

employee benefits lawflash

September 3, 2013

Same-Sex Marriages Recognized for Federal Tax Purposes

New ruling will apply even if the same-sex couple resides in a jurisdiction that does not otherwise recognize same-sex marriages.

On August 29, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) released a highly anticipated and important ruling stating that same-sex couples who are legally married in jurisdictions that recognize their marriages will be treated as married for all federal tax purposes.¹ Revenue Ruling 2013-17² clarified that this tax treatment will apply regardless of whether the same-sex couple resides in a state or jurisdiction that does not otherwise recognize same-sex marriages.

The ruling was issued in response to the June 26, 2013 U.S. Supreme Court decision in *United States v. Windsor*, where the Supreme Court determined that section 3 of the Defense of Marriage Act (DOMA) was unconstitutional. In conjunction with this announcement, the IRS released two question-and-answer documents³ reflecting the holdings of Revenue Ruling 2013-17. The documents provide information regarding the federal tax implications for same-sex marriages and domestic partnerships.

What does the ruling mean?

All same-sex couples who are married in a jurisdiction that recognizes same-sex marriages will be treated as married for all federal tax purposes, even if the same-sex couple resides in a jurisdiction that does not otherwise recognize same-sex marriages. Thus, for employee benefit plan purposes, a same-sex spouse should have all rights as a spouse under an employer's qualified plans and federal health and welfare laws (e.g., Consolidated Omnibus Budget Reconciliation Act (COBRA) and Health Insurance Portability and Accountability Act (HIPAA)).

How does the ruling affect domestic partnerships and civil unions?

The federal tax treatment will not apply to registered domestic partnerships, civil unions, or other similar relationships that may be recognized under state law.

When is the ruling effective?

The ruling generally only applies prospectively for operational purposes with respect to periods on and after September 16, 2013. However, the effective date is generally retroactive for purposes of individuals and employers filing amended tax returns or claims for credits and refunds with respect to taxes paid prior to September 16, 2013.

1. View the announcement at <http://www.irs.gov/uac/Newsroom/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes-Ruling-Provides-Certainty-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples>.

2. View Revenue Ruling 2013-17 at <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>.

3. View "Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law" at <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples> and "Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions" at <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions>.

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Thus, effective as of September 16, 2013, qualified retirement plans are required to treat same-sex spouses as spouses for purposes of satisfying the federal tax laws relating to qualified retirement plans. Additionally, health and welfare plans should not impute income or otherwise tax employees for same-spouse benefits after such date.

The IRS indicated that it will release future guidance relating to the application of the ruling for periods prior to September 16, 2013. The IRS also indicated that it will issue additional guidance clarifying the time by which any required plan amendments must be adopted.

We will further analyze the implications of the ruling and release more detailed information in the near future.

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