

PLANNING FOR SAME-SEX MARRIAGE POST-DOMA RULING

Understand and start planning for IRS and other agency changes.



KEY TAKEAWAYS

Supreme Court decision struck down Section 3 of the Defense of Marriage Act of 1996, giving same-sex couples who are legally married the same federal benefits and protections as opposite-sex marriages.*



Benefits now afforded to same-sex married couples, from Social Security and lifetime gift tax-free property transfers to veteran and employee healthcare benefits.



This is a tremendous change that will affect thousands of federal documents and legal references, which will take time to be fully implemented.

*Updated 08/30/2013

THE DECISION

On June 26, 2013, the Supreme Court made a landmark decision by striking down Section 3 of the Defense of Marriage Act of 1996 (DOMA), paving the way for same-sex marriages to receive the same federal benefits and protections as opposite-sex marriages. This move by the Supreme Court means that the legal definitions of “marriage” and “spouse” under federal law now include legal unions between same-sex partners as well as opposite-sex partners. This is a tremendous change that will affect thousands of federal documents and legal references.

The Supreme Court decision paves way for same-sex couples who are legally married to now enjoy many tax and healthcare related benefits.

This paper helps to identify the various changes that will affect same-sex marriages and what to consider from a tax and financial planning perspective. As with any major legislative ruling, additional guidance and the actual implementation of the changes are expected to take time.

The following takes a deeper look at the key areas affected by the Supreme Court ruling.

FILING STATUS AND FEDERAL INCOME TAX

FILING MARRIED

As a result of the ruling, the filing status for federal tax purposes for same-sex married couples as recognized by federal law is now married. You can no longer file as single or head of household – only married filing jointly or married filing separately.

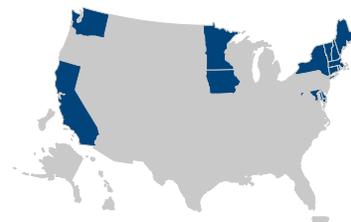
Given the shift to married status, couples should consider the benefits and/or changes that come along with it, including income tax bracket levels, the standard deduction, personal exemptions and adjusted gross income (AGI) amounts, which affect qualification for certain benefits. For higher income earners, filing jointly often puts them in the “marriage penalty” pool, where inevitably they pay more taxes than if filing separately. A variety of factors come into play, including income floors and thresholds that affect certain tax breaks. It is recommended that couples consider both scenarios of filing jointly or separately to determine the most advantageous situation.

On August 29, 2013, the Treasury Department and IRS announced that all same-sex couples who are legally married will be recognized as such for federal tax benefits, regardless of their state of residence or location of wedding.

As it stands, couples who reside in the 37 states that do not recognize same-sex marriage will be required to file 2013 federal tax returns as other married couples but may be required to file state returns as individuals.

There are currently 13 states, plus the District of Columbia, that recognize same-sex marriage:

<i>Connecticut</i>	<i>Minnesota</i>
<i>California</i>	<i>New Hampshire</i>
<i>Delaware</i>	<i>New York</i>
<i>Iowa</i>	<i>Rhode Island</i>
<i>Maine</i>	<i>Vermont</i>
<i>Maryland</i>	<i>Washington</i>
<i>Massachusetts</i>	



RE-FILING PRIOR YEAR TAX RETURNS AND REFUND CLAIMS

Initial review of the ruling indicates that the new “married” status for same-sex couples is retroactive to the marriage date on which they were legally married. This opens up the opportunity for same-sex couples to file amended tax returns under the new laws. Generally, but not always, taxpayers can re-file up to three years of tax returns.

Leading up to the Supreme Court’s decision, many same-sex married couples filed “protective” income tax refund claims using married-filing-jointly status with the idea being that there would one day be a contingent event to receive those claims before the period of limitations expired. Given the ruling, same-sex married couples should now file “full” refund claims, rather than protective claims.

SURVIVING SPOUSE CLAIMS

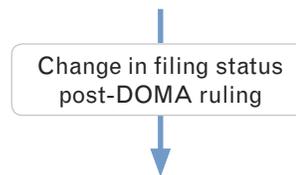
The ruling also means that same-sex married couples are now afforded surviving spouse claims. Essentially, the year a spouse dies, the surviving spouse can still file jointly and receive the same tax brackets as married couples. The surviving spouse may qualify for this treatment an additional two years if the taxpayer maintains a household with dependents and has not remarried. This scenario also assumes that the surviving spouse filed or could have filed jointly with the spouse in the year he or she died.

ESTATE AND GIFT TAXATION

In terms of estate and gift taxation, there are many benefits that same-sex married couples presumably can now take advantage of pursuant to the Supreme Court ruling.

Marital deduction. The marital deduction is a key planning tool that permits taxpayers to defer asset transfer taxes until the surviving spouse dies, as long as said spouse is a U.S. citizen. If an estate plan exists, same-sex married couples are encouraged to revisit plans to make certain that interests passing to the other spouse qualify for the marital deduction. If there is no estate plan in place, this is a good time to establish a plan with your financial advisor and tax professional.

Income Tax Bracket	
Rate	Single
10%	\$0 to \$8,925
15%	\$8,925 to \$36,250
25%	\$36,250 to \$87,850
28%	\$87,850 to \$183,250
33%	\$183,250 to \$398,350
35%	\$398,350 to \$400,000
39.6%	\$400,000 and up



Income Tax Bracket		
Rate	Married Filing Jointly	Married Filing Separately
10%	\$0 to \$17,850	\$0 to \$8,925
15%	\$17,850 to \$72,500	\$8,925 to \$36,250
25%	\$72,500 to \$146,400	\$36,250 to \$73,200
28%	\$146,400 to \$223,050	\$73,200 to \$111,525
33%	\$223,050 to \$398,350	\$111,525 to \$199,175
35%	\$398,350 to \$450,000	\$199,175 to \$225,000
39.6%	\$450,000 and up	\$225,000 and up

Portability. Portability is the ability of a surviving spouse to add the unused estate tax exemption (a total of \$5.25 million in 2013) of the spouse who died to his or her own. To take advantage of this portability, an estate tax return must be filed when the first spouse dies.

Gifts. Prior to the Supreme Court ruling, only opposite-sex married couples were permitted to “split” gifts to capitalize on the doubled annual gift tax exclusion (\$14,000 for 2013, for a total tax-free gift of \$28,000). Now, same-sex married couples can enjoy greater flexibility in estate planning and presumably transfer assets between themselves with no concern of lifetime gift tax consequences.

EMPLOYEE BENEFITS

The impact of the ruling on employee benefit plans is significant, and the timing of plan amendments will take time. This is one area where additional IRS guidance is certainly awaited. One question that exists is whether or not benefits will be made retroactive or only prospective from the date of the ruling. Benefit plans affected are expected to include cafeteria plans, flexible spending accounts, health savings accounts and COBRA offerings as well as beneficiary designations.

WHAT ABOUT THE AFFORDABLE CARE ACT?

In 2010, the Obama administration signed into law the Affordable Care Act. This put in motion a number of changes that affect the delivery of health care and health insurance coverage. As a result of the ruling, there are a few things that same-sex married couples should be aware of.

Health coverage mandate and penalty. Effective 2014, the Affordable Care Act will impose a penalty on those individuals who don't carry minimum healthcare coverage (subject to certain exceptions). While both partners in a same-sex marriage were responsible for this coverage before the ruling, the difference now is that as a legally recognized married couple, any penalties for not carrying coverage will now be a joint liability.

Premium assistance tax credit. The premium assistance tax credit was designed for qualified individuals who aren't offered minimum coverage and as a result obtain coverage through a health benefit exchange. For taxpayers who want to claim the credit in a given year, they must file a joint return.

▶ With respect to employee benefits, one question that exists is whether or not benefits for same-sex married couples will be made retroactive or only prospective from the date of the ruling. The IRS is expected to provide additional guidance on the timing of employee benefit plan amendments.

SOCIAL SECURITY BENEFITS

Prior to the ruling, same-sex married couples didn't have the same benefits under Social Security that opposite-sex couples did – specifically survivor and death benefits. Given the Supreme Court ruling, it is anticipated that couples can now benefit from the one-time death benefit of \$255 as well as spousal benefits and survivor benefits depending on eligibility (age and dependents).

One fact to be aware of is that the Social Security Administration historically has based benefit rights on a couple's current state of residence and not the state in which they were married. How the administration will treat the right to Social Security benefits for same-sex married couples will need to be sorted out as there is no nationwide extension.

MOVING FORWARD

In the end, there remain many unanswered questions in terms of the consequences and recommended guidance as well as effective dates, which aren't straightforward in all cases. President Obama has directed Attorney General Eric Holder Jr. to ensure that changes be implemented “swiftly and smoothly.” This, however, will take time since countless federal rules and regulations will be affected by the ruling, and employers also will be required to revise policies and procedures.

While we must stay tuned in for additional information, it is a good time to start working with your financial advisor and tax professional to navigate the law in order to make the most informed changes to your financial and estate plans.

▶ Development and implementation of additional policies and procedures will take time to sort out with the Department of Justice. In order to protect you from the loss of potential benefits, it is encouraged by the SSA to apply for benefits if you believe you are eligible. Applying now preserves your filing date, which is used to determine the start of potential benefits. Claims will be processed once policy changes are finalized.*



THE BENEFITS NOW AFFORDED TO SAME-SEX MARRIAGES ARE FAR-REACHING

- Social Security spousal and survivor benefits
- Certain veterans benefits, such as pension and survivors benefits
- Military spousal benefits
- Lifetime gift tax-free property transfers to spouses
- Estate tax relief for surviving spouses
- Spousal IRA contributions
- Employer healthcare benefits

Please note, changes in tax laws or regulations may occur at any time and could substantially impact your situation.

Raymond James financial advisors do not render advice on tax or legal matters. You should discuss any tax or legal matters with the appropriate professional.

*Source: Social Security Administration, ssa.gov

LIFE WELL PLANNED.

RAYMOND JAMES®

INTERNATIONAL HEADQUARTERS: THE RAYMOND JAMES FINANCIAL CENTER

880 CARILLON PARKWAY // ST. PETERSBURG, FL 33716 // 800.248.8863

RAYMONDJAMES.COM