



Retirement Plans After Windsor

June 26, 2014



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Retirement Plans



Benefit Practitioner

Plan Participant, Employee

Plan Sponsor

Topics for Retirement Plans

- IRAs
- Types of Retirement Plans
- Required Minimum Distributions
- Retirement Plan FAQs
- Published Guidance
- Forms & Publications
- Correcting Plan Errors
- Newsletters
- More Topics

Tax Information for Retirement Plans Community



Help with Choosing a Retirement Plan

Web guide to help you compare plans

File a Retirement Plan Return

Forms 5500, 5500-SF, 5330, 5558 and 8955-SSA

Form 2848 - More Changes

Use the March 2012 version to designate a representative for retirement plan issues.

Retirement Plans Phone Forums

Check out upcoming phone forums

Fix-It Guides

Find, Fix and avoid common mistakes in plans

Cost-of-Living Adjustments (COLAs)

Limits on contributions and benefits

Examinations and Enforcement

Audit guide, compliance check letters and other programs



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Newsletters

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[Governmental Plans Updates](#)

Recent developments for governmental plans.

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Presenters

- Diane Bloom
 - Tax Law Specialist, Employee Plans Technical Guidance
- Angelique Carrington
 - Tax Law Specialist, Employee Plans Technical Guidance
- Sherri Edelman
 - Manager, Employee Plans Technical Guidance Group 2



United States v. Windsor

- Decided June 26, 2013
- 570 U.S. ____, 133 S.Ct. 2675 (2013)
- Found section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional because it violates Fifth Amendment principles
- Rest of DOMA unchanged



Section 3 of DOMA

- “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse refers only to a person of the opposite sex who is a husband and wife.”



Rev. Rul. 2013-17

- September 16, 2013
- Applies prospectively for all Federal tax purposes, including retirement plans



Rev. Rul. 2013-17 – Holding One

- The terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law.
- The term “marriage” includes such a marriage between individuals of the same sex.



Rev. Rul. 2013-17 – Holding Two

- State of celebration, not state of domicile applies



Rev. Rul. 2013-17 – Holding Three

- A marriage does not include a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state.



Rev. Rul. 2013-17 - Retroactivity

- IRS would issue future guidance on the retroactive application of Windsor to employee benefit plans and arrangements.



Other Employee Benefits Guidance

- Notice 2013-61
 - Employment taxes
- Notice 2014-1
 - Cafeteria plans, flexible spending accounts and health spending accounts



Notice 2014-19

- April 4, 2014
- Qualified plan rules relating to married participants
- Effective date
- Amendments



Notice 2014-19

- Some qualified retirement plan rules relating to married participants:
 - Qualified joint and survivor annuity (QJSA)
 - Qualified preretirement survivor annuity (QPSA)
 - Non-QJSA/QPSA plans
 - Minimum distribution rules
 - Related employer (stock attribution)
 - Top-heavy/key employee definition
 - ESOP
 - QDRO



Notice 2014-19

- Operate in accordance with Windsor as of June 26, 2013
- Comply with Rev. Rul. 2013-17 as of September 16, 2013
 - State of domicile vs. state of celebration



Notice 2014-19 - Amendments

- Required
 - Provisions inconsistent with Windsor, Rev. Rul. 2013-17 or Notice 2014-19
 - Spouse must be a person of the opposite sex
 - Marriage defined in accordance with DOMA
 - Retroactive application



Notice 2014-19 - Amendments

- Not required
 - Plan provisions not inconsistent with Windsor, Rev. Rul. 2013-17, or Notice 2014-19
 - May want to consider a clarifying amendment



Notice 2014-19 - Retroactivity

- Retroactive application
 - Optional
 - Can be on a selective basis
 - Caution against applying it across the board
 - Unintended consequences
 - Non-discrimination rules applicable



Notice 2014-19 – Amendment Deadlines

- General rule
 - Later of applicable deadline under section 5.05 of Rev. Proc. 2007-44, or
 - December 31, 2014
- Governmental plan
 - Not earlier than the close of the first regular legislative session of the legislative body with authority to amend the plan that ends after December 31, 2014



Notice 2014-19 – Section 436

- A required amendment that is effective June 26, 2013 is not treated as an amendment to which IRC Section 436(c) applies (IRC Section 432 for multiemployer plans).
- An amendment that is effective prior to June 26, 2013 is an amendment to which IRC Section 436 applies (IRC Section 432 for a multiemployer plans).



Notice 2014-37

- May 15, 2014
- 401(k) safe-harbor plans may be amended mid-year to adopt amendments required by Windsor, Rev. Rul. 2013-17, or Notice 2014-19.



FAQs

- Available at www.irs.gov/Retirement-Plans/Answers-to-Frequently-Asked-Questions
- Beneficiary designations for participants who died on or after June 26, 2013
- Choice of law
- Implementation of a plan amendment prior to its adoption date



FAQs

- New rights or benefits with respect to participants with same-sex spouses
- Section 403(b) plans
- Multiemployer defined benefit plans subject to IRC Section 432



Amendments – Miscellaneous Issues

- Cycle D Submissions
- Terminations



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