



Tax Implications for the Supreme Court's DOMA Decision



In light of the Supreme Court's decision in the *Windsor* case invalidating a portion of the Defense of Marriage Act (DOMA), the Treasury Department and the Internal Revenue Service announced earlier this year "same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes." This is known as the "state of celebration" rule.

In short, regardless of what state the same-sex couple currently resides, if they were legally married in a jurisdiction that recognizes same-sex marriages as legal and valid, then same-sex spouses are married for all federal tax purposes.

Here are some additional impacts of the *Windsor* decision for the upcoming tax filing season:

1. **For State Tax Purposes.** If a couple lives in a state that doesn't recognize their same-sex marriage, their home state does not have to treat them as a married couple.
2. **Programs Following State of Residence Rule.** In order for same-sex married couples to be eligible for Veteran Benefits, Social Security, Medicare, Medicaid, and Family Medical Leave benefits, they must reside in a state that recognizes their marriage. These programs follow a "state of residence," or "state of domicile" rule.
3. **Amended Returns for Same-Sex Couples.** If same-sex couples are amending past tax returns, they are not obligated to change their filing status. However, if they are amending for an issue involving filing status (like the former tax on employer-provided health insurance), they are obligated to change their filing status to married.
4. **For Naturalization Purposes.** The Department of Homeland Security uses the state of celebration rule to determine whether a marriage is valid, so a U.S. citizen spouse may now petition for permanent residency for his or her foreign national spouse to remain in the U.S. under the same rules that apply to heterosexual spouses.
5. **What Happens after 16 September 2013?** After this date, married couples no longer have the option to file as single for any years in which they have not filed previously or any future tax year; instead, they must file married filing jointly or married filing separately.
6. **State Tax Impact.** Twenty-four (24) states of the 33 states that do not recognize same-sex marriage require state taxpayers to refer to their federal tax return when preparing their state tax return (state law often refers to the federal return for income, deductions, and filing status and requires state return items to match the federal return,

which will be impossible). These 24 states (Arizona, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, Utah, Virginia, West Virginia, and Wisconsin) are mandated to provide guidance to taxpayers on how to proceed before the 2014 tax season. In these states, same-sex couples will file single returns at the state level but joint returns at the federal level.

7. Divorce. Couples who live in states that do not recognize their marriage may have to go to one that does to dissolve it. Some states have residency requirements that prevent out-of-state couples from showing up just to get divorced. For example, California requires residence by at least one member of the couple for a minimum of six months. Some jurisdictions (including Washington, DC and Vermont) will grant divorces without a residence requirement for couples who married in those jurisdictions but subsequently moved to places where those marriages are not recognized.



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