



# US TREASURY AND IRS ISSUE PROPOSED REGULATIONS ON FEDERAL TAX ASPECTS OF SAME SEX MARRIAGE

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As has been well chronicled, the US Supreme Court ruled, in its June 26, 2015 *Obergefell v. Hodges* landmark decision, that under the equal protection clause of the 14<sup>th</sup> Amendment, states must issue a marriage license to same sex couples who choose to marry and who otherwise qualify.

On October 21, 2015, the US Treasury and Internal Revenue Service (IRS) issued Proposed Regulations implementing the Supreme Court's decision for federal tax purposes.

## Background

- In 2013, the IRS issued a revenue ruling providing that same sex marriages that are legally valid in the state in which the marriage was performed are to be recognized as valid marriages for federal tax purposes (Rev. Rul. 2013-17, Aug. 29, 2013).
- The IRS ruling followed the US Supreme Court *E.S. Windsor* case (2013-2 USTC) in which the Court ruled that Section 3 of the 1996 Defense of Marriage Act-based on which the IRS would not recognize same sex marriages for federal tax purposes—was unconstitutional.
- Thus, for all states that then recognized same sex marriage, such couples married pursuant to state law were considered married for federal income, estate, and gift tax purposes.
- But, married status for tax purposes does not include civil unions, domestic partnerships, or similar relationships not recognized as marriage under state law.

## New Proposed Regulations

- The new Regulations essentially adopt the provisions of Rev. Rul. 2013-17 and make it clear that they now apply in all states.
- As under the revenue ruling, married status does not include civil unions, domestic partnerships, or similar relationships not recognized as marriage under state law.

## Comments on the New Regulations for Same Sex Couples Lawfully Married in Michigan

- Marital status for income tax purposes affects:
  - Tax filing status;
  - Personal and dependency exemptions;
  - The standard deduction;
  - Earned income tax credit;
  - Child tax credit;
  - Innocent spouse protection; and
  - IRA contributions.
- Same sex couples must now file as either “married filing jointly” or “married filing separately.” This will be disadvantageous for some couples who would pay lower combined tax filing single status returns, which can be the case if their incomes are relatively close in amount.
- Married status extends to same sex couples certain estate and gift tax benefits—such as the marital deduction for both estate and gift taxes and the availability of “gift splitting”—essentially, an additional annual exclusion (\$14,000 for 2015)—for gift tax purposes.

## About the Author

*Joe Cunningham has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy though his practice is statewide.*