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Gay Or Straight, Married Filing Jointly May Not Be Such A Good Deal

Whether you are new to marriage or have decades under your belt, it pays to think about your tax filing status. With same sex marriages, much of the discussion these days is about joint return filing and when the IRS will issue guidance making the rules clear. See [Gay Married Couples Lacking IRS Guidance Risk Paying More.](#)

There should be parity, and in some cases there will be a significant dollar impact from joint returns.

But the knee-jerk “file jointly” reaction many couples have is worth reconsidering. Many people don’t consider which box to check at the top of their return. If we’re married, we file jointly; if not, we file single. That can be shortsighted.

Five Choices. There are [five choices](#): Single, Married Filing Jointly, Married Filing Separately, Head of Household and Qualifying Widow(er) with Dependent Child. The Head of Household status may be the one most often claimed in error. In [Tax Tip 2013-13](#), the IRS lists pointers about filing status options.



1. Last day of the year. This one is easy. Your marital status on the last day of the year determines your marital status for the entire year. So to be **eligible** to file a married filing joint return, you must be married on December 31st.

2. Legal Separation. If you are legally separated under state law you can file single. Of course, if you are legally divorced you can also file single. But if you are still married on December 31st and **not** legally separated, you'll need to file married (presumably filing separate), not single.

3. Doubling Up. If more than one filing status applies, you can pick the one giving you the lowest tax. You and your spouse may pay lower taxes by filing married filing jointly. But sometimes even if you would pay less that way, it is worth considering filing separately.

4. Innocent Spouse? By filing jointly, each of you is 100% liable regardless of who had the income. What if you learn that your spouse had unreported income? You are also on the hook. See [IRS Tougher On "Innocent" Spouse Relief](#) and [When An Innocent Spouse Seeks Tax Relief](#). If you're worried about your spouse's tax debts, get some advice. See [Innocent Spouse Tax Relief Eligibility Explorer](#).

If you file jointly and later face joint liabilities, you may be able to claim innocent spouse relief. See [More Timing Disputes Over Innocent Spouse Relief](#). Recently, the IRS announced more liberal rules. See [IRS Proposes To Permanently Ease Restrictions For Innocent Spouse Relief](#). Yet you can avoid these issues **entirely** by filing married filing separate. See [Married Filing Jointly, or Separate? How to Decide](#).

5. Death of Spouse. If your spouse died and you did not remarry during that year, you usually can still file a joint return for that year.

6. Head of Household? This status generally applies to taxpayers who are unmarried. You must also have paid more than half the cost of maintaining a home for yourself and a qualifying person.

7. Qualifying Widow(er) with Dependent Child. You may be able to choose this as your filing status if your spouse died, you have a dependent child, and you meet certain other conditions.

Get More: Most people don't devote any thought to their filing status. That can be a mistake. Many same sex couples understandably want the benefits of joint filing. But same sex or not, run the numbers and consider if joint or separate returns are better for you.

Don't merely consider the marginal tax dollars. Even if you'll pay less in taxes by filing jointly, weigh the pros and cons. It can be worthwhile to keep returns separate, especially if one spouse has past credit, tax or legal problems or any of these problems seem likely in the future. Separate filings help keep assets from being co-mingled too, which can make divorce less consequential.

To learn more, check out IRS [Publication 501](#), Exemptions, Standard Deduction, and Filing Information. You can also use the [Interactive Tax Assistant](#) (ITA) on the IRS website to determine your filing status. The ITA tool takes you through a series of questions and provides you with responses. The IRS needs to address same same sex marriage. Even so, every married couple should think through what is best for them and should avoid the automatic joint filing reaction.

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.