



2014 Filing Season: Preparing Same Sex Tax Returns (Federal & State)

January 27, 2014

Key Messages:

- For Federal tax purposes, IRS will recognize a marriage of same-sex individuals under Revenue Ruling 2013-17.
- Same-sex married couples can file Joint Federal Tax Returns.
- The federal recognition of same-sex marriages can impact the filing status on federal tax returns for the current and up to 3 prior years.
- Unlike the federal law, state laws regarding same-sex marriage vary across the United States.
- State laws regarding SSMCs affect VITA/TCE volunteers' ability to prepare an accurate state tax return.
- VITA/TCE partners must work with the state and their SPEC territory office to determine the state law and the requirements for filing state tax returns for SSMCs.
- To ensure an accurate state tax return, self-disclosure is necessary for those states that do not recognize SSMCs.
- Individuals must inform volunteers if they are interested in filing SSMCs tax returns.
- Volunteers can use TaxWise and follow state law provisions for preparing the state tax returns.

This fact sheet provides instructions on how to prepare same-sex married couples' federal and state tax returns in VITA/TCE sites. For the purpose of this document the acronym SSMC will be used when referring to a "same-sex married couple".

Background

On August 29, 2013, the U.S. Department of Treasury and Internal Revenue Service ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes.

The ruling implements federal tax aspects of the June 26, 2013 Supreme Court decision invalidating a key provision (Section 3) of the 1996 Defense of Marriage Act. Section 3 defined marriage as a legal union between one man and one woman as husband and wife.

IRS Revenue Ruling 2013-17 states that for federal tax purposes, it 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 authorize same-sex marriage, even if the couple resides in a jurisdiction that does not recognize same-sex marriage. 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.

The VITA and TCE programs were established to provide free assistance with the basic federal tax returns to individuals and families with low-to-moderate income, the elderly and persons with disabilities. Many partners prepare both federal and state returns to ensure taxpayers have met their filing requirements. In addition, many partners receive grant funding to prepare federal and state returns.

Federal Impact of Same-Sex Marriage Tax Returns

The federal recognition of same-sex marriages affects the federal tax return related to:

- **Filing status.** For tax year 2013 and subsequent years, same-sex married couples generally must file using the married filing jointly (MFJ) or married filing separately filing (MFS) status regardless of which state they currently reside.
- **Amended returns.** Same-sex couples may choose (but are not required) to amend their prior-year returns to reflect their married status.

How to Prepare a SSMC Federal Tax Return

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 can not be turned away based on their sexual orientation.

Volunteers are prohibited from asking the following questions:

- a. What is your gender?
- b. Are you a same-sex couple?
- c. Are you filing a same-sex couple tax return?
- d. In which state were you married?
- e. Other gender or same-sex couple related questions

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.

State Impact of Same-Sex Marriage Tax Returns

The filing status and amended return determination for the state return depends on where the couple resides, where they were married and the state's law. Unlike the federal law, state laws on same-sex marriage vary across the United States. **VITA/TCE partners must work with the state and their SPEC territory office to determine the state law and the requirement for filing state tax returns for SSMCs.** [Click here](#) for additional state information and guidance for filing returns.

How to Prepare a SSMC State Tax Return

For states allowing SSMCs to file MFJ state tax returns, there is no additional information required to prepare these tax returns. These couples must be treated in the same manner as heterosexual married couples. In addition, these couples shall not be asked any additional questions if they have marked their intake sheet as married. *In other words, if the state law allows SSMCs to file joint state tax returns, you should not ask if they are legally married or any other questions not relevant to filing a federal and state tax return.*

For states that do not allow SSMCs to file joint state tax returns, volunteers are required to prepare same-sex couples 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.**

If taxpayers:

- **self-disclose** their gender and that they are a SSMC, you may prepare the return based on state law where the couple resides. Volunteers are discouraged from preparing a state return for a state in which they (volunteer) do not know the state's tax law.
- **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 following questions:
 - a. What is your gender?
 - b. Are you a same-sex couple?
 - c. Are you filing a same-sex couple tax return?
 - d. In which state were you married?
 - e. Other gender or same-sex couple related questions

TaxWise software can be used to assist volunteers with preparing the state tax returns. For those states that will not allow SSMCs to file MFJ state tax returns, the couples may have to file a paper return.

Preparing Amended and Prior Year Returns

NEW: SPEC has revised its policy to allow both amended and prior year returns to be prepared for the last 3 years for any taxpayer. Amended returns may be prepared by a site if the site prepared and filed the taxpayer's original return. ***However, preparing amended and prior year returns is not mandatory for VITA/TCE sites. This is an optional service that partners can provide at their discretion and given available resources.***

Importance of Taxpayer Disclosure

IRS created Publication 5135, a disclosure flyer related to same-sex tax returns. All partners are required to either display the flyer at their sites or share with taxpayers prior to assisting them. Our expectation is that after reading the flyer, taxpayers will self-disclose if they are a same-sex couple and their intent to file jointly. The intake/interview process provides taxpayers another opportunity to disclose if they are a same-sex couple. The flyer states:

“The Internal Revenue Service sponsors the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.

The mission of these programs is to provide free basic tax return preparation for low-to-moderate income taxpayers, persons with disabilities, elderly, limited English proficient taxpayers and persons serving in the Military.

Volunteers participating in these programs will prepare a federal tax return (married filing jointly or married filing separately) for same-sex couples.

However, under state law you may not be able to file a state married filing jointly or married filing separately return. States that recognize same-sex marriage will allow a married filing jointly or married filing separately return. States that do not recognize same-sex marriage may require you to file single or head of household.”

Note: Publication 5135 is ***only*** available electronically at IRS.gov.

You are preparing the federal and state tax return based on the information the taxpayer discloses to you. Remind taxpayers that when they sign their tax returns, they are stating under penalty of perjury that the return is accurate, to the best of their knowledge.

Reminder about Volunteer Standards of Conduct

As referenced in [Publication 4961](#), *VITA/TCE Volunteer Standards of Conduct*, VITA/TCE volunteers are required to treat all taxpayers and volunteers in a professional, courteous and respectful manner. Failure to treat same-sex couples in this manner is a violation of the volunteer standards of conduct and may result in partners and/or volunteers being released from the VITA and TCE programs.