

New Jersey: Domestic partner to appeal tax court's denial of estate tax exemption



David M. Kall | Thursday, June 30, 2016

In May, the New Jersey Tax Court issued an opinion in [Jiwungkul v. Director, Division of Taxation](#), in which it concluded that the decedent's registered domestic partner could not avoid \$101,041 in estate taxes. The court reasoned that a surviving same-sex registered domestic partner is not legally entitled to be treated as a surviving spouse for purposes of calculating the New Jersey estate tax.

In justifying its decision, the court recognized the state's [Domestic Partnership Act](#) (DPA), under which domestic partners are treated as spouses and entitled to exemptions for personal income tax and the transfer inheritance tax purposes, but not estate tax liabilities. It also noted that after lawmakers passed the DPA, they enacted the 2007 [Civil Union Act](#), which entitles a surviving civil union partner to be treated as a surviving spouse for estate tax purposes, and that in October 2013, same sex couples became eligible for marriage.

The court further acknowledged the "unfortunate but undeniable fact[s]" that the couple had "deliberately and publically elected not to enter into a civil union when that relationship became available to them some seven years before the partner died," and moreover, that the couple "considered civil unions to be inferior to marriage and refused to enter into a civil union as a matter of principle." Although the couple intended to marry after that option became available to them, the decedent died a few days before their planned wedding. In the end, the court concluded that "Plaintiff and his partner did not take the steps necessary to be recognized in New Jersey as a couple with the rights of marriage."

The crux of the plaintiff's argument was that he was entitled to be treated as a civil union partner even though the couple had purposely refrained from converting their status from domestic partners to civil union partners. He supported this contention by arguing that the DPA is unconstitutional for its failure to treat domestic partners as spouses for estate tax exemption purposes, a theory that the court patently rejected. The court underscored the fact that New Jersey had satisfied its obligations by making same sex marriage available in 2013, and that it was entitled to maintain existing domestic partnership status in the law, under which participants could enjoy some, but not all of the rights of marriage.

On May 26, 2016, the plaintiff filed his notice of appeal.

In the court of public opinion

A certified public accountant who wrote an editorial for [Forbes](#) denounced the court's "almost doesn't count" theory.

Similarly, [Bloomberg](#) quoted one tax lawyer, John Loalbo, as characterizing the court's ruling as "draconian" and "a very strict reading of the statute that seems ripe for appeal." Loalbo opined that the court could have awarded a benefit on the basis of exceptional circumstances: "The couple clearly intended to marry to comply

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with New Jersey's most recent laws and were within inches of completing their union...What if they were standing at the altar and the guy drops dead? I guess that wouldn't have been good enough either." He thought there was no chance of setting a bad precedent because the facts are so unique.



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