

Tax Guidance for Same-Sex Marriages



15420 W. Capitol Drive Brookfield, WI 53005
(262) 784-6210 FAX: (262) 784-7408
www.freyberg-hinkle.com

This brochure contains general tax information for taxpayers. As each tax situation may be different, do not rely upon this information as your sole source of authority. Please seek professional advice for all tax situations.

#878 – © Copyright September 2014
National Association of Tax Professionals
PO Box 8002
Appleton, WI 54912-8002
www.natptax.com



On June 26, 2013, the U.S. Supreme Court overturned Section 3 of the *Defense of Marriage Act* (DOMA) as unconstitutional because it violates the equal protection clause of the Fifth Amendment. In layman's terms, this means that same-sex couples who are legally married under the laws of their jurisdiction are afforded many federal tax benefits that were previously only allowed to opposite-sex married couples.

Federal Tax Returns

The U.S. Department of the Treasury and the Internal Revenue Service (IRS) issued a revenue ruling stating that same-sex couples, legally married in states that recognize the marriage, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a state that recognizes same-sex marriage or a state that does not recognize same-sex marriage. The term "state" means any domestic or foreign jurisdiction having the legal authority to sanction marriages.

Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes. However, the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law.

As of September 15, 2013, legally married same-sex couples generally must file any original return using either the "married filing jointly" or "married filing separately" filing status. Individuals who were in same-sex marriages may, but are not required to, file original or amended returns choosing to be treated as married for federal tax purposes for one or more prior tax years still open under the statute of limitations. If a protective claim was filed, the taxpayers are permitted

to file refund claims for earlier tax years; however, the taxpayers are not required to amend their returns.

State Tax Returns

The Supreme Court decision did not rule on Section 2 of DOMA, which declares that individual states do not have to honor the marriage laws of another state. The Court felt that it was not within the scope of its authority to force states to do so. If the couple resides in a state where same-sex marriage is recognized, they cannot use the single filing status.

Couples who do not live in one of these states, but are legally married, should consult their tax professional for guidance. The couples are generally required to file a joint federal tax return, but in most states are not allowed to file a joint state tax return. In many cases, this creates a complication because the income reported on the federal return is often the starting point for calculating state income tax.

Some states have developed an additional form to be completed that identifies which individual earned which portion of the income reported on the joint federal return. Those amounts will become the starting point for completing the two separate state tax returns.

Other states just require each taxpayer to provide the same federal income tax information on the state return that would have been provided prior to the issuance of the revenue ruling by the IRS. Following the federal developments, lawsuits have been filed in several states challenging the constitutionality of state amendments and its statutory prohibition against same-sex marriage. Pending the results of these lawsuits, current tax guidance for many states could change.

Other Federal Benefits

Employer-provided health insurance is a tax-free benefit as long as it's provided as a part of a compensation package. The insurance may cover the employee, spouse and dependents. However, if the employer provided health insurance to same-sex spouses who were previously not federally recognized, the employee paid federal and FICA tax on this benefit. The federal tax can be refunded by amending tax returns for open year, whereas, FICA tax refunds generally require the employer to file a claim for the refund.

The Social Security Administration (SSA) is processing retirement claims for same-sex couples and paying benefits. Spouses who believe they may be eligible for social security benefits should apply now to protect against the loss of any potential benefits.

Items to Discuss with Your Tax Professional

- The tax impact on past tax returns to determine if amending returns is advantageous.
- Future tax returns and tax planning opportunities.
- Whether additional tax needs to be claimed and refunded.
- Adjusting payroll tax withholding.