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Employers and individuals have been anxiously awaiting guidance from the IRS on how to apply the United States Supreme Court's June 26 ruling in the *Windsor* case for income tax, employment tax, and employee benefits purposes. In the *Windsor* case, the Supreme Court ruled that the provision barring recognition of same-sex marriages for federal law purposes was unconstitutional (you can read our earlier alert here). Yesterday, the IRS issued Revenue Ruling 2013-17 and related Q&As, in which the IRS adopted the so-called "place of celebration" rule in recognizing same-sex marriage for federal tax purposes.

The ruling provides that legal same-sex marriages will be recognized for all federal tax purposes regardless of whether a same-sex couple lives in a jurisdiction that recognizes same-sex marriage, as long as the couple entered into the marriage in a place that recognized the marriage. The guidance comes as a relief to many employers trying to determine the correct administration and taxation of employee benefits to employees with same-sex spouses in the wake of *Windsor*, and should simplify administration with one uniform rule for federal purposes.

This will impact many areas of employee benefits, including:

- taxation of same-sex spousal health coverage, and
- qualified domestic relations orders, rollovers, required minimum distributions, hardship distributions, spousal survivor benefits, and spousal consent for retirement plans.

With respect to qualified retirement plans, employers **must** apply the new rules for same-sex spouses beginning September 16, 2013. The IRS intends to issue future guidance on application of the rules prior to this date.

In contrast, for individual and payroll tax treatment, the rule can be applied retroactively. Legally-married same-sex couples may (but are not required to) seek income tax refunds for past years if the applicable statute of limitations has not expired. Such refunds can also be for amounts for health care benefits that were treated as taxable, including amounts that were treated as after-tax through a cafeteria plan. Employers may also make income tax withholding adjustments for excess income tax withholding in the current year. Similarly, employers will be able to file refund claims for payroll taxes (e.g., FICA) for previously-taxed health insurance provided to same-sex spouses; more guidance will be issued on a streamlined process for employers to file for tax refunds on behalf of themselves and their employees.

Although there will now be uniform tax treatment for same-sex spouses under federal law, state tax laws may or may not recognize the relationship. In addition, the ruling specifically provides that individuals in domestic partnerships, civil unions, or similar formal relationships recognized under state law will not be considered married for federal tax purposes. Thus, there may also be different administration of federal and state taxes for individuals in such relationships.

For more information on the impact of Revenue Ruling 2013-17, please contact a member of the Benefits Law Group.

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