

Date: September 4, 2013

TCRS 2013-04: Revenue Ruling 2013-17: Initial Guidance Regarding the Supreme Court's Decision on the Defense of Marriage Act ("DOMA"). See also [TCRS 2013-02](#).

Ruling:

The U.S. Department of the Treasury and the Internal Revenue Service ("IRS") ruled on August 29, 2013, that same-sex couples lawfully married in one of the 50 U.S. states, the District of Columbia, a U.S. territory, or a foreign country will be treated as married for federal tax purposes, regardless of whether or not the couple lives in a jurisdiction that recognizes same-sex marriage. Couples (same-sex and opposite-sex) who are in registered domestic partnerships, civil unions, or similar formal arrangements will not be treated as married for federal tax purposes.

In addition to the ruling, the IRS provided updated answers to [Frequently Asked Questions](#) ("FAQs") on its website for questions about couples in a same-sex marriage, and for questions about couples (same-sex and opposite-sex) who are in some other formal arrangement, such as a [domestic partnership](#) or civil union.

What is meant by "federal tax purposes:"

[Revenue Ruling 2013-17](#) will affect a number of areas under the U.S. Tax Code, including, but not limited to, income taxes, filing status, personal and dependency exemptions, IRA contributions, and employee benefits, such as 401(k), 403(b), defined benefit, and Section 125 (cafeteria) plans.

Effective date:

The general effective date of the ruling is September 16, 2013, although there are various retroactive applications, some of which are known at this time and more which might possibly be made in the future.

The known retroactive applications involve the voluntary filing of amended tax returns by employees and employers to claim a refund of taxes. Amended filings may be made for all years for which the limitations period for filing a claim for refund are open, which is generally three years from the date the return was filed or two years from the date the tax was paid, whichever is later.

Possible retroactive applications could depend on the effective date of the Supreme Court's repeal of Section 3 of DOMA for retirement plans. For example, a retroactive application of the repeal of Section 3 of DOMA could require a correction of a plan's prior operation, such as where death benefits may not have been paid to a same-sex spouse due to DOMA.

Impact on retirement plans:

For qualified retirement plans, such as 401(k), 403(b), and defined benefit plans, additional guidance is forthcoming on issues such as possible retroactive application, plan amendment requirements, and any corrections necessary for prior plan operations, as mentioned above. Qualified retirement plans should comply with the ruling beginning September 16, 2013 even if the forthcoming guidance has not yet been issued on September 16.

For plans subject to the Qualified Joint and Survivor Annuity ("QJSA") rules, the ruling impacts administration of annuities, loans, and beneficiary status with respect to the rights and/or consent requirements of spouses. For all plans, the administration of hardship withdrawals, Qualified Domestic Relations Orders ("QDROs"), death benefits, required minimum distributions, and rollovers for spousal beneficiaries are impacted.

For cafeteria plans providing benefits to spouses, same-sex spouses must now be covered, and premiums an employee previously paid on an after-tax basis for a same-sex spouse may now be paid on a pre-tax basis.

Actions for retirement plan sponsors to take now:

- Gather updated employees' marital status information (e.g. married or unmarried, where married includes only those in a legal marriage, and unmarried includes those in some other type of arrangement, such as a domestic partnership or civil union).
- Implement changes and instructions to forms and procedures to ensure that the plan will be compliant with the ruling on September 16, 2013. Examples include beneficiary designation instructions where spousal consent is required if a beneficiary other than the spouse is named, distribution/loan request forms requiring spousal consent, and QJSA and QDRO procedures where a same-sex spouse is considered.
- Possibly distribute new beneficiary designation forms for employees to complete.
- Consult ERISA counsel regarding any additional actions that might be necessary, such as providing an updated Summary Plan Description (with a revised definition of spouse) to employees.

Future actions pending additional guidance:

- Amendments to the plan, such as to the definition of spouse.
- Possible retroactive application of the Supreme Court's repeal of Section 3 of DOMA and any resulting required corrections, such as the example mentioned earlier, where under the prior operation of the plan, death benefits may not have been paid to a same-sex spouse due to DOMA.

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