

MEMO# 27755

December 11, 2013

ICI Submits Letter to Department of the Treasury Regarding Retroactive Application of U.S. v. Windsor

[27755]

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TO: PENSION MEMBERS No. 58-13
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 43-13
OPERATIONS COMMITTEE No. 58-13
TRANSFER AGENT ADVISORY COMMITTEE No. 86-13 RE: ICI SUBMITS LETTER TO
DEPARTMENT OF THE TREASURY REGARDING RETROACTIVE APPLICATION OF U.S. V.
WINDSOR

The Institute drafted and submitted the attached letter to the Department of the Treasury regarding the potential retroactivity of U.S. v. Windsor to retirement plans. We are pleased that twelve additional trade organizations joined the Institute as signatories on the letter. The letter responds to IRS's 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 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 letter includes 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 letter strongly recommends that IRS use its 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 its September 16, 2013 effective date.

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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