The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

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- e Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and e ciently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. is is particularly important for people who are on certain public bene ts, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and nancial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

FEDERAL TAXES

IMPORTANT TAX DISCLAIMERS

is guidance is intended for general information purposes. It should not be construed as legal advice or a legal opinion on any speci c facts or circumstances, and does not create an attorney-client relationship.

Because sound legal advice must necessarily take into account all relevant facts and developments in the law, the information you will nd in this guidance is not intended to constitute legal advice or a legal opinion as to any particular matter.

Any tax information included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code (Code).

Marriage Matters For Federal Taxes

A 2004 government report identi ed 198 separate Code provisions tied to marital status, highlighting the dramatic impact of marriage on personal taxes. Rep. "GAO-04-353R Defense of Marriage Act - Update to Prior Report" (Jan. 24, 2004), *see* www.gao.gov/new.items/d04353r.pdf.

Summarized below are a few of the many tax issues *potentially* a ecting married same-sex couples now that DOMA has been invalidated. In all likelihood, there will be speci c guidance forthcoming from the Internal Revenue Service (IRS) before the next income tax ling deadline for tax year 2013. For personal advice on income tax, gift tax, or estate tax – federal or state - please consult a tax advisor. *State income taxes are not addressed in this guidance*. is is not legal or tax advice.

"MARRIED" FILING STATUS FOR FEDERAL INCOME TAXES

"Filing status" refers to whether you identify yourself as "single," "head of household," "married ling jointly" or "married ling separately" on your federal income tax returns. Only married couples can le as married, whether jointly or separately. e ling statuses of "single" or "head of household" are generally reserved for unmarried persons. DOMA barred married same-sex couples from ling as "married," whether jointly or separately.

In general, your ling status is determined on the last day of the year. If you are married on the last day of the year, you will be considered married for the entire year. Alternatively, if you are single on the last day of the year (if you got divorced, for example) you will be considered single for the entire year. ere are some exceptions to these rules, so check with your tax advisor if you have a question about your ling status.

Now that DOMA has been ruled unconstitutional, we believe that the IRS will instruct married same-sex couples to le their 2013 income taxes as "married"—whether jointly or separately—rather than as "individual" or "head of household," *provided that the IRS recognizes the marriage*. See below for important information about how the IRS assesses whether or not a person is "married" for tax purposes.

For those marriages recognized by the IRS, tax preparation should be simpler and less expensive than it was with DOMA. e questions that have faced married same-sex couples at tax time, like "who claims which child" and "how much of the mortgage deduction or charitable deduction do we each take" are eliminated for married same-sex couples who may now take these deductions *together* in one joint return.

WHO DOES THE IRS COUNT AS MARRIED FOR FEDERAL TAX PURPOSES?

is is a critical question to answer before ling your 2013 income taxes, and we expect guidance from the IRS on this point. ere may be a period of uncertainty because under current IRS practice, a person can le his or her income tax return as "married ling jointly" or "married ling separately" if the individual is considered married in his or her state of domicile (essentially, the permanent residence/primary home). at practice seems to suggest that only people in states that license or recognize marriages of same-sex couples and in D.C. can expect to be treated as married by the IRS. However, there is no statute or regulation requiring this approach. In addition, the IRS does not always follow this practice. For example, the IRS recognizes "common law" marriages for federal tax purposes no matter where a couple lives as long as their marriage was valid where entered. is will likely be an evolving area of law and you should consult with a quali ed tax expert about your circumstances. e legal organizations listed here also hope to provide more information as the situation develops.

Q. I married in a state that recognizes marriages between spouses of the same sex, and I still live in such a state. Am I eligible to be treated as a spouse for tax purposes?

A. Yes.

Q. I live in a state with a Civil Union or Registered Domestic Partnership system, and my partner and I have entered into that status. Am I eligible to be treated as a spouse for tax purposes?

A. As stated above, the IRS has a practice of using a place of domicile rule for assessing marital status, but not in the case of common law marriages. We should await guidance from the IRS on this point. In addition, certain authorities have indicated that partners in a civil union are not spouses eligible to be treated as "married" for federal tax purposes. On the other hand, the Chief Counsel of the IRS in Illinois stated in a letter that a heterosexual couple joined in civil union, which Illinois had recognized "as husband and wife," were permitted to le federal returns with the ling status "married ling jointly." If a person encounters problems or questions, they should contact a tax advisor and a legal organization listed below.

Q. I used to live in a state with marriage for same-sex couples and married there, but have since moved to a state that does not recognize marriages of same-sex couples. Am I eligible to be treated as a spouse for tax purposes?

A. As stated above, the IRS has a practice of using a place of domicile rule for assessing marital status, but not in the case of common law marriages. We should await guidance from the IRS on this point. In our mobile society, we believe it would make more sense for the IRS to use a place of celebration rule for all marriages and not just for "common law" marriagesAus/M the IRS has a p

See below if you are considering ling amended returns for a tax refund with respect to earlier tax years.

WHAT ARE SOME OF THE OTHER DIFFERENCES FOR SAME-SEX COUPLES IN BEING TREATED AS "MARRIED" FOR FEDERAL TAX PURPOSES?

Apart from tax rate schedules, there are numerous other ways in which your marital status *may* a ect your federal taxes depending on your individual circumstances. *For those persons the IRS regards as "married,"* for example:

- t . . . . . **D** . . . . . . Taxpayers can either take "itemized deductions" found on Schedule A of the federal income tax return, or a "standard