

**DESCRIPTION OF H.R. 3299,  
THE “PROMOTING RESPECT FOR INDIVIDUALS’  
DIGNITY AND EQUALITY ACT OF 2019”**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on June 20, 2019

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3299, the “Promoting Respect for Individuals’ Dignity and Equality Act of 2019.” This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3299, the “Promoting Respect for Individuals’ Dignity and Equity Act of 2019”* (JCX-26-19), June 18, 2019. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references herein are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

## **1. Extension of period of limitation for certain legally married couples**

### **Present Law**

#### **Statute of limitations on credit or refund**

In general, a taxpayer must file a claim for credit or refund within three years of the filing of the tax return or within two years of the payment of the tax, whichever expires later (if no tax return is filed, the two-year limit applies).<sup>2</sup> A claim for credit or refund that is not filed within these time periods is rejected as untimely. In addition, the amount of credit or refund is limited to the portion of tax paid within the three-year period (plus any filing extension) or the two-year period, as applicable, immediately preceding the filing of the claim.<sup>3</sup>

#### **Limitation on filing a joint return after filing a separate return**

An individual filing a separate return for a tax year for which the individual and the individual's spouse could have filed a joint return may file a joint return amending the prior separate return for the tax year after the due date for filing the return has passed.<sup>4</sup> However, an individual cannot elect to file a joint return after having filed a separate return more than three years after the due date of the return (without regard to any extensions) for the applicable tax year.<sup>5</sup>

#### **Federal tax treatment of same-sex marriage**

Prior to the Supreme Court's decision in *United States v. Windsor*,<sup>6</sup> section 3 of the Defense of Marriage Act (DOMA)<sup>7</sup> prohibited the IRS from recognizing same-sex marriages for purposes of the provisions of the Code that refer to the marital status of the taxpayer and convey benefits upon such status. In *Windsor*, the Supreme Court held that section 3 of DOMA was unconstitutional because it violated principles of equal protection.

Following the *Windsor* decision, the IRS issued Revenue Ruling 2013-17<sup>8</sup> (the "Revenue Ruling"), which provided guidance on the effect of the *Windsor* decision on the IRS's interpretation of the provisions of the Code that refer to a taxpayer's marital status. In the Revenue Ruling, the IRS recognized the validity of same-sex marriages that were lawful in the

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<sup>2</sup> Sec. 6511(a).

<sup>3</sup> Sec. 6511(b)(2).

<sup>4</sup> Sec. 6013(b)(1).

<sup>5</sup> Sec. 6013(b)(2).

<sup>6</sup> 570 U.S. 744 (2013).

<sup>7</sup> 1 U.S.C. sec. 7.

<sup>8</sup> 2013-38 I.R.B. 201.

State where they occurred. In particular, the Revenue Ruling made three specific holdings for Federal tax purposes:

1. The terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under State law, and the term “marriage” includes such a marriage between individuals of the same sex.
2. The IRS adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a State whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a State that does not recognize the validity of same-sex marriages.
3. The terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under State law that is not denominated as a marriage under the laws of that State, and the term “marriage” does not include such formal relationships.

The Revenue Ruling allowed affected taxpayers to rely on the ruling for purposes of filing original returns, amended returns, adjusted returns, or claims for credit or refund resulting from its holdings but only if the applicable limitations period for filing such claims had not expired. The holdings of Revenue Ruling 2013-17 were applied prospectively as of September 16, 2013. Thus, taxpayers lawfully married under State law during tax years for which the statute of limitations was closed as of September 16, 2013, could not claim the tax benefits of Federal recognition of same-sex marriage. Massachusetts and several other States legalized same-sex marriage during years for which the statute of limitations generally was closed as of September 16, 2013. Accordingly, some lawfully married same-sex couples were not able to claim Federal tax benefits associated with their marital status for all tax years for which they were lawfully married.

### **Description of Proposal**

Under the proposal, lawfully married same-sex couples may file amended returns and claims for credit or refund for tax years for which the statute of limitations for such claims has expired, so long as the claims relate to a change in marital status. The extended statute of limitations for newly-filed joint returns expires on the filing date (including extensions) of the return for the tax year that includes the date of enactment of the proposal. In addition, the limitation on the dollar amounts recoverable is made inapplicable for newly-filed joint returns.

### **Effective Date**

The proposal is effective on the date of enactment.

## **2. Rules relating to all legally married couples, and rules relating to the gender of spouses, etc.**

### **Present Law**

The Code contains a number of provisions that apply to married couples. While these provisions apply to both opposite-sex and same-sex married couples,<sup>9</sup> they generally refer to “husband and wife” or otherwise used gendered language in describing the couple or one or both spouses.

For example, the Code allows taxpayers to claim a nonrefundable child and dependent care credit, for which the allowable credit is an applicable percentage of employment-related expenses. For purposes of this credit, qualifying expenses are limited by the earned income of the taxpayer. A special rule applies in the case of married couples:

Section 21(d)(2). Special rule for spouse who is a student or incapable of caring for himself. In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of the paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) \$250 if subsection (c)(1) applies for the taxable year, or

(B) \$500 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

### **Description of Proposals**

The proposals would amend the Code so that provisions that apply to married couples use gender-neutral language, by changing terms such as “husband and wife” or other gendered language.

For example, with respect to section 21(d)(2), quoted above, the proposal would change “himself” to “self” and “husband and wife” to “any married couple.”

### **Effective Date**

The proposals are effective on the date of enactment.

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<sup>9</sup> Rev. Rul. 2013-17. For a full description of Revenue Ruling 2013-17, see discussion above.