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RETIREMENT PLAN AMENDMENTS MAY BE REQUIRED TO REFLECT SUPREME COURT'S HOLDING IN WINDSOR REGARDING SAME-SEX MARRIAGES

April 10, 2014

On April 4, 2014, the IRS issued Notice 2014-19, which provides information on the application of *United States v. Windsor*, 570 U.S. ____ (2013), in which the Supreme Court found Section 3 of the Defense of Marriage Act unconstitutional, to qualified retirement plans such as pension plans and 401(k) plans. The IRS had previously ruled that for federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include same-sex couples who are lawfully married under state law. Notice 2014-19 extends the prior guidance to the realm of qualified retirement plans.

In Notice 2014-19 the IRS concludes that “any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex.” For example, plans that require spousal consent to waive the application of a qualified joint and survivor annuity must require spousal consent for married same-sex individuals.

The IRS clarified that whether a qualified plan must be amended to reflect the outcome of the *Windsor* decision depends on the terms of the specific plan. For example, if a qualified retirement plan specifically provides that same-sex marriages are to be disregarded (or other language that is inconsistent with the *Windsor* decision), the plan must be amended, generally on or before December 31, 2014, to be consistent with the *Windsor* decision. Any such amendment must be retroactive to June 26, 2013, the effective date of the *Windsor* decision. Plans may also be amended to reflect the outcome of *Windsor* retroactively to periods prior to June 26, 2013, so long as all other applicable qualification requirements are met.

Please contact a member of Dilworth Paxson’s Tax Department or Employee Benefits Group if you would like to discuss any aspect of Notice 2014-19, or its effect on the qualified retirement plans sponsored by your business.