Rev. Rul. 2013-17

ISSUES

1. Whether, for Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex, if the individuals are lawfully married under state[1] law, and whether, for those same purposes, the term "marriage" includes such a marriage between individuals of the same sex.

2. Whether, for Federal tax purposes, the Internal Revenue Service (Service) recognizes a marriage of same-sex individuals validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the state in which they are domiciled does not recognize the validity of same-sex marriages.

3. Whether, for Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include individuals (whether of the opposite sex or same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the

[1] For purposes of this ruling, the term "state" means any domestic or foreign jurisdiction having the legal authority to sanction marriages.

laws of that state, and whether, for those same purposes, the term "marriage" includes such relationships.

LAW AND ANALYSIS

1. Background

In Revenue Ruling 58-66, 1958-1 C.B. 60, the Service determined the marital status for Federal income tax purposes of individuals who have entered into a common-law marriage in a state that recognizes common-law marriages.[2] The Service acknowledged that it recognizes the marital status of individuals as determined under state law in the administration of the Federal income tax laws. In Revenue Ruling 58-66, the Service stated that a couple would be treated as married for purposes of Federal income tax filing status and personal exemptions if the couple entered into a common-law marriage in a state that recognizes that relationship as a valid marriage.

The Service further concluded in Revenue Ruling 58-66 that its position with respect to a common-law marriage also applies to a couple who entered into a common-law marriage in a state that recognized such relationships and who later moved to a state in which a ceremony is required to establish the marital relationship. The Service therefore held that a taxpayer who enters into a common-law marriage in a state that recognizes such marriages shall, for purposes of Federal income tax filing status and personal exemptions, be considered married notwithstanding that the

[2] A common-law marriage is a union of two people created by agreement followed by cohabitation that is legally recognized by a state. Common-law marriages have three basic features: (1) A present agreement to be married, (2) cohabitation, and (3) public representations of marriage.

taxpayer and the taxpayer's spouse are currently domiciled in a state that requires a ceremony to establish the marital relationship. Accordingly, the Service held in Revenue Ruling 58-66 that such individuals can file joint income tax returns under section 6013 of the Internal Revenue Code (Code).

The Service has applied this rule with respect to common-law marriages for over 50 years, despite the refusal of some states to give full faith and credit to common-law marriages established in other states. Although states have different rules of marriage recognition, uniform nationwide rules are essential for efficient and fair tax administration. A rule under which a couple's marital status could change simply by moving from one state to another state would be prohibitively difficult and costly for the Service to administer, and for many taxpayers to apply.

Many provisions of the Code make reference to the marital status of taxpayers. Until the recent decision of the Supreme Court in United States v. Windsor, 570 U.S. ___, 133 S. Ct. 2675 (2013), the Service interpreted section 3 of the Defense of Marriage Act (DOMA) as prohibiting it from recognizing same-sex marriages for purposes of these provisions. Section 3 of DOMA provided that:

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. § 7.

In Windsor, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of equal protection. It concluded that this section "undermines both the public and private significance of state-sanctioned same-sex marriages" and found that "no legitimate purpose" overcomes section 3's "purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect[.]" Windsor, 133 S. Ct. at 2694-95. This ruling provides guidance on the effect of the Windsor decision on the Service's interpretation of the sections of the Code that refer to taxpayers' marital status.

2. Recognition of Same-Sex Marriages

There are more than two hundred Code provisions and Treasury regulations relating to the internal revenue laws that include the terms "spouse," "marriage" (and derivatives thereof, such as "marries" and "married"), "husband and wife," "husband," and "wife." The Service concludes that gender-neutral terms in the Code that refer to marital status, such as "spouse" and "marriage," include, respectively, (1) an individual married to a person of the same sex if the couple is lawfully married under state law, and (2) such a marriage between individuals of the same sex. This is the most natural reading of those terms; it is consistent with Windsor, in which the plaintiff was seeking tax benefits under a statute that used the term "spouse," 133 S. Ct. at 2683; and a narrower interpretation would not further the purposes of efficient tax administration.

In light of the Windsor decision and for the reasons discussed below, the Service also concludes that the terms "husband and wife," "husband," and "wife" should be interpreted to include same-sex spouses. This interpretation is consistent with the

Supreme Court's statements about the Code in Windsor, avoids the serious constitutional questions that an alternate reading would create, and is permitted by the text and purposes of the Code.

First, the Supreme Court's opinion in Windsor suggests that it understood that its decision striking down section 3 of DOMA would affect tax administration in ways that extended beyond the estate tax refund at issue. See 133 S. Ct. at 2694 ("The particular case at hand concerns the estate tax, but DOMA is more than simply a determination of what should or should not be allowed as an estate tax refund. Among the over 1,000 statutes and numerous Federal regulations that DOMA controls are laws pertaining to . . . taxes."). The Court observed in particular that section 3 burdened same-sex couples by forcing "them to follow a complicated procedure to file their Federal and state taxes jointly" and that section 3 "raise[d] the cost of health care for families by taxing health benefits provided by employers to their workers' same-sex spouses." Id. at 2694-2695.

Second, an interpretation of the gender-specific terms in the Code to exclude same-sex spouses would raise serious constitutional questions. A well-established principle of statutory interpretation holds that, "where an otherwise acceptable construction of a statute would raise serious constitutional problems," a court should "construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988). "This canon is followed out of respect for Congress, which [presumably] legislates in light of constitutional limitations," Rust v.

Sullivan, 500 U.S. 173, 191 (1991), and instructs courts, where possible, to avoid interpretations that "would raise serious constitutional doubts," United States v. X-Citement Video, Inc., 513 U.S. 64, 78 (1994).

The Fifth Amendment analysis in Windsor raises serious doubts about the constitutionality of Federal laws that confer marriage benefits and burdens only on opposite-sex married couples. In Windsor, the Court stated that, "[b]y creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of Federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect." 133 S. Ct. at 2694. Interpreting the gender-specific terms in the Code to categorically exclude same-sex couples arguably would have the same effect of diminishing the stability and predictability of legally recognized same-sex marriages. Thus, the canon of constitutional avoidance counsels in favor of interpreting the gender-specific terms in the Code to refer to same-sex spouses and couples.

Third, the text of the Code permits a gender-neutral construction of the gender-specific terms. Section 7701 of the Code provides definitions of certain terms generally applicable for purposes of the Code when the terms are not defined otherwise in a specific Code provision and the definition in section 7701 is not manifestly incompatible with the intent of the specific Code provision. The terms "husband and wife," "husband," and "wife" are not specifically defined other than in section 7701(a)(17), which provides, for purposes of sections 682 and 2516, that the terms "husband" and "wife" shall be

read to include a former husband or a former wife, respectively, and that "husband" shall be read as "wife" and "wife" as "husband" in certain circumstances. Although Congress's specific instruction to read "husband" and "wife" interchangeably in those specific provisions could be taken as an indication that Congress did not intend the terms to be read interchangeably in other provisions, the Service believes that the better understanding is that the interpretive rule set forth in section 7701(a)(17) makes it reasonable to adopt, in the circumstances presented here and in light of Windsor and the principle of constitutional avoidance, a more general rule that does not foreclose a gender-neutral reading of gender-specific terms elsewhere in the Code.

Section 7701(p) provides a specific cross-reference to the Dictionary Act, 1 U.S.C. § 1, which provides, in part, that when "determining the meaning of any Act of Congress, unless the context indicates otherwise, . . . words importing the masculine gender include the feminine as well." The purpose of this provision was to avoid having to "specify males and females by using a great deal of unnecessary language when one word would express the whole." Cong. Globe, 41st Cong., 3d Sess. 777 (1871) (statement of Sen. Trumbull, sponsor of Dictionary Act). This provision has been read to require construction of the phrase "husband and wife" to include same-sex married couples. See Pedersen v. Office of Personnel Mgmt., 881 F. Supp. 2d 294, 306-07 (D. Conn. 2012) (construing section 6013 of the Code). The Dictionary Act thus supports interpreting the gender-specific terms in the Code in a gender-neutral manner "unless the context indicates otherwise." 1 U.S.C. § 1. "'Context'" for purposes of the Dictionary Act "means the text of the Act of Congress surrounding the word at issue, or

the texts of other related congressional Acts." Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 199 (1993). Here, nothing in the surrounding text forecloses a gender-neutral reading of the gender-specific terms. Rather, the provisions of the Code that use the terms "husband and wife," "husband," and "wife" are inextricably interwoven with provisions that use gender-neutral terms like "spouse" and "marriage," indicating that Congress viewed them to be equivalent. For example, section 1(a) sets forth the tax imposed on "every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013," even though section 6013 provides that a "husband and wife" make a single return jointly of income. Similarly, section 2513 of the Code is entitled "Gifts by Husband or Wife to Third Party," but uses no gender-specific terms in its text. See also, e.g., §§ 62(b)(3), 1361(c)(1).

This interpretation is also consistent with the legislative history. The legislative history of section 6013, for example, uses the term "married taxpayers" interchangeably with the terms "husband" and "wife" to describe those individuals who may elect to file a joint return, and there is no indication that Congress intended those terms to refer only to a subset of individuals who are legally married. See, e.g., S. Rep. No. 82-781, Finance, Part 1, p. 48 (Sept. 18, 1951). Accordingly, the most logical reading is that the terms "husband and wife" were used because they were viewed, at the time of enactment, as equivalent to the term "persons married to each other." There is nothing in the Code to suggest that Congress intended to exclude from the meaning of these terms any couple otherwise legally married under state law.

Fourth, other considerations also strongly support this interpretation. A gender-neutral reading of the Code fosters fairness by ensuring that the Service treats same-sex couples in the same manner as similarly situated opposite-sex couples. A gender-neutral reading of the Code also fosters administrative efficiency because the Service does not collect or maintain information on the gender of taxpayers and would have great difficulty administering a scheme that differentiated between same-sex and opposite-sex married couples.

Therefore, consistent with the statutory context, the Supreme Court's decision in Windsor, Revenue Ruling 58-66, and effective tax administration generally, the Service concludes that, for Federal tax purposes, the terms "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if they were lawfully married in a state whose laws authorize the marriage of two individuals of the same sex, and the term "marriage" includes such marriages of individuals of the same sex.

3. Marital Status Based on the Laws of the State Where a Marriage Is Initially Established

Consistent with the longstanding position expressed in Revenue Ruling 58-66, the Service has determined to interpret the Code as incorporating a general rule, for Federal tax purposes, that recognizes the validity of a same-sex marriage that was valid in the state where it was entered into, regardless of the married couple's place of domicile. The Service may provide additional guidance on this subject and on the application of Windsor with respect to Federal tax administration. Other agencies may

provide guidance on other Federal programs that they administer that are affected by the Code.

Under this rule, individuals of the same sex will be considered to be lawfully married under the Code as long as they were married in a state whose laws authorize the marriage of two individuals of the same sex, even if they are domiciled in a state that does not recognize the validity of same-sex marriages. For over half a century, for Federal income tax purposes, the Service has recognized marriages based on the laws of the state in which they were entered into, without regard to subsequent changes in domicile, to achieve uniformity, stability, and efficiency in the application and administration of the Code. Given our increasingly mobile society, it is important to have a uniform rule of recognition that can be applied with certainty by the Service and taxpayers alike for all Federal tax purposes. Those overriding tax administration policy goals generally apply with equal force in the context of same-sex marriages.

In most Federal tax contexts, a state-of-domicile rule would present serious administrative concerns. For example, spouses are generally treated as related parties for Federal tax purposes, and one spouse's ownership interest in property may be attributed to the other spouse for purposes of numerous Code provisions. If the Service did not adopt a uniform rule of recognition, the attribution of property interests could change when a same-sex couple moves from one state to another with different marriage recognition rules. The potential adverse consequences could impact not only the married couple but also others involved in a transaction, entity, or arrangement. This would lead to uncertainty for both taxpayers and the Service.

A rule of recognition based on the state of a taxpayer's current domicile would also raise significant challenges for employers that operate in more than one state, or that have employees (or former employees) who live in more than one state, or move between states with different marriage recognition rules. Substantial financial and administrative burdens would be placed on those employers, as well as the administrators of employee benefit plans. For example, the need for and validity of spousal elections, consents, and notices could change each time an employee, former employee, or spouse moved to a state with different marriage recognition rules. To administer employee benefit plans, employers (or plan administrators) would need to inquire whether each employee receiving plan benefits was married and, if so, whether the employee's spouse was the same sex or opposite sex from the employee. In addition, the employers or plan administrators would need to continually track the state of domicile of all same-sex married employees and former employees and their spouses. Rules would also need to be developed by the Service and administered by employers and plan administrators to address the treatment of same-sex married couples comprised of individuals who reside in different states (a situation that is not relevant with respect to opposite-sex couples). For all of these reasons, plan administration would grow increasingly complex and certain rules, such as those governing required distributions under section 401(a)(9), would become especially challenging. Administrators of employee benefit plans would have to be retrained, and systems reworked, to comply with an unprecedented and complex system that divides married employees according to their sexual orientation. In many cases, the tracking of

employee and spouse domiciles would be less than perfectly accurate or timely and would result in errors or delays. These errors and delays would be costly to employers, and could require some plans to enter the Service's voluntary compliance programs or put benefits of all employees at risk. All of these problems are avoided by the adoption of the rule set forth herein, and the Service therefore has chosen to avoid the imposition of the additional burdens on itself, employers, plan administrators, and individual taxpayers. Accordingly, Revenue Ruling 58-66 is amplified to adopt a general rule, for Federal tax purposes, that recognizes the validity of a same-sex marriage that was valid in the state where it was entered into, regardless of the married couple's place of domicile.

4. Registered Domestic Partnerships, Civil Unions, or Other Similar Formal Relationships Not Denominated as Marriage

For Federal tax purposes, the term "marriage" does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under that state's law, and the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a formal relationship. This conclusion applies regardless of whether individuals who have entered into such relationships are of the opposite sex or the same sex.

HOLDINGS

1. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the

individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex.

2. For Federal tax purposes, the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

3. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term "marriage" does not include such formal relationships.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 58-66 is amplified and clarified.

PROSPECTIVE APPLICATION

The holdings of this ruling will be applied prospectively as of September 16, 2013.

Except as provided below, affected taxpayers also may rely on this revenue ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from these holdings, provided the applicable limitations period for filing such claim under section 6511 has not expired. If an affected taxpayer files an original return, amended return, adjusted

return, or claim for credit or refund in reliance on this revenue ruling, all items required to be reported on the return or claim that are affected by the marital status of the taxpayer must be adjusted to be consistent with the marital status reported on the return or claim.

Taxpayers may rely (subject to the conditions in the preceding paragraph regarding the applicable limitations period and consistency within the return or claim) on this revenue ruling retroactively with respect to any employee benefit plan or arrangement or any benefit provided thereunder only for purposes of filing original returns, amended returns, adjusted returns, or claims for credit or refund of an overpayment of tax concerning employment tax and income tax with respect to employer-provided health coverage benefits or fringe benefits that were provided by the employer and are excludable from income under sections 106, 117(d), 119, 129, or 132 based on an individual's marital status. For purposes of the preceding sentence, if an employee made a pre-tax salary-reduction election for health coverage under a section 125 cafeteria plan sponsored by an employer and also elected to provide health coverage for a same-sex spouse on an after-tax basis under a group health plan sponsored by that employer, an affected taxpayer may treat the amounts that were paid by the employee for the coverage of the same-sex spouse on an after-tax basis as pre-tax salary reduction amounts.

The Service intends to issue further guidance on the retroactive application of the Supreme Court's opinion in Windsor to other employee benefits and employee benefit plans and arrangements. Such guidance will take into account the potential

consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries. The Service anticipates that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Richard S. Goldstein and Matthew S. Cooper of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Mr. Goldstein and Mr. Cooper at 202-622-3400 (not a toll-free call).