

The PRS Report

ARE YOUR EMPLOYEES MARRIED?

WHAT DOES HAVING A SPOUSE MEAN FOR A QUALIFIED PLAN?

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Your Employee's Marital Status

Prior to June 26, 2013, Section 3 of the Federal Defense of Marriage Act (DOMA) prohibited the federal government from recognizing the marriage of same-sex couples, while permitting the individual states to determine the legality of the marriage within its own jurisdiction. For federal tax purposes, as well as for qualified plans which operate under Federal law, marriage would be recognized only between a man and a woman. Then on June 26, 2013, the U.S. Supreme Court found Section 3 to be **unconstitutional** (United States v. Windsor). As a result, if a couple is legally married in a state or foreign country, that marriage is recognized for federal tax purposes, regardless of the sex of the spouses. Initially this left more unanswered questions than answered.

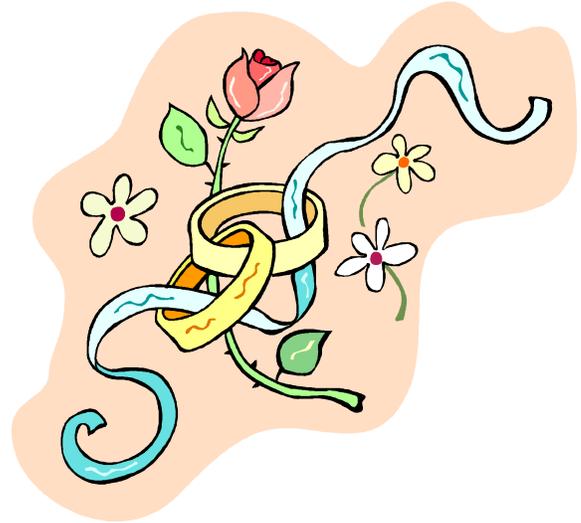
On August 29, 2013 the Internal Revenue Service issued Revenue Ruling 2013-17 which provided much needed guidance with respect to the recognition of



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marriage. Generally the marriage of a couple is recognized for federal tax purposes if it is a legal marriage based on the jurisdiction in which it has taken place – state, District of Columbia, US territory or foreign country. Neither the jurisdiction of where the couple lives or works nor the state in which the Plan Sponsor is established or doing business will dictate whether the marriage will be recognized for Federal purposes. Note the ruling does NOT apply to registered domestic partners, civil unions or similar relationships recognized under state law.



Marital Status and Its Effect on Qualified Plans

The following provisions of a qualified plan apply to married couples:

- * Upon the death of a participant while actively employed, an annuity is payable to the spouse.
- * For a plan subject to the Qualified Joint and Survivor Rules (all defined benefit plans, all money purchase plans and some profit sharing/401k plans), the normal form of payment must be in the form of a Qualified Joint and Survivor Annuity, which will provide a benefit to the spouse after the participant's death.
- * The spouse must consent to a participant's designation of a beneficiary other than the spouse.
- * The spouse must consent to an optional form of payment from the Plan.
- * The spouse may need to consent to a loan from the Plan.
- * Qualified Domestic Relations Orders allow payments from the Plan to a former spouse.
- * A surviving spouse may elect a direct rollover to an eligible retirement plan or IRA.
- * Safe Harbor hardship distribution rules recognize the needs of a spouse.
- * The calculation of the minimum required distribution and the timing of its distribution take into account the marital status of the participant.

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When is this effective?

Effective September 16, 2013, marriage between opposite and same-sex couples are to be treated the same for federal tax purposes, and qualified retirement plan purposes. This means that the qualified plans must be operated in accordance with the above definition of marriage. Practically, beneficiary designations may need to be re-executed; benefits may need to be calculated differently; distributions packages and election forms may need to be revised, to name just a few.

What issues still need clarification?

Although there is an effective date of September 16, 2013, it is unclear as to whether or not it will apply retroactively. Past benefit elections and benefit calculations are just some of the areas that would require revision if the ruling is to apply retroactively. While this could prove quite costly and burdensome, we still need to await further guidance.

Link to Frequently Asked Questions:

The following link <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples> may be referenced for common issues, including those not relating to qualified plans.



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