



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable Margaret Wood Hassan
United States Senator
1589 Elm Street, Third Floor
Manchester, NH 03101

Attention:

Dear Senator Hassan:

I am responding to your inquiry dated June 29, 2020, on behalf of your constituent, . explained she will have unused amounts in her dependent care flexible spending arrangement (FSA) under a Section 125 cafeteria plan because her children's summer camp is not open due to COVID-19. She explained that she has stopped making contributions to her dependent care FSA and asked if there is an exception that would allow a refund of her unreimbursed dependent care FSA contributions.

It appears that employer has used the relief provided in Notice 2020-29 to allow her to revoke her dependent care FSA election. However, this relief does not modify the rule that an employee cannot receive amounts from a dependent care FSA other than as reimbursements for dependent care expenses.

Notice 2020-29 allows (but does not require) an employer to amend a Section 125 cafeteria plan to give employees increased flexibility to make mid-year election changes to their dependent care FSAs during 2020. Specifically, employers may amend a Section 125 cafeteria plan to allow employees to revoke an election, make a new election, or decrease or increase an existing election for a dependent care FSA

prospectively. The Notice also allows an employer to amend a Section 125 cafeteria plan to extend the period for incurring claims that may be reimbursed by a dependent care FSA to the end of 2020. Notice 2020-29 is available on the IRS.gov website at www.irs.gov/pub/irs-drop/n-20-29.pdf.

I hope this information is helpful. If you have additional questions, please contact me or
at .

Sincerely,

Denise Trujillo
Branch Chief, Health and Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)