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MUNICIPAL LAW ALERT

Treasury and IRS Announce That They Will Recognize Same-Sex Marriages for Tax Purposes

On August 29, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) announced, in Revenue Ruling 2013-17, that legally married same-sex couples will be treated as married for federal tax. This includes federal income, gift and estate taxes. The ruling implements the federal tax law aspects of the Supreme Court's June 26, 2013 decision in *United States v. Windsor*, which invalidated a key provision of the 1996 Defense of Marriage Act (DOMA) as unconstitutional based on principles of equal protection. The ruling applies even if the couple lives in a state that does not recognize same-sex marriages.

While the Treasury and the IRS will not begin applying the terms of the ruling until September 16, 2013, taxpayers are permitted to rely on the ruling retroactively. As such, individual taxpayers will be permitted to amend previously filed tax returns to change their filing status and recalculate their federal income tax. Furthermore, the IRS specifically mentions that individual taxpayers may amend previous returns to seek "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." Employers may also rely on the ruling retroactively to claim a refund of, or make an adjustment for, any excess social security taxes and Medicare taxes paid by the employer. A special administrative procedure for employers to file claims for refunds or make adjustments for such payroll taxes paid on previously-taxed health insurance and fringe benefits supplied to same-sex spouses will be provided in forthcoming guidance to be issued by the IRS in the near future. The Treasury and the IRS also plan to issue further guidance on cafeteria plans and on how qualified retirement plans and other tax-favored arrangements should treat same-sex spouses for periods before the effective date of this Revenue Ruling.

To read the official IRS news alert on this subject, along with updated FAQs for Same-Sex Couples, please refer to the link below:

<http://www.irs.gov/uac/Newsroom/Treasury-and-IRS-Announce-That-All-Legal-Same-Sex-Marriages-Will-Be-Recognized-For-Federal-Tax-Purposes;-Ruling-Provides-Certainty,-Benefits-and-Protections-Under-Federal-Tax-Law-for-Same-Sex-Married-Couples>

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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