

Q&A Insurance Marketing, Inc

Please Read This Before Proceeding

THIS IS AN APPLICATION FOR A SECTION 125 SALARY REDUCTION PLAN DOCUMENTATION SERVICES ONLY. THIS SERVICE IS PROVIDED TO PARTICIPATING FIRMS IN THE NBBE GROUP INSURANCE BENEFITS PROGRAMS. THERE IS NO CHARGE AT THIS TIME FOR THIS SERVICE

IMPORTANT INFORMATION YOU SHOULD KNOW BEFORE YOU SUBMIT YOUR APPLICATION IS INCLUDED. AFTER REVIEWING THE INFORMATION, YOU MUST SIGN AND RETURN THE DISCLOSURE WITH THE APPLICATION. YOUR APPLICATION WILL NOT BE PROCESSED WITHOUT IT.

NONE OF THE ATTACHED CONSTITUTE A PLAN DOCUMENT NOR SUMMARY PLAN DESCRIPTION, NOR ANY OTHER DOCUMENT REQUIRED TO CONSTITUTE A FEDERALLY QUALIFIED SECTION 125 PLAN

FOR FURTHER INFORMATION CONTACT YOUR PROGRAM MANAGER
AT

www.qaim.com

OR

RITA GREEN

Q&A INSURANCE MARKETING, INC
800-585-2392
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Mail OR Fax (925-838-9679) Completed Application AND Disclosure to:
Q&A Insurance Marketing, Inc.
PMB 348
696 San Ramon Valley Blvd
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SECTION 125 SALARY REDUCTION PLAN



Application for Plan Document Preparation, Filing and Employee Election Forms

This section contains general information which we need to prepare your Plan Document. Regulations require you to keep this document on file. The IRS has determined that Section 125 is NOT a benefit welfare plan, nevertheless the IRS has jurisdiction over the applicable Internal Revenue Code Regulations.

General Information: Builders Exchange or Association _____ No. EE's _____

Employer Legal Name _____ Affiliate _____

1. C-Corp SubChapter S Partnership Sole Proprietor Other _____

The Employer is the Plan Administrator

The Administrator keeps the records for the Plan

The Administrator responsible for the administration of the Plan.

The Administrator will also answer any questions plan participants have about the Plan.

The Plan Administrator is designated as the Plan's agent for service of legal process.

2. Plan Number 501 (unless you have an existing plan with this number. Numbers follow sequentially in this instance i.e. 502, 503. This is at employer's discretion _____)

3. Employers Federal Tax ID _____ - _____

4. Street Address _____

5. Legal Mailing Address if Different _____

6. City _____ State _____ Zip _____

7. Business Phone _____ Fax _____ Email _____

8. Desired Effective Date _____

9. First Plan Year begins on _____ and ends on _____

10. Subsequent Plan Anniversary Date (Month-Day) _____

Benefits offered under Section 125 Salary Reduction Plan (check which apply)

1. Medical Insurance
2. Dental Insurance
3. Chiropractic Supplemental Insurance
4. Vision Care
5. Group Term Life Insurance
6. Group AD & D Insurance
7. Long Term Disability Coverage
8. Compensation In Lieu of Benefits
9. Other eligible insurance as defined in Sec 105 or Sec 106 of the IRC
Please specify _____

Participation and Eligibility (choose one only)

A All Full Time Employees who participate in one or more of Company Sponsored Insurance Plans as specified in “Benefits Offered under Section 125 and are not members of a collective Bargaining Unit

B All Full Time Employees who are not members of a collective bargaining unit (this would include employees who receive compensation in lieu of benefits and do not participate in any of the Insurance Plans described above.

READ THIS !

Constructive Receipt

Under the Internal Revenue Code, if even one employee is given the opportunity to receive compensation instead of benefits, than all benefits paid for by the employer on behalf of all employees are taxable to all employees unless a properly executed Section 125 Salary Reduction Plan has been adopted. There is no retroactivity

Highly Compensated and Key Employees

Under the Internal Revenue Code, “highly compensated employees” and “key employees” generally are Participants who are officers, shareholders, or highly paid.

Plan Participants within these categories, the amount of contributions and benefits may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under the Plan. For computation purposes, premium paid by an employer towards the cost of the employees' insurance will be considered as non-taxable when performing the non-discrimination test.

DISCLAIMER AND ACKNOWLEDGEMENT MUST BE PROPERLY EXECUTED AND ATTACHED OR THIS APPLICATION WILL NOT BE PROCESSED.

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Authorized Applicant _____ **Position/Title** _____

Signature _____ **Date** _____

Program Manager _____

DISCLAIMER AND WAIVER



Nondiscrimination Requirements

In the case of highly compensated participants, the Code ~ 125 exclusion from income does not apply to any benefit under a cafeteria plan attributable to a year for which the plan discriminates in favor of:

- highly compensated individuals as to eligibility to participate, or
- highly compensated participants as to contributions and benefits.

In addition to the above two rules, cafeteria plans are subject to a 25% key employee concentration test. The IRS will check for compliance with these requirements in the event of an audit

Plan Administrator Must Follow the Terms of the Plan Document

Cafeteria plan administrators must ensure that the written plan document provisions are adhered to. Failure to follow the terms of the written plan document provisions may result in disqualification of the cafeteria plan. For example, Treasury Department Regulations provides that a plan is not a cafeteria plan if participants are permitted to revoke their elections after the first day of the plan year.

Reporting & Disclosure Requirements

1. ERISA Reporting and Disclosure for Component Plans

ERISA's annual reporting requirement (using Form 5500) applies to any ERISA plan that is offered through a cafeteria plan (e.g., health insurance, health FSA, etc.), subject to certain exceptions for small insured or unfunded plans.

2. Code ~S 6039D Returns for Cafeteria Plans No Longer Required

Code ~ 6039D used to require that a cafeteria plan sponsor file an annual return on Form 5500 for its cafeteria plan, including limited financial information (on the Schedule F). This reporting requirement has been suspended as of April 2002. Nevertheless, any ERISA plans (such as health insurance) offered under the cafeteria plan are still subject to ERISA's annual reporting requirements, unless an exemption applies. Welfare Plans with 100 or more employees are still required to file Form 5500.

3. Disclosure Requirements

Code ~ 125 does not impose any specific requirements as to what information must be disclosed to cafeteria plan participants. However, ERISA does impose disclosure requirements for any ERISA plan's that are offered through a cafeteria plan (e.g., health insurance, dental benefits, etc.)

F. How Having a Cafeteria Plan May Impact ERISA Requirements

The DOL has ruled that a Code ~ 125 "salary reduction premium payment plan" is not an ERISA welfare benefit plan. Nevertheless, funding benefits through a cafeteria plan may cause the underlying benefits to become subject to ERISA, if they are not already.

Further, having a cafeteria plan will affect SPD (Summary Plan Description) and other disclosure requirements for the underlying ERISA plans (e.g. health insurance, dental benefits, etc.)

In addition, if participants make contributions toward employer-provided coverage there would normally be a requirement under ERISA for the employer to hold those contributions in an ERISA trust. But the DOL is not enforcing the trust requirement and certain reporting requirements, when participant contributions come in through a cafeteria plan, if certain conditions are met.

Caution: The DOL's nonenforcement policy applies only if benefits are paid solely and directly from the employer's general assets. and only if there is no separate fund from which benefits are paid.

Signature and Acknowledgement.

I certify that I have read and understand the above. If I do not, I will seek competent legal counsel, before signing. I also acknowledge that Q&A Insurance Marketing, Inc and its authorized agents act only in an advisory capacity and makes no representation as to legal counsel or tax law, nor are considered to be an "administrator" within the definition of the Plan Document itself or related documents.

I certify that I have read and understand the notes on "Constructive Receipt".

I also certify that no communication nor documentation in respect to all affected plans whether, written, verbal, or electronic has been backdated.

To be returned to Q&A Insurance Marketing, Inc. Keep a copy for your records.

BOTH PROGRAM MANAGER AND PLAN SPONSOR MUST SIGN AND DATE

Plan Sponsor/Employer _____

Authorized Officer _____ Title _____

Signature _____ Date _____

Program Manager _____ Date _____

No Documents will be processed nor submitted to the appropriate regulatory agencies without completion and signatures properly dated and executed.



The Constructive Receipt Doctrine

The constructive receipt doctrine provides that compensation is taxable when paid, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for in a different period. Under the cash receipts and disbursements method of accounting, amounts are included in gross income when actually or constructively received.¹

Income is constructively received in the taxable year during which it is credited to the taxpayer's account or set apart for the taxpayer or otherwise made available so that he or she may draw upon it at any time, or so that the taxpayer could have drawn upon it during the taxable year if notice of intention to withdraw had been given.² However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Treasury regulations explain how the constructive receipt doctrine works (and the adverse tax consequences that occur) when employees are informally offered a choice between cash and non-taxable benefits by an employer that does not have a cafeteria plan that meets IRS requirements:

In general, an employee who has an election among nontaxable benefits and taxable benefits (including cash) must include in gross income any taxable benefits that the employee could have actually received pursuant to the employee's election. The amount of these benefits is included in the employee's income in the year in which the employee would have actually received the taxable benefits if the employee had elected such benefits. This generally is the result even if the employee's election between the nontaxable benefits and taxable benefits is made prior to the year in which the employee would have actually received the taxable benefits.³

Example 1—Employee Opt Outs Without a Cafeteria Plan:

Assume that Noway Hosay, Inc. does not have a cafeteria plan. The company informally lets its employees choose whether to receive health insurance coverage (a non-taxable benefit) or to receive an additional \$30 of weekly wages, but not both.

IRS Treatment of Employees Who Take the Insurance:

The IRS says that the employees of Noway Hosay, Inc. who elect to receive health insurance coverage must include as taxable income the extra \$30 of weekly wages that they could have received in lieu of health insurance. That is, the employees have constructively received the \$30 and will be taxed on it like other W-2 wages, and Noway Hosay, Inc. will be subject to wage withholding and employment taxes on it. This same concept applies not only to health insurance, but to any other non-taxable benefits that the employees are allowed to elect in lieu of cash when the employer does not have a valid Section-125 plan.

IRS Treatment of Employees Who Take the Cash:

For the employees who elected to receive the extra wages instead of health insurance, the \$30 per week is like a cash bonus, and it is subject to income taxes and employment taxes as all W-2 wages are.

Example 2—Employee Payroll Deduction Without a Cafeteria Plan:

Assume that Noway Allday, Co. does not have a cafeteria plan. The company informally lets its employees choose in December of each year whether or not to receive health insurance coverage (a non-taxable benefit) for the following year, but if they elect health insurance, they have to pay \$30 per week for it. Noway Allday, Co. tells the employees that they can pay for it on a pre-tax basis. If they want the insurance coverage, the company will pay them \$30 less in wages per week (i.e., Noway Allday, Co. will reduce their W-2 wages by \$30 per week).

IRS Treatment of Employees Who Take the Insurance:

The IRS says that the employees of Noway Allday, Co. who elect to receive health insurance coverage have constructively received, and must include as taxable income, the \$30 weekly cash compensation that the employees could have received in lieu of health insurance. Without a valid Section 125 cafeteria plan, the arrangement to reduce the employees' W-2 wages to pay for their health insurance coverage does not work to avoid current taxation. The employee's contributions to the Plan, through payroll deductions, are includible in their gross income under section 61 of the Code

¹ Treas. Reg. § 1.45 1-1(a).

² Treas. Reg. § 1.45 1-2(a).

Prop. Treas. Reg. § 1.125-2 (1989), Q/A-2.

This is just a brief synopsis of the underlying rationale for implementing a structured, properly documented, Premium Reduction Plan under Section 125 of the Internal Revenue Code. The underlying Treas Regs are cited above. Simply Stated, it makes no sense in view of the nominal costs associated with plan implementation to not adopt a Section 125 plan.

Simply stated a Section 125 plan enables an employee to convert “employee” money into “employer” money, and therefore enjoy the same favorable tax treatment under the IRC as pertains to certain qualified employee benefit plans.

1. Cafeteria Plans—Premium/Salary Reduction Plan Only

Key Employee Concentration Test

If the qualified benefits provided to Key Employees exceed 25% of the total of all such benefits provided for all employees under the plan, the plan will fail the key employee concentration test.

Key employees should not be confused with Highly Compensated Employees, although there is some overlap. For 2003, a Key Employee is someone who

an officer with annual compensation in excess of \$130,000

a more-than-5% owner of the employer; or

a more-than-2 % owner of the employer with annual compensation greater than \$150,000.

NOTE: THE PLAN MUST QUALIFY AT ALL TIMES DURING THE PLAN YEAR. AS SUCH THE CONCENTRATION TEST SHOULD BE APPLIED ANY TIME THERE ARE ENROLLMENT OR PLAN CHANGES.