

Section 129 – Reporting Requirements for Dependent Care Assistance Programs
(Also, § 125)

Part III - Administrative, Procedural, and Miscellaneous

Notice 2005-61

PURPOSE

The purpose of this notice is to clarify the Form W-2 reporting requirements when an employer has amended a cafeteria plan document to provide a grace period for qualified dependent care assistance immediately following the end of a cafeteria plan year.

BACKGROUND AND APPLICATION

Notice 2005-42, 2005-23 I.R.B. 1204, modifies the application of the rule prohibiting deferred compensation under a cafeteria plan. That notice permits an employer to amend a cafeteria plan document to provide a grace period immediately following the end of each plan year during which unused benefits or contributions remaining at the end of the plan year, including contributions for dependent care assistance as described in § 129, may be used to pay or reimburse expenses incurred during the grace period.

Notice 89-111, 1989-2 C.B. 449, *amplified*, Notice 90-66, 1990-2 C.B. 350 (extending Notice 89-111 to years following 1989), provides guidance concerning the reporting requirements for dependent care assistance furnished by an employer to an employee under a qualified dependent care assistance program. The notice states that in a cash reimbursement arrangement, the amount reported on Form W-2, Wage and Tax Statement, is the total amount of cash

reimbursement furnished to the employee during the calendar year. However, if the employer does not know the actual total amount of cash reimbursement at the time the Form W-2 is prepared, the employer may report a reasonable estimate of the total amount on Form W-2. Notice 89-111 states that for a salary reduction arrangement under a § 125 cafeteria plan, the amount electively contributed by an employee for the year for dependent care assistance (plus any employer matching contributions attributable thereto) will be considered a reasonable estimate.

An employer that amends its cafeteria plan to provide a grace period for dependent care assistance may continue to rely on Notice 89-111, by reporting in Box 10 of Form W-2 the salary reduction amount elected by the employee for the year for dependent care assistance (plus any employer matching contributions attributable thereto). For example, suppose an employer amends its calendar year cafeteria plan to permit a grace period for dependent care assistance until March 15 of the subsequent year, that an employee elects salary reduction of \$5,000 for dependent care assistance for the 2005 calendar year and elects an additional \$5,000 salary reduction for dependent care assistance for the 2006 calendar year, and that the employee has \$500 of dependent care contributions remaining unused at the end of the 2005 plan year, which is available to reimburse dependent care expenses incurred during the grace period. For the 2005 calendar year, the employer may report in Box 10 of Form W-2 the \$5,000 salary reduction amount elected by the employee for dependent care assistance in 2005. Similarly, for the 2006 calendar year, the employer may report in Box 10

of Form W-2 the \$5,000 salary reduction amount elected by the employee for dependent care assistance in 2006.

EFFECT ON OTHER DOCUMENTS

Notice 89-111, 1989-2 C.B. 449, is amplified.

DRAFTING INFORMATION

The principal author of this notice is Elizabeth Purcell of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice contact Ms. Purcell on (202) 622-6080 (not a toll-free call).