

EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION ALERT

April 2014

IRS Clarifies Rules Regarding Same-Sex Marriage Applicable to Retirement Benefits Plans

As a result of the United States Supreme Court's decision in *U.S. v. Windsor*, the tax rules applicable to employee pension benefit plans apply the terms "marriage," "spouse," "husband," "wife," and "husband and wife" to both same-sex and opposite-sex couples who are validly married under state law.

Recently, the IRS issued guidance intended to clarify the impact of the *Windsor* decision on Internal Revenue Code ("Code") provisions governing tax-qualified retirement plans. This guidance provides that:

- Any plan qualification rule or regulation provided in the Code that applies to a participant who is married to an individual of the opposite sex, must apply equally to a participant who is married to an individual of the same sex;
- All tax-qualified retirement plans must operate in accordance with *Windsor* as of June 26, 2013 (the date of the Supreme Court's decision). However, if a plan participant was at that time residing in a state that did not recognize same-sex marriage, the plan must operate, with respect to that participant, in accordance with *Windsor* as of September 16, 2013 (the date of interim IRS guidance);
- Amendments to a tax-qualified retirement plan are required to the extent the plan language is inconsistent with the Supreme Court's *Windsor* decision;
- A plan sponsor may choose to amend and operate its plan retroactively to a date preceding the date of the *Windsor* decision (i.e., a date prior to June 26, 2013). However, it would be necessary to consider all of the consequences of adopting a retroactive amendment; and
- The deadline for adopting a plan amendment to comply with *Windsor* is generally December 31, 2014.

What a Plan Sponsor Should Do Now

In light of this recent IRS guidance, plan sponsors should:

- operate and administer tax-qualified retirement plans by treating a same-sex spouse in the same manner as an opposite-sex spouse;

- review all retirement plan documents, such as summary plan descriptions, election forms, qualified domestic relations order procedures, beneficiary designation forms or other administrative documents, to determine if any updates are necessary to comply with *Windsor* and the IRS guidance; and
- amend plan documents to the extent necessary. These amendments must generally be made by December 31, 2014.

We are ready to assist you with the preparation of any necessary plan amendments. If you have any questions concerning Windsor's impact on your retirement plan or would like assistance in reviewing plan documents, or drafting a plan amendment in order to comply with Windsor, please contact us.

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This edition of the Employee Benefits & Executive Compensation Alert highlights recent guidance published by the IRS regarding the impact of the U.S. Supreme Court's decision in U.S. v. Windsor on tax-qualified retirement benefit plans. The Alert was written by Devin M. Karas, a member of the Employee Benefits & Pension Practice Area at Reid and Riege, P.C. The Practice Area works closely with clients to design and draft tax-qualified and nonqualified retirement plans. For information or additional copies of this Alert, or to be placed on our mailing list, please contact Devin (tel. 860-240-1063) (e-mail dkaras@rrlawpc.com) or another member of the Practice Area, John J. Jacobson, Chair (tel. 860-240-1006) (e-mail jjacobson@rrlawpc.com), John V. Galiette (tel. 860-240-1009) (e-mail jgaliette@rrlawpc.com), Ronald J. Koniuta (tel. 860-240-1034) (e-mail rkoniuta@rrlawpc.com), or Ereik M. Sharp (tel. 860-240-1074) (e-mail esharp@rrlawpc.com), or the Reid and Riege attorney with whom you regularly work.

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