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Same-Sex Married Couples

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Same-Sex Married Couples— Tax Filing Rules

On June 26, 2013, the U.S. Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional because it violates the principles of equal protection (*Windsor*, U.S. Supreme Court, June 26, 2013). The IRS has now issued guidance on the effect of the *Windsor* decision and how the IRS interprets the sections of the Internal Revenue Code that refer to a taxpayer's marital status. Specifically, Revenue Ruling 2013-17 deals with the following issues for federal tax purposes as a result of the *Windsor* decision:

- Whether the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex, if the individuals are lawfully married, and whether the term marriage includes such a marriage between individuals of the same sex. For this purpose, lawfully married means a legal marriage under any domestic or foreign jurisdiction having the legal authority to sanction marriages (such as a state that legally sanctions same-sex marriages).
- Whether the IRS recognizes a marriage of same-sex individuals validly entered into in a state (or other jurisdiction) whose laws authorize the marriage of two individuals of the same sex even if the state in which they are domiciled does not recognize the validity of same-sex marriages.
- Whether the terms "spouse," "husband and wife," "husband," and "wife" include individuals (whether of the opposite sex or same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage

under the laws of that state, and whether the term "marriage" includes such relationships.

Recognition of Same-Sex Marriages

There are more than 200 provisions in the Internal Revenue Code and Regulations that include the terms "spouse," "marriage," "husband and wife," "husband," and "wife." The IRS Revenue Ruling states that such terms also apply to individuals lawfully married under state law (or other jurisdiction) to a person of the same sex, and to legal marriages under state law (or other jurisdiction) between individuals of the same sex. It does not matter if a term is gender-neutral or gender specific because the ruling in *Windsor* said any federal law that confers marriage benefits and burdens only on opposite-sex married couples is unconstitutional.

Marital Status Based on the Laws of the State Where a Marriage Is Initially Established

For federal tax purposes, the IRS Revenue Ruling states that individuals of the same sex are lawfully married under the Internal Revenue Code as long as they were married in a state (or other jurisdiction) whose laws authorize the marriage of two individuals of the same sex, even if they are domiciled in a state that does not recognize the validity of same-sex marriages.

Registered Domestic Partnerships, Civil Unions, or Other Similar Formal Relationships Not Denominated as Marriage

For federal tax purposes, the IRS Revenue Ruling says the term marriage 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, and the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a formal relationship. This applies regardless of whether individuals who have entered into such relationships are of the opposite sex or the same sex.

Effective Date

The IRS Revenue Ruling is effective September 16, 2013. However, affected taxpayers may also rely on this Revenue Ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from this Revenue Ruling, provided the applicable statute of limitations period has not expired. If such a return is filed based on this Revenue Ruling, all items required to be reported on the return or claim that are affected by the marital status of the taxpayer must be adjusted to be consistent with the marital status reported on the return or claim.

Taxpayers may also rely on this Revenue Ruling retroactively with respect to any employee benefit plans and arrangements for purposes of employer-provided health coverage benefits or other fringe benefits that were provided by the employer and are excludable from income under the Internal Revenue Code based on an individual's marital status.

For example, if employees could elect to make pre-tax salary-reductions for health coverage under an IRC section 125 cafeteria plan, and the employer also elected to provide health coverage for a same-sex spouse on an after-tax basis under a group health plan sponsored by that employer, the affected taxpayer may treat the amounts that were paid by the employee for the coverage of the same-sex spouse on an after-tax basis as pre-tax salary reduction amounts.

There is nothing in the Revenue Ruling that requires an affected taxpayer to amend a previously filed return to pay additional taxes such as a marriage penalty. The election to file amended returns only applies to overpayments of tax. There is also nothing in the Revenue Ruling that says it is optional for a legally married same-sex couple to be treated as married for federal tax purposes. Thus, if a married same-sex couple is subject to a marriage penalty as a result of their legal marriage, they do not have the option to file as if they were not married.

Contact Us

There are many events that occur during the year that can affect your tax situation. Preparation of your tax return involves summarizing transactions and events that occurred during the prior year. In most situations, treatment is firmly established at the time the transaction occurs. However, negative tax effects can be avoided by proper planning. Please contact us in advance if you have questions about the tax effects of a transaction or event, including the following:

- Pension or IRA distributions.
- Significant change in income or deductions.
- Job change.
- Marriage.
- Attainment of age 59½ or 70½.
- Sale or purchase of a business.
- Sale or purchase of a residence or other real estate.
- Retirement.
- Notice from IRS or other revenue department.
- Divorce or separation.
- Self-employment.
- Charitable contributions of property in excess of \$5,000.

This brochure contains general information for taxpayers and should not be relied upon as the only source of authority. Taxpayers should seek professional tax advice for more information.

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