

## Domestic Partners and Same-Sex Marriages

### 1. Did the Supreme Court's 2013 ruling that the Defense of Marriage Act is unconstitutional impact HSAs?

Yes, the ruling changes HSAs for legally married same-sex couples. The Defense of Marriage Act (DOMA) defined marriage as between one man and one woman and accordingly did not grant same-sex couples the same rights as opposite sex couples under federal law. Prior to the Supreme Court's ruling, same-sex couples could not get the benefits afforded "spouses" under HSA law.

HSA law provides special treatment for spouses in the following areas:

- **Tax-Free Distributions.** An HSA owner can use his or her HSA tax-free to pay the eligible medical expenses of spouses.
- **Beneficiary Treatment.** A spouse beneficiary can treat the HSA as his or her own upon the death of the HSA owner.
- **Divorce Transfer.** An HSA owner can transfer assets into an HSA of former spouse in the case of a divorce.
- **Estate Tax Treatment.** If a spouse is named as the beneficiary of the HSA, the treatment of the HSA may change for estate tax purposes.
- **Family HDHP Treatment.** Spouses covered under a family HDHP are capped at the combined HSA family limit. Also, if one spouse has a family HDHP, then both spouses are deemed to have family HDHPs. This rule closes a loophole that allowed each partner in a same-sex couple to contribute the family HSA maximum in certain circumstances.
- **Child of Former Spouse.** An HSA owner can use the HSA to pay for medical expenses of his or her child that is claimed as a tax dependent by a former spouse (this is helpful in cases of divorce and legal separation).

### 2. Are same-sex couples always considered spouses?

No. Same-sex couples that are legally married and recognized by the state law as "spouses" can take advantage of the special treatment for spouses under HSA law. Same sex marriage states include Connecticut, Delaware, District of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont and Washington (Check your state law before acting as this list could change given rapid developments in this legal area).

### 3. Is a domestic partnership or civil union the same as marriage?

No. The IRS states that for federal tax purposes the term "spouse" does not include "registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under that state's law..." This is true for same-sex and opposite sex relationships. "Spouse" is the key word for HSA laws but "marriage" is generally the state classification that results in couples becoming "spouses."

IRS Rev. Rul. 2013-17.

### 4. I was married in a state that allows same-sex marriages but now live in a state that does not, what rules do I follow?

For federal tax purposes, your marriage is recognized assuming it was validly entered into in a state whose laws authorize same-sex marriages. You follow the rule for "spouses" for HSA purposes.

### 5. What is the effective date for the changes for same-sex spouses?

The Supreme Court declared the Defense of Marriage Act unconstitutional on June 6, 2013; however, there remains some uncertainty as to what this means from a timing perspective for HSAs. The IRS, the key regulatory authority for HSAs, released guidance on the impact of the change stating that the rules released in its guidance are prospective from September 16, 2013.

The same guidance; however, added that affected taxpayers may retroactively apply the new rules in some cases. This includes filing amended returns to take advantage of tax benefits so long as the deadline for filing amended returns has not expired (generally three years). The IRS is also providing retroactive relief for benefit programs; including salary deferrals to Section 125 plans. At the time of this writing the exact nature of that relief is uncertain and the IRS promised more guidance on the retroactive application of this rule.

From an HSA perspective, a retroactive application could be favorable in a situation where an HSA owner was legally married to a same-sex spouse that incurred medical expenses and desired to use the HSA owner's HSA to pay those expenses. Under DOMA, the HSA owner could not use his or her HSA to pay the medical expenses of that partner. Now, the HSA owner can. If still within the time period to amend the tax return, the HSA owner could likely reimburse himself or herself for those expenses paid outside of the HSA with HSA funds (assuming the medical expenses were not otherwise paid for with tax-favored dollars and that the couple was legally married on the date the medical expense were incurred). This early interpretation may change as we learn more from future IRS releases.

IRS Rev. Rul. 2013-17.

#### **6. Can I use my HSA for my same-sex spouse's eligible medical expenses?**

Yes, provided you were married in a state that legally recognizes same-sex marriages. The unconstitutional federal Defense of Marriage Act no longer limits HSA law's use of the word "spouse" to mean only an opposite sex spouse.

#### **7. Can I use my HSA to pay medical expenses of my domestic partner?**

No, you can only use your HSA to pay for the medical expenses of your spouse or your dependents. If your domestic partner meets the IRS requirements as a dependent (IRS Code § 152), then you can use your HSA for your domestic partner's medical expenses. Meeting the definition of a "dependent" is difficult for non-children. If your state recognized same-sex marriages with the result being that you are spouses (married), rather than domestic partners (or are spouses in addition to being domestic partners), then you can use your HSA to pay for eligible medical expenses of your spouse.

#### **8. If my HDHP covers only my domestic partner or same-sex spouse and me, can I contribute the family HDHP limit?**

Yes, in order to contribute the family HSA limit (\$6,550 for 2014); your High Deductible Health Plan (HDHP) must cover you and at least one other person. If that other person is your domestic partner or your same-sex spouse, then you have a family HDHP and you can contribute the family limit if you are otherwise eligible for an HSA. The rule is pretty straight-forward in this area and to get the family contribution limit you simply need to be covered under a family HDHP meaning you and at least one other person be on the plan. That other person could be a spouse (same-sex or not), domestic partner (same sex or not), child or potentially someone else allowed on your family HDHP.

#### **9. Does my domestic partner's or same-sex spouse's HSA contribution count against my maximum contribution?**

One potential downside for same-sex couples is that the court's ruling closed a loophole. HSA law caps spouses' combined HSA contributions to the family limit (\$6,550 for 2014) if one or both spouses had family HDHP coverage. Same-sex couples avoided that cap and could each potentially contribute the maximum limit.

Spouses are subject to a couple of special rules in this regard: (1) if either spouse has family HDHP coverage both spouses are deemed to have family HDHP coverage and (2) combined the spouses cannot exceed the family HDHP limit.

Whether the loophole is still available to same-sex couples depends on whether or not the couple is legally married under state law.

**Example.** Todd and Adam are domestic partners and are not considered spouses under their state's laws. Todd's employer provides HDHP coverage for Todd and his domestic partner. Todd enrolls in a family HDHP through his employer that covers only Todd and Adam. Todd and Adam are both otherwise eligible for an HSA. Adam is not Todd's dependent (or vice versa). Todd contributes \$6,550 to his own HSA for 2014. Adam also contributes \$6,550 to his own HSA. Combined they get \$13,100 of deductions for HSA contributions. An opposite-sex married couple would only get one \$6,550 HSA contribution. Todd; however, cannot use his HSA to cover Adam's medical expenses and Adam cannot use his HSA to pay for Todd's expenses (whereas married couples are able to use their HSA to cover each other's expenses).

**Example.** Using the same facts as the previous example, except that Todd and Adam are same-sex spouses married in a state that allows that status. Todd contributes \$6,550 to his HSA for 2014. Adam cannot also contribute to his HSA. Combined married couples must coordinate their HSA contributions not to exceed the federal limit and because Todd contributed the full amount there is no limit left for Adam to contribute to an HSA. Todd can use his HSA to cover Adam's medical expenses.