



News

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UNITED STATES SUPREME COURT LEGALIZES SAME-SEX MARRIAGE

FEDERAL TAX IMPLICATIONS

On June 26, 2013, the United States Supreme Court issued a landmark decision in *U.S. v. Windsor*, striking down the exclusion of same-sex couples from the definition of spouse as set forth in the Defense of Marriage Act ("DOMA"). The case involved two women, resident of New York and married in Ontario, Canada. After the death of Thea Spyer, her spouse, Edith Windsor, filed an amended federal estate tax return claiming an estate tax marital deduction for property passing to her from her spouse. Her refund claim was denied by the Internal Revenue Service. Ms. Windsor brought suit, which eventually found its way to the U.S. Supreme Court.

Currently 16 states¹, plus the District of Columbia, recognize as legal marriages between same-sex couples. Whether a couple is legally married has immense financial and legal ramifications. As mentioned in the *Windsor* opinion, the application of over 1,000 federal laws and a multitude of federal regulations are impacted by marital status.

Immediately after the ruling was issued, there was tremendous speculation as to the ruling's impact on a number of issues, including federal taxes and employee benefits.

FEDERAL INCOME AND ESTATE TAXES

The Internal Revenue Service provided welcome guidance only two months after the Court's decision. On August 29, the Internal Revenue Service issued a ruling² and a set of Frequently Asked Questions outlining the application of the Supreme Court decision for federal income tax purposes. The ruling provides that same-sex couples, legally married in domestic or foreign jurisdictions that recognize their marriages, will be treated as married for federal tax purposes regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage. As a result, for federal tax purposes, the "state of ceremony" determines marital status, and not the "state of domicile."

The ruling applies prospectively as of September 16, 2013. Legally married same-sex couples will therefore file their 2013 federal income tax returns either as married filing jointly or married filing separately. (As opposite-sex married couples know too well, married tax-filing status is not always beneficial.) In addition, the couples can file amended returns for prior years still open by the statute of limitations (generally 3 years from filing the original return). This will get complicated for same-sex couples residing in a state that does not recognize gay marriage, but that does have a state income tax. In those cases, the parties' filing status for federal income tax purposes will differ from that for state purposes.

¹ California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Washington. New Mexico has not banned or legalized gay marriage, and some counties are issuing marriage licenses to same-sex couples.

² Rev. Rul. 2013-17, 2013-38 IRB 1.

The issue in the *Windsor* case involved the estate tax marital deduction. Federal tax law allows an unlimited estate tax deduction for property passing to a surviving spouse. With the decision in *Windsor*, same-sex married couples will be able to take advantage of this provision, which generally results in a deferral of estate tax until the surviving spouse dies. As with income tax returns, if the statute of limitations is still open³, an amended estate tax return may be appropriate to claim the estate tax marital deduction for property passing to a surviving spouse in a same-sex marriage. Since there is also an unlimited gift tax marital deduction, prior year gift tax returns reporting taxable gifts to same-sex spouses should be reviewed and amended if necessary.

Same-sex couples who are currently married, or are contemplating marriage, will want to review their estate plan and make necessary changes to take advantage of the tax benefits afforded married couples.

EMPLOYEE BENEFIT PLANS

Soon after the Internal Revenue Service issued its ruling in August, the U.S. Department of Labor (the "DOL") followed suit and issued its own ruling.⁴ The DOL also adopts the "state of celebration" rule, acknowledging in the ruling that a rule for employee benefit plans based on state of domicile would raise significant challenges for multi-state employers and their employees. The ruling affects the administration of retirement and other employee benefit plans.

PLANNING OPPORTUNITIES

Since the application of many laws is impacted by marital status, additional guidance will be needed from the Internal Revenue Service and other federal and state agencies. The recent rulings described in this article provides an opportunity for same-sex married couples and their advisors to review estate and income tax planning to take advantage of laws benefiting married individuals.

The professionals at GSRP are available to assist in evaluating how the changes resulting from *Windsor* may affect you or your clients.

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³ The Federal Estate Tax Return (Form 706) is due nine months after death. A six-month filing extension can be obtained. The statute of limitations is 3 years from the date of filing.

⁴ Technical Release No. 2013-04.