

8 Things Same-Sex Couples Need to Know About Taxes

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Keep in mind:

This guidance is intended for general information purposes. It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship. Sound legal advice must necessarily take into account all relevant facts personal to you as well as development in the law; you should contact a tax professional or attorney if you need advice or assistance.

Any tax information included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

1) WE ARE MARRIED AND RESIDE IN A STATE THAT RECOGNIZES OUR MARRIAGE. DO WE HAVE TO FILE STATE INCOME TAX RETURNS JOINTLY AS MARRIED? DO WE HAVE TO FILE OUR FEDERAL INCOME TAX RETURNS JOINTLY AS MARRIED?

If you were married in 2013 and continue to live in a state that recognizes your marriage, you should file both your state and federal tax returns as married. However, you can choose whether to file “Married Filing Jointly” or “Married Filing Separately.”

Your filing status is determined on the last day of the year. If you were married on the last day of the year, you will be considered married for the entire year. Likewise, if you were single on the last day of the year (for example, if you got divorced) you will be considered single for the entire year. There are some exceptions to these rules, so check with a tax professional if you have a question about your filing status.

2) WE GOT MARRIED IN A JURISDICTION WHERE SAME-SEX COUPLES CAN LEGALLY MARRY, BUT WE RESIDE IN A STATE THAT DOES NOT RECOGNIZE OUR MARRIAGE. HOW SHOULD WE FILE OUR STATE INCOME TAX RETURNS? DO WE STILL HAVE TO FILE OUR FEDERAL INCOME TAX RETURNS AS MARRIED?

The good news is - the IRS recognizes the legal marriages of same-sex couples, no matter where you now live, so if you were married in the 2013 tax year, you need file your federal income taxes as married. You can choose whether to file “Married Filing Jointly” or “Married Filing Separately.”

The bad news is - if you live in a state that does NOT recognize the marriage of same-sex couples, you will likely need to file your state income tax return as “single,” even though we believe this is unfair and discriminatory. Some people choose to include a note or letter stating that they are married and object to filing

as “single.” Such a letter will not affect your state tax status right now, but is a clear statement of your objection to be treating unfairly by the state in which you live.

There are some exceptions where non-recognition states are allowing married same-sex couples to file state taxes as “married” even though they do not generally recognize marriages of same-sex couples for other purposes. And some states have developed special tax procedures or instructions for couples who will be filing as married with the federal government but as single with the state, so you should consult your state department of revenue or a tax professional for more information – and contact [Lambda Legal’s Help Desk](#) for more resources.

3) IF WE ARE MARRIED BUT LIVE IN A STATE THAT DOES NOT RECOGNIZE OUR MARRIAGE, DO WE HAVE TO PAY FEDERAL TAXES ON MEDICAL BENEFITS PAID BY MY EMPLOYER FOR MY SPOUSE? WHAT ABOUT STATE TAXES?

You will probably have to pay state taxes on these benefits if your state does not recognize your marriage, [but you will not have to pay federal taxes.](#)

Typically, when an employer provides group health insurance and premium contributions for its employees and their spouses, children and other dependents, the value of those benefits is not taxed by the federal government as “income.” But when all of DOMA was still in effect, the IRS could not recognize same-sex spouses, so this extra “imputed income” was taxed. Married same-sex couples paid more taxes than other married couples. The good news is – now that the core section of DOMA has been struck down, his tax advantage is now available to married same-sex couples for the purposes of federal [taxes.](#)

If you were charged federal taxes on this imputed income, you can file a refund claim. For guidance from the IRS on how to claim refunds for or adjust overpayments of certain taxes on

benefits provided to same-sex spouses, click [here](#) or [here](#). You can also check out the [instructions for IRS Form 1040X](#).

4) WE WERE MARRIED BEFORE THE IRS BEGAN TO RECOGNIZE SAME-SEX MARRIAGES IN 2013. CAN WE RE-FILE OUR FEDERAL TAXES AS A MARRIED COUPLE FOR PREVIOUS YEARS? WHAT IS AN AMENDED RETURN?

Generally speaking, the IRS allows taxpayers to amend their returns up to three years after they were originally filed. If you were legally married during the 2010, 2011 or 2012 tax years, you may be able to file amended returns as “married filing jointly” or “married filing separately” for those years.

To make a refund claim for income taxes, an individual must complete an amended tax return for each tax year at issue and send it to the IRS with an explanation as to why the original filing was incorrect. The IRS has a precise process and required forms for amended returns. For more information, see the [instructions for IRS Form 1040X](#) and GLAD’s [Tax Time and Preserving Your Federal Rights](#). Note that to recover Social Security taxes paid or taxes imputed on health insurance for a spouse, you have to specifically request that such amounts be refunded.

There is some question about the deadline for filing an amended return when a couple could not file a tax return as married but now can. Planning conservatively, you should file any amended return within three years of its original due date, as opposed to the extended due date. For example, for the tax year 2010 (where the return was originally due April 15, 2011), any amended return would have to be filed by April 15, 2014.

You should also consider potential downsides of taking these steps, including an increased risk of audit or that you may owe more taxes as a married couple and may, therefore, have to pay back taxes for these earlier years. A tax professional can help you determine your best options.

Finally, if your spouse died before DOMA was struck down and you think you paid more in taxes than you should have because of DOMA (e.g., you could not take an inherited IRA as a spouse), you should consult a qualified tax professional for advice.

5) IF WE HAVE A CIVIL UNION CAN WE FILE OUR STATE OR FEDERAL TAXES AS MARRIED? AREN’T CIVIL UNIONS SUPPOSED TO BE TREATED THE SAME AS MARRIAGE?

No, marriages and civil unions are two separate legal statuses. If your state recognizes civil unions, it may grant you all the same state-level rights as a marriage, so you may be able to file state taxes jointly. You should carefully review your state tax

instructions for information on how to proceed, or contact a tax professional.

[The IRS](#) (and most other federal departments) *only* recognizes marriages. It does not recognize civil unions, registered domestic partnerships, or similar “marriage-like but not marriage” statuses from foreign countries. Federal law preempts state laws, which means that your state has no control over what the federal government does. Even if your state has a law that says that civil unions must be treated the same as marriage, the federal government will not do so; that law only affects the state (and more local) levels.

If you want to be able to file your federal taxes as married, you will need to get married. However, you should be aware that doing so may affect your eligibility for federal benefits, such as assistance based on need. While we cannot advise you whether or not you should get married, please don’t hesitate to contact our [Help Desk](#) or [check out our After DOMA fact sheets](#) for additional information.

6) IF WE HAD A CIVIL UNION IN A STATE THAT NOW HAS MARRIAGE EQUALITY, ARE WE CONSIDERED LEGALLY MARRIED BY OUR STATE AND/OR THE FEDERAL GOVERNMENT?

That depends on the laws of your state! After achieving marriage equality, some states that offered civil unions automatically converted those civil unions into marriages. In other states, you have to take steps to convert your civil union to a marriage if you want to be married.

These states automatically converted civil unions performed in that state into marriages: [Connecticut](#) and [New Hampshire](#). [Delaware](#) will also convert all existing civil unions into marriages on July 1, 2014.

These states require some additional step to convert their civil unions to marriages: Vermont, [Rhode Island](#), [Delaware](#) (until July 1, 2014), [Illinois](#) and [Hawaii](#) (in Hawaii, you will need to get married to your partner; no conversion is available).

If you have any questions about converting your civil union to a marriage, please contact our [Help Desk](#).

7) WILL I PAY MORE FEDERAL TAXES? WHAT ARE THE MAJOR CHANGES TO MY FEDERAL TAX FILING?

In some instances, joint filing may result in higher taxes because of the so-called “marriage penalty;” there are other instances where joint filing may reduce overall tax exposure and provide opportunities for larger income tax deductions.

As a federally recognized married couple, you must select between a “married filing separately” and “married filing jointly” on your 2013 tax return. By far the most common

selection is “married filing jointly.” The more rare “married filing separately” limits deductions and credits you can claim; it is used to separate the tax liabilities of two married people. This is useful if, for example, you are in the process of divorcing and it is not yet final. Generally, joint tax filing helps couples with significantly varying incomes. If, for example, one person is a stay-at-home parent, while the other parent supports the family with her employment, such a couple would “share” the income and the higher earner would effectively be taxed at a lower income level, while the lower earner stays in the same low bracket, for an overall gain for the couple. If, however, the couple is composed of two high-earners, a joint filing may result in the overall income landing them in a higher tax bracket - the so-called “marriage penalty.” You can file jointly with your same-sex spouse even if one of you does not have any income or deductions for that year. If you are concerned about filing jointly or separately with your spouse, we recommend that you discuss your filing situation with a tax planner. Many online tax services and accountants will also give you the opportunity to “run the numbers” and compare the tax consequences of either type of tax filing.

Being treated as married by the federal government impacts other aspects of your overall federal income tax liability. Some of these are complex and it is important to seek out tax advice from a professional with your questions, but here are a few highlights. There are some deductions that joint filing may increase or change, including (1) the standardized deduction; (2) the sale of principal residence exclusion; and (3) if one person is on the other’s health insurance, a joint filing couple will no longer be forced to count that health insurance benefit as taxable income. Tax filers may either take “itemized” deductions or a “standard” deduction, whichever is higher. For an individual “single” filer or one filing as “married filing separately,” the standard deduction is \$6,100; however, for joint-filers, the standard deduction rises to \$12,200.¹ Here is a sampling of how other itemized deductions add up for joint filing:

- Exclusion of gain from sale of principal residence: An individual filer may only take \$250,000 for this exclusion, while a couple filing jointly may take \$500,000.
- Qualifying Medical and Dental Expenses: If one spouse has a high amount of medical and/or dental expenses in a given tax year, those expenses may be used as a deduction for a joint filing (provided that the expenses exceed a certain percentage of the joint income).
- Adoption Tax Credit: Qualifying expenses incurred in the course of an adoption, which can be quite costly, may be offset with a tax credit of up to \$12,650. This tax credit may be used by a parent who is seeking a

second-parent adoption of a child born to their spouse. The dollar amount of the tax credit begins to decrease above an income of \$189,710 and disappears entirely for incomes above \$229,710.

8) OTHER THAN INCOME TAXES, HOW ARE MY OTHER TAXES IMPACTED?

With Section 3 of DOMA struck down and the IRS interpreting the ruling broadly according to the “state of celebration,” other taxes beyond your income taxes may be affected. If your spouse died in 2013 and you are entitled to an inheritance from his or her estate, you will no longer be treated as a legal stranger for federal estate tax purposes: you will be allowed to utilize spousal exemptions for some of those assets. At the federal level, estate taxes are not at issue for a transfer to a surviving spouse, where the estate is valued at less than \$5.25 million dollars. Similarly, same-sex couples no longer need to worry about gift tax treatment: you can give your same-sex spouse a gift of any amount without incurring any federal gift tax consequences.

For more information about taxes and how other federal benefits or laws have changed since the Supreme Court's ruling in June of 2013 regarding DOMA, visit "After DOMA: What It Means for You" at lambdalegal.org/publications/after-doma.

¹ All dollar values reflect 2013 tax year amounts. Values in past years (e.g., for amended returns) may be different.