

IRS Defines ‘Spouse,’ ‘Husband,’ ‘Wife,’ and ‘Marriage’ for Tax Purposes

Saturday, February 11, 2017

The IRS recently issued final regulations, effective as of Sept. 2, 2016, providing gender-neutral definitions of “spouse,” “husband,” and “wife,” and clarifying the definition of “marriage” for federal income, transfer, and employment tax purposes. Under the new final regulation section 301.7701-18(c), a marriage (same-sex or opposite-sex) will be recognized for federal tax purposes if it is recognized by the state in which the individuals are married, regardless of where the couple is domiciled. These regulations reflect recent Supreme Court decisions that same-sex married couples are to be treated the same as opposite-sex married couples for federal tax purposes. The new regulations also provide that common-law marriages (whether of same-sex or opposite-sex couples) will be recognized as lawful marriages for federal tax purposes if the requirements for a common-law marriage are satisfied. These regulations will have a significant impact on estate planning for same-sex couples who may now incorporate, for the first time, both the unlimited marital deduction and the “portability” election into their estate plans.

Key Definitions:

Under the new regulations, the terms “spouse,” “husband,” and “wife” mean an individual who is lawfully married to another individual. The term “husband and wife” means two individuals lawfully married to each other.

A marriage will generally be recognized for federal tax purposes if it is recognized by the state, possession, or territory of the United States in which the individuals married, regardless of the state of the couple’s domicile. An exception is provided for marriages entered into in foreign jurisdictions. In those cases, the marriage will be recognized if the marriage would be recognized in at least one state, regardless of the couple’s domicile.

How do the new regulations impact common law marriages?

Several states (such as Alabama, Colorado, District of Columbia, Iowa, Kansas, New Hampshire, Montana, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah) currently allow what is often referred to as “common-law” marriages. While their laws differ slightly, the common-law marriage doctrine generally provides that a couple is considered legally married if both individuals are of age, agree to be married, cohabitate, and hold themselves out to be married to each other.

Many states that do not authorize common-law marriage will recognize the validity of such marriages if entered into in another state.

The final regulations establish that common-law marriages (whether of same-sex or opposite-sex couples) will be recognized as lawful marriages for federal tax purposes if the requirements for a common-law marriage are satisfied.

How do the new regulations impact registered domestic partners and civil unions?

Registered domestic partnerships, civil unions, and similar relationships that are not given the status of marriage under the law of the state where entered into, are specifically excluded from the definition of marriage in the final



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regulations. The regulations acknowledge that individuals may intentionally enter into non-marital arrangements to preserve certain benefits, such as single taxpayer status for income tax filing purposes, Social Security benefits associated with a prior spouse, and other tax and non-tax reasons. Such individuals have an expectation that their relationship will not be deemed a marriage for federal tax or any other purpose.

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