
Windsor Significantly Improves the Legal Rights of Same Sex Couples

On June 26, 2013, the US Supreme Court struck down the Defense of Marriage Act (DOMA) in the case of *United States v. Windsor*. The Court ruled that the federal definition of marriage as between one man and one woman is an unconstitutional violation of due process and equal protection principles. Edith Windsor and Thea Spyer wed in Ontario, Canada, in 2007. They lived in New York which recognizes the marriage of same sex couples. Thea died in 2009 and left her entire estate to Edith. As Executor of Thea's estate, Edith claimed that DOMA barred her from claiming the unlimited marital deduction on the estate tax return. Edith, as Executor, paid \$363,053 in estate taxes and sought a refund, which the IRS denied. Edith filed suit in federal district court. The district court and the Second Circuit US Court of Appeals ruled in her favor. The US Dept. of Justice elected to not defend DOMA, but the IRS would not give Edith a refund. Consequently, the Bipartisan Legal Advisory Group (BLAG) of the House of Representatives voted to intervene, which the Court allowed.

The 5 justices in the majority ruled that DOMA forced same-sex couples to live as married in New York but unmarried for federal law purposes. The majority found this differentiation demeaning to same sex couples and their children. It deprived families of practical federal rights, benefits and responsibilities under 1,000+ federal laws. The 4 justices in the minority argued that the Supreme Court should not override our elected officials in Congress and no language in the constitution guaranteed the right to enter into a same-sex marriage.

The Supreme Court did not overturn the laws of the 28 states that do not recognize same sex marriage. On September 16, 2013, in Revenue Ruling 2013-17, the IRS adopted a general rule recognizing a marriage of same-sex individuals in a state whose laws authorize same-sex marriage even if the married couple moves to a state that does not recognize the validity of same-sex marriages.

Because Connecticut recognizes same-sex marriage, same-sex married couples in Connecticut now have the same rights and responsibilities as all other married couples. They can use the same income, gift and estate tax planning techniques that all other married couples have enjoyed. They can apply for the same public benefits that all married couples can.

Legally married same-sex couples must file their 2013 federal income tax return using either the married filing jointly or married filing separately filing status. Same sex couples can apply for refunds through the IRS, but are not required to do so. They would use Form 1040X to amend their income tax returns and Form 843 to amend any estate or gift tax returns. A taxpayer can only amend returns for one or more prior tax years that are still open under the statute of limitations. As a result, refund claims can be filed for tax years 2010, 2011 and 2012.

Joseph A. Cipparone, Esq., CFP®, wrote this article. No taxpayer can avoid tax penalties based on the advice given in this newsletter. This information is for general purposes only and does not constitute legal advice. For specific questions related to your situation, you should consult a qualified attorney.

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