



**UMB** Healthcare Services

# HSA Groups: Employer and Employee Responsibilities

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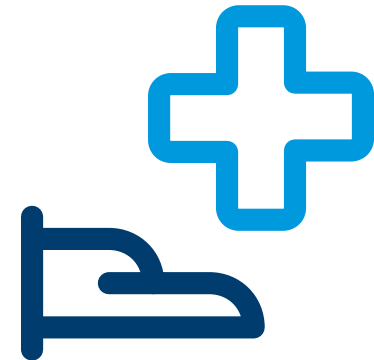
[UMB.com/HSA](https://UMB.com/HSA)



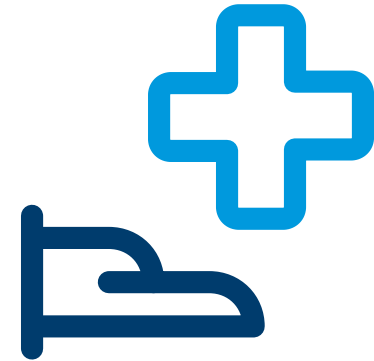
Not financial or tax advisor.  
Please consult an advisor for specifics.



- Overview of HSA group program
- Tax benefits
- Section 125 plans
- Contribution comparability
- Business entity differences
- Compliance responsibilities



- IRS sets most of the rules (IRS 969 and 502)
- Accounts remain individually focused
- Opened at IRA approved Institutions
- Employers need to understand the rules
- Employees need to understand their responsibilities
- Shared compliance can cause confusion

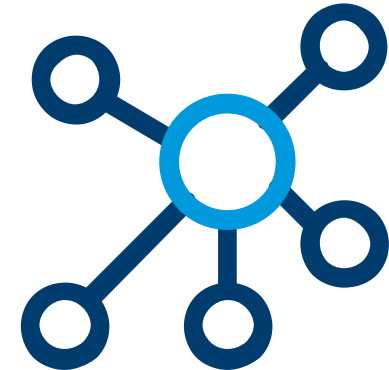


- Individual Account - 1 owner
- Authorize signers are allowed
- Account owner decides how and when to use funds
- Tax benefits flow to account owner
- Triple tax savings



## HSA Implementation and Administration

- Simplified by the lack of group-level rules
- HSA group rules apply
  - *If employer allows pre-tax contributions*
  - *Not based # of employees*
- NO group rules apply to after-tax payroll contributions or no contributions at all
- Lost tax savings for employer and employee if pre-tax contributions not offered by employer



Tax	Avoidance	
	Pretax Employer	Employee Contributes on Own
Federal income tax	✓	✓
State income tax	✓	✓
FICA	✓	
Medicare	✓	
FUTA	✓	
SUTA*	✓	✓

\* Depends on state law, still taxable in CA and NJ. No state income tax in Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming

- Section 125 plan (Cafeteria Plans) required for pretax payroll deferrals to HSA
- Easy to do; little to no paperwork submitted to IRS, no annual IRS Form 5500 filing
- Most employers have Section 125 in place if employer allows health insurance premiums deducted pretax.



## Administering the Section 125

- Payroll deferral—reduce employees pay by the amount of the deferral & contribute directly into employee's HSA.
- Collection of Section 125/HSA payroll deferral election forms
  - Law allows for monthly changes to the HSA a deferral.
  - Employers are allowed to accept prospective monthly changes to deferral elections.
    - » Note: Prospective means – the change cannot take effect until the month following the change date.



## Benefits of the Section 125

- Offering pre-tax HSA payroll deferral makes sense for most employers
  - *Cost, compliance, and administration burdens are low*
  - *Employer does not pay taxes on employee deferrals*
- Employers get tax benefits without a Section 125 plan by giving employee HSA funds
  - Employer must meet the IRS comparability rules.



- Created by Congress in HSA law
  - Ensures employer HSA contributions are made fairly across employee groups
- Most complicated compliance issue facing HSA plans
- 35% penalty for failure to comply
- Testing—contributions must be comparable at the time they are made (no annual testing or reporting)
- Employers not required to submit contribution data except during IRS or other government agency audit.



# Does Comparability Testing Apply?

- Comparability vs. Nondiscrimination Rules
  - If following IRS rules without exceptions noted in Section 125 plan document
  - If comparability does apply, then determine categories
- NOTE: The comparability rules do not require that everyone gets same treatment, just same treatment for employees in the same category



# Are Employees Properly Categorized?

- Level of coverage
- Part time or full time
- Current vs former
- HSA eligible vs non-eligible
- Non-union vs union
- Union vs union
- Employer HDHP vs other HDHP
- Compensation level



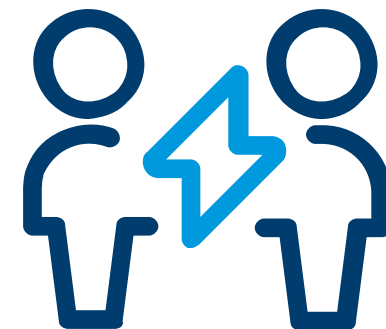
## Are the Contributions Comparable?

- Same dollar amount
- Same percentage of deductible
- Matching opportunity
- Contribution timing
  - Testing based on monthly determination
  - IRS provides 3 methods
    - Pre-funding
    - Periodic funding – preferred method
    - Post funding – ‘Look back”



- Business can deduct HSA contributions for employees as business expense (without having to report as income for employee)
- Special HSA rules limit owner's tax benefits through the company
- Different rules for contributions made by company to the business owners
- Treatment varies by type of business entity

Always verify you tax deductibility status with your tax preparer



- Not considered an employee for purpose of business made HSA contributions
- Not allowed to deduct their own HSA contribution as a business expense
- Can deduct HSA contributions on personal income tax return
- May result in the sole proprietor having to pay payroll taxes on the owner's HSA Contribution
  - Positive Note: Owner's not subject to comparability rules.
  - Owner's HSA contribution can be higher than employees.



- Partnerships and multi-member limited liability-flow-through entities for purposes of HSA contributions made on behalf of the owners
- HSA contributions are NOT deductible by the business
- Contributions reported as a distribution on partners' Schedule K-1
- Partner takes deduction on personal taxes
- Partnerships & LLCs often choose to make a larger shareholder distribution for the owners and allow the owners make HSA contributions on their own versus having the business do it directly.

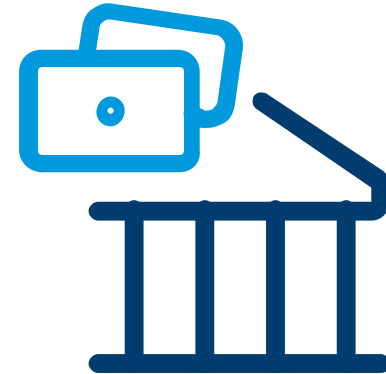


## S-corporations

- 2% owner of more treated as owner/partner in a partnership
- Owners cannot make pretax contributions via salary reduction
- Contributions made on their behalf by company are taxable & may be deducted on their personal income taxes.

## C-corporations

Shareholders of normal corporations, who are also employees, are not subject to any special HSA rules and are treated as employees.



# HSA Reporting Requirements by Responsible Party

HSA Reporting Requirements	Custodian	Employer	Employee
Payroll deferral HSA contribution	5498-SA	W-2	8889
Employer contribution	5498-SA	W-2	8889
Employee contribution (personal)	5498-SA	None	1040 & 8889
HSA distribution for medical expenses	1099-SA	None	8889
HSA distribution for non-eligible reason	1099-SA	None	1040 & 8889

HSA Compliance Requirement	Employee	Employer	Custodian
Eligibility for HSA	✓		
Contribution Limit	✓		
Distribution—deciding and validating what items eligible	✓		
Open HSA	✓		
Management of HSA (monitor, contact info., investments)	✓		
Termination of employment—close HSA	✓		
Employer contribution—comparability		✓	
Employee payroll deferral—Section 125 plan rules		✓	
Small business owner rules		✓	
Accounting—custodial services (track activity)			✓
HSA legal documentation—5305	✓		✓

- Most of the legal and compliance burden for HSAs falls on the employee or HSA custodian
- HSA programs are simple and inexpensive to implement
- Tax savings for all parties
- Employers have few compliance burdens and should play a role in educating



HSA programs supported by quality HSA administrators can be a great benefit for both the employer and employee!



The HSA Authority: [www.theHSAauthority.com](http://www.theHSAauthority.com)

IRS Publications: [www.irs.gov/publications/p969/](http://www.irs.gov/publications/p969/)  
[www.irs.gov/uac/Publication-502](http://www.irs.gov/uac/Publication-502)  
[www.irs.gov/pub/irs-drop/n-13-71.pdf](http://www.irs.gov/pub/irs-drop/n-13-71.pdf)

Dept. of Treasury: [www.treasury.gov/resource-center/](http://www.treasury.gov/resource-center/)

Business Quarterly: Whitney R. Johnson, HSA Resources, LLC

IRS Notice 2005-8: Q&A 3

U.S. Department of Labor, Field Assistance Bulletin 2004-1

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