



NEW TAX GUIDANCE ON SAME-SEX MARRIAGE: ACTION REQUIRED FOR EMPLOYEE BENEFIT PLANS BY SEPTEMBER 16

The IRS has issued guidance on the application of the recent Supreme Court decision regarding same-sex marriage. Click [here](#) for our prior Client Alert about the related Supreme Court case that prompted the new guidance.

Pursuant to new [IRS Revenue Ruling 2013-17](#), for Federal tax purposes, the terms “spouse,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals were lawfully married under the laws of the state in which the marriage occurred. The IRS will treat these same-sex marriages as valid even if the state in which they reside does not. Registered domestic partnerships, civil unions, and similar legal relationships that are not designated as “marriages” under state law will not be recognized for this purpose.

The IRS has posted [Q&A's](#) on its website that help explain how the new rules apply to individuals and to employers maintaining benefit plans, but many questions still remain unanswered, most notably the retroactive effect of the new rules.

Employers must take action to comply no later than September 16, 2013 for plan purposes and Federal tax reporting purposes. It is important to note that the Revenue Ruling applies only for Federal tax purposes, including income, employment, and estate taxes, but it does not apply for purposes of state law or substantive claims for plan benefits that may be available based on marital status.

What Does This Mean for Retirement Plans? Plan sponsors must start treating same-sex spouses as spouses for all purposes, including spousal consents and survivor annuities, no later than September 16, 2013. Many plan documents will need to be amended, but future guidance is expected to provide more details.

What Does This Mean for Health and Welfare Plans? For health plans already covering same-sex partners, there is no longer a requirement to impute income for Federal tax purposes for coverage of a same-sex spouse. Further, premiums for health plan coverage may be paid on a pre-tax basis through a cafeteria plan. The IRS guidance provides details on how employees and employers may file for refunds for prior years.

We are waiting for further guidance addressing cafeteria plan coverage issues and how various other rules will be affected. Plan sponsors should review health and welfare plan documents to determine whether any plan amendments may be needed as well as whether eligibility and enrollment practices should be changed.

Additional Steps to Take Now. Employers should begin right away to gather information from employees on marital status. Many same-sex spouses may not have identified themselves as married in

the past given the prior law. Identifying all spouses is important for benefit coverage and for beneficiary elections and consents.

Please contact any of the attorneys listed below to discuss the impact these requirements may have on your company and its employee benefit plans.

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