

Client Advisory | April 2014

IRS Releases Guidance for Qualified Retirement Plans in Light of Windsor Decision

On April 4, 2014, the Internal Revenue Service released Notice 2014-19 providing long-awaited guidance on the application of the U.S. Supreme Court's decision in *United States v. Windsor* and Revenue Ruling 2013-17 to 401(k), 403(b) and other qualified retirement plans.

In the *Windsor* decision, the U.S. Supreme Court ruled that Section 3 of the Defense of Marriage Act, which defined "marriage" for Federal tax purposes to mean only a "legal union between one man and one woman", was unconstitutional. Subsequent to the *Windsor* decision, the IRS adopted a "state of celebration" rule (in Rev. Rul. 2013-17) whereby, effective as of September 16, 2013, same-sex individuals will be treated as married for Federal tax purposes as long as the marriage is entered into in a state whose laws authorize the marriage of two individuals of the same sex, regardless of whether the individuals live in a state that authorizes such marriages.

Notice 2014-19

Notice 2014-19 clarifies the following:

- ♦ Qualified retirement plans are required to operate in compliance with the *Windsor* decision as of June 26, 2013.
- ♦ A plan will not be treated as failing to meet the IRS qualification requirements if, between June 26, 2013 and September 16, 2013, the plan did not recognize same-sex spouses for participants who resided in a state that did not recognize same-sex marriages.
- ♦ Plans terms that are inconsistent with the *Windsor* ruling (for example, the plan defines "marriage" by reference to the Defense of Marriage Act) must

be amended by the later of December 31, 2014 or the due date for the employer's tax return (including extensions) for the fiscal year that included June 26, 2013. Governmental plans must adopt amendments before the close of the first regular legislative session of the legislative body with authority to amend the plan that ends after December 31, 2014.

- ♦ If a plan's terms are not inconsistent with the *Windsor* ruling, the plan is not required to be amended. The IRS notes, however, that a clarifying amendment may be useful for plan administration purposes.
- ♦ Plans may be amended to recognize same-sex spouses prior to June 26, 2013, but the IRS cautioned this recognition may trigger requirements that are difficult to implement retroactively and may create unintended consequences. The plan amendment must be adopted by the timeframe set forth above.
- ♦ With respect to a single-employer defined benefit plan, an amendment that takes effect on June 26, 2013 to recognize same-sex spouses will not require additional contributions or attainment of an 80% adjusted funding target percentage. However, an amendment that recognizes same-sex spouses prior to June 26, 2013 will require an additional funding contribution to the plan if the

required funding target percentage is not met.

Next Steps

Plan sponsors should review their retirement plan documents to determine whether any amendments are necessary to implement the *Windsor* decision. If the plan uses terms such as "spouse", "legally married spouse" or "spouse under Federal law", without any distinction between a same-sex spouse and an opposite-sex spouse, an amendment generally will not be required. However, if the plan document defines "spouse" with a reference to the Defense of Marriage Act or as a member of the opposite-sex, an amendment will be required.

Further, plan sponsors should review their administrative procedures to determine whether the plans have been operating in compliance with the *Windsor* decision since June 26, 2013. For example, the plan sponsor should confirm that the plan obtained the consent of a same-sex spouse to a participant's designation of a non-spousal beneficiary. This may be a good opportunity to communicate with participants about the effect of the *Windsor* decision on employee benefit plans.

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