



IRS Issues Guidance on Retirement Plan Benefits in the Context of Same-Sex Marriages



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Background

Recently, the U.S. Supreme Court struck down Section 3 of the [Defense of Marriage Act](#) ("DOMA") as an unconstitutional violation of the 5th Amendment's guarantee of equal protection under the law. Section 3 of DOMA defined "marriage" and "spouse" for purposes of Federal law as limited to a legal union between one man and one woman as husband and wife. The elimination of Section 3 of DOMA extends certain marriage rights to same-sex couples under many Federal laws. As a result, guidance from a number of Federal regulatory agencies will be necessary in order to fully integrate the DOMA decision. Although the impact of this decision is much broader than just the world of tax-qualified retirement plans, the remainder of this article focuses exclusively on the retirement plan impact of the decision.

In this regard, on August 29, 2013, the Internal Revenue Service ("IRS") released [Revenue Ruling 2013-17](#) and certain [Frequently Asked Questions](#) (collectively referred to as "the Guidance") which *begin* to explain the proper treatment of same-sex spouses under certain employment benefits plans and arrangements. The Guidance becomes effective as of September 16, 2013. However, within the Guidance, the IRS indicated that future guidance will also be issued in order to discuss certain unaddressed issues as well as the potential for the retroactive application of the Guidance. This additional guidance is expected to include consideration of the need for retroactive plan amendments to conform the terms of a plan to its operation in accordance with the new rules.

Rules

In essence, the Guidance establishes that same-sex marriages lawfully performed in any U.S. state, the District of Columbia, or a foreign country are valid as marriages under Federal tax law, regardless of where the couple reside. In addition, for Federal tax purposes, the Guidance indicates that the terms "spouse," "husband and wife," "husband," "wife" and "marriage" include reference to a lawful same-sex marriage as defined above. Finally, the IRS clearly indicated that registered domestic partnerships, civil unions or other relationships formalized under state law as something other than marriage are not treated as marriage for Federal tax purposes, whether between same-sex or opposite sex individuals. Notwithstanding, in the case of a same-sex couple participating in an unrecognized domestic partnership, civil union, etc., such couple could secure prospective Federal recognition of their relationship by obtaining a valid marriage license from a state or country that recognizes same-sex marriage.



Impact

In practice, the Guidance will generally require Plan Sponsors to treat same-sex spouses equal to opposite-sex spouses for Federal tax purposes, so long as the couple was legally married in a state or other locale that recognizes same-sex marriage.

The following example is derived directly from the Guidance. A qualified defined contribution plan provides that a participant's account must be paid to the participant's spouse upon the participant's death unless the spouse consents in writing to a different beneficiary. Such plan does not provide for any annuity forms of distribution. In that case, in the context of a lawfully performed same-sex marriage, the plan must pay the death benefit to the same-sex surviving spouse of any deceased participant. However, the plan would not be required to provide this death benefit to a surviving registered domestic partner of a deceased participant.

Action Items

First, Plan Sponsors should verify that any of its employees who are participants in a same-sex marriage were "legally" married as that term is considered under the Guidance. This includes confirmation that the relationship truly is a marriage and not a registered domestic partnership, civil union or other relationship formalized under state law as something other than marriage.

Second, Plan Sponsors must be on the alert for future regulatory guidance on retirement plan administration in relation to same-sex spouses. As indicated above, the IRS has stated that it intends to release such guidance. However, it is likely that other regulatory agencies will also release pronouncements on the issue.

Finally, the fact that additional guidance is expected on this issue emphasizes that the full impact of the Supreme Court's DOMA actions are not yet established and that this entire issue remains in a state of flux. Therefore, be sure to check with your retirement plan service professionals when same-sex spousal retirement benefit questions arise.



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