**8804. Can the treatment of employment benefits in an entity structure impact choice of entity?**

While S corporations and partnerships are able to offer many of the same employment type benefits, such as qualified pension and profit-sharing plans and accident and health insurance, the tax treatment differs in some cases. Many of the IRC provisions that create tax preferences for employment benefits do so only for plans that provide benefits for *employees*. Partners in a partnership are generally subject to different rules. Rather than being treated as employees, 2 percent shareholders in an S corporation are treated as partners for certain employment benefit purposes.[[1]](#footnote-1)

For example, premiums paid for accident and health insurance paid on behalf of 2 percent shareholders and partners are deductible by the entity, but are includable in the recipient’s gross income.[[2]](#footnote-2) This is because in order for premiums paid by the employer on behalf of the recipient to be excludable from that recipient’s income, he or she must be considered an employee. For purposes of determining the excludability of employer-provided accident and health benefits, self-employed individuals and certain shareholders owning more than 2 percent of the stock of an S corporation are not treated as employees.[[3]](#footnote-3)

Despite this, sole proprietors, partners, and 2 percent shareholder-employees of an S corporation may generally deduct up to 100 percent of their health insurance premiums on their individual returns.[[4]](#footnote-4)

See Q 8693 to Q 8731 for a discussion of the treatment of various health-related benefits provided in an employment context. Q 8732 to Q 8758 discusses the treatment of various employment “fringe” benefits.

1. . IRC Sec. 1372. [↑](#footnote-ref-1)
2. . Rev. Rul. 91-26, 1991-1 CB 184. [↑](#footnote-ref-2)
3. . IRC Sec. 105(g); Treas. Reg. §1.105-5(b). [↑](#footnote-ref-3)
4. . IRC Sec. 162(l). [↑](#footnote-ref-4)