Q What is a Flexible Spending Account?
A Flexible Spending Account (FSA) is a separate written plan maintained by an employer for employees that meets the specific requirements of and regulations of section 125 of the Internal Revenue Code (IRC). It provides participants an opportunity to receive certain benefits on a pretax basis. Participants in a cafeteria plan must be permitted to choose among at least one taxable benefit (such as cash) and one qualified benefit. In addition to FSA's, Section 125 of the IRC provides employers with the ability to make employees mandatory contributions towards premium costs for health insurance on a "pre-tax basis". A section 125 plan is the only means by which an employer can offer employees a choice between taxable and nontaxable benefits without the choice causing the benefits to become taxable.

To meet the requirements of section 125, the plan must only provide 'Qualified Benefits" which include the following:

- Accident and health benefits (Adoption assistance
- Dependent care assistance
- Group-term life insurance coverage
- Health savings accounts

Note: The written plan must specifically describe all benefits and establish rules for eligibility and elections.

Q How Does an FSA Work?

Employer contributions to the cafeteria plan are usually made pursuant to salary reduction agreements between the employer and the employee in which the employee agrees to contribute a portion of his or her salary or wage, on a pre-tax basis to pay for the qualified benefits. Since these "reductions" are not actually or "constructively" received by the participant, they are not considered wages for federal income tax purposes, Social Security or Medicare.

Q How has the 'Affordable Care Act' (ACA) Impacted These Plans?

ACA has a major impact on FSA/125 Plans:

- Only individuals eligible for employer-provided major medical coverage can be offered the health FSA. Employers with health FSAs must have an underlying ACA-compliant group health insurance plan. For example Township X offers a health FSA to full-time employees and part-time employees. However; the part-time employee population is not eligible to enroll in Township X's major medical plan. Under this scenario, part-time employees can no longer enroll in an FSA. An amendment is required to Township X's Plan Document to remove this group as eligible employees under the FSA.
- The health FSA must limit the maximum payable to 2 times the participant's salary reduction or, if greater, the participant's salary reduction plus $500. What does this mean? Simply that health FSAs can include employer contributions of $500 or up to a dollar for dollar match of each participant's election.
- Premium only plans have to change plan documents to allow a onetime 'opt out' from withholding to allow them to purchase insurance on the health insurance exchange
- Health FSA's may not be used to pay for individual insurance coverage
- Health FSA's annual contributions $2,500 maximum indexed for inflation (2015=2,550)
- No over the counter medicine reimbursements using FSA's.

If you have one of these plans or are considering adopting one, we strongly recommend you engage a qualified plan specialist.