

VEBA IRC § 501(c)(9) AND IRC § 115 TRUSTS

TRUST COMPARISON

Many governmental plan sponsors have set up medical reimbursement plans, defined by the IRS as health reimbursement arrangements (HRAs), using a VEBA (voluntary employees' beneficiary association - authorized by IRC Section 501(c)(9)) trust or a IRC Section 115 integral part governmental trust.

Many HRA programs are called VEBAs simply because VEBA is a simple, memorable term, and the IRS did not coin the "HRA" phrase until 2002. Many plan sponsors have been operating medical reimbursement programs through VEBAs for governmental employers for many years prior to 2002.

You will find the word "VEBA" many times interchanged with "HRA". You should be aware, however, that VEBAs are also used to hold assets for self-insured medical plans, dental plans, severance pay plans and other benefits.

HRAs offered through VEBA trusts typically offer the same tax benefits as HRAs offered through Section 115 integral part trusts. It should be noted that custom VEBAs are subject to additional discrimination rules under IRC Section 505 and are generally more expensive to set up. The IRC 505 discrimination rules are not applicable to HRAs offered through Section 115 trusts.

HRAs offered through Section 115 trusts can provide discriminatory contributions if the benefits are limited to insurance premiums, because Section 105(h) discrimination testing does not apply to HRAs that are restricted to paying only insurance premiums. Discriminatory contributions to VEBAs offering HRAs may result in the VEBA losing its tax-exempt status under 501(c)(9).



	VEBA	115
A health reimbursement arrangement (HRA) can be offered by governmental employers within a VEBA or other tax-exempt trust.	Formed pursuant to specific provisions of Section 501(c)(9) of the Internal Revenue Code (IRC) which sets forth the requirements and limitations relating to the trust's tax exemption.	A trust that is exempt from taxation under Section 115 of the IRC set up to benefit from the same tax exempt status of the governmental employer who establishes and adopts the trust. The legal guidance for the requirements and limitations for a 115 trust is based upon a collection of IRC provisions, Treasury regulations, and IRS private letter rulings.
What is the tax treatment on trust income?	Trust earnings accumulate on a tax-exempt basis.	Trust earnings accumulate on a tax-exempt basis.

TRUST COMPARISON

	VEBA	115
Is IRS approval required or recommended?	Yes. An IRS 501(c)(9) determination letter is required and must be obtained within 15 months after the Trust documents have been executed. VEBA trusts are typically limited to three contiguous states.	IRS approval is not required. However, an IRS private letter ruling (PLR) is recommended for a prototype plan document used by multiple employers. The documents used by all other employers will be substantially similar in order to ensure that each employer may be confident their program complies with the IRS guidelines for tax-exemption.
Does IRS approval apply to all adopting governmental employers?	Yes, if it is a multi-employer VEBA.	While the IRS does not permit its PLR to be relied upon by anyone other than the particular employer for whom the PLR is obtained, tax-exemption under 115 is less stringent and complex than for 501(c)(9), and thus reliance on IRS approval is less critical. Usually, in a multiple employer arrangement, all employers' 115 documents are substantially similar to the documents for which a PLR is obtained, giving assurance to other adopting employers that their program meets the IRS guidelines for compliance.
What non-discrimination rules apply?	Subject to the non-discrimination rules for HRA plans under IRC §105(h). In addition, 501(c)(9) has its own set of non-discrimination rules under IRC §505, which are generally satisfied by compliance with the non-discrimination rules applicable to HRAs.	Subject to the non-discrimination rules for HRA plans under IRC §105(h).
What are the consequences of violating non-discrimination rules?	Violation of the non-discrimination rules by any participating employer in a multiple-employer trust will disqualify the tax exemption for all participating employers. Violation of the non-discrimination rules will also cause the HRA payments to be taxable for highly compensated employees of the violating employer.	Violation of the non-discrimination rules by any participating employer has no effect on the tax exemption of the trust under IRC §115. Violation of the HRA non-discrimination rules will cause the HRA payments to be taxable for highly compensated employees of the violating employer.
Is the trust expensive to create?	VEBA trusts are generally fairly expensive to create as the plan sponsor must prepare and submit IRS Form 1024 along with a pro forma budget and plan and trust documents to the IRS for approval as a 501(c)(9) organization. The IRS issues a letter of determination if the plan qualifies as a VEBA.	Generally setting up 115 trusts are less expensive than a VEBA trust because the effort to seek and receive the IRS letter of determination approval is not necessary.