

Part IV. Items of General Interest

Cafeteria Plans Election Changes

Announcement 98-105

PURPOSE

The purpose of this document is to announce that the Internal Revenue Service will delay the effective date of the cafeteria plan temporary regulations (1.125-4T) and proposed regulations (1.125-4) published on November 7, 1997 at 62 FR 60165 and 62 FR 60196, respectively.

BACKGROUND

In 1984, the Service issued proposed regulations that address certain issues under section 125 of the Internal Revenue Code. See 49 FR 19321. The proposed regulations were amended in 1989. See 49 FR 50733. The proposed regulations include rules relating to the circumstances under which an employer can permit a cafeteria plan participant to revoke an existing election with respect to accident or health coverage or group term life insurance coverage and make a new election during a cafeteria plan year. In 1997, the Service issued proposed and temporary regulations that modify and clarify the change in election provisions of the pre-1990 proposed regulations. The 1997 temporary regulations provide that they will become effective for plan years beginning after December 31, 1998. The preamble to the 1997 temporary regulations states that, pending this effective date, taxpayers can rely on the 1997 temporary regulations as well as the pre-1990 proposed regulations.

The Service will amend the effective date of the 1997 temporary regulations and

the 1997 proposed regulations so that they will not be effective before plan years beginning at least 120 days after further guidance is issued. Thus, for example, in the case of a calendar year plan, the 1997 temporary and proposed regulations will not be effective for 1999. Until further guidance is issued, taxpayers can rely on the change in election provisions of the 1997 temporary regulations as well as the change in election provisions of section 1.125-2 of the pre-1990 proposed regulations, and both alternatives are available regardless of whether the plan document has been amended to conform with the 1997 temporary regulations.

Questions regarding this announcement may be directed to Felix Zech in the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-4606 (not a toll-free number).