

Business Day

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For Same-Sex Marrieds, a Tax Season to Look Back

By TARA SIEGEL BERNARD

Tax season doesn't usually stir up emotions about the meaning of family and equal rights.

But this year is different, at least for the tens of thousands of same-sex married couples who, for the first time, will be required to file federal income tax returns that reflect their married status. Whether couples ultimately owe more in taxes or receive big refunds, for many of them, it will provide a long-awaited sense of validation.

"It's a big deal that an institution like the I.R.S. has to acknowledge our union and change its processes for us," said Krystal Banzon, 29, who, in 2011, married Claudia Narvaez-Meza, a social worker and family therapist, in a small Buddhist ceremony in Manhattan.

The changes in the tax law are the result of the monumen-



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tal Supreme Court decision last June, which gave same-sex marriage two legal victories. But like many gay couples, Ms. Banzon, who works for NBC Universal, said that excitement about the changes quickly gave way to confusion and raised

many questions.

One of the thorniest, for example, is whether now-married gay couples should also amend previous returns. Under the law they generally can choose to refile their last three tax returns using a married filing status —

Krystal Banzon, left, and Claudia Narvaez-Meza were married in New York in 2011. They will amend a previous year's tax return for a refund.

a potentially worthwhile move if it generates a nice refund. But how should couples approach that process?

And there are other issues: Can you easily recover the extra taxes many gay employees incurred when they bought health insurance for their spouses, for instance? And what do couples living in states that don't recognize their unions need to know?

To answer some of these questions, Ms. Banzon and Ms. Narvaez-Meza, who have a 1-year-old son, Malaya, sought the advice of Janis Cowhey McDonagh, a partner at Marcum, an accounting firm in New York with a practice that spe-

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For Same-Sex Marrieds, a New Tax Season May Include a Look Back

From First Business Page

cializes in tax and estate planning for same-sex couples.

The verdict on the past taxes: She suggested that they amend their 2011 return, which could generate an additional \$800 refund, but said to leave 2012 alone.

Looking ahead, they are likely to get about \$2,500 more back on their 2013 return than if they filed as singles. "You really have to take a step back and look at the entire picture," Ms. McDonagh said. "It's not always easy to say whether you will get a refund or not."

Many high-earning couples who earn similar incomes will pay much more by filing jointly. Here are some things to consider as tax season gets into full swing:

■ *Am I required to amend my returns?*

No. You can choose to amend if it will generate a refund for a particular year. As long as you were married during the tax year, you can generally amend your returns for three years from the date the original return was filed or two years from the date the tax was paid, whichever is later, according to the Internal Revenue Service. That means time is running out for 2010 returns.

And though I heard from a reader who amended a return even with the knowledge that more taxes would be owed, the reader was surprised to learn that interest was owed on the portion of taxes not paid. You're forewarned.

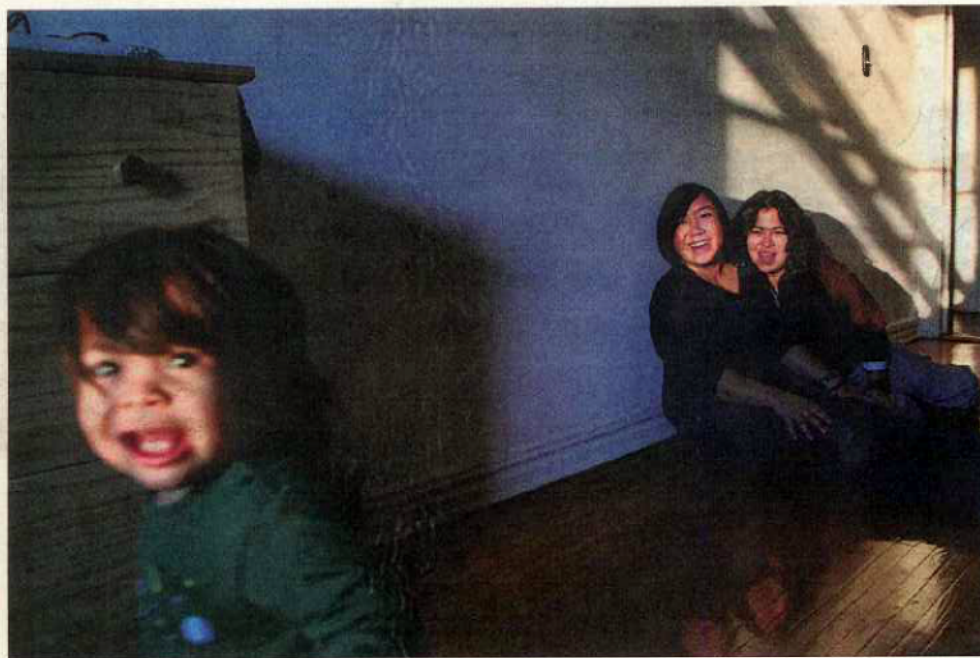
■ *Does amending increase the chances of an audit?*

Though several taxpayers have expressed concerns about audits, accountants said that the I.R.S. told agents that they should not audit returns if the sole change was related to marital status.

■ *When does it make sense to amend?*

It's not always immediately obvious whether you will receive a refund, which is clearly the reason you would want to amend. Couples living in states that recognize their marriage may already have a good idea of how they would fare because they probably had to fill out a mock federal tax return as a married couple (that extra step is necessary to fill out a joint state return).

If one spouse stays at home or earns significantly less than the other, it usually results in what's



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Krystal Banzon and Claudia Narvaez-Meza, with their year-old son, Malaya. They expect a bigger federal tax refund for 2013.

known as a marriage bonus, where a couple owes less in tax when they file jointly. Higher-income couples with two working spouses making similar incomes are likely to face a marriage penalty, which means they'd pay more.

■ *What else should I consider?*

Couples could potentially lose a variety of deductions or credits — from student loan interest to the child tax credit — when combining their incomes. While one spouse might have been able to take the full child tax credit, worth \$1,000, it begins to phase out for couples with modified adjusted gross income of more than \$110,000.

Same-sex couples could also lose the widely used adoption credit, which cannot be taken to adopt your spouse's child, Ms. McDonagh added. Rental property owners could also lose the ability to take losses, said Lillian Gonzalez, an accountant in Stoughton, Mass.

Even if a joint filing would gen-

erate a refund, combining income may create other unexpected consequences. It may cause one spouse to become ineligible to contribute to a Roth I.R.A., which is subject to income limits, Ms. Gonzalez added, and possible penalties. "For people who are younger, it may make more sense to leave the contribution in there and let it grow, and not file the amended return," she said.

The bottom line: "Run the numbers, run the numbers, run the numbers," said Pan Haskins, an accountant in California.

■ *How do I amend my return? And what should I send to the I.R.S.?*

For each tax year they are amending, couples must fill out and send the amended federal tax form, known as the 1040X, which illustrates the changes you are making. And if you are making changes to any supplemental forms, such as the Schedule A for itemized deductions, the I.R.S. said to include those, too. Even though it's not required, some ac-

countants suggested including the new joint 1040 form, as well as the original tax returns for each spouse. On top of the 1040X, be sure to write "Filed pursuant to Revenue Ruling 2013-17," which is the ruling that says same-sex marriages will be recognized for federal tax purposes.

Experts also suggested including a cover letter explaining that the return was being amended only to reflect a change in filing status. Another accountant said she included a spreadsheet explaining the changes. The I.R.S. suggests sending each year's amended return package in a separate envelope.

■ *I paid extra taxes on the value of my spouse's health insurance coverage. How do I get that money back?*

First, some background: When same-sex marriage wasn't federally recognized, people who bought health insurance for their gay spouses through an employer often paid income taxes on the value of that coverage. Workers

weren't permitted to pay for the insurance using pretax dollars either, unlike their opposite-sex married peers.

To get a refund on both of those items, the couple needs to amend the entire federal return (using Form 1040X) using a married filing status. So they will need to run the numbers and make sure it's still worth recovering the money, experts said, since they can't cherry-pick and get a refund for these taxes alone.

Taxpayers may be able to find the extra taxes paid on their W-2 or on their last paystub for that year; otherwise, ask your employer.

■ *If the value of my health insurance increased my income, I probably also paid more in payroll taxes for Social Security and Medicare. How do I get that money back?*

You can get this money back without amending your entire return. Start by asking if your employer plans on recovering the money for you. If not, you can file

a Form 843 for a refund. The I.R.S. said that you should write "Windsor Claim" in dark, bold letters across the top margin of the form.

■ *What do I need to know about filing my state tax return?*

Couples living in the District of Columbia or one of the 17 states that recognize same-sex marriage can simply file using a married status at both the federal and state level, just like any other married couple.

The same goes in Colorado, Missouri, Oregon and Utah, even though those states don't recognize same-sex marriage, explained Joseph Henchman, vice president of state and legal projects at the Tax Foundation, a nonpartisan tax research and policy group.

Twelve states will require gay married taxpayers to complete a dummy federal tax return as if they were single, and then use that information to complete the state tax return, which should be filed as if they were single, he added. Those states are Georgia, Idaho, Indiana, Kentucky, Louisiana, Michigan, Nebraska, North Carolina, Oklahoma, South Carolina, Virginia and West Virginia.

Five more states — Arizona, Kansas, North Dakota, Ohio and Wisconsin — told taxpayers to allocate their income, using state-provided worksheets, onto the state tax returns, which should be filed individually. Alabama instructed taxpayers to apportion their income between two single returns using a ratio, he said. And Montana advised taxpayers not to file jointly, Mr. Henchman added, but said that it had no way of verifying marital status.

■ *Where can I find more information or get help?*

Gay & Lesbian Advocates & Defenders' public information service, GLADAnswers.org at (800-455-GLAD), can answer general questions and help you find a tax professional. PridePlanners.org also provides a listing of financial professionals. The I.R.S. also has some helpful guidance on its website.

If you are willing to go it alone, TurboTax will allow you to amend your 2010, 2011 and 2012 returns free. You just need to have old tax returns handy. And for \$99 a return, a credentialed tax expert there will do it for you. Pricing for 2013 returns generally starts at \$29.99 for a federal return and \$36.99 for state, though some people can file free.