

## **Now That Same-Sex Marriage Is Legal In All States, What Are The Tax Implications?**

### **Article Highlights:**

- All states are required to recognize and allow same-sex marriage
- Married tax filing requirements
- Potential tax benefits
- Negative tax aspects

On June 26, the Supreme Court ruled that the Fourteenth Amendment to the Constitution requires all states to license marriages between two people of the same sex and to recognize same-sex marriages performed in other states. This comes approximately two years after the Supreme Court overturned the Defense of Marriage Act (DOMA) enacted by Congress and signed by then President Bill Clinton. DOMA defined marriage as "legal union between one man and one woman as husband and wife."

This has wide-ranging implications for married individuals who reside in states that until now have not recognized same-sex marriage and for those who can now marry in their state, including employer-provided employee and spousal benefits, retirement issues, Social Security benefits, and of course tax issues.

Since DOMA was overturned, legally married same-sex couples have been required to file their federal returns as "married," but they have had to file their state returns as single or head of household status if their state did not recognize their marriage as legal. That will now change, and they will be filing using the married status for their state returns as well.

Being married for tax purposes is not always beneficial, depending on a number of circumstances. The following are some of the tax breaks available to legally married same-sex couples:

- The right to file a joint return, which can produce a lower combined tax than the total tax paid by same-sex spouses filing as single persons (but this can also produce a higher tax, especially if both spouses are relatively high earners or one or both previously qualified to file as head of household);
- The opportunity to get tax-free employer-paid health coverage for the same-sex spouse;
- The opportunity for either spouse to utilize the marital deduction to transfer unlimited amounts during life to the other spouse, free of gift tax;
- The opportunity for the estate of the spouse who dies first to receive a marital deduction for amounts transferred to the surviving spouse;
- The opportunity for the estate of the spouse who dies first to transfer the deceased spouse's unused exclusion amount to the surviving spouse;
- The opportunity to consent to make "split" gifts (i.e., gifts to others treated as if made one-half by each); and
- The opportunity for a surviving spouse to stretch out distributions from a qualified retirement plan or IRA after the death of the first spouse under more favorable rules than apply for nonspousal beneficiaries.

There is a negative side as well. Many same-sex married couples, especially higher-income ones, may find that filing as married has unpleasant income tax ramifications. Divorcing before the end of the year can rectify that. However, before employing that strategy, a couple needs to consider the other financial benefits of

being married. The following issues are commonly encountered by same-sex married couples.

- A taxpayer who is married and living with his or her spouse cannot file using head of household filing status. So a same-sex spouse (or both) who previously qualified for and filed a federal return using the head of household status will no longer file as head of household. Instead, the same-sex couple will file as married using the joint or separate status, which will generally result in higher taxes.
- When filing as unmarried, one individual can take the standard deduction and the other can itemize. As married individuals, they must choose between the two, which could substantially reduce their overall deductions. If a same-sex couple files married separate returns and one spouse claims itemized deductions, the other spouse cannot use the standard deduction.
- As unmarried individuals, same-sex partners were able to adopt each other's children and claim the adoption credit. As married individuals they can no longer do that.

For those who are registered domestic partners (RDPs) in California, the Supreme Court's recent ruling does not address the IRS's position that these individuals are not legally married and therefore not eligible to file as married. Unless IRS changes its interpretation, RDPs will still not be able to file as married for federal purposes.

If you are contemplating a same-sex union or live in a state that previously did not recognize same-sex marriages and wish to explore the tax consequences of now filing as married individuals, please give the office a call.