

MP&S TAX ALERT: SUPREME COURT ISSUES LANDMARK DECISIONS ON SAME-SEX MARRIAGE

On June 26, the US Supreme Court issued two landmark decisions. *United States v. Windsor* requires the federal government to recognize same-sex marriage in states where it's legal. *Hollingsworth v. Perry* may allow same-sex marriage in the country's most highly populated state, California. These 5-4 decisions could dramatically affect tax and estate planning for same-sex married couples, as well as the benefit plans employers and the federal government provide to such couples.

Marriage definition struck down

Windsor concerned the constitutionality of Section 3 of the 1996 Defense of Marriage Act (DOMA), which defined marriage for federal benefits purposes as being between a man and a woman, thus denying federal benefits to same-sex married couples. The Court struck down Sec. 3 as a violation of the U.S. Constitution's guarantee of equal protection under the law.

The female defendant-respondent was married to a woman and resided in New York, where same-sex marriage is legally recognized. She sued the government to claim the federal estate tax marital deduction available to heterosexual surviving spouses when their spouses die. As a result of the Supreme Court's ruling, she'll be able to claim a \$363,000 tax refund.

The Court's ruling, however, was not so broad as to hold that same-sex couples have a fundamental right to marry. As a result, the more than thirty states that don't recognize same-sex marriage will not be required to do so.

Nevertheless, the Court has opened the doors for same-sex married couples — in states where same-sex marriage is recognized — to claim numerous federal benefits and rights, as well as be subject to some tax burdens, related to marital status.

Proposition 8 left hanging

Hollingsworth involved Proposition 8, a voter-approved California state law prohibiting same-sex marriage that had been struck down by a federal district court. The Supreme Court avoided issuing a decision on Proposition 8, instead finding that the private parties who had intervened to defend the law (after the state of California had declined to do so) did not have standing to do so.

The Court remanded the case to the U.S. Court of Appeals for the Ninth Circuit to dismiss. As a result, the lower-court ruling will stand, in effect permitting same-sex marriage in California, though additional litigation may ensue.

Tax and benefits implications

Same-sex marriage has already been made legal in 12 states and the District of Columbia. If California is included as the 13th state, about one-third of Americans would reside in jurisdictions where same-sex marriage is legally recognized.

Same-sex married couples in these states should review their tax planning strategies and estate plans to ensure they're taking advantage of all of the opportunities now available to them as married couples — and plan for any new burdens to which they could now be subject. Employers will need to keep a close eye on how these developments affect the benefits they're providing.

It will take some time for all of the implications to emerge, but we would be pleased to help guide you through the changes and how they may affect you or your business.

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