

PUBLICATION

Same Gender Spouses – The IRS and Department of Labor Now Agree

September 23, 2013

In Revenue Ruling 2013-17 (Ruling), the IRS stated that for purposes of federal tax laws, same-gender couples who have been legally married in a jurisdiction (domestic or foreign) that allows same-gender marriage will be treated as married for all purposes under federal tax laws in all states, regardless of the couple's state of residence or domicile. In effect, the law of the state of celebration of a marriage controls for federal tax purposes. This treatment of same-gender spouses does not apply to persons who are in registered domestic partnerships or civil unions or are otherwise in a relationship which does not constitute a marriage under the law of the jurisdiction in which the relationship arose.

IRS Ruling Applies Only for Federal Tax Purposes

The Ruling applies only for federal tax purposes, and not for other federal, state or local law purposes. For more on the IRS ruling, see our previous [Alert](#) dated September 4, 2013. Many employee benefit programs which are sponsored by employers, other than certain church-related or governmental agencies, are also subject to requirements and rules set forth in the Employee Retirement Income Security Act of 1974, as amended (ERISA). ERISA contains some provisions which are similar or identical to those administered by the IRS under the tax laws in the Internal Revenue Code, but ERISA also includes other statutes relating to areas such as fiduciary responsibility in administering plans, civil enforcement and penalties for not adhering to the plan provisions or the requirements of ERISA. ERISA is regulated and enforced by the U. S. Department of Labor (DOL).

DOL Release Now Agrees Generally With IRS Ruling

On September 18, 2013, the DOL issued Technical Release 2013-04 (Release), which follows the position of the IRS and the Treasury Department in the Ruling. Thus, for purposes of determining the status of an individual as a spouse, the law of the jurisdiction under which the marriage occurred will control, regardless of the state of residence or domicile of the employee or spouse. Similar to the position of the IRS and Treasury Department, a relationship which is not a marriage under the laws of a domestic or foreign jurisdiction with the legal authority to sanction marriages will not result in an individual being treated as a spouse of an employee or former employee.

The Release states only a general position of the DOL regarding the status of a same gender individual as a spouse and does not address the specific application of the position with respect to the various provisions of ERISA, indicating that it intends to issue further guidance in that regard. Thus, like the Ruling, it does not address the retroactive effect of the position, if any. However, it is reasonably clear that an individual either will or will not be treated as a spouse for both federal tax and ERISA purposes, which is a welcome result for ease of administration of benefit plans and other purposes relating to federal taxation. Despite the lack of guidance in the Release regarding specific provisions of ERISA, the Release also makes it reasonably clear that a same gender spouse under the laws of any jurisdiction will have the same rights as an opposite gender spouse, such as the right to certain notices, the right to correct administration by a plan fiduciary and the right to pursue claims under the civil enforcement provisions of ERISA.

Should you wish to discuss the impact of the IRS Ruling or the DOL Release on your particular facts and circumstances, please do not hesitate to contact any attorney in the Firm's Tax Group.