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Estate Planning Council of Berks County

Estate Planning for Same Sex Couples

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I. Overview of changes in law:

A. Defense of Marriage Act (DOMA) - US v. Windsor - June 26, 2013

1. Ruled that Section 3 of DOMA is unconstitutional because it denies equal protection of the laws to same sex married couples in violation of the Fifth Amendment to the U.S. Constitution

(1) Section 3 defined "marriage" as between one man and one woman, and defined "spouse" as a person of the opposite sex

2. Court stopped short of ruling that there is a protected constitutional right to enter into a same sex marriage

3. It did not strike down Section 2 which provides that states need not recognize same-sex marriages validly solemnized in other states.

4. Basically it returned the issue of a state resident's marital status to that state's statutes

B. Pennsylvania Retirement Plan Benefits: Cozen O'Connor, D.C. v. Tobits - July 29, 2013

1. U.S. District Court for the Eastern District of Pennsylvania ruled that as between two rival claimants to an ERISA retirement plan death benefit, a deceased employee's parents and the deceased employee's same sex partner, the same sex partner is entitled to the plan death benefit because of her status, post Windsor, as decedent's spouse

2. Pennsylvania Employer's plan, lawsuit filed in Pennsylvania and choice of law was Pennsylvania

3. Concerning the plan participant's marital status, however the court ruled that the law of the jurisdiction in which the decedent and her partner were domiciled at the time of death controls their marital status for ERISA purposes

C. Revenue Ruling 2013-7 - August 29, 2013

1. IRS ruled that same sex couples who are legally married in a jurisdiction that authorizes such marriages will be treated as married for all federal tax purposes, without regard to the law concerning the legality of same sex marriage in the couple's domicile state

2. Ruled that marriage does NOT include registered domestic partnerships, civil unions or similar formal relationships which are not considered marriages under the laws of the state where entered

D. Pa's Attorney General, Kathleen Kane, announced that she would not defend the constitutionality of Pa's version of DOMA.

1. What does this mean for PA? Currently Pennsylvania's marriage law, §1704 of Title 23, prohibits same-sex marriage. Marriage can only be between man and woman.

(1) 16 states and DC allow same sex marriage

(a) Most recently are NJ, Illinois and Hawaii

II. What every LGBT couple should know about estate planning:

A. Don't need to be rich to plan, many issues are non-economic

B. Every state's laws are different

C. The default provisions under Pennsylvania law (Intestate Act) can have undesired effects

D. Pennsylvania law treats heterosexual couples as one financial unit - not true for same-sex couples

E. With proper planning, you can usually protect the surviving partner at relatively minimal tax cost

III. What practitioners should know:

A. Why Don't Same Sex Couples Do Estate Planning?

1. Do not understand importance of non-tax reasons to plan

2. Do not want to discuss death and the future with a third party or even their partner

3. Intimidated by estate planning professionals

4. Don't know where to start or with which professional

5. Believe they are not wealthy enough to plan, or do not realize how much they have

6. Have not "come out" and are unaware of the concept of confidentiality and the attorney/client privilege

7. Do not know how to find a competent and trusted professional

B. Planning should be viewed in same light

1. over 50% of first marriages fail and the failure rate is even higher in the case of second and third marriages. We as planners must assume that the failure rate for any relationship (even those who aren't married under PA law) will have the same rate of failure.

C. How to make LGTB population understand the importance of planning

1. It helps to focus on real world goals:

a. Client has spent his or her entire life accumulating assets – does your client want those assets to go to his or her family who may not accept the lifestyle (by default) or do they want to provide for their partner?

b. Does client want a court to decide who is best suited to serve as Trustee for adopted or natural child?

c. Does client want assets to be required to be sold to pay death taxes?

d. Does client want partner to be able to obtain health information about him or her if he or she is hospitalized?

e. Does client want partner to be able to manage his or her financial affairs if client becomes temporarily or permanently incapacitated?

f. If client becomes terminally ill, who will make end of life decisions for client if client is unable to do so?

g. If client dies, can his or her partner afford to continue client's business?

h. After both partners die, does your client wish to create a charitable legacy?

i. Does your client want to prevent his or her family that may not accept your lifestyle from successfully challenging client's wishes to benefit partner

D. Tax Reasons for Planning:

1. Pennsylvania Inheritance Tax issues

a. The inheritance tax rate is 15% for transfers to someone who is not a spouse, lineal ascendant or descendant or sibling

b. Leaves LGBT couples with 4 options

(1) Adoption

(a) Adoption of a partner could reduce the rate of inheritance tax to 4.5% which is the rate applicable to lineal ascendants and descendants 72 P.S. §9116(a)(1)

(b) PA law permits a person to be adopted regardless of age, and also provides that any person may be an adopting parent. 23 Pa.C.S.A §2311

(c) Drawback is that if PA law changes and allows same sex marriage, cannot undo the adoption

(2) Own property jointly

(a) PA inheritance tax will be assessed on a fractional share of jointly owned property upon the death of the one party without regard to the deceased party's contribution to the purchase or creation of the property. 72 P.S. §9108

(b) Take care to specifically state that survivorship is intended

(3) Use methods that are excluded from tax

(a) Life Insurance

(b) Retirement plans if you are under 59 1/2

(c) other issues as set forth herein

(4) Relocate

(a) Move to a state that recognizes same sex marriages

2. Federal estate tax issues

a. Basic exclusion amount is $5,000,000, indexed for inflation

(1) Amount for 2013 is $5,250,000

(2) Portability - the applicable exclusion amount is the sum of the sum of the applicable credit amount plus the deceased spousal unused basic exclusion amount, if the proper

portability election is made on the federal tax return of the predeceased spouse

(3) What does this mean?

(a) If the client's gross estate is not, or never will be, greater than this amount, there will be no federal estate tax issues

b. IRC §2056 provides an unlimited marital deduction for federal estate tax purposes. This applies to same sex marriages

3. Federal Gift Tax issues

a. The basic exclusion amount allowed for estate tax purposes may be used to shelter taxable gifts from the federal gift tax

(1) Amount for 2013 is $5,250,000

(2) This too can be increased by the deceased spousal unused exclusion amount

(3) IRC §2523 provides an unlimited marital deduction for gift tax purposes. This applies to same sex marriages.

(4) IRC §2503(b) permits annual exclusion gifts to someone other than a spouse. The amount for 2013 is $14,000

(a) Unmarried same sex couples can take advantage of this

(b) However, transfers of property in excess of $14,000 per year for an unmarried same sex partner can have adverse tax consequences and create the obligation to file a gift tax return

b. Certain exempt gifts provide planning for unmarried same sex couples

(1) Direct payment of medical expenses

(2) Direct payment of tuition costs

IV. Pennsylvania Inheritance Tax

A. The Basics and the Differences for Same Sex Couples

1. No exemption amount like Federal law – first dollar of net worth is taxable

2. No *per se* tax on gifts but transfers within 1 year of death (in excess of $3,000) are brought back into the estate for tax purposes

B. Tax Rates

1. Heterosexual spouse – zero

2. Domestic partner – 15% (treated as strangers)

3. Siblings – 12%

4. Charities – 0% (great planning opportunity at death)

5. Lineal ascendants and descendants (including adopted children) – 4.5%

V. Before We Show Some Solutions – What is Pennsylvania's Default Estate Plan?

A. If client dies without a will – client's estate is distributed to client's spouse, children, parents and siblings

B. A domestic partner is not considered an intestate heir under the intestate act and receives nothing

C. Pennsylvania law also has a preferred order regarding who may be appointed as "administrator" – The person who has the legal authority to settle client's estate – a domestic partner is not recognized under this statute as a potential preferred administrator

D. **Practice Pointer:** Assets passing by virtue of a beneficiary designation are not covered by the intestate act – make sure beneficiary designations on life insurance, IRA's, annuities have up to date primary and contingent beneficiaries

VI. Basic Documents to Have in Place

A. During Lifetime

1. Durable General Power of Attorney

a. permits partner to make financial decisions for other partner if he or she becomes incapacitated

b. keeps family members from taking over the finances

c. dangerous if misused

2. Durable Power of Attorney for Medical Purposes

a. General Health Care Power of Attorney

b. HIPPA Authorization and Release (stand alone or combined with Health Care Power of Attorney)

(1) Permits agent authority to receive medical information

3. Advanced Directive/Living Will

a. deals with end of life decisions if one partner becomes terminally ill or permanently unconscious and may designate an agent to carry out his or her wishes

4. Cohabitation Agreement

a. Very important to set forth rights and obligations regarding property during the lifetime of partners

b. since most domestic relations laws are drafted for heterosexual couples, this document defines the arrangement on matters like separation, ownership of separate property, payment of expenses

B. Plan for death

1. A Simple Will

a. appoints an executrix of client's choosing

b. appoints a trustee of client's choosing – consider corporate trustee

c. distributes client's property outright or in trust according to his or her wishes – not the intestate act's wishes or client's family's wishes

d. can appoint guardian of minor children

e. can create a trust to benefit children, parents or partner for their lifetime or until they reach a certain age

f. Trusts may also benefit different people or charities after the death of partner

g. Avoid a will contest

(1) make sure competent counsel prepares will

(2) full disclosure of all issues to counsel

(3) 99% of time, wills done by competent, well-respected counsel won't be the subject of a successful will contest

(4) make a negative bequest – specifically mention people not made a beneficiary

h. **Drafting consideration:**

(1) recite relationships and intended beneficiaries

(a) Use custom definitions - "companion" "spouse"

(2) statement of positive intent not to benefit "natural" heirs without attacking them

(3) Tax apportionment issues

(a) remember that PA inheritance tax is assessed at different rates depending upon the relationship between decedent and the beneficiary. The general rule is that each transferee bears the burden of the inheritance tax attributable to transfers to that transferee

2. Living Trust - the alternative to a will

a. Can be funded or unfunded

b. Assets transferred to a trust during client's lifetime

c. Client and partner can be trustees

d. At death – client's property is distributed by the successor trustee without the need to have a court appointed executor

e. There is some feeling that a trust is harder to challenge than a will – true if funded during lifetime and operated

f. Can provide some privacy – trust not probated or filed to activate administration process

g. Can also provide excellent financial management during lifetime if a partner becomes incapacitated (works as a substitution for a general power of attorney)

h. Can reduce probate filing fees

i. Does not save death taxes or reduce professional fees

j. Only passes assets owned by or that flow into that trust

k. Still need pour-over will – assets not transferred into trust during lifetime – either intentionally or inadvertently

VII. Specific Planning Techniques That May Work Well With LGBT Couples

A. Irrevocable Life Insurance Trusts

1. make annual exclusion gifts to irrevocable trust during client's lifetime

2. create an estate with life insurance proceeds free of income, estate and inheritance taxes

3. excellent source of liquidity

4. irrevocable trust created and administered during lifetime is very difficult to challenge

5. can pay proceeds outright to partner or can provide income stream to partner with remainder to other beneficiaries

6. can be drafted to provide contingent beneficiaries if the relationship terminates

B. Grantor Retained Annuity Trust ("GRAT")

1. A GRAT is an irrevocable trust

2. Good if client has a high yield or appreciating asset that they are willing to part with ownership

3. Trust established during lifetime and asset transferred into trust

4. Grantor retains the right to an annuity for a fixed period of years or shorter of fixed term or life

5. When retention period ends – assets, including appreciation and undistributed income, pass to beneficiary (partner)

6. Annuity is a fixed annuity payment expressed as a percentage of the original value of the trust

7. There is a gift at the time of the creation of the trust – based upon "subtraction method"

a. subtract the value of the retained annuity (by the grantor) from value of property transferred

b. value of annuity interest depends upon who the remainder beneficiary is

C. Qualified Personal Residence Trust

1. Create an irrevocable trust that is a GRIT (Grantor Retained Income Trust) – hard for adverse family to undo

2. Transfer the residence and retain the right to live in the house for a specified term of years

3. At the end of the term – house transferred to remainder beneficiary (partner)

4. Qualified Personal Residence Trust – can hold the house plus limited amount of cash for expenses and improvements

5. Value of the gift – subtraction method– excess of the value transferred over the value of the interest retained (at time of transfer)

   a. retained interest = multiply present value of an annuity factor x number of years

   b. appreciation in value (plus the house) to partner

6. Grantor trust – all income, deductions, and credits stay with grantor

7. Risk – grantor does not survive term – entire value at time of death in grantor's estate

8. At end of term – trust distributes residence to partner – what about grantor

   a. FMV rent paid by grantor

D. Charitable Trusts

1. Particularly suited for same sex couples because not based upon the marital deduction or family tax advantages

2. Split interest trust

3. Charitable portion/Non-charitable portion

4. CRT – Charitable Remainder Trust

   a. income interest (annuity or unitrust) paid to non-charitable beneficiary and at termination of trust – remainder to charity

5. CLT – Charitable Lead Trust

a. income interest (annuity or unitrust) paid to charity and at end of term – reverts to donor or at least one non-charitable beneficiary (partner)

6. Annuity or Unitrust Income Interest

a. annuity – fixed amount set when trust is created

b. interest – fixed percentage based upon value each year

7. Gift Tax – if a charitable remainder trust – donor makes a gift to the beneficiary of the value of the survivorship life estate interest

8. Charitable Deduction

a. inter-vivos trust – income trust

b. at death – estate tax return

9. **Practice pointer**: both partners can contribute jointly owned property – one ½ includable in estate of first partner to die

VIII. Practice Pointers for Professionals

A. Take extra care to defeat potential will contest

B. Do not underestimate initial client interview and estate planning questionnaire

1. focus on entire family situation of both partner

2. source of wealth for both partners

3. potential problem family members

C. Carefully consider whether you should represent both partners or just one partner

Rev. Rul. 2013-17

ISSUES

1. Whether, for Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex, if the individuals are lawfully married under state[1] law, and whether, for those same purposes, the term "marriage" includes such a marriage between individuals of the same sex.

2. Whether, for Federal tax purposes, the Internal Revenue Service (Service) recognizes a marriage of same-sex individuals validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the state in which they are domiciled does not recognize the validity of same-sex marriages.

3. Whether, for Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include individuals (whether of the opposite sex or same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the

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[1] For purposes of this ruling, the term "state" means any domestic or foreign jurisdiction having the legal authority to sanction marriages.

laws of that state, and whether, for those same purposes, the term "marriage" includes such relationships.

LAW AND ANALYSIS

1. Background

In Revenue Ruling 58-66, 1958-1 C.B. 60, the Service determined the marital status for Federal income tax purposes of individuals who have entered into a common-law marriage in a state that recognizes common-law marriages.[2] The Service acknowledged that it recognizes the marital status of individuals as determined under state law in the administration of the Federal income tax laws. In Revenue Ruling 58-66, the Service stated that a couple would be treated as married for purposes of Federal income tax filing status and personal exemptions if the couple entered into a common-law marriage in a state that recognizes that relationship as a valid marriage.

The Service further concluded in Revenue Ruling 58-66 that its position with respect to a common-law marriage also applies to a couple who entered into a common-law marriage in a state that recognized such relationships and who later moved to a state in which a ceremony is required to establish the marital relationship. The Service therefore held that a taxpayer who enters into a common-law marriage in a state that recognizes such marriages shall, for purposes of Federal income tax filing status and personal exemptions, be considered married notwithstanding that the

[2] A common-law marriage is a union of two people created by agreement followed by cohabitation that is legally recognized by a state. Common-law marriages have three basic features: (1) A present agreement to be married, (2) cohabitation, and (3) public representations of marriage.

taxpayer and the taxpayer's spouse are currently domiciled in a state that requires a ceremony to establish the marital relationship. Accordingly, the Service held in Revenue Ruling 58-66 that such individuals can file joint income tax returns under section 6013 of the Internal Revenue Code (Code).

The Service has applied this rule with respect to common-law marriages for over 50 years, despite the refusal of some states to give full faith and credit to common-law marriages established in other states. Although states have different rules of marriage recognition, uniform nationwide rules are essential for efficient and fair tax administration. A rule under which a couple's marital status could change simply by moving from one state to another state would be prohibitively difficult and costly for the Service to administer, and for many taxpayers to apply.

Many provisions of the Code make reference to the marital status of taxpayers. Until the recent decision of the Supreme Court in United States v. Windsor, 570 U.S. ___, 133 S. Ct. 2675 (2013), the Service interpreted section 3 of the Defense of Marriage Act (DOMA) as prohibiting it from recognizing same-sex marriages for purposes of these provisions. Section 3 of DOMA provided that:

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. § 7.

In Windsor, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of equal protection. It concluded that this section "undermines both the public and private significance of state-sanctioned same-sex marriages" and found that "no legitimate purpose" overcomes section 3's "purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect[.]" Windsor, 133 S. Ct. at 2694-95. This ruling provides guidance on the effect of the Windsor decision on the Service's interpretation of the sections of the Code that refer to taxpayers' marital status.

2. Recognition of Same-Sex Marriages

There are more than two hundred Code provisions and Treasury regulations relating to the internal revenue laws that include the terms "spouse," "marriage" (and derivatives thereof, such as "marries" and "married"), "husband and wife," "husband," and "wife." The Service concludes that gender-neutral terms in the Code that refer to marital status, such as "spouse" and "marriage," include, respectively, (1) an individual married to a person of the same sex if the couple is lawfully married under state law, and (2) such a marriage between individuals of the same sex. This is the most natural reading of those terms; it is consistent with Windsor, in which the plaintiff was seeking tax benefits under a statute that used the term "spouse," 133 S. Ct. at 2683; and a narrower interpretation would not further the purposes of efficient tax administration.

In light of the Windsor decision and for the reasons discussed below, the Service also concludes that the terms "husband and wife," "husband," and "wife" should be interpreted to include same-sex spouses. This interpretation is consistent with the

Supreme Court's statements about the Code in Windsor, avoids the serious constitutional questions that an alternate reading would create, and is permitted by the text and purposes of the Code.

First, the Supreme Court's opinion in Windsor suggests that it understood that its decision striking down section 3 of DOMA would affect tax administration in ways that extended beyond the estate tax refund at issue. See 133 S. Ct. at 2694 ("The particular case at hand concerns the estate tax, but DOMA is more than simply a determination of what should or should not be allowed as an estate tax refund. Among the over 1,000 statutes and numerous Federal regulations that DOMA controls are laws pertaining to . . . taxes."). The Court observed in particular that section 3 burdened same-sex couples by forcing "them to follow a complicated procedure to file their Federal and state taxes jointly" and that section 3 "raise[d] the cost of health care for families by taxing health benefits provided by employers to their workers' same-sex spouses." Id. at 2694-2695.

Second, an interpretation of the gender-specific terms in the Code to exclude same-sex spouses would raise serious constitutional questions. A well-established principle of statutory interpretation holds that, "where an otherwise acceptable construction of a statute would raise serious constitutional problems," a court should "construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988). "This canon is followed out of respect for Congress, which [presumably] legislates in light of constitutional limitations," Rust v.

Sullivan, 500 U.S. 173, 191 (1991), and instructs courts, where possible, to avoid interpretations that "would raise serious constitutional doubts," United States v. X-Citement Video, Inc., 513 U.S. 64, 78 (1994).

The Fifth Amendment analysis in Windsor raises serious doubts about the constitutionality of Federal laws that confer marriage benefits and burdens only on opposite-sex married couples. In Windsor, the Court stated that, "[b]y creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of Federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect." 133 S. Ct. at 2694. Interpreting the gender-specific terms in the Code to categorically exclude same-sex couples arguably would have the same effect of diminishing the stability and predictability of legally recognized same-sex marriages. Thus, the canon of constitutional avoidance counsels in favor of interpreting the gender-specific terms in the Code to refer to same-sex spouses and couples.

Third, the text of the Code permits a gender-neutral construction of the gender-specific terms. Section 7701 of the Code provides definitions of certain terms generally applicable for purposes of the Code when the terms are not defined otherwise in a specific Code provision and the definition in section 7701 is not manifestly incompatible with the intent of the specific Code provision. The terms "husband and wife," "husband," and "wife" are not specifically defined other than in section 7701(a)(17), which provides, for purposes of sections 682 and 2516, that the terms "husband" and "wife" shall be

read to include a former husband or a former wife, respectively, and that "husband" shall be read as "wife" and "wife" as "husband" in certain circumstances. Although Congress's specific instruction to read "husband" and "wife" interchangeably in those specific provisions could be taken as an indication that Congress did not intend the terms to be read interchangeably in other provisions, the Service believes that the better understanding is that the interpretive rule set forth in section 7701(a)(17) makes it reasonable to adopt, in the circumstances presented here and in light of Windsor and the principle of constitutional avoidance, a more general rule that does not foreclose a gender-neutral reading of gender-specific terms elsewhere in the Code.

Section 7701(p) provides a specific cross-reference to the Dictionary Act, 1 U.S.C. § 1, which provides, in part, that when "determining the meaning of any Act of Congress, unless the context indicates otherwise, . . . words importing the masculine gender include the feminine as well." The purpose of this provision was to avoid having to "specify males and females by using a great deal of unnecessary language when one word would express the whole." Cong. Globe, 41st Cong., 3d Sess. 777 (1871) (statement of Sen. Trumbull, sponsor of Dictionary Act). This provision has been read to require construction of the phrase "husband and wife" to include same-sex married couples. See Pedersen v. Office of Personnel Mgmt., 881 F. Supp. 2d 294, 306-07 (D. Conn. 2012) (construing section 6013 of the Code). The Dictionary Act thus supports interpreting the gender-specific terms in the Code in a gender-neutral manner "unless the context indicates otherwise." 1 U.S.C. § 1. "'Context'" for purposes of the Dictionary Act "means the text of the Act of Congress surrounding the word at issue, or

the texts of other related congressional Acts." Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 199 (1993). Here, nothing in the surrounding text forecloses a gender-neutral reading of the gender-specific terms. Rather, the provisions of the Code that use the terms "husband and wife," "husband," and "wife" are inextricably interwoven with provisions that use gender-neutral terms like "spouse" and "marriage," indicating that Congress viewed them to be equivalent. For example, section 1(a) sets forth the tax imposed on "every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013," even though section 6013 provides that a "husband and wife" make a single return jointly of income. Similarly, section 2513 of the Code is entitled "Gifts by Husband or Wife to Third Party," but uses no gender-specific terms in its text. See also, e.g., §§ 62(b)(3), 1361(c)(1).

This interpretation is also consistent with the legislative history. The legislative history of section 6013, for example, uses the term "married taxpayers" interchangeably with the terms "husband" and "wife" to describe those individuals who may elect to file a joint return, and there is no indication that Congress intended those terms to refer only to a subset of individuals who are legally married. See, e.g., S. Rep. No. 82-781, Finance, Part 1, p. 48 (Sept. 18, 1951). Accordingly, the most logical reading is that the terms "husband and wife" were used because they were viewed, at the time of enactment, as equivalent to the term "persons married to each other." There is nothing in the Code to suggest that Congress intended to exclude from the meaning of these terms any couple otherwise legally married under state law.

Fourth, other considerations also strongly support this interpretation. A gender-neutral reading of the Code fosters fairness by ensuring that the Service treats same-sex couples in the same manner as similarly situated opposite-sex couples. A gender-neutral reading of the Code also fosters administrative efficiency because the Service does not collect or maintain information on the gender of taxpayers and would have great difficulty administering a scheme that differentiated between same-sex and opposite-sex married couples.

Therefore, consistent with the statutory context, the Supreme Court's decision in Windsor, Revenue Ruling 58-66, and effective tax administration generally, the Service concludes that, for Federal tax purposes, the terms "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if they were lawfully married in a state whose laws authorize the marriage of two individuals of the same sex, and the term "marriage" includes such marriages of individuals of the same sex.

3. Marital Status Based on the Laws of the State Where a Marriage Is Initially Established

Consistent with the longstanding position expressed in Revenue Ruling 58-66, the Service has determined to interpret the Code as incorporating a general rule, for Federal tax purposes, that recognizes the validity of a same-sex marriage that was valid in the state where it was entered into, regardless of the married couple's place of domicile. The Service may provide additional guidance on this subject and on the application of Windsor with respect to Federal tax administration. Other agencies may

provide guidance on other Federal programs that they administer that are affected by the Code.

Under this rule, individuals of the same sex will be considered to be lawfully married under the Code as long as they were married in a state whose laws authorize the marriage of two individuals of the same sex, even if they are domiciled in a state that does not recognize the validity of same-sex marriages. For over half a century, for Federal income tax purposes, the Service has recognized marriages based on the laws of the state in which they were entered into, without regard to subsequent changes in domicile, to achieve uniformity, stability, and efficiency in the application and administration of the Code. Given our increasingly mobile society, it is important to have a uniform rule of recognition that can be applied with certainty by the Service and taxpayers alike for all Federal tax purposes. Those overriding tax administration policy goals generally apply with equal force in the context of same-sex marriages.

In most Federal tax contexts, a state-of-domicile rule would present serious administrative concerns. For example, spouses are generally treated as related parties for Federal tax purposes, and one spouse's ownership interest in property may be attributed to the other spouse for purposes of numerous Code provisions. If the Service did not adopt a uniform rule of recognition, the attribution of property interests could change when a same-sex couple moves from one state to another with different marriage recognition rules. The potential adverse consequences could impact not only the married couple but also others involved in a transaction, entity, or arrangement. This would lead to uncertainty for both taxpayers and the Service.

A rule of recognition based on the state of a taxpayer's current domicile would also raise significant challenges for employers that operate in more than one state, or that have employees (or former employees) who live in more than one state, or move between states with different marriage recognition rules. Substantial financial and administrative burdens would be placed on those employers, as well as the administrators of employee benefit plans. For example, the need for and validity of spousal elections, consents, and notices could change each time an employee, former employee, or spouse moved to a state with different marriage recognition rules. To administer employee benefit plans, employers (or plan administrators) would need to inquire whether each employee receiving plan benefits was married and, if so, whether the employee's spouse was the same sex or opposite sex from the employee. In addition, the employers or plan administrators would need to continually track the state of domicile of all same-sex married employees and former employees and their spouses. Rules would also need to be developed by the Service and administered by employers and plan administrators to address the treatment of same-sex married couples comprised of individuals who reside in different states (a situation that is not relevant with respect to opposite-sex couples). For all of these reasons, plan administration would grow increasingly complex and certain rules, such as those governing required distributions under section 401(a)(9), would become especially challenging. Administrators of employee benefit plans would have to be retrained, and systems reworked, to comply with an unprecedented and complex system that divides married employees according to their sexual orientation. In many cases, the tracking of

employee and spouse domiciles would be less than perfectly accurate or timely and would result in errors or delays. These errors and delays would be costly to employers, and could require some plans to enter the Service's voluntary compliance programs or put benefits of all employees at risk. All of these problems are avoided by the adoption of the rule set forth herein, and the Service therefore has chosen to avoid the imposition of the additional burdens on itself, employers, plan administrators, and individual taxpayers. Accordingly, Revenue Ruling 58-66 is amplified to adopt a general rule, for Federal tax purposes, that recognizes the validity of a same-sex marriage that was valid in the state where it was entered into, regardless of the married couple's place of domicile.

4. Registered Domestic Partnerships, Civil Unions, or Other Similar Formal Relationships Not Denominated as Marriage

For Federal tax purposes, the term "marriage" does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under that state's law, and the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a formal relationship. This conclusion applies regardless of whether individuals who have entered into such relationships are of the opposite sex or the same sex.

HOLDINGS

1. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the

individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex.

2. For Federal tax purposes, the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

3. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term "marriage" does not include such formal relationships.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 58-66 is amplified and clarified.

PROSPECTIVE APPLICATION

The holdings of this ruling will be applied prospectively as of September 16, 2013.

Except as provided below, affected taxpayers also may rely on this revenue ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from these holdings, provided the applicable limitations period for filing such claim under section 6511 has not expired. If an affected taxpayer files an original return, amended return, adjusted

return, or claim for credit or refund in reliance on this revenue ruling, all items required to be reported on the return or claim that are affected by the marital status of the taxpayer must be adjusted to be consistent with the marital status reported on the return or claim.

Taxpayers may rely (subject to the conditions in the preceding paragraph regarding the applicable limitations period and consistency within the return or claim) on this revenue ruling retroactively with respect to any employee benefit plan or arrangement or any benefit provided thereunder only for purposes of filing original returns, amended returns, adjusted returns, or claims for credit or 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 under sections 106, 117(d), 119, 129, or 132 based on an individual's marital status. For purposes of the preceding sentence, if an employee made a pre-tax salary-reduction election for health coverage under a section 125 cafeteria plan sponsored by an employer and also elected to provide health coverage for a same-sex spouse on an after-tax basis under a group health plan sponsored by that employer, an affected taxpayer may treat the amounts that were paid by the employee for the coverage of the same-sex spouse on an after-tax basis as pre-tax salary reduction amounts.

The Service intends to issue further guidance on the retroactive application of the Supreme Court's opinion in Windsor to other employee benefits and employee benefit plans and arrangements. Such guidance will take into account the potential

consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries. The Service anticipates that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Richard S. Goldstein and Matthew S. Cooper of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Mr. Goldstein and Mr. Cooper at 202-622-3400 (not a toll-free call).

IRS

Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law

The following questions and answers provide information to individuals of the same sex who are lawfully married (same-sex spouses). These questions and answers reflect the holdings in Revenue Ruling 2013-17 in 2013-38 IRB 201.

Q1. When are individuals of the same sex lawfully married for federal tax purposes?

A1. For federal tax purposes, the IRS looks to state or foreign law to determine whether individuals are married. The IRS has a general rule recognizing a marriage of same-sex spouses that was validly entered into in a domestic or foreign jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple resides in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages.

Q2. Can same-sex spouses file federal tax returns using a married filing jointly or married filing separately status?

A2. Yes. For tax year 2013 and going forward, same-sex spouses generally must file using a married filing separately or jointly filing status. For tax year 2012 and all prior years, same-sex spouses who file an original tax return on or after Sept. 16, 2013 (the effective date of Rev. Rul. 2013-17), generally must file using a married filing separately or jointly filing status. For tax year 2012, same-sex spouses who filed their tax return before Sept. 16, 2013, may choose (but are not required) to amend their federal tax returns to file using married filing separately or jointly filing status. For tax years 2011 and earlier, same-sex spouses who filed their tax returns timely may choose (but are not required) to amend their federal tax returns to file using married filing separately or jointly filing status provided the period of limitations for amending the return has not expired. A taxpayer generally may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later. For information on filing an amended return, go to Tax Topic 308, Amended Returns, at http://www.irs.gov/taxtopics/tc308.html.

Q3. Can a taxpayer and his or her same-sex spouse file a joint return if they were married in a state that recognizes same-sex marriages but they live in a state that does not recognize their marriage?

A3. Yes. For federal tax purposes, the Service has a general rule recognizing a marriage of same-sex individuals that was validly entered into in a domestic or foreign jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple resides in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages. The rules for using a married filing jointly or married filing separately status described in Q&A #2 apply to these married individuals.

Q4. Can a taxpayer's same-sex spouse be a dependent of the taxpayer?

A4. No. A taxpayer's spouse cannot be a dependent of the taxpayer.

Q5. Can a same-sex spouse file using head of household filing status?

A5. A taxpayer who is married cannot file using head of household filing status. However, a married taxpayer may be considered unmarried and may use the head-of-household filing status if the taxpayer lives apart from his or her spouse for the last 6 months of the taxable year and provides more than half the cost of maintaining a household that is the principal place of abode of the taxpayer's dependent child for more than half of the year. See Publication 501 for more details.

Q6. If same-sex spouses (who file using the married filing separately status) have a child, which parent may claim the child as a dependent?

A6. If a child is a qualifying child under section 152(c) of both parents who are spouses (who file using the married filing separate status), either parent, but not both, may claim a dependency deduction for the qualifying child. If both parents claim a dependency deduction for the child on their income tax returns, the IRS will treat the child as the qualifying child of the parent with whom the child resides for the longer period of time during the taxable year. If the child resides with each parent for the same amount of time during the taxable year, the IRS will treat the child as the qualifying child of the parent with the higher adjusted gross income.

Q7. Can a taxpayer who is married to a person of the same sex claim the standard deduction if the taxpayer's spouse itemized deductions?

A7. No. If a taxpayer's spouse itemized his or her deductions, the taxpayer cannot claim the standard deduction (section 63(c)(6)(A)).

Q8. If a taxpayer adopts the child of his or her same-sex spouse as a second parent or co-parent, may the taxpayer ("adopting parent") claim the adoption credit for the qualifying adoption expenses he or she pays or incurs to adopt the child?

A8. No. The adopting parent may not claim an adoption credit. A taxpayer may not claim an adoption credit for expenses incurred in adopting the child of the taxpayer's spouse (section 23).

Q9. Do provisions of the federal tax law such as section 66 (treatment of community income) and section 469(i)(5) ($25,000 offset for passive activity losses for rental real estate activities) apply to same-sex spouses?

A9. Yes. Like other provisions of the federal tax law that apply to married taxpayers, section 66 and section 469(i)(5) apply to same-sex spouses because same-sex spouses are married for all federal tax purposes.

Q10. If an employer provided health coverage for an employee's same-sex spouse and included the value of that coverage in the employee's gross income, can the employee file an amended Form 1040 reflecting the employee's status as a married individual to recover federal income tax paid on the value of the health coverage of the employee's spouse?

A10. Yes, for all years for which the period of limitations for filing a claim for refund is open. Generally, a taxpayer may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later. If an employer provided health coverage for an employee's same-sex spouse, the employee may claim a refund of income taxes paid on the value of coverage that would have been excluded from income had the employee's spouse been recognized as the employee's legal spouse for tax purposes. This claim for a refund generally would be made through the filing of an amended Form 1040. For information on filing an amended return, go to Tax Topic 308, Amended Returns, at http://www.irs.gov/taxtopics/tc308.html.

For a discussion regarding refunds of social security and Medicare taxes, see Q&A #12.

Example. Employer sponsors a group health plan covering eligible employees and their dependents and spouses (including same-sex spouses). Fifty percent of the cost of health coverage elected by employees is paid by Employer. Employee A was married to same-sex Spouse B at all times during 2012. Employee A elected coverage for Spouse B through Employer's group health plan beginning Jan. 1, 2012. The value of the employer-funded portion of Spouse B's health coverage was $250 per month.

The amount in Box 1, "Wages, tips, other compensation," of the 2012 Form W-2 provided by Employer to Employee A included $3,000 ($250 per month x 12 months) of income reflecting the value of employer-funded health coverage provided to Spouse B. Employee A filed Form 1040 for the 2012 taxable year reflecting the Box 1 amount reported on Form W-2.

Employee A may file an amended Form 1040 for the 2012 taxable year excluding the value of Spouse B's employer-funded health coverage ($3,000) from gross income.

Q11. If an employer sponsored a cafeteria plan that allowed employees to pay premiums for health coverage on a pre-tax basis, can a participating employee file an amended return to recover income taxes paid on premiums that the employee paid on an after-tax basis for the health coverage of the employee's same-sex spouse?

A11. Yes, for all years for which the period of limitations for filing a claim for refund is open. Generally, a taxpayer may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later. If an employer sponsored a cafeteria plan under which an employee elected to pay for health coverage for the employee on a pre-tax basis, and if the employee purchased coverage on an after-tax basis for the employee's same-sex spouse under the employer's health plan, the employee may claim a refund of income taxes paid on the premiums for the coverage of the employee's spouse. This claim for a refund generally would be made through the filing of an amended Form 1040. For information on filing an amended return, go to Tax Topic 308, Amended Returns, at http://www.irs.gov/taxtopics/tc308.html. For a discussion regarding refunds of social security and Medicare taxes, see Q&A #12.

Example. Employer sponsors a group health plan as part of a cafeteria plan with a calendar year plan year. The full cost of spousal and dependent coverage is paid by the employees. In the open enrollment period for the 2012 plan year, Employee C elected to purchase self-only health coverage through salary reduction under Employer's cafeteria plan. On March 1, 2012, Employee C was married to same-sex spouse D. Employee C purchased health coverage for Spouse D through Employer's group health plan beginning March 1, 2012. The premium paid by Employee C for Spouse D's health coverage was $500 per month.

The amount in Box 1, "Wages, tips, other compensation," of the 2012 Form W-2 provided by Employer to Employee C included the $5,000 ($500 per month x 10 months) of premiums paid by Employee C for Spouse D's health coverage. Employee C filed Form 1040 for the 2012 taxable year reflecting the Box 1 amount reported on Form W-2.

Employee C's salary reduction election is treated as including the value of the same-sex spousal coverage purchased for Spouse D. Employee C may file an amended Form 1040 for the 2012 taxable year excluding the premiums paid for Spouse D's health coverage ($5,000) from gross income.

Q12. In the situations described in FAQ #10 and FAQ #11, may the employer claim a refund for the social security taxes and Medicare taxes paid on the benefits?

A12. Yes. If the period of limitations for filing a claim for refund is open, the employer may claim a refund of, or make an adjustment for, any excess social security taxes and Medicare taxes paid. The requirements for filing a claim for refund or for making an adjustment for an overpayment of the

employer and employee portions of social security and Medicare taxes can be found in the Instructions for Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund. A special administrative procedure for employers to file claims for refunds or make adjustments for excess social security taxes and Medicare taxes paid on same-sex spouse benefits will be provided in forthcoming guidance to be issued by the IRS in the near future.

Q13. In the situations described in Q&A #10 and Q&A #11, may the employer claim a refund or make an adjustment of income tax withholding that was withheld from the employee with respect to the benefits in prior years?

A13. No. Claims for refunds of overwithheld income tax for prior years cannot be made by employers. The employee may file for any refund of income tax due for prior years on Form 1040X, provided the period of limitations for claiming a refund has not expired. See Q&A #10 and Q&A #11. Employers may make adjustments for income tax withholding that was overwithheld from an employee in the current year provided the employer has repaid or reimbursed the employee for the overwithheld income tax before the end of the calendar year.

Q14. If an employer cannot locate a former employee with a same-sex spouse who received the benefits described in Q&A #10 and Q&A #11, may the employer still claim a refund of the employer portion of the social security and Medicare taxes on the benefits?

A14. Yes, if the employer makes reasonable attempts to locate an employee who received the benefits described in Q&A #10 and Q&A #11 that were treated as wages but the employer is unable to locate the employee, the employer can claim a refund of the employer portion of Social Security and Medicare taxes, but not the employee portion. Also, if an employee is notified and given the opportunity to participate in the claim for refund of Social Security and Medicare taxes but declines in writing, the employer can claim a refund of the employer portion of the taxes, but not the employee portion. Employers can use the special administrative procedure that will be set forth in forthcoming guidance to file these claims.

Q15. If a sole proprietor employs his or her same-sex spouse in his or her business, can the sole proprietor get a refund of Social Security, Medicare and FUTA taxes on the wages that the sole proprietor paid to the same-sex spouse as an employee in the business?

A15. Services performed by an employee in the employ of his or her spouse are excluded from the definition of employment for purposes of the Federal Unemployment Tax Act (FUTA). Therefore, for all years for which the period of limitations is open, the sole proprietor can claim a refund of the FUTA tax paid on the compensation that the sole proprietor paid his or her same-sex spouse as an employee in the business. Services of a spouse are excluded from Social Security and Medicare taxes only if the services are not in the course of the employer's trade or business, or if it is domestic service in a private home of the employer.

Q16. What rules apply to qualified retirement plans pursuant to Rev. Rul. 2013-17?

A16. Qualified retirement plans are required to comply with the following rules pursuant to Rev. Rul. 2013-17:

1. A qualified retirement plan must treat a same-sex spouse as a spouse for purposes of satisfying the federal tax laws relating to qualified retirement plans.
2. For purposes of satisfying the federal tax laws relating to qualified retirement plans, a qualified retirement plan must recognize a same-sex marriage that was validly entered into in a jurisdiction whose laws authorize the marriage, even if the married couple lives in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages.
3. A person who is in a registered domestic partnership or civil union is not considered to be a spouse for purposes of applying the federal tax law requirements relating to qualified retirement plans, regardless of whether that person's partner is of the opposite or same sex.

Q17. What are some examples of the consequences of these rules for qualified retirement plans?

A17. The following are some examples of the consequences of these rules:

1. Plan A, a qualified defined benefit plan, is maintained by Employer X, which operates only in a state that does not recognize same-sex marriages. Nonetheless, Plan A must treat a participant who is married to a spouse of the same sex under the laws of a different jurisdiction as married for purposes of applying the qualification requirements that relate to spouses.
2. Plan B is a qualified defined contribution plan and provides that the participant's account must be paid to the participant's spouse upon the participant's death unless the spouse consents to a different beneficiary. Plan B does not provide for any annuity forms of distribution. Plan B must pay this death benefit to the same-sex surviving spouse of any deceased participant. Plan B is not required to provide this death benefit to a surviving registered domestic partner of a deceased participant. However, Plan B is allowed to make a participant's registered domestic partner the default beneficiary who will receive the death benefit unless the participant chooses a different beneficiary.

Q18. As of when do the rules of Rev. Rul. 2013-17 apply to qualified retirement plans?

A18. Qualified retirement plans must comply with these rules as of Sept. 16, 2013. Although Rev. Rul. 2013-17 allows taxpayers to file amended returns that relate to prior periods in reliance on the rules in Rev. Rul. 2013-17 with respect to many matters, this rule does not extend to matters relating to qualified retirement plans. The IRS has not yet provided guidance regarding the application of *Windsor* and these rules to qualified retirement plans with respect to periods before Sept. 16, 2013.

Q19. Will the IRS issue further guidance on how qualified retirement plans and other tax-favored retirement arrangements must comply with *Windsor* and Rev. Rul. 2013-17?

A19. The IRS intends to issue further guidance on how qualified retirement plans and other tax-favored retirement arrangements must comply with *Windsor* and Rev. Rul. 2013-17. It is expected that future guidance will address the following, among other issues:

1. Plan amendment requirements (including the timing of any required amendments).
2. Any necessary corrections relating to plan operations for periods before future guidance is issued.

Q20. Can a same-sex married couple elect to treat a jointly owned and operated unincorporated business as a Qualified Joint Venture?

A20. Yes. Spouses that wholly own and operate an unincorporated business and that meet certain other requirements may avoid Federal partnership tax treatment by electing to be a Qualified Joint Venture. For more information on Qualified Joint Ventures, see the tax topic "Husband and Wife Business" at http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Husband-and-Wife-Business.

Related Item:

- IR-2013-72, 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

Page Last Reviewed or Updated: 19-Sep-2013

(LETTERHEAD)

November 21, 2013

LETTER OF INSTRUCTIONS

TO WHOM IT MAY CONCERN:

I, Partner Two, am writing this letter to declare that I have entered into a committed, long term relationship with Partner One, and as such, Partner One occupies a position of great trust and responsibility in my life. Partner One and I share common values and confidence. We have discussed the contents of this letter, which is an expression of my common law right of personal autonomy, before I have signed it.

The purpose of this letter is not to effect or establish any property rights or any other financial matters. Its purpose is to confer my authority on Partner One, similar to a spouse or parent, as the holder of my confidence, to announce my decisions with respect to personal matters including, but not limited to the following: medical questions, institutional visitation, funeral and burial concerns, and custody and visitation of pets. I believe that Partner One is knowledgeable concerning the ownership of personal property within our mutual custody. Without intending to limit the foregoing, it is my wish to confer all authority to Partner One to speak on my behalf with respect to these subjects and to have the decision of Partner One prevail, notwithstanding the contrary preference of any member of my biological family.

I request, but do not require, that Partner One will consult with other family members who have been supportive of our relationship.

Partner One is familiar with my wishes, attitudes and beliefs. Because of this knowledge and confidence I have in Partner One, with respect to any health care decisions not already embraced within any power of attorney and any advance directive for healthcare that I may have given, I direct my health care providers to consult with Partner One and recognize that Partner One is capable of expressing my thoughts if I cannot. Partner One is more conversant with my preferences, and the announcement of my decision in a health matter by Partner One shall be given more weight and authority than any wishes of a member of my biological family.

If I am in a hospital, including an ICU or CCU, a hospice, skilled nursing facility, or other medical or residential care facility, for purposes of visitation, Partner One is to be treated as my primary family member, and shall be given access to me in all circumstances. Partner One shall have the authority to exclude other persons from my presence, including members of my biological family, if, in the discretion of Partner One, this is appropriate. Partner One shall be treated as my personal representative as defined in HIPAA regulations, 45 CFR §164.502. My biological family members shall not be given any authority to exclude Partner One from my presence.

Partner One and I have discussed our choice of the treatment of our mortal remains, methods of interment and any ceremonies to commemorate our passing. While our family, culture or religion may have different practices, our decisions were made understanding any conflict, and should be given effect, even if it is over the objection of my biological family. If we have chosen a joint headstone, I expect that this will be carried out. It is my explicit and sincere expression that Partner One, and not anyone else shall make arrangements for the final disposition of my remains, 20 Pa C.S.A. §305.

In all things, I implore my family and friends to support Partner One in every respect. We have chosen to entwine our lives, and in any time of tension and sadness, Partner One will need everyone's help.

I hereby set my hand to this Letter of Instructions prepared on the letterhead of my attorney on the _____ day of _____, 2012, at Wyomissing, Pennsylvania.

_____

In our presence Partner Two, the above-named individual signed this and declared it to be an expression of his instructions, and now at his request, in his presence, and in the presence of each other, we sign as witnesses:

_____

_____

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF BERKS :

I, Partner Two, having been duly qualified according to law, acknowledge that I signed the foregoing instrument as my Letter of Instructions, and that I signed it as my free and voluntary act for the purposes therein expressed.

_____

We, _____ and _____, the witnesses whose names are signed to the attached or foregoing instrument, having been duly qualified according to law, do hereby declare to the undersigned authority that we were present and saw Partner Two sign and execute the instrument as his Letter of Instruction, that Partner Two signed willingly and executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of Partner Two and of each other, signed the Letter of Instruction as witness, and that to the best of our knowledge, Partner Two was at the time eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____ _____

Witness Witness

Subscribed, sworn to or affirmed and acknowledged before me by Partner Two, and subscribed and sworn to or affirmed before me by _____ and_____, the witnesses, this ____ day of _____, 2013.

_____

Notary Public