

New York State's Marriage Equality Act

In July 2011, New York State Governor Andrew Cuomo signed into law "The Marriage Equality Act," which took effect on July 24, 2011. It amends New York's Domestic Relations Law to provide that same-sex couples may obtain a marriage license in New York and to require that a same-sex marriage be treated the same as an opposite-sex marriage " in all respects under (New York) Law."



The Marriage Equality Act

The Marriage Equality Act (Act) was signed into law as Chapters 95 and 96 of the Laws of 2011, on June 24, 2011. One purpose of the Act is to provide that all marriages, whether of same-sex couples or different-sex couples, will be treated equally under all laws of the state. Accordingly, the Act applies to all taxes administered by the Tax Department as of the effective date of July 24, 2011.

The Marriage Equality Act provides that no government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, will differ based on the parties to the marriage being or having been of the same sex rather than a different sex. When necessary to implement the rights and responsibilities of spouses under the law, all gender-specific language or terms will be construed in a gender-neutral manner in all sources of law. The Act applies to all legally performed marriages, whether or not the marriage took place in New York. The new law took effect on July 24, 2011.

The Act applies to all taxes administered by the Tax Department. Although the Act applies to all taxes, the taxes principally affected are the personal income tax and the estate tax. The effects on these taxes are summarized as follows:

- **Personal income tax.** Same-sex married couples must file New York personal income tax returns as married, even though their marital status is not recognized for federal tax purposes. This means they must file their New York income tax returns using a married filing status (e.g., married filing jointly, married filing separately), even though they may have used a filing status of single or head of household on their federal returns. In addition, to compute their New York tax, they must recompute their federal income tax (e.g., their federal income, deductions, and credits) as if they were married for federal purposes.

For personal income tax purposes, the Act is effective for tax years ending on or after July 24, 2011. Same-sex married couples who are married as of December 31, 2011, will be considered married for the entire year. They must file their returns using a married filing status starting in tax year 2011. The Act is not retroactive. Therefore, a

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All Taxes
July 29, 2011

same-sex married couple who was legally married in another state prior to July 24, 2011, is not married for New York tax purposes until July 24, 2011, and may not use a married filing status prior to tax year 2011.

- **Estate tax.** The New York taxable estate of an individual in a marriage with a same-sex spouse must be computed in the same manner as if the deceased individual were married for federal estate tax purposes. Accordingly, the same deductions and elections allowed for different-sex spouses are allowed for same-sex spouses, whether or not a federal estate tax return is filed. For New York State estate tax purposes, the Act takes effect for the estates of decedents who died on or after July 24, 2011.

The Tax Department will be posting additional guidance regarding the Act on its Web site (www.tax.ny.gov) as it is developed.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.