

DOMA- Introduction to the Federal Tax Issues of Legally Married Same Sex Couples after the Windsor Supreme Court Case Decision

Speakers

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The Treasury Department and the Internal Revenue Service have recognized all legal same-sex marriages for federal tax purposes.

- US Dept. of Treasury and the IRS ruled that same-sex couples, *legally married* in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes.
- Married persons whose marriage is recognized at the federal level are now *required* to change their filing status from single to married.



Same-sex couples who are legally married are treated as married for all federal tax purposes.

As a result of the US vs. Windsor ruling, same-sex couples will be treated as married for all federal tax purposes and those tax provisions where marriage is a factor:

- Filing status
- Personal and dependency exemptions
- Standard deductions
- Income, gifts, estate taxes
- Employee benefits and contributions to an IRA
- Claiming Earned Income Tax Credit or Child Tax Credit



Any same-sex marriage *legally* entered into in one of the 50 states, the District of Columbia, a US territory, or a foreign country is covered by the ruling.

The ruling does not apply to:

- ✦ Registered domestic partnerships
- ✦ Civil unions
- ✦ Similar formal relationships recognized under state law

As a result:

- ✦ Beginning with 2013 returns, *legally married* same-sex couples generally must file federal income tax returns using either married filing jointly or married filing separately filing status.



For any tax year prior to 2013, individuals in same-sex marriages may file original or amended return.

- ✦ May choose to do this; not required
- ✦ Years must still be open under statute of limitations
 - ✦ Generally, the statute of limitations for filing a refund claim is three (3) years from the date the return was filed, or two (2) years from the date the tax was paid, whichever was later.
- ✦ Therefore, refund claims can be filed for tax years 2011 and 2012.



The Service and Treasury also ruled regarding health insurance and federal tax provisions.

- Amounts paid for health insurance coverage purchased on an after-tax basis from an employer for a same-sex spouse may be treated as pre-tax, therefore excludable from income.

Filing a claim for a prior year refund for individuals in same-sex marriages.

- Use the standard **Form 1040X**, Amended Individual Income Tax Return.
- Gift or estate tax refund claims should be filed on **Form 843**, Claim for Refund and Request for Abatement.



IRS Notice 2013-61 - Streamlined procedures for employers filing refund claims for payroll taxes on previously-taxed health insurance and fringe benefits.

- Describes methods and procedures for using **Form 941** or **941X**
- Special administrative procedures for 2013
- Separate special administrative procedures for years prior to 2013



Revenue Ruling 2013-17

- Includes discussion of the terms, “spouse”, “husband”, “wife”, “husband and wife” and “marriage” if the person is legally married to a person of the same sex.
- Rev. Rul. 2013-17 also addresses same-sex marriage validly entered into in a state whose laws authorize same-sex marriage even though the state in which they are domiciled does not recognize the authority of same-sex marriage.
- Addresses for federal tax purposes whether the term “marriage” includes same-sex individuals who have entered into a registered domestic partnership, civil union or other similar formed relationship that is not denominated as marriage under the laws of their state.



The GAO reports nearly 200 IRC provisions with marital status as a factor in tax liability, e.g.,

- Filing Status and Tax Brackets
- Earned Income Tax Credit
- Child and Dependent Care Credits
- Education Tax Credits; Education Deductions
- Adoption credits
- Employer Adoption Assistance Exclusion
- Flexible Spending Accounts (FSA)
- §1041 Basis Issues on Property Settlements Related to Divorce
- Deductibility of Health Insurance Premiums for Self-Employed Individuals



Additional IRC provisions with marital status issues:

- Contribution to Dependent Care Accounts
- Joint and Several Liability Issues
- Related Party Transactions
- Qualified Joint Venture Elections on Schedule C
- Estate Planning Issues
- Gift Transfers
- Pension Distribution Rules
- Innocent Spouse and Injured Spouse Issues
- New .9% Medicare Tax on Wages and Earned Income
- New 3.8% Medicare Tax on Net Investment Income
- And many more...



For more information

- Revenue Ruling 2013-17
- IRS Notice 2013-61
- Publication 555, Community Property
- US v. Windsor (SUP CT 6/26/2013) 111 AFTR 2d 2013-2385
- 1996 Defense of Marriage Act (DOMA)
- **Come to the NSTP booth in the Exhibit Hall and NSTP table in main corridor**

