

Tax Law Update

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Internal Revenue Service Recognizes Federal Tax Benefits for Same-Sex Married Couples

On August 29, 2013, the Internal Revenue Service issued a Revenue Ruling clarifying the federal tax treatment of the approximately 130,000 same-sex married couples throughout the United States, generally recognizing their married status for tax purposes. The Ruling paves the way for same-sex couples to reap many tax benefits long enjoyed by opposite-sex married couples, including reduced taxes on employee benefits and reduced estate and gift taxes. Employers will need to take action to bring retirement plans and health and welfare benefit plans into compliance.

Revenue Ruling 2013-17 implements the U.S. Supreme Court's June 2013 decision in *United States v. Windsor*, which invalidated the federal Defense of Marriage Act's definition of "marriage" as a union between a man and a woman.

Under Revenue Ruling 2013-17, same-sex married couples are considered to be married for federal tax purposes if the individuals were lawfully married in a state, or a foreign jurisdiction, that recognizes same-sex marriage. This is true regardless of whether the marriage is recognized by the state (or foreign jurisdiction) where the couple resides. This treatment is mandatory for tax returns filed on or after September 16, 2013, and taxpayers have the option of applying the treatment in returns filed before September 16. Taxpayers also may apply the treatment retroactively by filing amended returns or refund claims for tax years that are not closed by the statute of limitations (generally, 2010-2012). In any amended return, a couple will have to change their filing status to married filing jointly or separately. The Ruling does not apply to individuals in domestic partnerships and civil unions.

The Ruling will have far-reaching effects on the taxation of same-sex married households, most of which will be beneficial. Benefits include the exemption of inter-spouse transfers from federal estate and gift taxes and the ability to receive tax-favored benefits from a spouse's employer. On the negative side, same-sex married couples in which both individuals earn income may now face a "marriage penalty," as do some opposite-sex married couples.

The Ruling is also significant for administrators of qualified retirement plans. The Ruling clarifies that legally married same-sex spouses of plan participants are entitled to spousal rights and benefits required under federal law for qualified plans, including applicable death benefits. Qualified retirement plans will be required to comply with these rules by September 16, 2013.

The IRS has not yet provided guidance with respect to how or when qualified retirement plans must be amended, but the Ruling promises that such guidance is forthcoming.

Prior to the Supreme Court's decision in *Windsor*, sponsors of health and welfare benefit plans were required to report the value of benefits provided to same-sex spouses of employees as income to the employee, while benefits have generally been provided tax-free to opposite-sex spouses. The Ruling clarifies that employees with same-sex spouses will be eligible to file amended tax returns for all open tax years to seek refunds of income taxes paid on those amounts. Similarly, employees may file amended returns to recover income taxes paid on after-tax healthcare premiums contributed for a same-sex spouse. As noted above, couples filing amended returns will need to change their filing status to married filing jointly or separately and may find that marriage-penalty consequences outweigh the benefits of married status.

Finally, the Ruling also clarifies that employers may seek refunds for payroll taxes previously paid on benefits to same-sex spouses of employees.

**For more information, please contact the Tax Law Practice Group
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