

T R U S T S & E S T A T E S

A L E R T

JUNE
2014LIFT OF PROHIBITION ON SAME-SEX MARRIAGES
IN PENNSYLVANIA PROVIDES NEW
ESTATE PLANNING OPPORTUNITIES*By Michael S. Williams*

On May 20, 2014, in the case of *Whitewood v. Wolf*, Judge John E. Jones III of the U.S. District Court for the Middle District of Pennsylvania struck down Pennsylvania's ban on same-sex marriages. Like many of the rulings recently issued in other federal courts, the court found the ban in violation of the constitutional protections of due process and equal protection. The next day, Governor Tom Corbett announced that his administration would not appeal the ruling.¹

The decision comes nearly a year after the Supreme Court of the United States proclaimed the Defense of Marriage Act (DOMA) unconstitutional in the landmark decision *United States v. Windsor*. Shortly after the *Windsor* decision, the Internal Revenue Service announced it would follow the ruling and recognize, for tax purposes, all legal same-sex marriages regardless of the current residence of the couple. Until Judge Jones' ruling, however, same-sex marriages were not allowed in Pennsylvania and same-sex marriages occurring out of state were not recognized in Pennsylvania for state law purposes.

This change has a profound effect on estate planning for same-sex couples residing in Pennsylvania.

Pennsylvania Inheritance Tax

The most significant result of the recognition of same-sex marriages on tax and estate planning is the

effect on the Pennsylvania inheritance tax burden of surviving same-sex spouses. Under prior law, the estates of same-sex spouses were subject to an inheritance tax of 15 percent on the entire amount of bequests to a surviving spouse. Today, those same bequests to the surviving spouse are subject to a zero percent tax rate. This change results in a substantial tax savings on any estate containing a bequest to a same-sex surviving spouse.

Pennsylvania Income Tax

Because the Pennsylvania income tax is imposed at a flat rate of 3.07 percent and does not incorporate a filing status determination, the aggregate Pennsylvania income tax of a same-sex couple is unaffected by the ruling. However, same-sex couples whose marriages are now recognized in Pennsylvania or who marry in Pennsylvania should now be allowed to file joint Pennsylvania income tax returns.

Federal Income and Estate Taxes

For couples who were legally married in another jurisdiction, but residing in Pennsylvania, the federal tax consequences have not changed since DOMA was overturned in 2013. Couples contemplating marriage may want to run a pro forma income tax return to understand the impact marriage will have on the couple's overall income tax liability.

Other Effects of the Ruling

Same-sex spouses now have the following benefits previously unavailable under Pennsylvania law:

1. On June 6, 2014, the Schuylkill County Clerk of Orphans' Court and Register of Wills filed a motion before Judge Jones seeking to intervene in her official capacity with the intention to seek a stay of the decision and to appeal. Judge Jones has not yet ruled on the motion.

(continued from page 1)

- A surviving same-sex spouse now has the right to an “elective share” of the deceased spouse’s estate
- Where a spouse dies intestate (without a will), the surviving spouse now has a right to an intestate share
- Couples may now take advantage of the creditor protection benefits of owning real estate as “tenants by the entirety”
- Trust beneficiaries with a power of appointment to their “spouse” may now exercise this power in favor of a same-sex spouse
- Various other benefits including those involving family matters, adoption, health insurance, and retirement plans

Revisiting Your Estate Plan

Pennsylvania same-sex couples with existing estate plans designed around the old Pennsylvania inheritance tax rate are encouraged to consider revising their estate plans to take advantage of the beneficial change in Pennsylvania law.

Additionally, same-sex spouses who are trust beneficiaries should review their estate plans to determine whether they now have the opportunity to exercise a power of appointment in favor of their spouse. ♦

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