

**MEMO# 27649**

October 23, 2013

## **Draft Letter to Department of Treasury Regarding Retroactive Application of Revenue Ruling 2013-17 -- Comments Requested by November 4, 2013**

ACTION REQUESTED

[27649]

October 23, 2013

TO: PENSION COMMITTEE No. 25-13  
PENSION OPERATIONS ADVISORY COMMITTEE No. 24-13 RE: DRAFT LETTER TO  
DEPARTMENT OF TREASURY REGARDING RETROACTIVE APPLICATION OF REVENUE RULING  
2013-17 -- COMMENTS REQUESTED BY NOVEMBER 4, 2013

In anticipation of the issuance of further guidance regarding the retroactive application of Revenue Ruling 2013-17, [\[1\]](#) we have drafted the attached letter strongly recommending that the Internal Revenue Service (IRS) utilize its authority under the Internal Revenue Code to issue guidance providing for the application of Revenue Ruling 2013-17 on a prospective-only basis. Our draft letter includes several illustrations of the significant and complex consequences of a retroactive application of the Revenue Ruling on retirement plans. The letter also discusses IRS's statutory authority to apply the Revenue Ruling 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.

As you may recall, Revenue Ruling 2013-17, which was issued by the Treasury Department and IRS in response to the Supreme Court's holding in *U.S. v. Windsor*, provided that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. [\[2\]](#) The Revenue Ruling, which applies regardless of whether the same-sex couple lives in a jurisdiction that recognizes same-sex marriage, is effective as of September 16, 2013.

Concurrent with the issuance of the Revenue Ruling, the IRS provided guidance through the issuance of two sets of Frequently Asked Questions (FAQs) – one for individuals of the same sex who are married under state law and one for registered domestic partners and individuals in civil unions. The FAQs for same-sex married individuals include four questions and answers (i.e., FAQs 16-19) relating to qualified retirement plan

administration. FAQ 18 provides that the Ruling is applicable to qualified retirement plans as of September 16, 2013. The guidance explains that, although the Ruling allows a taxpayer to file amended returns that relate to prior periods with respect to other matters, [3] this does not apply with respect to matters relating to qualified retirement plans, as “[t]he IRS has not yet provided guidance regarding the application of Windsor and these rules to qualified retirement plans with respect to periods before September 16, 2013.” The Revenue Ruling also states that the IRS intends to issue further guidance on the retroactive application of the Court’s ruling in Windsor to other employee benefit plan matters and employee benefit plan arrangements, and that the guidance will take into account the potential consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, and affected employees and beneficiaries.

We would appreciate receiving any comments you may have on the draft letter by Monday, November 4, 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>.

[2] For the Institute’s summary of Revenue Ruling 2013-17 and the FAQs, 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.

[3] The Revenue Ruling states that it may be relied on by taxpayers retroactively with respect to any employee benefit plan or arrangement or any benefit provided thereunder only for purposes of filing original returns, amended returns, adjusted returns, or claims for credit or refund of an overpayment of tax concerning employment tax and income tax with respect to employer-provided health benefits or fringe benefits that were provided by the employer and are excludable from income under the IRC based on an individual’s marital status.