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To: Clients and Friends

From: Daniel S. Engle

Subject: Department of the Treasury Introduces Regulations Defining Terms Describing Marital Status Under the Internal Revenue Code

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In the September 2, 2016 issue of the *Federal Register* (81 FR 60609) ([click here](#)), the United States Department of the Treasury (“Department”) announced the implementation of final regulations, effective September 2, 2016, defining terms in the Internal Revenue Code that describe the marital status of taxpayers for federal tax purposes. These regulations reflect the United States Supreme Court’s holdings in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) ([click here](#)) and *United States v. Windsor*, 133 S. Ct. 2675 (2013) ([click here](#)) as well as the Department’s Revenue Ruling 2013-17 ([click here](#)). The language of these definitions is gender neutral and designed to apply equally to same-sex and opposite-sex couples. The Department’s objective was to clarify, for federal tax purposes, the federal law espoused in *Obergefell* and *Windsor*.

First, the terms “spouse,” “husband” and “wife” are defined in the new regulations as “an individual lawfully married to another individual.” The term “husband and wife” is defined as “two individuals lawfully married to each other.” These definitions are stated in the newly added Section 301.7701-18(a) of 26 CFR Part 301.

Second, the Department added regulations specifying the definition of persons who are legally married in Section 301.7701-18(b) of 26 CFR Part 301. A marriage between two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession or territory of the United States in which the marriage was entered into. A foreign marriage is recognized for federal tax purposes if: 1) two individuals entered into a relationship that was denominated as a marriage under the law of a foreign jurisdiction and 2) the relationship would be recognized as a marriage under the laws of at least one state, possession or territory of the United States.

The Department also clarified that persons who have entered into a formal, legal relationship in a state, possession, or territory of the United States that is not denominated as a marriage under that state, possession or territory—for example, a civil union—are not considered lawfully married for the purposes of federal tax law and that the terms “spouse,” “husband,” “wife,” “husband and wife” and “marriage” do not apply to those relationships or the individuals who have entered into them. This provision was added in Section 301.7701-18(c) of 26 CFR Part 301.

Finally, the Department added regulations applicable for each federal tax that refer the definitions of “spouse,” “husband and wife,” “husband,” “wife” and “marriage” to those newly added in Section 301.7701-18 of 26 CFR Part 301 and which are discussed above. Specifically, these added regulations are: Section 1.7701-1 of 26 CFR Part 1 (Income Taxes); Section 20.7701-2 of 26 CFR Part 20 (Estate Tax); Section 25.7701-2 of 26 CFR Part 25 (Gift Tax); Section 26.7701-2 of 26 CFR Part 26 (Generation-Skipping Transfer Tax) and Section 31.7701-2 of 26 CFR Part 31 (Employment Taxes and Collection of Income Tax at the Source).

The final regulations addressed in this memorandum apply to taxable years ending on or after September 2, 2016, and this memorandum is provided to assist our lending clients in the processing and underwriting of loans that may be impacted by these regulations.

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