



**Federal Tax Considerations  
for Same-Sex Married  
Couples After**

*United States v. Windsor*

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# Agenda

- Scope of the Supreme Court's opinion in *United States v. Windsor*
- Federal income tax reporting and planning implications
- Federal gift and estate tax planning considerations
- Overview of selected non-tax related Federal benefits



## *United States v. Windsor*

- Federal estate tax refund case
- Edith Windsor and Thea Spyer wed in Canada in 2007
- In 2009, Ms. Spyer passed away when residing in New York, leaving her entire estate to Ms. Windsor
- Ms. Spyer's estate's claimed the Federal unlimited marital deduction for assets left to her surviving spouse
- IRS assessed \$363,053 estate tax deficiency denying the marital deduction based on Section 3 of the Defense of Marriage Act



## Defense of Marriage Act – Section 3

- Section 3 of DOMA defined “marriage” as meaning “only a legal union between one man and one woman as husband and wife”
- Denied same-sex couples legally married in states where same-sex marriages are recognized over 1,000 Federal rights and benefits
  - Including a right under Federal estate tax law for an unlimited marital deduction afforded married couples of the opposite sex



# Scope of Supreme Court's Opinion

- Only declared Section 3 of DOMA unconstitutional under the Fifth Amendment to the Constitution
- But Section 2 of DOMA remains in effect
  - “No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.”
- Constitutionality of Section 2 was not before the Supreme Court



# State of Celebration vs. State of Residence

- Issue: are the following couples considered “married” under Federal laws?
  - Same-sex couple married and residing in a Recognition State who subsequently move to a Non-Recognition state
  - Same-sex couple married in a Recognition State but who resided in a Non-Recognition State
- Continues to be a developing area of law, with “married” status being determined based on the state of celebration or the state of residence under various Federal laws
  - Lack of uniformity in determining marital status



## U.S. Jurisdictions Recognizing Same-Sex Marriage

- California
- Connecticut
- Delaware
- District of Columbia
- Hawaii
- Illinois (06.01.14)
- Iowa
- Maine
- Maryland
- Massachusetts
- Minnesota
- New Hampshire
- New Jersey
- New Mexico
- New York
- Rhode Island
- Vermont
- Washington





# Federal Income Taxes



# Federal Tax Uniformity – State of Celebration

- IRS and Treasury Revenue Ruling
  - Revenue Ruling 2013-17
  - Have ruled that a same-sex couple married in any jurisdiction where same-sex marriages are recognized will be treated as “married” for Federal tax purposes regardless of where they reside



# Combined Federal Income Tax Liability

- Same-sex married couples will face potential “marriage penalty” imposed on opposite-sex married couples
  - Depending on the married individuals’ income levels relative to the other
- Generally speaking, for couples where both spouses make substantial taxable income, their combined Federal income tax liability likely to increase after DOMA
- Generally speaking, for couples where one spouse is the primary source of the couple’s income, their combined Federal income tax liability may decrease after DOMA



# Filing Status for Federal Income Tax Returns

- Under DOMA
  - Same-sex married individuals required to file as single taxpayers
- After DOMA
  - Same-sex married couples will now be required to file either as
    - Married filing jointly, or
    - Married filing separately



## Marginal Income Tax Rates - 2013

Marginal Income Tax Rate	Two Single Taxpayers Equal Taxable Income	Married Filing Jointly Combined Taxable Income
25%	\$72,500 - \$175,700	\$72,500 - \$146,400
28%	\$175,701 - \$366,500	\$146,401 - \$223,050
33%	\$366,501 - \$796,700	\$223,051 - \$383,350
35%	\$796,701 - \$800,000	\$383,351 - \$450,000
39.6%	\$800,001+	\$450,001+

Source: [www.irs.gov](http://www.irs.gov)



## Marginal Income Tax Rates - 2014

Marginal Income Tax Rate	Two Single Taxpayers Equal Taxable Income	Married Filing Jointly Combined Taxable Income
25%	\$73,800 - \$178,700	\$73,800 - \$148,850
28%	\$178,701 - \$372,700	\$148,851 - \$226,850
33%	\$372,701 - \$810,200	\$226,851 - \$405,100
35%	\$810,201 - \$813,500	\$405,101 - \$457,600
39.6%	\$813,501+	\$457,601+

Source: [www.irs.gov](http://www.irs.gov)



## Long Term Capital Gains and Qualified Dividends – 2013 Tax Rates

- Under DOMA
  - 15% single taxpayers with taxable income up to \$400,000
  - 20% single taxpayers with taxable income of \$400,001+
- After DOMA
  - 15% married filing jointly taxpayers with taxable income up to \$450,000
  - 20% married filing jointly taxpayers with taxable income above \$450,001+



## Net Investment Income Tax (aka, 3.8% Medicare Surtax)

- Under DOMA
  - As single taxpayers
    - Net investment income exposed to NIIT if modified adjusted gross income of a single taxpayer exceeds \$200K
- After DOMA
  - As taxpayers married filing jointly
    - Net investment income exposed to NIIT if MAGI of married filing jointly taxpayers exceeds \$250K
- Net investment income
  - Capital gains, dividends, interest, rents, royalties, gain from tax deferred annuities, passive income





# Alternative Minimum Tax - 2013

- Under DOMA
  - Exemption amount \$51,900
- After DOMA
  - Exemption amount \$80,800 or \$40,400 depending on filing status



# Standard and Itemized Deductions - 2013

- Under DOMA
  - Amounts and phase outs filing as single taxpayers
  - Standard deduction \$6,100
  - Phase out begins at AGI of \$250K
- After DOMA
  - Amounts and phase outs filing as married filing jointly
  - Standard deduction of \$12,200
  - Phase out begins at AGI of \$300,000



# Gain from Sale of Principal Residence

- Under DOMA
  - As single taxpayers, each spouse has separate \$250K exclusion, but if only one spouse owned the residence, the other spouse's \$250K exclusion could not be used to shelter gain
- After DOMA
  - As taxpayers married filing jointly, a combined \$500K exclusion is allowed, regardless of whether only one spouse or both spouses own the principal residence



# Qualified Plan & IRA Spousal Rollovers

- Under DOMA
  - Surviving spouse's options limited to inherited IRA options for non spousal beneficiaries
  - A spousal rollover was not one of the surviving spouse beneficiary's options
- After DOMA
  - Surviving spouse has the distribution options available as the beneficiary of an inherited IRA
  - Plus the added flexibility of effecting a spousal rollover if more desirable to the surviving spouse



# Qualified Plans – Surviving Spouse Rights

- Under DOMA
  - A surviving spouse from a same-sex marriage had no survivor rights unless the participant spouse named the surviving spouse the beneficiary
- After DOMA
  - The participant spouse may not name anyone as a beneficiary of the plan without the consent of the non-participant spouse



# Tax Deferred Annuities

- Under DOMA
  - A same-sex surviving spouse beneficiary only had the rights of a non-spouse beneficiary and would have been required to receive payment of the annuity death benefit
- After DOMA
  - The surviving spouse may now elect to receive payment of the annuity death benefit upon the death of the annuity owner spouse, or
  - Assume ownership of the contract and continue the deferral



# Employer Provided Health Care

- Under DOMA
  - The cost of employer provided health care for a same-sex spouse of an employee was includible in the employee's taxable income
- After DOMA
  - The cost will generally not be included in the employee's taxable income



# Federal Transfer Taxes





# Federal Gift Taxes

- Annual Exclusion
  - For 2013 and 2014, \$14,000
  - Under DOMA, unlimited for gifts between same sex married couples (but limited to \$143,000 in 2013 and \$145,000 in 2014 if spouse is a non US citizen)
- Lifetime Exemption/Applicable Exclusion Amount
  - For 2013, \$5,250,000; 2014, \$5,340,000
  - Under DOMA, same-sex married couples required to allocate exclusion amount to gift assets to each other gift tax free
  - After DOMA, exclusion amount can be preserved for gifts to other individuals



## Federal Gift Taxes – What Does This Mean?

- Under DOMA, same-sex spouses were technically required to keep track of and report gifts to each other
- After DOMA, wealth management and asset shifting between same-sex married couples has been greatly simplified
- After DOMA, unlimited lifetime transfers to same-sex spouse can be made with no gift tax or reporting required (as long as donee spouse is a U.S. citizen)
  - Outright or in qualifying marital deduction trusts



# Federal Estate Taxes

- Unlimited Marital Deduction
  - Under DOMA
    - Same-sex spouses not eligible
    - This was the issue challenged in *Windsor*
  - After DOMA
    - Same-sex spouses eligible (must be U.S. citizens)
    - Qualified Domestic Trust (for non U.S. citizen spouse)
- Applicable Exclusion Amount
  - \$5,340,000 (2014) can now be used by same-sex married couple to shelter assets left to other individuals, rather than to each other as was the case under DOMA



# Federal Estate Taxes – What Does This Mean?

- Traditional Credit Shelter Trust/Marital Trust Planning possible
  - Defer Federal estate taxes until surviving spouse's death
  - Control ultimate disposition of remaining assets at surviving spouse's subsequent death
- Portability Opportunities
  - Married couples where wealth ownership disproportionate
  - Married couples with comparable amounts of wealth, but below Applicable Exclusion Amount levels
  - Downside: no control over ultimate disposition of wealth

A photograph of a wooden surface, likely a table or desk, with a coiled white rope and a rope handle. The rope is coiled into a large, flat circle on the left side of the image. To the right, a section of the rope is looped around a wooden handle, which is part of a larger object, possibly a tool or a piece of equipment. The background is a dark wood panel. A semi-transparent grey box is overlaid on the left side of the image, containing the text "Planning Considerations".

# Planning Considerations



## Amended Tax Returns – Opportunities vs. Obligations

- Same-sex married couples who filed Federal income, gift or estate tax returns while married for tax years 2010, 2011 and 2012 should consult their tax advisors
- Recent IRS ruling provides that taxpayers will be allowed but not be required to file amended returns as a result of the *Windsor* ruling



# Estate Planning – Non-Recognition State

- Federal law versus state law
  - Revenue Ruling treating same-sex married couples as married regardless of where they reside pertains to Federal tax laws only
  - If same-sex married couple resides in a Non-Recognition state, without proper estate planning documents in place, a surviving spouse will have no inheritance rights to the decedent spouse's assets under that state's law
    - Except for survivor's rights in qualified plans provided under Federal law (Federal law supremacy over state laws)



# Estate Planning

- Same-sex married couples with estate planning documents that pre-date Windsor
  - Well advised to have documents reviewed and potentially updated





## Other Selected Federal Benefits

- Social Security surviving spousal benefits
  - Eligibility for benefits are determined based on marital status in the state of domicile (not state of celebration) when applying for benefits
  - Same-sex married couples married in a Recognition State who reside or move to a Non-Recognition State may be disqualified from survivor's benefits
- Department of Veterans Affairs
  - Effective 9/4/13, the VA was directed by President Obama with support of Attorney General Eric Holder to provide spousal benefits to same-sex spouses of service members, including
    - Health care benefits
    - Survivor's benefits