

# Taxes after DOMA: What do Same-Sex Married Couples Need to Know When Filing Their Taxes?

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## *Hollingsworth v. Perry*

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# CALIFORNIA'S PROPOSITION 8



## *United States v. Windsor*

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# DEFENSE OF MARRIAGE ACT

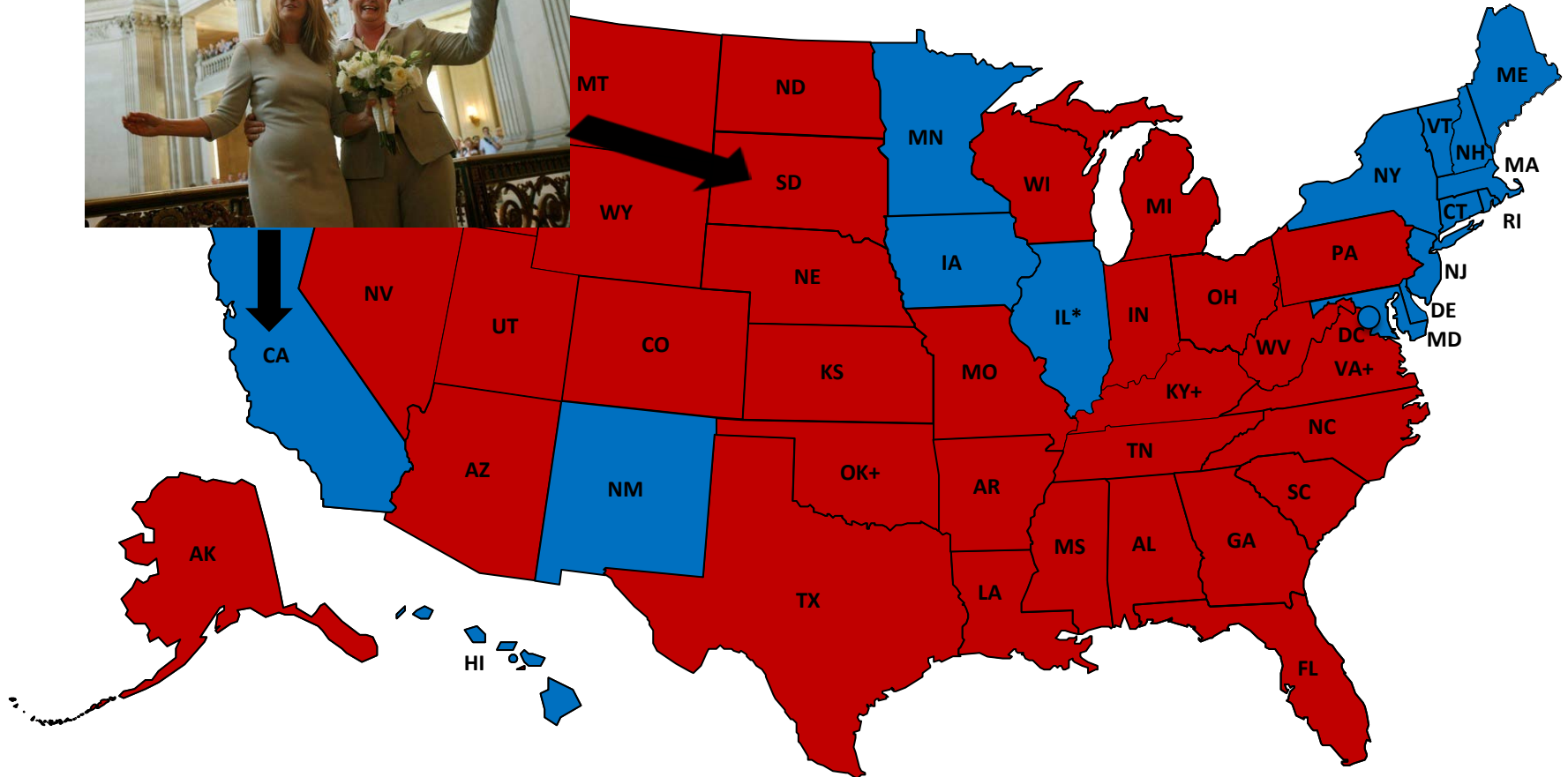


# *United States v. Windsor*



**“DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others. The federal statute is invalid, for no legitimate purpose overcomes the purposes and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.”**

# Whose Marriages Are Recognized?



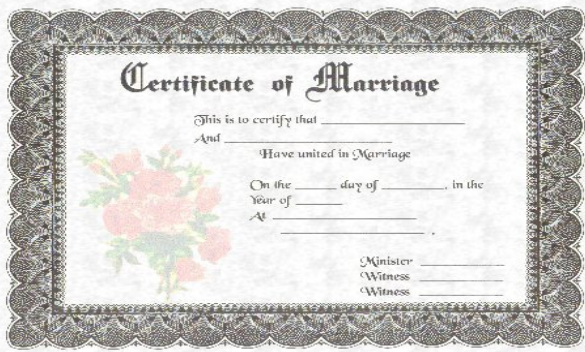
\* As of June 2014

+ Earlier this year, District Courts in VA, OK and KY ruled that the states' bans on marriage equality were unconstitutional. These rulings are currently stayed pending appeal, so marriages will not occur immediately in these states.



# Response to the *Windsor* Decision

- **Rev Rule 2013-17**
- **Adopted a “place of celebration” rule**
- **Equal access to spousal tax treatment, including filing status, access to exemptions**
- **Ability to file as married and potentially reduce your household’s tax burden**
- **End of taxation on employer-provided health coverage for a same-sex spouse**
- **Spousal exemption for tax on gifts, inheritance**



## “Place of Celebration” Rule

- **Legally married in a state or foreign country that recognizes same-sex marriage? You are married for federal tax purposes.**
- **This is the case even if you are now residing in a state that does not recognize your marriage.**
- **Who’s not married: people in registered domestic partnerships, civil unions, or other similar formal relationships.**

# Equal Access to Spousal Tax Treatment

- **If you were legally married on December 31, 2013, for tax purposes you were married for all of 2013.**
- **Filing Status → Married Filing Jointly or Married Filing Separately**
- **Exemptions—standard deduction + personal (and potentially dependent) exemptions**



# Filing Status—Married

Married Filing Jointly	Married Filing Separately
<ul style="list-style-type: none"><li>• <b>Potentially lower tax rate</b></li><li>• <b>Many deductions and credits only available if you file jointly (EITC, Child/Dependent Care, student loan interest)</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Separate filing means no legal or financial responsibility for spouse's tax obligations</b></li><li>• <b>Unique financial situations could result in a lower tax bill</b></li></ul>

## Bottom line:

**A tax professional or tax preparation software may help you decide which filing status is right for you!**

# Filing Status—Separated, Divorced

Single	Head of Household
<ul style="list-style-type: none"><li>• If divorced or legally separated on the last day of the tax year (12/31/13), then you are considered unmarried and can file a return as single.</li><li>• State law governs whether you are married, legally separated, or divorced.</li></ul>	<ul style="list-style-type: none"><li>• Can use HoH (and get the favorable HoH rates) if you're supporting a related dependent for more than half the year and either:<ul style="list-style-type: none"><li>• Single</li><li>• Separated and the spouse was not a household member for the last 6 months of the year</li></ul></li></ul>

# A quick note about Tax Credits

<b>The credit</b>	<b>To be eligible, a family needs</b>	<b>Age of qualifying children</b>	<b>Maximum credit value</b>
<b>Earned Income Tax Credit (EITC)*</b>	<b>Earned income, but not more than \$51,567 for married couple with 3 kids</b>	<b>Under 19, under 24 if a full-time student, no age limit if disabled</b>	<b>\$6,044</b>
<b>Child Tax Credit (CTC)</b>	<b>\$3,000 in earned income for refund</b>	<b>Under age 17</b>	<b>\$1,000 per child</b>
<b>Child and Dependent Care Tax Credit (CDCTC)*</b>	<b>Work-related child care expenses</b>	<b>Under 13 (unless disabled)</b>	<b>\$2,100</b>
<b>Adoption Tax Credit</b>	<b>Qualified adoption expenses and Modified Adjusted Gross Income less than \$234,580</b>	<b>Under 18, no age limit if disabled</b>	<b>\$12,970</b>

\*Married couples must file jointly to claim this credit.

# **New in 2014: The Premium Tax Credit**

- **The Premium Tax Credit\* provides financial assistance for paying monthly costs of health insurance obtained through the health insurance marketplace.**
- **Available as soon as you start paying for insurance**
- **Credit is paid directly to insurer every month**
- **Amount of the credit based on family size and income**
- **“Settle up” with 2014 tax return but report changes in family size and income throughout year.**

**\*Married couples must file jointly to claim it.**

# Equal Access to Spousal Tax Treatment—Examples



- **Cara and Maria live in Massachusetts and were married in 2011.**
  - They each earned \$35,000 in 2012 and in 2013.
  - They have one child, age 3, who attended a day care center that cost \$3,000 in 2012 and 2013.
  - They each had health insurance through their employers (Cara’s covered their child).
  
- **Last year, Maria filed a federal tax return as single and Cara filed a federal tax return as head of household, claiming their child as a dependent.**
  - Cara claimed the Child Tax Credit, Earned Income Tax Credit, and Child and Dependent Care Tax Credit.
  - Maria’s federal tax bill was **\$3,304** and Cara’s was **-\$113**, after tax credits.
  - When they filed their Massachusetts tax return, they filled out a federal tax return as Married filing Jointly, and used that as the basis for calculating their state taxes, as the Massachusetts Department of Revenue instructed.

# Equal Access to Spousal Tax Treatment—Examples



## After DOMA →

- This year, Cara and Maria *must* file their federal tax return as a married couple.
- If they file as married filing separately, their tax liability will be **\$5,023**.
- If they file as married filing jointly, they will be able to claim the dependency exemption and all tax credits for which they are eligible, but ... their tax liability will be **\$4,423**.
- Their state taxes will be based on their actual federal return this year—no dummy return needed!

# Equal Access to Spousal Tax Treatment—Examples



- **Paul and Dan were married in Connecticut in 2009.**

- Paul earned \$11,500 in 2012 and 2013; Dan earned \$45,000.
- They each have health insurance through their employer.

- **Last year, each filed a federal tax return as single.**

- Paul claimed the Earned Income Tax Credit and received **\$219**. Their total tax liability was **\$4,735**.
- When they filed their Connecticut tax return, they filled out the federal tax return as **Married filing Jointly**, and used that as the basis for calculating their state taxes, as the Connecticut Department of Revenue instructed.

# Equal Access to Spousal Tax Treatment— Examples



## After DOMA →

- This year, Paul and Dan *must* file their federal tax return as a married couple.
- They can file as Married filing Separately. This will disqualify them from claiming the Earned Income Tax Credit. Their tax liability will be **\$4,954**.
- If they file as Married filing Jointly, their tax liability will be **\$4,582**.
- They will not be able to claim the Earned Income Tax Credit because they earn too much.
- Despite that → they are saving **\$152** in comparison to their combined 2012 tax bill.
- Because they live in North Carolina, they will have to complete dummy federal returns as single in order to file their state taxes, as instructed by the North Carolina Department of Revenue.



# End of Taxation of Employer-Provided Health Coverage

- **Employer provided spousal healthcare coverage will no longer be taxed as income for same-sex married couples.**
- **Couples who paid this additional tax may be eligible for a refund if they submit amended returns**
  - **Couples may submit amended returns for up to three prior tax years (i.e. 2010, 2011, 2012)**
- **Domestic partner coverage provided to unmarried couples will continue to be taxed.**

# Spousal Exemption for Tax on Gifts and Inheritance

- **Same-sex spouses may now inherit from their spouse or receive a gift without paying estate and gift tax.**
- ***U.S. v. Windsor* was a case of unfairly imposed inheritance tax on a surviving same-sex spouse.**

# Changes to 401K Plans

- **Same-sex spouses may now fund a spousal IRA for a non-working spouse**
- **401K plans are also now required to recognize same-sex spouses**
- **This will allow a surviving spouse to roll their spouse's IRA into their own**
- **Same-sex spouses can also not be cut out of their spouse's 401K plan without their permission**

# Amending Past Years' Tax Returns

- **You can choose (but aren't required) to amend your filing status on previous years' tax returns, as long as the period of limitations has not expired.**
- **Generally, that limitation is three years from the filing date for a refund claim or two years from the date that any tax was paid, whichever is later.**
- **When it might be worth it:**
  - **if your incomes were very unequal or**
  - **if one person receives health coverage through their spouse's employer.**

**\*\*You should consult a tax professional to decide whether amending past years' returns is the right decision for you!**

# State Tax Issues

- **State tax filing will continue to vary for same-sex married couples, depending on whether your state recognizes your marriage.**
- **If you live in a marriage recognition state, the process for filing your 2013 taxes will likely be much easier than it was in years past, because you now have the ability to file both your state and federal taxes using the same filing status.**
- **If you are a same-sex married couple living in a state that does not recognize your marriage, the tax filing process will most likely continue to be more onerous.**
- **You should contact your state's Department of Revenue to determine how to proceed in filing your state taxes.**



# Need Help Filing?

- **You could qualify for free tax filing assistance!**

Program	Eligibility	Contact
Volunteer Income Tax Assistance (VITA) → in person tax filing assistance	Income under \$52,000.	Call the IRS' hotline at <b>1-800-906-9887</b> or visit <a href="http://irs.treasury.gov/freetaxprep/">http://irs.treasury.gov/freetaxprep/</a>
AARP Tax Aide/Tax Counseling for the Elderly (TCE)	At least 60 years old.	If you're over age 60, you qualify for the IRS's Tax Counseling for the Elderly program. Call <b>1-888-227-7669</b> or visit <a href="http://www.aarp.org/money/taxaide/">http://www.aarp.org/money/taxaide/</a>
Free File Alliance → free online tax preparation assistance from industry-leading tax software companies who are partnering with the IRS	Income under \$58,000.	For information about this <b>Free File Alliance</b> , visit <a href="http://www.freefilealliance.org/">http://www.freefilealliance.org/</a> .

- **If you're planning to use a paid tax preparer, here are some tips from the IRS on choosing the right one:** <http://www.taxpayeradvocate.irs.gov/Individuals/Choosing-A-Tax-Preparer>.

# For More Information

- **FAQs for Same-Sex Married Couples on Taxes After DOMA:** <http://www.nwlc.org/resource/after-doma-tax-filing-faqs-same-sex-married-couples>
- **Detailed information on state income tax requirements for same-sex married couples:** [www.hrc.org/taxes](http://www.hrc.org/taxes)
- **Information about other tax benefits for families with children:** [www.nwlc.org/loweryourtaxes](http://www.nwlc.org/loweryourtaxes)
- **FAQs on Obamacare and Taxes:** <http://www.nwlc.org/resource/paying-health-care-obamacare-and-taxes>