

## TAX LAW UPDATE

September 18, 2013

### **IRS ISSUES REVENUE RULING STATING LEGAL-SAME SEX MARRIAGES RECOGNIZED FOR FEDERAL TAX PURPOSES**

The Internal Revenue Service has issued Revenue Ruling 2013-17, which states that same-sex couples who are legally married in a jurisdiction that recognizes their marriage will be treated as married for federal tax purposes regardless of where they are domiciled. This decision was made after the United States Supreme Court invalidated provisions of the Defense of Marriage Act (“DOMA”) in its 2013 decision in *United States v. Windsor*. In *Windsor*, the Supreme Court held that section three of DOMA was unconstitutional by creating a federal definition of “marriage” and “spouse” limited to relationships involving a man and a woman. The effect of the decision was that the federal government must now recognize same-sex marriages from states that have made it legal. However, section two of DOMA is still intact, which allows States to refuse to recognize same-sex marriages performed under laws of other States.

Currently, thirteen States (California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington) and the District of Columbia allow same-sex marriages in their respective jurisdictions. Based on the IRS Ruling, this means that a same-sex couple who was legally married in Minnesota but who work and live in Wisconsin would be recognized as legally married spouses for federal tax purposes. The IRS did clarify that the term marriage still does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under State law. The holdings of the ruling are applied prospectively as of September 16, 2013.

The IRS intends on issuing further guidance on the retroactive application of the *Windsor* decision to other employee benefits and employee benefit plan arrangements. For instance, a special administrative procedure will be set forth in future guidance to inform employers on how to file a claim for refunds or make adjustments for excess social security taxes and Medicare taxes paid on same-sex spouse benefits.

If you have any questions related to this information or any other tax law(s) that may affect your business, please contact Martin W. Meyer or Scott A. Komp of Mawicke & Goisman, S.C.

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