

IRS Guidance Requires Recognition of Same-Sex Marriage for Employee Benefits

September 4, 2013

On August 29, 2013, the IRS issued Revenue Ruling 2013-17 which offers important guidance to employers on the application, for federal tax purposes, of the Supreme Court's ruling in *United States v. Windsor*. In *Windsor*, the Supreme Court declared the unequal treatment of same-sex marriage for federal law purposes unconstitutional. This client alert will (1) describe the holdings of Revenue Ruling 2013-17, (2) discuss its effective date, and (3) identify issues of potential concern to employers where further guidance is needed.

I. Holdings of Revenue Ruling 2013-17

Revenue Ruling 2013-17 devotes considerable attention to articulating the legal and other considerations which inform its three specific holdings. The IRS cites the language of *Windsor* which recognizes that the decision will affect a wide range of federal laws and then interprets the decision to require gender-neutral construction of marriage-related provisions of the Internal Revenue Code ("Code"). The IRS points out that this position is consistent with other provisions of the Code, as well as a 1958 Revenue Ruling in which the IRS recognized common-law marriages validly entered into under state law for certain federal tax purposes. For these reasons, the holdings in Revenue Ruling 2013-17 generally interpret the Code references to marriage, spouse, husband, and wife to refer to same-sex as well as opposite-sex marriages and married persons.

a. Meaning of Marital Terminology

First, the terms "spouse," "husband and wife," "husband," and "wife" will include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" will include such a marriage between individuals of the same sex. This holding reflects the ruling in *Windsor* declaring unconstitutional the contrary provisions in Section 3 of DOMA and will have broad application going forward to the various spousal provisions of employee benefit plans, including spousal annuities and the criteria for hardship distributions under retirement plans.

b. State of Marriage v. State of Domicile

Second, the IRS will adopt a general rule recognizing a same-sex marriage that was validly entered into in a state whose laws authorize same-sex marriage even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. Thus, for example, the legal marriage of a same-sex couple in the District of Columbia will be recognized for federal tax purposes even if the couple is domiciled in Virginia, which does not currently recognize same-sex marriages. This holding should simplify benefits administration for employers with operations and/or employees in more than one state.

c. Status of Formal Relationships other than Marriages

Third, the IRS confirmed that the term “marriage” does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under that state’s law. Similarly, the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals who have entered into such a formal relationship. This holding extends to all such relationships whether same-sex or opposite-sex. Therefore, employers should not need to apply the spousal provisions of their benefits plans to relationships that are not marriages under state law.

II. Effective Date

In general, the holdings in Revenue Ruling 2013-17 will be applied prospectively as of September 16, 2013. However, subject to statutes of limitations and other restrictions, employers may also be able to rely on the holdings retroactively for purposes of filing returns, or claims for credit or refund of any overpaid employment taxes with respect to certain benefits provided by the employer that are excludable from the employee’s income based on his or her marital status. This retroactive application may be of interest to employers that provided benefits to same-sex spouses prior to *Windsor* and imputed taxable income to the employee for the value of the spousal benefit. (Employees may also be able to claim federal tax refunds for any overpaid income and employment taxes with respect to employer-provided benefits for same-sex spouses.)

III. Further Guidance Needed on the Retroactive Application of *Windsor*

The IRS recognizes that additional guidance is needed regarding the retroactive application of *Windsor* to other employee benefits issues. Revenue Ruling 2013-17 provides that such guidance will take into account the potential consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries. The IRS anticipates that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify. In the meantime, employers may wish to consult benefits counsel to determine both the scope and the limitations of Revenue Ruling 2013-17 with respect to the current administration of their benefit plans.

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We initially discussed *Windsor* in our June 2013 client alert “[DOMA Ruling Affects Employee Benefits](#)”. This client alert is focused on recent IRS guidance regarding the application of *Windsor* for federal tax purposes. For more information on *Windsor*, Revenue Ruling 2013-17, or other issues concerning your employee benefit plans, please contact [Joanne C. Youn](#) at jyoun@capdale.com or at 202.862.7855



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