

R.I. Division of Taxation's Declaratory Ruling: Application of Marital Deduction to Same-Sex Couples

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On September 21, 2012, the Rhode Island Division of Taxation issued a declaratory ruling holding that partners of a Rhode Island civil union, as well as same-sex couples who lawfully have been married in another state, can benefit from the marital deduction for Rhode Island estate tax purposes.

The specific facts giving rise to this ruling involved a same-sex couple who had been married in Massachusetts in 2007. In 2012, one of the spouses died, leaving a will that passed all of her assets outright to the surviving spouse. The couple also owned assets jointly with a right of survivorship, and the surviving spouse was the beneficiary of most of the decedent's life insurance and retirement assets.

In its ruling, the Rhode Island Division of Taxation pointed out that the Civil Unions Act (the "Act")—Chapter 3.1 of Title 44 of the Rhode Island General Laws—which took effect in Rhode Island in July of 2011, "provides that a party to a civil union shall be included in any definition or term that denotes the spousal relationship as those terms are used throughout Rhode Island law." It also considered that the Act grants civil union partners in Rhode Island "all the rights, benefits, protections and responsibilities under the law as people joined together in a lawful marriage" in Rhode Island.

As a result of the ruling, partners of a Rhode Island civil union, as well as same-sex couples lawfully married in another state, may generally use the marital deduction for estate tax purposes and, accordingly, the value of property passing from a decedent to the surviving spouse can be deducted for purposes of the estate tax imposed under § 44-22-1(a) of the Rhode Island General Laws. In addition, joint property passing to the surviving partner in a Rhode Island civil union, or to the surviving spouse of a same-sex marriage lawfully executed in another state, can be treated as owned one-half by the decedent for estate tax purposes, just as it can with traditional marriages.