

# ***DOMA overturned: impact on income, estate, and gift taxes***

July 2, 2013

## ***In brief***

The federal Defense of Marriage Act (DOMA) created a dichotomy between federal tax rules and state tax rules for those states that have recognized same-sex marriage. The Supreme Court's decision in *United States v. Windsor* removes the federal tax barriers to obtaining certain benefits (see U.S. No. 12-307, 6/26/13). Taxpayers affected by the decision should now examine the tax-related rules associated with various benefit programs, income tax filing status, gift-related tax strategies, and estate tax return filings, with a view to revisiting tax filings made before DOMA was struck down. This review of tax filings should cover not only current-year activity but prior-year activity as well.

## ***In detail***

### ***Income tax***

Members of same-sex couples generally have been filing federal tax returns as 'single' taxpayers. Some may have been able to file as 'head of household' if there are children in the family. Based on the recent Supreme Court decision, 'married' same-sex couples will need to file 'joint' tax returns or 'married filing separate.' Changing the filing status changes the tax calculation and could result in less or more income tax, so affected taxpayers will have to do calculations to determine the impact.

Tax preparation software and tax return preparers have had to address the need to file federal returns with a different status

than the state returns for same-sex couples. The Supreme Court decision clarifies this issue, but a new challenge has been created — how to determine the marital status of a same-sex couple. The determination should be easy for couples that live in the same state in which they were 'married.' Yet to be determined is the federal status of a couple that is 'married' in one state but lives in another state that does not recognize same-sex couples.

Additionally, if the members of the same-sex couple work in multiple states (or have business income in multiple states) the calculations become very complex. It may be that a joint tax return is filed for federal purposes but single tax returns for some (but not all) states.

Regardless of how this new question is answered, married same-sex couples should review their last three tax returns (more if any were filed on extension) and recalculate their income tax for each year by combining income and deductions. They may want to consider the option to file amended returns.

### ***Estate tax***

The Supreme Court's ruling deals specifically with the estate tax calculation of a married same-sex couple. These couples now may benefit from the marital deduction that previously was not previously available.

The Supreme Court's decision not only affects future estate tax liability of same-sex couples, but also may benefit the survivors of

recently deceased members of same-sex marriages. Filing an amended estate tax return is not nearly as simple as filing an amended income tax return. However, the surviving member of a former same-sex couple whose partner recently died should contact the estate administrator and ask about filing an amended federal estate tax return if any federal estate tax was due.

Before DOMA was struck down, estate planning professionals had designed special estate distribution strategies to minimize estate taxes for same-sex couples. Married same-sex couples now should revisit their estate planning documents—especially beneficiary designations—to determine if changes are appropriate.

### **Gift tax**

Married couples are permitted to transfer assets between themselves with no gift tax consequences (unless one spouse is not a US citizen). Until the *Windsor* decision, married same-sex couples could not benefit from those rules. These same-sex couples may have paid gift tax in prior years based on asset transfers, and should examine prior-year gift tax returns to determine if amended filings are appropriate.

### **The takeaway**

Taxpayers should consider the impact of the Supreme Court ruling in *Windsor* on their individual tax filings. Tax rules for benefit programs, income tax filing status, gift

related tax strategies, and estate tax return filings all may need to be examined, and previous filings may need to be adjusted.

### **Additional resources**

For details about how DOMA affects:

- employment tax, please see our IRS Hot Topic, [\*DOMA rejection triggers changes and opportunity for employers\*](#) (dated July 2, 2013) or
- benefit plans, please see our HRS Insight, [\*What does the DOMA decision mean for employer-sponsored benefit plans\*](#) (dated June 28, 2013).

## **Let's talk**

For a deeper discussion of how this issue might affect you, please contact:

### **Personal Financial Services**

Brittney Saks, *Chicago*  
(312) 298-2450  
[brittney.b.saks@us.pwc.com](mailto:brittney.b.saks@us.pwc.com)

Rich Wagman, *Boston*  
(617) 530-7003  
[richard.s.wagman@us.pwc.com](mailto:richard.s.wagman@us.pwc.com)

Christopher Essig, *Cleveland*  
(216) 875-3099  
[christopher.m.essig@us.pwc.com](mailto:christopher.m.essig@us.pwc.com)

Kent E. Allison, *Florham Park*  
(973) 236-5253  
[kent.allison@us.pwc.com](mailto:kent.allison@us.pwc.com)

Bill Fleming, *Hartford*  
(860) 241-7044  
[william.r.fleming@us.pwc.com](mailto:william.r.fleming@us.pwc.com)

Allison Shipley, *Miami*  
(305) 375-6303  
[allison.p.shipley@us.pwc.com](mailto:allison.p.shipley@us.pwc.com)

Holly Singletary Ford, *Atlanta*  
(678) 419-1682  
[holly.s.ford@us.pwc.com](mailto:holly.s.ford@us.pwc.com)

Susan Gilles, *Charlotte*  
(704) 347-1628  
[susan.gilles@us.pwc.com](mailto:susan.gilles@us.pwc.com)

Mark Nash, *Dallas*  
(214) 999-1424  
[mark.t.nash@us.pwc.com](mailto:mark.t.nash@us.pwc.com)

William Zatorski, *Florham Park*  
(973) 236-4943  
[william.zatorski@us.pwc.com](mailto:william.zatorski@us.pwc.com)

Mark Borden, *Houston*  
(713) 356-5645  
[mark.t.borden@us.pwc.com](mailto:mark.t.borden@us.pwc.com)

Robert Biaggio, *Minneapolis*  
(612) 596-4747  
[robert.biaggio@us.pwc.com](mailto:robert.biaggio@us.pwc.com)

James Medeiros, *Boston*  
(617) 530-7353  
[james.m.medeiros@us.pwc.com](mailto:james.m.medeiros@us.pwc.com)

Michael Petrecca, *Cincinnati*  
(614) 225-8853  
[michael.a.petrecca@us.pwc.com](mailto:michael.a.petrecca@us.pwc.com)

David VanEgmond, *Detroit*  
(313) 394-6531  
[david.a.vanegmond@us.pwc.com](mailto:david.a.vanegmond@us.pwc.com)

Randy Fackler, *Harrisburg*  
(717) 231-5938  
[randy.l.fackler@us.pwc.com](mailto:randy.l.fackler@us.pwc.com)

Becky Weaver, *Kansas City*  
(816) 218-1729  
[becky.weaver@us.pwc.com](mailto:becky.weaver@us.pwc.com)

Evelyn Capassakis, *New York*  
(646) 471-2363  
[evelyn.capassakis@us.pwc.com](mailto:evelyn.capassakis@us.pwc.com)

Michael Spielman, *New York*  
(202) 312-7905  
[michael.spielman@us.pwc.com](mailto:michael.spielman@us.pwc.com)

Alfred Peguero, *San Francisco*  
(415) 498-6111  
[alfred.peguero@us.pwc.com](mailto:alfred.peguero@us.pwc.com)

Jeff Saccacio, *Southern California*  
(213) 217-3227  
[jeff.j.saccacio@us.pwc.com](mailto:jeff.j.saccacio@us.pwc.com)

Karl Weger, *Philadelphia*  
(267) 330-2496  
[karl.weger@us.pwc.com](mailto:karl.weger@us.pwc.com)

Scott Torgan, *San Francisco*  
(415) 498-6240  
[scott.a.torgan@us.pwc.com](mailto:scott.a.torgan@us.pwc.com)

Karrie Hebert, *Tampa*  
(813) 218-2959  
[karrie.k.hebert@us.pwc.com](mailto:karrie.k.hebert@us.pwc.com)

Al Vernacchio, *Pittsburgh*  
(412) 355-6028  
[albert.j.vernacchio@us.pwc.com](mailto:albert.j.vernacchio@us.pwc.com)

Roxanne Laine, *San Jose*  
(408) 817-5956  
[roxanne.laine@us.pwc.com](mailto:roxanne.laine@us.pwc.com)

Ryan Lauridsen, *Washington, DC*  
(703) 918-4251  
[ryan.lauridsen@us.pwc.com](mailto:ryan.lauridsen@us.pwc.com)