

# The Refund Equality Act of 2021

## The Problem

- Before the Supreme Court's decision in *U.S. v. Windsor*, a same-sex married couple could not file federal income taxes as a married couple because the Defense of Marriage Act (DOMA) prevented the federal government from recognizing the marriage.
- After *Windsor*, the Internal Revenue Service published guidance that clarified the IRS's recognition of same-sex marriages, and stated that married same-sex couples could amend previously-filed tax returns to claim refunds or credits due as a result of corrected marital status.<sup>1</sup>
- However, the IRS lacks authority to override the applicability of two time limitations in the Tax Code: Section 6013(b) limits to three years the period within which a married couple may make an election to file jointly after having filed separate returns, and section 6511(a) generally requires a claim for credit or refund of an overpayment of tax to be filed within three years from the time the return was filed.
- Without a legislative fix, same-sex couples who were married in jurisdictions that recognized same-sex marriage before *Windsor* – including Massachusetts, Connecticut, California, Iowa, New Hampshire, Vermont, and Washington, D.C. – are currently unable to claim refunds for certain years that they were legally married.

## The Refund Equality Act

- **The Refund Equality Act would create an exemption to this three-year limitations period in the Tax Code that would allow married same-sex couples to file for federal income tax adjustments back to the date of marriage.**
- Under the Refund Equality Act, an amended return for a past year can be filed up to the due date for the return for the year in which the provision is enacted.
- The Code already includes several exemptions to the three-year limitations period, ranging from adjustments to capital loss carryback to adjustments for retired servicemembers who receive an award of disability compensation.<sup>2</sup>
- Given these other exemptions, a limited exemption for married same-sex couples, who were unable to file tax returns as married couples because of an unconstitutional law, is more than justified.
- In 2019, JCT estimated that the Refund Equality Act would return \$57 million to taxpayers whose marriages were systematically discriminated against.

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<sup>1</sup> For Federal tax purposes, the IRS adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a jurisdiction 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 marriage. *IRS Revenue Ruling 2013-17* at 13, available at <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>.

<sup>2</sup> See 26 U.S.C. § 6511(d).