Treatment of Marriages of Same-Sex Couples for Retirement Plan Purposes

On April 4, 2014, the IRS issued Notice 2014-19, which provides guidance on how qualified retirement plans should treat the marriages of same-sex couples following the Supreme Court's decision in *United States v. Windsor*. The *Windsor* decision invalidated Section 3 of the 1996 Defense of Marriage Act (DOMA) that barred married same-sex couples from being treated as married under federal law.

The notice:

- gives examples of Code requirements under which the marital status of the participants is relevant to the payment of benefits,
- provides guidance on how to satisfy those requirements in light of *Windsor* and Revenue Ruling 2013-17, and
- describes when retirement plans must be amended to comply with *Windsor*, Revenue Ruling 2013-17, and Notice 2014-19

Recognition of marriages of same-sex couples for tax purposes

Following the *Windsor* decision, the IRS issued Revenue Ruling 2013-17, which holds that married same-sex couples are now treated as married for all federal tax purposes where marriage is a factor, if the couple is lawfully married under the laws of one of the 50 states, the District of Columbia, a U.S. territory or a foreign jurisdiction. Notice 2014-19 gives additional guidance on how qualified retirement plans should treat the marriages of same-sex couples.

Plan amendments required with respect to plan provisions inconsistent with *Windsor*

- If its terms are inconsistent with *Windsor* or Revenue Ruling 2013-17, a retirement plan must be amended to comply with *Windsor* and Revenue Ruling 2013-17. For example, a plan must be amended if it defines "spouse" by reference to section 3 of DOMA, or only as a person of the opposite sex.
- Not all plans need to be amended in order to be in compliance. An amendment generally is not required if a plan's terms are not inconsistent with *Windsor* or with Revenue Ruling 2013-17.
- Required amendments must be adopted by the later of

December 31, 2014, or the applicable date under the IRS' general amendment guidance for qualified retirement plans, Revenue Procedure 2007-44.

Optional amendments

- Plan sponsors may also, but are not required to, reflect the outcome of *Windsor* for periods prior to the date *Windsor* was decided.
- In such a case, a plan amendment is required.
- Such optional amendment must be adopted by the later of December 31, 2014, or the applicable date under Revenue Procedure 2007-44.

FAQs for more information

See the FAQs on the treatment of same-sex marriages for additional guidance, including:

- beneficiary designations in profit-sharing plans after *Windsor*,
- amendments that reflect the outcome of *Windsor* for periods before the decision was issued, and
- application of the outcome of *Windsor* to 403(b) plans.

Additional resources

- IRS News – For Same-Sex Couples and Certain Domestic Partners
- Revenue Ruling 2013-17 – treatment of same-sex marriage for federal tax purposes
- FAQs on treatment of same-sex marriage for retirement plans

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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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