

# eBenefits Alert - IRS Hears Wedding Bells - New Guidance Same Sex Marriage Under Federal Tax Laws

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Right before the Labor Day holiday began last week, the IRS issued Revenue Ruling 2013-17 stating the IRS position on recognition of same-sex marriage for federal tax purposes. In the wake of the Supreme Court's June 2013 decisions on same-sex marriage indicating federal law would defer to state law to ascertain whether a couple is legally married - the new question became: which state's law? The couple's residence state, or the state where the marriage was performed? The IRS adopted the "state of celebration" approach, which means that federal tax benefits and obligations will apply to same gender couples that are legally married in any state, even if they do not reside in a state that recognizes their marriage.

## ***What Does the Revenue Ruling Do?***

- The guidance clarifies for individuals and employers how to determine federal tax treatment of employees in a legal same sex marriage.
  - Employers do not have to impute income for federal tax purposes on health plan coverage of a same sex spouse, even if the employee resides in a state that does not recognize the same sex marriage.
  - Individuals in same sex marriages can file federal joint tax returns, even if they reside in a state that does not recognize the marriage.
  - Individuals can amend their returns and claim a refund of the taxes paid on income imputed for spousal health coverage in all "open" years (i.e. the two or three tax years for which the individual can still file a refund claim).
  - Employers can also seek a refund of Social Security and Medicare taxes paid on those amounts.
  - Employers can distribute retirement benefits to the same-sex spouse of a deceased employee as they would for an opposite-sex spouse, regardless of where the spouses lived at the time of death or at the time of distribution.

## ***What Doesn't the Revenue Ruling Do?***

- A civil union or domestic partnership will not be considered a legal marriage for federal tax purposes.
- The IRS guidance does not require states to recognize same sex marriages for state tax purposes.
- The IRS guidance does not require employers to offer benefits to same sex spouses.
- The guidance does not permit an employer to file a refund of income tax paid for an individual.

### ***What are Some Tax Issues After the Revenue Ruling?***

- Employers offering pre-tax health benefits no longer need to impute income for federal tax purposes, as long as the employee is in a legal marriage, whether same sex or opposite sex.
- Employers will likely need to impute income for state tax purposes in states that don't recognize same sex marriage—however, it may take legislative action for some states to implement a difference between the federal and state calculations of income to be used for taxation.
- Employers may not need to impute income for state tax purposes in states that don't recognize same sex marriage if the state has a civil union or domestic partnership law that extends state law recognition to those relationships.
- Employers will have to impute income for federal tax purposes for benefits extended to an employee's civil union or domestic partnership partner, as the guidance makes clear that those relationships are not marriages for federal tax purposes.

### ***What are Some ERISA Considerations After the Revenue Ruling?***

- Legally married same-sex spouses will be covered by the spousal rights and obligations under various ERISA provisions, such as
- Spousal consent
- Qualified Domestic Relations Orders
- Special distribution options
- This coverage status continues as long as a couple is legally married, even if they reside in a state that does not recognize their same sex marriage.

### ***What Should Employers Expect?***

- Having to address state tax issues that will arise when employees in a same-sex marriage move from a state that recognizes same-sex marriage to one that doesn't, or get married in a state that recognizes same-sex marriage and reside in one that doesn't
- Having to clarify the federal tax treatment of the benefits for same sex married couples, as it may differ from state treatment
- Possible further state activity either adopting or preventing same-sex marriage recognition
- Disputes between same-sex spouses and other potential beneficiaries of deceased employees over retirement plan benefits
- Additional litigation or legislative activity

### ***What Should Employers Do Now?***

- Continue to monitor developing information regarding the treatment of same sex marriages at the federal and state level

- Review current benefit language, insurance policies, and administrative services agreements for:
  - definitions of Spouse and dependents
  - eligibility criteria
- Determine whether changes are needed, considering:
  - Compliance with state law recognition of same-sex marriage and federal law recognition of the state law determinations
  - Multi-state employers' issues with determining the appropriate federal and state consequences of same-sex marriage recognition
- Determine whether changes are needed in employee communications
- For employers currently providing civil union or domestic partner coverage, determine whether such coverage should continue, terminate, or be modified.

### **Conclusion**

The marriage recognition landscape is changing rapidly with federal agencies weighing in on treatment (and not necessarily the same treatment) on almost a weekly basis. Employers will need to be ready to make adjustments to benefit plans and payroll as the various positions are issued and clarified.

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