

One Minute Memo[®]



IRS Clarifies Same-Sex Marriages for Tax Purposes

By Diane V. Dygert

Following up on the Supreme Court's decisions in both *Windsor v. United States* and *Obergefell v. Hodges*, discussed in our earlier Alerts ([here](#) and [here](#)), on October 21, 2015 the IRS issued proposed [regulations](#) clarifying that the use of terms "husband" and "wife" apply to spouses in same-sex marriages. The definitions apply across a variety of tax-based issues in addition to income tax, including estate tax, gift tax, generation-skipping transfer tax, employment tax and withholding requirements. As a result, the regulations give clarity on tax status for couples in same-sex marriages, as well as sponsors and administrators of employee benefit plans.

The proposed regulations would specifically amend current regulations to provide that the terms "spouse", "husband" and "wife" mean an individual lawfully married to another individual, and that the term "husband and wife" means two individuals lawfully married to each other, regardless of the gender of any such individual. The proposed regulations also clarify that a marriage will be considered lawful if it is recognized by any state, possession or territory of the United States. Marriages performed in foreign jurisdictions will therefore be recognized only if at least one state, possession or territory recognizes that marriage.

However, the IRS was clear to state that for Federal tax purposes, "marriage" does not include registered domestic partnerships, civil unions or similar relationships even if recognized under state law, where that state law does not denominate such a relationship as a marriage. The drafters believe that by not entering into a marriage, the individuals in such a relationship may have purposefully determined that they do not want to be treated as married for Federal tax purposes and they do not intend to "undermine the expectations" of those couples.

The federal definition will also clarify state tax reporting and withholding for employees in states that use the federal definition of income for purposes of calculating state income taxes.

The proposed regulations will be published in the Federal Register on October 23, 2015 and comments are requested by December 7, 2015. The regulations will become effective as of the date of publication of the final regulations.

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