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Supreme Court Upholds Gay Marriage (Divorce Too)

The right to marry is about a lot more than tax equality. But in dollars and cents, the right to [file joint tax returns](#) is nothing compared to what happens when a relationship dissolves. When a married couple splits, there's no limit on the money or property the two can transfer tax-free between them. See [IRS Publication 504, Divorced or Separated Individuals](#).



(Image credit: AFP/Getty Images via @daylife)

Marriages end, and even our Byzantine tax code recognizes that it is unfair to tax either party. Dividing the assets is not a sale for tax purposes. That means no income tax to either party.

What's more, there's no gift tax either, unless the spouse receiving assets isn't a U.S. citizen. Compare this tax-favored divorce to what happens when an unwed couple splits. It's all taxed.

Defenders of the Defense of Marriage Act ([DOMA](#)) were quick to point out that the bad tax rules applicable when unmarried couples split apply whether the couple is same sex or not. Splitting unmarried heterosexual and gay couples are treated equally badly under the tax law. If you're not married, unwinding a relationship can trigger income taxes, [gift taxes](#) or both.

You can try to sidestep income taxes by treating transfers as gifts, but you are limited to \$14,000 per year. Gifts beyond that trigger gift tax or eat into your lifetime gift-tax exemption. And income tax is a bigger problem.

Suppose an unmarried couple splits when they own a house and some stock. A gives his half of the house to his ex in exchange for some of B's stock. A just ***sold*** half of the house to B, who just sold half the stock to A. No cash changed hands, but A and B each have income tax to pay.

Suppose A and B bought the house together decades ago for \$400,000 and it is now worth \$1 million? A's half had a \$200,000 basis and a value of \$500,000. A has a \$300,000 gain on the split. Perhaps A can claim the principal residence exclusion to shield \$250,000, but there's still tax to pay. What about B who is keeping the house and handing over \$500,000 in stock? If B's basis in the stock is \$300,000, he or she will have a \$200,000 gain.

But here's the kicker: If the same couple had been married, there would be no taxes on these transfers. After a many-year relationship with significant assets, the taxes at stake can be enormous. Some unmarried couples trying to untangle joint assets even orchestrate a marriage ***just so they can immediately get divorced tax-free***. (For a real life example, see [Five True Tales From A Tax Lawyer](#).) Of course, it only works if the marriage—however short-lived—is legal.

The non-tax aspects of marriage are more important than taxes. Still, taxes matter, especially when unwinding a relationship. For more, see [How To Make Divorce Less Taxing](#).

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.