

IRS Issues Guidance Regarding Tax Treatment of Married Same-Sex Couples

By Lauren Liebes on October 7, 2013

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The recent United States Supreme Court ruling in *United States v. Windsor* (see prior blog article [here](#)) invalidated Section 3 of the Defense of Marriage Act, which had defined marriage as a union between a man and a woman. The ruling greatly expands the estate and tax planning techniques available for married same-sex couples who live in a state like California that recognizes same-sex marriage.

On August 29, 2013, the Internal Revenue Service (IRS) issued Revenue Ruling 2013-17, which provides technical guidance for the federal tax treatment of married same-sex couples in light of the Windsor decision. The Revenue Ruling provides the following guidance:

- Gender neutral terms in the Internal Revenue Code (the “Code”) which refer to marital status include individuals in same-sex marriages. Terms such as “spouse” and “marriage”, include persons in same sex marriages if the couple is lawfully married. The terms “husband” and “wife” include same-sex spouses.
- Marital status is based on the laws of the state where marriage was entered into. The IRS will recognize the marriages of individuals of the same sex who were married in a state that recognizes same-sex marriage, even if the couple lives in a state that does not.
- The term “marriage” does not include registered domestic partnerships. This rule applies to same-sex and opposite sex couples.

While this Revenue Ruling may be relied upon for the purpose of filing tax returns, married same-sex couples should consult with their tax advisor regarding whether to file amended or protective income, gift and estate tax returns. The Revenue Ruling indicates that the IRS intends to issue additional guidance on the application of the Windsor decision to Federal tax administration, including the application of the ruling to employee benefit plans and arrangements.

Even if the Windsor decision does not apply to you, it is important that you review your estate plan in light of the “permanent” transfer tax relief passed by Congress earlier this year.
