

## **Immediate Action Required in Response to Revenue Ruling 2013-17**

**August 30, 2013**

On August 29th, the IRS issued a ruling granting broad recognition of same-sex marriages for purposes of Federal tax law. The US Treasury Department and the IRS stated that same-sex couples legally married in any state, US territory or foreign country will be recognized for tax purposes, even if the state of the couple's residence does not recognize the marriage. This ruling follows the recent US Supreme Court decision that invalidated the provision of Federal law that prohibited the recognition of such marriages under Federal law. (Yesterday's pronouncement is Revenue Ruling 2013-17.) (The recognition of a same-sex spouse for Federal tax purposes does NOT extend to registered domestic partners or those in a civil union.)

### **Tax Treatment of Affected Employees**

The IRS will apply the ruling prospectively effective September 16, 2013. For 2013, legally married same-sex couples will have to file their Federal tax returns reflecting their married status. Affected taxpayers will be permitted to amend prior year tax returns for any year the statute of limitations hasn't run, which for most will be back to 2011 (or 2010, if the amended return is filed before the end of the three-year period beginning on the date the 2010 return was filed.) Employers may rely on the ruling retroactively for the same period to amend returns or claim credits or refunds of any overpayment of employment taxes (FICA and FUTA) for health and welfare benefits provided to such married employees. Any after-tax payments made by an affected employee to pay for health coverage of a same-sex spouse may be treated as pre-tax payments.

### **Immediate Action for Health and Welfare Plan Coverage**

Employers should immediately cease the reporting of imputed income for health coverage of an employee's same-sex spouse, and not report such income on the 2013 Form W-2. Employers should also convert any payments to cafeteria plans by affected employees from after-tax to pre-

tax not only for 2013 but also for years for which a refund can be claimed for related payroll taxes.

## Immediate Action for Retirement Plans

The ruling applies to retirement plans effective September 16, 2013. A retirement plan must pay any survivor benefits required to be paid to a spouse to a same-sex spouse even if a beneficiary designation is on file naming someone else. If an affected employee retires, he or she should be offered a QJSA from any defined benefit plan in favor of his or her same-sex spouse. Any required minimum distributions for an affected plan participant should recognize a same-sex spouse for calculating the amount and time of payment. The IRS will be issuing further guidance for retirement plans and other benefit plans with rules to be followed and timeline for any amendments; we suggest waiting on further IRS guidance before paying benefits under a QDRO for a former same-sex spouse.

## Conclusion

Employer should quickly contact their payroll service provider or payroll tax department to begin process of filing for a refund of employment taxes for the reversal of imputed income for health care coverage and any after-tax payments to a cafeteria plan for the same-sex spouse of any employees. For 2010, we suggest consulting with counsel to see if a claim for overpayment of payroll taxes can still be made. Employers may need to communication with employees to identify those who are in a same-sex marriage and the dates of such marriages.

Please feel free to contact us if you have any questions.

---

Constance M. Hiatt, JD  
August 30, 2013

Altman & Cronin Benefit Consultants, LLC  
100 Pine Street, Suite 1050  
San Francisco, California 94111  
415 395 9300 Tel  
[www.altmancronin.com](http://www.altmancronin.com)