Glossary – E

EFAST 2 – This is the name of the DOL's new all-electronic filing system that eliminates paper 5500 filings. The transformation to electronic filing resulted in significant practical changes. A plan sponsor will have three electronic filing options: (1) a private web-based sub-site, (2) a third-party software application, transmitted via the Internet, or (3) access to the *IFILE* web-based system.

Eligibility Tests – The IRS requires that plan eligibility be fair, consistent, and reasonable. Eligibility tests show that eligibility is not limited to or weighted in favor of key or highly compensated employees. Thus, self-funded plans (such as a cafeteria plan) may not exclude non-highly compensated employees from participating. Treasury regulations do, however, permit the exclusion of certain groups of employees, including: (a) employees with less than three years of service, (b) employees under age 25, (c) part-time or seasonal employees, (d) non-resident aliens (with no domestic income), and (e) collective bargaining employees. Generally, to satisfy eligibility requirements, a plan must benefit: (a) 70% or more of all non-excludable employees, regardless of whether they are highly or non-highly compensated, (b) 80% or more of all employees who are eligible to benefit, and (c) employees qualifying under a classification that does not discriminate in favor of highly compensated employees.

Employee – Tax advantages of the IRC apply only to employees and IRC-defined dependents. Such dependents may gain tenure beyond the death of the employee. Employment status continues if health care coverage is extended by collective bargaining, retiree coverage or a severance agreement. Special rules apply to self-employed. Only salespeople who have status as a common law employee gain tax advantages; life insurance salespeople are employees if they pay employer (and not self-employed) FICA taxes. Courts have used facts/circumstances to determine whether a corporate stockholder/employee is or is not an employee. For purposes of tax non-deductibility, a retiree participant is deemed a common law employee. However, if such retiree is a substantial shareholder in a closely held corporation, such payments (i.e., economic issue of benefits) may be held to be a taxable dividend.

Excludible Employee – An excludible employee is one who meets one of the following criteria: (a) no attained age 25, (b) not completed three years of service, (c) part-time (35 hours-per-week criteria), (d) temporary (less than nine months average work period per year), (e) working under a collective bargaining agreement, or (f) nonresident aliens with no domestic income.