

IRS Rules That Same-Sex Marriages Will Be Recognized For Federal Tax Purposes

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On August 29, 2013, the IRS issued an announcement (Rev. Rul. 2013-72 <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>) ruling that it will treat same-sex couples, legally married in jurisdictions that recognize their marriages, as married for federal tax purposes. Importantly, the ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

The ruling implements federal tax aspects of the June 26th Supreme Court decision invalidating a key provision of the 1996 Defense of Marriage Act (DOMA).

Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income taxes as well as gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit.

The ruling will cover 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. However, the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law. New Jersey permits same-sex couples to enter into civil union, but not marriages. So this ruling will not apply to New Jersey civil unions, but will apply to same-sex couples who were married outside of New Jersey.

Legally married same-sex couples generally must file their 2013 federal income tax return using either the married filing jointly or married filing separately filing status. Also important is that individuals who were in same-sex marriages may, but are not required to, file original or amended returns choosing to be treated as married for federal tax purposes for one or more prior tax years still open under the statute of limitations. Generally, the statute of limitations for filing a refund claim is three years from the date of the filing of the return, or two years from the date the tax was paid, whichever is later. As a result, refund claims can still be filed for tax years 2010, 2011 and 2012.

Additionally, employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis may treat the amounts paid for that coverage as pre-tax and excludable from income.

If you have any questions regarding the impact of this ruling, please contact Gary Botwinick, Chair of the Taxation/Trusts & Estates Department at Einhorn, Harris at gbotwinick@einhornlawyers.com or 973-627-7300.

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