



VITA/TCE Volunteer Tax Alert (VTA)

Thank you for volunteering and for your dedication to top **QUALITY** service!

VTA Number	VTA - 2014 - 01
Date Issued	January 29, 2014
Tax Law Topic	Defense of Marriage Act (DOMA) – Same Sex Married Couple (SSMC)
Policy Change	IRS Revenue Ruling 2013-17 states that for federal tax purposes, IRS will recognize a marriage of same-sex individuals. To be valid, the marriage must have been entered into in a domestic or foreign jurisdiction whose laws authorized same-sex marriages, even if the couple resides in a jurisdiction that <u>does not recognize same-sex marriage</u>. <i>This ruling does not apply to domestic partners, civil unions and other formal relationships recognized under state law, whether of the opposite sex or the same-sex.</i>
How to Prepare Federal Return	<p>For federal purposes, VITA/TCE volunteers are required to treat SSMCs equally as they would any other married couple filing a tax return. In addition, the couple cannot be turned away based on their sexual orientation.</p> <p>Based on federal law, couples can file federal MFS or MFJ tax returns if they are married in a domestic or foreign jurisdiction whose laws authorize same-sex marriage.</p> <p>Volunteers are prohibited from asking the following questions:</p> <ul style="list-style-type: none">• What is your gender?• Are you a same-sex couple?• Are you filing a same-sex couple return?• In which state were you married?• Other gender or same-sex couple related questions.
How to Prepare State Return	<p>For states that do not allow SSMCs to file joint state tax returns, volunteers are required to prepare same-sex couple state returns based on state law provisions only when taxpayers disclose their gender or reveal that they are a SSMC requesting to file joint tax returns. To ensure an accurate state tax return, self-disclosure is necessary for those states that do not recognize SSMCs.</p> <p>Sites should have a process in place for preparing state tax returns based on their state laws. For additional information, use the following link: State Laws Regarding Same Sex Marriages</p> <p>If taxpayers:</p> <ul style="list-style-type: none">• Do not self-disclose that they are a SSMC; the state tax return will be prepared under the normal procedures as any other heterosexual married couple. Under this instance, volunteers are prohibited from asking the SSMC related questions listed above. Preparing returns under the normal procedures as any other heterosexual couple reduces the need to ask questions that may appear to be offensive to both heterosexual and SSMCs.• Self-disclose their gender and/or expresses their interest to file a SSMC return, volunteers may prepare the return based on state law where the couples reside. This may include asking additional question for filing amended, prior year, and/or state returns. Volunteers are discouraged from preparing a state return for any state that they are not familiar with the state tax law. Volunteers can ask pertinent questions for preparing the state returns. Please review the TaxWise instructions on how to prepare these returns.
Self- Disclosure Methods	Self-disclose can occur in the following manners: <ul style="list-style-type: none">▪ The taxpayer(s) providing the volunteer information that indicates both SSMC's gender such as state issued driver's licenses or similar identifications showing their gender (with or without verbal consent), or

	<ul style="list-style-type: none"> ▪ One or both taxpayers informing the volunteer that they are a same-sex couple or that they are interested in filing SSMC return. <p>Volunteers should not ask taxpayers questions about their gender, if they are a same sex couple, or the state in which they were married.</p>
Volunteers Role	<p>It is not the volunteer's role to determine gender based on appearance or the names listed on the intake sheet. Doing so could result in partner and/or IRS discrimination complaints, or congressional inquiries.</p> <p>Volunteers are preparing tax returns based on the information received from the taxpayer. Advise taxpayers to review their return for accuracy and inform them that they are ultimately responsible for the information included on their tax return.</p>
Resources	<ul style="list-style-type: none"> • <u>State Laws Regarding Same Sex Marriages</u> • Publication 5135 EN/SP, <i>Same Sex Tax Returns - Federal & State</i> Click here • Publication 4961, <i>VITA/TCE Volunteer Standards of Conduct</i> Click here • VITA/TCE Quality Site Requirements Click here • <u>Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law</u>

For additional question, please talk to your site coordinator, partner, or IRS SPEC relationship manager.