

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT
DEPARTMENT OF ECONOMIC SECURITY

1. Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:

Unemployment Insurance Tax: Cafeteria Plan. The substantive policy statement number is 17P-C119.

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

The substantive policy statement was issued and will become effective upon filing with the Office of the Secretary of State.

3. Summary of the contents of the substantive policy statement:

The substantive policy statement describes the Department's rationale and approach to cafeteria plans, for the purpose of determining Unemployment Insurance Tax coverage.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. § 23-622 (B) (5) (g)

Internal Revenue Code (I.R.C.) § 125

26 U.S.C. § § 3121 (a) (5) (G) and 3306 (b) (5) (G)

5. Statement as to whether the substantive policy statement is a new statement or a revision:

This is a new substantive policy statement.

6. Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:

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Policy Statement
Number: 17P-C119
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

Cafeteria plan.

AUTHORITY

Arizona Revised Statute (A.R.S.) 23-622 (B) (5) (g) provides that wages shall not include “a cafeteria plan within the meaning of § 125 of the Internal Revenue Code.”

Title 26 United States Code (U.S.C.) Sections 3121 (a) (5) (G) and 3306 (b) (5) (G) provide that employer contributions to a cafeteria plan are generally not subject to the Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) because the contributions are not actually or constructively received to the employee participant.

DISCUSSION AND CONCLUSION

The Department will include salary reduction amounts as excludable wages if the amounts are contributed by the employer toward qualified benefits under an Internal Revenue Code § 125 (a) cafeteria plan. An employer contribution may be provided solely by the employer or through a salary reduction agreement, or both. Accordingly, the amount will not be included in the gross income of the employee participant.

A salary reduction agreement is an agreement between an employer and employee whereby the employee agrees to a reduction in salary, or foregoes an increase in salary. This amount is then contributed by the employer to a plan and becomes the “employer contribution” if it is part of a cafeteria plan according to Internal Revenue Code (I.R.S.) § 125 (d) (1) (A) and (B).

Examples of qualified benefits include the following; “accident and health benefits (but not Archer medical savings accounts or long-term care insurance), adoption assistance, dependent care assistance, group-term life insurance coverage, and health saving accounts, including distributions to pay long-term care services.” (available at <http://www.irs.gov/govt/fslg/article/0,,id=112720,00.html>) (accessed on September 2, 2009).

However, if the employee participant elects to receive cash instead of any qualified benefit, the amount is treated as wages and, thus, subject to all employment taxes: FUTA and Arizona State Unemployment Insurance Tax (SUTA). Id.

A 401(k) plan may or may not be part of a cafeteria plan and is not treated as current income for federal income tax purposes, however 401(k) contributions to the plan are included as wages subject to social security (FICA), Medicare, and Federal Unemployment Tax Act (FUTA) and

SUTA. (available at <<http://www.irs.gov/retirement/participant/article/0,,id=151753,00.html>)
(accessed on September 2, 2009).

REFERENCES

A.R.S. § 23-622 (B) (5) (g)

Internal Revenue Code (I.R.C.) § 125

26 U.S.C. § § 3121 (a) (5) (G) and 3306 (b) (5) (G)

AGENCY RECEIPT

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