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\$57 Million in Tax Refunds for Same-Sex Couples

BY EILEEN Y. LEE BREGER • JUNE 27, 2019

On June 20, Elizabeth Warren, Democratic senator from Massachusetts, reintroduced the Refund Equality Act of 2019, which would allow same-sex couples who were legally married in their home states before the demise of the federal Defense of Marriage Act (DOMA) in 2013 to amend their past income tax returns beyond the 3-year limit imposed by the IRS, paving the way for an estimated \$57 million in tax refunds to these couples.

It wasn't until the Defense of Marriage Act was struck down by the Supreme Court's 2013 decision in *U.S. v. Windsor* that same-sex couples could jointly file tax returns as a married couple. Prior to that, same-sex couples had to file individually, which in many cases resulted in such couples paying more in taxes.

In 2013, following the decision in *U.S. v. Windsor*, the IRS indicated that same-sex married couples could amend their past returns to file jointly for the prior 3 years: 2012, 2011 and 2010 (the same time limit allowed for opposite-sex couples who wish to amend their returns to change their filing status). However, this rule meant that same-sex couples in nearly 10 states, including Massachusetts, who had been legally married before 2010 would lose out on tax benefits for some duration of their marriage.

The passing of the Refund Equality Act would mean that a same-sex couple in Massachusetts who had been married since same-sex marriage was legalized at the state level in 2004 could claim federal tax refunds going back to the date of their marriage, not just back to 2010.

Although same-sex married couples have been able to file joint returns since 2013, this bill was only first introduced in 2017 and then was stalled in the legislative process. Now, Warren, who is running for president in 2020, is trying to build support for this reintroduced bill that will equalize tax benefits for same-sex married couples.

"The federal government forced legally married same-sex couples in Massachusetts to file as individuals and pay more in taxes for almost a decade," Warren said in a statement. "We need to call out that discrimination and to make it right – Congress should pass the Refund Equality Act immediately."

Same-sex couples should consult their tax advisor to discuss whether this potential new legislation will result in significant tax refunds for them.