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CLIENT ALERT

Same-Sex Marriages Recognized for Federal Tax Purposes Regardless of Where Taxpayers Live

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On August 29, 2013, the U.S. Treasury Department and the Internal Revenue Service (IRS) issued guidance (in the form of a Revenue Ruling, a News Release, and two sets of Frequently Asked Questions) clarifying that same-sex couples that are legally married in a state (or country) that recognizes their marriage will be treated as married for federal tax purposes, regardless of whether the couple lives in a state that recognizes same-sex marriage or a state that does not.

The ruling (Rev. Rul. 2013-17) implements the federal tax aspects of the Supreme Court's June 26 decision in *U.S. v. Windsor*, which invalidated a key provision of the 1996 Defense of Marriage Act ("DOMA"). (We described the *Windsor* decision in our June 28 article.) Under the recent ruling, which is effective as of September 16, 2013, same-sex couples are treated as "married" for all federal tax purposes, including income, gift, and estate taxes. According to the News Release, the ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependent exemptions, taking deductions, employee benefits, contributing to an IRA, and claiming certain tax credits.

The key question prior to this ruling was whether same-sex couples who legally married in one of the 13 states (plus the District of Columbia) that recognize same-sex marriage, but who then moved to a state that does *not* recognize same-sex marriage, would be treated as married for federal tax purposes. We now know that the answer to that question is "yes." Under the ruling, any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory, or a foreign country will be recognized for federal tax purposes, regardless of where the couple currently reside. However, the ruling does *not* apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law.

The Treasury Department and the IRS also issued two separate 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.

According to the first set of FAQs, legally married same-sex couples generally

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must file their 2013 federal income tax return using either the “married filing jointly” or the “married filing separately” filing status. Those who were in same-sex marriages for previous years may, but are not required to, file amended returns (as married taxpayers) for one or more prior tax years – if those years are still “open” tax years under the applicable statute of limitations (which is generally three years for federal income tax purposes). In addition, employees who purchased health insurance coverage for their same-sex spouse through their employer on an after-tax basis may treat the amounts paid for that coverage as pre-tax and thus excludable from income.

The News Release and the revenue ruling indicate that the IRS intends to issue guidance 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, as well as additional guidance on how qualified retirement plans, cafeteria plans, and other tax-favored arrangements should treat same-sex spouses for periods before the September 16, 2013, effective date of the ruling.

If you have any questions about the federal tax treatment of employee benefits for same-sex spouses (or domestic partners), please do not hesitate to contact any of the attorneys in the Employee Benefits Practice Group at Spencer Fane.
