

MSP
#25**DEFENSE OF MARRIAGE ACT: IRS, Domestic Partners and Same-Sex Couples Need Guidance****RESPONSIBLE OFFICIALS**

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DEFINITION OF PROBLEM

Recently, the Supreme Court held unconstitutional the Defense of Marriage Act of 1996 (DOMA), § 3, which effectively had precluded federal recognition of same-sex marriage.¹ Recent IRS guidance resolved certain questions of same-sex spouses anticipated by the National Taxpayer Advocate in her 2012 Annual Report to Congress. While the decision and guidance answer fundamental questions, questions about implementation remain unanswered. Additionally, questions of unmarried domestic or civil union partners persist, such as:

- Is alimony after dissolution of a civil union includible by the recipient and deductible by the payer?
- Is community property created upon partnering with an individual of the same sex a taxable gift?

ANALYSIS OF PROBLEM

On June 26, 2013, *United States v. Windsor* generally ruled DOMA unconstitutional, resulting in federal recognition of same-sex marriages.² Specifically, the Supreme Court allowed an estate tax marital deduction to a widow whose wife had died in New York. In a companion case, the Supreme Court effectively allowed a lower court to strike Proposition 8, which had essentially banned same-sex marriage in California.³ Immediately, the administration directed agencies to develop guidance to implement the law as interpreted by the Court.⁴

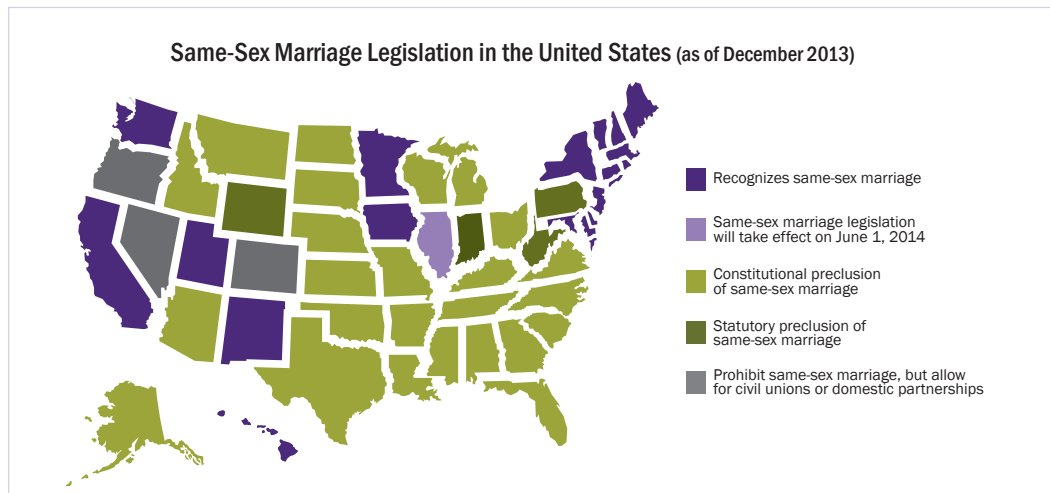
1 See 1 U.S.C. § 7, Pub. L. No. 104-199, 110 Stat. 2419.

2 See *U.S. v. Windsor*, 570 U.S. ____ (2013).

3 See *Hollingsworth v. Perry*, 570 U.S. ____ (2013).

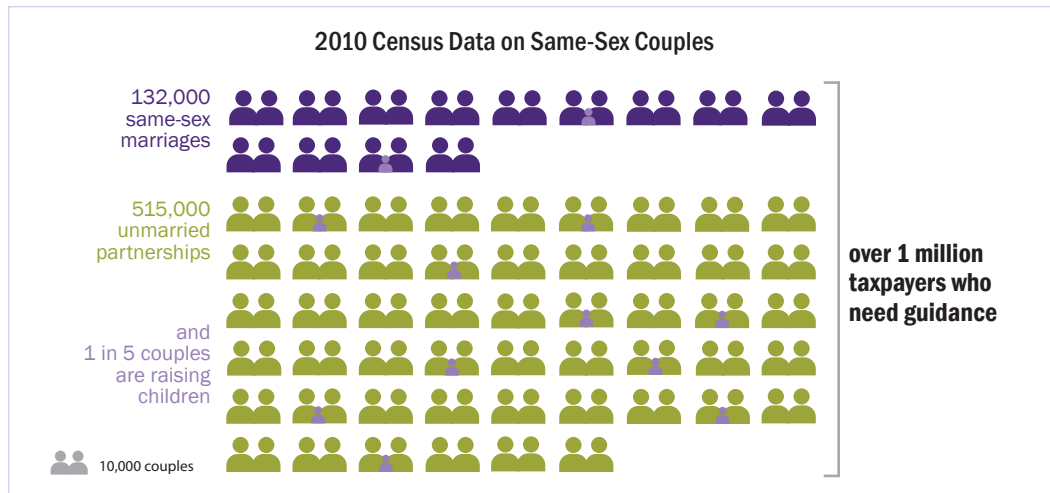
4 See White House Office of the Press Sec'y, Statement by the Pres. on the Supreme Ct. Ruling on DOMA (June 26, 2013), at <http://www.whitehouse.gov/doma-statement> (last visited July 3, 2013) ("So we welcome today's decision, and I've directed the Attorney General to work with other members of my Cabinet to review all relevant federal statutes to ensure this decision, including its implications for Federal benefits and obligations, is implemented swiftly and smoothly.").

Currently, 16 foreign jurisdictions, 18 states, and the District of Columbia recognize same-sex marriage, while 32 states do not.⁵ Of the latter, three states allow civil unions or domestic partnerships of same- or opposite-sex partners.⁶



Analysis of the latest Census data reflects about 132,000 same-sex marriages and 515,000 unmarried partnerships, about a fifth of which are raising children.⁷ These numbers indicate that over a million individual taxpayers need guidance.

- ⁵ See Council on Foreign Rel'ns, *Same-Sex Marriage: Global Comparisons* (July 31, 2013) (Argentina, Belgium, Brazil, Canada, Denmark, France, Iceland, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, So. Africa, Sweden, Uruguay), available at <http://www.cfr.org/society-and-culture/same-sex-marriage-global-comparisons/p31177> (last visited Aug. 19, 2013). American jurisdictions recognizing same-sex marriage are: Calif., Conn., Del., Hawaii, Ill., Iowa, Me., Md., Mass., Minn., N.H., N.J., N.M., N.Y., R.I., Vt., Wash. & D.C. Same-sex marriage legislation will take effect in Ill. on June 1, 2014. See <http://www.ncsl.org/research/human-services/same-sex-marriage.aspx> (last visited Nov. 25, 2013). The N.M. Supreme Court has effectively recognized same-sex marriage. See *Griego v. Oliver*, Docket No. 34,306 (N.M. Dec. 19, 2013). Twenty-nine states with constitutional preclusion of same-sex marriage are: Ala., Aka., Ariz., Ark., Colo., Fla., Ga., Id., Kans., Ken., La., Mich., Miss., Mo., Mont., Neb., Nev., N.C., N.D., Oh., Okla., Ore., S.C., S.D., Tenn., Tex., Utah, Va., Wisc.; four states with statutory preclusion of same-sex marriage are: Ind., Penn., W.V. & Wyo. See Nat'l Conference of State Legislatures, *Defining Marriage: Defense of Marriage Acts & Same-Sex Marriage Laws* (July 26, 2013), available at <http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx> (last visited Oct. 21, 2013). As of Dec. 23, 2013, Utah was issuing same-sex marriage licenses. See *Kitchen v. Herbert*, No. 2:13-cv-217 (D. Utah, Dec. 20, 2013).
- ⁶ Civil unions or domestic partnerships are allowed by three states (Colo., Nev., & Ore.) that prohibit same-sex marriage. See Nat'l Conference of State Legislatures, *Defining Marriage: Defense of Marriage Acts & Same-Sex Marriage Laws* (Jul. 26, 2013), available at <http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx> (last visited Oct. 23, 2013).
- ⁷ See Brief of Gary J. Gates as *Amicus Curiae* Supporting Respondents, *Hollingsworth v. Perry*, 570 U.S. ___ (2013) (No. 12-144) 25, 31, available at http://www.americanbar.org/publications/preview_home/12-144.html (last visited Aug. 19, 2013); see also Gary J. Gates, Ph.D., *Same-sex & Different-sex Couples in the American Community Survey: 2005-2011*, Williams Inst., Univ. of Calif. – L.A. (Feb. 2013), available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/ss-and-ds-couples-in-ac-2005-2011/> (last visited Aug. 19, 2013); Gary J. Gates & Abigail M. Cooke, *U.S. Census Snapshot: 2010*, Williams Inst., Univ. of Calif. – L.A., available at <http://williamsinstitute.law.ucla.edu/> (last visited Nov. 27, 2013).



Because of the difference between federal and state law, same-sex spouses may have to file tax returns as single at one level but as married at the other. Before *Windsor*, spouses whose state recognized their marriage would file singly for federal but jointly for state tax purposes. While spouses whose state does not recognize their marriage may continue to file singly for state tax purposes, IRS guidance of August 29, 2013, clarified that they should file as married for federal tax purposes.⁸

After the Supreme Court Decision, the IRS Has Answered Questions from Prior ARCs.

The National Taxpayer Advocate's 2010 Annual Report to Congress requested guidance, listing five particular questions.⁹ The IRS responded that guidance for a relatively small taxpayer population would be premature pending litigation, yet answered two of our questions along with several others in FAQs on IRS.gov. In anticipation of the Supreme Court decision, the 2012 Annual Report to Congress posed questions about amended returns and conflict of laws which IRS guidance now has answered, as discussed below.¹⁰ In addition, the IRS clarified the rules of construction, which generally allow interpretation of gendered terms in context.¹¹ In particular, the IRS guidance interprets terms like "husband" and "wife" to apply to same-sex couples.¹²

⁸ See Rev. Rul. 2013-17, 2013-38 I.R.B. 21 (Aug. 29, 2013); see e.g. Va. Dep't of Tax'n, Tax Bull. 13-13, Va. *Income Tax Treatment of Same-Sex Marriage* (Nov. 8, 2013).

⁹ See National Taxpayer Advocate 2010 Annual Report to Congress 211, 215 (Most Serious Problem: *State Domestic Partnership Laws Present Unanswered Federal Tax Questions*).

¹⁰ See National Taxpayer Advocate 2012 Annual Report to Congress 449 (Status Update: *Federal Tax Questions Continue to Trouble Domestic Partners and Same-Sex Spouses*).

¹¹ See Rev. Rul. 2013-17; IRC § 7701; 1 USC § 1.

¹² See Rev. Rul. 2013-17.

Taxpayers May Amend Returns in Open Years.

The 2012 Annual Report to Congress asked:

If the Supreme Court finds a constitutional flaw in the statute, would that finding be retroactive? Could same-sex spouses amend their returns to file jointly? Conversely, would same-sex spouses who had avoided federal marriage penalties be held harmless?¹³

On the announcement of *Windsor*, no authority appeared to preclude same-sex spouses who would have owed less tax but for DOMA from amending returns for open years, extending to those for which they had filed “protective” claims, as some practitioners had advised, in anticipation of the Supreme Court decision, to preserve their rights to amend their single returns into joint returns.¹⁴ By the same token, no authority appeared to compel same-sex spouses who had properly avoided marriage penalties under DOMA to amend.¹⁵ The IRS guidance has confirmed these propositions.¹⁶ Assuming that legitimate amended returns will arrive, the IRS should make sure that automatic sorting criteria do not ensnare these unusual filings, as discussed further below.

There Is a “Conflict of Laws.”

For same-sex spouses whose state of domicile does not recognize their marriage duly celebrated in another state or country (*i.e.* a “conflict of laws”),¹⁷ the *Windsor* case effectively forced the question of which law governs for federal tax purposes. Historically, the IRS had issued revenue rulings to recognize common-law marriage of taxpayers “who later move into a state in which a ceremony is required to initiate the marital relationship” and to disregard state anti-miscegenation statutes as unconstitutional.¹⁸ The IRS cited this precedent in ruling that the state of celebration governs for federal tax purposes even if the taxpayers live in a state that does not recognize their marriage.¹⁹

The “conflict of laws” among states may be particularly acute for taxpayers who move frequently.²⁰ Various tax questions may turn on state law. In the case of a taxpayer who moves with a same-sex spouse and the spouse’s child to a state that does not recognize their marriage performed in their home state, the IRS will continue to recognize both as spouses even if the taxpayer is no longer a stepparent.²¹

13 National Taxpayer Advocate 2012 Annual Report to Congress 545-55 (Status Update: *Federal Tax Questions Continue to Trouble Domestic Partners and Same-Sex Spouses*).

14 See, e.g., Firm Comments on Tax Implications of Supreme Court’s DOMA Decision, Tax Notes Today 153-10 (Aug. 1, 2013), reflecting letter to IRS on behalf of Human Rights Campaign, citing *Badaracco v. Comm’r*, 464 U. S. 386, 393 (1984) (“the Internal Revenue Code does not explicitly provide either for a taxpayer’s filing, or for the Commissioner’s acceptance, of an amended return”).

15 Although regulations refer to amendment of inclusions and deductions in open years, applicability to filing status under law then prevailing would be unclear. See Treas. Reg. §§ 1.451-1(a); 1.461-1(a).

16 See Rev. Rul. 2013-17.

17 “That part of the law of each state which determines whether in dealing with a legal situation the law of some other state will be recognized, be given effect or be applied is called the Conflict of Laws.” Restatement of Conflict of Laws § 1 (1934, 2013 ed.).

18 See Rev. Rul. 58-66, 1958-1 C.B. 60; Rev. Rul. 68-277, 1968-1 C.B. 526 (citing *Loving v. Va.*, 388 U.S. 1 (1967)).

19 See Rev. Rul. 2013-17 (citing Rev. Rul. 58-66).

20 For example, military service members may be assigned to various posts of duty which may or may not recognize same-sex marriage. See Under Sec’y of Defense, Memo. re: Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members (Aug. 13, 2013) (authorizing leave to travel to a state that allows same-sex marriage), available at <http://www.defense.gov/releases/release.aspx?releaseid=16203> (last visited Oct. 22, 2013).

21 See Answers to Frequently Asked Questions for Individuals of the Same Sex who Are Married Under State Law, Q&A6, available at <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples> (last visited Oct. 22, 2013) (“Q6. If same-sex spouses (who file using the married filing separately status) have a child, which parent may claim the child as a dependent?”).

Domestic Partners Still Need Guidance.

Questions also remain for domestic partners of the same or opposite sex whose state authorizes registration or civil unions. The 2013 guidance provides that the IRS will not treat partners as spouses.²² In a 2011 letter to H&R Block that has generated commentary since it came “as a surprise to practitioners,”²³ the IRS Office of Chief Counsel (CC) had appeared to allow Illinois opposite-sex civil union partners to file jointly, which DOMA presumably would not have allowed for same-sex partners.²⁴ On the other hand, state and federal courts have indicated that partners are not “spouses.”²⁵

Because of the difference between federal and state law, same-sex spouses may have to file tax returns as single at one level but as married at the other.

Suppose a civil union state, such as Oregon, grants alimony to a former same-sex partner. Presumably, non-spouse partners remain under pre-statutory case law whereby the Supreme Court had held that alimony was a “natural” obligation neither includible by the (ex-) wife nor deductible by the (ex-) husband.²⁶ For spouses (now including same-sex spouses), Internal Revenue Code (IRC) §§ 71 and 215 would prescribe inclusion of alimony in the gross income of the recipient with a correlative deduction by the payer. In a state that recognizes same-sex marriage, such as nearby Washington, a former same-sex spouse therefore could amend a pre-*Windsor* return to deduct alimony. Under the recent IRS guidance, there seems to be no need for a corresponding amendment by the other ex-spouse, who before *Windsor* had not been required to include alimony received.²⁷

In a state like Nevada that authorizes domestic partnership (but not same-sex marriage) resulting in community property, would registration result in a taxable gift of community property?²⁸ A Private Letter Ruling suggests not, but definitive guidance has not yet appeared.²⁹ Presumably, sole proprietors will continue to face the anomaly whereby their domestic partners — even if not working in the business — become subject to self-employment tax on half the income from community property because they are not spouses.³⁰

Another question persists if a court places a child with the parent’s same-sex partner — who may be precluded from adoption in certain states.³¹ Would that placement come within the definition of “eligible

22 See Rev. Rul. 2013-17.

23 See Amy S. Elliott, *IRS Memo Indicates Civil Unions Are Marriages for Federal Tax Purposes*, Tax Notes Today 216-5 (Nov. 7, 2011).

24 See Gen. Info. Ltr. (Aug. 30, 2011) (“if Illinois treats the parties to an Illinois civil union who are of opposite sex as husband and wife, they are considered ‘husband and wife’ for purposes of Section 6013 of the Internal Revenue Code, and are not precluded from filing jointly”).

25 See *Smelt v. Orange County*, 447 F.3d 673 (9th Cir. 2006) (denying standing to challenge DOMA by partners who “are not in a relationship that has been dubbed marriage by any state, much less by the State of California”) *cert. den’d* 549 U.S. 959 (2006); *Bishop v. Okla.*, 447 F. Supp. 2d 1239, 1247 (N.D. Okla. 2006) (denying partners standing to challenge DOMA even though state statute grants a civil union “all the same benefits, protections and responsibilities under law” as marriage, because “a Vermont civil union is not the equivalent of a marriage”), *rev’d & remanded* on other issue 333 Fed. Appx. 361 (10th Cir. 2009); *Strauss v. Horton*, 46 Cal.4th 364, 445 (2009) (“the designation of ‘marriage’ is, by virtue of the new state constitutional provision, now reserved for opposite-sex couples”); *Knight v. Schwarzenegger*, 26 Cal.Rptr.3d 687, 690 (2005) (“domestic partners act did not constitute an amendment of the defense of marriage initiative”).

26 See *Gould v. Gould*, 245 U.S. 151 (1917). As noted above, the IRS has not confirmed the applicability of this case law.

27 To avoid a “whipsaw,” a payor claiming an alimony deduction must report the payee’s Social Security number, facilitating IRS verification of the corresponding income inclusion. See Treas. Reg. § 1.215-1T, Q&A-1. In situations to which Rev. Rul. 2013-17 applies, however, this ruling would not require amendment of a return correctly filed before *Windsor*.

28 See National Taxpayer Advocate 2010 Annual Report to Congress 215.

29 See Priv. Ltr. Rul. 2010-21-048 (May 5, 2010).

30 See National Taxpayer Advocate 2012 Annual Report to Congress 452-53 (discussing IRC § 1402).

31 See Fla. Stat. § 63.042(2)(a) (limiting joint adoption to husband and wife); Miss. Code § 93-17-3 (disallowing adoption by same-sex couples); Utah Code § 78B-6-117 (prohibiting adoption “by a person who is cohabiting in a relationship that is not a legally valid and binding marriage”).

foster child,” meaning “an individual who is placed with the taxpayer by ... judgment, decree, or other order of any court of competent jurisdiction” for tax dependency purposes?³² Literally, a court may place the child, if not with a traditional foster parent, with a same-sex parent. Thus, the terms of the definition could apply to changing social and legal circumstances. This issue is particularly important for same-sex couples, who are six times more likely than opposite-sex couples to be raising foster children.³³ As a matter of rationale, the only reason to deny the dependency deduction would be failure to recognize the parental role of the partner.³⁴

Employment Benefits May Present Conflict of Interest.

Generally, IRC §§ 105 and 106 exclude from gross income the value of employer-provided health coverage, which may extend to the employee’s spouse and dependents. Before *Windsor*, in the case of a same-sex spouse who was neither a spouse nor a dependent for federal tax purposes, some employers extended health coverage that was not excludible. After *Windsor*, employers may seek payroll tax refunds to the extent coverage should have been excluded, and employees may amend returns to reduce gross income. IRS guidance confirms the viability of these amendments.³⁵ On the other hand, an employee who would face a marriage penalty may not wish to amend because in “many cases the pre-tax savings will not outweigh the additional tax that may be due on an amended return claiming married status.”³⁶ As a matter of fact, employer and employee may have different desires.³⁷

Same-Sex Spouses Now Are Related Parties.

Under DOMA, same-sex spouses were strangers at law, avoiding provisions that resulted in a marriage penalty.³⁸ By the same token, same-sex spouses did not need to file jointly to claim tax benefits for which opposite-sex spouses would have had to file jointly.³⁹ After *Windsor*, same-sex spouses are related parties for purposes such as installment sales, discharge of debt, losses, corporations, partnerships, and trusts.⁴⁰ If same-sex spouses had made arrangements assuming that their marriage was not recognized under DOMA, they must now make alterations, perhaps confronting property or contract law impediments, to reflect their marriage, at least for federal tax purposes.

32 IRC § 152(f)(1)(C) (defining “eligible foster child”).

33 See Brief of Gary J. Gates as *Amicus Curiae* Supporting Respondents, *Hollingsworth v. Perry*, 570 U.S. ____ (2013) (No. 12-144) 39, available at http://www.americanbar.org/publications/preview_home/12-144.html (last visited Aug. 19, 2013); see also Gary J. Gates, Ph.D., *LGBT Parenting in the U.S.*, Williams Inst., Univ. of Calif. — L.A. (Feb. 2013) 1, 3, available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/> (last visited Aug. 19, 2013).

34 See National Taxpayer Advocate 2012 Annual Report to Congress 454.

35 See Notice 2013-61, 2013-42 I.R.B. 432 (setting forth guidance for employers and employees to make refund claims or adjustments of payroll tax withholding for some benefits provided and monies paid to same-sex spouses); Answers to Frequently Asked Questions for Individuals of the Same Sex who Are Married Under State Law, available at <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples> (last visited Sept. 12, 2013). See also Notice 2014-1, 2014-2 I.R.B. 1.

36 CCH Tax Briefing, *IRS Guidance on Same-Sex Marriage* 5 (Sept. 3, 2013) (itals. original).

37 Generally, an employer may claim a refund of overpaid Social Security tax only upon reimbursing the employee portion or obtaining employee consent. See Treas. Reg. § 31.6402(a)-2(a).

38 See Theodore P. Seto, *Unintended Tax Advantages of Gay Marriage*, 65 Wash. & Lee L. Rev. 1529 (2008).

39 E.g. IRC §§ 21(e)(2) (child-care credit), 22(e)(1) (elderly or disabled credit), 23(f)(1) (adoption credit), 25A(g)(6) (Lifetime Learning, Hope Scholarship, and American Opportunity Tax Credits), 32(d) (Earned Income Tax Credit), 36(c)(5) (First-Time Homebuyer Credit), 135(d)(3) (U.S. savings bond interest exclusion for college expenses), 137(e) (adoption exclusion), 163(h)(4)(A)(ii) (home mortgage interest deduction), 221(e)(2) (student loan interest deduction).

40 See IRC §§ 453, 108, 267, 318, 707, 672.

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IRS Employees and Taxpayers Need Instruction.

The IRS needs to train employees and program systems to process relevant returns accurately. From July 24 to August 29, 2013, IRS instructions told employees to hold amended returns that referenced DOMA or *Windsor*.⁴¹ Consequently, the IRS suspended hundreds of these claims.⁴² On the other hand, same-sex spousal amendments that were not so labeled may have proceeded without delay – resulting in disparate treatment. The instruction above exemplifies how delays in guidance could have delayed the processing of claims of same-sex spouses.⁴³

As individual rather than sophisticated corporate or institutional taxpayers, same-sex spouses need user-friendly guidance. To facilitate compliance, the IRS should consolidate the FAQs and related guidance into a single publication for non-traditional families.

At the same time, the IRS should review its systems for processing amended and new returns.⁴⁴ As discussed elsewhere in this report, IRS revenue protection filters may put certain returns in the limbo of refund fraud processes.⁴⁵

CONCLUSION

In response to our 2010 Most Serious Problem discussion, the IRS said that guidance was premature pending litigation for a small taxpayer population.⁴⁶ The Supreme Court decision and administration directive disposed of the first concern. Regarding the population, there are significant demographic data, yet the IRS has issued guidance for discrete populations historically.⁴⁷ In addition to FAQs, further guidance should be both more authoritative (through published rulemaking like Revenue Ruling 2013-17 and Notice 2013-61 cited above) and more accessible (through a plain-language IRS Publication). Moreover, to avoid unnecessarily freezing or rejecting amended and new returns from same-sex married taxpayers, the IRS must train its employees to recognize the many and diverse scenarios that can arise as tax administration transitions to recognizing same-sex marriages.

41 Servicewide Electronic Research Program (SERP) Alert No. 13A0447 (July 24, 2013) (“If assigned a Form 1040X Amended return and “*Defense of Marriage Act*,” “*DOMA*,” “*Windsor v. the United States*,” or a reference pertaining to “*Recent Supreme Court Decision*” is notated on the claim, HOLD the claim.”).

42 See IRS response to TAS research request (Oct. 29 & Nov. 1, 2013).

43 On a related note, IRM 21.7.5.3.4(3) (Oct. 1, 2013), relating to estate tax on same-sex couples, directs IRS employees to “Verify the validity of the marriage and U.S. citizenship.” By contrast, Form 706, *U.S. Estate (and Generation-Skipping Transfer) Tax Return*, pt. 6 at 4, states: “A decedent with a surviving spouse elects portability of the deceased spousal unused exclusion (DSUE) amount, if any, by completing and timely-filing this return. No further action is required to elect portability of the DSUE amount to allow the surviving spouse to use the decedent’s DSUE amount.”

44 See IRM 21.6.1.4.3, Processing Separate-to-Joint Adjustments (Sept. 10, 2013); SERP Alert No. 13A0515 (Aug. 30, 2013) (“work all [individual] M[aster] F[ile] DOMA claims in inventory or any new receipts following normal procedures”).

45 See *supra* Status Update: *The IRS Still Refuses to Issue Refunds to Victims of Return Preparer Misconduct, Despite Ample Guidance Allowing the Payment of Such Refunds*; Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers*.

46 See National Taxpayer Advocate 2010 Annual Report to Congress 218.

47 See, e.g., Rev. Proc. 2010-41, 2010-48 I.R.B. 781 (including guidance for return preparers without a Social Security number due to religious objection); Rev. Proc. 2010-31, 2010-40 I.R.B. 413 (setting forth guidance on when a foreign adoption is final for parents who claim a tax credit for expenses of adopting a child); Notice 2010-30, 2010-18 I.R.B. 650 (containing guidance for military spouses who are civilians working in a U.S. territory but claiming residence in a state); Rev. Rul. 2004-71, 2004-2 C.B. 74 (applying IRC § 6402 refund offset to community property in Arizona and Wisconsin); Rev. Rul. 2004-72, 2004-2 C.B. 77 (applying refund offset to community property in California, Idaho, and Louisiana); Rev. Rul. 2004-73, 2004-2 C.B. 80 (applying refund offset to community property in Nevada, New Mexico, and Washington); Rev. Rul. 2004-74, 2004-2 C.B. 84 (applying refund offset to community property in Texas).

RECOMMENDATIONS

The IRS should issue formal and informal guidance for:

- Same-sex spouses as questions continue to arise;
- Same- and opposite-sex partners who have marital attributes under civil union or similar state law;
- IRS employees to promptly process the foregoing returns and related claims; and
- Review of identity theft and revenue protection filters in light of common filing scenarios by same-sex spouses to ensure that the IRS does not freeze and delay refunds to legitimately married taxpayers.