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# ***THE GROUP BENEFIT NEWS BULLETIN***

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## **UPDATE:**

### **IRS: Legally Married Same-Sex Couples To Be Recognized For Federal Tax Purposes**

#### **Background:**

Recently we provided you with a Benefit Bulletin regarding the IRS and the Treasury Department releasing Revenue Ruling 2013-17 on the heels of the Supreme Court's 5-4 Ruling striking down section 3 of DOMA (Defense of Marriage Act). The ruling states that for federal tax purposes, same-sex couples who are legally married within a state, whose laws authorize the marriage of two individuals of the same sex, will be treated as married.

The ruling further states that "the IRS intends to issue further guidance on the retroactive application of the Supreme Court's opinion to other employee benefits and employee benefit plans and arrangements. Such guidance will take into account the potential consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries. The Service anticipates that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify."

#### **Update:**

Per conversations with IRS attorneys in the Health and Welfare Branch of the Office of the Associate Chief Counsel, currently, health plans are not required to offer dependent benefits to legally married same sex couples. If an Employer does, then the organization should take the necessary steps to comply with the aspects of the Federal Tax Code. (i.e. same sex deductions should be pre-tax as is opposite sex deductions, etc). Employers that are domiciled in States that do not recognize legal same sex marriages but operate in States that do are not required to provide dependent benefits to legally married same sex employees in those states.

If it is the intent of an organization not to cover dependent benefits of legally married same sex couples, it is strongly recommended that those organizations make certain that their respective plans eligibility wording is clear on that requirement (for example, if plans provide coverage to "spouses" then should be clearly spelled out to "opposite sex spouses"). It was noted that the Justice Department would be actively looking into potential discrimination in this area. It is further recommended that Employers seek additional conversations with their legal counsel regarding this issue.

As always, TBPG will continue to monitor all updates and keep you informed of any pertinent information. If you have any questions, please contact your TBPG representative.

The Benefit Planning Group  
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As always, this material is intended for informational purposes only and is not to serve as instruction or legal counsel.