

State Income Taxes After *Obergefell*
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On June 26, 2015, the United States Supreme Court handed down its decision in *Obergefell v. Hodges*, 135 S.Ct. 2584, holding that states must recognize marriages of same-sex couples and issue licenses to those same-sex couples who wished to marry. This was a constitutional decision that effectively struck down any existing state laws banning recognition of same-sex marriages or State DOMAs (as we often referred to such laws).

Since the state laws were held to be unconstitutional, the legal result is that these laws were all void from the moment they were enacted. That means the effect of the Court's ruling is retroactive. So, should spouses who have been filing state taxes as single because their state tax laws refused to recognize their marriages now amend their past returns and file as married?

Answer: It depends. Here are some considerations:

1. State income tax rates rarely have the built-in marriage penalty that exists at the federal level, so it may not be worth amending returns to file as married.
2. But if employer-provided health plan benefits for a same-sex spouse were taxed at the state level in the past, then it may be worth amending in order to save the taxes paid on that imputed income.
3. The IRS issued clear guidance about amending federal returns after the federal DOMA was struck down in *Windsor*. See Rev. Rul 2013-17. Many state tax or revenue agencies have not yet provided similar guidance. That creates some uncertainty as to the effect that filing amended returns might have.

For example, the IRS ruling allowed great flexibility to same-sex spouses. They could amend or not, depending on whether filing as married helped them or hurt them. And, if they amended for one year they did not have to amend for all open years. If only one spouse wanted to amend he or she could do so even if the other spouse did not (the filing status in that case would be married filing separately). It is not clear whether the states that were forced to recognize marriage equality by the U.S. Supreme Court will be as supportive of same-sex spouses when it comes to state income tax issues and therefore provide similar flexibility.

Louisiana was one of the last states to recognize the validity of a same-sex couple's marriage. That is because the federal court challenge to the Louisiana DOMA failed in federal district court and was not specifically reversed by the Fifth Circuit until July 2, after the *Obergefell* decision was handed down. On July 2, 2015, the Louisiana Department of Revenue issued Revenue Information Bulletin No. 15-028, which can be found at <http://revenue.louisiana.gov/LawsPolicies/RIB15-028.pdf>

In this Bulletin, the Department announced that married same-sex couples would be permitted to file amended returns for any tax year that was still open under the state's three-year statute of limitations. But the Bulletin gave no further guidance as to whether both spouses had to amend or whether the couple had to claim a consistent filing status from year to year.

Bottom line: So long as a tax year is still open under the applicable statute of limitations, taxpayers should have a legal basis to file amended returns claiming they were married in that year. But, given the numerous glitches that many taxpayers experienced when they filed amended returns at the federal level after *Windsor*, there is no prediction that any amended state income tax returns will be accepted or that refunds will be calculated correctly.