



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

OFFICE OF THE CHIEF COUNSEL

August 22, 2018

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Dear _____ :

I am responding to your inquiry dated April 18, 2018, regarding your dependent care assistance account. Your letter was referred to this office for response because the Internal Revenue Service (IRS) administers the federal tax laws regarding dependent care assistance plans.

The facts concerning your inquiry are not clear from the information you provided. However, it appears that your employer provides employees with a dependent care assistance plan that permits employees to elect between taxable and nontaxable benefits and to set aside money for dependent care expenses on a pre-tax basis through salary reduction under a section 125 cafeteria plan (cafeteria plan). It appears that you elected to reduce your salary by \$5,000 for the 2017 plan year but did not timely submit documentation for the dependent care expenses incurred in 2017 to your employer's plan. As a result, the plan forfeited the \$5000 you set aside on a pre-tax basis for dependent care expenses in accordance with the rules applicable to these plans.

Treasury Regulations provide that a cafeteria plan can designate a period during which participants may submit expenses, including a deadline for submitting expenses, but the Regulations do not specify the length of the period. The employer plan document should specify the deadline for submitting expenses. The Treasury Regulations also require that this period apply to all participants on a uniform and consistent basis. A cafeteria plan must operate according to its written plan or the employees' elections between taxable and nontaxable benefits under the plan are includible in the employees' income. For the specific rules applicable to your plan, you may want to request the plan document from your employer.

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

Sincerely,

Denise Trujillo, Branch Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Tax Exempt and Government Entities)