

**RETIREMENT HEALTH SAVINGS TRUST:
FEASIBILITY OF A RETIREMENT HEALTH SAVINGS TRUST
FOR STATE EMPLOYEES**

HOUSE BILL 04-1171 REPORT TO THE GENERAL ASSEMBLY
DECEMBER 1, 2004

Colorado Department of Personnel & Administration

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Executive Summary

House Bill 04-1171 requires the state personnel director to “investigate the benefits and drawbacks of establishing a retirement health savings trust for the benefit of state employees”, and to report his findings to the General Assembly no later than December 1, 2004. A retirement health savings trust (RHST) is a trust arrangement established to receive tax-deferred contributions during employment to be used for health care expenses in retirement. The report must identify the feasibility of various components listed in the statute, including allowing the State, as an employer, and state employees various options to contribute money or accrued leave to the trust. Additionally, the report must address various potential terms of an RHST including, but not limited to, the design, adoption, and schedule for implementation of the trust.

The director has completed his evaluation and has concluded that offering an RHST is technically feasible but not cost-effective or desirable at this time. The Department has plans to offer a High Deductible Health Plan (HDHP) option that will enable state employees enrolled in the State’s medical coverage to take advantage of Health Savings Accounts (HSAs) as soon as fiscal year 2004-05. HSAs, which were authorized by federal legislation in late 2003, also permit tax-deferred savings for subsequent medical expenses. Although RHSTs have some advantages HSAs do not, RHSTs also have significant drawbacks that render them an inappropriate alternative for the State at this time.

In the event the State goes forward with establishing an RHST, the most appropriate structure under the federal tax code would be an Integral Part Trust (IPT). This type of trust is tax-exempt and, unlike other available structures, permits employer contributions but does not require them. Under an IPT, employees may make pre-tax and post-tax contributions to their account in the IPT. The employee pre-tax election is a fixed percentage of salary that is irrevocable for the duration of employment, and the assets accumulated in the trust may be used only for health care after retirement. Contributions of accrued annual or sick leave to an RHST are not clearly authorized by federal tax law. To ensure the trust did not discriminate in favor of highly compensated employees and lose its tax-exempt status, a State RHST would have to either be mandatory for all employees or limit use of benefits to pay only retiree health insurance premiums. In addition, recent federal legislation addressing the constructive receipt of income in the wake of Enron-type abuses casts doubt on the continuing validity of all existing RHST models the State might rely upon to establish its own trust. The State would be well advised to seek a private letter ruling from the Internal Revenue Service before implementing an RHST.

From a fiscal standpoint, State contributions of money to an RHST are unlikely in the foreseeable future. Contributions of accrued annual and sick leave, even if authorized by the IRS, do not avoid the fiscal problem because they are unfunded liabilities the State would have to pay for in order to place such amounts in the trust. Further, the administrative costs to establish and maintain such a trust would be about \$84,000 in the first year and about \$55,000 annually thereafter. These costs include investment and legal advice to the trustee, as well as additional FTE for the employee benefits program within the Department of Personnel & Administration. Since participation levels in an RHST are expected to be very low, it is likely the State would have to subsidize the program to a substantial degree for the foreseeable future in order to keep participant fees at reasonable levels. The State is not presently in a fiscal position to make contributions or undertake such an administrative subsidy.

Background

When the Medicare Prescription Drug Improvement and Modernization Act of 2003 was signed into law on December 8, 2003, it created, among other things, a new type of tax-savings account, a Health Savings Account (HSA)¹, to encourage eligible individuals with qualifying high deductible health plans (HDHP)² to save for medical and retiree health expenses. With the advent of HSAs, there has been renewed interest in other funding structures to aid retirees with medical payments. A bill was introduced in the Colorado House of Representatives, HB 04-1171, to examine one such program, a retirement health savings trust or RHST. An RHST allows tax-deferred savings during employment to be used later for health care expenses in retirement.

House Bill 04-1171, signed into law by the Governor May 21, 2004, contains the following key provisions giving rise to this report:

“The state personnel director shall investigate the benefits and drawbacks of establishing a retirement health savings trust for the benefit of state employees. The director shall include the findings of the investigation and recommendations regarding the establishment of such a trust in a report as specified in subsection (5) of this section.” [§ 24-52.5-102(1), C.R.S.]

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“On or before December 1, 2004, the state personnel director shall submit a written report to the members of the state, veterans, and military affairs committee and the health, environment, welfare, and institutions of the Senate and the House of Representatives and to the members of the joint budget committee. The report shall review the director’s findings and shall make a recommendation regarding the establishment of a retirement health savings trust for the benefit of state employees.” [§ 24-52.5-102(5), C.R.S.].

The statute requires that the report address the feasibility and timetable for establishing a retirement health savings trust that permits both pre-tax and post-tax contributions by employer and employee, including a portion of an employee’s accrued annual and sick leave. Additionally, the report must address investment of trust moneys, the types of medical expenses that qualify for withdrawal, and the administrative costs of such a program.³

Funding Structure

Under certain conditions, the Internal Revenue Service (IRS) allows state and local governments to fund employee benefits, such as retiree health benefits, tax-free through separate trusts entitled to the government’s tax-exempt status. An “Integral Part Trust” (IPT) is viable funding structure for the State of Colorado to use in establishing an RHST. If done correctly, both the trust and the

¹ A Health Savings Account is an account that can be funded by employee or employer contributions and has the requirement of a HDHP if implemented.

² A high deductible health plan (HDHP) is a health plan with an annual deductible of at least \$1000 and a cap of \$5000 on out-of-pocket expenses for self-only coverage (double these amounts for family coverage).

³ The complete text of § 24-50-102, C.R.S., is set forth in Attachment A.

income generated by the trust are tax-exempt. The design of this type of funding structure provides the most flexibility for governmental employers.

The tax exemption of the trust and the pre-tax status of contributions to the trust are based upon the tax exemption provided under Internal Revenue Code (IRC) Section 115(1). Unlike an HSA, using an IPT for purposes of establishing an RHST does not require the participating employee to be enrolled in medical insurance coverage under a qualified High Deductible Health Plan. Trust assets may be used only for “integral functions” of state government, such as employee benefits and retiree health benefits. In order for a trust to qualify as an “integral part” of the employer, the employer must exert “substantial control” over the trust and must have “substantial financial involvement”. “Substantial control” means that the State appoints the trustee to hold title to trust assets on behalf of the employer and to manage the trust operations. “Substantial financial involvement” means that the employer has the primary responsibility for funding the trust. As discussed in greater detail below, certain employee contributions may be considered those of the employer for purposes of satisfying the “substantial financial involvement” test. Throughout this report, references to RHSTs are based on the Integral Part Trust approach.

Contributions

An RHST may receive direct tax-exempt contributions from the employer as well as pre-tax and post-tax employee contributions. Employee pre-tax contributions may be mandatory or voluntary. Voluntary employee pre-tax contributions require the employee to make an election setting aside a certain percentage of salary. The employee election is irrevocable *for the duration of employment*, meaning that it cannot be increased, decreased or terminated without jeopardizing the tax-exempt status of the entire trust. The IRS has not approved contributions of accrued leave. Moreover, leave balances are unfunded liabilities for which the State would have to pay at the time of contributing them to the trust.

As discussed previously, “substantial financial involvement” is one of the ways in which the government employer demonstrates the integral function nature of its RHST in order to obtain tax-exempt status. This generally means the government must invest its own resources. However, for purposes of satisfying the applicable test, the IRS considers direct employer contributions, mandatory employee contributions from compensation, or irrevocable elected pre-tax employee contributions to be employer contributions. In fact, pre-tax irrevocable elections by employees that are treated as having been made by the employer are sufficient standing alone to retain the tax-exempt status of a State RHST. This is important for the State of Colorado because neither mandatory employee contributions nor direct employer contributions of money or leave are considered viable alternatives due to the fiscal impact.

The definition of salary under PERA was amended in the last legislative session to include salary contributions to “any other type of retirement health savings account program”. Thus, an RHST has no impact on PERA pension benefits.

Tax-deferred compensation vehicles, such as an RHST, may not have the effect of discriminating in favor of “highly compensated employees” (HCE), in accordance with the nondiscrimination rules under Internal Revenue Code section 105(h). If an RHST is found to have discriminated in this respect, HCE are taxed on the amount of their RHST benefit thereby eliminating any tax

benefit of RHST contributions for HCE. A lengthy discussion of HCE nondiscrimination is beyond the scope of this report. Generally, however, for the State this means that unless 70 percent of its employees participate in the RHST the program would be deemed discriminatory. If any higher education employees are eligible to participate in the RHST, the entire employee population in higher education must be included in satisfying the 70 percent participation threshold. The bottom line in this regard is that federal tax policy seeks assurances that the employer sponsor is truly committed to helping employees save for retirement health care costs and not simply creating just one more tax income tax deferral scheme for individual highly paid employees.

These nondiscrimination limits are a fatal drawback to establishing a State RHST. Voluntary participation by 70 percent of employees is unrealistic given the irrevocable nature of the pre-tax election. The director cannot recommend mandatory employee contributions to satisfy the 70 percent participation level. Although the State could have only voluntary participation and attempt to factually demonstrate that it is not violating the HCE nondiscrimination rules, this would require major modifications to the affected payroll systems in order to track this information. Since only highly paid employees generally will be in a position to irrevocably commit a fixed percentage of salary for the duration of employment, it appears highly unlikely the State could satisfy the applicable nondiscrimination tests. Therefore, investment in payroll system changes in order to track this information appears not to be a prudent use of State resources.

Tax Status Uncertainty

The Internal Revenue Code (IRC) does not expressly authorize RHSTs. They are a particular creative use of Integral Part Trust doctrine and are approved by the IRS through private letter rulings only for employers currently offering them. The director strongly recommends that any State RHST not be implemented without a favorable private letter ruling from the IRS.

Recent federal legislation calls into question all existing RHSTs upon which the State might base its own model. The Jobs Creation Act of 2004, P.L. 108-311 (Act) significantly revised the tax rules governing nonqualified deferred compensation arrangements effective January 1, 2005. These changes were necessary to establish rules for contributions to avoid the constructive receipt of income under IRC Section 83 after abuses revealed in the Enron matter.

Current analysis of the Act indicates it has potentially broad application to all arrangements that avoid the constructive receipt of income, unless statutorily excepted. The Act significantly changes the rules governing the timing of employee contributions and the events, which permit distribution. It will take time for the IRS to issue guidance on technical issues under the Act and their application to an RHST. Until such guidance is issued or obtained, it is unlikely the IRS will issue further private letter rulings validating RHSTs, and employers already offering an RHST will be at risk that their design violates IRS rules.

Fiscal Impact

If an RHST is implemented there will be an increased cost to administer the Department's Employee Benefits program. It is virtually impossible to estimate participation levels if an RHST is implemented. Very few employers offer RHSTs, limiting the value of extrapolating

from the experience of others in this regard. The unlikely probability of state contributions and the irrevocability of employee contributions for the duration of employment suggest very low participation rates by state employees. It is also important to note that the level of participation would not affect the cost involved in administering the plan envisioned in HB04-1171. Those costs would be the same whether participation is 50 or 5,000 employees because the cost of administration would be borne by the trust, or funded with fees charged to the participants, much as they are for the State's existing 457 Deferred Compensation Plan. However, implementation costs may take several years to recoup from participant fees in order to keep fees at reasonable levels for individual participating employees.

Estimated costs to the Department of Personnel & Administration, Division of Human Resources, are estimated to be \$83,981 for the first year, and \$54,551 per year thereafter. These estimates are based on costs incurred in the State's defined contribution retirement plans administered by the Department of Personnel & Administration. Costs include salary for a professional level half-time employee (\$21,380), operating expenses, and legal assistance for trust implementation, e.g., RFP development, review of proposals, awarding of contract, contract negotiation and on-going trust administration (\$8,207). Additionally, the Department would require the following external start-up costs that increase the base internal cost from about \$55,000 annually up to \$84,000 for the first year:

- Retention of an outside tax attorney (\$5,000) to seek a favorable IRS ruling for appropriate federal tax-exempt status plus an applicable filing fee (\$1,000);
- Technical assistance from an outside consultant for the purpose of RFP development, review of proposals and contract negotiations (\$10,000);
- Legal services from the Attorney General's Office for assistance in the development of the plan (trust) document, RFP and contract documents, as well as contract negotiation assistance (\$2,500);
- Selection and monitoring of investment options available to employees participating in the RHST requires an investment consultant who would also prepare an investment policy for the trust (\$28,000); and
- Programming the state payroll systems to send and receive files from the awarded provider would cost an additional \$10,800. This cost excludes changes to the payroll system necessary to track participation and ensure compliance with the highly compensated employee nondiscrimination rules.

Under current fiscal constraints the State is not in a position to subsidize such a program at this time. Even if the participants ultimately pay these costs, the State must advance the funds necessary to get the program off the ground. Although the State could build the cost into the existing benefit structure, which is cash funds exempt under TABOR, given the already low state contribution to basic health, life and dental benefits, it appears inappropriate at this time to use limited state funds for an RHST. The Department is working hard to make health care coverage affordable for many employees who have dropped out due to the high cost. Diverting limited resources to an RHST is especially undesirable due to the lengthy pay back period from anticipated low participation levels by state employees. It could take several years to make the program self-sufficient and repay funds advanced by the State.

Implementation

Once the funding structure and contribution type are selected the employer would develop a trust document. Employees would have separately identifiable accounts and be permitted to select from several investment options with varying risk-return characteristics, similar to defined contribution retirement plans. Because the role of trustee involves handling and investing of funds, there are extensive safeguards involved, such as minimum required net worth, bonding, and annual audits. Unless the trustee is created by statute, the trust document would establish the trustee for fiduciary oversight and administration of the plan, including selection and monitoring of the investment options available to participants.

The trustee would contract with various consultants who have expertise in investments, administration, and federal regulations. An investment consultant would develop an investment policy, make recommendations on investment options, and review the performance of the funds annually. The trust document also provides terms of eligibility, describes the nature of investments offered (subject to any statutory limitations), defines qualified medical expenses (subject to IRC Section 213), and establishes administrative fees (paid by employee or employer) to administer the plan.

Following passage of authorizing legislation, an implementation schedule of 12-18 months would be necessary to prepare a Request for Proposal (RFP), select a vendor to administer an RHST, install the administrative processes necessary to make it work, and conduct education and enrollment for employees. Ideally, introduction of a new benefit should be at the same time employees are thinking about changing other benefits, e.g., annual open enrollment period. This keeps costs down and enables the employee to compare at one time various benefit alternatives that may impact one another. Starting July 1, 2005, employee benefits will move from a calendar year to a fiscal year cycle, in accordance with HB 04-1449. The following implementation schedule takes all of these factors into account.

Implementation Schedule

- May 2005 – Assume legislation passes to implement RHST.
- August 2005 – January 2006
 1. Discussions with IT for system requirements.
 2. Create subcommittee for implementation.
 3. Prepare trust document for PLR.
 4. Set up trust and Committee for oversight.
 5. Retain a technical consultant for RFP process and contract negotiations.
- February 2006 – BID opens for 30 days for bundled provider of RHST.
- March 2006 – Review proposals.
- April 2006 – Oral presentations and award bid.
- May 2006 – Systems testing, coordination between State and vendor.
- May/June/July 2006 – contract negotiations.
- August 2006– Route contract for signature effective January 1, 2007.
- September through December 2006 – Communications effort and training HR professionals.
- January through March 2007 – Preparation to include in FY07 Open Enrollment.

- March/April 2007 – Open enrollment period to make one-time irrevocable election for contributions to RHST.
- July 2007 – Health Retirement Savings Trust begins receiving contributions from State employees who enrolled during open enrollment.
- August 2007 – Committee starts meeting monthly to review budget, investments, and administration of plan.

Summary Comparison of HSAs Versus RHSTs

The director has not identified any compelling reasons to offer an RHST, especially in light of the fact that HSAs are on the horizon. The Department already has plans to offer a High Deductible Health Plan option that will enable state employees to take advantage of Health Savings Accounts (HSAs) as soon as fiscal year 2006. A comparison of HSAs and RHSTs shows that many of the benefits of tax deferred savings for retirement can be achieved through HSAs without most of the drawbacks associated with RHSTs.

Both HSAs and RHSTs permit employee tax-deferred contributions, as well as employer contributions. Both can be used for medical expenses in retirement. However, the employee owns and directs an HSA much like an individual savings account or IRA. Under an RHST, the trust establishes investment options and participants do not own their money until distribution even though accounts are held in their names, much like a defined contribution retirement plan. Although RHSTs have the unique advantage of permitting employees to contribute uncapped amounts of salary and no requirement to enroll in a High Deductible Health Plan, RHSTs have a number of restrictive disadvantages that make them even less attractive if HSAs are available.

As noted previously, under an RHST the employee must make an irrevocable election to set aside a fixed percentage of his or her income for the duration of employment, while HSAs permit employees to set aside whatever amount they wish on a monthly or yearly basis (subject to annual maximums). In this respect, HSAs are very much like Individual Retirement Accounts (IRA) because the amounts contributed and the proper use of assets are matters strictly between the taxpayer and the IRS as reported on a tax return. Second, RHST balances may only be used after retirement; HSA accruals can be used for medical expenses during employment and retirement. Third, employees may use their HSA money at any time for any non-medical purpose so long as they pay the income taxes and a 10 percent penalty. RHST funds may be used only for retiree medical expenses. Fourth, RHSTs require costly state administration to monitor eligible expenses for retired employees while HSAs allow employees to set up their own accounts so long as they are enrolled in a qualified High Deductible Health Plan. This is significant because the anticipated low participation rate, at least in the early years, will create very high fees for employees unless the State subsidizes the program.

Finally, given the State's fiscal condition and the already low employer contribution to health, life and dental benefits, it is unlikely the State will be in a position to make employer contributions in the foreseeable future. Therefore, HSAs offer employees greater flexibility with less cost to take advantage of tax-deferred savings opportunities for future medical expenses.⁴

⁴ For a complete discussion of HSAs, see the Senate Bill 04-94 report to the General Assembly entitled, *Health Savings Accounts: Feasibility of Offering an HSA-Qualified High Deductible Health Plan to State Employees*. To

Conclusion

Although a Retirement Health Savings Trust is a feasible product to offer employees, it is not in the best interest of either the State of Colorado or its employees in terms of fiscal impact, additional administrative requirements, and flexibility. The Department plans to offer a High Deductible Health Plan, which in turn provides employees with the opportunity to save for medical expenses during employment as well as in retirement through a Health Savings Account. While an RHST is limited to payment of medical expenses during retirement, participation is not dependent on enrollment in another benefit plan. However, RHSTs have significant drawbacks, such as the one-time irrevocable contribution election by employees and the anticipated employer cost to subsidize the program in order to keep fees at a reasonable level and meet federal nondiscrimination rules. When combined with the requirement to cover all employees in order to avoid discrimination in favor of highly compensated employees, establishing an RHST does not appear to be viable benefit offering by the State at this time. Strategically, it is important for the State to remain focused on addressing the greater need of making affordable health care coverage available to the workforce as a whole. Because of the relatively low state contribution to basic health benefits, diverting these limited dollars away from this greater need to establish an RHST is undesirable for the State at this time.

Attachments

A. Excerpts from House Bill 04-1171 Concerning the Feasibility of Establishing a Retirement Health Savings Trust.

B. Brief Summary of Tax and Related Compliance Issues for Health Reimbursement Arrangements (HRA), Health Savings Accounts (HSA), Voluntary Employee Benefit Association (VEBA), and Retirement Health Savings Trust (RHST).

request a copy of this report, contact Cari Arnold in the Employee Benefits Unit by telephone at 303-866-3436 or by e-mail at cari.arnold@state.co.us.

Attachment A

Excerpts from House Bill 04-1171 Concerning the Feasibility of Establishing a Retirement Health Savings Trust.

24-52.5-102. Retirement health savings trust - state personnel director - investigation and report. (1) The state personnel director shall investigate the benefits and drawbacks of establishing a retirement health savings trust for the benefit of state employees. The director shall include the findings of the investigation and recommendations regarding the establishment of such a trust in a report as specified in subsection (5) of this section.

(2) In investigating the benefits and drawbacks of establishing a retirement health savings trust, the state personnel director shall consider the feasibility of the following:

(a) The state, as an employer, establishing a trust for the purpose of providing retirement health savings benefits to state employees who choose to participate in the trust;

(b) The state specifying that providing retirement health savings benefits is an integral part of the state's activities;

(c) The state treating a trust that makes the provision of retirement health benefits possible as an integral part of the state and therefore including the trust in the state's tax-exempt status;

(d) The state creating an individual account within the trust for each state employee who chooses to participate and allowing the state to make pretax contributions, including unused annual or sick leave, to a state employee's account on behalf of the employee;

(e) The state maintaining substantial control of the trust and having the power to amend or terminate the trust and appoint the trustees of the trust;

(f) The state allowing each state employee who participates in the trust to determine how his or her money will be invested;

(g) The state allowing all moneys in the trust to grow without being subject to state or federal income taxes;

(h) The state allowing participating state employees to make withdrawals on a tax-free basis after reaching a certain age, so long as the moneys are used for qualified medical expenses; and

(i) The state allowing an employee's spouse, dependants, or other beneficiaries to use any assets that remain in a participating employee's account at the time of the employee's death for qualified medical expenses.

(3) The state personnel director, in investigating the feasibility of establishing a retirement health savings trust, shall investigate the benefits and drawbacks to the state and to state employees of allowing the state as an employer and state employees the option to make the following contributions to the trust:

(a) Pretax contributions, including a portion of unused employee annual and sick leave, by the state to an employee's account on behalf of the employee;

(b) Voluntary after-tax contributions by the state to an employee's account on behalf of the employee;

(c) Voluntary after-tax contributions by the employee into the employee's account; and

(d) Voluntary pretax contributions by the employee to the employee's account based on a one-time irrevocable election to make such contributions.

(4) The state personnel director shall investigate the benefits and drawbacks to the state and to state employees of various potential terms of a retirement health savings trust, including, but not limited to:

- (a) The design, adoption, and schedule for implementation of the trust;
 - (b) The nature and amount of the contributions that the state may make to the trust on behalf of a participating state employee;
 - (c) The nature of the investments that a state employee may choose to make with the moneys contributed to the trust;
 - (d) The terms of eligibility for participating in the trust and for withdrawing the moneys contributed to the trust;
 - (e) The nature of the expenses that qualify as medical expenses for purposes of tax-free withdrawal of moneys from the trust; and
 - (f) The negotiation and payment of any administrative expenses to be paid by the state or by each employee who chooses to participate in the trust.
- (5) On or before December 1, 2004, the state personnel director shall submit a written report to the members of the state, veterans, and military affairs committee and the health, environment, welfare, and institutions committee of the senate and the house of representatives and to the members of the joint budget committee. The report shall review the director's findings and shall make a recommendation regarding the establishment of a retirement health savings trust for the benefit of state employees.

Attachment B: Brief Summary of Tax and Related Compliance Issues for HRAs, HSAs, VEBAs, and RHSTs

Plan Design or Compliance Issue	Health Reimbursement Account - HRA	Health Savings Account - HSA	Voluntary Employee Benefit Association - VEBA	Retirement Health Savings Trust - RHST
Internal Revenue Code	Rev. Rule 2002-41, Notice 2002-45	Code § 223	IRC Section 501(c)(9)	The legal basis stems from IRC § 115(1), Rev. Rul. 77-261 and private letter rulings obtained by some vendors.
Who is eligible?	Any employee, subject to employer-designed exclusions.	Any individual who is covered under an HDHP (as defined in Code § 223), not entitled to Medicare, and not claimed as a tax dependent. With certain exceptions, the individual cannot have any non-HDHP coverage.	Generally limited to employees of an employer or a group of employers, collective bargaining units or labor unions. Mandatory for covered employees.	Employer determines eligibility. Generally mandatory or irrevocable election by employee.
How is plan funded?	Employer contribution only, cafeteria plan not available.	Employer or employee pretax contributions or post-tax.	Employer contributions, mandatory employee pre-tax or mandatory unused leave.	Employer contributions, mandatory employee pre-tax, mandatory unused leave (subject to employer policy and as determined by employer formula)*, pre-tax irrevocable election or employee voluntary after-tax. * Note: the IRS has not approved the contribution of unused accrued leave.
Are there limits on contributions?	No, determined by the employer.	Yes, cannot exceed the lesser of the HDHP deductible or indexed amount.	None for governmental VEBA.	None, except 25% limit on voluntary after-tax.
Can unused amounts be carried over to the next year?	Yes	Yes	Yes	Yes

Plan Design or Compliance Issue	Health Reimbursement Account - HRA	Health Savings Account - HSA	Voluntary Employee Benefit Association - VEBA	Retirement Health Savings Trust - RHST
What medical expenses are eligible for reimbursement?	Otherwise un-reimbursed Code § 213(d) medical expenses incurred while coverage is in effect, including premiums for eligible health insurance and long-term care insurance, subject to employer-designed limitations.	Otherwise un-reimbursed Code § 213(d) medical expenses of account-holder, spouse and dependents incurred after HSA established, except a Medicare supplemental policy.	Otherwise un-reimbursed Code § 213(d) medical expenses incurred while coverage is in effect, including premiums for eligible health insurance and long-term care insurance, subject to employer-designed limitations.	Section IRC 213(d) except for direct long-term care expenses. However, premiums for long-term care can be paid assuming employer offers this benefit.
Are distributions for non-medical expenses permitted?	No	Yes, but such amounts are taxable and subject to a 10% excise tax (certain exceptions apply).	Yes may be used to purchase life insurance for members.	No, except employer may include a de minimus distribution (lump sum payment if balance is less than \$5,000) if employee severs employment before benefit eligible age.
Are elections irrevocable or are changes allowed?	Employer decision.	HSA elections can change at anytime. HDHP is an irrevocable election for 12 months.	Yes Typically do not offer irrevocable elections.	Depends on contribution type, typically irrevocable election if pre-tax contributions made by employee.
Are benefits vested?	Yes	Yes. HSAs are non-forfeitable and portable.	Yes, assuming this funding structure is used for retirement purposes.	Yes, employee contribution is fully vested.
Do Code § 105(h) nondiscrimination requirements apply?	Yes	Yes for self-insurance HDHP. No for HSA, but if employer makes HSA contributions, Code § 4980E requires comparable contributions to be available for comparable participating employees.	Applies to self-insured non-collectively bargained plans.	Yes, except if the plan is limited to collective bargaining units or the plan limits medical reimbursements to insurance premiums only [§ 213(d)], then nondiscrimination rules do not apply.

Plan Design or Compliance Issue	Health Reimbursement Account - HRA	Health Savings Account - HSA	Voluntary Employee Benefit Association - VEBA	Retirement Health Savings Trust - RHST
Are account earnings taxable?	If reimbursements are made directly out of the general assets of the employer and account funds are not set-aside in a separate account, there are no earnings to be taxed.	No (except unrelated business income of colleges and universities may be taxed under Code § 115).	No	No
Is a health plan required?	No. Although an HRA may be coupled with HDHP, it is not required.	Yes. A HDHP is required.	No	No
Is an IRS ruling required?	No, but a private letter ruling is recommended.	No	Yes	No, but a private letter ruling is recommended, particularly on certain design features such as contributing unused accrued leave.
Is a trust account required?	No	Yes	Yes	Yes
Do the privacy provisions or HIPAA apply?	Yes	Yes, for an HDHP and for an employer-sponsored HSA, even if sponsored by governmental entity or church.	Yes	Yes