Fall 2013

Defense of Marriage Act

Bailey, Carr CPAs, P.C.

As same sex marriage was becoming legal in more states throughout the nation, the Federal government reviewed the Defense of Marriage Act. Two months after Congress struck down DOMA, the Federal government ruled that all legally married same-sex couples will be treated as married for Federal tax purposes. This ruling affects all federal taxes, including income taxes, estate and gift taxes, payroll taxes, and more.

Who Does This Affect?

The IRS is taking a "place of celebration" approach, not a place of domicile approach. This means that regardless of where a couple lives, if they were married in a state where same sex marriages are performed legally, they are considered married for Federal tax purposes. Therefore, any same sex couple legally married at the end of 2013 ***must*** file their 2013 tax returns as either married filing jointly or married filing separately. A couple is not required to amend prior year returns, but may do so for any open years if they so choose.

State Filing Status

As marriage is still a state level law, a couple's state tax filing status may be different than the Federal. For instance, if a same sex couple was married in New York (after July 24, 2011) and then moved to Virginia (a state which currently does not recognize same sex marriages), they would be required to file their 2013 Federal income taxes as a married couple, but would have to file their Virginia tax returns as separate, single individuals.

Employee Benefits

This decision will also affect employee benefits in respect to payroll taxes. Many employers are already providing health care benefits for an employee's same sex partner, regardless of marital status. Unfortunately, because same sex marriage was not previously recognized by the IRS, the portion of those benefits paid for the non-employee was included in the employee's gross wages and therefore subject to Federal income taxes. This ruling means that legally married same sex couples will no longer be subject to those additional taxes and an amended return may be filed for any open period to recover some of these taxes previously paid.

Amending Returns

Generally, the statute of limitations for filing a refund claim is three years from the date the return was filed or two years from the date the tax was paid, whichever is later. As a result, refund claims can still be filed for tax years 2010, 2011 and 2012.

If you have any questions or need additional information regarding this issue, please do not hesitate to contact our office.

Meet Our Staff

Alyson Orr, CPA

Alyson graudated from Keuka College in 2005 with a Bachelors Degree in Accounting. She has worked for Bailey, Carr since her graduation and became a Certified Public Accountant in 2008. Alyson is also a QuickBooks Certified ProAdvisor and enjoys all aspects of accounting and tax preparation.

Alyson is a member of the American Institute of Certified Public Accountants, New York State Society of Certified Public Accountants and the Yates County Chamber of Commerce.

She currently volunteers her time as a tutor for the Literacy Volunteers of Ontario and Yates Counties.

Alyson enjoys trivia contests. Most weekends you can find her playing DJ at Finger Lakes weddings and events.

""The hardest thing in the world to understand is the income tax."
Albert Einstein