



Retirement Health Savings Program

RETAIN/INSTRUCTIONS BOOK (1 of 2)



MissionSquare Retirement Health Savings Plan

This is one of two books containing information to establish your MissionSquare Retirement Health Savings (RHS) Plan. This Retain Book contains useful information to help employers establish a MissionSquare RHS Program. Section I includes information regarding key RHS features and instructions to adopt the Program. Section II includes documents that are not required to be returned to MissionSquare. The Return Book includes documents that are required to be returned to MissionSquare.

Contents	Page
Section I: Information and Instructions for Establishing Your MissionSquare Retirement Health Savings Program	3
▪ Establishing Your MissionSquare RHS Program	4
▪ Description of MissionSquare RHS Program Documents	6
▪ Instructions for Adoption Documents to Return to MissionSquare	9
▪ Suggested Resolution or Suggested Affirmative Statement of Adoption	9
▪ Administrative Services Agreement	9
▪ Sample Declaration of Integral Part Trust	10
▪ Sample Retiree Welfare Benefits Plan	10
▪ VantageTrust II Participation Agreement	10
▪ RHS Adoption Agreement	11
▪ Instructions for Completing the MissionSquare RHS Adoption Agreement	11
Section II: Adoption Documents to RETAIN in your files	20
▪ Private Letter Ruling	21
▪ Information on Welfare Plan Nondiscrimination Rules	26
▪ RHS VantageTrust II Adoption Materials	28

Please retain a copy of all MissionSquare RHS Adoption Documents for your records, including the documents that are being returned to MissionSquare.

Please Note

The information in this book only takes into account the federal tax rules related to the MissionSquare Retirement Health Savings Program. Prior to implementing an RHS Program, the employer is responsible for determining that there are no state or local laws that would prohibit the employer from offering the Program to its employees. The employer must also determine that the options it selects in the *MissionSquare Retirement Health Savings Adoption Agreement* comply with state and local requirements. The employer is responsible for determining that the investments selected for the welfare benefits plan utilized by the RHS Program fall within state and local requirements.

Section I

Information and Instructions for Establishing Your MissionSquare Retirement Health Savings Program

Establishing Your MissionSquare Retirement Health Savings Program

Congratulations on your decision to establish a MissionSquare Retirement Health Savings Program ("RHS Program," "RHS," or "the Program") for your employees. RHS allows governmental employers and employees to accumulate assets to pay for health insurance and out-of-pocket medical expenses in retirement. RHS has a number of advantages including tax-free contributions, tax-free investment earnings, and tax-free disbursements for eligible medical expenses for participants, their spouses and dependents. The RHS Program complies with the IRS guidance for Health Reimbursement Arrangements.

The steps needed to establish your RHS Program are outlined below.

1. Review the materials in this book to become familiar with the options available through the Program.
 - Section I contains information and instructions on establishing your MissionSquare RHS Program.
 - Section II contains documents that you retain for your files, including a copy of the Private Letter Ruling obtained by MissionSquare in conjunction with the original adopting RHS employer.

You may also want to review the MissionSquare RHS Program Questions and Answers for Employers available from your Retirement Plans Specialist or by calling Plan Services at (800) 326-7272.

2. Decide on your RHS design features, such as employee group coverage, contribution sources, funding levels, benefit eligibility timing, and type of eligible medical expenses. You may need to meet with covered employee groups, including collectively bargained groups, as appropriate.

3. Prepare the required documents.
 - Sample Declaration of Integral Part Trust
 - Sample Retiree Welfare Benefits Plan (if one does not already exist)
 - MissionSquare RHS Adoption Agreement
 - VantageTrust II Participation Agreement
 - Administrative Services Agreement
 - Governing Body Resolution or Affirmative Statement of Adoption

Please Note

If you would like MissionSquare to review your adoption materials prior to formal execution, please contact your Retirement Plans Specialist. This review may make your adoption more efficient, as any outstanding questions can be discussed prior to formal adoption.

Additional information on each required document is included later in this book.

4. Return the following executed documents to MissionSquare.
 - MissionSquare RHS Adoption Agreement
 - Administrative Services Agreement
 - VantageTrust II Participation Agreement
 - Governing Body Resolution or Affirmative Statement of Adoption
 - Sample Declaration of the Integral Part Trust
 - Sample Retiree Welfare Benefits Plan (if one does not already exist)
5. MissionSquare will set up your RHS Program in our recordkeeping system and send you a New Plan Confirmation letter. At that point, you may hold employee education/enrollment meetings and help your employees begin saving for their retirement health costs.

Please Note

At any point in the RHS Program adoption process, you should feel free to contact your Retirement Plans Specialist regarding design issues. You may be referred to a member of the MissionSquare RHS Product Team for questions of a technical nature.

For questions on the adoption process itself, contact MissionSquare's Plan Services at (800) 326-7272 for assistance.

Description of MissionSquare RHS Program Documents

The following three documents collectively comprise your MissionSquare Retirement Health Savings Program.

Sample Declaration of Integral Part Trust

The Sample Declaration of Integral Part Trust is included in the Return Book.

If you do not already have an applicable post-employment benefit trust, the Sample Declaration of Integral Part Trust establishes the legal entity that will hold the assets you set aside to pay for your employees' retiree health benefits, and lays out the duties of the employer and Trustee with respect to the Trust.

If you do not wish to use the sample Declaration of Integral Part Trust provided by MissionSquare, you may draft an individually designed document in conjunction with your human resources or benefits counsel. However, if you do not use the sample trust document, or if you make changes to the sample document, your individually designed document must be reviewed and accepted by MissionSquare prior to adoption of your RHS Program. This will ensure that your document meets the requirements for integral part trusts, and that MissionSquare can administer all provisions of your RHS Program.

The sample trust document has been worded broadly to encompass any employer's RHS program. In most situations, as with your 457 and 401 retirement programs, the employer will act as Trustee. Some employers name the jurisdiction (e.g., City or County) as Trustee. Others name a particular position (e.g., Finance Director, Human Resources Manager) or a group (e.g., Deferred Compensation Committee, Retiree Health Committee) within the jurisdiction. When the employer is named as Trustee, the terms Administrator and Trustee in the Trust Declaration will refer to the employer. Each reference to the employer, Administrator, or Trustee refers to the employer acting in the appropriate capacity.

In some cases, the employer names a third party as Trustee (e.g., a bank). In this case, the term Administrator refers to the employer while Trustee refers to that third-party Trustee. Employers interested in using the services of a third-party trustee may contact your Retirement Plans Specialist or MissionSquare's Plan Services for information.

Please Note

In no case can MissionSquare act as Trustee for your Trust.

The sample Declaration of Integral Part Trust is not an agreement between you and MissionSquare. The Declaration gives the employer (acting as Administrator) the ability to designate another entity (i.e., MissionSquare) to perform administrative services for the RHS Program. The Administrative Services Agreement (see below) constitutes the contract between you and MissionSquare for these services.

Return the completed sample trust document or your individually designed document to MissionSquare.

Sample Retiree Welfare Benefits Plan

A sample Retiree Welfare Benefits Plan is included in the Return Book.

The sample Retiree Welfare Benefits Plan document identifies the underlying benefits available to the retiree such as medical, dental, and long-term care coverage. You may wish to discuss with counsel whether existing personnel policies or memoranda of understanding may qualify as a welfare benefits plan document suitable for use in conjunction with your RHS Program.

If you do not already have a written retiree welfare benefits plan in place, you may use the sample Retiree Welfare Benefits Plan Document provided by MissionSquare. If you wish, you may also draft a welfare benefits plan in conjunction with your human resources or benefits counsel. It can be a simple document, but it should be in writing in order for your employees to enjoy tax-free treatment of the benefits they receive. Your individually designed document must be reviewed and accepted by MissionSquare prior to adoption of your RHS Program.

Return the completed sample Retiree Welfare Benefits Plan Document or your existing/individually designed document to MissionSquare.

MissionSquare RHS Adoption Agreement

The *MissionSquare RHS Adoption Agreement* is included in the Return Book.

The Adoption Agreement specifies the details of how your welfare benefits plan will work. For example, the Adoption Agreement details participant eligibility requirements, sources of contributions, any restrictions on contributions, vesting provisions (if any), the types of benefits that will be funded by the Integral Part Trust, and procedures to be followed in case of the death of the participant.

Specific instructions for completion of the Adoption Agreement are provided.

Other RHS Adoption Materials

Administrative Services Agreement

The Administrative Services Agreement is provided separately.

The Administrative Services Agreement is the contract between you and MissionSquare for administration of the RHS Program. A signed copy must be returned to MissionSquare. Your RHS Program cannot be implemented without an executed Administrative Services Agreement.

Governing Body Resolution or Affirmative Statement of Adoption

A suggested resolution and suggested affirmative statement of adoption are included in the Return Book.

Your governing body may require the execution of a formal Resolution to adopt the RHS Program. Other jurisdictions may simply require an Affirmative Statement of Adoption. You may wish to speak with counsel to determine which action is required in your jurisdiction. MissionSquare cannot make this determination for you.

Private Letter Ruling on Integral Part Trust

MissionSquare obtained a Private Letter Ruling (PLR) from the IRS approving the tax-exempt status of the integral part trust. This PLR was obtained in conjunction with the first adopting RHS employer in late 1999.

The PLR included in this book is for your information. You may want to keep it with your other RHS materials.

Your use of MissionSquare's Sample Declaration of the Integral Part Trust will provide you with comfort that the trust for your RHS Program is also within IRS requirements for integral part trusts.

Please Note

The information in this book only takes into account the federal tax rules related to the MissionSquare Retirement Health Savings Program. Prior to implementing an RHS Program, the employer is responsible for determining that there are no state or local laws that would prohibit the employer from offering the Program to its employees. The employer must also determine that the options it selects in the *MissionSquare Retirement Health Savings Adoption Agreement* comply with state and local requirements. The employer is responsible for determining that the investments selected for the welfare benefits plan utilized in the RHS Program fall within state and local requirements.

Instructions for Adoption Documents to Return to MissionSquare

Suggested Resolution and Suggested Affirmative Statement of Adoption

- Determine whether your jurisdiction requires a resolution to adopt the RHS Program, or if a less formal affirmative statement may be used.
- Review the appropriate sample document to ensure that it meets your local requirements.
- Complete and execute the document.
- Your RHS Plan number can be found on the Administrative Services Agreement.
- Return a copy of the executed document to MissionSquare with your other RHS adoption materials.

Please Note

If you do not use the suggested resolution or affirmative statement of adoption, your individually designed adoption execution must include the following statements:

- That you are adopting the MissionSquare Retirement Health Savings Program.
- That the assets of your welfare benefits plan shall be held in trust, with the employer (or other named third-party trustee) acting as trustee, for the exclusive benefit of Plan participants and their survivors, and that the assets shall not be diverted to any other purpose prior to the satisfaction of all liabilities of the Plan.
- That you have executed a Declaration of Trust in the form of either the Sample Declaration of the Integral Part Trust provided by MissionSquare or a trust provided by you.*
- The title of the trustee for your Trust.

* If you develop your own trust document, a copy must be provided to MissionSquare for review prior to adoption of your RHS Program.

Administrative Services Agreement

You received a MissionSquare RHS Administrative Services Agreement separately.

- Review the Administrative Services Agreement, consulting with counsel if desired.
- Return and retain a copy for your RHS files.

Upon receipt of all of your RHS adoption materials, MissionSquare will review the documents for completeness and compliance with RHS Program requirements. Once the review is complete, and any outstanding questions are answered, MissionSquare will send you a written confirmation letter and a customizable summary that may be provided to your employees during enrollment.

Sample Declaration of Integral Part Trust

- Review the sample Declaration of Integral Part Trust document. You may wish to review this document with counsel.
- Complete the title page of the sample Declaration of Integral Part Trust document with the name of the employer adopting the RHS Program.
- Complete the blanks.
- Execute the Trust. The employer and Trustee should sign. If the employer has been named Trustee, the employer should sign in both places as indicated.
- Return the executed sample Declaration of Integral Part Trust Document with your other RHS materials.

Please Note

If you make revisions to the sample Declaration of Integral Part Trust Document and sample Retiree Welfare Benefits Plan, you must provide a copy to MissionSquare for review prior to adoption of your RHS Program. This review will be expedited if you provide an edited version of the document, indicating provisions that have been revised.

Sample Retiree Welfare Benefits Plan

- Determine if you already have a welfare benefits plan in place that outlines the benefits available to your employees/retirees covered by the RHS Program. You may wish to review this with counsel to determine if existing personnel policies or memoranda of understanding may be used.
- If you do not have a welfare benefits plan in place, review the sample Retiree Welfare Benefits Plan. You may wish to review this document with counsel.
- Give the sample Plan a name, such as City of XYZ Retiree Welfare Benefits Plan, and put this name in the RHS Adoption Agreement, Article IV.
- Complete the blanks in the Preamble and Section 1.01.
- Complete the blanks in Section 2.09, "Plan Year." For purposes of RHS, most employers use a calendar year to coincide with the individual participant's tax year.
- Complete the blank in Section 9.12 with the name of the state you are located in.
- Execute the document by signing it as indicated.
- Return the executed sample Retiree Welfare Benefits Plan Document or your existing document with your other RHS materials.

VantageTrust II Participation Agreement

The VantageTrust II (VT II) Participation Agreement is included in the Return Book. Review and execute this agreement in order to adopt VT II and become eligible to invest in VT II Funds.

Instructions for Completing the MissionSquare Retirement Health Savings Adoption Agreement

The MissionSquare Retirement Health Savings (RHS) Adoption Agreement in the Return Book specifies the details of how your RHS Program will operate.

For example, the adoption agreement details employee eligibility requirements, sources of contributions, the level of contributions, vesting provisions (if any), the types of benefits that will be funded by the Trust, and procedures to be followed in case of the death of the employee. The following instructions outline how the adoption agreement should be completed. Any questions regarding the adoption agreement can be directed to your MissionSquare Retirement Plans Specialist. You may also wish to consult with your benefits counsel.

RHS Plan Number

Please insert your RHS Plan number. The Plan number can be found on the front of your RHS Administrative Services Agreement included with your RHS adoption materials.

New Plan or Amendment to Existing Plan

Check the appropriate box to specify whether you are establishing a new RHS Plan or amending an existing Plan.

Please Note

If you are amending an existing RHS Plan, please complete the entire Adoption Agreement, including items that are not being amended. When you send your amended document to us, please summarize the changes in your cover letter.

I. Employer Name and State

Enter the official name of the employer sponsoring the RHS Plan (e.g., City of City name) and your State.

II. Plan Dates

A. Effective Date: Enter the date your welfare benefits plan will become effective. The effective date determines the employees who may participate – employees who separate from service prior to the effective date may not participate.

B. Plan Year: Enter the annual accounting period for the RHS Program.

III. Retiree Welfare Benefits Plan

Enter the name(s) of the welfare benefit plan(s) that will be funded through the Trust (e.g., City of City name Retiree Welfare Benefits Plan). If you do not already have a welfare benefits plan in place, a sample plan is provided in Section II of the book.

IV. Eligible Groups, Participation, and Participant Eligibility Requirements

- A. Eligible Groups:** This section is used to designate the employee group(s) covered under your welfare benefits plan. The coverage group specified in your adoption agreement should correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other documents in effect in your state or locality.

Note: If you select different contribution arrangements for different eligibility groups, you are responsible for ensuring your RHS Program conforms with the welfare plan nondiscrimination rules.

One Plan vs Multiple Plans: If you intend to provide different program features that must be administered differently by MissionSquare for different groups of employees, you must establish distinct RHS Plans and complete a separate adoption agreement for each group. Features that require separate plans are as follows:

- Vesting Schedule (Section VII.A.)
- Forfeiture Allocation Provision (Section VIII.)
- Permissible Medical Benefit Payments (Section X.)

Please Note

You may want to establish separate RHS Plans even if separate plans are not required. For example, if you establish different benefit eligibility criteria in Section IX of the Adoption Agreement for different employee groups, you may want to establish separate plans for these groups in order to make plan administration simpler.

If the only difference in your plan is in the contribution structure (e.g., types of contributions or contribution limitations), you may include all employee groups in one plan or establish separate plans. Some employers prefer to keep employee groups separate for payroll processing or collective bargaining reasons.

Welfare Plan Nondiscrimination Rules: Please note that if the RHS Program covers non-collectively bargained employees, AND it provides for reimbursement of any medical expenses other than insurance premiums, the welfare plan nondiscrimination rules will apply. More information regarding these rules is available in the *MissionSquare RHS Questions and Answers for Employers*, the *MissionSquare Retiree Health Program Employer Manual*, and the *MissionSquare RHS Program Nondiscrimination Requirements* included in this package.

- B. Participation:** In accordance with IRS rules, the RHS Program requires participation of all employees in the covered group (Mandatory Participation). Employees may not opt out of participation as long as they are in the covered group(s) (current employees and future hires).

RHS employers may allow participants the option to permanently opt out and waive future reimbursements from their RHS account, as allowed under IRS Notice 2013-54. If you wish to adopt this feature, please contact your Retirement Plans Specialist.

- C. Employee Eligibility:** If desired, you may specify a minimum period of service (e.g., 6 months) and/or minimum age (e.g., age 21) requirement. Employees who have not met these requirements may not join the plan under the Mandatory Participation.

V. Contribution Sources and Amounts

This section defines the amount and types of contributions to your RHS Program.

A. Definition of Earnings

The definition of Earnings specified in this section will be used for purposes of all contribution types included in your RHS Plan:

- Direct employer contributions made as a percentage of earnings
- Mandatory contributions of employee compensation

B. Direct Employer Contributions and Mandatory Employee Contributions

You may choose to include the following contribution types in your RHS Plan:

- Direct employer contributions
- Mandatory contributions of employee accumulated unused leave
- Mandatory contributions of employee compensation
- A combination of the above

Employees participating in the RHS Plan will receive these contributions.

1. Direct Employer Contributions

Direct employer contributions can be made as a:

- Percentage of earnings (Note: If you select contributions to be made based on a percentage of earnings, you should consult your benefits counsel to ensure your Plan conforms with the nondiscrimination rules.)
- Specific dollar amount each Plan year per participant
- Discretionary amount to be determined each year

Direct employer contributions may be contributed in a lump sum, each pay period, or under any schedule determined by the employer.

No FICA (Social Security and Medicare taxes) or federal income taxes are payable at the time of contribution, and, if used for medical expenses of the participant, spouse or dependent, no FICA or federal income taxes are payable at distribution. Where states follow federal income tax rules, state income taxes generally are not payable. Check with your state income tax department for additional information.

2. Mandatory Employee Compensation Contributions

Mandatory contributions of employee compensation can be used as a way to share responsibility for funding your retirement health plan with your employees.

You can establish a compensation contribution formula that best fits the needs of you and your covered employees. For example, mandatory compensation contributions may take the form of either a reduction in salary (e.g., 1% of compensation is contributed to the Plan) or a decrease in the annual pay plan or merit increase (e.g., 1% of a 3% pay plan adjustment is contributed to the Plan). Mandatory contributions of employee compensation are established by the employer - **employees may not choose whether or not to make these contributions and they may not revise the contribution amount.**

No FICA (Social Security and Medicare taxes) or federal income taxes are payable at the time of contribution, and, if used for medical expenses of the participant, spouse or dependent, no FICA or federal income taxes are payable at distribution. Where states follow federal income tax rules, state income taxes generally are not payable. Check with your state income tax department for additional information.

3. Mandatory Employee Leave Contributions

Mandatory contributions of employee leave can be used as a way to share responsibility for funding your RHS Plan with your employees.

You can establish an unused leave contribution formula that best fits the needs of you and your covered employees. For example, you might require all accumulated leave in excess of a certain number of hours to be contributed to the RHS Plan on an annual basis. Mandatory contributions of employee accrued leave are established by the employer – **employees may not choose whether or not to make these contributions and they may not revise the contribution amount.**

No FICA (Social Security and Medicare taxes) or federal income taxes are payable at the time of contribution, and, if used for medical expenses of the participant, spouse or dependent, no FICA or federal income taxes are payable at distribution. Where states follow federal income tax rules, state income taxes generally are not payable. Check with your state income tax department for additional information.

Please Note

Direct employer contributions made as a percentage of earnings, mandatory contributions of employee compensation that are made as a percentage of earnings or a discretionary amount that varies from employee to employee, as well as mandatory contributions of accumulated leave may be subject to the nondiscrimination rules. See the discussion in the *RHS Program Nondiscrimination Requirements* included in this package, or contact your benefits counsel. RHS reimbursements that are considered to be “discriminatory” under these rules are reportable as taxable income to the retiree. See the *MissionSquare Retiree Health Program Employer Manual* for information on tax reporting of these payments.

C. Limits on Contributions

This section is used to establish an overall limitation on total contributions to each individual participant’s RHS account, if you wish to do so. While this is not a requirement of the Program, you may do so to ensure that the RHS Program does not provide benefits in excess of reasonable benefits normally provided by such a welfare benefits plan. You may wish to speak with your benefits counsel.

You may limit total contributions to a specific percentage of earnings (as defined in this section) or a specific dollar amount. If you choose to place an overall limit on contributions, at the end of each plan year, you will test total contributions from all sources (direct employer and mandatory employee) against your limit for each participant account. Contributions in excess of the limitation should be returned to the participant as compensation or leave as the case may be, and the participant’s Form W-2 should be adjusted accordingly for the year the compensation is returned.

Limits on each individual type of contribution (e.g., mandatory employee) are established within sections VI.A. and B.

Recordkeeping of Contribution Types

Note that the IRS considers direct employer contributions, mandatory accrued leave, and mandatory compensation contributions to be employer contributions. In other words, **all contributions are considered to be employer contributions**. However, MissionSquare will recordkeep the direct employer contributions as a distinct source for participant reporting and vesting purposes. All other types of employee contributions – mandatory accrued leave and mandatory employee compensation – will be combined and shown as employee pre-tax contributions on participant statements.

The *MissionSquare Retiree Health Program Employer Manual* includes directions on how to report your contribution detail properly via the employer website.

VI. Vesting for Direct Employer Contributions

A. Vesting Schedule

You may place a vesting schedule on direct employer contributions (Section VI.B.1).

Examples of vesting schedules include:

- 100% immediate vesting
- Cliff vesting (e.g., 100% vesting after 5 years of service)
- Graduated vesting (e.g., 10% vesting for each year of service with 100% vesting after 10 years)
- Vesting at retirement or some other specified event

The RHS Plan default is 100% vesting for direct employer contributions.

MissionSquare will calculate vesting for each participant account if you choose a vesting schedule based on years of service. If you choose vesting at retirement or some other specified event, you will notify MissionSquare via the employer website when 100% vesting occurs.

Plans with vesting schedules beyond 10 years are not supported, and it is the employer's responsibility to maintain and provide the vested percentage of eligible employees upon benefit eligibility.

Mandatory employee contributions are always 100% vested.

B. Vesting Upon Certain Events

A participant's direct employer contributions will automatically become 100% vested upon the participant's

- Death
- Disability (as defined in Section IX.C)
- Retirement (as defined in Section VII.B.), and
- Attainment of benefit eligibility (as determined in Section IX)

You must define "retirement" for vesting purposes in this section.

Please Note

If you establish benefit eligibility as separation from service, participants will become 100% vested in their direct employer contributions immediately upon separation regardless of their years of service. If you do not wish for full vesting to occur at separation, you should establish benefit eligibility as an event other than separation from service (e.g., separation and a specific age, or one month after separation from service).

C. Rehired Employees

If an employee participating in RHS separates from service and is then rehired into a group covered by RHS, the service completed **prior to** the employee's first separation will not count for vesting purposes. The account balance, including any direct employer contributions that were contributed prior to the first separation, will be subject to vesting as if the employee had no accumulated service.

If an employee became eligible to receive reimbursements from the RHS Program upon separation from services and is subsequently rehired as an employee, the participant must suspend his or her access to benefits under the RHS Program until he or she is again separated from service. Rehired employees generally are unable to request disbursements.

VII. Forfeiture Provisions

All RHS Plans must contain a forfeiture provision, even if there is no vesting schedule on direct employer contributions.

The forfeiture provision you specify in this section may be used in three situations:

- Your RHS Plan includes direct employer contributions subject to vesting: When a participant separates from service prior to attaining full vesting, the nonvested assets will be forfeited and used as you direct in this Section.
- Upon the death of a participant: If there are no surviving spouse or dependents, remaining assets will revert to your Trust to be utilized as you direct in this Section. Note that as long as there is a surviving spouse or dependent, no forfeiture will occur.
- Permanent Opt Out and Waiver: If a participant permanently opts out and waives future reimbursements, as allowed under IRS Notice 2013-54, the participant's account at the time of the waiver will be forfeited as you direct in this Section.

There are three forfeiture allocation methods:

- Forfeited amounts will be used to offset your direct employer contributions for the next and succeeding contribution cycles until the forfeitures are depleted.
- Forfeited amounts will be reallocated on an equal dollar basis among remaining plan participants.
- Forfeited amounts will be reallocated among remaining plan participants based on account balances.

Regardless of which forfeiture allocation method you choose, you must inform MissionSquare at the time you wish to use the forfeited funds as outlined in the *MissionSquare Retiree Health Program Employer Manual*.

VIII. Eligibility Requirements to Receive Medical Benefit Payments from the MissionSquare Retirement Health Savings Program

A. General Benefit Eligibility

This section defines your primary benefit eligibility provision(s). You may designate eligibility at:

- Retirement (as defined in this Section or in Section VII.B).
- Separation from service, with restrictions defined by the employer, if desired (e.g., separation from service and attainment of age 55). If no restrictions are desired, write "N/A" or "None" in the blank.
- Attainment of a certain age. (Note: Employers selecting benefit eligibility to begin upon an event other than separation from service or retirement may violate the Affordable Care Act's ("ACA") Prohibition on Annual and Lifetime Limits, unless the RHS Program is "integrated" with another health plan that satisfies the ACA's requirements.)
- A combination of retirement/separation from service and a certain age.

B. Termination Prior to General Benefit Eligibility

Use this section to specify benefit eligibility criteria for employees who separate from service prior to attaining the general benefit eligibility you have selected in Section A. For example, if your general benefit eligibility criterion requires employees to "retire" before they become eligible for benefits, you may have some employees who separate from service prior to "retirement"; in this situation, you need to designate a specific time for those early-separating employees to become eligible for benefits. You might specify immediate eligibility or a certain age (e.g., age 65 or the retirement age provided under your general pension program). If you do not specify benefit eligibility criteria in Section B., employees who leave employment prior to attainment of your general benefit eligibility may never attain benefit eligibility, and their account will not be available for use until the employee's death.

C. Benefit Eligibility at Disability

Your RHS-participating employees will automatically become eligible for medical benefit payments if they are disabled according to the definition chosen in this section. In all cases, you must notify MissionSquare via employer website when a participant is disabled under the definition you provide in this Section.

D. Benefit Eligibility at Death

Upon the death of the participating employee, the surviving spouse and dependents will automatically become eligible for tax-free medical expense reimbursement. If there are no surviving spouse or dependents, the account balance will revert to the employer's RHS Trust to be reallocated as forfeitures in accordance with Section VIII of the MissionSquare RHS Adoption Agreement. See Section XI.

IX. Permissible Medical Benefit Payments

This section is used to designate the medical expenses that will qualify for reimbursement under your RHS Plan. You may offer reimbursement for all qualifying medical expenses as defined in

Internal Revenue Code Section 213 (i.e., medical costs that would otherwise be deductible to the employee on his or her individual income tax return) other than direct long-term care expenses.

Alternatively, you may allow reimbursement of only specific types of medical expenses. For example, reimbursements may be made available only for health insurance premiums, COBRA premiums, Medicare supplemental insurance premiums, dental insurance premiums, out-of-pocket medical costs, qualified long-term care insurance, etc. You may allow reimbursement for only one benefit, or for any combination of qualifying medical costs. Information about what constitutes a qualifying medical expense can be found in IRS Publication 502, Medical and Dental Expenses available on the IRS website.

Note: Under current IRS rules, direct long-term care expenses may not be reimbursed through your RHS Program. However, qualifying long-term care insurance premiums are an allowable expense.

Please Note

If you include any non-insurance expenses as permissible medical benefit payments, you may need to perform welfare plan nondiscrimination testing. See the discussion in the *MissionSquare RHS Program Nondiscrimination Requirements* included in this package, or contact your benefits counsel.

X. Benefits After the Death of the Participant

This section defines the treatment of the participant's account balance at death.

A. Surviving Spouse and/or Surviving Dependents

Upon the death of the participant, the surviving spouse and/or surviving eligible dependents are immediately eligible to maintain the account and utilize it only for the purpose of reimbursing eligible medical benefits.

When a participant dies, MissionSquare must be notified by the filing of the *MissionSquare RHS Decedent Information Form*. MissionSquare will maintain the Participant's account for the benefit of the spouse and dependents. Once notified of the availability of the account, the spouse or dependents may move the money into other investments.*

If the deceased participant's account balance is not fully depleted upon the death of the surviving spouse, remaining dependents may continue to use the account. Upon the death of all eligible dependents, the account balance will revert in accordance with the Employer's election under Section VIII of the MissionSquare RHS Adoption Agreement.

* Before investing, please read the applicable fund disclosure materials carefully for a complete summary of all fees, expenses, investment objectives and strategies, and risks. This information is available when you log in at www.missionsq.org or upon request by calling (800) 326-7272.

B. No Surviving Spouse or Dependents

If there are no surviving spouse or dependents, the account balance will revert to the employer's RHS Trust to be reallocated as forfeitures under Section VIII.

When a participant dies, MissionSquare must be notified by the filing of the *MissionSquare RHS Decedent Information Form*.

XI. Other Provisions

This section defines other provisions of the RHS Program, including:

- RHS Program administration must be accomplished via MissionSquare's employer website.
- RHS Program fee payment.
- Definition of dependent.
- Employer responsibilities for tax reporting and remittance for payments deemed taxable under the nondiscrimination rules.

XII. Employer Acknowledgements

- A. This section acknowledges that the employer understands the significance of completing the Adoption Agreement properly to safeguard the tax-free status of the contributions and distributions from the Program.
- B. If you have policies or procedures (such as Memoranda of Understanding or Personnel Policies) referenced in this document that you wish to be a part of the RHS Program, you should check the box in this section, indicating that you are attaching these documents as part of your Employer Signature Plan.

After you have completed the Adoption Agreement, it should be signed and returned to MissionSquare with the other documents outlined in MissionSquare RHS Adoption Materials on page I:4.

Please Note

The information in this book only takes into account the federal tax rules related to the MissionSquare Retirement Health Savings Program. Prior to implementing an RHS Program, the employer is responsible for determining that there are no state or local laws that would prohibit the employer from offering the Program to its employees. The employer must also determine that the options it selects in the *MissionSquare Retirement Health Savings Adoption Agreement* comply with state and local requirements. Employer is responsible for determining that the investments selected for the welfare benefits plan utilized by RHS fall within state and local requirements.

SECTION II:

Adoption Documents to Retain in Your Files

**Private Letter Ruling on
Integral Part Trust**

Internal Revenue Service

Department of the Treasury

Index Number: 115.02-00

Washington, DC 20224

▷

Contact Person:

Telephone Number:

In Reference to:

CC:DOM:FI&P:2 PLR-116685-99

Date:

December 28, 1999

City =

Trust =

State =

Dear :

This is in response to a letter dated October 12, 1999, and prior correspondence, requesting a private letter ruling that Trust is an integral part of City.

FACTS

City is a political subdivision of State. City currently maintains one or more post-retirement welfare benefit plans (collectively, the "Plan") that provide its eligible employees ("Participants") and their beneficiaries ("Beneficiaries") with life, sickness, medical, disability, severance and other similar benefits through insurance and self-funded reimbursement plans.

City intends to establish Trust to hold assets and income of the Plan for the exclusive benefit of Participants and their Beneficiaries.

Trust's Declaration defines "Beneficiaries" to include a Participant's spouse, any child of the Participant or the Participant's spouse who is a minor or a student within the meaning of section 151(c)(4) of the Internal Revenue Code, any other minor child residing with the Participant, and any other individual who is a person described in section 152(a) of the Code. Death benefits may be provided to any Beneficiary designated by a Participant under the terms of a death benefit program or an insurance contract forming part of the Plan. Trust

PLR-116685-99

2

may provide benefits by cash payment, and may reimburse a Participant, City, or Trust's Administrator for insurance premiums or other payments expended for permissible benefits under the Plan.

Under Trust's Declaration, City will be the Administrator of Trust. City may appoint one or more investment managers to manage and control all or part of the assets of Trust. Under Trust's Declaration, the Trustee will hold assets only as titleholder. Persons having custody or possession of assets may include City, the Administrator of Trust, the investment manager, and their agents and subagents, but not the Trustee. The Trustee will have no discretion or authority with regard to the investments of Trust and will act solely as a directed Trustee with respect to the assets to which it holds title.

The Trustee will not be responsible or liable for any loss or expense that may arise or result from complying with any direction from the City, the Administrator, the investment manager, or such agents to take title to any assets, or from the Trustee's refusal or failure to comply with any direction to hold title, unless it involves or results from the Trustee's negligence or intentional misconduct. The Trustee may refuse to comply with any direction if it deems such direction illegal.

City indemnifies and holds the Trustee harmless from any actions, claims, demands, liabilities, losses, damages or reasonable expenses of any kind in connection with or arising out of (i) any action taken or omitted in good faith in accordance with its directions, (ii) any disbursements made in accordance with directions, or (iii) any action taken by or omitted by the Trustee with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction regarding any investment in the absence of directions from the investment manager. City, however, has no responsibility to the Trustee under the indemnification if the Trustee fails negligently, intentionally, or recklessly to perform its duties.

City will contribute to Trust such amounts as specified in the Plan or by resolution. No other person or persons will be permitted to make any contributions.

The Plan must provide a formula for determining the value of a Participant's accrued vacation leave, sick leave, or both, in excess of a threshold number of hours of such leave. City may contribute amounts so determined to Trust. The Plan will contain a forfeiture provision that will prevent Participants and their Beneficiaries from receiving cash in lieu of a contribution to Trust in their behalf. Contributions, investment income, realized and unrealized gains and losses, and forfeitures will be deposited into an account in Trust in the name of the Participant

PLR-116685-99

3

for the exclusive benefit of the Participant and his or her Beneficiaries. A Participant may direct the investment of amounts in her or his account among investments selected by City. No amount in any account will be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of City, the Trustee, Participant or Beneficiary.

City or the Administrator, investment manager, or other agent designated by City will receive contributions and will hold, invest, and administer contributions without distinction between principal and income. The Trustee will not be responsible for the calculation or collection of contributions, but will hold title to property received as directed by City or its designee. The Trustee will not be required to keep accounts of the investments, receipts, disbursements, and other transaction of Trust except as necessary to perform its title-holding function. City or its designee will maintain all books and records.

City reserves the right to alter, amend, or terminate Trust at any time for any reason without the consent of any person. No amendment affecting the Trustee is effective without the Trustee's consent, and no termination can result in any part of Trust's assets being used for or diverted to purposes other than the exclusive benefit of Participants and Beneficiaries.

If City adopts other plans providing life, sickness, accident, medical, disability, severance, or other benefits and designates Trust as part of such plan, City or its agent will hold contributions to such plan in Trust. The contributions may be commingled for investment purposes, but the books and record of Trust must show the portion of Trust allocable to each plan.

Upon the satisfaction of all liabilities under the Plan to provide benefits, any amounts remaining in any account must be returned to City.

LAW & ANALYSIS

Income of an integral part of a state or political subdivision of a state is not taxable absent specific statutory authorization. See Rev. Rul. 87-2, 1987-1 C.B. 18; section 511(a)(2)(B) of the Code, GCM 14407, C.B. XIV-1, 103 (1935), superseded by Rev. Rul. 71-131, 1971-1 C.B. 28. Whether an enterprise is an integral part depends on facts and circumstances such as the state's degree of control over the enterprise and its financial commitment to the enterprise. If an enterprise is an integral part of a state or political subdivision of a state, it will not be treated as a separate entity for federal tax purposes, though it may have been formed as a separate entity.

PLR-116685-99

4

under state law. Section 301.7701-1(a)(3) of the Procedural and Administrative Regulations.

City has made a substantial financial commitment to Trust by providing all of its funding. City retains complete control over Trust because it may amend or terminate Trust at any time. City retains control over the daily operation of Trust by its power to appoint or remove agents who manage daily operation. The Trustee is merely a title holder with no power to manage Trust.

CONCLUSION

Provided that City is the only person that makes contributions to Trust, and Trust accepts or holds only amounts of money contributed by City, Trust will be an integral part of City, and any income earned on amounts in Trust will not be subject to federal income tax.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Assistant Chief Counsel
(Financial Institutions & Products)

By: William Coppersmith _____
William E. Coppersmith
Chief, Branch 2

Important Information on Welfare Plan Nondiscrimination Rules



Retiree Health Program Nondiscrimination Requirements

Important Information on Welfare Plan Nondiscrimination Rules

An employer's Retiree Health Program (i.e., MissionSquare Retirement Health Savings (RHS) Plan/401(h) Retiree Health Account) will generally be covered by nondiscrimination requirements that are already applicable to the employer's other health and welfare plans (under Internal Revenue Code Section 105(h)).

However, please note that nondiscrimination requirements will not adversely impact your Retiree Health Program (Program) in the following scenarios:

- A. If the Program is limited to one or more collective bargaining groups that bargained regarding health benefits and the Program provides for fixed dollar contributions for all employees.
- B. If the Program limits reimbursements to insurance premiums only (health insurance premiums, Medicare supplemental insurance premiums, Medicare Part B insurance premiums, COBRA insurance premiums, long-term care insurance premiums).

Premium-Only Programs are currently excluded from nondiscrimination testing. However, under the Affordable Care Act, Premium-Only Programs will likely be subject to nondiscrimination testing upon future IRS guidance.

If the Program does not fall into one of the two scenarios above, health and welfare nondiscrimination requirements may adversely impact your Plan.

Generally speaking, if your program does not fall under one of the two scenarios above, the following requirements apply:

1. An IRS-approved proportion of your employees must be covered. For instance, coverage must be extended to at least 70 percent of employees (excluding part-time and seasonal employees, employees under age 25, employees with less than three years of service, and collectively bargained employees). Once the employer identifies the applicable coverage group, up to 30 percent of that group can be excluded.¹
2. Benefits must be provided on a substantially equal basis to all covered employees. What this means, in practical terms, is that contributions must be substantially equal for each participant, and thus cannot be determined as a percentage of compensation or based on age or years of service. A fixed dollar contribution would comply.

Please note that "failure" to meet the nondiscrimination requirements does not result in "disqualification" of the Program. The ramifications of not meeting the requirements are that "excess benefits" paid to "highly compensated individuals" who participate in the RHS plan are taxable as W-2 income to the participant.

An excess benefit is generally equal to the amount of the benefit made available to the highly compensated individuals but not made available to other employees. Highly compensated individuals will generally consist of the highest paid 25 percent of all employees.

What does all this mean?

Employers need to consider nondiscrimination requirements when developing their Program. The employer may want to consider talking to benefits counsel to determine if these rules will impact its participants.

Should an employer establish a program that does not fall under scenario A or B above and does not meet the nondiscrimination requirements, the out-of-pocket expenses paid to highly compensated employees may be taxable.

You are encouraged to discuss the results with a tax or benefits advisor because the IRS rules are complex.

¹There may be additional ways that your program would satisfy the nondiscrimination requirements of IRC § 105(h).

**RHS VantageTrust II
Adoption Materials**

RHS VantageTrust II Adoption Materials

The MissionSquare Retirement Health Savings ("RHS") Program makes available for investment the VantageTrust II Funds ("VT II Funds"), a Collective Investment Trust ("CIT"). A CIT is designed to facilitate investment management by combining assets from eligible investors into a single investment portfolio (or fund) with a specific investment strategy.

To access the VT II Funds, you must adopt VT II by executing the VantageTrust II Participation Agreement and returning it along with the completed documents from the RHS Program Adoption Book.

Prior to executing the agreement, please review the following information:

- **VantageTrust II Participation Agreement**: Review and execute this agreement in order to adopt VT II and become eligible to invest in VT II Funds.
- **VantageTrust II Declaration of Trust**: The governing document for the operation of VT II. Please review and retain a copy for your records.
- **VantageTrust II Disclosure Memorandum**: Additional information regarding VT II and the operation of the funds it makes available to investors.

The VT II Funds available for investment can be found on our **website**. VT II Fund Fact Sheets are available by logging in to the employer website (www.missionsq.org) or upon request by calling Plan Services at (800) 326-7272. The VantageTrust II Disclosure Memorandum is provided above.

MissionSquare

RETIREMENT

MissionSquare Retirement

**777 North Capitol Street, NE
Washington, DC 20002-4240**

(800) 669-7400
www.missionsq.org
59623-0123-W3042