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Agencies issue guidance regarding same-sex marriages

On June 26, the U.S. Supreme Court ruled that provisions of the federal Defense of Marriage Act (DOMA) that defined marriage as a legal union between one man and one woman were unconstitutional. In a 5-4 vote, the Court found that the provisions deprived "the equal liberty of persons that is protected by the Fifth Amendment."

The Court's ruling in United States v. Windsor caused quite a stir in the employee benefits world, with a lot of confusion over how benefits plans in various states would be affected. After the decision, it was clear that married same-sex couples in states where such marriages are legal are entitled to be recognized as spouses for purposes of federal law and therefore will become eligible for equal benefits under numerous federal programs. However, it wasn't quite as clear how same-sex couples in states without legalized same-sex marriage would be affected.

Luckily, agencies have recently issued guidance to clarify some of the issues and questions that arose after the Supreme Court's decision.

IRS treatment of same-sex marriage

At the end of August, the IRS and the U.S. Department of the Treasury issued IRS Revenue Ruling 2013-17, which makes clear that same-sex couples who were legally married in jurisdictions recognizing their marriages will be treated as married for federal tax purposes, regardless of whether they live in a jurisdiction that recognizes same-sex marriage. (This is generally known as the "state of celebration" approach.) Treasury Secretary Jacob Lew said in a statement that the ruling "assures legally married same-sex couples that they can move freely throughout the country knowing that their federal filing status will not change."

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According to the ruling, same-sex married couples will be treated as married for all federal tax purposes, including income, gift, and estate taxes. The ruling covers federal tax provisions such as filing status, dependency exemptions, employee benefits, IRA contributions, and claiming the earned income tax credit or child tax credit. While the ruling applies to any legally recognized same-sex marriage, it doesn't apply to other types of legal relationships, including registered domestic partnerships or civil unions.

Tax returns

Revenue Ruling 2013-17 makes clear that generally, legally married same-sex couples must file their 2013 federal income tax returns using either the "married filing jointly" or "married filing separately" filing status. They may also choose to file original or amended returns for prior tax years still open under the statute of limitations, which usually is either three years from the date the return was filed or two years from the date the tax was paid, whichever is later. That means refund claims still can be filed for tax years 2010, 2011, and 2012, and some taxpayers' special circumstances may allow them to file refund claims for earlier years.

In addition, employees who paid on an after-tax basis for a same-sex spouse's health insurance may treat the payments as pretax payments that are excludable from income.

Ruling application and future guidance

The Treasury and the IRS emphasized that they would begin applying the terms of Revenue Ruling 2013-17 on September 16, 2013, but taxpayers may use the ruling's terms to file amended returns for applicable prior years.

Additionally, the Treasury and the IRS indicated that they intend to issue "streamlined" procedures for employers that want to file refund claims for payroll taxes paid on previously taxed health insurance and fringe benefits provided to same-sex spouses. They also revealed that they plan to issue more guidance on cafeteria plans and how qualified retirement plans and other tax-favored arrangements should treat same-sex spouses for periods before the effective date of the ruling.

Since the ruling was released, the IRS has issued IRS Notice 2013-61, which provides guidance for employers and employees to claim refunds or adjust overpayments of FICA taxes and employment taxes regarding certain benefits and remunerations provided to same-sex spouses.

DOL ERISA guidance

On September 18, the U.S. Department of Labor (DOL) provided guidance to plans, plan sponsors, fiduciaries, participants, and beneficiaries on the *Windsor* decision's impact on

ERISA. According to DOL Technical Release No. 2013-04, generally, the terms “spouse” and “marriage” in Title I of the Employee Retirement Income Security Act (ERISA) and in related regulations include same-sex couples who are legally married in any state or foreign jurisdiction that recognizes such marriages, regardless of where the couple currently resides. The DOL chose this “state of celebration” approach because it “provides a uniform rule of recognition that can be applied with certainty by stakeholders, including employers, plan administrators, participants, and beneficiaries.”

Similar to the IRS ruling discussed above, the DOL’s release also notes that the terms “spouse” and “marriage” do not include individuals in other legal relationships besides marriage, such as domestic partnerships or civil unions.

The release also noted that the DOL’s Employee Benefits Security Administration (EBSA) plans to issue future guidance addressing specific provisions of ERISA and its regulations.

Be on the lookout

There’s no doubt that the Supreme Court’s DOMA ruling will bring significant changes to the area of employee benefits. And although guidance is slowly being released to address the decision’s impact, there are still a lot of unanswered questions. Thus, it’s important to be on the lookout for future guidance and make sure you’re reviewing and updating your benefits plans and payroll procedures to be in compliance with federal law.

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MORE INFORMATION:

- IRS Revenue Ruling 2013-17 is available at: www.irs.gov/pub/irs-drop/rr-13-17.pdf
- IRS Notice 2013-61 is available at: www.irs.gov/pub/irs-drop/n-13-61.pdf
- *IRS: Answers to Frequently Asked Question for Individuals of the Same Sex Who Are Married Under State Law* is available at: <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>
- More general information and links are available at: <http://www.irs.gov/uac/Newsroom/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes;-Ruling-Provides-Certainty,-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples>