

# Understanding Same-Sex Couple Benefits

By Raymond J. Ziegler Jr., CPA



**W**hen the U.S. Supreme Court ruled this summer that there is a federal constitutional right to same-sex marriage, the decision led to some sweeping changes in tax, estate and retirement planning, as well as in health care benefits. The current ruling legalizes same-sex marriage at the federal and state levels across the country and provides all married couples, including same-sex couples, access to the same tax breaks and benefits. The ruling is for all states, even the 13 states where same-sex marriage was not previously legal, including Missouri.

Here is a synopsis of those changes:

**Taxes.** Married same-sex couples no longer need to file two sets of tax returns, a joint return to the federal government and two separate filings to their state. They will now be able to file a joint state tax return. This means that employers must adjust state tax reporting and withholding for all employees in same-sex marriages who live in states that did not previously recognize their marriages.

**Estate planning.** The ruling extends the spousal exclusion that allows spouses to leave one another property without paying estate taxes at the first death to same-sex couples at the state level. Married same-sex couples will also have the right to inherit property under a state's intestacy statute, where the surviving spouse is generally entitled to priority over other family members regarding the deceased spouse's assets, if there is no will. Previously, in states where the intestacy statutes did not apply to same-sex couples married in other jurisdictions, if there was no will or if there was a will and it was successfully challenged, then same-sex partners would be disinherited.

Same-sex couples no longer have to worry about state estate taxes at the death of the first spouse if the state did not previously recognize same-sex marriage. The exemption of gift tax being unlimited between spouses will now apply to all same-sex couples. Same-sex couples who decide to split up will be able to legally divorce and can no longer be treated by states as having no legal rights in terms of division of property.

**Retirement planning.** There may now be some public-employee pension plan (state and local) benefits made available to spouses in same-sex couples whose marriage wasn't previously recognized. Legally married couples may have a lump sum payout option and an option for an annuity. The annuity can include the life of the spouse.

If a spouse inherits an Individual Retirement Account (IRA), there's a special spousal rollover provision that

lets a surviving spouse delay taking distributions until age 70 ½ and stretch out tax deferred payments over the survivor's lifetime. Therefore, same-sex couples, in all states, should double check their IRA beneficiary designation forms.

**Social Security.** Previously, same-sex couples did not qualify for spousal benefits if their marriage wasn't legally recognized in the state where they lived. Now that they are considered legally married, they could have access to their spouse's benefits, which could be higher. Both the Social Security Administration and the Department of Veterans Affairs are still working to implement the ruling. The Social Security Administration encourages same-sex couples to apply now for benefits. If they disagree with the Administration's decision about their entitlement, eligibility for benefits, or payment amount, they should appeal.

**Health benefits.** Prior to the ruling, fully insured medical plans could deny coverage to same-sex spouses in states that denied same-sex marriage. Now fully insured medical plans must provide coverage to spouses in same-sex marriages if they provide coverage to spouses in heterosexual marriages. Self-insured medical plans can arguably continue to exclude same-sex spouses from coverage but would be at risk of challenges under sex discrimination laws.

The case that led to these changes is *Obergefell v. Hodges*. Prior to this case, which was ruled on June 26, 2015, the federal tax filing status of a same-sex couple was determined solely by the laws of the state in which the marriage was entered into. Exactly two years earlier, in the *United States v. Windsor*, the Supreme Court struck down Section 3 of the Defense of Marriage Act, which defined a marriage for purposes of federal law as only existing between male and female couples. Under the new ruling, registered domestic partnerships and civil unions will continue to be treated as non-marriages for tax purposes.

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