

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100206	Same-Sex Couples - Common Questions

State of Wisconsin
Department of Revenue

Same-Sex Couples

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. Is a same-sex couple that is considered lawfully married for federal tax purposes considered married for Wisconsin income tax purposes?
2. Will the Department recognize the validity of same-sex marriage licenses issued between June 6 and 13, 2014, before higher courts ruled in the *Walker v. Wolf* case?
3. How should a lawfully married same-sex couple file their Wisconsin income tax returns?
4. I have a health savings account that pays qualified medical expenses of myself and my same-sex spouse. What is the Wisconsin treatment of contributions to the health savings account?
5. My same-sex spouse and I each made contributions to a traditional IRA subject to the spousal IRA limitations. Are the amounts contributed to each IRA deductible for Wisconsin?
6. What is the tax treatment of a traditional IRA that I inherited from my same-sex spouse?
7. Can I add my same-sex spouse to my employer-provided health insurance without having to impute taxable income?
8. How does the U.S. Supreme Court decision relating to same-sex marriage affect employers?
9. Does the treatment of imputed income for employer-provided health insurance to an employee with a same-sex spouse apply to taxable years before 2014?

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1. **Is a same-sex couple that is considered lawfully married for federal tax purposes considered married for Wisconsin income tax purposes?**

Yes. On October 6, 2014, the U.S. Supreme Court denied Wisconsin's petition for certiorari in [Walker v. Wolf](#) regarding the ban on same-sex marriage. As a result, same-sex marriage is now legal and recognized in Wisconsin.

2. Will the Department recognize the validity of same-sex marriage licenses issued between June 6 and 13, 2014, before higher courts ruled in the *Walker v. Wolf* case?

Yes. To the extent that any couple, regardless of sex, received a marriage license and followed the requirements of ch. 765, Wis. Stats., the department will treat those couples as married under Wisconsin law, even if they received their license between June 6 and 13, 2014.

3. How should a lawfully married same-sex couple file their Wisconsin income tax returns?

◦ **2014 and thereafter individual income tax returns**

A lawfully married same-sex couple must file their Wisconsin individual income tax returns as married filing jointly, married filing separately or, if qualified, as head of household.

◦ **2013 and prior returns filed on or after October 16, 2014**

A lawfully married same-sex couple must file their Wisconsin individual income tax returns as married filing jointly, married filing separately or, if qualified, as head of household.

◦ **2013 and prior returns filed before October 16, 2014**

A lawfully married same-sex couple who already filed their tax returns, may choose (but are not required) to amend their Wisconsin tax returns using Form 1X, claiming a filing status of married filing jointly, married filing separately or, if qualified, as head of household. Prior returns may be amended as long as the statute of limitations has not expired. For most returns, this is four years from the due date of the return or the date filed, whichever is later.

Note: A couple is considered married for the whole year if they were lawfully married as of December 31. If a spouse dies during the year, the couple may file a joint return for the year unless the surviving spouse remarries during the year. Lawfully married means a valid marriage in a state that recognizes same-sex marriage.

4. I have a health savings account that pays qualified medical expenses of myself and my same-sex spouse. What is the Wisconsin treatment of contributions to the health savings account?

The definition of a health savings account (HSA) requires that it be set up exclusively for the purpose of paying qualified medical expenses for the account holder, their spouse and any dependents. Because Wisconsin recognizes a same-sex marriage, contributions to an HSA are deductible for Wisconsin tax purposes if the HSA provides benefits to a same-sex spouse. Employer contributions to an HSA that provides benefits to a same-sex spouse are excluded as taxable wages on the employee's W-2 for Wisconsin.

5. My same-sex spouse and I each made contributions to a traditional IRA subject to the spousal IRA limitations. Are the amounts contributed to each IRA deductible for Wisconsin?

Because Wisconsin recognizes a same-sex marriage, the federal spousal IRA provisions apply for Wisconsin.

6. What is the tax treatment of a traditional IRA that I inherited from my same-sex spouse?

For federal tax purposes, special rules apply to an inherited IRA. If the beneficiary of a traditional IRA is the decedent's surviving spouse, who properly rolls over the distribution into another traditional IRA, the distribution (rollover) is not taxable. A surviving spouse can also roll over tax-free the taxable part of the distribution from other qualified plans including section 401(k) plans, section 403(b) plans, and section 457 plans.

Since Wisconsin recognizes a same-sex marriage, the special rules that apply to a surviving spouse for federal tax purposes also apply for Wisconsin.

7. Can I add my same-sex spouse to my employer-provided health insurance without having to impute taxable income?

Yes. Wisconsin follows the Internal Revenue Code and excludes from income contributions to an accident or health plan for injuries or sickness incurred by the employee, his or her spouse, or dependents. Since Wisconsin recognizes a same-sex marriage, employers may exclude from employee income the value of an employer-provided health insurance plan for a same-sex spouse.

8. How does the U.S. Supreme Court decision relating to same-sex marriage affect employers?

Prior to the U.S. Supreme Court denial of Wisconsin's petition for certiorari in *Walker v. Wolf* on October 6, 2014, for Wisconsin tax purposes an employer that provided health insurance benefits that covered a same-sex spouse of the employee was required to impute income taxable to the employee equal to the value of the employer-provided health insurance. The imputed income and related withholding would be reported on the employee's 2014 Form W-2.

This treatment changed for an employee who is lawfully married to a person of the same sex.

For an employee who was lawfully married to a person of the same sex on January 1, 2014, the employer should not include any imputed income on the 2014 Form W-2.

For an employee who first became lawfully married to a person of the same sex after January 1, 2014, the employer should not include any imputed income on the Form W-2 from the date of marriage through December 31. Assuming the health insurance covered the same-sex person as a domestic partner prior to marriage, imputed income must be reported from January 1 until the date of marriage, but no imputed income would be reported on the Form W-2 for the period after marriage until the end of the year.

9. Does the treatment of imputed income for employer-provided health insurance to an employee with a same-sex spouse apply to taxable years before 2014?

Yes. With certain filing status limitations, you may file an amended return to remove any imputed income previously taxed to an employee who was lawfully married to a person of the same sex. However, whether you can amend your Wisconsin return depends on your filing status for the year.

Prior to 2014, for a lawfully married same-sex couple, each spouse was required to file a Wisconsin income tax return as single or, if qualified, as head of household. After the U.S. Supreme Court denial of Wisconsin's petition for certiorari in *Walker v. Wolf* on October 6, 2014, for returns filed before October 16, 2014, the lawfully married same-sex couple may choose to file an amended return to change their filing status to married filing jointly or married filing separately. The head of household filing status does not apply to spouses that lived in the same home for the last 6 months of the tax year.

You may file an amended return to exclude imputed income only if you are filing an amended return for the same year to change your filing status to married filing jointly or married filing separately.

You may **not** file an amended return for any year to exclude imputed income if you have not changed your filing status for that year to married filing jointly or married filing separately.

Generally, amended returns must be filed within 4 years of the unextended due date of the return. For example, an amended 2014 return (originally due April 15, 2015) must be filed on or before April 15, 2019.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of October 22, 2019: Chapter 765, Wis. Stats., secs. 71.01, 71.03 and 71.75, Wis. Stats., sec. Tax 2.12, Wis. Adm. Code, 26 U.S. Code §§ 2, 125, 223 and 7703, 26 CFR § 1.408-8, and *Walker v. Wolf*.

Laws enacted and in effect after October 22, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to October 22, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

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