



Information for Same-Sex Married Couples

This TSB-M provides information to New York State taxpayers based on recent guidance issued by the Internal Revenue Service.

This memorandum supplements the information previously given in:

- [TSB-M-11\(8\)I](#), *The Marriage Equality Act*,
- [TSB-M-11\(8\)M](#), *Implementation of the Marriage Equality Act Related to the New York State Estate Tax*, and
- [TSB-M-13\(9\)M](#), *New York Estate Tax Information for Estates of Individuals Married to Same-Sex Spouses*.

General

In response to the recent decision of the United States Supreme Court in *United States v. Windsor*, the Internal Revenue Service (IRS) has issued [Revenue Ruling 2013-17](#) explaining that the IRS will recognize the validity of any marriage between a same-sex couple that is valid under the laws of the jurisdiction (state or foreign country) where it was entered into, regardless of the married couple's place of domicile. The ruling will be applied prospectively as of September 16, 2013.

The IRS has further indicated that taxpayers may (but are not required to) rely on the ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from the ruling for any prior periods where the statute of limitations for filing such a claim has not expired.

For taxes administered by the New York State Tax Department, equal treatment has been given to individuals legally married to different-sex spouses and same-sex spouses since the enactment of the Marriage Equality Act, which took effect on July 24, 2011. Based on the *Windsor* decision and the IRS ruling, this equal treatment now also applies to the personal income tax and the estate tax for earlier periods.

The effects on the New York State personal income tax and the estate tax based on the recent federal revenue ruling and *Windsor* decision are summarized below.

Personal income tax

The following rules apply to same-sex couples who are in a legally recognized marriage:

- For tax years before 2011, individuals who were legally married to a same-sex spouse and who filed their New York State personal income tax returns using a filing status of

single or head of household may (but are not required to) file an amended New York State return to use a married filing status (e.g., married filing jointly, married filing separate). A New York State amended personal income tax return can be filed for any tax year where the statute of limitations for filing an amended return remains open. Generally, an amended return must be filed within three years from the date the return was filed or two years from the date the tax was paid, whichever is later.

To complete the New York State amended income tax return, taxpayers must report and/or compute any federal information required to be shown on the New York State amended return by applying the federal rules in effect for married taxpayers for the same tax year (regardless of whether an amended federal return is filed).

- For tax years 2011 and 2012, same-sex married couples must file their New York State personal income tax return(s) using a married filing status even if they used a filing status of single or head of household on their federal income tax return(s).
- For tax years 2013 and after, same-sex married couples must file using the general married filing status rules.

Estate tax

The estates of individuals who were legally married to same-sex spouses and died prior to July 24, 2011, may (but are not required to) amend any previously filed estate tax return where the statute of limitations to apply for a refund remains open.

To amend an estate tax return for a date of death prior to July 24, 2011, file Form ET-706, *New York State Estate Tax Return*, following the directions given in [TSB-M-11\(8\)M](#), *Implementation of the Marriage Equality Act Related to the New York State Estate Tax*, and [TSB-M-13\(9\)M](#), *New York Estate Tax Information for Estates of Individuals Married to Same-Sex Spouses*. However, a pro forma federal return is only required when the estate does not file a federal estate tax return.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.