



Section of Taxation

10th Floor
740 15th Street N.W.
Washington, DC 20005-1022
(202) 662-8670
FAX: (202) 662-8682
E-mail: tax@abanet.org

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2208 Rayburn House Office Building
Washington, D.C. 20515

Representative C.W. Bill Young
2407 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 5120: Appropriations Rider Concerning Cash Balance Plans

Dear Sirs:

I am writing on behalf of the Section of Taxation of the American Bar Association to urge that a provision in the House-passed Treasury-Postal Appropriations bill (H.R. 5120), dealing with so-called "cash balance plans," not be included in the final appropriations bill. The views expressed herein represent the position of the Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

The provision that concerns us would prohibit the Internal Revenue Service (IRS) from using any appropriated funds "for any activity that is in contravention of Internal Revenue Service Notice 96-8, section 411(b)(1)(H)(i) or section 411(d)(6) of the Internal Revenue Code of 1986, section 204(b)(1)(G) or 204(b)(1)(H)(i) of the Employee Retirement Income Security Act of 1974, or section 4(i)(1)(A) of the Age Discrimination in Employment Act of 1967."

Notice 96-8 requested comments on potential proposed administrative guidance concerning certain provisions of the Internal Revenue Code that apply to single-sum distributions from defined benefit plans that are cash balance plans. In addition to describing the law on this subject and requesting comments, the Notice provided certain indices that would constitute a "reasonable good-faith" interpretation of the law (regarding interest rates used to calculate single-sum distributions) until the contemplated proposed guidance was issued. Notice 96-8 was never intended to address the full panoply of issues regarding cash balance plans that require guidance; nor was it ever intended to be a statement of final position on the subject. Rather, it provided interim guidance that could be used until the Treasury Department and IRS developed the formal guidance that was contemplated, and requested comments with respect to the content of such future guidance.

Senator Charles E. Grassley
135 Senate Hart Office Building
Washington, D.C. 20510

Senator Ted Stevens
522 Senate Hart Office Building
Washington, D.C. 20510

Representative Charles B. Rangel
2354 Rayburn House Office Building
Washington, D.C. 20515

Representative David Obey
2314 Rayburn House Office Building
Washington, D.C. 20515

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We understand that Treasury and IRS have spent considerable time and effort in developing the guidance contemplated by Notice 96-8, and that at least some of this guidance is expected to be issued in the relatively near future -- including guidance dealing with age discrimination issues, calculation of lump-sum benefits and other technical issues.

The cash balance appropriations freeze attached to H.R. 5120, if enacted, could have the effect of preventing the IRS and the Treasury Department from completing and publishing the more detailed guidance contemplated by Notice 96-8. Such legislation would thus prohibit further development of the law in this important area. Approximately 250 cash balance plans are currently being held in limbo by the IRS pending the development of further guidance. These plans were adopted by some of the largest corporations in the United States and affect the retirement benefits of hundreds of thousands of employees. Without further guidance, these plans, and the benefits of these employees, will remain in a state of continuing uncertainty. Notice 96-8 and the statutory provisions cited in H.R. 5120 do not provide sufficient guidance in this area, as the IRS itself recognizes.

We believe that legislation affecting the tax laws and administrative guidance thereunder should be enacted only after full consideration by the committees in Congress that have jurisdiction over tax matters and recognized expertise in such matters. Without thorough consideration by the tax-writing committees, enactment of tax legislation through the appropriations process is not, in our view, an appropriate exercise of legislative responsibility.

We urge that the rider regarding cash balance plans not be included in the final appropriations bill, and that Treasury and the IRS be allowed to complete its guidance on the difficult issues that were not addressed by Notice 96-8. If Congress desires to change the substantive law with respect to cash balance plans, it may, of course, do so through the processes normally utilized to propose and enact tax legislation. In the meantime, any attempts to ease administratively the existing state of uncertainty in this area should be encouraged rather than foreclosed.

We appreciate your consideration of these comments. Please contact William J. Wilkins, the Section's Vice-Chair for Government Relations, at (202) 663-6204, with any questions you may have.

Very truly yours,



Herbert N. Beller
Chair, Section of Taxation

cc: Mitchell Daniels, Director, Office of Management and Budget
Pamela Olson, Assistant Secretary, Tax Policy, Department of Treasury
Bill Sweetnam, Benefits Tax Counsel, Department of Treasury
Lindy Paull, Chief of Staff, Joint Committee on Taxation
Allison Giles, Majority Chief of Staff, Ways and Means Committee
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Kolan Davis, Republican Staff Director and Chief Counsel, Senate Finance Committee