

**EXHIBIT K**

**Claim for Refund and Request for Abatement**

▶ See separate instructions.

Use Form 843 if your claim or request involves:

- (a) a refund of one of the taxes (other than income taxes and an employer's claim for FICA tax, RRTA tax, or income tax withholding), shown on line 3,
- (b) an abatement of FUTA tax or certain excise taxes, or
- (c) a refund or abatement of interest, penalties, or additions to tax for one of the reasons shown on line 5a.

Do not use Form 843 if your claim or request involves:

- (a) an overpayment of income taxes or an employer's claim for FICA tax, RRTA tax, or income tax withholding (use the appropriate amended tax return),
- (b) a refund of excise taxes based on the nontaxable use or sale of fuels, or
- (c) an overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Name(s) Edith S. Windsor, Executor of the Estate of Thea C. Spyer	Your social security number <b>Redacted</b>
Address (number, street, and room or suite no.) <b>Redacted</b>	Spouse's social security number
City or town, state, and ZIP code New York, New York 10011	Employer identification number (EIN) Decedent's SS <b>Redacted</b>
Name and address shown on return if different from above	Daytime telephone number <b>Redacted</b>

1 <b>Period.</b> Prepare a separate Form 843 for each tax period From _____ to _____	2 <b>Amount</b> to be refunded or abated \$ 363,053
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3 **Type of tax.** Indicate the type of tax to be refunded or abated or to which the interest, penalty, or addition to tax is related.

Employment       Estate       Gift       Excise       Income

4 **Type of penalty.** If the claim or request involves a penalty, enter the Internal Revenue Code section on which the penalty is based (see instructions). IRC section: \_\_\_\_\_

5a **Interest, penalties, and additions to tax.** Check the box that indicates your reason for the request for refund or abatement. (If none apply, go to line 6.)

Interest was assessed as a result of IRS errors or delays.  
 A penalty or addition to tax was the result of erroneous written advice from the IRS.  
 Reasonable cause or other reason allowed under the law (other than erroneous written advice) can be shown for not assessing a penalty or addition to tax.

b Date(s) of payment(s) ▶ \_\_\_\_\_

6 **Original return.** Indicate the type of return filed to which the tax, interest, penalty, or addition to tax relates.

706       709       940       941       943       945  
 990-PF       1040       1120       4720       Other (specify) ▶ \_\_\_\_\_

7 **Explanation.** Explain why you believe this claim or request should be allowed and show the computation of the amount shown on line 2. If you need more space, attach additional sheets.

The Executor of the Estate of Thea C. Spyer did not claim the marital deduction authorized by Internal Revenue Code (IRC) Sec. 2056 on the Estate Tax Return, filed on January 29, 2010. The decedent and Edith S. Windsor, both women, were married on May 22, 2007 in Canada, which recognizes same-sex marriages. The decedent and Edith S. Windsor were married as of the date of decedent's death, February 5, 2009. Decedent was domiciled in New York State as of the date of her death, a state that recognizes same-sex marriages that are valid where performed. Therefore, the Estate is entitled to claim the marital deduction authorized by IRC Sec. 2056 for all property passing to the decedent's surviving spouse, Edith S. Windsor. Due to the marital deduction, the Estate is entitled to a refund of \$363,053. Please see attached revised portions of Form 706 and exhibits for computation of refund.

**Signature.** If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the officer's title must be shown.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature (Title, if applicable. Claims by corporations must be signed by an officer.) *Edith S. Windsor* Date *04/07/2010*

Signature (spouse, if joint return) \_\_\_\_\_ Date \_\_\_\_\_

<b>Paid Preparer's Use Only</b>	Preparer's signature ▶ _____	Date _____	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN _____
	Firm's name (or yours if self-employed), address, and ZIP code ▶ _____	EIN _____	Phone no. _____	

# Disclosure Statement

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.

OMB No. 1545-0889

Attachment  
Sequence No. **92**

Department of the Treasury  
Internal Revenue Service

▶ Attach to your tax return.

Name(s) shown on return

**Edith S. Windsor, Executor of the Estate of Thea C. Spyer**

**Redacted**

Identifying number shown on return

**Part I** General Information (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1		Marital deduction authorized by IRC Sec. 2056	706;schd M	3B	\$363,053
2		-----			
3		-----			
4		-----			
5		-----			
6		-----			

**Part II** Detailed Explanation (see instructions)

- 1 See Attachment.
- 2 -----
- 3 -----
- 4 -----
- 5 -----
- 6 -----

**Part III** Information About Pass-Through Entity. To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

*Note: A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).*

1 Name, address, and ZIP code of pass-through entity	2 Identifying number of pass-through entity
	3 Tax year of pass-through entity to
	4 Internal Revenue Service Center where the pass-through entity filed its return

For Paperwork Reduction Act Notice, see separate instructions.  
ISA

Form **8275** (Rev. 8-2008)

Edith S. Windsor, Executor  
SS:Redacted  
Attachment to Form 8275, Part II

On May 22, 2007, Edith Schlain Windsor was lawfully married to decedent, Thea Clara Spyer, in Toronto, Canada, and the couple were still married at the time of Ms. Spyer's death. As executor of Ms. Spyer's estate, Ms. Windsor noted that the decedent was married to Ms. Windsor at the time of her death, but did not claim the marital deduction in the Form 706 "United States Estate (and Generation-Skipping Transfer) Tax Return," filed on January 29, 2009, due to the operation of 1 U.S.C. § 7 (the "Defense of Marriage Act" or "DOMA"). DOMA provides in pertinent part that, when interpreting federal law, the term "marriage" means only a legal union between one man and one woman. It is submitted that DOMA violates the United States Constitution, and therefore the marital deduction authorized by Internal Revenue Code Sec. 2056 should be available. Accordingly, the estate overpaid \$363,053.00 in taxes (in addition to another \$320,000.00 in taxes to New York State).

More specifically, DOMA discriminates against surviving spouses in married same-sex couples, such as Ms. Windsor. If Ms. Spyer had been married to a man, rather than to another woman, her estate would undoubtedly be entitled to claim the marital deduction. The taxpayer believes that the Government cannot establish a legitimate, much less, an important or compelling, government interest furthered by such unequal and unfair treatment. Accordingly, DOMA violates the Equal Protection Clause of the Fifth Amendment and is unconstitutional. *See In the Matter of Brad Levenson*, 560 F.3d 1145 (9th Cir. 2009) (holding that the application of DOMA to deny the same-sex spouse of a federal employee health insurance or other benefits is unconstitutional, because there exists no rational basis for denying benefits to same-sex spouses); *see also In the Matter of Karen Golinski*, No. 09-80173, Am. Order at 3-5 (9th Cir. Jan. 13, 2009) (finding that whether DOMA furthers a legitimate governmental interest was "at least doubtful," and that the constitutionality of DOMA presented a "hard question"). DOMA also violates the Due Process Clause of the Fifth Amendment, because it interferes with the fundamental right to marry without a narrowly tailored justification that serves a compelling state interest. *See Loving v. Commonwealth of Virginia*, 388 U.S. 1 (1967) (holding that marriage is a fundamental right). Accordingly, the estate is entitled to recover the full amount of overpaid taxes.