

Glossary – I

Independent Contractor – The IRC provides that an independent contractor is one who meets any one of the following four tests: (a) may suffer a loss or make a profit from the services provided, (b) has a principle place of business other than the firm's and has a significant investment in tools or facilities, (c) makes services available to the general public and provides those services as an independent contractor to at least one other recipient during the current year or previous year, (d) is paid exclusively on commission, and (e) either has a principal place of business other than the firm's or pays a fair market value for rent or lease in the firm's office. There has been a plethora of litigation which involves the independent contractor and a health care plan as well as proposed legislation and regulatory pronouncements. Contrast of two issues is cited: (a) few independent contractors on the plan will create a tax situation for such few contractors that an IRS Form 1099 of the economic value will be required, (b) too many such contractors will endanger the tax status of the entire plan, i.e., a self-funded plan primarily of independent contractors would fail to meet the definition of an employee benefit plan.

Ineligible Employee – A more-than-2% owner of a Sub-S Corporation (and their spouse, children, grandchildren and parents), or partner in a partnership, or member of an LLC is not eligible to participate in a Section 125 plan. This includes the premium-only plan as well as the Health or Day Care Flexible Spending.