

# IRS RULES THAT ALL MARRIAGES ARE CREATED EQUAL

**WEBINAR**

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# The Supreme Court Voids § 3 of DOMA

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- In *United States v. Windsor*, the Supreme Court ruled that Section 3 of the Defense of Marriage Act ("DOMA") is unconstitutional as a violation of the Equal Protection Clause of the Constitution.
- Section 3 of DOMA provides that for purposes of federal law, the word "marriage" means "a union of a man and a woman" and the definition of "spouse" is "a person of the opposite sex who is a husband or a wife."
- In Revenue Ruling 2013-17, the IRS issued guidance on the impact of the Supreme Court's decision on U.S. federal tax laws, including laws impacting employer-sponsored employee benefit plans

# IRS Revenue Ruling 2013-17

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- 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. (Called “State of Celebration” Standard)
- This treatment of same-gender spouses does not apply to persons who are in registered domestic partnerships or civil unions.
- The Ruling applies only for federal tax purposes and not for other federal, state or local law purposes.
- Except for some very limited allowances for revising returns for open tax years, the IRS's Ruling will be applied prospectively as of September 16, 2013.
- The IRS also intends to issue guidance on how retirement plans and Section 125 cafeteria plans should treat same-sex spouses for periods prior to September 16, 2013, the effective date of the IRS ruling.

# HEALTH BENEFIT PLANS

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1. **Tax Treatment of Employer and Employee Contributions for Coverage of Same-Gender Spouses.** Federal tax treatment of same-gender spouses will be the same as opposite-gender spouses, allowing for pre-tax premium payments and no requirement to impute income for employer-paid coverage.
2. **Effective Date.** This rule becomes effective September 16, 2013.
3. **Refunds?** Employers and individuals may obtain refunds for federal income, FICA and FUTA taxes on the value of employer-subsidized coverage for same-gender spouses for open tax years.

## HEALTH PLANS (cont'd)

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4. **Special Enrollment Rights.** Same-gender marriages will now trigger rights to mid-year enrollments.
5. **Flexible Spending Accounts, Health Savings Accounts and Health Reimbursement Accounts.** Employees can now claim a right to have their same-gender spouses and the spouses' children covered by the employer's cafeteria plan, FSA, HSA, and HRA.
6. **Dependent Care Reimbursement Accounts (DCRA).** Step-children, regardless of through opposite-gender spouse or same-gender spouse, will likely have to be treated the same and be eligible for coverage under a DCRA plan.

## HEALTH PLANS (cont'd)

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- 7. COBRA Continuation Coverage.** COBRA requires employers with 20 or more full-time employees to allow covered individuals the right to continue, as their own expense, health coverage for a period of time following a certain qualifying events, such as termination of employment, death and divorce. Same-gender spouses will now be protected with a separate COBRA right, in the same manner as opposite-gender spouses have been protected.



## HEALTH PLANS – HOW TO COMPLY?

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- The IRS Ruling is effective September 16, 2013, which is mid-year for most plans.
- Employers may want to consider having special mid-year enrollment opportunity for same-gender spouses and their children. (Compliance with “change in status” rules under IRC § 125)
- Employers may want to require copies of marriage certificate for ALL spouses, including opposite-gender
- What to do about domestic partners and common law spouses?
- Can employers limit coverage only to opposite-gender spouses?

## HEALTH PLAN ISSUES – ERISA Preemption

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- ERISA generally preempts state law to the extent it relates to an employee benefit plan subject to ERISA. State insurance laws are "saved" from ERISA preemption, but an ERISA benefit plan is not considered to be engaged in the business of insurance and thus subject to state insurance regulation.
- State insurance mandates, including those involving same-gender spouse or domestic partner issues, are not preempted, but may not apply directly to an ERISA plan (because the plan is not considered an insurer subject to state regulation). This is how **self-insured** ERISA plans avoid state insurance laws . . . the state has no power to reach out and regulate a self-insured ERISA plan for compliance with state insurance law.



## HEALTH PLAN ISSUES – ERISA Preemption (cont'd)

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- **Insured** plans have different analysis. While state insurance laws cannot apply directly to the plan, they can apply to the insurers writing group policies. The state may decline to approve for issue in the state a group policy that does not satisfy state insurance mandates. In this way the state insurance law indirectly regulates an insured ERISA plan because the group policy issued to the plan by the insurer comes with all the bells and whistles required by state law.
- Laws requiring an employer to provide domestic partner benefits as a condition of doing business with the **state or city** are very likely preempted to the extent they would require an employer subject to ERISA to add domestic partner benefits where none currently exist, where the government is acting as a regulator as opposed to a consumer or market participant. In the latter case, preemption may well not apply.

## WELFARE BENEFIT PLANS

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- In general, there are no special protections for spouses under other benefit plans such as life, disability and AD&D. These benefits are typically provided through policies of insurance which are subject to state regulation. Accordingly, the IRS's Ruling may have no significant impact on these benefit plans. However, the specific language of the relevant plan may result in same-gender spousal rights, in light of the Ruling.

# RETIREMENT PLANS

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1. **Rights of Spouses over Form of Distribution.** Same-gender spouses of participants in certain pension plans will now have same rights to Qualified Joint and Survivor Annuities and Qualified Preretirement Survivor Annuities whereby the employee's spouse is entitled to certain rights with respect to the payment of benefits. **EXAMPLE:** If an employee is currently entering pay-status under a pension plan subject to these rules, the employer should verify if there is a same-gender spouse and confirm compliance with these rules for that spouse.
2. **Spousal Consent Rights.** Distributions, including loans and hardship withdrawals, from most pension plans cannot be made to married participants absent a consent by the spouse. consent requirement is now extended to same-gender spouses.

## RETIREMENT PLANS (cont'd)

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- 3. Payment of Death Benefits.** Absent a proper waiver, certain retirement plans must provide that that death benefits be paid to the surviving spouse, which now includes same-gender spouses. Employers may want to require employees to execute new beneficiary designation forms and, if a non-spouse is elected as beneficiary, having the employee affirmatively indicate that the employee is not married. There remain open issues regarding any retroactive application of these rules and whether same-gender spouses for whom death benefits have been paid to non-spouse beneficiaries were appropriate.
- 4. Spousal Rollover Rights.** Both spouses and non-spouses who are beneficiaries of a retirement plan participant's account balance may roll over a distribution from the retirement plan to an IRA; however, only spouses can roll over the death benefit to another qualified employer plan. Same-gender spouses will now be allowed to roll over an inherited plan benefit to their employers' qualified plans.

## RETIREMENT PLANS (cont'd)

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5. **Age 70½ Required Minimum Distributions.** Same-gender surviving spouses may now have special rights to defer distribution of death proceeds from a retirement plan.
6. **Qualified Domestic Relations Orders (QDROs).** Under an exception to ERISA's anti-alienation rules, a participant's retirement plan benefits can be required to be paid to a former spouse incident to a court-ordered QDRO. This same requirement can possibly now be claimed to apply in the context of same-gender spouses; although state-specific statutes may present obstacles to obtaining or enforcing a QDRO.

## OPEN ISSUES

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- Retroactive application
  - What about distributions to non-spouse beneficiaries when there was a legal same-gender spouse? (VT was first state to recognize same-gender marriage, beginning in 2000.)
  - What about QPSA rights and QJSA rights?
- Amending Prior Year Returns

# QUESTIONS?

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