the time of the repayment. The amount of interest is equal to: <ul style="list-style-type: none"> • The amount of the erroneous payment; • Multiplied by the short-term applicable Federal rate; • Multiplied by a fraction, the 	<p>Repaid amounts are not reported on the employee's Form W-2 or Form 1099. If employment taxes have been withheld and paid with respect to such payment, appropriate adjustments should be made.</p> <p>Instead of repayment, the employer reduces other compensation that would have been paid to the employee. The compensation that is used to make the correction is includible in the employee's income and reported as wages on Form W-2.</p> <p>Relief is not available during any tax year in which the employer experienced a substantial financial downturn or otherwise experienced financial or other issues that indicated a significant risk that the employer would not be able to pay the amount deferred when the payment became due.</p>	<p>Example</p> <ul style="list-style-type: none"> • Employee, who is not an <u>Insider</u>, makes an election to defer 50% of a bonus payable in 2008 to a nonqualified defined contribution plan maintained by the employer. The bonus is \$100,000. • Due to an unintentional operational failure, employer defers only 10% of the bonus, or \$10,000, and pays employee the other \$90,000 in 2008 (including the \$40,000 that should have been deferred). • Correction Option A <ul style="list-style-type: none"> • On or before December 31, 2008, the additional \$40,000 is credited to the employee's account balance and the employee pays the employer \$40,000, and • The \$40,000 erroneously paid to employee is not reported as income on Form W-2. • Correction Option B <ul style="list-style-type: none"> • Compensation otherwise payable to employee in 2008 (such as salary payments), is reduced by \$40,000. The \$40,000 reduction in employee's compensation used to repay the amount (but not the \$40,000 erroneous payment) is reported as wages on Form W-2. • Employer may also adjust employee's account to reflect the earnings (or losses) that would have been allocated to the account if the amount had been timely deferred and credited to the employee's account balance, if such adjustment for earnings (or losses) is made on or before December 31, 2008. • If it is impracticable to make the adjustment on or before December 31, 2008, it may be made later retroactively to December 31, 2008, provided that employee and employer

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<p>numerator of which is the number of days from the erroneous payment date to the repayment date and the denominator is the number of days in the tax year.</p> <p>The short-term rate is based on annual compounding for the month in which the erroneous payment was made.</p> <p>Correction Option B</p> <p>A repayment may also be made through a reduction of the employee’s other compensation.</p> <ul style="list-style-type: none"> • The repayment date occurs on each date the compensation otherwise would have been paid to the employee. • If the amount withheld on a repayment date is less than the entire erroneous payment and interest is payable, the interest calculation is applied by substituting the unpaid balance immediately before the repayment for the amount of the erroneous payment. 		<p>each has a legally binding right on December 31, 2008 to such adjustment.</p>
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<p>Transaction: <i>Early Payments Corrected in the Same Tax Year</i></p>		
<p>Under the terms of the plan and any applicable deferral election, an amount should not have been paid to an employee in a tax year, but was paid in that year due to an <u>unintentional operational failure</u>.</p>		
<p align="center">Correction</p>	<p align="center">Relief</p>	<p align="center">Examples</p>
<p>Correction Option A</p>	<p>Repaid amounts are not reported on the employee’s Form W-2 or Form 1099. If</p>	<p>Example</p> <ul style="list-style-type: none"> • Employee, who is an <u>Insider</u>, is scheduled to receive a

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<p>The employee must:</p> <ul style="list-style-type: none"> • Repay to the employer the amount that was erroneously paid to the employee on or before the last day of the employee's tax year in which the amount was erroneously paid. • Immediately after the repayment, the employee must have a legally binding right under the plan to be paid the amount that would have been due if such amount had not been erroneously paid during such tax year, at the same time and in the same form of payment. • If the total of all amounts that were erroneously paid in an employee's tax year exceeds the qualified plan 402(g) deferral limit for the year in which the erroneous payment was made and the employee is an Insider, the employee must also pay interest to the employer at the time of the repayment. The amount of interest is equal to: <ul style="list-style-type: none"> • The amount of the erroneous payment; • Multiplied by the short-term applicable Federal rate; • Multiplied by a fraction, the numerator of which is the number of days from the erroneous payment date to the repayment date and the denominator is the number of days in the tax year. <p>The short-term rate is based on annual compounding for the month in which the erroneous payment was paid.</p>	<p>employment taxes have been withheld and paid with respect to such payment, appropriate adjustments should be made.</p> <p>Instead of repayment, the employer reduces other compensation that would have been paid to the employee. The compensation that is used to make the correction is includible in the employee's income and reported as wages on Form W-2.</p> <p>Relief is not available during any tax year in which the employer experienced a substantial financial downturn or otherwise experienced financial or other issues that indicated a significant risk that the employer would not be able to pay the amount deferred when the payment became due.</p>	<p>\$10,000 installment payment in 2008 that is not subject to the six-month delay for payments to specified employees upon separation from service.</p> <ul style="list-style-type: none"> • Due to an unintentional error, the employer pays the employee \$11,000. • Correction Option A <ul style="list-style-type: none"> • On or before December 31, 2008, the excess \$1,000 payment is credited to the employee's account balance, and the employee pays the employer \$1,000, and • The \$1,000 is not reported as income on Form W-2. • Correction Option B <ul style="list-style-type: none"> • Employee's compensation otherwise payable in 2008 (such as salary payments) is reduced by \$1,000. • The \$1,000 reduction in employee's compensation used to repay the amount (but not the \$1,000 erroneous payment) is reported as wages on Form W-2. • Since the excess \$1,000 payment does not exceed the qualified plan 402(g) deferral limit, employee does not need to pay any interest. • Employer may also adjust the employee's account to reflect the earnings (or losses) that would have been allocated to the account if the amount had been timely deferred and credited to the employee's account balance, if such adjustment for earnings (or losses) is made on or before December 31, 2008. • If it is impracticable to make the adjustment on or before December 31, 2008, it may be made later retroactively to December 31, 2008, provided that employee and employer each has a legally binding right on December 31, 2008 to such adjustment.
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<p>Correction Option B</p> <p>A repayment may also be made through a reduction of the employee's other compensation.</p> <ul style="list-style-type: none"> • The repayment date occurs on each date the compensation otherwise would have been paid to the employee. • If the amount withheld on a repayment date is less than the entire erroneous payment and interest is payable, the interest calculation is applied by substituting the unpaid balance immediately before the repayment for the amount of the erroneous payment. 		
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<p>Transaction: <i>Failure to Delay Payment in Accordance with <u>Six-Month Rule</u> Corrected in the Same Tax Year</i></p> <p>Applies to amounts that under the terms of the plan, any applicable deferral election and section 409A requires that deferred compensation may not be paid or made available to a specified employee for at least six months following his separation from service, but is made available before the expiration of such six-month period due to an <u>unintentional operational failure</u>.</p>		
Correction	Relief	Examples
<p>On or before the last day of the employee's tax year in which the amount was paid or made available:</p> <ul style="list-style-type: none"> • The employee repays to the employer the amount that was erroneously paid or made available to the employee. • Immediately after such repayment the employee must have a legally binding right to receive such amount from the employer on the date that is the same number of days after the later of: <ul style="list-style-type: none"> • The date the amount would 	<p>Repaid amounts are not reported on the employee's Form W-2 or Form 1099.</p> <p>Appropriate adjustments should be made to the extent employment taxes have been withheld.</p> <p>Relief is not available with respect to any erroneous payment occurring during any tax year of the employee in which the employer experienced a substantial financial downturn or otherwise</p>	<p>Example 1</p> <ul style="list-style-type: none"> • Employee has a legally binding right to a payment of deferred compensation on the first day of the seventh month following the employee's separation from service. Employee separates from service on November 15, 2008. Payment is due on June 1, 2009. • Due to an unintentional operational failure, employer pays the employee the amount of deferred compensation on May 1, 2009. • Employer discovers the error on July 1, 2009, and employee repays the amount to employer on July 1, 2009 (61 days after the erroneous payment).

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<p>otherwise have been payable under the terms of the plan and the applicable deferral election, or</p> <ul style="list-style-type: none"> • The date of the repayment as the number of days from the date the employer made the erroneous payment through the date the employee repaid the erroneous payment, and • The repaid amount is not paid or made available to the employee before such date. <p>For purposes of counting days, the first day of the period is disregarded and the last day is taken into account.</p>	<p>experienced financial or other issues that indicated a significant risk that the employer would not be able to pay the amount deferred when the payment became due.</p>	<ul style="list-style-type: none"> • Provided immediately after the repayment the employee has a legally binding right to receive the amount from employer on August 31, 2009 (61 days after July 1, 2009 repayment date) and employer does not repay the amount to employee before that date, employee will not be treated as having failed to comply with the section 409A rules and the terms of the plan as a result of the early payment. <p>Example 2</p> <ul style="list-style-type: none"> • Under the terms of the plan, the employee has a legally binding right to a payment of deferred compensation on the first day of the seventh month following separation from service. • Employee separates from service on May 1, 2008. Payment is due on December 1, 2008. • Due to an unintentional operational failure, employer pays employee the amount of deferred compensation on May 1, 2008. • Employer discovers the error and employee repays the amount to employer on July 1, 2008 (61 days after the erroneous payment). • Provided that immediately after the repayment, employee has a legally binding right to receive the amount from employer on January 31, 2009 (61 days after December 1, 2008) and employer does not repay the amount to employee before that date, employee will not be treated as having failed to comply with the terms of the plan as a result of the early payment. • Erroneous payment is not reported on the Form W-2. The amount is includible in employee's income in the year in which the amount is repaid by employer to employee pursuant to the plan and is required to be reported on that year's Form W-2 and is subject to employment taxes.
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Transaction: *Excess Deferred Amount Corrected in the Same Tax Year*

Under the terms of a plan and any applicable deferral election, an amount that should not have been deferred compensation is credited to the employee's account

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or otherwise treated as deferred compensation as the result of an <u>unintentional operational failure</u> .		
Correction	Relief	Examples
<p>The employer pays the excess amount to the employee on or before the last day of the employee's tax year in which the excess amount was incorrectly treated as deferred compensation.</p> <ul style="list-style-type: none"> • The amount to which the employee has a legally binding right under the plan at the end of the year must be adjusted to reflect the payment (for example, through a reduction in the account balance). • In addition, if the employee is an <u>Insider</u>, the remaining account balance (or other deferred compensation under the plan) must be adjusted with positive earnings retroactive to the date the excess amount was incorrectly deferred under the plan, provided that such adjustment must be made on or before the last day of the employee's tax year in which such amount was incorrectly treated as deferred compensation (or if it is impracticable to make the adjustment by the end of such year, the employer must have a legally binding right on the last day of such tax year to make such adjustment retroactively to such date). • In other cases, such adjustment may be (but is not required to be) made. • Where the amount was subject to losses, the remaining account 	<p>This relief is not applicable to an employer's failure to timely pay in the proper tax year of an employee amounts that were deferred in one or more previous tax years of the employee.</p>	<p>Example</p> <ul style="list-style-type: none"> • Employee, who is an <u>Insider</u> and whose tax year is the calendar year, makes an election to a nonqualified defined contribution plan to defer 10% of a bonus payable in 2008. The bonus is \$100,000. • Due to an unintentional operational failure, employer defers 50% of the bonus, or \$50,000 and pays employee \$50,000 (instead of deferring \$10,000 and paying employee \$90,000). • The excess \$40,000 will not be treated as deferred under the plan if on or before December 31, 2008, employer pays employee \$40,000 of the account balance under the plan. • The remaining account balance must be adjusted for earnings and may be adjusted for losses that were allocable to such amount under the plan. For example, if the account was credited with 10% in investment earnings, the account balance must be reduced by both the \$40,000 paid to employee and \$4,000 in earnings, or \$44,000, to result in \$11,000 account balance that would have been reflected had the deferred compensation under the plan been properly deferred. • The adjustment must be made by December 31, 2008, except that the adjustment can be made later, retroactively as of that date, if it is impracticable to make the adjustment by December 31, 2008, and the employer has a legally binding right on that date to make such a retroactive adjustment. • If the account was charged with 10% deemed investment losses, the account balance must be reduced by the \$40,000, but may be adjusted not later than December 31, 2008, by the \$4,000 in losses on the improperly deferred amount, for a net reduction of \$36,000, to result in the \$9,000 account balance that would have been reflected had the deferred compensation been properly deferred. • If it is impracticable to make the adjustment on or before December 31, 2008, such \$4,000 adjustment may be made later retroactively to December 31, 2008, provided that the

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<p>balance (or other deferred compensation under the plan) is not required to be adjusted, but may be adjusted for such losses retroactive to the date the excess amount was incorrectly credited to the employee's account or otherwise incorrectly treated as deferred compensation under the plan, provided that such adjustment must be made on or before the last day of the employee's tax year in which such amount was incorrectly treated as deferred compensation under the plan (or if it is impracticable to make the adjustment by the end of such tax year, the employee must have a legally binding right on the last day of such tax year to require that such adjustment be made retroactively to the date of the failure).</p> <ul style="list-style-type: none">• The employer may (but is not required to) pay reasonable interest to (or otherwise reasonably compensate) the employee to reflect the time value of money with respect to the late payment, provided that such interest or other compensation is paid or made available by the end of the employee's tax year in which such amount was incorrectly treated as deferred compensation under the plan.		<p>employer has a legally binding right on December 31, 2008, to have such adjustment made.</p> <ul style="list-style-type: none">• Employer may (but is not required to) pay employee reasonable interest on the \$40,000 erroneous deferral provided such payment is made by December 31, 2008.
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Transaction: <i>Correction of Exercise Price of Otherwise Excluded Stock Right</i>		
Applies if the exercise price is less than the fair market value of the underlying stock and results from an <u>unintentional operational failure</u> . The stock right is treated from the date of grant as not providing for nonqualified deferred compensation.		
Correction	Relief	Examples
<p>Relief is available if before the stock right is exercised and not later than the last day of an employee's tax year in which the employer granted the stock right:</p> <ul style="list-style-type: none"> • The exercise price is reset to an amount equal to or exceeding the fair market value of the underlying stock on the date of grant; and • At all times before such increase in the exercise price the stock right would not have provided for nonqualified deferred compensation. 	<p>Stock right will be treated as nonqualified deferred compensation if, before the stock right is exercised, the exercise price is reset to an amount equal to or exceeding the fair market value.</p>	<p>Example</p> <ul style="list-style-type: none"> • On January 1, 2008, employer grants employee a stock option to purchase 100 shares of stock, and the stock option would otherwise be excluded from the nonqualified deferred compensation requirements except that due to an unintentional operational failure, the exercise price is set at an amount below the fair market value of the stock on January 1, 2008. • On July 1, 2008, the employee partially exercises the stock option and purchases 40 shares, but retains a stock option to purchase 60 shares. • Provided that on or before December 31, 2008, the exercise price of the remaining stock option to purchase 60 shares is reset to a price at or above the fair market value of the underlying stock on January 1, 2008, the stock option to purchase 60 shares may qualify for relief. • Because the exercise price was not reset before July 1, 2008, the portion of the stock option that was exercised to purchase 40 shares is not eligible for relief.

Transaction: <i>Failure to Defer Limited Amount Not Corrected in the Same Tax Year</i>
<p>During an employee's tax year beginning before January 1, 2010, an <u>unintentional operational failure</u> occurs and:</p> <ul style="list-style-type: none"> • An amount should have been treated as deferred compensation under the terms of the plan and any applicable deferral election, but the amount was not credited to the employee's account or otherwise treated as deferred compensation during the employee's tax year, or did not remain deferred compensation after the end of such year; and • Because the amount was not credited to the employee's account or treated as deferred compensation under the plan after the end of such year, the amount was made available to the employee during the employee's tax year; and • The amount made available to the employee does not exceed the qualified plan 402(g) deferral limit for the year of the operational failure.

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Correction	Relief	Examples
<p>Provided the plan complies with section 409A and related guidance, the amount includible in income as a result of such payment is limited to the amount that should have been treated as deferred compensation, but was instead made available to the employee, and does not include any other amounts deferred under the plan.</p> <ul style="list-style-type: none"> The employee must pay the additional 20% tax on the amount includible in income, but is not required to pay the additional premium interest tax. The plan includes any arrangements treated as a single plan so that the correction only applies if any and all erroneous payments under the plan, in the aggregate, of amounts that otherwise should have been treated as deferred compensation with respect to the employee during the tax year (or should have continued to be deferred compensation during the tax year) do not exceed the qualified plan 402(g) deferral limit for such year. 	<p>The amount includible in income is limited to the amount that should have been treated as deferred compensation but was made available to the employee and does not include any other amounts deferred under the plan.</p> <p>Relief is not available if the operational failure occurred during a tax year of the employee in which the employer experienced a substantial financial downturn or otherwise experienced financial or other issues that indicated a significant risk that the employer would not be able to pay the amount deferred when the payment becomes due.</p>	<p>Example</p> <ul style="list-style-type: none"> Employee makes an election to defer 10% of a bonus payable in 2008 to a nonqualified defined contribution plan. The bonus is \$10,000. Due to an unintentional operational failure, employer defers only 8% of the bonus, or \$800, and pays employee \$9,200 (instead of deferring \$1,000 and paying employee \$9,000). The amount is not corrected by December 31, 2008, when employee's account balance is \$100,000. Employer must treat the amount as a wage payment for employment tax and reporting purposes, as appropriate, including reporting as income on the Form W-2. Employer is permitted to report as income on Form W-2 (or 2008 Form W-2c), Box 12, using Code Z, only \$200, and employee is permitted to include income for 2008 only \$200. Employee is required to pay additional 20% tax only on the \$200 (or \$40 in additional income tax), but is not required to pay the premium interest tax.

<p>Transaction: <i>Certain Erroneous Payments Not Corrected in the Same Tax Year</i></p> <p>Applies if during an employee's tax year beginning before January 1, 2010, an <u>unintentional operational failure</u> occurs and:</p> <ul style="list-style-type: none"> An amount should have been treated as deferred compensation under the terms of the plan and any applicable deferral election, but the amount did not remain deferred compensation after the end of such year; and The amount was paid to the employee during the employee's tax year; and The amount paid to the employee does not exceed the qualified plan 402(g) deferral limit for the year of the operational failure. 		
Correction	Relief	Examples

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<p>Provided the plan complies with section 409A and related guidance, the amount includible in income as a result of such payment is limited to the amount that should have continued to be deferred compensation under the plan) but was instead paid to the employee, and does not include any other amounts deferred under the plan.</p> <ul style="list-style-type: none"> • The employee must pay the additional 20% tax on the amount includible in income, but is not required to pay the additional premium interest tax. • A payment of an amount (including a payment of an amount that is one of a series of installment payments or life annuity payments) that under the terms of the plan is required to be delayed for at least six months following a separation from service, but is paid before the completion of that six months, may be treated as the payment of an amount that should have continued to be deferred compensation. • The plan includes any arrangements treated as a single plan so that the correction only applies if any and all erroneous payments under the plan, in the aggregate, of amounts that otherwise should have been treated as deferred compensation with respect to the employee during the tax year (or should have continued to be deferred compensation during the tax year) do not exceed the qualified plan 402(g) deferral limit for such year 	<p>The amount includible in income is limited to the amount that should have been treated as deferred compensation but was paid to the employee and does not include any other amounts deferred under the plan.</p> <p>Relief is not available if the operational failure occurred during a tax year of the employee in which the employer experienced a substantial financial downturn or otherwise experienced financial or other issues that indicated a significant risk that the employer would not be able to pay the amount deferred when the payment becomes due.</p>	<p>Example</p> <ul style="list-style-type: none"> • Employee is a specified employee who is entitled under a nonqualified defined contribution plan to a life annuity commencing upon the first day of the seventh month following the employee's separation from service. The annuity payments are \$2,000 per month. • Employee separates from service on April 18, 2008, and is scheduled to receive an initial annuity payment on November 1, 2008. • Due to a miscalculation of the employee's separation from service date, employee receives a \$2,000 payment on October 1, 2008, before the end of the 6-month period following the employee's separation from service. • Employee and employer do not discover the error until 2009. • Employer must treat the amount as a wage payment for employment and tax reporting purposes, as appropriate, including reporting as income on the Form W-2. • Employer is permitted to report as income on the Form W-2 (or Form W-2c), Box 12, using Code Z, only \$2,000, and employee is permitted to include in income in 2008 only \$2,000. • Employee is required to pay the additional 20% tax on the \$2,000 (or \$400 in additional income tax), but is not required to pay the premium interest tax.
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Transaction: *Limited Excess Deferred Amount Not Corrected in the Same Tax Year*

Applies on or before the last day of an employee’s tax year beginning before January 1, 2010, provided the following requirements are met:

- Under the terms of the plan and any applicable deferral election, an amount of deferred compensation under the plan should have been paid or made available to the employee during the employee’s tax year, or an amount is treated as deferred compensation under the plan that should have been paid or made available to the employee during the employee’s tax year, but such amount is not paid or made available due to an unintentional operational failure with respect to the plan; and
- The amount that should have been paid or made available to the employee during that employee’s tax year does not exceed the qualified plan 402(g) limit for the year.

Correction	Relief	Examples
<ul style="list-style-type: none"> • By the later of the end of the employer’s tax year in which the failure is discovered or the fifteenth day of the third month following the date upon which the failure is discovered, the employer pays the employee the amount that should have been paid or made available to the employee, provided that any earnings allocable to such amounts through the date of payment are either forfeited or added to the payment to the employee, and any losses allocable to such amounts through the date of payment are either permanently disregarded or subtracted from the payment to the employee and the employer reports the payment on a Form W-2 or Form 1099, as applicable. • The employee must pay the additional 20% tax, but is not required to pay the premium interest tax. • For purposes of this correction, the plan includes any arrangements treated as a single plan so that the correction will 	<ul style="list-style-type: none"> • The amount included as income is limited to the excess amount paid to the employee and does not include any other deferred compensation. • If the employer reports the payment as income on Form W-2 for the year in which the payment was made, including reporting the amount on Form W-2, Box 12 using Code Z, the employer will not be subject to penalties for the failure to properly withhold. 	<p>Example</p> <ul style="list-style-type: none"> • Employee, who has a calendar year tax year, makes an election to defer 8% of a bonus payable in 2008 to a nonqualified defined contribution plan. The bonus is \$10,000. • Due to an unintentional operational failure, employer defers 10% of the bonus or \$1,000 and pays employee \$9,000 (instead of deferring \$800 and paying employee \$9,200). • Employer discovers the error on February 1, 2009, so that the excess deferred amount is not corrected by December 31, 2008. • On March 1, 2009, the employee’s account balance includes \$15 in earnings on the excess \$200 credited to the account. Employer pays \$215 to employee. • Correction Option A <ul style="list-style-type: none"> • Employer reports \$215 as income on 2009 Form W-2, Box 1 and Box 12, using Code Z. • Provided the employee reports this income and pays the applicable taxes on 2009 Form 1040, employee is not required to include any additional amounts deferred under the plan as income or to include any amount as income for years before 2009. Employer only needs to pay additional 20% tax on \$215 (or \$42.50) in additional

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<p>apply only if any and all erroneous deferrals under the plan, in the aggregate, of amounts that should have been paid to the employer do not exceed the qualified plan 402(g) deferral limit for the year.</p>		<p>income tax and not the premium interest tax.</p> <ul style="list-style-type: none">• Correction Option B<ul style="list-style-type: none">• Employer may pay employee only \$200 excess deferral if the \$15 in earnings is forfeited.
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