lower limit specified in the plan). Cafeteria plan amendments may be effective only prospectively. See Prop. Treas. Reg. § 1.125–1(c). Notwithstanding this rule against retroactive amendments, an amendment to conform a cafeteria plan to the requirements of § 125(i) that is adopted on or before December 31, 2014, may be made effective retroactively, provided that the cafeteria plan operates in accordance with the requirements of § 125(i) (including the guidance under this notice) for plan years beginning after December 31, 2012. This amendment to the written cafeteria plan may be expressed as a maximum dollar amount or by another method of determining the maximum dollar amount of salary reduction contributions to a health FSA, but in no case may the plan permit a participant to make salary reduction contributions, for a plan year beginning after December 31, 2012, exceeding the $2,500 limit.

V. EXAMPLES

The rules of this notice are illustrated by the following examples. For all examples, it is assumed that the cafeteria plan otherwise satisfies all of the requirements of § 125 and the proposed regulations, and that the employer is not a member of a controlled group or affiliated service group.

Example 1. (i) Employer W offers a calendar year cafeteria plan including a health FSA. Employer W amends its written cafeteria plan by December 31, 2014, to provide that, effective for the plan year beginning on January 1, 2013, employee salary reduction contributions to a health FSA are limited to $2,500 (as indexed for inflation).

(ii) Employer W's written cafeteria plan satisfies the requirements of § 125(i).

Example 2. (i) Employer X offers a calendar year cafeteria plan including a health FSA with a grace period of two months and 15 days that complies with Notice 2005–42 and the proposed regulations. Effective for the 2012 plan year, the written plan provides that employee salary reduction contributions for the health FSA are limited to $5,000. Effective for the 2013 plan year, the written plan provides that employee salary reduction contributions to the health FSA are limited to $2,500 (as indexed for inflation). Some employees have unused amounts from their 2012 health FSA salary reduction contributions that remain available during the grace period in the first two months and 15 days of 2013.

(ii) The availability during the grace period of amounts attributable to 2012 health FSA salary reduction contributions does not cause Employer X's cafeteria plan to fail to satisfy the $2,500 limit.

VI. EFFECTIVE DATES

Under the guidance provided in this notice, section 125(i) applies to plan years beginning after December 31, 2012. Indexing of the $2,500 limit applies to plan years beginning after December 31, 2013.

VII. EFFECT ON OTHER DOCUMENTS

The Treasury Department and the IRS intend to amend the regulations under §§ 1.125–1, 1.125–2, and 1.125–5 to provide for the $2,500 limit, and taxpayers may rely on the foregoing guidance in this notice pending issuance of the amended regulations.

VIII. REQUEST FOR COMMENTS ON POSSIBLE MODIFICATION OF USE-OR-LOSE RULE FOR HEALTH FSAS

In light of the $2,500 limit, the Treasury Department and the IRS are considering whether, for health FSAs, the position contained in proposed regulations that is often referred to as the "use-or-lose" rule" should be modified. That rule generally prohibits any contribution or benefit under an FSA from being used in a subsequent plan year or period of coverage. See Prop. Treas. Reg. § 1.125–1, Q&A–7(b) (1984); Prop. Treas. Reg. § 1.125–2, Q&A–5 & Q&A–7 (1989); Prop. Treas. Reg. § 1.125–5(c) (2007). Thus, under this rule, unused amounts in the health FSA are "forfeited" at the end of the plan year.

The $2,500 limit, while not addressing the "use-or-lose" rule, limits the potential for using health FSAs to defer compensation and the extent to which salary reduction amounts may accumulate over time. Given the $2,500 limit, the Treasury Department and the IRS are considering whether the use-or-lose rule for health FSAs should be modified to provide a different form of administrative relief (instead of, or in addition to, the current 2 1/2 month grace period rule). Comments are requested on whether the proposed regulations should be modified to provide additional flexibility with respect to the operation of the use-or-lose rule for health FSAs and, if so, how any such flexibility might be formulated and constrained. Comments are also requested on how any such modifications would interact with the $2,500 limit.

This section VIII of this notice does not constitute guidance and may not be relied upon by taxpayers.

Comments must be submitted by August 17, 2012. Comments should include a reference to Notice 2012–40. Send submissions to CC:PA:LPD:PR (Notice 2012–40), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered **Monday through Friday** between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2012–40), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044, or sent electronically, via the following e-mail address: *Notice.comments@irscounsel.treas.gov*. Please include "Notice 2012–40" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

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 at (202) 622–6080 (not a toll-free call).

Extension of Relief and Procedures Under Notice 2010–30 and Notice 2011–16 for Spouses of U.S. Servicemembers Who are Working In or Claiming Residence or Domicile In a U.S. Territory Under the Military Spouses Residency Relief Act

Notice 2012–41

On April 15, 2010, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Notice 2010–30, 2010–18 I.R.B. 650, which provides relief and procedures

for certain taxpayers who are spouses (civilian spouses) of active duty members of the uniformed services (servicemembers). The relief and procedures were made available to civilian spouses who (A) accompany their servicemember spouses to a military duty station in American Samoa, Guam, the Northern Mariana Islands (NMI), Puerto Rico, or the U.S. Virgin Islands (USVI) (each a "U.S. territory") and claim residence or domicile (tax residence) in one of the 50 States or the District of Columbia under the Military Spouses Residency Relief Act (MSRRA) or (B) accompany their servicemember spouses to a military duty station in one of the 50 States or the District of Columbia and claim tax residence in a U.S. territory under MSRRA. The relief and procedures set forth in Notice 2010–30 were initially available for the taxable year including November 11, 2009 (generally, this would be calendar year 2009, referred to hereinafter as 2009). On April 8, 2011, the Treasury Department and the IRS published Notice 2011–16, 2011–17 I.R.B. 720, which extended the relief and procedures announced in Notice 2010–30 to the first taxable year beginning after November 11, 2009 (generally, this would be calendar year 2010).

This notice further extends the relief set forth in Notice 2010–30 for civilian spouses described in the prior paragraph to taxable years beginning after November 11, 2010 (generally, these will be calendar year 2011 and subsequent calendar years, referred to hereinafter as 2011 and subsequent taxable years), and provides that such civilian spouses should follow the applicable procedures described in Notice 2010–30.

The extension of time to pay federal income taxes described in Part III(A)(1)(b) of Notice 2010–30 for 2009 is available to eligible civilian spouses described in Part III(A)(1)(b) of Notice 2010–30 claiming MSRRA relief with respect to individual federal income tax returns filed for 2011 and subsequent taxable years. To obtain an extension of time through October 17, 2012, to pay federal income taxes for 2011, such taxpayers should follow the procedures in Part III(A)(1)(b) of Notice 2010–30. To obtain an extension to pay federal income taxes for subsequent taxable years, such taxpayers should follow those same procedures adjusted for the appropriate filing dates in each such subsequent taxable year.

As provided in Notice 2010–30, the IRS has also determined pursuant to section 6654(e)(3)(A) of the Internal Revenue Code that, with respect to civilian spouses eligible for the extension of time to pay federal income taxes described in this notice and Part III(A)(1)(b) of Notice 2010–30, the addition to tax under section 6654(a) will not apply in the case of an underpayment of estimated tax by such civilian spouses for 2011 and subsequent taxable years due to unusual circumstances.

Civilian spouses who obtain the extension to pay federal income taxes for 2011 and subsequent taxable years provided by this notice are required to pay interest on the amount of tax from the original payment due date until the date the tax is paid. Pursuant to section 6601, interest is calculated from the prescribed payment due date determined under section 6151 without regard to any extension to pay federal income tax, including the extension to pay tax provided by this notice.

For the reasons discussed in Part III(A)(2) of Notice 2010–30, the extension to pay federal income taxes described in Part III(A)(1)(b) of Notice 2010–30 is not available to civilian spouses claiming tax residence in a State or the District of Columbia under MSRRA and filing individual federal income tax returns for 2011 and subsequent taxable years who are (A) federal employees in American Samoa, Guam, or the USVI, or (B) individuals working in Guam or the NMI to whom section 935 applies. These civilian spouses should file their individual federal income tax returns for 2011 and subsequent taxable years, and pay any taxes due, according to the procedures described in Part III(A)(2) of Notice 2010–30.

Civilian spouses who accompany their servicemember spouses to a military duty station in one of the 50 States or the District of Columbia and who claim tax residence in a U.S. territory under MSRRA should follow the procedures in Part III(B) of Notice 2010–30 with respect to their individual federal income tax returns for 2011 and subsequent taxable years.

DRAFTING INFORMATION

The principal author of this notice is Jackie B. Manasterli of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Jackie B. Manasterli at (202) 435–5262 (not a toll-free call).

Credit for Carbon Dioxide Sequestration 2012 Section 45Q Inflation Adjustment Factor

Notice 2012–42

SECTION 1. PURPOSE

This notice publishes the inflation adjustment factor for the credit for carbon dioxide (CO_2) sequestration under § 45Q of the Internal Revenue Code (§ 45Q credit) for calendar year 2012. The inflation adjustment factor is used to determine the amount of the credit allowable under § 45Q. The calendar year 2012 inflation-adjusted credit applies to the amount of qualified CO_2 captured by a taxpayer at a qualified facility and disposed of in secure geological storage.

SECTION 2. BACKGROUND

Section 45Q(a)(1) allows a credit of $20 per metric ton of qualified CO_2 that is captured by the taxpayer at a qualified facility, disposed of by the taxpayer in secure geological storage, and not used by the taxpayer as a tertiary injectant. Section 45Q(a)(2) allows a credit of $10 per metric ton of qualified CO_2 that is captured by the taxpayer at a qualified facility, used by the taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, and disposed of by the taxpayer in secure geological storage.

Section 45Q(b)(1) defines the term "qualified carbon dioxide" as CO_2 captured from an industrial source that would otherwise be released into the atmosphere as industrial emission of greenhouse gas, and that is measured at the source of capture and verified at the point of disposal or injection. Qualified CO_2 includes the initial deposit of captured CO_2 used as a tertiary injectant but does not include CO_2 that is re-captured, recycled, or otherwise re-injected as part of the enhanced oil and natural gas recovery process.

Section 45Q(c) defines the term "qualified facility" as an industrial facility that