**Title:** IRS States That Civil Unions Should Be Treated As Husband and Wife For Income Tax Purposes

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**Raw Content:** In a recent letter to H&amp;R Block, the IRS informed a senior tax adviser that opposite-sex parties to an Illinois civil union should be treated as husband and wife for federal income tax purposes if they are treated as husband and wife by Illinois, adding that under those circumstances, the parties may file their federal return as married filing jointly.
<span style="color: #000000;">The informal guidance appears to say that an Illinois civil union constitutes a marriage for federal tax purposes -- a position that will come as a surprise to practitioners. While registered domestic partnerships (RDPs) and civil unions are used by same-sex and opposite-sex couples to receive the state law benefits of marriage, they are distinct from state law marriages. In this Letter, the IRS remarked:</span>
<span style="color: #000000;">In general, the status of individuals of the opposite sex living in a relationship that the state would treat as husband and wife is, for federal income tax purposes, that of husband and wife. Section 20 of the Illinois Religious Freedom Protection and Civil Union Act provides that “[A] party to a civil union is entitled to the same legal obligations, responsibilities, protections and benefits as are afforded or recognized by the law of Illinois to spouses . . .” 750 Ill. Comp. Stat. 75/20 (2011). Accordingly, 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, unless prohibited by other exceptions under the Code.</span>
<span style="color: #000000;">Opposite-sex couples who aren't married for state law purposes generally can't file joint federal tax returns. According to Publication 501, </span><span style="color: #000000;"><em>Exemptions, Standard Deduction, and Filing Information</em></span><span style="color: #000000;">, state law governs whether a couple is married, and only married couples may file joint returns. </span>
<span style="color: #000000;">The IRS must follow the Defense of Marriage Act (DOMA), which defines marriage as a legal union between a man and a woman and defines a spouse as a person of the opposite sex who is a husband or wife. It would appear for that reason, even if a state recognizes a same-sex couple as married, that couple can't claim married filing jointly status on a federal return. </span>
<span style="color: #000000;">Whether this Letter is an aberration or a trend will remain to be seen. The constitutionality of DOMA is being litigated nationwide. If DOMA is found to be unconstitutional or repealed, same sex couples who are recognized as married by a state may be permitted to file joint federal tax returns.</span>