

Same-sex marriages



What:

Recently, the Supreme Court struck down section 3 of the Defense of Marriage Act (DOMA) requiring same-sex spouses to be considered unmarried for provisions of federal law. More than 1000 federal laws involve marital status. Same-sex legally married couples can now take advantage of these laws.

Who:

There are already in excess of 130,000 same-sex legally married couples. This decision will, indeed, increase that number substantially.

Also, there are an increasing number of states that allow same-sex marriages. Legally married couples residing in these states can now take advantage of these federal marital laws. Same-sex couples who were legally married in any state (or country) are considered married for federal tax purposes regardless of where they reside. The type of state return that is filed depends on that particular state.

Same-sex couples who were legally married in past years can amend open tax years if they choose to do so.

New rights:

Legally married same-sex couples can now:

- File joint federal tax returns
- Use the unlimited estate tax marital deduction at death
- Transfer property to each other without creating gift tax
- Get pretax health insurance for their spouse
- Use their health flexible spending account for their spouse
- Qualify for survivor and death benefits under pension plans
- Qualify for Social Security benefits as married people

Tax implications:

Not all of these new rights will be to the advantage (tax wise) of all legally married couples. Filing a joint return is not always the best scenario. The following list of facts might be helpful:

- The biggest benefits will go to the couple where one makes a lot more than the other.
- Couples both making high incomes will be introduced to the marriage penalty and a host of other limitations and taxes including the new earned income and investment surtaxes which are a part of ObamaCare.
- Middle income couples making similar amounts, in most cases, will see results similar to filing as singles.
- Low income couples, especially those raising children could find a loss or reduction of some of the low income benefits such as earned income credit, refundable child tax credit, and qualifying for Medicaid.