

Treasury and IRS Guidance on Application of Same-Sex Marriage

On August 29, 2013, the U.S. Treasury and Internal Revenue Service (IRS) issued Revenue Ruling 2013-17, along with a series of FAQs, to address marriage of same-sex individuals for federal law purposes. The ruling follows the June Supreme Court decision in *United States v. Windsor*, which struck down Section 3 of the Defense of Marriage Act (DOMA). As DOMA defined marriage, it could only exist between individuals of the opposite sex. While most of the guidance focuses on tax filing status, amended returns, deductions and other items not related to employee benefit plans, the guidance does have some applicability to employee benefits.

Following are key points:

- The determining factor for marriage is based on the state of celebration. The definition of husband, wife, or spouse now includes an individual married to a person of the same sex if they were lawfully married in a state whose laws authorize the marriage. (Note that the definition of 'state' includes any domestic or foreign jurisdiction having the legal authority to sanction marriages.)
- The above applies even if the couple is domiciled, or currently resides, in a state that does not recognize the validity of same-sex marriage.
- Civil unions, registered domestic partnerships and other similar relationships recognized under state law are not recognized as marriage for federal law purposes. (Note that plans may choose to recognize these arrangements in determining a default beneficiary.)
- This ruling applies prospectively as of September 16, 2013.
- The IRS intends to issue further guidance on the retroactive application of the change to the DOMA definition of marriage as related to employee benefit plans.
 - Such guidance will take into account the potential consequences to taxpayers, plan sponsors, plans, employers, employees and beneficiaries.
 - Sufficient time will be provided for plan amendments and any necessary corrections so that plans can maintain their qualified status.

As an immediate result of the ruling, employer-sponsored retirement plans will treat legally married same-sex couples in the same way as opposite-sex couples with respect to the following provisions:

- ERISA requires spousal consent when the participant names a non-spouse beneficiary.
- Plans that require distribution in the form of a joint and survivor annuity (and death benefit in the form of a qualified pre-retirement survivor annuity) – these are generally defined benefit and money purchase pension plans – can only pay an alternate form of benefit if the participant waives the annuity and the spouse consents.
- A participant's benefit can be assigned to a spouse via a qualified domestic relations order.
- 401(a)(9) – required minimum distribution deferral provisions are applicable to a same-sex spouse of the participant. In addition, a same-sex spouse will be able to receive the participant's death benefit over the lifetime of the surviving spouse, with the distribution based on his or her life expectancy, as recalculated each year.
- Hardship withdrawals are available to pay for expenses incurred by a spouse (even if the spouse is not the participant's beneficiary).
- Upon the death of a participant, a spouse may transfer the plan distribution into a rollover IRA. In addition, the spouse may use his or her own IRA or an inherited IRA for the rollover.

We will continue to keep you updated about new developments.

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