

American Benefits Council Benefits Briefing – Health & Retirement Benefits after *Windsor*

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Revenue Ruling 2013-17

- For federal tax purposes, marriage is valid if valid where entered into, regardless of residence—called the “state of celebration” rule
 - **Gender-specific words like “husband” and “wife” include an individual married to person of the same sex**
- Marriage does not include registered domestic partnerships, civil unions, and another relationships not “denominated” as a marriage
- State includes “any domestic or foreign jurisdiction having the legal authority to sanction marriages.” Marriages entered into foreign country like Canada recognized (see Treasury press release)



Revenue Ruling 2013-17

- Reasoning behind ruling
 - **Efficient and fair tax administration**
 - **Domicile movement among states**
 - **Constitutional issues with gender-specific terms in Code**
 - **Administrative problems for individuals, employers, and plan administrators with “state of domicile” rule**
- Individual tax returns
 - **Prior open tax years may be, but not required to be amended**
 - **2012 returns filed on or after September 16, 2013 must reflect marital status**



FAQs

- FAQs for Same-sex Married Individuals
 - **Q&As 10-15 cover health benefits (and associated FICA and FUTA tax issues)**
 - **Q&As 16-19 address qualified plans**
- FAQs for Domestic Partners and Civil Unions



Effective date of Rev. Rul. 2013-17

- Applies “prospectively” as of September 16, 2013.
- Taxpayers may rely on it for filings for open tax years.
- For benefit plans, taxpayer may rely on it “retroactively” only for certain purposes
 - **Filing returns and claiming credits for health or fringe benefits**
 - **IRS will issue further guidance on retroactive application**



Retirement and Pension Plan Implications

- General plan administration changes in place by September 16, 2013
- Spousal consent procedures
 - **QJSA/QOSA**
 - **QPSA**
 - **Profit sharing beneficiary designation**
 - **Consent to loan**
- Direct rollovers
- After-death required minimum distributions
- Hardship distributions



Retirement and Pension Plan Implications

- Additional 415(b) limit for subsidized QJSA
- 10% penalty exceptions
 - **Medical expenses**
 - **Health premiums for unemployed**
 - **Qualified higher education expenses**
 - **First-time homebuyer**
- Prohibited transaction: Married for party-in-interest purposes
- Processing QDROs in post-*Windsor* environment
 - **If valid QDRO, anti-alienation rule not violated.**

