



STU Legal Update – IRS Revenue Ruling 2013-17

September 2, 2013

On August 29, 2013, the Department of Treasury and the Internal Revenue Service (IRS) issued Revenue Ruling 2013-17 asserting their position regarding the treatment of same-sex marriages under federal tax laws. In this guidance, the Treasury Department and the IRS state that they will recognize all legally married same-sex couples under all federal tax laws regardless of whether a same-sex married couple's state of domicile recognizes same-sex marriages. This guidance from the IRS will ensure that opposite-sex couples and same-sex couples who are legally married will be treated similarly under federal tax laws.

Background

This new guidance from the IRS is an expected development that stems from the Supreme Court of the United States' decision in *U.S. v. Windsor* in which the Court determined that section 3 of the Defense of Marriage Act of 1996 (DOMA) was unconstitutional. Prior to *Windsor*, section 3 of DOMA required the IRS and other federal agencies to recognize opposite-sex married couples for a variety of reasons (including for purposes of filing federal income tax returns and determining one's entitlement to federal benefits). With the Court's decision in *Windsor*, the IRS was obligated to re-assess its former position of not recognizing same-sex married couples as legally married for purposes of federal tax laws. It is this re-assessment that resulted in the issuing of Revenue Ruling 2013-17.

Revenue Ruling 2013-17

Under this ruling, a couple of the same sex will be considered to be lawfully married for all purposes under the Internal Revenue Code of 1986, as amended (the "Code"), so long as the couple was married in any jurisdiction (domestic or foreign) that legally recognizes same-sex marriages. This rule will apply even if the same-sex married couple currently lives in a state that does not recognize the validity of same-sex marriages.

The ruling draws a distinction between same-sex marriages and other formal relationships that are not considered marriage under state law. The IRS explicitly re-affirms that for all purposes of the Code, the term "marriage" continues to exclude registered domestic partnerships, civil unions, or other similar formal relationships that may have legal significance under a jurisdiction's laws but clearly are not intended to be a marriage. Thus, same-sex couples who are not married under any jurisdiction's laws will continue to be treated as single individuals under all federal tax laws. This conclusion also will apply to opposite-sex couples in domestic partnerships and other similar relationships.

Impact of Ruling on Employee Benefit Plans

In discussing its rationale for issuing Rev. Rul. 2013-17, the IRS expressly acknowledged the impact of this ruling on employee benefit plans, plan participants, employers, plan sponsors and administrators. For instance, the IRS stated in the ruling that if an employee made a pre-tax salary-reduction election for health coverage under his employer's Code section 125 cafeteria plan and the employee also elected

coverage for his/her same-sex spouse on an after-tax basis, the employee may treat the after-tax payments for the spouse's coverage as a pre-tax salary reduction.

In addition to the impact on health plans and cafeteria plans, the ruling also is expected to impact spousal rights under employer-sponsored retirement plans and other tax-favored arrangements such as IRAs.

Effective Date and Reliance by Taxpayers

The revenue ruling becomes effective on September 16, 2013, but the ruling permits taxpayers (including individuals, plan sponsors and employers) to start relying on the ruling retroactively for the purpose of filing original/amended/adjusted returns and/or claims for credit or refund for tax overpayments resulting from the ruling so long as the applicable statutes of limitations have not expired. Thus, employees may retroactively file original returns, amended returns and/or adjusted returns to address any employer-provided health coverage benefits or fringe benefits that their same-sex spouses received on an after-tax basis. The IRS also plans to issue simplified procedures to enable employers file for refunds of employment taxes paid on previously-taxed health and fringe benefits that the employers provided to its' employees' same-sex spouses.

Next Steps

The IRS indicated that it will issue further guidance on the retroactive application of the Court's decision in *Windsor* to retirement plans, cafeteria plans and other benefit plans and arrangements. The IRS anticipates that plan sponsors and plan administrators will have sufficient time to amend their plans and make any necessary corrections to ensure the plans and the benefits provided continue to retain favorable tax treatment. In anticipation of the additional guidance from the IRS, *we recommend that plan sponsors and plan administrators begin to review their retirement plans, cafeteria plans, health plans and other employee benefit plans and identify the plan provisions that most likely will be impacted by Revenue Ruling 2013-17.*

If you have any questions about how Revenue Ruling 2013-17 will impact your employee benefit plans or need help reviewing your different benefit plans, please contact *Nwa'ndo Ume-Nwagbo* by phone at 404-418-8492, ext. 103 or by e-mail at: neu@stulawgroup.com.

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