HUMAN RIGHTS CAMPAIGN®

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

TAX & BUDGET

FACT SHEET

After DOMA: Tax Filing FAQs for Same-Sex Married Couples

In 2013, the Supreme Court invalidated a portion of the Defense of Marriage Act (DOMA)—providing, for the first time, federal recognition and protections for same-sex, legally married couples. The IRS has since issued guidance about what the ruling means for same-sex married couples when filing their federal taxes. The following questions and answers are designed to give general information about tax issues that same-sex couples will be dealing with in tax year 2013 and beyond, and is not meant to be exhaustive. It is intended for general information purposes only.

1. Do we need to file federal taxes?

Yes, if your gross income in 2014 was:

- Single and under 65: $10,150
- Married filing jointly under 65: $20,300
- Married filing separately: $3,950
- Head of Household: $13,050
- Widow(er) under 65 with qualifying dependent: $16,350

Yes, if:

- You paid federal taxes and want a refund
- You are eligible for the Earned Income Tax Credit (EITC) or Child Tax Credit
- You are self-employed
- You took money out of an IRA, 401(k), or 403(b) retirement savings account
- You owe taxes on tip income
- You sold your home

2. What filing status should we use for tax year 2014?

This tax year, same-sex, legally married couples **living in any state** will generally be required to file a **federal return** as **Married filing Jointly** or **Married filing Separately**. Marital status for tax purposes is based on what it was on the last day of the tax year (unless a spouse died during the year)—so if you are legally married on December 31, 2014, for tax purposes you will be considered married for all of 2014.

Filing status choices include:

- Single (including legally separated or divorced)
- Married filing Jointly (joint tax liability)
- Married filing Separately (disqualifies couples from eligibility for the federal EITC and Child and Dependent Care Tax Credit)
- Head of Household (for taxpayers who are single, legally separated OR living apart from spouse during the last six months and are supporting dependents)
- Qualifying Widow(er) with a dependent child

3. What does the IRS consider as "Married" for federal tax purposes?

If you were legally married in a state or foreign country that recognizes same-sex marriage, you are married for federal tax purposes. This is true even if you are now residing in a state that does not recognize your marriage. For example: A couple is legally married in Massachusetts (a marriage recognition state) and later moves to

Louisiana (a state that does not recognize same-sex marriage). They are married in the eyes of the IRS, and may file a federal tax return as Married filing Jointly or Married filing Separately.

However, the IRS *does not* consider couples who have entered into registered domestic partnerships, civil unions or other similar formal relationships, to be married for federal tax purposes—therefore, these couples may not file as Married filing Jointly or Married filing Separately.

4. Should we file as Married filing Separately or Married filing Jointly?

Generally, married couples who file their taxes separately pay more combined tax than they would with a joint return. When married couples file separately, the tax rates are usually higher, and many deductions and credits—like the Earned Income Tax Credit, the Child and Dependent Care credit, the deduction for student loan interest, and in most cases the Premium Tax Credit that helps people afford health insurance under the ACA —are not available. So why would a married couple choose to file their taxes separately? A spouse who files separately is not legally and financially responsible for her spouse's tax obligations. Further, there are some unique financial situations in which filing separately results in a lower tax bill than filing jointly. How you file, therefore, will depend upon your specific situation. A tax professional or tax preparation software may help you decide which filing status is right for you.

5. Will we owe more or less federal income tax now that we can file a joint tax return?

Generally, married couples filing jointly will owe less federal income tax than they did as single tax filers, when one spouse earns much less than the other or does not work at all. The IRS treats each spouse as having earned half of the total claimed income—so couples who collectively earn $80,000 are treated as individually having earned $40,000 (even if one earned $70,000 and the other earned $10,000)—allowing them to take advantage of a lower tax bracket. High-income couples with spouses earning similar amounts will probably pay more than they did when they filed two separate Single filing status returns. This is because the joint return income thresholds (the maximum amount of income you can claim before the next marginal tax rate applies) are higher than single return thresholds, but not twice as high.

6. Are we eligible for family tax credits?

You might be! Since you will be filing as married, it is important to note that with the exception of the Child Tax Credit, these tax credits are only available to married couples when they **file jointly**, not married couples filing separately.

- The Federal Earned Income Tax Credit (EITC) is a refundable tax credit worth up to $6,143.
- The Federal Child Tax Credit is a refundable tax credit worth up to $1,000 per child.
- The Federal Child and Dependent Care Tax Credit is a non-refundable tax credit worth up to $2,100.
- Your state may also offer tax credits for families.
- Visit www.nwlc.org/loweryourtaxes to find out more.

Note that if you claimed these tax credits for your family in previous years, your eligibility or the amount of the credit you receive may change now that you are filing as a married couple.

7. Are we eligible for the Premium Tax Credit—the subsidy to help with health insurance costs under the ACA?

Quite possibly! If you purchase health insurance through the Marketplace (healthcare.gov), and your income is between 100-400% of the federal poverty level ($15,730-$62,920 for a family of 2), you are likely eligible for a Premium Tax Credit to help with the monthly cost of your health insurance premium. With only a couple of narrow exceptions, legally married couples have to file their tax return jointly in order to receive the Premium Tax Credit.

If you are already receiving a Premium Tax Credit to help you pay for health insurance and you get married at some point during the year, don't forget to update the Marketplace! You may be eligible for an increase in your Premium Tax Credit, or your Premium Tax Credit amount may need to be lowered—and reporting it as soon as possible will limit how much you may owe back when you file your taxes.

Visit https://www.healthcare.gov/will-i-qualify-to-save-on-monthly-premiums/ for more information about the Premium Tax Credit.

8. We've been married for several years—what should we do about 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. Amending your filing status from Single to Married filing Jointly or Married filing Separately could be a benefit in certain circumstances—for example, if your incomes were very unequal or if one person receives **health coverage through their spouse's employer**. The employee spouse may claim a refund of taxes paid on the value of that coverage that would have been excluded from income had the employee's same-sex marriage been recognized for tax purposes. You should consult a tax professional to decide whether amending past years' returns is the right decision for you.

9. How do we file our state taxes?

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,[1] the process for filing your 2014 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.

10. Where can we get help with filing our taxes?

There are many resources available for low- and moderate-income families who need help preparing their taxes, including the IRS-sponsored VITA or TCE programs (including the AARP-sponsored Tax-Aide program).
Visit http://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers and http://www.aarp.org/money/taxes/aarp_taxaide/ for more information. Additionally, the Free File Alliance partners with the IRS to help low- and moderate-income families file their taxes online for free. Visit them at http://www.freefilealliance.org/.

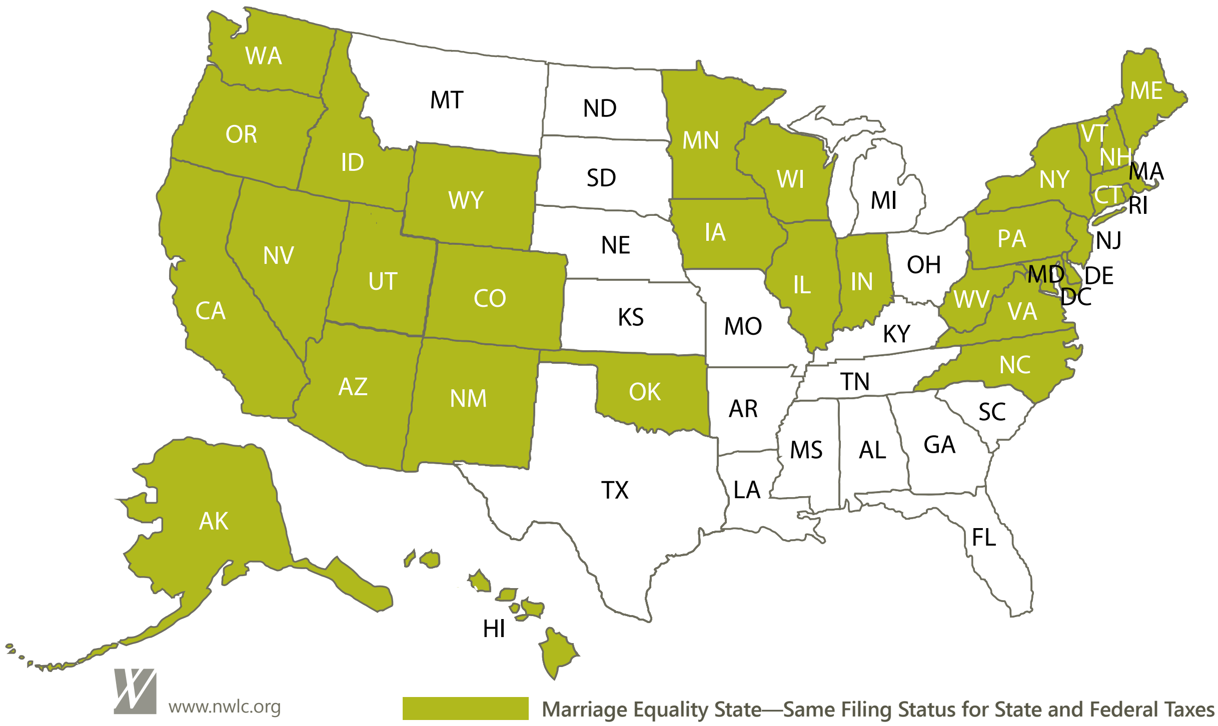
If you're planning to use a paid tax preparer, here are some tips from the IRS on choosing the right one: http://www.taxpayeradvocate.irs.gov/Individuals/Choosing-A-Tax-Preparer.

For more information:

Information about other tax benefits for families with children is available on the National Women's Law Center's website at www.nwlc.org/loweryourtaxes.

Information about other federal tax implications of the Supreme Court's DOMA decision is available on the Human Rights Campaign's website at http://www.hrc.org/files/assets/resources/Post-DOMA_FSS_Federal-Taxes_v3.pdf [pdf]

The State of Marriage Equality in Tax Year 2014.



1 States that currently recognize same-sex marriage include: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii , Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia.