The U.S. Supreme Court Rules Gay Spouse Is Entitled to Estate Tax Refund

The U.S. Supreme Court has ruled that a key provision of the Defense of Marriage Act (DOMA) is unconstitutional, clearing the way for the surviving spouse of a lesbian couple to receive a refund of the taxes she was forced to pay because the federal government did not consider her married to her spouse.

Although the ruling does not create a national constitutional right to same-sex marriage, it does allow same-sex couples in states that legally recognize their marriages to receive a host of federal benefits that were previously denied them, such as being able to inherit from a spouse without paying federal estate tax.

Edith Windsor and Thea Spyer became engaged in 1967 and were married in Canada in 2007, although they lived in New York City. When Ms. Spyer died in 2009, Ms. Windsor had to pay Ms Spyer's estate tax bill because of DOMA, a 1996 law that denies federal recognition of gay marriages. Although New York State considered the couple married, the federal government did not and taxed Ms. Spyer's estate as though the two were not married. Ms. Windsor sued the U.S. government seeking to have DOMA declared unconstitutional and asking for a refund of the more than $363,000 federal estate tax she was forced to pay. As previously reported, a federal court judge from the U.S. District Court for the Southern District of New York ruled that there was no rational basis for DOMA's prohibition on recognizing same-sex marriages.

In a 5-4 decision, the U.S. Supreme Court declared that DOMA is an unconstitutional deprivation of equal liberty under the

Equal Protection Clause of the Fifth Amendment. Noting that states have the power to define and regulate marriage, the Court held that DOMA discriminates against same-sex couples who are legally married in their state. According to the court, “DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.”

The ruling will have many implications for same-sex couples with regard to federal estate taxes, gift taxes, Social Security benefits, and IRA beneficiary rollover rules, and more than 1,000 other federal benefits. The decision means that same-sex couples who are legally married must now be treated the same under federal law as married opposite-sex couples, at least in states that recognize same-sex marriage.

Complicating matters is that the case brought to the Supreme Court did not challenge another provision of DOMA that says no state must recognize a same-sex marriage from another state. If a couple married in a state that recognizes same-sex marriage moves to a state that does not, not all federal rights and benefits accorded married couples will apply because some benefits – like Social Security, for example – are contingent on whether the marriage is considered valid in the state where the couple currently lives.

For this to change, Congress will have to pass new laws and/or President Obama will have to change regulations. But in the meantime, Edith Windsor can expect a check from the U.S. Treasury for $363,053 – plus interest.

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Medicaid Annuities

Annuities Bought for Medicaid Applicant’s Spouse Are Neither Income Nor Resource

A U.S. district court has held that the annuities a Medicaid applicant purchased for his wife cannot be considered as either assets or income when determining Medicaid eligibility. *Jackson v. Selig* (U.S. Dist. Ct., E.D. Ark., No. 3:10–CV–00276–BRW, March 13, 2013).

Richard Jackson lived in a nursing home and applied for Medicaid benefits. The state denied Mr. Jackson’s application because he had more than $300,000 in available resources. Mr. Jackson purchased an annuity for his wife for $248,949.09 and a smaller annuity for himself, and then reapplied for benefits. The state found Mr. Jackson transferred resources for less than fair market value and issued a 69-month penalty period

Mr. Jackson sued the state in federal court. The state filed a motion to dismiss, but the district court denied the motion. Both parties asked for summary judgment. (Mr. Jackson died during the pendency of the lawsuit.)

The U.S. District Court for the Eastern District of Arkansas grants summary judgment to Mr. Jackson. The court holds that because the annuities complied with federal Medicaid law, they cannot be considered as assets when determining Medicaid eligibility. In addition, the court rules that the annuity payments were made to Mr. Jackson’s wife, so the annuity payments are not income or resources available to Mr. Jackson.

For the full text of this decision, click here.

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Do-It-Yourself Will Leads to Unwanted Result

If you choose to write your own will, you run the risk of not having your estate distributed the way you want, as a recent Pennsylvania case illustrates.

George Zeevering apparently wanted his estate to go to two of his five children. Instead of seeking out an elder law attorney to advise him on drawing up an estate plan, he decided to write his own will. The will gave his pickup truck to his daughter Diane and his summer property to his son Wayne. Mr. Zeevering also wrote in the will that he was intentionally leaving out his other three children.

The problem with the will was that Mr. Zeevering did not specify what to do with the remainder of his estate (called a "residuary clause"). While Mr. Zeevering probably intended that the rest of his estate – which totaled $217,000 – would go to his favorite children, he didn't state that in the will. Because the will had no residuary clause, the remainder of Mr. Zeevering's estate passed under the state law that specifies who inherits when there is no will. Under Pennsylvania law, this meant that the rest of Mr. Zeevering's estate would be divided equally between his five children.

A state court confirmed this result, but only after the children had spent much more in attorney fees than their father would have paid a lawyer to have his will done properly. While you may save some money drafting your own will, you are in danger of making mistakes that can cause unneeded conflict and don't get the result you want. Always seek the advice of your elder law attorney before creating an estate plan.

To read more about this case, click here.

Heirs and IRS Reach Agreement on Unsaleable Artwork Valued at $65 Million

How much is something worth if it can never be sold? When the children of art dealer Ileana Sonnabend inherited her valuable collection of artwork in 2007, among the pieces was a ground-breaking "combine" by Robert Rauschenberg titled "Canyon."

The children paid $471 million in federal and state estate taxes on their mother's estimated $1 billion collection, but they did not think they had to pay any tax on "Canyon." The 1959 work, it turns out, can never be sold because it includes a stuffed bald eagle. Bald eagles are under federal protection and selling or trading one, even if it is part of a famous work of art, is a crime.

The Internal Revenue Service (IRS), however, saw things differently and appraised the work at $65 million. On that basis, the IRS said the estate owed $29.2 million in taxes plus another $11.7 million in penalties.

The children and the IRS have finally reached an agreement:

the IRS will drop the tax assessment on the condition that the children donate "Canyon" to a museum and claim no tax deduction for the donation.

After a contest between two major New York City cultural institutions – the Museum of Modern Art and the Metropolitan Museum of Art – over who will get Rauschenberg's masterwork, the children have decided to donate it to the Modern. As the *New York Times* put it, "the eagle has now landed."

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Nursing Home Patient under Custodial Care Not Entitled to Coverage from Insurance

A U.S. court of appeals holds that a nursing home patient was not entitled to coverage from her health insurance plan for her nursing home stay because she received primarily custodial care, not skilled nursing services. *Becker v. Chrysler LLC Health Care Benefits Plan* (7^{th} Cir., No. 11-2624, Aug. 20, 2012).

Evelyn Jeranek had health insurance through her husband's employer. The plan provided that it would not cover benefits for a terminally ill enrollee whose condition is primarily custodial and no longer requires skilled nursing service. Ms. Jeranek entered a nursing home suffering from congenital heart failure, among other maladies. She refused treatment several times, as well as her doctor's recommendation that she go to the hospital.

The nursing home submitted a claim to Ms. Jeranek's insurance company, which denied the claim after finding that Ms. Jeranek had a chronic stable condition that did not require skilled nursing care. After Ms. Jeranek died, her personal representative sued the insurer, arguing that Ms. Jeranek's was a complex patient that required the care of skilled nursing personnel. The district court granted summary judgment to the insurance company, and Ms. Jeranek's personal representative appealed.

The U.S. Court of Appeals, 7th Circuit, affirms, holding that the plan did not cover Ms. Jeranek's nursing home stay because she did not receive skilled nursing services. According to the court, there is nothing in the plan that "suggests that 'skilled nursing personnel' equates with the provision of 'skilled nursing services,'" so there was a basis for the insurance company's conclusion that the care provided was entirely custodial.

For the full text of this decision, go to: http://www.ca7.uscourts.gov/tmp/KX0KLNEF.pdf.

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