



of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** (54 FR 9460) on March 7, 1989 and amends proposed regulations relating to change in family status. In T.D. 8738, page 4, the IRS is issuing temporary regulations that provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for public hearing must be received by February 5, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-243025-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-243025-96), 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.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sharon Cohen, (202) 622-6080; concerning submissions or to request a public hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Q&A-8 of §1.125-1¹ and Q&A-6(c) and (d) of §1.125-2² provide that a participant may make benefit election changes pursuant to changes in family status and separation from service. The

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Par. 3. Section 301.6109-3 is added to read as follows:

Notice of Proposed Rulemaking and Partial Withdrawal of Notice of Proposed Rulemaking

Tax Treatment of Cafeteria Plans

REG-243025-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking, amendment to notice of proposed rulemaking, and notice

¹Published as a proposed rule at 49 FR 19321 (May 7, 1984).

²Published as a proposed rule at 54 FR 9460 (March 7, 1989).

temporary regulations set forth the standards under which a cafeteria plan can allow an employee to change his or her health coverage election during a period of coverage to conform with the special enrollment rights under the Health Insurance Portability and Accountability Act of 1996, and to change his or her health coverage or group-term life insurance coverage in a variety of other change in status situations. Thus, these proposed regulations modify A&A-8 of §1.125-1 and Q&A-6(c) and (d) of §1.125-2, and clarify that the “change in family status rules” in the existing proposed regulations continue to apply to qualified benefits (including dependent care assistance under section 129 and adoption assistance under section 137) other than accident or health coverage and group-term life insurance coverage. Election changes continue to be permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouses’s employment.

In addition, the temporary regulations provide that the rules of section 401(k) and (m), rather than the rules in the temporary regulations that apply to other qualified benefits, govern election changes under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or with respect to employee contributions under section 401(m). Therefore, the proposed regulations withdraw Q&A-7(f) of §1.125-2.

T.D. 8738 amends the Income Tax Regulations (26 CFR part 1) relating to section 125. The temporary regulations contain rules relating to the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Pro-

cedure Act (5 U.S.C. chapter 5) do not apply to these regulations, and because the regulations does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Catherine Fuller and Sharon Cohen, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

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

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Amendments Previously Proposed Rules

Accordingly, the proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460) are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. In §1.125-1, as proposed May 7, 1984 (49 FR 19321), in Q&A-8,

Q-8 is republished and A-8 is amended by revising the last sentence to read as follows:

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

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

A-8: *** However, except for benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage if both the revocation and the new election are on account of and consistent with a change in family status (e.g., marriage, divorce, death of spouse or child, birth or adoption of child, and termination of employment of spouse).

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Par. 2. In §1.125-2, as proposed March 7, 1989 (54 FR 9460), in Q&A-6, Q-6 is republished and A 6 is amended by revising A-6(c) and (d) to read as follows:

§1.125-2 Miscellaneous cafeteria plan questions and answers.

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

A-6: ***

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(c) Certain Changes in Family Status. Except as otherwise provided, in the case of benefits other than accident or health plan coverage and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election during a period of coverage and to make a new election for the remaining portion of the period if the revocation and new election are both on account of a change in family status and are consistent with such change in family status. For purposes of this paragraph (c) of Q&A-6, examples of changes in family status for which a benefit election change may be permitted include the marriage or divorce of the employee, the death of the employee’s spouse or a dependent, the birth

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or adoption of a child of the employee, the termination of employment (or the commencement of employment) of the employee's spouse, the switching from part-time to full-time employment status or from full-time to part-time status by the employee or the employee's spouse, and the taking of an unpaid leave of absence by the employee or the employee's spouse. Benefit election changes are consistent with family status changes only if the election changes are necessary or appropriate as a result of the family status changes. In the case of accident or health plans, election changes are permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouse's employment. For additional rules governing cafeteria plan election changes with respect to accident or health plan coverage and group-term life insurance coverage, see §1.125-4T.

(d) Separation from Service. Except with respect to accident or health plan coverage and group-term life insurance coverage, a cafeteria plan may permit an employee who separates from the service of the employer during a period of coverage to revoke existing benefit elections and terminate the receipt of benefits for the remaining portion for the coverage period. The plan must prohibit the employee, if the employee should return to service for the employer, from making new benefit elections for the remaining portion of the period of coverage. For rules governing cafeteria plan election changes with respect to accident or health plan coverage and group-term life insurance coverage, see §1.125-4T.

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Proposed Amendments to the Regulations

In addition, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.125-4 is added to read as follows:

[The text of this proposed section is the same as the text of §1.125-4T published in T.D. 8738.]