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### July 5, 2013 – Supreme Court Strikes Down Section 3 of the Defense of Marriage Act

The United States Supreme Court has handed down its much-anticipated decision on the fate of Section 3 of the Defense of Marriage Act (DOMA) and the ruling has many implications for taxpayers. The Court struck down Section 3 of DOMA in *Windsor v. U.S.*, June 26, 2013, opening the door for the federal government to extend to same-sex married couples the same benefits available to opposite-sex married couples, including a host of tax-related benefits. The IRS has promised to provide guidance to taxpayers as soon as possible but the agency has a daunting task ahead because so many Tax Code provisions are impacted by the Court's decision.

Section 3 of DOMA provided that the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife for federal purposes. This definition also applied to the Tax Code. As a result, same-sex married couples could not file their federal income tax returns as married filing jointly, could not take advantage of taxpayer-friendly treatment of many health care and retirement benefits available to opposite-sex couples, and were not treated the same as opposite-sex married couples under the federal estate tax regime.

It was in the estate tax context that the Supreme Court took-up Section 3 of DOMA. After her same-sex spouse died, Edith Windsor sought to claim the estate tax exemption for surviving spouses. Section 3 of DOMA barred her claim because she was in a same-sex marriage and not an opposite-sex marriage. The estate paid the estate taxes and the Windsor executrix filed for a refund. A federal district court found that Section 3 of DOMA was unconstitutional. On appeal, the Second Circuit also struck down DOMA. The Supreme Court agreed to hear the case and issued its decision on June 26.

Justice Anthony Kennedy wrote the five-justice majority opinion. Kennedy noted that marriage laws have traditionally been within the province of the states and not the federal government. "Marriage laws may vary from state to state, but they are consistent within each state," Kennedy explained. DOMA, however, identified a subset of state-sanctioned marriages (same-sex marriages) and made them unequal. Kennedy concluded that "the principal purpose of DOMA was to impose inequality." The four dissenting justices would have upheld DOMA. According to the dissenting justices, DOMA avoids difficult choice-of-law issues that will now arise absent a uniform federal definition of marriage."

Almost immediately after the Supreme Court issued its decision, President Obama directed all federal agencies to revise their rules and regulations to reflect the ruling. The IRS announced on its website that it would act "swiftly" to provide guidance to taxpayers. The IRS will be busy because so many Tax Code provisions and regulations are affected. Many same-sex married couples may mistakenly think that the Court's decision merely allows them to file their federal income tax returns as married filing jointly. Filing status is only the tip of the iceberg; the Court's ruling impacts much more. The IRS is expected to issue guidance on, among other areas: employee benefits and retirement savings, children and dependents, innocent spouse rules, estate and gift taxation, education benefits, and more. The Court's decision also will impact how the IRS implements the Patient Protection and Affordable Care Act.

Starting in 2014, the Affordable Care Act imposes new requirements on individuals to carry minimum essential health coverage (unless exempt) or pay a penalty. The Affordable Care Act also makes many changes to common employee benefits, such as health flexible spending accounts. Our office will keep you posted of developments as the IRS rolls out guidance.

It is important to keep in mind that the Supreme Court did not strike down Section 2 of DOMA, which provides that no state, territory, or possession of the U.S. is required to give effect to any law of another state, territory, or possession that recognizes same-sex marriage. Chief Justice John Roberts cautioned that the Supreme Court did not address if “states could continue to utilize the traditional definition of marriage.” This issue was not before the Court. Roberts emphasized that the majority held that the decision and its holding “are confined to those lawful marriages—referring to same-sex marriages that a state has already recognized.” Shortly after the Supreme Court announced its decision, legislation was introduced in the House to repeal Section 2 of DOMA. The Respect of Marriage Act would require that all states recognize same-sex marriages performed in other states.

If you have any questions about the Supreme Court’s decision striking down Section 3 of DOMA and its impact on taxpayers, please contact our office.