



## Compliance Bulletin

# IRS to Recognize All Legal Same-Sex Marriages for Federal Tax Purposes

Provided by Sullivan Benefits

### Quick Facts

- IRS announced ruling on Aug. 29, 2013.
- Same-sex couples treated as married for federal tax purposes if married in jurisdiction that recognizes same-sex marriage.
- Ruling applies even if the couple resides in a jurisdiction that does not recognize same-sex marriage.
- Ruling can be applied retroactively.

Legally married same-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes.

On Aug. 29, 2013, the U.S. Dept. of the Treasury and the Internal Revenue Service (IRS) issued [Revenue Ruling 2013-17](#), ruling that same-sex couples who are 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 not, to ensure uniformity in application of the Internal Revenue Code.

The IRS and the Treasury issued this ruling to implement the U.S. Supreme Court's decision on the Defense of Marriage Act (DOMA). On June 26, 2013, the Court held that same-sex couples who are legally married under state law are entitled to equal treatment under federal law with regard to income taxes and federal benefits.

### Impact on Individuals

Under the ruling, same-sex couples who are legally married 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.

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.

### Impact on Employers

Employers may wish to file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses. The Treasury and the IRS intend to issue streamlined procedures for these claims.

The Treasury and the 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 the ruling.

### Marriages Covered by the Ruling

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.

#### **Effective Date**

The Treasury and the IRS will begin applying the terms of Revenue Ruling 2013-17 on Sept. 16, 2013. However, taxpayers may rely on the ruling for prior years, as long as the statute of limitations has not expired.

See below for more information on the statute of limitations and filing tax returns for 2013 and amended returns for prior years.

#### **Filing 2013 Tax Returns**

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.

#### **Retroactive Application**

The ruling can apply retroactively. Individuals who were in same-sex marriages before the ruling was issued may, but are not required to, file original or amended returns choosing to be treated as married for federal tax purposes for prior tax years if those years are 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.

#### **Filing a Refund Claim**

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, or the Instructions to Forms 1040X and 843. Information on where to file your amended returns is available in the form's instructions.

#### **HHS Guidance for Medicare Beneficiaries**

The Treasury and the IRS indicated that other agencies may provide guidance on federal programs affected by the Internal Revenue Code.

The Department of Health and Human Services (HHS) also [issued guidance](#) related to DOMA on Aug. 29, 2013. Specifically, HHS issued a memo clarifying that all beneficiaries in private Medicare plans are entitled to care in a nursing home where their spouse lives.

Under current law, individuals enrolled in a Medicare Advantage plan are entitled to care in skilled nursing facilities (SNFs) where their spouse resides if all requirements are met. The HHS memo confirms that this entitlement applies equally to couples who are in a legally recognized same-sex marriage, regardless of where they live.

#### **More Information**

For additional information, please consult the following resources:

- [Revenue Ruling 2013-17](#)
- [Updated IRS FAQs for same-sex couples](#)
- [Updated IRS FAQs for registered domestic partners and individuals in civil unions](#)

*Source: Internal Revenue Service and Department of Health and Human Services*

