

SUPREME COURT'S RULING IN THE DEFENSE OF MARRIAGE ACT (DOMA) TAX AND PLANNING CONSIDERATIONS

Background

On June 26, 2013, the U.S. Supreme Court ruled on a landmark case related to same-sex marriage (SSM) ([*United States v. Windsor*](#)). The 5-4 decision changes the application of federal tax rules for married same-sex couples. Generally, the ruling should enable same-sex married couples to obtain the same treatment under federal rules as has been available to heterosexual married couples. Federal agencies are working on issuing guidance on the effect of the *Windsor* decision, including whether federal rules treat a couple as married based on the state of celebration (where the marriage was performed) or state of domicile (where the couple lives). In late August, the IRS released guidance stating that for federal tax purposes, a marriage is recognized if validly entered into in a domestic or foreign jurisdiction that has the legal authority to sanction marriages. Thus, for federal tax purposes, the IRS is following the state of celebration rule to determine if a couple is married. The Departments of Labor, Defense and Homeland Security have also adopted a state of celebration rule. However, it is important to realize that the Social Security Administration, by law, currently uses a state of domicile rule.

Federal government agencies, including the Treasury Department and Internal Revenue Service, will continue to review and modify rules and regulations. Employers will need to review and revise their policies and procedures regarding benefits and withholding. Married same-sex couples will need to consider the new rules and policies, including their tax situation. Affected couples should consider updating their estate plans based upon the estate and gift tax impact, as well as their financial plans. There may be some state tax issues to address as well. For example, federal employees may be entitled to certain benefits that others are not, and states likely will need to clarify what the state tax treatment is if the state does not recognize same-sex marriage. Also, for couples living in states that do not recognize same-sex marriage, the state will likely provide guidance on how to obtain the federal tax amounts to file state income tax returns.

Same-sex couples who have not been legally married are unaffected by this ruling until their marital status is legally changed according to domestic or foreign country law. The case has broad federal tax planning and compliance implications and various IRS publications and website information that provide guidance to married individuals will likely be revised.

Tax Implications

Federal tax treatment now available to legally married same-sex couples includes:

- Joint filing of federal income tax returns
- Amending of prior tax returns
- Pre-tax basis of employer-provided health-care benefits
- Deductible and includable alimony
- Income tax-free transfers between spouses
- Lifetime gift tax-free property transfers to spouses
- Estate tax relief for surviving spouses

- Spousal IRA contributions, rollovers, required minimum distributions

Other Federal Benefits

In addition, below are some of the federal benefits or protections that may now be available to legally married same-sex couples:

- Social Security, Medicare, and Medicaid benefits
- Certain veterans benefits, such as pensions and survivor's benefits
- Military spousal benefits
- Family medical leave rights
- Spousal visas for foreign national spouses
- Private pension benefit options (e.g., survivor annuities)
- Application of the thresholds for the tax penalties and health insurance subsidies available under the Patient Protection and Affordable Care Act

Income and Estate and Gift Tax Planning Issues

Some of the specific individual income tax and estate and gift tax planning issues that may be impacted and should be considered are:

- **Income Tax Planning Issues**
 - Joint tax returns
 - Amended income tax returns
 - Estimated tax payments for 2013
 - Income tax returns beyond the statute of limitations
 - Rollover IRAs at death
 - Spousal IRA contributions and rollovers
 - IRA required minimum distributions
 - Review of the designated beneficiary on retirement and other benefits provided by an employer
 - Divorce tax issues
 - Application of the adoption tax credit
- **Estate & Gift Tax Planning**
 - Updated estate plans and documents
 - Inter vivos gifts
 - Amended gift tax returns
 - Gift and estate tax returns beyond the statute of limitations
 - Portability of unused applicable lifetime exemption
 - Grantor trusts
 - Spousal rollover
 - Beneficiary designations
 - Retirement plans
 - Community property rules
 - Marital Agreements

AICPA Tools & Resources

The following are a few links to resources the AICPA provides and updates continuously:

- **Tools and Practice Aids** – [Individual Income Taxation Resources page](#)
- **Legislative Issues and Comment Letters** – [Individual Income Taxation Advocacy page](#)
- **DOMA Resources (Individual Tax)** – [Domestic Partners and Same-Sex Couples page](#)
- **DOMA Resources (Estate Tax)** – [Estate Tax Impact of Same Sex Marriage Ruling page](#)

Another great way to track the developments on DOMA and other current tax legislation topics is to sign up for [Tax E-Alerts](#) which is a publication available to AICPA [Tax Section members](#).