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United States – Supreme Court Decision for Same-Sex Marriage

by KPMG LLP's Washington National Tax practice, Washington, D.C. (KPMG LLP in the United States is a KPMG International member firm)

On June 26, 2015, the Supreme Court of the United States ruled in *Obergefell v. Hodges*¹ that same-sex couples have the constitutional right to marry. This means that U.S. states that do not permit same-sex marriage² must now do so. Previously, 35 states allow same-sex couples to marry, but with *Obergefell*, "marriage equality" is the law of the land.

Why This Matters

Many legal rights and responsibilities conferred by marriage will now be extended nationally, eliminating the uncertainty that has previously affected same-sex married couples that relocated to states that did not recognize their unions. This applies to their tax filing status, inheritance taxation, and social security, among many other rights and privileges.

For employers, the *Obergefell* decision should eliminate the complications with respect to payroll reporting that stemmed from same-sex marriage being recognized in some states but not others. Certain employee benefits such as spousal health insurance that are tax exempt for federal tax purposes should now receive equivalent treatment in all states.

States Now Required to License and Recognize Same-Sex Marriages

The Court held in a 5-4 decision that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when a marriage was lawfully licensed and performed out of state. The majority opinion was delivered and written by Justice Kennedy and joined by Justices Breyer, Kagan, Ginsburg, and Sotomayor. Dissenting opinions were filed by Chief Justice Roberts, and Justices Thomas, Alito, and Scalia.

It is believed the Court's decision will not take effect until the mandate gets issued in about two weeks, although states could decide to start implementing it sooner.

For U.S. federal income tax purposes (and most other applications of federal law), same-sex marriage legally performed in any jurisdiction is recognized even if the couple resides in a state that does not recognize their marriage. This has been the case since 2013, when the U.S. Supreme Court in *U.S. v. Windsor*³ struck down the portion of the Defense of Marriage Act⁴ (DOMA) that prohibited the federal government from recognizing same-sex marriage. That decision let stand the portion of DOMA that permits states not to recognize same-sex marriages performed in other jurisdictions.⁵

By finding that state bans on same-sex marriage are not permitted under the U.S. Constitution, the Court has essentially rendered moot the remainder of DOMA.

KPMG Note

After the *Windsor* decision, same-sex married couples in states that did not recognize their unions faced complications with respect to state income tax, since a couple that filed as married for federal income tax purposes was forced to adopt single status in their state income tax returns for their state of residence. This discrepancy made tax planning and filing more difficult, but the financial impact of the position depended on the circumstances of the couple, with some paying more tax than they would if their marriage was recognized, while others paid less.

Now, with this decision, legally married same-sex couples should be treated equally from a state tax perspective as opposite-sex couples.

Footnotes:

1 For the opinion, see: http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf.

2 States that do not permit same-sex marriage include Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Texas. The status of same-sex marriage in Alabama, Kansas, and Missouri is unclear; Missouri, however, recognizes same-sex marriages legally performed in other jurisdictions.

3 570 U.S. ____ (2013). For additional information on the 2013 *Windsor* case, see the following issues of *Flash International Executive Alert*: [Flash International Executive Alert 2013-093](#) (June 27, 2013); [Flash International Executive Alert 2013-101](#) (July 12, 2013); [Flash International Executive Alert 2013-121](#) (August 30, 2013); [Flash International Executive Alert 2013-122](#) (September 5, 2013); [Flash International Executive Alert 2013-131](#) (September 27, 2013).

Also see: B. Rothery, "[Supreme Court's Same-Sex Marriage Decisions Clarify Some Issues, Cloud Others](#)" in *The Expatriate Administrator*, a publication of KPMG LLP (U.S.).

In addition, see our GMS Video on the global mobility implications of the 2013 *Windsor* decision "[What the Supreme Court's DOMA Decision Means for Global Mobility Programs](#)."

4 Pub.L. 104-199, 1 U.S.C. § 7 and 28 U.S.C. § 1738C.

5 For the implications of the *Windsor* decision on state tax filing (which applied up to today's Supreme Court ruling in *Obergefell*), see this GMS Video "[Same-Sex Marriage and State Tax Filing for 2013](#)."

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