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U.S. v. Windsor and Estate Planning: A Florida Perspective

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Statistics Regarding Same-Sex Households

Urban Institute Fact Sheet

- Florida has fourth most same-sex couple households in the U.S., growing at a rate in excess of 50% during the last decade.
- Florida has the second highest concentration of senior same-sex households.
- Sarasota-Bradenton = Among all U.S. metropolitan areas, we have the fourth highest concentration of senior same-sex households.

U.S. vs. Windsor (570 U.S. 12/2013)

Issue = Whether or not Section 3 of DOMA, which provides that marriage is a legal union between one man and one woman, is constitutional?

Holding = Yes, because:

- A federal law that infringes upon a state-provided personal liberty, such as marriage, amounts to a 5th amendment, Due Process violation because it's a deprivation of a personal liberty.
- Section 3 of DOMA goes too far as to federal pre-emption by violating the long-standing rule that the regulation of domestic relations is the exclusive province of the states.
- Section 3 of DOMA creates a host of tax administration issues, not the least of which is the creation of two different federal marriage regimes within the same state.

Revenue Ruling 2013-17, Issued 8/29/13

1. The Service interprets Windsor as applying to all same-sex marriages, regardless of the taxpayer's state of domicile.
2. Terms in the Code such as "marriage," "spouse," etc are to be read so as to include a same-sex spouse or couple.
3. The term "marriage," however, does not include registered domestic partnerships, civil unions, or other similar formal relationships that are recognized under state law but do not rise to the level of actual marriage.
4. Revenue Ruling 2013-17 has a retroactive effect, and taxpayers may file amended returns.
5. Additional guidance is forthcoming.

Internal Revenue Bulletin 2013-72, Issued 8/29/13

1. As to the scope of Windsor, the Service's position is that it is as broad as possible. It applies in all realms of federal taxation (income, estate, gift, etc.) and applies to all tax provisions where marriage is a factor.
2. As to prior years' returns, same-sex couples may, but are not required to, file original or amended returns selecting a married filing status, provided that such return years are still open for purposes of the statute of limitations.
3. As to assessments in prior years, taxpayers can infer that the Service will probably not assess tax in prior years based upon marital status.
4. As to closed years, the Service remains silent and the bulletin does not indicate whether guidance is forthcoming.

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