



*STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS*  
**DEPARTMENT OF REVENUE**  
**DIVISION OF TAXATION**

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# Same-sex marriage and taxes: Frequently asked questions (FAQs)



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Legislation approved by the General Assembly and signed into law by Governor Lincoln D. Chafee on May 2, 2013, allows eligible couples to marry regardless of gender.<sup>1</sup>

As a result, from a Rhode Island tax perspective, same-sex married couples have the same rights and responsibilities that formerly applied only to opposite-sex married couples. The new law, which took effect August 1, 2013, raises a number of questions involving the Rhode Island tax impact of same-sex marriage. For example, will a same-sex married couple be able to use the “married filing jointly” filing status on a Rhode Island personal income tax return? If so, how soon? Will the rules apply to nonresidents as well as residents?

On the following pages, we provide answers to these and other questions – not only for same-sex couples, but also for their advisers – in light of Rhode Island’s new law and the guidance which the Internal Revenue Service provided on August 29, 2013, regarding the federal tax treatment of same-sex married couples.<sup>2</sup> (Please note that the terms “husband,” “wife,” and “spouse” on the following pages should be considered gender-neutral to reflect both opposite-sex and same-sex married couples. The term “marriage” refers to marriages involving both opposite-sex and same-sex couples.)

This document serves only as a general summary of certain Rhode Island tax matters involving same-sex marriage. Every taxpayer's situation is different. Please consider consulting a tax professional who can advise you about how Rhode Island General Laws, tax regulations, and tax rulings may affect your particular situation.

If there are questions that we have not answered in this document, please feel free to contact us. The Rhode Island Division of Taxation is at One Capitol Hill, Providence R.I. 02908. We are located in the Powers Building, diagonally across Smith Street from the State House. We are open from 8:30 a.m. to 3:30 p.m. business days. We can be reached by phone at (401) 574-8829 (extension 3), or by e-mail: [txassist@tax.ri.gov](mailto:txassist@tax.ri.gov).

Sincerely,

David M. Sullivan  
Rhode Island Tax Administrator

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<sup>1</sup> [Public Law 2013](#), chapters 4 and 5. The Act amended Rhode Island General Laws (RIGL) chapters 15-1, 15-2, 15-3, and 15-3.1.

<sup>2</sup> [Revenue Ruling 2013-17](#).

## Same-sex marriage and taxes: Frequently asked questions (FAQs)

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**1. Will a same-sex couple married under Rhode Island’s new law be allowed to file their Rhode Island personal income tax return as a married couple?**

Yes. If you are married as of the last day of the calendar year, you must file your Rhode Island personal income tax return for that year using a “married” filing status.<sup>3</sup>

**2. How soon will we be able to use a “married” filing status?**

If you are married under provisions of Rhode Island law as of December 31, 2013, use a “married” filing status in early 2014 – on your Rhode Island personal income tax return covering tax year 2013.<sup>4</sup>

♦ *For information on claiming refunds for prior years by filing amended returns, please see Questions 28 and 29.*

**3. Please provide some examples of the most likely filing status scenarios for same-sex couples married under Rhode Island law on or after August 1, 2013.**

Example 1:

Nina and Claudia are a same-sex couple married under Rhode Island law. Nina regularly files her federal and Rhode Island income tax returns using the “single” filing status. Claudia regularly files her federal and Rhode Island income tax returns using the “single” status.

For 2013 and later tax years, Nina and Claudia will file “married filing jointly” returns for federal and Rhode Island personal income tax purposes.

Example 2:

Before marrying, Frederick maintained his own household, for himself. Julian maintained his own household – for himself and his child.

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<sup>3</sup> Either “married filing jointly” or “married filing separately.” Nearly all married couples file jointly.

<sup>4</sup> The same principle applies to marriages validly entered into in another state or jurisdiction and that are not prohibited under provisions of Rhode Island statute.

Frederick filed his federal and Rhode Island income tax returns using the “single” filing status. Julian filed his federal and Rhode Island income tax returns using the “head of household” filing status.

Following their marriage under Rhode Island law in August 2013, Frederick and Julian – and Julian’s child – all move into the same household. For tax year 2013, Frederick and Julian will file as “married filing jointly” for federal and Rhode Island personal income tax purposes; the child will be claimed as a dependent on the returns.<sup>5</sup>

**4. How shall a same-sex married couple, filing a joint return, go about calculating their Rhode Island return?**

Complete your federal return, using federal rules and a “married” filing status. Find your adjusted gross income, also known as AGI. (It’s typically on the cover of your U.S. Form 1040, toward the bottom.) Carry that figure over to Line 1 of your Rhode Island return. Then complete your Rhode Island return using the “married” filing status. (Remember that your federal filing status and Rhode Island filing status must match.)

**5. Is “federal adjusted gross income” the only figure from the federal return we need for purposes of filing our Rhode Island personal income tax return?**

There may be additional numbers on your federal return that may affect your jointly filed Rhode Island return – such as the federal credit for child and dependent care expenses and the federal earned income credit.

**6. Must we attach our federal return to our Rhode Island personal income tax return?**

No. But please do keep it for your records; we may need to see a copy later on, as part of the routine examination process which applies to all taxpayers.

**7. If we sell our principal residence at a profit (a “gain”), what is the exclusion amount for Rhode Island personal income tax purposes?**

You may be able to exclude from income, for Rhode Island tax purposes, up to \$500,000 in gain from the sale of a principal residence, provided the exclusion requirements in federal law are met.<sup>6</sup>

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<sup>5</sup> Couples married on or after August 1, 2013, cannot claim “head of household” filing status for tax year 2013. For more about federal tax treatment involving same-sex marriage, see Internal Revenue Service release [IR-2013-72](#).

<sup>6</sup> Internal Revenue Code (IRC) § 121.

**8. How shall we treat employee benefits, such as health insurance? I was already covered, as a domestic partner, under my same-sex spouse's health insurance plan at work. She formerly was required to report the dollar value of my coverage as income on her federal return. How shall we treat that on our jointly filed Rhode Island return?**

Because the IRS now recognizes same-sex marriage for federal income tax purposes, the value of certain employee benefits provided to a same-sex spouse/partner – and to that person's child or children – is no longer treated as income for federal income tax purposes. Such benefits include employer-provided group health insurance.<sup>7</sup>

Because the value of such items is not to be included on your federal return, the value will not be reflected on your Rhode Island return.<sup>8</sup> As a result, you won't be taxed on it for Rhode Island personal income tax purposes.<sup>9</sup>

**9. Before we married, my spouse itemized deductions on Schedule A of his U.S. Form 1040. I claimed the standard deduction on my federal return. Now that we are married, may we simply combine all of our deductions for purposes of the Rhode Island return?**

No. Rhode Island in 2010 enacted sweeping changes to the state's personal income tax system. The changes took effect for tax years beginning on or after January 1, 2011. One change was a sharp reduction in the state's top personal income tax rate. Another change was the elimination of the option of claiming itemized deductions.

As a result, no taxpayer may now claim itemized deductions for Rhode Island personal income tax purposes. Instead, taxpayers are eligible to claim a standard deduction amount – which varies depending on filing status and may be limited depending on income.<sup>10</sup> The standard deduction amount for a married couple filing a joint Rhode Island return is exactly twice the amount allowed for someone who is single.

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<sup>7</sup> The IRS has [posted FAQs](#) which, among other things, discuss the federal income tax treatment of health insurance and other employee benefits for spouses in a same-sex marriage and dependents. See also [Rev. Rul. 2013-17](#).

<sup>8</sup> By not counting the imputed income of the employee benefits as part of your federal adjusted gross income, you will automatically receive a Rhode Island personal income tax benefit. On Schedule M of your Rhode Island return, do not claim the modification decreasing AGI for amounts of insurance benefits for dependents and domestic partners under RIGL § 44-30-12(c)(6).

<sup>9</sup> Employers should not calculate withholding based on the higher amount.

<sup>10</sup> The standard deduction, personal exemption, and dependency exemption amounts are subject to annual adjustments for inflation. Higher-income taxpayers may be subject to a reduction – or elimination – of the standard deduction, personal exemption, and dependency exemption amounts depending on their Rhode Island income. For tax year 2013, the phase-out range is \$186,550 to \$207,950.

**10. Now that we are married, what changes might we encounter in calculating our federal and Rhode Island returns?**

There could be quite a few – too many to list here – but the following examples may give you a general idea.

Example 1:

Suppose that, for 2013, your income is \$80,000, and your spouse's is \$35,000. Suppose, too, that you have student loans outstanding, and are paying interest on those loans.

Previously, you would not have been able to deduct any of that interest on your federal return – because your filing status would have been “single,” and your income would have exceeded the applicable federal threshold for someone who is single (\$75,000). And because that would have impacted your federal AGI, it would have impacted your income for Rhode Island tax purposes, too.

But because of the recent changes recognizing same-sex marriage,<sup>11</sup> all of your interest will be deductible at the federal level,<sup>12</sup> because your combined income of \$115,000 will fall below the applicable federal threshold for a married couple filing a joint return (\$155,000). Thus, your AGI will be reduced for purposes of calculating your Rhode Island personal income tax – saving you tax.

Example 2:

You recognized gain of \$8,000 from the sale of stock this year and had no losses. Your spouse has \$20,000 of unused capital losses from stock sales in prior years, but no capital gains for this year. Previously, you would have had to report \$8,000 in gains, and your spouse would have been allowed to use only \$3,000 of the unused capital losses.

But because of the recent changes, gains and losses must be combined on a joint return. As a result, you'll get to use \$8,000 of the unused losses, which eliminates the \$8,000 gain for tax purposes. Your AGI will be reduced for federal and Rhode Island tax purposes.

Example 3:

You work outside the home for an employer. Your spouse remains at home raising a child. You have employer-provided group health insurance, covering all three of you – the value of the spouse-and-child coverage is \$5,000. If the laws had not changed, your employer would have included in your income the \$5,000 value of covering your spouse

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<sup>11</sup> Rhode Island Public Law 2013, chapters 4 and 5; IRS Revenue Ruling 2013-17.

<sup>12</sup> Subject to limitations and other provisions of IRC § 221. See also IRS Pub. 970.

and child. You would have had to report that \$5,000 on your individual federal return.

But because of the recent changes, you will not have to include that \$5,000 in income. Thus, it will not be part of your federal AGI, and will not be taxed for federal or Rhode Island purposes.

**Example 4:**

Suppose that you both are retired and collect Social Security benefits. For tax year 2012, each of you filed your own return as “single,” and your provisional income for 2012 was \$18,000 each. As a result, none of your Social Security benefits were taxable at the federal or Rhode Island level because your provisional income fell below the applicable threshold for someone who is single (\$25,000).

However, because of the recent changes, if you marry this year, some of your Social Security benefits will be taxable at the federal and Rhode Island level because the combined provisional income for both of you will be \$36,000, which exceeds the applicable threshold of \$32,000 for a married couple filing a joint return.

<b>Social Security benefits and taxes</b>		
If you use this filing status . . .	. . . and your provisional income <sup>(1)</sup> exceeds this threshold . . .	. . . then up to this portion of your Social Security benefits is taxable:
Single <sup>(2)</sup>	\$25,000	50 %
Single	\$34,000	85 %
Married	\$32,000	50 %
Married	\$44,000	85 %

<sup>(1)</sup> - "Provisional income" generally includes pensions, capital gains distributions, taxable interest, dividends, self-employment income, tax-exempt interest, and other income – plus one-half of your Social Security benefits.

<sup>(2)</sup> – "Single" for this calculation also means someone filing as "head of household," "qualifying widow," or "qualifying widower." For rules governing "married filing separately" filing status, see IRS Publication 915.

**Example 5:**

Your income is \$60,000; your spouse’s is \$115,000. If the laws had not changed, you would have filed as “single” on your U.S. Form 1040, and you would have claimed the federal deduction for tuition and fees for \$4,000. That, in turn, would have reduced your AGI for Rhode Island tax purposes.

But because of the recent changes, you no longer qualify for the federal deduction for tuition and fees. That's because whether you can take the deduction depends on your income level – and your combined income of \$175,000 in this example exceeds the applicable threshold of \$160,000 for 2013 for a married couple filing a joint return. Thus, your AGI for Rhode Island tax purposes will be \$4,000 higher than it otherwise would have been.

♦ *To see how your personal circumstances might be affected by the changes in federal and Rhode Island laws, consider enlisting the aid of a tax professional, such as a certified public accountant, enrolled agent, or public accountant.*

## **11. How will the Rhode Island refund offset program affect us?**

Rhode Island's refund offset program<sup>13</sup> generally works as follows:

If someone is delinquent on Rhode Island personal income tax, federal personal income tax, or has certain other debts, that person's Rhode Island personal income tax refund will be intercepted – and some or all of the refund amount used to pay the debt.

Debts involved in the Rhode Island personal income tax refund program include the following:

- Rhode Island personal income tax;
- federal income tax;
- Connecticut state tax;
- obligations owed to the City of East Providence;
- obligations owed to the City of Woonsocket.
- child support payments;
- amounts owed the Rhode Island Higher Education Assistance Authority;
- cash assistance and other benefit payments owed the Rhode Island Department of Human Services;
- court costs, fines, and restitution owed;
- overpayments of unemployment insurance or temporary disability insurance payments owed the Rhode Island Department of Labor and Training; and
- obligations owed to the Rhode Island Student Loan Authority.

As a general rule, each spouse on a joint Rhode Island return is responsible for the tax debts of the other spouse. So, for example, if one spouse is delinquent on Rhode Island personal income tax, the joint refund owed the couple may be intercepted to pay the outstanding debt.

Rhode Island generally follows federal rules involving innocent-spouse and injured-spouse relief. (A spouse on a jointly filed Rhode Island personal income tax return may file a request to get back his or her share of the joint refund when the joint overpayment is applied to a past-due obligation of the other spouse.)

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<sup>13</sup> RIGL chapters 44-30.1 and 44-30.2.

**12. We were married in another state, not Rhode Island, though we live in Rhode Island now. May we file our Rhode Island return as a married couple?**

Yes. Effective for tax year 2013 and later tax years, file your Rhode Island resident return as a married couple.

**13. We are in a civil union. May we file our Rhode Island return as a married couple?**

Because you are not married, you cannot file your Rhode Island personal income tax return using a “married” filing status. However, should you choose to “convert” your civil union into a marriage that is recognized under terms of Rhode Island law, you will be able to file your Rhode Island return as a married couple.<sup>14</sup>

**14. We were married in another state, not Rhode Island, and we live in that other state. May we file our Rhode Island nonresident return as a married couple?**

Yes, effective for tax years 2013 and later.

**15. We are lifelong Rhode Island residents. We were married a few years ago in a state that allowed same-sex marriages. May we now file amended Rhode Island returns – for years prior to tax year 2013 – to change our filing status to “married filing jointly”?**

Please refer to Questions 28 and 29.

**16. When a same-sex married couple files a joint Rhode Island resident or nonresident return, may that return be filed electronically?**

Yes.

**17. If we file a joint return – resident or nonresident – will we incur a “marriage penalty”?**

A same-sex married couple filing a joint return are subject to the same rules as an opposite-sex married couple filing a joint return and may be subject to the “marriage penalty”.<sup>15</sup> It is perhaps best explained by example:

If each of you is single and each ends up with \$50,000 in Rhode Island taxable income for 2013, each of your individual returns will show that the

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<sup>14</sup> IRS Revenue Ruling 2013-17 does not allow those in a registered domestic partnership, civil union, or similar formal relationship to file returns as a married couple. Rhode Island does not, either. But RIGL § 15-3.1-12 outlines the process for merger of a civil union into a marriage.

<sup>15</sup> Various “marriage benefits” and “marriage penalties” are built into personal income tax systems in a number of other states and at the federal level.

income would be taxed at Rhode Island's lowest rate, 3.75 percent tax rate.

However, if you marry, and your combined Rhode Island taxable income is \$100,000 for 2013, only about half of your income would be taxed at Rhode Island's lowest rate of 3.75 percent; the rest would be taxed at 4.75 percent. So you'd wind up, as a couple, paying a few hundred dollars more in Rhode Island personal income tax.

**18. Are there other potential "marriage penalties" faced by higher-income couples?**

Yes. You may lose some or all of your standard deduction and personal exemption amounts. This matter is also best explained by example:

Suppose each of you is single. For 2013, one of you ends up with \$150,000 in Rhode Island taxable income, the other with \$75,000. On the Rhode Island personal income tax return for 2013, each uses the "single" filing status. As a result, each gets to claim a standard deduction amount of \$8,000. Each of you also gets to claim a personal exemption amount of \$3,750. In other words, each of you gets to shelter \$11,750 from Rhode Island tax.

If you marry in 2013 and file a joint return, you would be unable to claim a standard deduction amount and you would be unable to claim a personal exemption amount. That's because Rhode Island limits the standard deduction and personal exemption based on income. In general, the higher your income, the less likely you'll qualify for the standard deduction and personal exemption. For 2013, the limit is \$207,950. And on a joint return, income is combined for purposes of the limit.<sup>16</sup>

So in the example above, each person filing "single" qualifies for a standard deduction and personal exemption amount because each person's Rhode Island taxable income is below the limit. But if you were to marry, your combined Rhode Island taxable income would total \$225,000, which exceeds the limit. (Note that if you are married, you cannot file as "single" on your Rhode Island personal income tax return; you must file as "married.")

**19. In filing a joint Rhode Island return, shall we put all of our Form W-2 wage statements and Forms 1099 on Schedule W of Form RI-1040?**

Yes. Because you will be filing one Rhode Island return for the tax year, using the "married filing jointly" filing status, enter – on that return's Schedule W –

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<sup>16</sup> If a taxpayer's federal AGI (as modified for Rhode Island tax purposes) falls within a certain income range, the standard deduction, personal exemption, and dependency exemption amounts are limited. If income exceeds the range, the taxpayer cannot claim the standard deduction, the personal exemption, or the dependency exemption. The range is subject to adjustment each year based on inflation. For tax year 2013, the range is \$186,550 to \$207,950.

information from any Form W-2 or Form 1099 that shows Rhode Island income tax withheld for either of you.

- 20. I have income from a subchapter S corporation; my domestic partner has income from a single-member limited liability company (LLC). The income from the S corp flows straight to my U.S. Form 1040; the income from my domestic partner's LLC flows straight to his U.S. form 1040. Once we are married in Rhode Island, shall we combine that income for federal and Rhode Island tax purposes?**

Yes.

- 21. I project that our Rhode Island personal income tax liability will be different after we are married. Is there anything we can do to prepare for that?**

Rhode Island has uniform withholding tables – they apply no matter your filing status.

Because your Rhode Island personal income tax may be more – or less – than before your marriage, you may wish to adjust the amount of Rhode Island personal income tax that is withheld from your paycheck.

The Division of Taxation has a special form for just such a purpose – [Form RI W-4, "Employee's Withholding Allowance Certificate."](#) Once you have determined how much to have withheld from your paycheck, file the form with your employer, and keep a copy for your records. (Instructions are on the form.)

Another option is to make quarterly estimated payments of Rhode Island personal income tax – or to adjust the amount that you are currently paying. Use a blank [Form RI-1040ES](#) (unless you have your own personalized copy). Also consider consulting a tax professional.

- 22. Instead of filing a joint Rhode Island return, may each of us file our own Rhode Island returns?**

In nearly every instance, two people who are married as of the last day of the calendar year must use a "married" filing status on the Rhode Island return.

- 23. So for our Rhode Island return, we can't just choose which filing status would give us the "better deal"?**

No. Neither opposite-sex nor same-sex married couples may simply pick and choose a filing status, cafeteria style; you must use the appropriate filing status. If you are married as of the end of the calendar year, you will be married for Rhode Island tax purposes for that year – so you must file your Rhode Island return as "married."

The only question is whether you would use the "married filing jointly" or "married filing separately" filing status. Most couples will use the "married filing jointly"

filing status. Keep in mind that, in almost every case, you must use the same filing status on your Rhode Island return that you use on your federal return.

**24. Can you tell me more about the “married filing separately” status?**

In nearly all cases, married couples filing the Rhode Island personal income tax return will use the “married filing jointly” status.

<b>“Married” filing statuses</b>		
Filing status:	Number of returns using the filing status:	Percentage of all “married” returns:
Married filing jointly	167,638	96 %
Married filing separately	7,791	4 %
Total	175,429	100 %

Figures are based on Rhode Island resident personal income tax returns for 2011 tax year and do not include other filing statuses (“single”, “head of household”.) “Married filing jointly” includes “qualifying widow” and “qualifying widower”.

However, there are rare situations in which you would use the “married filing separately” status. (Of all the Rhode Island resident returns using a “married” status, only about four percent use “married filing separately”. Check with a tax professional about the consequences – many of them restrictive – of filing as “married filing separately” for federal income tax purposes. Remember that your filing status must be the same for federal and Rhode Island purposes.)

- You would use “married filing separately” if you would otherwise use “married filing jointly” -- but your spouse won’t agree to file the joint return.
- You may want to use “married filing separately” if you want to be responsible only for your own tax.
- You may want to use “married filing separately” if one spouse is a Rhode Island resident, the other is a nonresident.

**25. Can you tell me more about the “head of household” filing status on my Rhode Island personal income tax return?**

In nearly all cases, married couples filing the Rhode Island personal income tax return will use the “married filing jointly” status.

However, there are rare situations in which you would use the “head of household” status.<sup>17</sup> About 13 percent of Rhode Island resident returns use the “head of household” filing status.

<sup>17</sup> Couples married on or after August 1, 2013, cannot claim “head of household” filing status for tax year 2013.

Rhode Island resident returns sorted by filing status		
Filing status:	Number of returns using the filing status:	Percentage of all returns:
Single	244,067	50 %
Married filing jointly	167,638	35 %
Head of household	64,198	13 %
Married filing separately	7,791	2 %
<b>Total returns:</b>	<b>483,694</b>	<b>100 %</b>

Figures are based on Rhode Island resident personal income tax returns for 2011 tax year as listed in Division of Taxation Statistics of Income (SOI) report. "Total returns" means only those returns in SOI report for which filing status is listed. "Married filing jointly" includes "qualifying widow" and "qualifying widower".

As a general rule, you may use the "head of household" filing status under the following conditions:

- you're unmarried – or considered unmarried – on the last day of the year;
- you paid for more than half the cost of keeping up your home for the tax year; and
- a "qualifying person" (such as your child) lived with you in the home for more than half the year.

To be "considered unmarried," you must clear a number of hurdles. One is that you paid more than half the cost of keeping up your home for the tax year -- and your spouse did not live in your home during the last six months of the tax year.

The Division of Taxation follows federal rules when it comes to eligibility for the "head of household" filing status.

**26. How will the new law affect us when it comes to selling or transferring a car to my spouse?**

In general, Rhode Island applies a 7 percent sales and use tax to the sale of a car. However, when a car is sold to a family member, it is deemed to be a "casual sale" and therefore is exempt from the sales and use tax.<sup>18</sup>

The exemption applies when the transferee or purchaser is the spouse, mother, father, brother, sister, or child of the transferor or seller. The term "spouse" includes spouse in a same-sex marriage. Thus, the sale of a car from a spouse in a same-sex marriage to her spouse, for example, shall not trigger Rhode Island sales and use tax.<sup>19</sup>

For more information about the Rhode Island sales and use tax, please contact the Division of Taxation's Excise Tax section at (401) 574-8955 from 8:30 a.m. to 3:30 p.m. business days.

<sup>18</sup> See RIGL § 44-18-20(d)(1) and Regulation [SU 07-17](#).

<sup>19</sup> To claim the exemption, use ["Sales or Use Tax Exemption Certificate – Motor Vehicles."](#)

**27. How will we be treated for Rhode Island estate tax purposes?**

For Rhode Island estate tax purposes, you are treated the same as an opposite-sex married couple, as outlined in a declaratory ruling issued in 2012.<sup>20</sup> So for purposes of Rhode Island's estate tax – also known as the death tax<sup>21</sup> – a Rhode Island marital deduction is allowable for property passing from a decedent to his or her surviving spouse regardless of gender.<sup>22</sup>

Also, same-sex spouses are allowed to include in the gross estate of a decedent one-half the value of certain joint property interests – based on the same principle that applies involving opposite-sex couples.<sup>23</sup> These rules apply to couples joined in a same-sex marriage in Rhode Island, or in a same-sex marriage or other such union in another jurisdiction. (As a surviving spouse, you generally may file an amended return if you had been married in another jurisdiction, you were married to that person at the time of that person's death, and the amended return meets statutory requirements – including, but not limited to, provisions of RIGL chapters 44-22 and 44-23.) For more information about the Rhode Island estate tax, please contact the Division of Taxation's Estate Tax section at (401) 574-8900 from 8:30 a.m. to 3:30 p.m. business days.

**28. May we amend Rhode Island personal income tax returns filed for tax years prior to tax year 2013 in order to reflect a “married” filing status?**

If you are allowed under federal law to amend your federal income tax return to claim a married filing status, you will be allowed to amend your Rhode Island income tax return to claim a married filing status.<sup>24</sup>

If you are not allowed under federal law to amend your federal income tax return to claim a married filing status, you will not be allowed under Rhode Island law to amend your Rhode Island income tax return to claim a married filing status.

So if your marriage under Rhode Island law occurred on or after August 1, 2013, you generally cannot amend either your federal or your Rhode Island returns for tax years prior to 2013 in order to claim a married filing status. Please see the following examples:

Example 1:

Sally and Samantha are lifelong Rhode Island residents who married in Rhode Island in August 2013. Neither has been married before, in any jurisdiction. Neither can file amended Rhode Island prior-year returns to claim a married filing status because neither was married in prior years.

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<sup>20</sup> Rhode Island's position on these estate tax matters was first publicly stated in [Declaratory Ruling 2012-02](#), issued September 21, 2012, which incorporated an interpretation of RIGL chapter 15-3.1, and Governor Chafee's Executive Order 12-02.

<sup>21</sup> See, *inter alia*, [IRC § 303](#), [IRC § 2011](#), [IRC § 2015](#), and [IRC § 2058](#).

<sup>22</sup> Requirements of IRC § 2056, involving bequests and such, must be met.

<sup>23</sup> Interest in the property must meet the requirements of IRC § 2040(b)(2) – generally involving qualified joint interests.

<sup>24</sup> For federal information, see IRS [Revenue Ruling 2013-17](#).

Example 2:

Barry and Brock are lifelong Rhode Island residents who married in Massachusetts in 2008. Because they can file amended federal returns for prior years to claim a married filing status, they may file amended Rhode Island returns for certain prior years to claim a married filing status (subject to the statute-of-limitation issue discussed in Question 29).<sup>25</sup>

Example 3:

June and Jane are lifelong Rhode Island residents. They entered into a civil union in 2011 under Rhode Island's civil union law. They cannot file amended Rhode Island returns, in order to claim a married filing status, for the years in which they were in a civil union under Rhode Island's civil union law.

**29. If I do plan to file amended returns, is there anything else I should know?**

If you file an amended federal return to change your filing status for one or more prior years, you are required by state law to file an amended state return to change your filing status for those years. In almost every case, the filing status on your Rhode Island return must be the same as the filing status on your federal return. Also, please review federal and Rhode Island laws carefully to make sure that the time has not expired for claiming refunds; the laws involving the statute of limitations are different for federal purposes than for Rhode Island purposes. (As a general rule, Rhode Island law is not as flexible as federal law in this regard.) Also, consult a tax or financial adviser to determine whether you are eligible to file amended returns, or if you should file them.



This document provides only a general summary of certain Rhode Island tax matters related to same-sex marriage. Nothing contained in this document in any way alters or otherwise changes any provisions of the Rhode Island General Laws, regulations of the Division of Taxation, or formal rulings.

-- David M. Sullivan  
Rhode Island Tax Administrator

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<sup>25</sup> Bear in mind that, in almost every case, you must use the same filing status on your Rhode Island return as you use on your federal return.