

U.S. Supreme Court Decision in Obergefell v. Hodges Has Far-Reaching Tax and Benefits Implications for Same-Sex Married Couples

July 17, 2015



On June 26, 2015, there was a groundbreaking decision in *Obergefell v. Hodges*. Two years after the Supreme Court ruled Section 3 of the Defense of Marriage Act (DOMA) unconstitutional in *United States v. Windsor*, the Supreme Court declared that same-sex couples have a right to marry anywhere in the United States under the freedom to marry ruling. The United States became the twenty-first country to legalize same-sex marriages. All fifty states including District of Columbia must now allow same-sex marriages and recognize same-sex marriages performed elsewhere outside their state.

Tax benefits that are available to opposite-sex partners are now extended to partners in same-sex marriages including:

- Ability to file jointly on the federal and resident state returns.
- Unlimited marital deduction for the surviving spouse without incurring a

federal estate tax.

- Unlimited marital deduction for lifetime gifts to the same-sex spouse.
- Gift splitting to take advantage of spouse's lifetime exemption and annual exclusion.
- Electing portability of any unused exclusion to the surviving spouses.
- Eligibility for spousal and survivor Social Security Benefits.
- Eligibility for spousal rollovers of IRA accounts, joint and survivor benefits for annuities, and tax-deductible spousal IRA contributions.
- Health insurance benefits provided by the employers for the same sex spouse are no longer taxable to the employees. Long-term care policies offered by employers can also be extended to the same-sex spouse.

The *Obergefell* decision essentially makes the *Windsor* decision applicable not only to federal returns, but to state returns as well. Married same-sex couples who were not allowed to file returns as married individuals in the state where they currently reside should consider whether it is advantageous to file an amended state tax return for open years. States that impose estate and gift taxes or inheritance taxes may have favorable provisions for transfers to or involving a spouse similar to the federal rules, such as marital deduction or the ability to make split gifts.

Items to consider:

- Amend state returns filed as single to joint to obtain possible overpayment of taxes paid.
- Amend gift tax returns for gift taxes paid or lifetime exemptions utilized for gifts made to a spouse.
- Amend Estate tax returns for deceased spouse, if the marital deduction was not taken advantage of on the state return.
- Amend gift tax returns to take advantage of gift splitting.
- Review Wills and other estate planning documents to take advantage of the unlimited marital deduction.
- Review insurance policies purchased that may no longer be needed to pay the estate tax.
- Consider survivorship policies if there are children.
- Non-citizen spouses can apply for permanent residence or citizenship.

- You can now obtain a divorce proceeding in your state of residence even though you may have married in another state.

Couples who entered into a registered domestic partnership, civil union, or other similar formal relationship that is recognized under state law would not be treated as married for federal tax purposes where state law doesn't denominate those relationships as marriage. However, *Obergefell v. Hodges* allow same-sex couples in those arrangements to marry if they choose, in which case the marriage will be recognized in all states and for federal purposes.

For more information, please contact your Anchin Relationship Partner, or Jane Bernardini, Partner in Anchin's Private Client Group at 212.840.3456.