



## ***Compliance Update - 2/10/14: IRS Guidance as a result of the Supreme Court Ruling on Defense of Marriage Act and Flexible Benefits Plans***

In a continuation of guidance issued as a result of the Supreme Court's decision in "United States v. Windsor", [IRS Notice 2014-1](#) was issued with an effective date of December 16, 2013 and includes information on cafeteria plan mid-year election changes, non-taxable flexible spending account (FSA) reimbursements and contribution limits for Health Savings Accounts (HSAs) and dependent care assistance programs.

It also affirms some administrative procedures that plan sponsors began allowing immediately following the court decision on June 26, 2013 or the release of Revenue Ruling 2013-17, such as allowing mid-year election changes for the legal marriage of same-sex couples.

### **Background**

The Supreme Court's decision in "United States v. Windsor" found §3 of the Defense of Marriage Act (DOMA), which provided that only opposite-sex marriages were recognized for federal law, to be unconstitutional. However, §2 of DOMA, which allows a State to refuse to recognize the validity of same-sex marriages that were legally performed in another State, was not at issue in this case. As a result, the ruling created many questions for benefits administrators and tax specialists concerning how state laws affected federal tax circumstances.

As anticipated in our previous [Compliance Alert](#), the IRS and Treasury announced that all legal same-sex marriages will be recognized for federal tax purposes - including tax laws related to employee benefits. This tax treatment applies even if a same-sex couple lives in a state that does not recognize same-sex marriage. The administration also said that same-sex couples can begin filing tax returns as "married filing jointly" or "married filing separately" for the 2013 tax year. It addresses how employees can file claims for refunds for income taxes on income previously imputed to them based on the extension of health and welfare benefits extended to a same-sex spouse.

The complete Revenue Ruling 2013-17 can be found [here](#). In addition, the Agencies issued two sets of FAQs ([found here](#)) which address the tax treatment of same-sex couples and domestic partners.

The previous ruling and this new ruling does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law.

### **Mid-Year Election Changes**

Cafeteria plans may treat participants who were married to a same-sex spouse as of the date of the "Windsor" decision (June 26, 2013) as if the participant experienced a change in legal marital status. In addition, a participant who marries a same-sex spouse after June 26, 2013 may make a mid-year election if they request it at any time.

A change in tax treatment generally does not constitute a significant change in the cost of coverage and thus, would not be allowed under 1.125-4 Regulations, however the change could be made as a result of the change in legal marital status.

The effective date of such changes would be no later than the later of the date that coverage under the cafeteria plan would be added under the cafeteria plan's usual procedures, or a reasonable period of time after December 16, 2013. If participants pay for a same-sex spouses' insurance coverage with after-tax dollars, when and under what circumstances must an employer begin to treat the amount as a pre-tax salary reduction? The Notice clarified this to be no later than the later of the date that a change in legal marital status would be required or a reasonable period of time after December 16, 2013. The employer could issue a revised W-4.

The employee's salary reduction under a cafeteria plan, that the participant is paying on a pre-tax basis, is deemed to include the employee cost of spousal coverage even if it was previously paid on an after-tax basis. This rule applies to the cafeteria plan year including December 16, 2013 and any prior years.

Upon filing their 2013 tax return the couple may also request a refund of any federal employee taxes paid on account of such coverage.

### **FSA Reimbursements**

The employer may permit participants' FSAs to reimburse covered expenses incurred by participants' same-sex spouses that were incurred no earlier than the beginning of the plan year including the Windsor date or the date of the marriage for health FSA, dependent care or adoption expenses.

### **Contribution Limits for HSAs and Dependent Care Assistance Programs**

HSA limits would use the "household" rule if they were married for federal tax purposes with respect to a taxable year. That is, couples who remain married as of the last day of the taxable year, including the 2013 taxable year.

To correct excess contributions, if spouses contributed over the limit during any taxable year, any excess can be distributed from the HSA of one or both spouses no later than the tax return due date for the spouses. Excess contributions not distributed will be subject to excise taxes.

Same-sex married couples are subject to the exclusion limit for contributions to a dependent care FSA if they remain married as of the last day of the taxable year. If the limit is exceeded, elections for one or both can be changed mid-year or the excess contributions will be includable in the spouses' gross income at the time of their tax filing(s).

Cafeteria plans allowing a change in election upon a change in legal marital status generally are not required to be amended to permit a change in status election with regard to same-sex spouses in connection with the "Windsor" decision. However, a plan sponsor may amend their cafeteria plan to permit election changes that were not previously provided for in the written plan document. The cafeteria plan must be amended before the last day of the first plan year beginning on or after December 16, 2013 and can be effective retroactively to the first day of the plan year including December 16, 2013, provided that the cafeteria plan operates in accordance with the guidance under this notice.

### **CPN, Inc.**

As benefit specialists, we are carefully following the application of this ruling and any subsequent guidance that may be issued. We will be closely watching for any subsequent guidance released from government agencies and continue to keep you apprised of this issue, how it may affect you and your employees, as additional information becomes available.