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TAX AND WEALTH ADVISOR ALERT: STATE OF CELEBRATION CONTROLS—ONE OPEN QUESTION FROM WINDSOR IS RESOLVED

The United States Supreme Court issued a landmark decision in Windsor, holding that if a couple is married and resides in a state (or province) that allows same sex marriage, then that couple is married for purposes of federal law (including the Internal Revenue Code). A question left unanswered by the Supreme Court in Windsor was, if a couple got married in a state that allows same sex marriage (the state of celebration), but resides in a state that does not allow same sex marriage (the state of residence), how is the couple treated under the Internal Revenue Code?

Luckily for planners, the IRS jumped into this definitional void. In Revenue Ruling 2013-17, the IRS makes it clear that it will administer the Code looking solely to the state of celebration. So if a same-sex couple marries in Massachusetts (a state that recognizes same-sex marriage), and then moves to Wisconsin (a state that does not recognize same-sex marriage), for federal tax purposes, the couple is married. Of course, for state tax purposes, the couple will not be treated as married, leading to challenges for planners who will need to consider state tax consequences that differ from federal tax consequences in planning for their same-sex married clients.