



Clarification of Domestic Partners (and Their Children) as Designated Beneficiaries for VEBA Funding/Payment Purposes

Issue

Current Department of the Treasury (“Treasury”) regulations that limit participation in a volunteer employees’ beneficiary association (“VEBA”) to an employee and the employee’s dependent or “designated beneficiary” are unclear in providing coverage to an employee’s domestic partner and/or domestic partner’s child.

Short Answer

The Treasury and/or the Internal Revenue Service (“IRS”) should promulgate regulations or another form of administrative guidance, such as a notice or revenue ruling clarifying that, for purposes of Internal Revenue Code (“Code”) Section 501(c)(9)—the provision of the Code which governs VEBAs—a designated beneficiary is anyone receiving or otherwise entitled to receive coverage under a health plan paid for in whole or part by the VEBA.

Background

Many employers use VEBAs to provide welfare plan benefits to their employees. One reason is that VEBAs are generally tax-exempt and thus can provide meaningful tax savings for employers. Another reason is because VEBAs can be used by employers to provide a limited but important opportunity for employers to pre-fund health coverage attributable to later years, while still receiving a current year income tax deduction.¹

There is some lack of clarity regarding whether an employer may provide health plan coverage, *e.g.*, medical, dental, or vision coverage, through a voluntary employees’ beneficiary association (“VEBA”) to an employee’s domestic partner and/or the domestic partner’s child. This is because current Treasury/IRS regulations limit participation in a VEBA to an employee and the employee’s dependent² or “designated beneficiary.” In many instances, an employee’s domestic partner and/or the domestic partner’s child will not qualify as a dependent.³ Moreover, because most health plan documents do not refer to beneficiaries under the plans as “designated beneficiaries,” but instead use such terms as plan “dependents” or “covered individuals,” it is unclear whether an employee’s domestic partner and/or the domestic partner’s child qualify as “designated beneficiaries” for purposes of the rules governing VEBAs.

The Code currently only allows VEBAs to provide benefits to employees “or their dependents or designated beneficiaries.”⁴ In many instances, however, an employee’s domestic partner and the domestic partner’s child to whom the employee does not have a legal relation (*e.g.*, where a state law prohibits the employee from adopting the couple’s child) may not qualify as dependents under the

¹ See I.R.C. §§ 419, 419A.

² See *id.* at § 152.

³ See *id.*

⁴ *Id.* at § 501(c)(9). “Dependent” is defined at Section 152 of the Code.



Code. Additionally, most health plan documents do not refer to individuals covered under the plan as “designated beneficiaries,” but instead refer to such persons as plan “dependents” or “covered individuals.” Thus, it is unclear whether an employee’s domestic partner and/or the domestic partner’s child may qualify as “designated beneficiaries.”

If an employer were to make pre-funding contributions to a VEBA and/or pay amounts from a VEBA with respect to a domestic partner or the partner’s child, certain negative consequences could ensue if such individuals do not meet the definition of dependent or are not deemed to constitute designated beneficiaries. Specifically, the tax-exempt status of the VEBA might be lost. Additionally, an employer could be found to have violated the prefunding limits contained in Code Sections 419 and 419A.

Recommendation

The Treasury and/or IRS should promulgate regulations or issue other administrative guidance clarifying stating that, for purposes of the rules governing VEBAs, a “designated beneficiary” includes all persons receiving or entitled to receive health plan coverage under an employer’s health care plan.

Authority

Treasury/IRS has the authority to promulgate such a regulation per the same authority by which the Treasury/IRS regulations define “dependent” in reference to Code section 152.