

September 5, 2013
2013-122

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

United States – Same-Sex Married Couples Should Take Note of September 15, 2013 Deadline

by KPMG LLP's Washington National Tax practice, Washington, D.C. (KPMG LLP in the United States is a KPMG International member firm)

The U.S. Internal Revenue Service (IRS) has issued Frequently Asked Questions (FAQ)¹ that provide additional guidance for same sex married couples affected by Revenue Ruling 2013-17. For prior guidance on Rev. Rul. 2013-17, see Flash Alert 2013-121, August 30, 2013.

In Rev. Rul. 2013-17 the IRS announced that beginning on September 16, 2013 (the effective date of the ruling) it will treat same-sex couples who are legally married as married for all federal tax purposes. The FAQs explain that such couples have the option to claim such treatment prior to that date, which means that they may – but are not required to – amend their tax returns to reflect their married status, for any years still open under the statute of limitations (generally 2012, 2011, and 2010, and 2009 for certain taxpayers who extended the filing date for that year).

Thus, the various filing statuses available and the applicable due dates can be summarized as follows:

- For tax year 2013 and subsequent years, same-sex spouses must file using married filing joint or married filing separate status;
- For tax year 2012 and all prior years, same-sex spouses who file an *original* tax return on or after September 16, 2013 must file using married filing joint or married filing separately status;
- For tax year 2012, same sex spouses who have not yet filed their returns (because, for example, they have requested an extension until October 15, 2013) may file their returns using *either* (1) single status or (2) married filing joint or married filing separate status, provided they file their returns before September 16, 2013;
- For tax year 2012, same-sex spouses who have already filed their tax return may – but are not required to – amend their return to use married filing joint or married filing separately status;
- For tax year 2011 and earlier years for which the statute of limitations remains open, same-sex spouses who filed their original tax return may – but are not required to – amend their return to use married filing joint or married filing separately status;

The effective date of Rev. Rul. 2013-17 should be of particular concern to same-sex married couples who have not yet filed their 2012 income tax returns. If they wish to file using single status, those returns must be filed by September 15, 2013. Returns for 2012 that are filed on or after September 16, 2013 must take Rev. Rul. 2013-17 into account, meaning that same-sex couples filing on or after that date must file using either married filing joint or married filing separate status.

In many cases, same-sex spouses will see their federal income tax liability increase due to the effect of the "marriage penalty," whereby a dual-income couple may pay more federal income tax when they file their federal income tax returns using married filing joint or married filing separate status than they would when they filed as two single individuals. Such couples may wish to adjust their income tax withholding or make payments of estimated tax for 2013 in order to address this.

Footnotes:

- 1 <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>

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