

Legislative Brief

Terms Relating to Same-Sex Spouses

November 2015

SAME-SEX SPOUSE PROPOSED REGULATION ISSUED

SUMMARY:

- The proposed regulations clarify for federal tax purposes, the terms “spouse,” “husband,” and “wife” to mean an individual lawfully married to another individual. Also the term “husband and wife” means two individuals lawfully married to each other. These terms should be interpreted in a neutral way.
- The proposed regulations provide the same federal rights and benefits to both same-sex and opposite sex marriages.
- All states must recognize same-sex marriages for federal tax purposes.
- For couples who enter or remain in a civil union or domestic partnership, the terms in the proposed regulation will not apply.
- The proposed regulations affect married couples, employers, and sponsors and administrators of employee benefit plans.

BACKGROUND

On October 21, 2015, the IRS issued [proposed regulations](#) implementing the recent decisions from the Supreme Court in [United States v. Windsor](#) and [Obergefell v. Hodges](#) on same-sex marriages. In *Windsor*, the Supreme Court held Section 3 of the Defense of Marriage Act (DOMA), which limits federal recognition of marriage to opposite-sex couples, as unconstitutional. It further ruled that legally married same-sex couples were to receive the same federal benefits as opposite-sex couples. In *Obergefell*, the Supreme Court held it was unconstitutional for a state to ban same-sex couples from the fundamental right to marry, thereby legalizing same-sex marriage in all fifty states.

The proposed regulations were issued to confirm that federal tax code provisions relating to marriage should be interpreted to include same-sex spouses as well as opposite-sex spouses. [Internal Revenue Code Section 7701](#), and the regulations thereunder, have miscellaneous definitions including the terms “spouse,” “husband,” “wife,” and “husband and wife.”

These proposed regulations:

- Amend definitions in current Internal Revenue Code sections and regulations to conform to the Supreme Court’s decisions on same-sex marriages;
- Clarify [IRS Revenue Ruling 2013-17](#) which states same-sex couples legally married in jurisdictions that permit same-sex marriage will be treated as married for federal tax purposes; and
- Provide for same-sex marriages to be recognized in all states.

These regulations affect married couples, employers, and sponsors and administrators of employee benefit plans.

TREATMENT OF SAME-SEX SPOUSES

The IRS proposed regulations amend and clarify terms indicating sex to be interpreted in a neutral manner to include same-sex spouses and opposite-sex spouses. For federal tax purposes, the terms “spouse,” “husband,” and “wife” mean an individual lawfully married to another individual and the term “husband and wife” means two individuals lawfully married to each other. These definitions apply regardless of sex. The proposed regulation also provides that marriage of same-sex and opposite-sex marriages will be treated the same if the same-sex marriage is recognized by any state or territory of the United States. Further, a marriage conducted in a foreign jurisdiction will be recognized for federal tax purposes if the marriage would be recognized in at least one state, possession or territory of the United States. Accordingly, all states must recognize all same and opposite sex marriages for federal tax purposes.

TREATMENT OF DOMESTIC PARTNERSHIPS AND CIVIL UNIONS

Despite the legal recognition of same-sex marriages in all states, some same-sex couples remain or enter into domestic partnerships, civil unions or similar relationships for a variety of reasons, including tax and/or benefit purposes. However, for federal tax purposes, the term “marriage” does not include a domestic partnership, civil union, or other similar relationship. Therefore the terms “spouse,” “husband,” and “wife” as defined in the proposed regulations are not applicable to individuals who are in a domestic partnership, civil union, or other similar relationship. These relationships will not be afforded the status or federal tax provisions provided to individuals in same-sex or opposite sex marriages.

EMPLOYER/PLAN ADMINISTRATOR RESPONSIBILITY

Employers must acknowledge same-sex marriages when it pertains to all federal tax provisions where marriage is a factor, including, but not limited to filing status; employee benefits; and contributing to an IRA. If an employer does not recognize and provide the same rights and benefits to individuals in same-sex marriages, the employer will violate federal tax law. For example, employers must now consider the elections and reimbursement procedures for same-sex spouses under cafeteria plans, flexible spending arrangements and health savings accounts. Same-sex spouses must be treated in a like manner for federal tax purposes.

EFFECTIVE DATE

The proposed regulations will become effective when they are published in final form. Until then, employers may continue to rely on the guidance the IRS issued following the Supreme Court’s DOMA ruling, including Revenue Ruling 2013-17.

For more information regarding same-sex spouse, please contact your Client Executive.

Federal legislation has many complex requirements for employers and health plans. Some state law may also be applicable. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the same-sex spouse requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding same-sex spouses and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances.

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