



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

News Alert: IRS Announces That It Will Treat Same Sex Couples as Married Based on Whether the Marriage Was Recognized By the State in Which the Ceremony Took Place, Not on Whether it is Recognized by the State Where a Couple Currently Resides

By Loraine M. DiSalvo

On August 29, 2013, with the publication of Revenue Ruling 2013-17, the Internal Revenue Service answered one of the many questions left open after the Supreme Court's decision in U.S. v. Windsor was announced in late June 2013. For federal tax purposes, a same-sex couple will be deemed to be married if the couple was actually married in a legally-recognized ceremony which was performed in a state which recognizes same-sex marriages. This recognition for federal tax purposes applies even if the couple resides in a state which does not recognize them as legally married. However, those couples who are in registered domestic partnerships, civil unions, or other legally recognized relationships which are not called marriage under the laws of the applicable state will **not** be treated as married for federal tax purposes.

The Revenue Ruling opens the door for Georgia couples who are legally married under the laws of another jurisdiction to begin filing federal income tax returns either jointly or as married filing separately, to receiving a marital deduction for federal gift and estate tax purposes, to making the election to gift-split for federal gift tax purposes, and to qualify for and be subject to a host of federal tax benefits and obligations. This includes the opportunity to qualify for certain benefits retroactively, by filing amended federal returns for various purposes, such as income tax returns or even estate tax returns for previous years (if the statute of limitations has not run for those years).

What the Revenue Ruling does **not** do is answer any questions regarding Social Security benefits or any other federal issues other than tax purposes. Those answers will come separately, from other agencies. What the Revenue Ruling also does **not** do is answer the wide range of questions which are raised by the prospect of a couple being recognized as married for federal purposes but not for state purposes. For example, Georgia couples who are married under another state's laws must now file their federal income tax returns either married filing jointly or as married filing separately, but they must each still file as single for state income tax purposes. Georgia income tax returns rely heavily on federal tax returns. How will the differences be reconciled? Will it be necessary for couples to prepare a second set of federal income tax returns, as if they were each single, in order for them to be able to file their Georgia returns? As another example, certain employer-paid benefits, such as health insurance coverage for an employee's spouse, can be income tax free for federal income taxes but may still be subject to state income taxes. How will this be handled by the couple and by the employer?

Couples who live in Georgia and other non-recognition states, who are not currently married in any jurisdiction, and who may now be considering whether to go to a recognizing state and get married, should still be very careful: as our News Alert noted following the Windsor ruling, states that do not recognize your marriage may not offer you the opportunity to divorce if the relationship goes sour, which could mean you



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

end up trapped in a bad relationship. In addition, as noted above: the difference between federal tax rules and state tax rules opens a host of complicated questions which will need to be addressed by married couples.

We now have another answer, but there are many, many questions still left. We'll continue to watch and see as more answers come forth.

For a copy of the Revenue Ruling, [click here](#).

For a list of Frequently Asked Questions for Same Sex Married Couples issued by the IRS in conjunction with Revenue Ruling 2013-17, [click here](#).