

IRS Releases Guidance on Tax Treatment of Same-Sex Marriages

On August 29, 2013, the IRS released its much anticipated [guidance](#) on how it will treat same-sex marriages for federal tax purposes. The guidance includes [Revenue Ruling 2013-17](#) and a set of [FAQs](#). These materials provide favorable tax treatment for same-sex spouses and answers many questions raised by the U.S. Supreme Court's decision in [U.S. v. Windsor](#). The guidance applies prospectively as of September 16, 2013.

The most significant implications of the IRS's guidance include:

- Place of celebration will dictate whether a couple is married for federal income tax purposes. As long as a couple was married in a state that recognizes same-sex marriage, that couple will be treated as legally married for federal tax purposes regardless of the married couple's current state of residence.
- Couples who were legally married in a state that recognizes same-sex marriage can file refund claims for prior tax returns changing their filing status to married filing jointly or married filing separately. Taxpayers can amend their returns for all years not closed by the statute of limitations (2012, 2011, 2010 and, in some cases, 2009).
- Filing amended tax returns as married couples may allow taxpayers to obtain significant refunds based on their filing status and personal exemptions. In addition, taxpayers who purchased same-sex spouse health insurance coverage from their employers on an after-tax basis will be allowed to amend their returns and treat the amounts paid for that coverage as pre-tax and excludable from income.
- The term "marriage" does not include registered domestic partnerships, civil unions, or other similar formal relationships under state law, if the state law does not denominate that relationship as a marriage. This is true regardless if the individuals in that relationship are of the opposite or same sex.
- It may be possible to obtain refunds or credits related to the overpayment of employment and income taxes in prior open years for same-sex spouse coverage under employer-



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provided health insurance, as well as for fringe benefits such as: (1) qualified tuition reduction, (2) employer-paid meals and lodging, (3) dependent care assistance plans, (4) qualified fringe benefits under Internal Revenue Code section 132, and (5) cafeteria plans under Code section 125.

- Employers also will be able to file amended employment tax returns, claiming refunds for the employer portion of employment taxes on previously-taxed benefits related to same-sex spouse coverage under the benefit plans and programs described above for open tax years. The IRS anticipates the future guidance will provide sufficient time for plan amendments and other needed corrections.
- Married same-sex persons will now be able to give a spouse unlimited gifts during life and at death.

For questions about the IRS's new guidance on same-sex married couples, please contact the Hanson Bridgett Tax or Employee Benefits Group.

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