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## Domestic Partners and Same-Sex Couples

On June 26, 2013, the U.S. Supreme Court struck down Section 3 of the Defense of Marriage Act of 1996 (DOMA). Section 3 defined marriage as the union of a man and a woman, and barred recognition of gay and lesbian same-sex marriages for all federal purposes including insurance benefits, Social Security benefits, the filing of joint tax returns, and the unlimited marital estate tax exemption available to opposite-sex married couples.

### What effect does the ruling have?

#### In states that have legalized same-sex marriage:

Because the Supreme Court justices struck down Section 3 of DOMA, couples in the 13 states (including California) and the District of Columbia that have legalized same-sex marriage will be allowed to receive federal benefits and protections that were previously available only to opposite-sex married couples.

Striking down Section 3 of DOMA means that the legal definitions of "marriage" and "spouse" under federal law now include legal unions between same-sex partners as well as opposite-sex partners. The effect of this change is enormous, because more than 1,000 federal laws reference marriage or spousal status.

The following list details some of the federal benefits or protections that may now be available to legally married same-sex couples:

- Social Security survivor's and spousal benefits
- Certain veterans benefits, such as pensions and survivor's benefits
- Lifetime gift tax-free property transfers to spouses
- Estate tax relief for surviving spouses
- Military spousal benefits
- Family medical leave rights
- Spousal IRA contributions
- Spousal visas for foreign national spouses
- Joint filing of federal income taxes
- Private pension benefit options (e.g., survivor annuities)
- Employer health-care benefits may be received on a pretax basis

#### In states that have not legalized same-sex marriage:

States still retain the authority to define marriage, and some states (like Texas) may choose to continue to define marriage as *a legal union between a man and a woman*. States still do not have to recognize same-sex marriages as legal if they were performed in other states.

Recent guidance from the Internal Revenue Service (IRS) on Registered Domestic Partners (RDPs), is a reminder of the need to understand how state law treats domestic partners and same-sex married couples.

For all states that impose a state income tax, preparers should determine how same-sex married couples or RDPs are required to file for state income tax purposes. In addition, preparers may want to determine if there are any special rules for such couples for other types of state taxes, such as property taxes. In addition, consideration must be given to whether prior year returns should be amended.

For same-sex married couples or RDPs in non-income tax states, how the state treats the couple's property rights and income and whether federal tax filings are affected must be considered.