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IRS Rules All Legal Same-Sex Marriages Count Now---Even Retroactively

The IRS has taken lots of hits lately, but this is welcome news for same-sex couples, those considering marriage, and the tax preparation community that has long been scratching its collective head. Now it's official. The IRS says anyone who is legally married is married for federal tax purposes. See [Treasury Department Press Release](#).

It doesn't matter whether you live in a jurisdiction that recognizes your marriage. Treasury Secretary Jacob J. Lew said, "This ruling also assures legally married same-sex couples that they can move freely throughout the country knowing that their federal filing status will not change." See [Treasury and IRS Recognize Same-Sex Marriages for Tax Purposes](#).

The IRS will apply this sea change September 16th, though you can actually amend for prior years as noted below. To see the text of Revenue Ruling 2013-17, click [here](#). For Frequently Asked Questions, click [here](#).



It's not just income taxes covered by this change. This ruling covers income and gift and estate taxes. It applies anywhere marriage is a factor, so things like:

- filing status;
- claiming personal and dependency exemptions;
- taking the standard deduction;
- employee benefits;
- contributing to an IRA;
- claiming the earned income tax credit or child tax credit; and
- employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis may treat the amounts as pre-tax and excludable from income.

While all **marriages** are covered, the ruling doesn't cover registered domestic partnerships, civil unions, or similar formal relationships recognized under state law. For registered domestic partners who live in community property states, click [here](#).

Legally-married same-sex couples generally must file 2013 federal income tax returns as "married filing jointly" or "married filing separately." If you were in a same-sex marriage in the past, you may—but aren't required—to file original or amended returns with married status for any years still open under the statute of limitations.

[Revenue Ruling 2013-17](#) applies starting on September 16, 2013, but the IRS says you can go ahead with refund claims for prior open years even before that date. There's an interesting serendipity about this September 16 date. After all, if your 2012 tax return is on extension from April 15, your filing deadline is October 15, 2013. Through September 15th, you can chose to file your 2012 return either as married or not married. That's a one-time unique choice.

As to the past, in general, the statute for filing a refund claim is three years from when you filed or two years from the date the tax was paid, whichever is later. That means refund claims are fair game for 2010, 2011, and 2012. If you want to file a refund claim for income taxes, use [Form 1040X](#).

If you want to file a refund claim for gift or estate taxes, file [Form 843](#), Claim for Refund and Request for Abatement. For filing an amended return, see [IRS Tax Topic 308, Amended Returns](#).

Employers can expect streamlined procedures to file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses. For cafeteria plans, qualified retirement plans and other tax-favored arrangements, the IRS will also say more shortly.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.