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Employee Benefit Plans

IRS/Treasury Guidance and the Supreme Court's Decision Related to the Defense of Marriage Act

In a previous publication we notified plan sponsors of the potential impacts on employee benefit plans following the US Supreme Court holding, in *United States v. Windsor,* that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. On August 29, 2013, the IRS and the US Treasury Department issued written guidance interpreting and applying the Supreme Court's ruling for federal tax purposes. This update reviews the federal tax law developments. The Department of Labor has not issued guidance pertaining to ERISA.

Background

Prior to the Supreme Court's ruling, Section 3 of DOMA provided that same-sex marriages were not recognized for all purposes of federal law and related regulations. This included federal tax law and the Employee Retirement Income Security Act of 1974 (ERISA).

The Supreme Court's decision left benefit plan sponsors and administrators with considerable uncertainty. One question was whether same-sex marriages should be recognized if a participant is married in a state that recognizes same-sex marriage and moves to a state that does not recognize such marriages. Another open question pertains to the effective date of the Supreme Court's ruling. In Revenue Ruling 2013-17 and accompanying FAQs, the IRS addresses some of the key federal income tax law considerations.

Domicile Issues

Under Revenue Ruling 2013-17, all couples (whether or not same-sex) will be treated as married for federal income tax purposes if the couple is married in a state, the District of Columbia, a US territory or a foreign country whose laws authorize the marriage, even if the couple later moves to a state that does not recognize such marriage. For example, a same-sex couple will still be considered married if they are married in New York (a state that recognizes same-sex marriage) and are later domiciled in Ohio (a state that does not recognize same-sex marriage). This result would be the same if the couple is married in Canada and moves to Ohio.

Notwithstanding the above, Revenue Ruling 2013-17 provides that "marriage" does not include registered domestic partnerships, civil unions or other similar formal relationships that are not denominated as a "marriage" under state law.

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Effective Date Issues

Revenue Ruling 2013-17 states that it is generally applied *prospectively*, as of September 16, 2013. However, employees and employers may file for tax refunds for open tax years. The IRS also states that it will issue a procedure for filing for employment tax refunds. The IRS also anticipates issuing further guidance on how the Supreme Court's ruling applies prior to September 16, 2013 and the compliance date for plan amendments.

Action Items

While we are awaiting further guidance, there are some action items for benefit plan sponsors and administrators. The following are some general action items following Revenue Ruling 2013-17:

- In the qualified retirement plan area, benefit plan sponsors and administrators should begin applying the plan rollover rules, required minimum distributions rules, and hardship distribution rules in a manner that treats same-sex spouses the same as opposite-sex spouses.
- Moreover, benefit plan sponsors and administrators should recognize same-sex spouses when applying a qualified retirement plan's beneficiary designation provisions, and beneficiary designation forms should be reviewed and updated accordingly.
- While the Supreme Court's ruling and Revenue Ruling 2013-17 do not require healthcare plans to provide coverage to same-sex spouses, if a same-sex spouse is covered by the plan, COBRA rights would apply upon a divorce or legal separation.
- Benefit plan sponsors and administrators should stop imputing federal taxable income to employees who have health insurance and certain other types of fringe benefits provided to same-sex spouses, as of September 16, 2013.
- Revenue Ruling 2013-17 provides that, for open tax years before 2013, plan sponsors are entitled to file refund claims for Social Security and Medicare taxes that were paid with respect to such imputed income. The Revenue Ruling states that the IRS will be issuing future guidance on the procedures for filing refund claims. In the meantime, plan sponsors should be able to obtain a general sense of the potential refund amount by multiplying the imputed income amount for the last three tax years by 7.65% (i.e., the employer rate for Social Security and Medicare).
- There are also a variety of more favorable federal income tax results in relation to healthcare plans and other fringe benefit arrangements. For example, same-sex spouses are now eligible to participate in health reimbursement accounts and same-sex marriage is now a qualifying life event for purposes of changing elections in Section 125 cafeteria plans.

For more information, please consult a Squire Sanders advisor below.

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