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### ESTATE AND TAX PLANNING

#### **U.S. Supreme Court's Decision on Same-Sex Marriage**

The U.S. Supreme Court's recent decision, *United States v. Windsor*, opens up important tax planning opportunities for same-sex couples who marry in states that recognize same-sex marriage. In *Windsor*, the Court held that Section 3 of the 1996 Defense of Marriage Act (DOMA) was unconstitutional because DOMA is subject to "intermediate scrutiny" under the Equal Protection Clause of the Fifth Amendment to the United States Constitution. The ruling held that DOMA does not withstand the test and that, as a result, must afford same-sex married couples Federal benefits that are available to opposite-sex couples.

In the estate planning and tax arena, such benefits include, but are not limited to:

- Claiming the marital deduction for gift and estate tax purposes;
- Naming the spouse as the beneficiary under a qualified retirement account, thereby potentially extending the ultimate payout of the account;
- Electing portability of the deceased spouse's unused applicable exclusion amount;
- Simplifying the basis and contribution rules with respect to jointly-owned property;
- Electing gift-splitting for inter-vivos gifts;
- Eliminating adverse tax consequences for the transfer of property pursuant to a marriage settlement agreement; and
- Granting certain Social Security, Medicare and Medicaid benefits.

The new law presents some wrinkles that have yet to be ironed out. For example, it is not clear that some or all of the above benefits are allowed for those same-sex married persons who were married in a state that recognizes same-sex marriage, but who reside at death in

a state that does not. Additionally, with respect to any Grantor Retained Income Trust ("GRIT") previously created for a partner who is now deemed to be a spouse, any such Trust should be evaluated.

For those same-sex married couples who previously filed income or gift tax returns, it is advisable for them to review the statute of limitations applicable to such filings and to amend prior returns filed before DOMA was overturned. In addition, an Executor who has filed a Federal estate tax return for a deceased same-sex married individual may be able to amend such return to claim the marital deduction for property passing to the surviving spouse.

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*Reid Glynn, LLP aims to keep you abreast of the ever-changing tax laws. Please do not hesitate to contact us with any questions that you might have or if you would like to discuss your estate plan in light of this Report.*

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