

## Legal same-sex marriages to be recognized for federal tax purposes

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### SUMMARY

A new federal policy will allow legally married same-sex couples to get the same federal tax benefits as married heterosexual couples. The policy applies even if the same-sex couple lives in a state that does not recognize their marriage that took place legally in another state.

Changes in other related federal laws are likely to follow.

The U.S. Treasury Department and the Internal Revenue Service announced on August 29, 2013 that same-sex couples legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes, regardless of their current residence. For example, if a couple was legally married in New York, a state that recognizes same-sex marriage, but currently resides in Pennsylvania, where same-sex marriage is prohibited, the couple will still be treated as married for federal tax provisions where marriage is a factor. This ruling addresses some of the ambiguity in federal tax law following the U.S. Supreme Court's decision in *U.S. v. Windsor* (please see alert at <http://www.saul.com/publications-alerts-1103.html>), which struck down provisions of the so-called Defense of Marriage Act. However, this announcement does not apply to civil unions or domestic partnerships.

What is the effect of this ruling? The ruling clarifies the Treasury Department's stance that same-sex marriages will be recognized in income tax situations in which marital status is a factor, such as filing status, personal and dependency exemptions, contributions to an IRA, employee benefits, the earned income credit and the child care credit. Same-sex couples who are legally married may file joint federal income tax returns and may file for income tax refunds where their status as married would have resulted in a smaller income tax liability in past years (subject to the statute of limitations for filing refunds, three years from the date the return was filed or, if later, two years from when the tax was paid).

The announcement also applies to federal estate and gift tax provisions. Same-sex married couples may now utilize various estate planning techniques previously unavailable to them, including the ability to:

- split gifts for federal gift tax purposes;
- take advantage of the unlimited marital deduction for estate tax purposes; and
- obtain any other estate and gift tax-related benefit available to married individuals.

Another significant change as a result of the announcement deals with health insurance. Previously, if a same-sex spouse was covered under an employer's health plan, the value of the coverage for the non-employee spouse created taxable income. The spouse may now obtain his or her coverage on a pre-tax basis, a valuable tax benefit to the couple.

We expect that other government agencies will issue guidance soon on the effect of the decision on the provisions of other laws, but we now have clear guidance for federal tax purposes.

If you have questions about this Alert or would like more information, please contact Robert Louis, Ross Bruch or one of the other attorneys in the Personal Wealth, Estates and Trusts Practice.

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