Hot Topics in Federal Taxation

Sara M. Reisdorf

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IRS Revenue Ruling 2013-17 (IRB 201)

- Issued on August 29, 2013 (along with FAQ's)
  - First step in implementing the United States' Supreme Court June 26, 2013 decision in *United States v. Windsor* (133 S. Ct. 2884 (2013)).

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IRS Revenue Ruling 2013-17 (IRB 201)

- IRS will recognize 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."

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IRS Revenue Ruling 2013-17 (IRB 201)

- Married SS couples will be required to file Married Filing Joint, or Married Filing Separately if the SS couple is legally married in a jurisdiction that authorizes SS marriage, even if the couple resides in a state that does not recognize SS marriage.

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IRS Revenue Ruling 2013-17 (IRB 201)

- Prospective application from September 16, 2013, BUT:
  - IRS will permit amended income tax returns to be filed for SS couples who were married prior to September 16, 2013 for 2010, 2011, and 2012.
  - Employers' will need to coordinate Payroll and Employee Benefits items to ensure that the legally married SS couples have corrected W2's to adjust for imputed income and eligibility for pretax payments for health ins

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Links for Information

- Revenue Ruling: www.irs.gov/pub/irs-drop/rr-13-17.pdf
- Frequently Asked Questions: www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples

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Net Investment Income (NII) Tax

- 3.8% Medicare Tax
  - From Affordable Care Act legislation in 2010
  - Found in Internal Revenue Code ("IRC") §1411
  - Went into effect on January 1, 2013
  - Proposed Regulations §§ 1.1411-1 through 1.1411-10 issued November 30, 2012 (will be effective January 1, 2014; may rely on until then)

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NII Tax - What They Apply To

- 3.8% Medicare Tax
  - Applies to lesser of:
    - an individual's (or estate's or trust's) "net investment income" or
    - such individual's (or estate's or trust's) modified adjusted gross income (MAGI) in excess of certain thresholds

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NII Tax - What They Apply To

- 3.8% Medicare Tax
  - Thresholds:
    - $250,000 for married taxpayers filing jointly
    - $125,000 for married taxpayers filing separately
    - $200,00 for single taxpayers
    - $11,650 for estates and trusts
  - Note, above thresholds not indexed for inflation

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"Net Investment Income"

- The sum of:
  - Interest, dividend, annuity, royalty, and rental income
  - Passive activity income under Code §469
  - Any trade or business income from trading in financial instruments or commodities (Code §475(e)(2))
  - Gain from disposition of property, including sale of partnership, LLC, or S corporation ownership (subject to certain limits)
  - Gain on sale of principal residence not excludable under Code §121
  - Gain on sale of vacation home or secondary residence

<u>Minus</u>

  - Deductions properly allocable to any of the above income or gain

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"Net Investment Income"

- What "net investment income" does not include
  - Amount subject to employment and self-employment tax
  - Operating income from "active" trade or business (whether or not conducted through partnership, LLC, or S corporation)
  - Gain on sale of "active" trade or business (whether asset sale or ownership sale)
  - Tax-exempt bond interest
  - Gain on sale of principle residence excludable under Code §121
  - Veterans' benefits
  - Life insurance proceeds
  - Tax-free inside build up of cash surrender value of life insurance
  - Certain qualified retirement plan distributions

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Application of NII Tax

- Proposed Regulations Hot Button Issues
  - Treatment of Rental Real Estate Activities, including self-rentals
  - Sale of partnership or S corporation stock
    - Proposed regulation §1.1411-7 - puts a "significant burden on taxpayers" because of its recordkeeping requirements
    - Burden is on the taxpayer (the partner/S corporation shareholder), and would apply to <u>any</u> disposition of interest/stock

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Application of NII Tax

- Proposed Regulations Hot Button Issues
  - Payments to Retiring / Deceased Owners
  - International Tax (Subpart F Income/Controlled Foreign Corporations)
  - Investment Funds and Fund Managers
  - Unintended Structuring Considerations (Preferred Returns on Invested Capital)

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Links for Information

- Draft Form 8960: www.irs.gov/pub/irs-dft/f8960--dft.pdf
- IRS Affordable Care Act Information Page: www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-Home

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Questions?

Sara M. Reisdorf

612.492.7332

sreisdorf@fredlaw.com

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