

IRS, Treasury Recognize Same-Sex Marriages for Federal Tax Purposes

On August 29, 2013, the IRS released [Revenue Ruling 2013-17](#), announcing that all legally married same-sex couples will be treated as married for Federal tax purposes, regardless of their state of domicile. At the same time, the IRS issued a [press release](#) and answers to [Frequently Asked Questions](#).

This Revenue Ruling is the IRS's first step in implementing the Supreme Court's June 26, 2013 decision in *U.S. v. Windsor*, which invalidated the provision of the 1996 Defense of Marriage Act ("DOMA") defining marriage as between a man and a woman.

Who will be considered married

Relying on a Revenue Ruling issued in 1958 on the determination of marital status for Federal income tax purposes of individuals who have entered into a common-law marriage in a state recognizing such marriages, the IRS has ruled that it will treat as married all same-sex couples that were legally married in a jurisdiction that authorizes the marriage of same-sex couples. While individual states and countries vary with respect to their rules of marriage recognition and in their treatment of same-sex marriages, the IRS will recognize a same-sex marriage that was validly entered into in a state whose laws authorize such marriages even if the same-sex married couple is domiciled in a state that does not recognize the validity of same-sex marriage. This ruling will allow individuals to move between states without fear that their marital status for Federal tax purposes could change at the border. The Revenue Ruling notes that the IRS position also ensures consistency with the established precedent for common-law marriage and will avoid complexities in the administration of tax policy affecting individuals and employee benefits.

Couples that have entered into domestic partnerships, civil unions, or other state-recognized relationships but who are not married under state law will not be considered married for Federal tax purposes.

Retroactivity

The Revenue Ruling is generally effective as of September 16, 2013. Once the ruling takes effect, married same-sex couples generally must file any original Federal tax returns as "married filing jointly" or "married filing separately." Employee benefit plans must treat same-sex spouses in the same manner as other legal spouses.

Individuals who were in same-sex marriages in prior tax years may, but are not required to, file amended returns choosing to be treated as married for Federal tax purposes for one or more tax years still open under the statute of limitations. For most individuals these are the years 2010, 2011 and 2012. Individuals who were in same-sex marriages in 2012 and who have not yet filed an original return for 2012 and do so before September 16, 2013 may choose to file as unmarried for Federal tax purposes for 2012.

Impact of the Ruling

Recognizing that the holdings in Revenue Ruling 2013-17 will raise a number of questions, the IRS issued FAQs that provide helpful details and examples on the following topics:

- Filing status for Federal tax returns (married filing jointly, married filing separately, head of household)
- Claiming dependents

- Taking deductions and claiming the adoption credit
- Taxation of benefits provided to same-sex spouses, including refunds for prior years
- Application of the Revenue Ruling to qualified retirement plans

Future guidance expected

The IRS intends to issue additional guidance on the implementation of *U.S. v. Windsor*, including:

- Streamlined procedures for employers seeking a refund on payroll taxes previously paid on health insurance and fringe benefits provided to same-sex spouses
- Guidance on the treatment of same-sex married couples before September 16, 2013 under qualified retirement plans, other tax-favored retirement arrangements, and cafeteria plans

Other agencies may provide guidance on federal programs they administer that are affected by the tax code.

For more information about the Revenue Ruling, the FAQs, or the DOMA decision generally, please contact your usual Ropes & Gray advisor or a member of the [employee benefits](#) practice group.