

# Partial Withdrawal of Notice of Proposed Rulemaking and Amendments to Notice of Proposed Rulemaking

## Tax Treatment of Cafeteria Plans

### REG-209461-79

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking and amendments to notice of proposed rulemaking.

SUMMARY: This document withdraws §1.125-2 Q&A-6(b),(c), and (d), and amends §1.125-2 Q&A-6(a) in the notice of proposed rulemaking (EE-130-86, 1989-1 C.B. 944) relating to cafeteria plans that was published in the **Federal Register** on March 7, 1989. Further, this document amends §1.125-1 Q&A-8 in the notice of proposed rulemaking relating to cafeteria plans that was published in the Federal Register on May 7, 1984, and amended on November 7, 1997, and March 23, 2000. This withdrawal and amendment are made because of changes made to these rules in the §1.125-4 final regulations (T.D. 8921, 2001-7 I.R.B. 532) relating to cafeteria plans.

DATES: Written or electronically generated comments and requests for a public hearing must be received by April 10, 2001.

ADDRESSES: Send submission to: CC:M&SP:RU (REG-209461-79), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:M&SP:RU (REG-209461-79), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.gov/tax\\_regs/regslst.html](http://www.irs.gov/tax_regs/regslst.html).

FOR FURTHER INFORMATION CONTACT: Christine Keller or Janet Laufer at (202)622-6080 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Background

On March 7, 1989, the IRS issued proposed regulations §1.125-2 Q&A-6 relating to the circumstances under which participants may revoke existing elections and make new elections under a cafeteria plan. The IRS published final regulations (T.D. 8921, 2001-7 I.R.B. 532) under § 1.125-4 that address certain parts of this rule. Accordingly, §1.125-2 Q&A-6(b), (c), and (d) are withdrawn and §1.125-2 Q&A-6(a) of this rule is amended.

Further, on May 7, 1984, the IRS issued proposed regulations §1.125-1 Q&A-8 relating to the requirements that apply to participants' elections under a cafeteria plan. Q&A-8 of these regulations was amended on November 7, 1997, and March 23, 2000, to conform with the §1.125-4T and §1.125-4 regulations published on these dates, and is further amended to conform with the final §1.125-4 regulations published on January 10, 2001.

### Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, §1.125-2 Q&A-6(b), (c) and (d) in the notice of proposed rulemaking that was published on March 7, 1989 (54 F.R. 9460), is withdrawn.

\* \* \* \* \*

### Amendments to Previously Proposed Rules

Accordingly, the proposed rules published on May 7, 1984 (49 F.R. 19321), and amended on November 7, 1997 (62 F.R. 60196), and March 23, 2000 (65 F.R. 15587), and the rules published on March 7, 1989 (54 F.R. 9460), are amended as follows:

#### PART 1— INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. In §1.125-1, as proposed May 7, 1984 (49 F.R. 19321), and as amended

March 23, 2000 (65 F.R. 15587), Q&A-8 is amended by removing the last four sentences of A-8 and adding a sentence in their place to read as follows:

*§1.125-1 Questions and answers relating to cafeteria plan.*

\* \* \* \* \*

Q-8: What requirements apply to participants' elections under a cafeteria plan?

A-8: \* \* \* However, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and make a new election with respect to the remainder of the period of coverage if both the revocation and the new election are permitted under § 1.125-4.

\* \* \* \* \*

Par. 3. In §1.125-2, as proposed March 7, 1989 (54 F.R. 9460), and as amended March 23, 2000 (65 F.R. 15587), A-6 is amended by removing A-6(b), A-6(c), and A-6(d), redesignating A-6(e) as paragraph A-6(b), removing the last 5 sentences of A-6(a) and adding a sentence in their place to read as follows:

Q-6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A-6: \* \* \*

(a) \* \* \* However, to the extent permitted under §1.125-4, the terms of a cafeteria plan may permit a participant to revoke an existing election and to make a new election with respect to the remaining portion of the period of coverage.

\* \* \* \* \*

Robert E. Wenzel,  
*Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on January 9, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 10, 2001, 66 F.R. 1923)