

# IRS and Treasury Department Provide Guidance on Same-Sex Marriage



## **Guidance issued in response to recent Supreme Court decision**

*The Treasury Department and IRS guidance was issued in response to the recent Supreme Court case striking down Section 3 of the Defense of Marriage Act of 1996 (DOMA), which defined marriage as the union of a man and a woman.*

The U.S. Department of the Treasury and the Internal Revenue Service (IRS) have announced that same-sex couples who are legally married in jurisdictions that recognize same-sex marriage will be treated as married for all federal tax purposes. Guidance has been provided in the form of a Revenue Ruling (Rev. Rul. 2013-17) and associated Frequently Asked Questions.

## **State granting marriage is key, not state of residence**

If a same-sex couple is legally married in a state that recognizes same-sex marriage, the couple will be treated as married for all federal tax purposes. This is true even if the couple resides in a state that does not recognize same-sex marriage. So, a same-sex couple legally married in a state that recognizes same-sex marriage, but residing in a state that does not recognize same-sex marriage, will be treated as married for federal tax purposes even though it's possible the couple may not be treated as married for state tax purposes. Recognition also applies to same-sex couples legally married in the District of Columbia, a U.S. territory, or a foreign country.

Registered domestic partnerships, civil unions, and other formal relationships recognized under state law do not qualify--only couples legally married under state law will be treated as married for federal tax purposes.

## **Applies for all federal tax purposes**

Legally married same-sex couples are treated as married for all federal tax purposes. This applies for federal estate and gift tax purposes, and for federal income tax purposes, including:

- Filing status issues
- Personal and dependency exemptions
- Standard deductions
- Employee benefits
- IRA contributions and deductions
- The earned income tax credit (EITC)
- The child tax credit

## **2013 tax year implications**

If you are legally married on the last day of the year, you generally have to file your 2013 federal income tax return as a married individual. That means same-sex couples treated as married for federal income tax purposes will generally have to choose whether to file their 2013 federal income tax return as married filing jointly, or as married filing separately.

## **Prior tax years**

If you were married prior to 2013, you may also amend prior year federal income tax returns, choosing to be treated as married for federal income tax purposes (assuming that you were legally married on the last day of the tax year(s) being amended). You're only able to file an amended return, however, for any tax year still open under the statute of limitations. Generally, the statute of limitations for filing a refund claim is three years from the date a return was filed, or two years from the date tax was paid, whichever is later. For



most individuals, that means claims can still generally be filed for tax years 2010, 2011, and 2012. You are not required to amend a prior year return, however.

It's important to note that if you choose to amend a prior year federal income tax return in order to be treated as married, all items on the return must be adjusted to consistently reflect your marital status (i.e., married filing jointly or married filing separately). That is, if you amend a prior year tax return to be treated as married, you are treated as married for all items and issues related to the return.

**Note:** *If your employer provided health coverage for your same-sex spouse and included the value of that coverage in your adjusted gross income (AGI), amending your prior year return to reflect your status as a married individual may allow you to recover the income taxes paid on the value of this coverage. Similarly, if you paid premiums for health-care coverage for your same-sex spouse with after-tax dollars, you may be able to reduce your income by these premium amounts.*

**Note:** *For tax year 2012, same-sex spouses who filed their federal income tax returns before September 16, 2013 (the effective date of the Revenue Ruling) may choose--but are not required--to amend their 2012 federal income tax returns to file as married (i.e., married filing jointly or married filing separately). Same-sex spouses who file an original federal income tax return for the 2012 tax year (or for any prior tax year, for that matter) on or after September 16, 2013, will not have a choice--if legally married for the tax year, they will generally have to file their federal income tax return as married filing jointly or married filing separately.*

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