

THE Witness Chair

Leading-edge Ideas for CPAs Providing Litigation and Dispute Resolution Services

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Time for More Initials After Your Name? Becoming a Licensed Private Investigator

by Ronald L. Durkin, CPA

A few years ago we had a CPA from an adjoining state speak to our Forensic Services Section Steering Committee. A few committee members mentioned that he had an excessive number of credentials after his name. Far too many for my taste, I thought at the time. So, how many are enough?

Before you decide to stick with what you have, consider the June 2013 *Journal of Accountancy* article regarding the possible need to be licensed as a private investigator.

The article, www.tinyurl.com/cft822j, described how CPAs might need to be licensed as private investigators if they perform certain forensic accounting procedures. The article referenced an online guide and indicated that more than 40 states have enacted laws requiring those conducting investigations, or other related services, to obtain a license as a private investigator.

As a former FBI special agent and a CPA who has been conducting investigations for more than 35 years, I found this article troubling and problematic for most CPAs in the U.S. While all of us who conduct investigations in California are covered, at least for now, this may be a potential problem for those who conduct investigations in other states.

More than 15 years ago I saw a potential problem with this issue and conducted my own research to determine whether I, and those working with me, would be in jeopardy if we conducted investigations in other states. I alerted my colleagues on the Steering Committee to this issue and we, along with our CalCPA government relations staff in Sacramento, were able to obtain a carve-out for CPAs in California.

Can A California CPA Conduct Investigations?

According to the California Board of Accountancy and the Business and Professions Code Sec. 5051, a CPA is allowed to “perform for compensation ... professional services that involve or require an audit, **examination**, verification, **investigation**, certification, presentation, or review of financial transactions and accounting records.” (Emphasis added.)

Additionally, a CPA “**prepares** or certifies **for clients** reports on audits or **examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication**, for the purpose of obtaining credit, **for filing with a court of law** or with any governmental agency, **or for any other purpose.**” (Emphasis added.)

It is clear that a California CPA can conduct an investigation and file with the court a report with the results of the investigation. But what happens if California CPAs do work in another state? Are they covered?

The Problem

According to the article, CPAs who “participate in activities associated with private investigations” may be required to obtain a private investigator license. These activities include conducting research and document-based investigations.

The California Bureau of Security and Investigative Services (CBSIS) defines a private investigator as “an individual who (1) **Investigates crimes**, (2)

investigates the identity, business, occupation, character, etc. of a person, (3) **investigates the location of lost or stolen property**, (4) **investigates the cause of fires, losses, accidents, damage or injury**, or (5) **secures evidence for use in court.**” (Emphasis added).

So, based on this definition, would a CPA’s duties fall within the parameters enumerated above? Since CPAs investigate alleged crimes such as embezzlements, financial statement fraud and corruption, among other things, those services would seem to fit within the parameters stated in the CBSIS definition above.

CPAs conduct background investigations to identify individuals who may be involved in alleged crimes, as well as their businesses. Again, that seems to fit within the above parameters. CPAs also try to trace funds and identify the location of the alleged stolen or fraudulently transferred assets.

A key ingredient in conducting the investigation is determining the amount of loss or damage suffered by the victim. Finally, the CPA “secures evidence” for use in court. These additional procedures would seem to fit within the CBSIS parameters.

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Section Action

Business Valuation by Denise M. Frey, CPA

In his presentations at the BV Section meeting in February, Aswath Damodaran, finance professor at the Stern School of Business at New York University, said detecting bias in valuation reports is one of his favorite subjects. Give him reports and he can tell whose side each analyst is on.

The theme continued at the BV Section meeting in May with Jim Hitchner. The subject matter, posed in question form to panelists, included cost of capital, DLOM and company specific risk—a few of the very things that could be used to “move” a value.

Included in the Financial Valuation and Litigation Expert newsletters accompanying his materials were two articles on how to “rig” the valuation of a business, explaining ways intentional biases make their way into a report. The article states “users of valuation services often can’t tell the difference between an unbiased and biased valuation.”

How can a user of valuation reports determine bias? The court is one user of such reports, and when presented with drastic value differences, “splits the difference.” If you know this may be the case, do you determine a value (high or low) so that if it is split your client receives their “fair share?” Is this intentional bias? Or a form of advocacy?

Some amount of unintentional bias happens and mistakes cannot be avoided, but advocacy should be left to the attorneys. Objectivity is expected of experts.

Denise M. Frey, CPA, ABV, CFF, CVA is

Business Valuation Section chair and a manager at Eckhoff Accountancy Corporation in San Rafael.

Economic Damages by Craig M. Enos, CPA

In my summer 2011 column I shared with you how to use Google Scholar to search for court opinions or articles related to economic damages. Summarized below is a recent case I received an alert on that relates to the admissibility of expert reports

and exclusion of expert testimony.

In the matter of
*Denise M. Jerome v.
Watersports Adventure*

Rentals and Equipment, Inc., d/b/a Island Flight Adventures (IFA), Civil Action No. 2009-092 United States District Court, D. Virgin Islands, Division of St. Croix (July 11, 2013), IFA challenged the admissibility of two expert reports prepared by the economic damages expert as well as the proposed testimony related to the factual basis underlying certain assumptions related to post-injury earning capacity.

Plaintiff’s expert reports were due on or before Nov. 18, 2011. The plaintiff timely filed the first expert report (First Report). The deposition of the expert was conducted Oct. 2, 2012. The expert brought with him to the deposition an amended expert report dated Oct. 1, 2012 (Second Report), which had not previously been provided to the defendant. During his deposition, the expert explained that the Second Report was not a new report, but a corrected version of the prior report to correct arithmetic and double counting errors and does not rely on any new sources of evidence or alter the methodology employed in the First Report. The changes reduced the damages total from \$3,733,003 to \$1,841,387.

In February 2013, IFA filed a motion seeking to exclude portions of the first two reports. In opposition to the motion, plaintiff filed an amended expert report dated March 12, 2013 (Third Report). The Third Report was significantly different than the previous reports and addressed some of the alleged deficiencies identified in the deposition of the expert as well as the subsequent motion to exclude the expert’s testimony. One of the differences in the Third Report was a new methodology for calculating the plaintiff’s lost future earning capacity. The Third Report also further reduced the plaintiff’s damages to \$1,802,705.

IFA argued that the court should exclude both the Second and Third Reports in their entirety because they were disclosed in an untimely fashion. The plaintiff argued that IFA failed to act to cure any untimeliness or surprise which may have resulted from the receipt of the Second or Third Reports, and that IFA should re-depose the expert or have its own expert review the reports.

The court found that the Third Report was admissible, but excluded the expert’s

new methodology for calculating lost future earnings. The plaintiff was not allowed to offer any evidence at trial, whether through portions of the Third Report or the expert’s own testimony, that relies on this new methodology. The court also agreed that the factual basis underlying certain assumptions related to post-injury earning capacity was insufficient.

If you find this case of interest, I encourage you to read the entire case to review the factors considered in evaluating the decisions to allow and prohibit expert testimony.

Craig M. Enos, CPA, ABV, CFF, CFE is
Economic Damages Section chair and owner of Enos Forensics in Folsom.

Family Law by Dan Close, CPA

With the United States Supreme Court ruling in the Windsor and Hollingsworth cases, (*US v. Windsor, Hollingsworth v. Perry*), same-sex couples can now unite in legal marriage recognized by both the state of California and the federal government. This means, among other things, that spousal support will be deductible/includible for federal tax purposes and property can be divided pursuant to IRC Sec. 1041 for same-sex partners.

Forensic CPAs who specialize in family law and marital dissolution, as well as CPAs who specialize in tax advice and preparation, will see an increased work load because of the Supreme Court decisions.

Forensic accountants may see additional work from same-sex couples in family court. Although many of the issues that exist for opposite sex divorces also exist for same-sex ones, there are added complexities arising from same-sex couples that have had long-term relationships. According to Robert W. Stanley, Esq. of Jaffe and Clemens, same-sex couples that have been in relationships for many years have already endured a complex legal and cultural landscape.

For example, there could be pre-marriage separate property valuation and tracing issues and same-sex couples will have legal issues resulting from past civil unions like registered partners, domestic partners or marriage in another state. This may create multiple dates of separate/community ownership that will require our trained forensic expertise in the analysis of income for support, tracing and valuation areas.

SectionAction

As with other legal issues that drive much of our work, we will look to the appellate court for guidance.

Are you looking for opportunities to gain more knowledge in the family law arena or are new to the subject and interested in exploring family law forensic accounting? There is a growing demand for experienced professional CPAs in California family law. One of the best ways to learn and increase your knowledge in this area is to attend our Family Law Section meetings held four times each year. Check out the CalCPA website, www.calcpa.org/FSS, for meeting dates and locations.

M. Daniel Close, CPA, ABV, CFF, CVA is

Family Law Section chair and a shareholder of EDR Valuations, Inc. with offices in Solana Beach and Ontario.

Fraud

by Peter W. Brown, CPA

Assisting clients with cyberthreats is a hot area for forensic specialists. Cyberthreats are increasing as businesses continue to become more digitally connected with their customers, service providers, suppliers and employees. Forensic specialists are continuing to work to assist companies in the investigation and prevention of cybercrime. While the tools have changed, traditional methods of forensic investigation are still extremely relevant in the digital world.

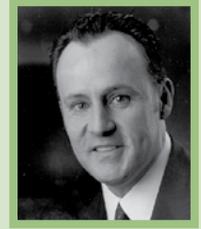
Cybercrime that targets businesses can include installing a virus that monitors online activity, steals financial information or denies employees/customers access to the company's website. A 2012 study by the Ponemon Institute reports a 42 percent increase in successful cyber attacks in the past year.

A 2013 study by the World Economic Forum Global Risk Landscape ranked cyber attacks as the sixth-most likely global risk to occur. All businesses that operate online must address the growing threat of cybercrime to prevent potential harm to the company. The fiscal costs of deterring and responding to these attacks can be significant. Intangible company assets, such as the company brand, intellectual property, research and development and personal customer information are often the target of the attacks.

Companies typically use various tools, including intrusion detection systems, firewalls and antivirus programs to protect against cyberthreats. To do so, companies

MessageFromtheChair

by Peter Salomon, CPA



Giving our time and money to the legal community should be something we all think about. A great way to do this is through not-for-profit organizations that serve the legal community. An organization close to me, and where I serve as a board member, is the Los Angeles Center for Law and Justice (LACLJ).

LACLJ has provided free legal representation, education and advocacy for low-income residents of Los Angeles for more than 40 years, primarily in matters related to family law and housing.

The mission of LACLJ is to provide direct representation and education to families facing the greatest barriers to justice in order to decrease homelessness, increase family stability and provide safe, violence-free homes for children. LACLJ accomplishes this by providing direct legal services by its own attorneys, who work for LACLJ at salaries far below what the private sector would pay, because they, too, believe in giving back to those much less fortunate.

LACLJ provides a range of services for its clients, including court representation, preparation of legal documents, legal advice and counsel. These services make children safer at home, prevent people from being improperly evicted from their residences and protect victims of domestic violence.

LACLJ is an efficient not-for-profit organization with more than 85 percent of its expenses being spent on program services, including approximately 80 percent spent on below-market salaries and benefits for its employees.

The next time you think about giving some of your valuable time and money back to the legal community, consider the fine work provided by LACLJ for the less fortunate people in Los Angeles that need legal assistance. You can learn more about LACLJ at www.laclj.org.

— **Peter A. Salomon, CPA, CFF** is a principal with Hemming Morse LLP in Los Angeles.

incur significant costs to identify risks, build new and safer operating procedures and buy protective software and hardware. Forensic specialists can assist companies proactively to prevent these intrusions and reactively to assess and remediate the damage caused by unauthorized intrusions and the loss of valuable information.

Forensic specialists assist with proactive threat assessments in several ways. Threat assessment is typically used to identify the range of threats facing a company. However, proactive threat assessments can also be used to evaluate the company's existing capabilities and security controls for known vulnerabilities. Periodic monitoring of a company's online information systems can also help prevent intrusions.

Forensic specialists can assist in designing and implementing security systems and suggest improvements to internal controls to monitor companies' online footprint.

Reactive breach response is another key area where forensic specialists are supporting companies in the battle against cybercrime. They can direct the investigation and containment of the incident, as well as help the company assess the impact of the breach and measure future risk. Reactive responders can also help companies move forward after the incident by suggesting improvements to systems and controls.

There is no remedy in sight for businesses plagued with cybercrime—or a shortage of work for forensic specialists engaged to prevent and respond to it. As cybercrime becomes more sophisticated, businesses will have to stay one step ahead of the threats and forensic specialists will continue to see a wealth of opportunities in this growing practice area.

Peter W. Brown, CPA is Fraud Section chair and a director with PricewaterhouseCoopers LLP in Los Angeles.



Advising Same-Sex Couples After *Windsor*

by Donald H. Read, Esq.

The simultaneous United States Supreme Court 5-4 decisions in *Windsor* and *Perry* June 26 represent a sea change in treatment of same-sex couples under federal law. While the core result—that persons of the same sex can marry in California and will be recognized as spouses for purposes of California and federal law—is clear, the intricacies of the change, at the margins, are rapidly, though not always consistently, being resolved.

DOMA

Section 3 of the Defense of Marriage Act (DOMA), which *Windsor* held is unconstitutional, reads in part:

“... 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.”

Section 2 of DOMA, which was not considered by the court, basically says that one state does not have to recognize a same-sex marriage performed in another state.

Windsor

The Court’s scathing language in striking down Section 3 of DOMA deserves attention (ellipses omitted):

“DOMA seeks to injure the very class New York seeks to protect. By doing so it violates basic due process and equal protection principles applicable to the Federal Government. [citation omitted]. The Constitution’s guarantee of equality must at the very least mean that a bare congressional desire to

harm a politically unpopular group cannot justify disparate treatment of that group.

“In determining whether a law is motivated by an improper animus or purpose, “[d]iscriminations of an unusual character” especially require careful consideration.

[citation omitted]. DOMA cannot survive under these principles.

“The history of DOMA’s enactment and its own text demonstrate that interference with the equal dignity of same-sex marriages, a dignity conferred by the States in the exercise of their sovereign power, was more than an incidental effect of the federal statute. It was its essence.

“The Act’s demonstrated purpose is to ensure that if any State decides to recognize same-sex marriages, those unions will be treated as second-class marriages for purposes of federal law. This raises a most serious question under the Constitution’s Fifth Amendment. The principal purpose is to impose inequality, not for other reasons like governmental efficiency. And it humiliates tens of thousands of children now being raised by same-sex couples.

“The principal purpose and the necessary effect of this law are to demean those persons who are in a lawful same-sex marriage. This requires the Court to hold, as it now does, that DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Fifth Amendment of the Constitution. No legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment.”

On the same day, in *Perry*, the Court instructed the 9th Circuit to dismiss the appeal of District Judge Vaughn Walker’s injunction against the enforcement of California’s Proposition 8, and same-sex marriages promptly resumed in this state.

Where does this momentous civil rights victory leave us, as lawyers and CPAs advising those affected? There are many issues, but I want to focus on three mostly tax issues:

- What are the transition rules for 2013 and prior years?

- Should the federal government treat registered domestic partners (RDPs) as married?
- What are the consequences of a same-sex married couple’s moving to a state that does not recognize same-sex marriages?

Transition Rules

The Department of Justice is leading the government’s effort to identify all laws and regulations impacted by these rulings. Reports are due within 90 days of the *Windsor* decision.

When CCA 201021050 came out in May 2010, the IRS said RDPs could amend returns for open years to split their community income, but they were not required to. RDPs were required to follow the CCA for 2010, even though one-third of the year had passed. So we can anticipate that *some* same-sex married couples will amend past returns from individual to joint.

Note: a broad reading of IRC Sect. 6013(b)(2)(A) might mean that the time to amend all 2009 returns for this purpose expired April 15, 2013.

We can anticipate that *all* same-sex married couples will file joint or married filing separately (MFS) returns for 2013.

On July 17, the American Benefits Council wrote a letter (the “ABC Letter”) on behalf of private employee benefits plans, urging that *Windsor be required to be applied* to spousal health and pension benefits on a prospective basis but that plans be *permitted* to apply such benefits retroactively.

On the same day, the Office of Personnel Management issued a letter (the “OPM Letter”) that said pre-*Windsor* same-sex marriages would be treated as “new marriages” for purposes of federal employees’ benefits. However, a federal district court ruled that a same-sex spouse was a surviving spouse for ERISA purposes, even though the death occurred before *Windsor* [*Cozen O’Connor P.C. v. Tobits* (7/29/2013)].

RDPs

Registered domestic partnership and civil unions laws of many states have provisions saying that these couples “shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law . . . as are granted to and

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AICPA Alert

by Annette M. Stalker, CPA

Recent publicized cases, as well as the annual PwC Daubert study, *Daubert Challenges to Financial Experts: A yearly study of trends and outcomes*, published earlier this year, point to the *lack of reliability* as the No. 1 basis for exclusion of financial expert testimony. As forensic accounting and/or valuation services practitioners, we are reminded of the importance of utilizing available resources in forming well-founded and reasonable opinions.

Two good options to supplement your education on forensic accounting and valuation topics are to visit the AICPA Forensic and Valuations Services website, www.aicpa.org/FVS, and to attend the AICPA National Forensic and Valuation Services Conference Nov. 10-12 in Las Vegas.

National Conference

It's expected that attendance at the national conference will be more than 1,000 professionals and more than 90 presenters. The nine tracks cover areas of specialization, including sessions for "Emerging" (less experienced) through "Masters" (more advanced) professionals. There will be something for everyone.

Learn more or register at www.CPA2BIZ.COM/FVC.

FVS Resources

The AICPA FVS Section provides a wide array of resources to aid practitioners in the performance of their work. FVS Section members have access to all of the published practice aids, special reports and whitepapers. The AICPA has combined all of the recently published forensic and valuation services collection resources into an online professional library. Visit www.aicpa.org/FVS and click on "FVS Online Professional Library" from the Quick Links option.

Annette M. Stalker, CPA, CFF, CITP, CFE is a principal at Ueltzen & Company LLP in Sacramento.

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If CPAs "participate in activities associated with private investigations," such as those listed above, then opposing counsel could argue that they may be required to be licensed as private investigators. Knowing the rules will help CPA investigators navigate these potentially dangerous challenges to their qualifications.

Becoming a Private Investigator

This discussion may lead a CPA to consider becoming a private investigator. If so, what are the requirements and how can someone, CPA or otherwise, obtain a PI license?

I recently applied for the license and had to fill out a multi-page document. One question asked if I was a veteran, which I am. Hopefully that got me some points. Another question asked if I had worked in law enforcement. Again, more brownie points. For those who have no law enforcement or military training, the process requires applicants to have worked under a qualified manager, defined as someone who is licensed as a private investigator.

To qualify, the applicant is required to have 6,000 hours of investigative experience under the supervision of a qualified manager. One would argue that most CPAs do not meet this requirement.

What is an Investigation?

It's probably best to define the term

"investigate" and the investigation process. Since fraud examiners frequently use the term "examination," I will define that, too, and contrast it with "investigation."

The *ACFE Fraud Examiner's Manual* states, "Fraud examination is a methodology for resolving fraud allegations from inception to disposition. More specifically, fraud examination involves obtaining evidence and taking statements, writing reports, testifying to findings, and assisting in the detection and prevention of fraud.

The Manual continues: "Investigation of fraud consists of the multitude of steps necessary to resolve allegations of fraud—interviewing witnesses, assembling evidence, writing reports and dealing with prosecutors and the courts. The investigation of fraud, because it deals with the individual rights of others, must be conducted only with adequate cause or predication."

An investigation is a reactive engagement where fraud or misconduct allegations have been made. The purpose of the investigation is to determine whether or not those allegations have merit.

The process surrounding an investigation varies from case to case, but normally involves, but is not limited to, performing background checks, collecting and examining electronic and other data, performing various analyses, conducting interviews and reporting results of the work performed.

Safe Harbor Conditions

California CPAs are, under the Business and Professions Code, allowed to conduct investigations. But do we have better coverage if we work under the direction of an attorney? Most forensic accounting investigative engagements start with the employment by counsel of the forensic accountant. This, in my experience, is the best way for forensic accountants to cover themselves in California and other states—but be careful to research whether attorneys have a carve-out to conduct investigations.

Some CPAs believe that if the term "examination" is used rather than "investigation" that they may survive the challenge. I know as a CFE that would be one argument I would use to defend myself.

Conclusion

CPAs need to know the rules regarding investigations. Knowing both private investigation and forensic accounting rules will protect CPAs from practicing without a license and it may give them the additional credentials that carry real weight. And, if in doubt, I suggest you consult an attorney for guidance—and some legal insulation—as to the applicable rules and regulations.

Ronald L. Durkin, CPA\CFF, CFE, CIRA is national partner in charge of *Fraud & Misconduct Investigations* at CliftonLarsonAllen LLP in Los Angeles.

HAPPENINGS

FORENSIC SERVICES SECTION ALL SECTIONS MEETINGS

Wednesday, Oct. 16; 9 a.m.–4:30 p.m.; 4:30–5:30 p.m./networking reception
Hilton Hotel Oakland Airport

Planning for our next FSS all-sections meeting is well underway. We are awaiting some presentation details and speaker confirmations, but listed below is a glimpse of the program. By having the individual sections meet together twice a year we are able to offer members cross-practice learning and networking opportunities and the ability to make real connections with other forensic accounting professionals.

Among our program presentations are:

- The Importance of Visual Illustrations by Annette Stalker, CPA, CFF, CITP, principal, Ueltzen & Company LLP, Sacramento, and Juliet Huck, a persuasive communications expert, jury consultant and CEO/founder of The Huck Group in Los Angeles
- Expert Report: Handling Deposition and Cross-examination Like a Pro
- Intellectual Property Issues in Major League Sports Cases by Joseph W. Cotchett, Esq., partner, Cotchett Pitre & McCarthy LLP in San Francisco
- The Latest on S Corps: Practical Lessons from Research and the Trenches, and Business Valuation in the Courts. Both presentations by Nancy Fannon, CPA, ABV, ASA, MCBA

This meeting is designed for CPAs, forensic accounting professionals, attorneys and judges.

The Family Law Section will meet separately in the morning and jointly with Business Valuation in the afternoon.

For full details on the presentation/speakers and to register, visit www.calcpa.org/FSS. If you have any questions, contact program associate Emily Ku, emily.ku@calcpa.org or (818) 546-3502.

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imposed upon spouses” [California Family Code Section 297.5(a)].

In August 2011 the IRS Chief Counsel’s office sent a letter stating that if the state laws treated opposite-sex RDPs as married, the IRS would, too, and the couple could file a joint return. DOMA will no longer prevent the same treatment being extended to same sex California registered domestic partners.

However, the OPM Letter states that “same-sex couples who are in a civil union or other forms of domestic partnerships other than marriages will remain ineligible for most Federal benefits programs.”

In *Cozens O’Connor*, the court said “this Canadian marriage was deemed valid, albeit under the nominal title of “civil union” in Illinois, there can be no dispute that Ms. Tobits is a “surviving Spouse” pursuant to the Plan.” Illinois law contains language virtually identical to that quoted above from CFC Sect. 297.5.

There is no reason that federal income tax liability or ERISA benefits should depend on whether a state names an identical bundle of legal rights a “marriage,” a “union” or a “partnership.”

Mobile Couples

What happens when a same-sex couple validly married in California moves to a state that does not recognize same-sex marriage, RDPs or civil unions? Section 2 of DOMA does not require the new state to “give effect to” the marriage “or a right or claim arising from such relationship.”

It is unlikely that Section 2 can survive the kind of constitutional analysis *Windsor* and one federal district court has held that, under *Windsor*, Ohio must recognize a same-sex marriage performed in Maryland. [*Obergefell v. Kasich* (USDC, SDOH 1:13-cv-501 July 22, 2013)].

Will the federal government treat the couple as married when they move to a non-recognition state? The IRS ruled in Rev. Rul. 58-66 that a common law married couple continued to be treated as married for federal tax purposes even though they moved to a state that required a ceremony for a valid marriage.

The ABC Letter urged the adoption of the rule treating as “spouses” persons who “entered into a marriage in a state or foreign country where the marriage was considered valid ... at the time it occurred,

and such marriage has not subsequently been legally dissolved.”

The OPM Letter says validly performed same-sex marriages will be recognized “regardless of the state of residency.”

In *Cozens O’Connor, supra*, the district court applied Illinois “spousal” statutes of civil unions to a Pennsylvania ERISA plan, even though Pennsylvania is a nonrecognition state.

Question: What filing status does a same-sex married couple use when filing a return in a nonrecognition state?

Conclusion

In 2006, the IRS refused to recognize the community property income of California registered domestic partners (CCA 200608038). In 2010 the IRS changed its mind (PLR 201021048 and CCA 201021050).

The reason we applied for the 2010 ruling after losing in 2006 was the intervening presidential election and strong support in 2009 in the White House’s website for equal rights for LGBT persons and couples. Hopefully, the administration will rapidly implement *Windsor* in the broadest and most comprehensive manner that the Constitution and statutes permit.

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