

IRS Issues Guidance on Same-Sex Marriage

By Arnold Sherman

On August 29, the IRS issued its much-anticipated guidance explaining the effect of the Supreme Court's June 2013 decision in *U.S. v Windsor* on the application of the sections of the Internal Revenue Code that refer to a taxpayer's marital status. In *Windsor*, the Supreme Court held that Section 3 of the Defense of Marriage Act (DOMA), which required same-sex spouses to be treated as not being married for federal tax purposes, is unconstitutional because it violates the principles of equal protection.

In Revenue Ruling 2013-17, the IRS ruled that same-sex couples legally married in a jurisdiction that recognizes their marriages will be treated as married for all federal tax purposes – income, gift and estate taxes – and for *all* provisions in the tax laws where marriage is a factor. In other words, any same-sex marriage legally entered into in one of the states, the District of Columbia, a U.S. territory or a foreign country is covered by the ruling. The tax provisions impacted by this ruling include filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit. **The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or one that does not recognize same-sex marriage.**

The IRS stated that this ruling is consistent with its 1958 ruling where it determined that individuals who entered into a common-law marriage in a state that recognized common-law marriages shall be considered married for federal income tax purposes notwithstanding that the couple later moved to a state that did not recognize common-law marriages.

In reaching its determination that individuals of the same sex will be considered married for tax purposes as long as they were married in a state whose laws authorize same-sex marriage, the IRS sought to achieve uniformity, stability and efficiency in the application and administration of the tax laws. The IRS noted that in our increasingly mobile society, it is important to have a uniform rule of recognition that can be applied with certainty by the IRS and taxpayers alike for all federal tax purposes.

The ruling will be applied prospectively as of September 16, 2013, which means that legally married same-sex couples must file their 2013 federal income tax return as either "married filing jointly" or "married filing separately." In addition, a same-sex couple that files an **original** income tax return for 2012 on or after September 16, 2013, must file using either married filing jointly or married filing separately status.

Legally married same-sex couples may also rely on this ruling for the purpose of filing amended returns, adjusted returns or claims for credit or refund for any over payment of tax resulting for prior years, *provided* that the applicable statute of limitations period has not expired. As a general rule, refund claims may be filed within three years from the date the return was filed or two years from the date the tax was paid, whichever is later. As a result, claims for refunds can be filed for the 2010, 2011 and 2012 tax years.

The ruling will also impact any employee that elected to provide health coverage for a same-sex spouse on an after-tax basis under a group health plan sponsored by an employer. An affected taxpayer may now treat the amounts he or she paid for the coverage of the same-sex spouse as pre-tax salary reduction amounts and file a refund claim for any open year.

For federal tax purposes, however, the ruling provides that 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. In addition, the terms "spouse," "husband and wife," "husband" and "wife" do not include individuals who have entered into such a formal relationship. The IRS noted that this determination applies regardless of whether individuals who have entered into such relationships are of the opposite sex or the same sex.

The IRS plans to issue streamlined procedures for employers who wish to file refund claims for payroll taxes paid on previously taxed health insurance and fringe benefits provided to same-sex spouses. In addition, the IRS intends to issue further guidance on cafeteria plans and on how qualified plans and other tax-favored arrangements should treat same-sex couples for periods before the ruling takes effect on September 16. It is expected that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify.

As additional guidance is issued, we will try to keep you “in the loop.” Feel free to check this website for updated blogs and related information.