

**MEMO# 27686**

November 7, 2013

# **Revised Draft Letter to Department of the Treasury Regarding Retroactive Application of U.S. v. Windsor -- Comments Requested by November 18, 2013**

[27686]

November 7, 2013

TO: PENSION COMMITTEE No. 27-13

PENSION OPERATIONS ADVISORY COMMITTEE No. 26-13 RE: REVISED DRAFT LETTER TO DEPARTMENT OF THE TREASURY REGARDING RETROACTIVE APPLICATION OF U.S. v. WINDSOR -- COMMENTS REQUESTED BY NOVEMBER 18, 2013

We have revised our draft letter to the Department of the Treasury regarding the potential retroactivity of U.S. v. Windsor to incorporate comments and suggestions received from members as well as additional editorial changes. As previously described, the letter is intended to respond to the Internal Revenue Service's (IRS) statement in Revenue Ruling 2013-17 regarding its intent to issue further guidance on the retroactive application of the Supreme Court's ruling in Windsor to other employee benefit plan matters and employee benefit plan arrangements. [\[1\]](#)

The revised letter focuses on the administrative problems associated with retroactivity in the context of plan qualification and the independent actions a retirement plan administrator would have to take if Windsor is applied retroactively. The revised letter continues to include a discussion of IRS's statutory authority to apply Windsor on a prospective-only basis and notes that IRS has previously exercised such authority in *Central Laborers' Pension Fund v. Heinz*, another Supreme Court case involving retirement benefits. The revised letter strongly recommends that IRS utilize such authority and issue guidance providing that it will not disqualify a retirement plan as a result of the plan's failure to administratively comply with Revenue Ruling 2013-17 prior to the effective date of the Windsor decision.

We appreciated your thoughtful comments and suggestions on the previous draft letter. We would appreciate receiving any additional comments you may have on the revised draft letter by Monday, November 18, 2013. Additionally, we are contemplating soliciting input

from other trade associations regarding their willingness to join as signatories on the letter.; Please let us know if you have any objection to our doing so.

Howard Bard  
Associate Counsel

[Attachment](#)

**endnotes**

[1] Revenue Ruling 2103-17 is available here: <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>. For the Institute's summary of Revenue Ruling 2013-17 see [Memorandum](#) to Pension Members No. 41-13, Bank Trust and Retirement Advisory Committee No. 28-13, Operations Committee No. 43-13, Transfer Agent Advisory Committee No. 66-13, Tax Committee No. 26-13 [27533], dated September 3, 2013.

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