

**The Ever Changing Landscape of Estate and Tax Planning  
for Non-Traditional Relationships**

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**Elizabeth A. Bryant**

**I. Current status of same-sex legal rights in the United States**

**A. Marriage:**

- 35 States, including Colorado, prohibit same-sex marriage [AK, AL, AR, AZ, CO, GA, FL, HI, ID, IL, IN, KS, KY, LA, MI, MO, MS, MT, NC, ND, NE, NM, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WI, WV, WY]
- 13 States, the District of Columbia and three Indian Nations allow same-sex marriage [CA, CT, DC, DE, IA, MA, MD, ME, MN, NH, NJ, NY, RI, VT, WA, the Little Traverse Bay Bands of Odawa Indians in Michigan, the Coquille Native American Nation in Oregon, and the Squamish Native American Nation in Washington]
- 1 State in limbo [NM]

**B. Relationship Recognition:**

- 14 States, the District of Columbia and three Indian Nations allow same-sex marriage [CA, CT, DC, DE, IA, MA, MD, ME, MN, NH, NJ, NY, RI, VT, WA, the Little Traverse Bay Bands of Odawa Indians in Michigan, the Coquille Native American Nation in Oregon, and the Squamish Native American Nation in Washington]
- 5 States, including Colorado, allow rights for same-sex couples [CO, HI, IL, NV, OR]
- 1 State recognizes some rights for same-sex couples [WI]
- 30 States do not recognize the relationship [AK, AL, AR, AZ, GA, FL, ID, IN, KS, KY, LA, MI, MO, MS, MT, NC, ND, NE, NM, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WY]
- 8 County Clerks in New Mexico currently issue marriage license for same-sex couples, and a hearing in front of the NM Supreme Court is set for October 23, 2013

**II. Timeline re Defense of Marriage Act**

A. **Defense of Marriage Act:** In 1996 the United States Federal Government enacted what is commonly referred to as the Defense of Marriage Act or “DOMA,” which established that only marriages between one man and one woman would be recognized by the United States Government. On June 26, 2013, the United States Supreme Court found that Section 3 of DOMA violates the equal protection clause of the Fifth Amendment of the U.S. Constitution as applied to

persons of the same-sex who are legally married under the laws of their state. In the Windsor case, the Supreme Court did not extend same-sex marriage nationwide, and it declined to say whether same-sex couples had a Constitutional right to marriage that would override state law.

B. **U.S. Office of Personnel Management.** On June 28, 2013, the United States Office of Personnel Management issued guidance on the extension of benefits to married gay and lesbian federal employees, annuitants and their families.

C. **U.S. Social Security Administration.** On August 9, 2013, the Social Security Administration issued a change to its Program Operations Manual System (POMS) indicating that, because of the Windsor case, Social Security is no longer prohibited from recognizing same-sex marriages for purposes of determining benefits.

D. **U.S. Internal Revenue Service.** On August 29, 2013, the Internal Revenue Service issued a revenue ruling that same-sex couples, legally married in jurisdictions that recognize the marriages, will be treated as married for federal tax purposes. This ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

E. **Colorado Department of Revenue.** On September 12, 2013, the Colorado Department of Revenue issued guidance stating the state “continues to maintain the position that both federal and Colorado income tax returns must have the same filing status.” But later that day, the guidance was withdrawn, pending further guidance from the Colorado Attorney General.

### III. Uncertainty in an Ever Changing Landscape

#### A. **Unanswered Questions.**

- The Colorado Constitution and statutes currently prohibit same-sex marriage.
- The IRS Revenue Ruling states that same-sex couples who are legally married must either file married filing jointly or married filing separately.
- Tax ramifications of having same-sex spouse on employer benefits.
- Tax ramifications of same-sex couples who divorce.
- Potential of loss of benefits granted to same-sex domestic partners who legally marry.
- The Colorado Civil Union Act currently does not address what happens when one of the partners wishes to qualify for Medicaid, but Colorado law is expected to address.
- Recognition of couples who either married or entered into a civil union/domestic partnership/civil partnership in another country, i.e., couple from UK in a Civil Partnership, couple from Spain in marriage.