Amending Tax Returns for Same-Sex Couples

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Free tax prep & financial resources

Defense of Marriage Act (DOMA) is gone! Should you file amended tax returns?

Contents:

Background

In the 2013 decision, *United States v. Windsor*, The Supreme Court invalidated a portion of the Defense of Marriage Act, which defined marriage in the federal context as one man and one woman. Since the federal definition of marriage touches everything from public benefits to taxes, there have been a lot of regulatory changes since the fall of DOMA. The 2015 *Obgerfell* decision applied those changes at the state level as well. This newsletter will provide some guidance about those changes relating to taxes and filing amended returns for same-sex couples.

"MARRIED" FILING STATUS AND WHAT IS DIFFERENT

Now that same-sex couples can file taxes as "married," they face a different set of choices. A taxpayer's filing status for an entire year is determined at of the close of that tax year and depends mainly on marital status. Generally, for those couples that are legally married in any state, they must file as either "married filing jointly," or "married filing separately," regardless of whether they live in a state that recognizes their marriage. It is important to note, however, that the IRS does not consider those in domestic partnerships or civil unions to be "married." Before DOMA fell, some same-sex couples were eligible to file "Head of Household" status, but many just filed using "single" status. In order to understand how this new filing status affects couples who may be considering filing amended returns, we will first look at the ways marital status might affect your federal tax situation.

- **Standard Deductions.** Taxpayers can either take the "standard deduction," or they can "itemize" their deductions on Schedule A. The standard deduction is a fixed dollar amount based on filing status plus some specific adjustments. For 2014, the standard deduction is $12,400 for joint filers, double the $6,200 deduction available to "single" or "married filing separately" filers.
- **Earned Income Tax Credit (EITC).** This is a refundable tax credit available to low- and medium-income taxpayers. Credits may in some cases be higher, and may be obtained at higher income levels, for some joint filers.
- **Pooled income and deductions.** Married couples can combine income and expenses when preparing their tax returns. For example, if a couple itemizes their deductions, they can combine their medical and dental expenses. However, this deduction is limited if the couple has a comparatively high Adjusted Gross Income (AGI), so that only medical and dental expenses in excess of a certain percentage of AGI are deductible (10% for 2014).
- **Income associated with employer-provided health insurance.** Married same-sex couples no longer have to pay income taxes on the value of employer provided insurance to an employee's spouse. Typically, when an employer provides group health insurance and premium contributions for its employees, their spouses, and dependents, the value of those benefits is not subject to federal income tax. This tax advantage is now available to married same-sex couples. Under DOMA, the value of the employer-provided health insurance benefits for a same-sex spouse was usually taxable income to the employee.

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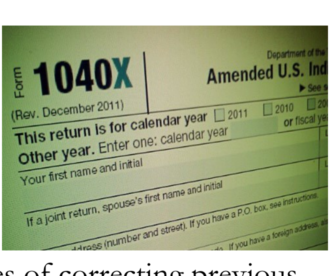
These are just a few portions of the Internal Revenue Code that differentiate between married and unmarried individuals. Consult a tax advisor about how these and many other factors might affect you. Now let's turn to the subject of amended returns, and then we will discuss when they might be beneficial.

AMENDED TAX RETURNS IN GENERAL

What we really mean when talking about amending a return is replacing the return you originally filed. Here are some facts about amended returns:



- You can only file amended returns for the years you were married by December 31st.
- You are NOT required to file amended returns for purposes of changing your marital status.
- Amended returns are normally filed for the purposes of correcting previous year returns. For same-sex couples, this correction is changing their filing statuses.
- Generally, the statute of limitations runs three years from the original due date of the return (April 15th), or three years from the date the return was actually filed if an extension was granted. So, until April 15th, 2015, taxpayers who filed by April 15th can amend 2011, 2012, and 2013 returns.

Now that we know more about amended returns, we will look at situations where it may or may not be advantageous for taxpayers to file amended returns.

SHOULD WE FILE AMENDED RETURNS?

Not everyone should file amended returns. In some circumstances, it might actually create a tax liability for those years. Here are some indicators that filing might be a good idea or not such a good idea. And remember, these are just some examples, a tax professional should be consulted for your specific situation.

Indicators that amending might be a good idea:

It is not going to be advantageous for everyone to file amended returns. This is very heavily dependent on your tax situation *as a whole*, but some indicators that filing amended returns could get you a refund are:

- **You and your spouse have very different incomes**. (i.e. – where one spouse makes little to no money and the other supports the family with their income.)
  - Why? The IRS treats the combined income of married couples as if each individual earned half, resulting in a lower tax bracket if a "higher" income can be balanced against a "lower" income.
  - Example: One spouse earns $60,000, and the other earns no income. Each spouse will be treated as earning $30,000, so the couple can take advantage of a lower tax bracket than a single person earning $60,000.

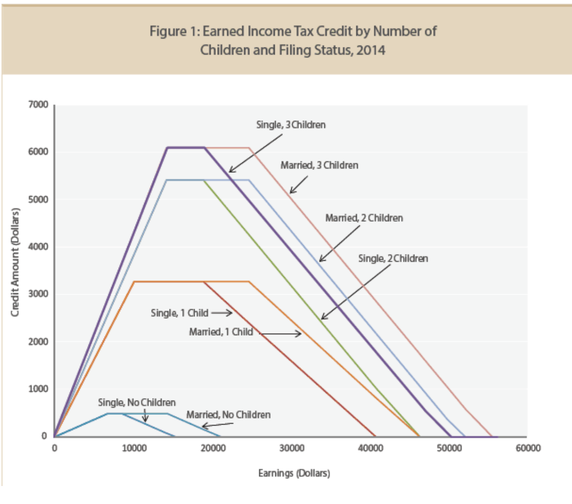
- **Significant tax-deductible expenses were paid by one spouse for the other, and neither claimed the expenses on their original return.** (i.e. – potentially deductible medical and dental expenses)
  - Why? When a couple is married, they might be better off "itemizing" their deductions in this situation because everything can now be in one pot. So, they might be better off amending the return to do that itemization and take advantage of a higher deduction. However, it should be noted that the expenses need to be quite significant for this to be the case.
- **One spouse had the other spouse on their employer sponsored health care plan.**
  - Why? Before DOMA fell, the employed spouse paid extra tax on the fair market value of the coverage for the spouse.

Those are some of the common situations where it might be advantageous to amend returns; they are certainly not all of them. You should consult a tax professional for help in making the decision.

Indicators that amending might not be a good idea:

Many will find that amended returns are not worthwhile for them because amending would result in owing more taxes for some years. Some factors that may indicate that amending returns is not right for your family:

- **One spouse claimed the Earned Income Tax Credit (EITC).**



  - Why? The EITC provides a credit that can create a refund. It starts to "phase-out," or reduce, at certain income levels ($17,830 for single person with one child in 2014). The phase-out level is not that much higher for a married couple with one child, at $23,260. So, spouses could find themselves owing for previous years, because their combined incomes phase-out more of the credit, resulting in them owing some of the credit back to the IRS.
- **Both spouses have comparatively high income.**
  - Why? Joint filing favors married couples with very different incomes. So, when both spouses are high earners, they incur a "marriage penalty," because while joint return income brackets are higher than those for single, they are not twice as high. In this situation, filing a return might result in owing tax from previous years.
  - This could also apply to a lesser extent when both spouses are "middle income" earners, where combining their income puts them into a higher tax bracket.
- **Both spouses claimed certain deductions that have "ceilings" or "floors."**
  - Why? Some deductions have "ceilings," which are the highest amount of that deduction that can be claimed on any single return. Most of these deductions have the same ceiling for single and married filing jointly taxpayers. So, if both claimed them on the original returns, amending the two returns into one would result in the possible deductions being halved.
  - In the case of deductions with "floors," the same result can arise. Floors exist for deductions like medical expenses, and they limit how much can be deducted to an amount over a certain percentage of income. For healthcare expenses, whatever is over 10% of AGI is deductible. Since amending will combine in-

HOW TO FILE AN AMENDED RETURN

You are **not** required to file an amended return. If you decide that filing amended returns is right for you, there are a couple different ways you can go through the process. You can do them yourself, you can pay a preparer to do them for you, or if you meet certain income criteria you may be able to have them done for you at no charge. If you decide to try the latter option, you may be eligible to attend a clinic to amend your returns. More information about this potential program is under the following heading, as well as the "Resources" section on the back page.

Ways to get returns done:

- ***Paid Preparer***
- ***Yourself***
- ***Free of charge (sign up below!)***

Filing an Amended Return Yourself:

1) Prepare a new tax return for the year you are amending
2) Find form 1040X on the IRS website
3) Make sure to find the right year's form!
4) Fill out the form using your actual tax return from that year and a new one that you have prepared for that year:
   - Column A shows original or adjusted figures from the original return.
   - Column C shows the corrected figures.
   - The difference between Columns A and C is shown in Column B.
5) There is an area on the back of the form to explain why the change is being made.
6) Submit your new 1040, 1040X, and any necessary supporting documentation, to the IRS with the address specified on their website.
7) Returns will take up to 12 weeks to be processed.

Getting your returns done free of charge:

If you meet certain income limitations, you and your spouse may be able to get your returns done free of charge. You can contact one of the tax prep sites listed in "Resources" to see if you qualify.

RESOURCES

Free Tax Preparation During Tax Season

Tax Time Central Ohio— Get connected by calling Hands On Central Ohio — 211 or (614) 221-2255 or get more information about getting help or volunteering your services at www.taxtimecentralohio.org.

Legal Assistance

The Legal Aid Society of Columbus – Low Income Taxpayer Clinic
1108 City Park Avenue
Columbus, Ohio 43206
(614) 241-2001

Free Year-Round Tax Preparation

Lutheran Social Services
(614) 443-5130

Impact Community Action
(614) 252-2799

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