

## **Per 8/29/13 IRS Newswire:**

# **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**

WASHINGTON — The U.S. Department of the Treasury and the Internal Revenue Service (IRS) today ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage.

The ruling implements federal tax aspects of the June 26 Supreme Court decision invalidating a key provision of the 1996 Defense of Marriage Act.

Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit.

Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be covered by the ruling. However, the ruling does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law.

Legally-married same-sex couples generally must file their 2013 federal income tax 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.

Generally, 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 tax years 2010, 2011 and 2012. Some taxpayers may have special circumstances, such as signing an agreement with the IRS to keep the statute of limitations open, that permit them to file refund claims for tax years 2009 and earlier.

Additionally, employees who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis may treat the amounts paid for that coverage as pre-tax and excludable from income.

### **How to File a Claim for Refund**

Taxpayers who wish to file a refund claim for income taxes should use [Form 1040X](#), Amended U.S. Individual Income Tax Return.

Taxpayers who wish to file a refund claim for gift or estate taxes should file [Form 843](#), Claim for Refund and Request for Abatement. For information on filing an amended return, see [Tax Topic 308](#), Amended Returns, available on IRS.gov, or the Instructions to Forms 1040X and 843. Information on where to file your amended returns is available in the instructions to the form.

### **Future Guidance**

Treasury and the IRS intend to issue streamlined procedures for employers who wish to file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses. Treasury and IRS also intend to issue further guidance on cafeteria plans and on how qualified retirement plans and other tax-favored arrangements should treat same-sex spouses for periods before the effective date of this Revenue Ruling.

Other agencies may provide guidance on other federal programs that they administer that are affected by the Code.

[Revenue Ruling 2013-17](#), along with updated Frequently Asked Questions for same-sex couples and updated FAQs for registered domestic partners and individuals in civil unions, are available today on IRS.gov. See also [Publication 555](#), Community Property.

Treasury and the IRS will begin applying the terms of Revenue Ruling 2013-17 on Sept. 16, 2013, but taxpayers who wish to rely on the terms of the Revenue Ruling for earlier periods may choose to do so, as long as the statute of limitations for the earlier period has not expired.