

Help Your Clients Navigate Return Filings under DOMA

By Dessie M. Stafford, CPA, CGMA

In *United States v. Windsor*, 699 F. 3d 169, the U.S. Supreme Court ruled on June 26, 2013, against the section of the Defense of Marriage Act that restricted the meaning of the words “marriage” and “spouse.” Citing administrative efficiency, the U.S. Department of the Treasury and the Internal Revenue Service responded with two releases: Rev. Rul. 2013-17 and Notice 2013-61. The rulings are to be applied prospectively as of Sept. 16, 2013; but there are select opportunities for retroactive application through amended and adjusted returns.

The IRS drew heavily from its 1958 ruling on the filing status for common-law marriages when drafting Rev. Rul. 2013-17. (See Rev. Rul. 58-66.) They decided that the administration of retirement plans and compliance with employment and income tax regulations should not require employers to continually validate and monitor where a couple was married or where they are domiciled. For simplicity, the tax filing status of a common-law couple as well as a same-sex couple is determined solely by the laws of the state in which the marriage was entered into.

For 2013, the filing status for a same-sex couple depends strictly on whether the couple is considered to be married or unmarried. Publication 17 has been updated for 2013 to read, “*For federal tax purposes, individuals of the same sex are considered married if they were lawfully married in a state (or foreign country) whose laws authorize the marriage of two individuals of the same sex, even if the state (or foreign country) in which they now live does not recognize same-sex marriage.*” In Rev. Rul. 2013-17, the IRS specifies that registered domestic partnerships, civil unions, and relationships other than state-authorized marriages, are not treated as marriages for tax purposes. Those taxpayers should consult their tax advisers for guidance when filing their taxes.

All same-sex couples who are considered by the IRS to be married are required to use either the married filing jointly or the married filing separately status for their 2013 tax filings. For years prior to 2013, couples may, but are not required to, amend their tax return for all years that are not closed by the statute of limitations. In general, a taxpayer may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later. If a taxpayer files an amended or adjusted return or claims a credit or refund relying on Rev. Rul. 2013-17, they must adjust all items affected by the marital status.

This would include not only the beneficial items such as joint filing status and spousal health insurance deductions but the troublesome attribution and related-party rules.

Notice 2013-61 provides employers with options for complying with Rev. Rul. 2013-17. The option of applying the rules retroactively has caused overpayments of employment taxes due to same-sex spouse employment benefits and overpayments resulting from one spouse employed by the other in 2013 and prior years. For 2013, the IRS allows employers to choose to either (1) make adjustments for the first three quarters using the fourth quarter 2013 Form 941, or (2) file one Form 941-X for the fourth quarter of 2013. For years prior to 2013, rather than filing a Form 941-X for each quarter, employers may file one Form 941-X to make a claim or an adjustment for all four quarters of the year. For all adjustments and claims, the period of limitations on refunds under Section 6511 of the Internal Revenue Code applies.

According to the IRS, more than 200 Code provisions and Treasury regulations include the terms “marriage” or “spouse” or their derivatives. This change in definition is likely to have far-reaching effects in tax compliance and planning.

Many state laws and regulations are contradictory in light of the *Windsor* decision. In Missouri, Governor Jay Nixon issued Executive Order 13-14, affirming that Missouri tax code will continue to be coupled with the federal tax code, including the issue of filing status for same-sex couples. Also issued, was a statement that Missouri’s acceptance of joint filings by same-sex couples applied only to federal exemptions or deductions and would not change the taxpayer’s eligibility for state-level exemptions, deductions or credits.

In general, the states are busy reconciling federal and state income differences and providing guidance for filing the state tax returns. Tax preparers will be called upon more than ever to navigate the emerging issues.

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