



July 2015 Newsletter

[News From Silver Bridge CPAs](#)

TAX TIPS & TRICKS

Selling your rental? Consider a tax-deferred exchange

Section 1031 of the Internal Revenue Code allows some types of business and investment property to be replaced without triggering gain recognition for tax purposes. Also known as a like-kind exchange, a 1031 exchange is a valuable tool, allowing taxpayers to trade business/investment property for other business/investment property of the same asset class without paying tax on the gain.

Not a sale. An exchange is a transfer that is not a sale. It is a trade of like property where one property is relinquished and a different property is received. Many 1031 exchanges include “boot,” or money or property not of a like kind, such as cash. Boot paid typically does not trigger gain recognition, but boot received typically does.

No personal use property. The like-kind rules require that property must be business or investment property. Both the property traded and the property received must be used for business or for investment. Most stocks, bonds and other securities are not eligible.

1. Replacement property must be identified within 45 days after property is relinquished and must be received within 180 days, or when the tax return is due, whichever comes first.

Qualified intermediary. Taking control of cash or other proceeds before the exchange is complete disqualifies the transaction. Avoid taking control of proceeds by using a qualified intermediary to hold the proceeds until the exchange is complete. Use a facilitator who meets IRS regulations to serve as your qualified intermediary.

Tax laws are complex, and this is not a comprehensive summary of 1031 rules. If you are considering a 1031 exchange, please contact Silver Bridge CPAs for advice specific to your unique tax situation.

Bookkeeping and Payroll Services:

Would you like to free up your calendar by reducing your administrative tasks such as bookkeeping and payroll? Silver Bridge CPAs offers customized solutions to help your business succeed.

- *Never miss another payroll tax deadline.*

- *Increase time available for revenue-generating activities.*
- *Track your business's performance using accurate & timely financial information.*

[Contact us](#) to discuss packages and pricing options today!

New Business Consultations

Do you know someone starting a new business? Silver Bridge CPAs offers free 30-minute new business consultations! We will review some basic information that all business owners should know. Starting off on the right foot can save your business time and resources in the long run.

[Contact us](#) to schedule an appointment today!

Office Hours:

Our current office hours are **Monday** through **Thursday** from **9:00 am to 5:00 pm** and we are **closed on Friday**.

TAX NEWS

[Supreme Court upholds ACA Code Sec. 36B premium tax credit regs](#)

After months of waiting, the U.S. Supreme Court announced its decision on the fate of the Code Sec. 36B premium assistance tax credit on June 25 in *King v. Burwell*, 2015-1 *ustc* ¶150,356. In a 6 to 3 decision, the Court held that enrollees in both federally-facilitated Marketplaces and state-run Marketplaces can claim the credit, which helps offset the cost of health insurance. The decision leaves in place the current IRS regulations on the credit and the regime for administering and claiming the credit.

Code Sec. 36B credit

The Affordable Care Act (ACA) created both the Marketplaces (previously called Exchanges) and the Code Sec. 36B credit. The Marketplaces connect eligible individuals with health insurance issuers. Some states have set up their own Marketplaces. In other states, the Marketplaces are operated by the federal government. Qualified enrollees may take advantage of the Code Sec. 36B credit if their incomes are within certain guidelines and they satisfy other requirements. When the IRS issued regulations on the Code Sec. 36B credit, the agency made the credit available to enrollees in state-run Marketplaces and federally-facilitated Marketplaces.

This decision by the IRS sparked controversy. A number of law suits were filed challenging the IRS's regulations. According to the challengers, the ACA limited the availability of the tax credits to enrollees in state-run Marketplaces. Enrollees in federally-facilitated Marketplaces could not claim the credit. In the *King* case, both a federal district court and the Fourth Circuit Court of Appeals ruled against the challengers. The Supreme Court agreed to take up the case and heard oral arguments in March of this year.

Note. Not all of the challenges to the Code Sec. 36B regulations were unsuccessful in the lower courts. In a case very similar to *King*, the Court of Appeals for the District of Columbia Circuit struck down the IRS regulations as contrary to the plain language of the ACA. The split among the circuits left the outcome of the controversy far from certain.

Supreme Court's decision

Chief Justice John Roberts delivered the Court's decision in *King*. "Congress based the Affordable Care Act on three major reforms: first, the guaranteed issue and community rating requirements; second, a requirement that individuals maintain health insurance coverage or make a payment to the IRS; and third, the tax credits for individuals with household incomes between 100 percent and 400 percent of the federal poverty line. In a State that establishes its own Exchange, these three reforms work together to expand insurance coverage. Under petitioners' reading, however, the Act would operate quite differently in a State with a Federal Exchange. As they see it, one of the Act's three major re-forms - the tax credits - would not apply," Roberts wrote. This outcome, the Court found, was not what Congress intended.

"The combination of no tax credits and an ineffective coverage requirement could well push a State's individual insurance market into a death spiral. It is implausible that Congress meant the Act to operate in this manner," Roberts added.

Three justices dissented in *King*. They would have found in favor of the challengers. "The Congress that wrote the Affordable Care Act knew how to equate two different types of Exchanges when it wanted to do so," the dissent wrote. According to the dissent, the government did not show why the Court should have departed from the language of the ACA.

Impact

Since enactment of the ACA, the IRS and the U.S. Department of Health and Human Services (HHS) have issued instructions and guidance for enrollees in Marketplace coverage. The Marketplaces make initial determinations of eligibility for the credit. The IRS administers how enrollees claim the credit when they file their federal income tax returns. According to HHS, nearly 80 percent of all enrollees in Marketplace coverage have been eligible and have used the Code Sec. 36B credit to offset the cost of health insurance. The decision by the Supreme Court in *King* leaves the IRS regulations on Code Sec. 36B undisturbed. Going forward, nothing is expected to change for enrollees.

If you have any questions about the Code Sec. 36B credit and/or the Supreme Court's decision in King, please contact our office.

[Supreme Court's same-sex marriage decision affects federal, state taxation](#)

The Supreme Court's decision in *Obergefell v. Hodges* (2015-1 usc ¶50,357) on June 26, 2015 continues what was set in motion in 2013: the expansion of tax benefits to same-sex married couples. In *Obergefell*, the Court ruled 5 to 4 that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex. The Court further held that states must

recognize a marriage between two people of the same sex when a marriage was lawfully licensed and performed out of state.

Background

In 2013, the Supreme Court decided *Windsor v. U.S.* (2013-2 ustc ¶50,400). Windsor was an estate tax case, which challenged Section 3 of the federal Defense of Marriage Act (DOMA). Section 3 defined marriage as a man-woman relationship for federal purposes. The Court in *Windsor* struck down Section 3 as unconstitutional.

After *Windsor*, the IRS issued Rev. Rul. 2013-17. The IRS announced that it would take a place of celebration approach to same-sex marriage. The IRS would recognize, for federal tax purposes, a marriage of same-sex individuals that was validly entered into even if the married couple is domiciled in a state that did not recognize the validity of same-sex marriages. In Notice 2014-19, the IRS issued guidance for retirement plans, reflecting *Windsor*.

Since *Windsor*, a number of cases challenging state bans on same-sex marriage moved through the federal courts, including *Obergefell*. The Supreme Court agreed to hear *Obergefell*.

Obergefell decision

Justice Anthony Kennedy delivered the Court's opinion in *Obergefell*. Kennedy wrote that the "the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State."

State prohibitions on same-sex marriage, Kennedy added, "abridge central precepts of equality. Same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. The Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry."

However, four justices dissented. The dissenting judges would have held that the fundamental right to marry does not include a right to make a State change its definition of marriage. "The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition."

Going forward

For federal tax purposes, the treatment of same-sex couples as on par with opposite-sex couples since the Windsor decision will continue unchanged. The IRS is likely to issue more guidance to reflect the Court's decision in *Obergefell*. Many other federal agencies, such as the Social Security Administration, also are expected to issue guidance reflecting *Obergefell*. The *Obergefell* decision also impacts retirement, pension and health care benefits of many same-sex married couples.

For state tax purposes, same-sex married couples in states that did not recognize their marriages have had to file as single individuals for state tax purposes. Under the *Obergefell* decision, these couples have a Constitutional right to file amended returns as married at the state level. Whether the normal three-year limitations period for filing these amended returns will apply remains to be tested. Also uncertain may be whether same-sex married couples must now retroactively file jointly or whether re-filing will be made optional, either state-by-state or nationwide.

If you have any questions about the Supreme Court's decision in *Obergefell* and its impact on taxes, please contact our office.