

Excise Tax Advisory

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Washington State Estate Tax Treatment of Same-Sex Spouses

Announcement of Washington State Same-Sex Estate Tax Spousal Benefits

This Excise Tax Advisory (ETA) explains estate tax benefits for same-sex spouses under Washington state law. The same-sex spouse of a decedent dying on or after December 6, 2012, the adoption date of Referendum 74, is allowed Washington state estate tax spousal benefits. These benefits include a marital deduction and/or a Washington state Qualified Terminal Interest Property Trust (“QTIP”) or Qualifying Domestic Trust (“QDOT”) election.

Further, after June 26, 2013, these same Washington state estate tax spousal benefits are also allowed to be used by a same-sex spouse with a valid marriage recognized by another jurisdiction that is not prohibited because of close kinship, incest or bigamy, even if the deceased spouse died prior to the passage of Referendum 74. (See RCW 26.04.020(3))

Recent Washington state law change

With the passage of Referendum 74 (Chapter 3, Laws of 2012) a new Washington state statute came into effect defining spouse as gender neutral and applicable to spouses of the same sex. RCW 26.04.010 (3), effective on December 6, 2012, states:

Where necessary to implement the rights and responsibilities of spouses under the law, gender specific terms such as husband and wife used in any statute, rule, or other law must be construed to be gender neutral and applicable to spouses of the same sex.

Recent U.S. Supreme Court Decision regarding

The U.S. Supreme Court’s decision in *United States v. Windsor*, No. 12-307, struck down a provision in the 1996 *Defense of Marriage Act* that defines the terms “marriage” and “spouse” to exclude same-sex couples. The Supreme Court’s decision issued on June 26, 2013 held: “Section 3 of the Defense of Marriage Act is

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DOMA unconstitutional as a deprivation of the equal liberty of persons that is protected by the Fifth Amendment.”

Contact information Those personal representatives of estates involving a same-sex spouse’s Washington state marital deductions or other state estate tax benefits needing assistance with the Washington state returns may contact the Department at: (360) 534-1503
