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Benefit Beat

Author: Karen R. McLeese, Esq.

In This Edition:

For Federal Tax Purposes, a Spouse is a Spouse, Whether Same or Opposite Sex, says the IRS and Treasury

In late June, the Supreme Court rendered two opinions relating to the recognition of same-sex marriage (see CBIZ Benefit Beat, ***Supreme Court Opines on Same-Sex Marriage Issues***, 7/5/13).

In the ***United States v. Windsor*** case, the Supreme Court determined that §3 of the Defense of Marriage Act (DOMA), a 1996 federal law defining marriage as, "*a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife*", is unconstitutional as a violation of the Equal Protection provisions of the U.S. Constitution. As a result of this decision, couples in a same-sex marriage, sanctioned by a state, will have all of the benefits of the federal law.

Now, a couple months later, guidance from federal government agencies is beginning to be issued. This guidance is most welcome in that it will help employers and taxpayers begin to plan for benefit and tax matters relating to a same-sex marriage, though much more guidance is likely to come and is needed.

Most recently, the IRS and Treasury issued ***Revenue Ruling 2013-17***, along with some ***Frequently Asked Questions*** for same-sex couples. In a nutshell, a same-sex couple that is legally married in a jurisdiction, whether domestic or foreign, is to be treated for all federal tax purposes as an opposite-sex married couple is treated for all federal tax purposes, including income taxes, and gift and estate taxes.

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This is true whether the couple resides in the jurisdiction in which the marriage was celebrated or moves to another jurisdiction, even if the jurisdiction in which the couple resides does not recognize same-sex marriage. This is known as the "Rule of Celebration" and is consistent with how the IRS and Treasury have treated common law marriage.

The Revenue Ruling affirms that relationships other than legal marriages, such as civil unions, domestic partnerships or registered domestic partnerships are not afforded this tax treatment – only those couples in a legal marriage will receive the tax advantage afforded opposite-sex married couples.

***Effective Date*:** The effective date of the Revenue Ruling is September 16, 2013.

The Revenue Ruling provides for retroactive reliance for purposes of employer contributions to health coverage, qualified tuition reduction, meals and lodging, dependent care assistance programs and certain fringe benefits pursuant to IRC §132, based on an individual's marital status.

At the moment, for retirement plan purposes, the September 16th date is relevant, though; future guidance may provide some retroactivity.

Family and Medical Leave

At this point, the Department of Labor's (DOL) position differs from that of the IRS and Treasury. Specifically, the DOL has taken the position that the *state of residence*, not the *state of celebration*, defines eligibility for federal family and medical leave purposes; thus, meaning that only those same-sex couples residing in the 14 jurisdictions sanctioning same-sex marriage could be entitled to the benefits of FMLA. The following states recognize same-sex marriage:

States with Same-Sex Marriage Laws	
California*	Massachusetts
Connecticut	Minnesota *(effective 8/1/13)*
Delaware *(effective 7/1/13)*	New Hampshire
District of Columbia	New York
Iowa	Rhode Island *(effective 8/1/13)*
Maine	Vermont
Maryland	Washington

**With regard to California, the 9th Circuit Court of Appeals Court lifted the stay restricting same-sex marriage on June 28, 2013, allowing same-sex marriages to resume.*

Note: While there is no specific state law prohibiting or permitting same-sex marriage in New Mexico, as of the date of this publication 8 of the 33 counties within the state are issuing same-sex marriage licenses.

It will be important to monitor developments from the DOL on this matter. The DOL has updated a ***FMLA Fact Sheet*** to reflect entitlement to FMLA leave for qualifying events such as birth, adoption or foster care, or to care for the employee's spouse, son, daughter, or parent who has a serious health condition. For this purpose, a spouse is a "*husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including 'common law' marriage and same-sex marriage*."

For a more in-depth discussion regarding the *Windsor* decision and its impact on employee benefit plans, please refer to the September 2013 special edition of *At Issue*.

DON'T FORGET TO DISTRIBUTE MEDICARE PART D NOTICES BY OCTOBER 15TH

Plan sponsors are currently inundated with many disclosure obligations, especially those required by the Affordable Care Act. On top of those required disclosures, there remains an annual obligation to provide the Medicare Part D creditable notices to Medicare-eligible individuals.

The annual Medicare Part D open enrollment period for the 2014 year begins October 15, 2013 and runs through December 7, 2013. The Medicare Part D Notice of Creditable or Non-creditable Coverage must be provided to Medicare-eligible individuals at least annually, prior to the Medicare Part D open enrollment period. This means that all Medicare Part D notices of creditable or non-creditable coverage must be provided *prior* to October 15, 2013.

Below are links to the CMS model notices:

- ❑ Model Individual Creditable Coverage Disclosure Notice Language (**English** or **Spanish**)
- ❑ Model Individual Non-Creditable Coverage Disclosure Notice Language (**English** or **Spanish**)

DOL Issues Revised Medicaid/CHIPRA Notice

Several years ago, two additional HIPAA special enrollment events were added to the law by the *Children's Health Insurance Program Reauthorization Act of 2009* (CHIPRA). These special enrollment events relate specifically to Medicaid. One special enrollment event arises if an individual loses eligibility for Medicaid. The other arises when an individual becomes eligible for premium assistance through Medicaid. "Premium assistance" means that a State's Medicaid or Children's Health Insurance Premium (CHIP) program will pay all or a portion of the employer-provided coverage. Employers sponsoring health plans are obligated to annually provide a premium assistance notice to their workforce. This notification can be accomplished by using a model notice provided by the Department of Labor (DOL).

The DOL has recently released an updated model Medicaid/CHIP notice that can be obtained from its website. The revised notice, current as of July 31, 2013, makes the following changes from the January 1, 2013 version:

1. Revised phone number for Oregon's Medicaid/CHIP office;
2. Revised phone number for national CMS office.

The current list of states that provide some form of premium assistance are:

States with Premium Assistance			
Alabama	Kansas	New Hampshire	South Carolina
Alaska	Kentucky	New Jersey	South Dakota
Arizona	Louisiana	New Mexico	Texas
Arkansas	Maine	New York	Utah
Colorado	Massachusetts	North Carolina	Vermont
Florida	Minnesota	North Dakota	Virginia
Georgia	Missouri	Oklahoma	Washington
Idaho	Montana	Oregon	West Virginia
Indiana	Nebraska	Pennsylvania	Wisconsin
Iowa	Nevada	Rhode Island	Wyoming

The notice explaining the right to premium assistance must be provided to anyone residing in these States, without regard to where the employer is located, or where the plan is situsued. The employer can provide the notice to all of its employees, or just to those who are residing in the above-listed states.

The revised Medicaid/CHIP notice can be viewed and/or saved from these website addresses:

English

- ➢ Word version: http://www.dol.gov/ebsa/chipmodelnotice.doc
- ➢ PDF version: http://www.dol.gov/ebsa/pdf/chipmodelnotice.pdf

Spanish

- ➢ Word version: http://www.dol.gov/ebsa/chipmodelnoticesp.doc
- ➢ PDF version: http://www.dol.gov/ebsa/pdf/chipmodelnoticesp.pdf

BEWARE: THE CREDITOR AND THE HSA INVESTMENT ACCOUNT

A recent case [***Leitch v. Christians (In re Leitch)***, No. 13-6009 (8th Cir. B.A.P. Jul. 16, 2013)] determined that bankruptcy does not afford the health savings account (HSA) investment account protection from creditors. The rationale of the Court is that the HSA investment fund is fully accessible by the accountholder, albeit with additional tax consequences if money is withdrawn for other than qualifying medical expenses. In the Court's view, this availability is sufficient to warrant exposing the account balance to the claims of creditors. Some states may provide a bit of protection; but the general rule is that the account is available to creditors.

About the Author: Karen R. McLeese is Vice President of Employee Benefit Regulatory Affairs for CBIZ Benefits & Insurance Services, Inc., a division of CBIZ, Inc. She serves as in-house counsel, with particular emphasis on monitoring and interpreting state and federal employee benefits law. Ms. McLeese is based in the CBIZ Leawood, Kansas office.