



New York Estate Tax Information for Estates of Individuals Married to Same-Sex Spouses

This TSB-M explains the effect of the United States Supreme Court decision in the matter of *United States v. Windsor*, related to the Defense of Marriage Act, for New York State estate tax purposes.

General

On June 26, 2013, in *United States v. Windsor*, the United States Supreme Court held Section 3 of the Defense of Marriage Act to be unconstitutional. As a result of the decision, for New York State estate tax purposes, estates of individuals legally married to same-sex spouses are entitled to claim the same deductions and elections allowed for estates of individuals legally married to different-sex spouses, including the marital deduction, for all years open under the statute of limitations.

For New York estate tax purposes, equal treatment has been given to estates of individuals legally married to different-sex spouses and same-sex spouses since the enactment of the Marriage Equality Act, applicable to estates of individuals dying on or after July 24, 2011. As a result of the Supreme Court's decision, this treatment now also applies to estates of individuals legally married to same-sex spouses who died prior to July 24, 2011. For a detailed explanation on how that treatment applies, see [TSB-M-11\(8\)M](#), *Implementation of the Marriage Equality Act Related to the New York State Estate Tax*.

Statute of limitations applies for credits or refund of overpayments

Accordingly, taxpayers affected by the Supreme Court decision may amend any previously filed estate tax return where the statute of limitations to apply for a refund remains open. Generally, a claim for credit or refund of an overpayment of estate tax must be filed by a taxpayer within the later of:

- three years from the date the original return was filed (if the original return was filed before the due date, three years from the due date), or
- two years from the date the tax was paid.

To amend an estate tax return, file Form ET-706, *New York State Estate Tax Return*, following the directions given in [TSB-M-11\(8\)M](#).

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.