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IRS Issues Guidance Implementing Repeal of DOMA

In late June the U.S. Supreme Court invalidated portions of the 1996 Defense of Marriage Act (DOMA) in the *Windsor* case.

Implementing that decision, the Internal Revenue Service (IRS) has now issued a ruling (Revenue Ruling 2013-17) confirming that any same-sex couple who marries in a jurisdiction that recognizes their marriage will be treated as married for federal tax purposes, regardless of whether or not the couple now lives in a jurisdiction that recognizes same-sex marriage.

The ruling applies to all federal tax provisions where marriage is a factor, including those affecting employee benefits and income taxes. 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 is covered by the ruling. However, persons who are in civil unions, registered domestic partnerships and other similar forms of relationships may not take advantage of this ruling, even if their relationship is recognized under state law.

The IRS has stated that it will begin applying the terms of Revenue Ruling 2013-17 on September 16, 2013, but taxpayers generally may rely on the terms of the Revenue Ruling

for earlier periods (subject to applicable statutes of limitations).

This may be important not only for employees, who may want to amend personal income tax returns (for example, to re-characterize same-sex spouse health insurance coverage from their employers from an after-tax to a pre-tax basis and excludable from income), but also 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.

It is important to note that the ability to rely on this Revenue Ruling prior to September 16, 2013 does not apply for purposes of qualified retirement plans. There, the IRS has said it intends to issue additional guidance in the future on how qualified retirement plans and other tax-favored arrangements must comply with *Windsor* and Revenue Ruling 2013-17. It is expected that this future guidance will address, among other issues, any necessary plan amendments, their effective date, and any necessary corrections relating to plan operations for periods before the future guidance is issued.

This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.