

IRS APPROVES 2 ½ MONTH “GRACE PERIOD” FOR FLEXIBLE SPENDING ACCOUNTS

The Internal Revenue Service recently issued Notice 2005-42, which would allow an additional 2 ½ months after the end of a cafeteria plan year for participants to incur and submit for reimbursement medical and dependent care expenses under their employer’s Section 125 cafeteria plan.

While the “use it or lose it” rule still remains in effect, the IRS Notice is intended to help employees spend their cafeteria plan money more intelligently, and not have to rush to use up their remaining cafeteria plan money at the end of the plan year. If an employer wishes to implement this change in a cafeteria plan for the current plan year, the IRS Notice requires that the plan must be amended before the end of the plan year.

While IRS spokesmen have subsequently cleared up some legal issues that have been raised regarding the implications of adding a grace period to a Section 125 cafeteria plan, there are still some planning considerations when deciding whether and how to add this feature to a plan.



John Papahronis has primary responsibility in McAfee & Taft’s employee benefits group for cafeteria plan issues. If you have questions about the new grace period rules, call John at (405) 552-2231 or

contact any other member of the employee benefits group. We will be directly contacting our clients for whom we have previously drafted cafeteria plan documents about amending such plans.

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