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## July 2013 Tax Alert

Dear Clients:

As part of our ongoing tax watch service to our clients, we are informing you of some important tax changes that have recently been caused by the June 26th, 2013 Supreme Court landmark decision. This decision ruled that the Defense of Marriage Act (known as "DOMA") was partially unconstitutional. Therefore, same-sex marriages will be legally recognized by the Federal government if legally recognized in the couple's home state. As of today, same-sex marriages are legally recognized in thirteen states including New York and Connecticut. Some states provide limited enumerated rights to same-sex partnerships such as New Jersey while others completely prohibit same-sex marriages such as Florida.

The most significant tax changes relating to this decision that affect all legally-recognized same-sex married couples are as follows:

- Unlimited gifting to spouse whereas before it was limited to the annual exemption of \$14,000 and a lifetime exclusion of \$5,250,000.
- The payment of living expenses by one spouse will not be counted as a gift subject to gift tax.
- Ability to file a joint Federal annual income tax return which provides advantageous marginal rates for couples (vs. each spouse filing as a single taxpayer).
- Planning with trusts can enable same-sex couples to take advantage of the unlimited marital deduction for Federal purposes, but at the same time, control what happens to the assets after the surviving spouse dies.
- Same-sex couples can now have their executor transfer any unused Estate, Gift or Generation Skipping Tax Exemption to the surviving spouse rather than having it "die" at the first spouse's death (This is called Portability).
- Medicaid will recognize the wealth of the well-spouse when considering eligibility to receive Medicaid (which could serve as a disadvantage unlike the other bullets listed).
- Entitlement to spousal IRA rollovers, survivor benefits for annuities and tax-deductible spousal IRA contributions.
- Eligibility for spousal and survivor Social Security benefits.

Estate planning opportunities exist now for same-sex couples that were not available before. This should lead to a reexamination of all same-sex couples' estate planning documents. If you need to schedule an appointment, please call our office at 631-424-5400 (Long Island) or 212-564-3307 (New York City). As our clients, we do not charge a fee for meeting with us on this. Also, please give our contact information to anyone you may know who needs a consultation on this topic. We offer a complimentary initial consultation.