

# Breaking Down the IRS's New Marriage Position

By Robert W. Wood

The Internal Revenue Service has taken lots of hits lately, mostly for small business targeting, general inefficiency and waste. Yet, the IRS should be commended for its sweeping ruling on same-sex marriage. The recent decision is welcome news for same-sex couples, those considering marriage, and for the tax professional community that has long been scratching its collective head about messy tax filings nationwide.

Now it's official. The IRS says that anyone who is legally married is married for federal tax purposes. See Internal Revenue Service News Release, "Treasury and IRS Announce That All Legal Same-Sex Marriages Will Be Recognized for Federal Tax Purposes; Ruling Provides Certainty, Benefits and Protections Under Federal Tax Law for Same-Sex Married Couples," Aug. 29, 2013. It doesn't matter whether the same-sex couple lives in a jurisdiction that recognizes the marriage as long as the marriage was legally recognized where entered into. That means legally married same-sex couples can move freely throughout the country assured that their federal tax filing status won't change.

This IRS sea-change will be effective as of Sept. 16, although you can amend for prior years as noted below. The announcement came in Revenue Ruling 2013-17, and the IRS also issued helpful Frequently Asked Questions. See Internal Revenue Service, Revenue Ruling 2013-17, Aug. 29, 2013; Internal Revenue Service, "Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law," Aug. 29, 2013.

It's not just income taxes covered by this change. This ruling covers gift and estate taxes as well, and essentially applies to any federal tax issue where marriage is a factor. Thus, it impacts your filing status, claiming personal and dependency exemptions and taking the standard deduction.

It will also impact your employee benefits, contributing to an individual retirement account, and claiming the earned income tax credit or child tax credit. There are many changes to employment-related tax rules too that will impact employees and their employers. For example, employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis can now treat the amounts as pre-tax and excludable from their incomes.

Although all legal marriages are covered, the IRS ruling does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law. The IRS also has some helpful guidance for registered domestic partners who live in community property states, but that is not a legal marriage for federal tax purposes. See Internal Revenue Service, "Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions," Aug. 29, 2013.

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.

The IRS says all these new terms apply as of Sept. 16. However, taxpayers can rely on the terms of these new rules for earlier periods if they like. That means you can go ahead and file refund claims for prior years, as long as the statute of limitations for the earlier period has not expired.

There's an interesting serendipity about this Sept. 16 date. After all, if your 2012 tax return is on extension from April 15, 2013, your extended filing deadline is Oct. 15, 2013. Through Sep. 15, you can choose to file your 2012 return either as married or not married. That's a one-time unique choice.

Starting Sept. 16, a married person must file married filing separate or married filing joint. For people considering past open tax years, the statute of limitations for filing a refund claim is three years from the date the return was filed or two years from the date the tax was paid, whichever is later.

As a result, refund claims can still be filed for 2010, 2011 and 2012. In some cases, a signed consent can keep even older years alive. To file a refund claim for income taxes, you would use Form 1040X, Amended U.S. Individual Income Tax Return. To file a refund claim for gift or estate taxes, file Form 843, Claim for Refund and Request for Abatement.

There will be more IRS guidance in the future, and much of it could impact the employment relationship. For example, employers have been told to 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 say more shortly.

As one example for how these rules can apply, let's suppose that an employer provided health coverage for an employee's same-sex spouse and included the value of that coverage in the employee's gross income. Can the employee file an amended return reflecting the employee's married status to get back the taxes that were paid on the spouse's health coverage?

Yes, as long as the statute of limitations is open. Again, that is generally three years from the date the return was filed or two years from the date the tax was paid, whichever is later. The employee has to make this claim by filing an amended income tax return.

Suppose that an employer sponsored a cafeteria plan that allowed employees to pay premiums for health coverage on a pre-tax basis. Now, can an employee who participates in that plan file an amended tax return to recover income taxes paid on premiums the employee paid for the health coverage of a same-sex spouse?

As long as the statute of limitations is open, yes. Again, the employee would have to file an amended income tax return. Many situations will impact employers too, though much of the IRS-issued guidance for employers is not yet out.

Since any amended tax filing should not be undertaken lightly, it pays to consider everything carefully before proceeding. The general rule is that a taxpayer is not legally obligated to file an amended return, as long as he or she thought the return was correct when it was filed. As one tax commentator once observed, tax returns are signed under penalties of perjury, they are not an opening offer!

However, once you do file an amended return, you cannot cherry pick what to amend. The amended return must be complete and accurate to the best of your knowledge. Amended returns are also filed under penalties of perjury.

There will be many same-sex couples whose tax situation has been made simpler and better as a result of this ruling. For some, their taxes may well go up. And for many in the short term, there will be some dislocation as taxpayers and their advisers adjust to this momentous change. But the IRS' global "marriage is marriage" policy is clearly both welcome and necessary news.



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