

THE PRIDE ACT OF 2019: PAVING THE WAY FOR EQUALITY IN TAX LAW

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I. INTRODUCTION

The LGBTQIA+ community has long faced tax challenges, especially as the Internal Revenue Service (“IRS”) has historically failed to provide clear guidance for same-sex married couples filing their federal income taxes.¹ According to a survey conducted by Credit Karma Tax in 2018, 35% of same-sex married couples were unsure of their tax-filing status.² The majority of surveyed individuals were unaware of any existing IRS guidance for same-sex married couples.³ The confusion surrounding filing status for same-sex married couples is apparent from just a glance at the frequently asked questions section on the IRS’s official website, e.g., “[c]an same-sex spouses file federal tax returns using a married filing jointly or married filing separately status?” and “[w]hen are individuals of the same sex lawfully married for federal tax purposes?”⁴

The Promoting Respect for Individuals’ Dignity and Equality Act of 2019 (“PRIDE Act”), reintroduced in 2021 and assigned to the United States House of Representatives Ways and Means Committee (the chief tax-writing committee), would create inclusive federal tax law language with relatively little room for confusion.⁵ The PRIDE Act would also allow same-sex couples, married prior to the *United States v. Windsor* ruling in 2013,⁶ to receive refunds for the prior years in which they were not allowed to file jointly under federal tax law, despite the IRS statute of limitations for federal tax return amendments.⁷ While the PRIDE Act would clarify federal tax law

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¹ *Taxes and the LGBTQ Community*, FORBES (June 14, 2021, 6:55 PM), <https://www.forbes.com/sites/taxnotes/2021/06/14/taxes-and-the-lgbtq-community/?sh=1413bc623131> [<https://perma.cc/4XJ6-A2KJ>].

² Darla Mercado, *LGBT Couples May Be Making This Mistake on Their Tax Returns*, CNBC (Apr. 9, 2018, 2:00 PM), <https://www.cnbc.com/2018/04/09/lgbt-couples-may-be-making-this-mistake-on-their-tax-returns.html> [<https://perma.cc/TD4N-7BWF>].

³ *Id.*

⁴ *Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law*, IRS, <https://www.irs.gov/newsroom/answers-to-frequently-asked-questions-for-same-sex-married-couples> [<https://perma.cc/TBR7-HANL>] (last updated Mar. 3, 2020).

⁵ H.R. 3299, 116th Cong. (2019); H.R. 3815, 117th Cong. (2021).

⁶ *United States v. Windsor*, 570 U.S. 744 (2013).

⁷ H.R. 3299 § 2(a), 116th Cong. (2019); *see infra* Section III.B.

to be more inclusive and provide refunds for individuals who were prevented from filing as married on their federal tax returns, the Act fails to include a significant portion of the LGBTQIA+ community: individuals in registered domestic partnerships and civil unions.⁸ Lawmakers should utilize the strong bipartisan support for The PRIDE Act, demonstrated by its unanimous passage in the House of Representatives in 2019,⁹ to promptly advance maximum inclusivity in federal tax law. Along with maximizing inclusivity, comprehensively recognizing registered domestic partners and civil union partners as married under federal tax law would create more uniformity between federal and state tax law.

II. BACKGROUND ON THE TREATMENT OF SAME-SEX COUPLES IN TAX LAW

This section begins with an overview of the heterosexual married couple's experience in filing federal income taxes generally and how it has historically been different than that of same-sex married couples. Next, it provides an explanation of the rulings in *U.S. v. Windsor* and *Obergefell v. Hodges*, the connection between the two cases, and the positive effect the cases had on the way same-sex married couples are treated in tax law. The section concludes by highlighting the work that must still be done to increase equality for same-sex couples in tax law; that is, the tax law must reflect the *Windsor* and *Obergefell* rulings and provide equal treatment to those who have been, or will be, in registered domestic partnerships and civil unions.

A. Navigating Taxes Traditionally

The traditionally recognized married couple—the heterosexual married couple—has long been able to file federal income taxes as either “married filing jointly” or “married filing separately.”¹⁰ The majority of married couples have filed, and continue to file, jointly on both their federal

⁸ Registered domestic partnerships and civil unions are both unions, similar to marriage. They both originated in order to provide same-sex couples a way to show commitment before same-sex marriage became legalized. Both marriage “alternatives” still exist today in multiple states, but each state treats these unions differently. For example, some states treat the partners as married and some provide only a portion of the benefits of marriage. See *infra* Section II.B.ii.a (discussing the history of registered domestic partnerships and civil unions and the lack of recognition by the PRIDE Act).

⁹ *House Unanimously Passes PRIDE Act to Fix LGBT Discrimination in Tax Code*, U.S. CONGRESSWOMAN JUDY CHU (July 24, 2019), <https://chu.house.gov/media-center/press-releases/house-unanimously-passes-pride-act-fix-lgbt-discrimination-tax-code> [<https://perma.cc/3P72-H7Q5>].

¹⁰ See Scott Ahroni & Benjamin Rue Silliman, *An Examination of Federal Tax Rules Impacting Married Same-Sex Couples from the U.S. Supreme Court Ruling in U.S. v. Windsor*, 21 AM. SOC'Y BUS. & BEHAV. SCI. 636, 638 (2014).

and state¹¹ tax returns.¹² When filing jointly, the married couple files only one federal tax return and one state tax return as opposed to filing two returns each when filing as single.¹³ All income, deductions, credits, and exemptions for both spouses are recorded on the same tax return.¹⁴

The married couple receives multiple benefits that are apparent throughout the filing process when filing jointly. To cite a few, the tax rate is generally lower due to belonging to a lower tax bracket¹⁵, there is a higher standard deduction, and there are more credits and deductions available, as it is usually easier for married couples filing jointly to meet minimum deduction requirements.¹⁶ Most of these married couples see a lower tax bill, or a higher tax return, due to filing jointly on both their state income tax return and their federal income tax return.¹⁷ This is often called the “marriage bonus.”¹⁸ In addition, married couples receive other tax benefits, like the estate tax exemption, the gift tax exemption, greater charitable contribution deductions, and more.¹⁹

¹¹ The following nine states do not have income taxes: Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming. Therefore, individuals in these states would not file a state tax return. See John Waggoner, *9 States That Don't Have an Income Tax*, AARP, <https://www.aarp.org/money/taxes/info-2020/states-without-an-income-tax.html#:~:text=Nine%20states%20%E2%80%94%20Alaska%2C%20Florida%2C,according%20to%20the%20Tax%20Foundation> [https://perma.cc/2EAF-84VS] (last updated Feb. 9, 2022).

¹² See Adam Zoll, *When 'Married Filing Separately' Makes Sense*, BUS. INSIDER (Feb. 28, 2012, 7:03 PM), <https://www.businessinsider.com/the-rare-cases-when-married-filing-seperately-makes-more-sense-2012-2> [https://perma.cc/4YDS-YDUU]; see also Stephen Fishman, *Should Married People File Jointly or Separately*, NOLO, <https://www.nolo.com/legal-encyclopedia/should-married-people-always-file-jointly.html#:~:text=A%20joint%20return%20is%20a,file%20jointly%E2%80%94over%2095%25> [https://perma.cc/Z7CP-N7P8] (last visited Aug. 2, 2022).

¹³ Julia Kagan, *Married Filing Jointly*, INVESTOPEDIA, <https://www.investopedia.com/terms/m/mfj.asp> [https://perma.cc/ZGW8-QYPE] (last updated Dec. 29, 2021).

¹⁴ *Id.*

¹⁵ “The [IRS] uses a progressive tax system, meaning that it uses a marginal tax rate, which is the tax rate paid on an additional dollar of income. The marginal tax rate increases as a taxpayer’s income increases. There are different tax rates for various levels of income. In other words, taxpayers will pay the lowest tax rate on the first ‘bracket’ or level of taxable income, a higher rate on the next level, and so on.” Julia Kagan, *Tax Bracket*, INVESTOPEDIA (Jul. 31, 2022), <https://www.investopedia.com/terms/t/taxbracket.asp> [https://perma.cc/NN9K-HX3K].

¹⁶ See Rachel Morgan Cautero, *Domestic Partnership vs. Marriage: What's the Financial Difference*, THE BALANCE, <https://www.thebalance.com/domestic-partnerships-vs-marriage-what-s-more-financially-beneficial-4172622> [https://perma.cc/4M88-8CSM] (last updated Nov. 27, 2021).

¹⁷ *What Are Marriage Penalties and Bonuses*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/what-are-marriage-penalties-and-bonuses> [https://perma.cc/6LRE-WKHM] (last updated May 2020).

¹⁸ *Id.*

¹⁹ See *Understanding Federal Estate and Gift Taxes*, CONG. BUDGET OFF. (June 2021), <https://www.cbo.gov/publication/57272> [https://perma.cc/J88L-RTHY]; see also *7 Tax Advantages of Getting Married*, TURBOTAX, <https://turbotax.intuit.com/tax-tips/marriage/7-tax-advantages-of-getting->

Prior to 2013, same-sex couples, even if legally married in a state that recognized same-sex marriage, were not considered married under federal law and did not have access to many of these financial benefits.²⁰ They could not file joint federal tax returns, even if they could do so for their state tax returns,²¹ and were prevented from reaping the benefits of the gift tax exemption, the estate tax exemption, and other benefits reserved for those whose marriages the federal government had traditionally recognized.²² These inequities harmed many individuals in same-sex marriages, including Edith Windsor, who was prevented from claiming an estate tax exemption after her wife died.²³

B. *U.S. v. Windsor: The DOMA Takedown*

Thea Clara Spyer and Edith Windsor were New York state residents who married in Toronto, Canada in 2007.²⁴ Spyer died in 2009, and left her entire estate to Windsor.²⁵ Windsor attempted to claim the federal estate tax exemption, but she was barred by Section 3 of the federal Defense of Marriage Act of 1996 (“DOMA”), which excluded same-sex partners from the definition of “marriage” and “spouse.”²⁶ Windsor brought suit, claiming that DOMA violated her right to equal protection. The issue made it to the United States Supreme Court, which held that Section 3 of DOMA was unconstitutional, “as a deprivation of the liberty of the person protected by the Fifth Amendment...”²⁷ The *Windsor* ruling “allowed same-sex spouses to be treated as married for all federal tax purposes, including the income and gift and estate taxes.”²⁸ That same year, the IRS issued a statement regarding *Windsor*, confirming and clarifying further that it would treat same-sex spouses, who were legally married in a jurisdiction which recognized their marriage, as married for federal tax purposes, including filing status.²⁹ Same-sex couples were also permitted to amend their federal tax returns for the

married/L1XILCh0m [https://perma.cc/2WGY-677M] (last updated Oct. 16, 2021, 7:15 AM).

²⁰ See *IRS Develops Rule on Same Sex Marriage After Windsor*, HOGANWILLIG (Sept. 6, 2013), <https://www.hoganwillig.com/blog/irs-develops-rule-on-same-sex-marriage-after-windsor>.

²¹ See *Answers to Frequently Asked Questions*, *supra* note 4; see also *United States v. Windsor*, 570 U.S. 744, 746 (2013).

²² *Windsor*, 570 U.S. at 749.

²³ *Id.* at 750.

²⁴ *Id.*

²⁵ *Id.* at 750–51.

²⁶ *Id.*

²⁷ *Id.* at 774.

²⁸ Robin Fisher et al., *Joint Filing by Same-Sex Couples After Windsor: Characteristics of Married Tax Filers in 2013 and 2014 2* (Off. of Tax Analysis, Working Paper No. 108, 2016), <https://joelclark.org/gaymoney/treasuryreport/treasuryreport.pdf> [https://perma.cc/Q2DQ-FA5R].

²⁹ *Id.* at 2.

three prior years—2010, 2011, and 2012.³⁰ Amendments for years prior to 2010 were barred by a three-year statute of limitations imposed by the IRS.³¹ In order to have eligibility to amend their federal tax returns, same-sex couples had to have been legally married in a state which recognized same-sex marriage during or before that taxable year.³²

Unfortunately, those same-sex couples that were unable to marry in the District of Columbia or one of the nine states that recognized same-sex marriage³³ were excluded, having to file their federal taxes as single or head of household, if applicable.³⁴ Additionally, some same-sex married couples who filed jointly for federal income taxes could not file under the same status for their state income taxes due to varying, operationalized definitions of “marriage.”³⁵ This led to *Obergefell v. Hodges* and the quest for equality and uniformity.³⁶

C. *Obergefell v. Hodges: A Considerable Step Towards Equality for Same-Sex Couples*

On June 26, 2015, *Obergefell v. Hodges* established the constitutional right to same-sex marriage in all fifty states.³⁷ The Supreme Court found that the right to marry was protected by the United States Constitution and that same-sex couples could exercise this right in the same way long afforded to opposite-sex couples.³⁸ The majority focused on how marriage benefits the individuals in the marriage, the family unit, the children of the individuals, and society as a whole.³⁹ The majority noted that, “the right to marry, establish a home and bring up children is a central part of the

³⁰ See *Windsor Revisited: IRS Guidance Recognizing Same-Sex Marriages*, MCGUIREWOODS (Aug. 30, 2013), <https://www.mcguirewoods.com/client-resources/Alerts/2013/8/Windsor-Revisited-IRS-Guidance-Recognizing-Same-Sex-Marriages> [<https://perma.cc/U4GT-KX7A>]; see Rev. Rul. 2013-17, 2013-38 I.R.B. 201, 204.

³¹ Rev. Rul. 2013-17, 2013-38 I.R.B. 201, 204.

³² *Id.* at 202.

³³ The following states recognized or legalized same-sex marriage prior to the *Windsor* ruling: Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and Washington. The District of Columbia also recognized same-sex marriage prior to the *Windsor* ruling. See *Marriage, Domestic Partnerships, and Civil Unions: Same-Sex Couples Within the United States*, NAT'L CTR FOR LESBIAN RTS. (July 2013), https://www.nclrights.org/wp-content/uploads/2013/07/Relationship_Recognition.pdf [<https://perma.cc/YS5L-BT7A>].

³⁴ Rev. Rul. 2013-17, 2013-38 I.R.B. 201, 204.

³⁵ *Id.*

³⁶ See *Obergefell v. Hodges*, 576 U.S. 644 (2015).

³⁷ *Id.*

³⁸ *Id.* at 664–65.

³⁹ *Id.* at 668–70.

liberty protected by the Due Process Clause.”⁴⁰ *Obergefell* extended this fundamental right to marry—and the respect and message of equality that comes along with it—to same-sex couples across the entirety of the United States.⁴¹

The *Obergefell* decision was a pivotal step towards equality for the LGBTQIA+ community for a multitude of reasons. One of the many benefits of the ruling was same-sex married couples’ ability to file joint federal and state tax returns in all fifty states, regardless of whether their state recognized same-sex marriage prior to *Obergefell*.⁴² Other benefits included the ability to make unlimited gifts exempted from the gift tax to a same-sex spouse, leave property to a same-sex spouse without paying any estate tax, and qualify as a surviving spouse for Social Security benefits.⁴³

Increased inclusivity in tax law started with *Windsor* in 2013, by opening the door for same-sex married couples to be treated equally to opposite-sex married couples under federal tax law. Tax law inclusivity continued to expand with *Obergefell* in 2015, by introducing consistency and uniformity between state and federal tax law and by requiring equal treatment of all same-sex married couples, regardless of their state of residence.⁴⁴ Despite the progress made, there is still much room for improvement. Federal tax law must continue to evolve to reflect inclusion of the LGBTQIA+ community.

D. Whom Did Windsor and Obergefell Leave Behind?

Both *Windsor* and *Obergefell* resulted in significant changes to federal tax law, but the language of that body of law has yet to reflect those alterations.⁴⁵ Language such as “himself,” “husband and wife,” and “taxpayer and his spouse” is used throughout the Internal Revenue Code of 1986 (“IRC”), the federal statutory tax law.⁴⁶ This outdated language has caused understandable confusion.⁴⁷ Due to the heteronormative and contradictory phrasing in the IRC, it is not surprising that 35% of same-sex

⁴⁰ *Id.* at 668.

⁴¹ *Id.* at 681.

⁴² Michael Cohn, *Supreme Court’s Same-Sex Marriage Ruling Has Major Tax and Financial Planning Implications*, ACCT. TODAY (June 29, 2015, 4:45 PM), <https://www.accountingtoday.com/opinion/supreme-courts-same-sex-marriage-ruling-has-major-tax-and-financial-planning-implications> [<https://perma.cc/L2ST-8TTD>] (last visited Mar. 3, 2022).

⁴³ *Id.*

⁴⁴ *United States v. Windsor*, 570 U.S. 744 (2013); Rev. Rul. 2013-17, 2013-38 I.R.B. 201, 204; *see also supra* Sections I.B–C.

⁴⁵ *See supra* notes 27–32, 41–43, and accompanying text.

⁴⁶ *See, e.g.*, I.R.C. § 6013; *see also infra* notes 52–57 and accompanying text.

⁴⁷ *See Mercado, supra* note 2.

married couples are unsure of their filing status.⁴⁸

In addition to the confusing language of federal tax law, there are still inequities and same-sex couples left behind. Neither *Windsor* nor *Obergefell* addressed the issues related to individuals in registered domestic partnerships and civil unions—legal relationships that provide some benefits and protections for those in them, but typically not to the same extent as marriage.⁴⁹ Registered domestic partners and civil union partners have yet to be recognized as married for federal tax law filing purposes, and, thus, they may not file as such.⁵⁰ The PRIDE Act seeks to have the language of the tax law reflect the *Windsor* and *Obergefell* rulings while filling the gaps left in the wake of these cases.

III. ANALYSIS

This section begins by analyzing the benefits of Sections 3 and 4 of the PRIDE Act, which would replace the gendered terminology in the IRC with gender-neutral terminology and reflect the *Windsor* and *Obergefell* rulings. Next, it details how Section 2 of the PRIDE Act will provide a tax refund to same-sex couples who were legally married prior to *Windsor* but could not file as such on their federal income tax returns due to the lack of recognition of their marriages. Finally, this section explains how couples in registered domestic partnerships and civil unions are neglected by the PRIDE Act.

A. Change in Tax Law Language Will Reconcile the Confusion for Same-Sex Couples

The IRC is riddled with gendered language.⁵¹ For example, when the IRC refers to an individual taxpayer or to the spouse of a taxpayer, the language used is “his” or “his spouse.”⁵² Similarly, when referring to a married couple under this section, the language used is “husband and wife.”⁵³

⁴⁸ *Id.*

⁴⁹ See *infra* notes 114–20 and accompanying text; *Domestic Partnerships and Civil Unions*, JUSTIA, <https://www.justia.com/lgbtq/family-law-divorce/domestic-partnerships-civil-unions/> [<https://perma.cc/EG8U-S2S4>] (last updated Oct. 2021).

⁵⁰ *Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions*, IRS, <https://www.irs.gov/newsroom/answers-to-frequently-asked-questions-for-registered-domestic-partners-and-individuals-in-civil-unions#:~:text=Like%20other%20provisions%20of%20the,married%20for%20federal%20tax%20purposes> [<https://perma.cc/D9AD-FQ8B>] (last visited Aug. 3, 2022).

⁵¹ See, e.g., I.R.C. § 6013.

⁵² See, e.g., *id.* §§ 2(a)(2)(B), 63(f)(4), 4905(a).

⁵³ See, e.g., *id.* §§ 22(e)(1), 761(f)(1), 1313(c)(1).

After the *Windsor* ruling,⁵⁴ which allowed same-sex married couples to file jointly, the IRS changed the actual regulations; however, the IRS rejected all suggestions that the regulation should use language specifically referring to same-sex marriage or same-sex married couples.⁵⁵ Instead, the IRS simply ruled that the terms “husband,” “wife,” and “husband and wife” should be interpreted to include individuals married to a person of the same sex if they are legally married under state law.⁵⁶

Sections 3 and 4 of the PRIDE Act would replace the gendered terminology in the IRC with gender-neutral language.⁵⁷ For example, “himself” would be changed to “self,” “husband and wife” to “married couple,” “taxpayer and his spouse” to “taxpayer and the spouse of the taxpayer,” and so on.⁵⁸ Sections 3 and 4 of the PRIDE Act would replace over fifty gendered terms and phrases throughout the IRC.⁵⁹ For example, these sections would amend section 21(d)(2) of the IRC, the section covering the rule for spouses who are students or incapable of caring for themselves, “by striking ‘HIMSELF’ in the heading and inserting ‘SELF;’ and by striking ‘any husband and wife’ and inserting ‘any married couple.’”⁶⁰ The language change would apply to all provisions of the IRC that relate to legally married couples and the gender of spouses.⁶¹

Although the IRS has ruled that gendered terminology applies equally to individuals married to someone of the same sex,⁶² gendered language is more than simply semantics and changing the terminology would make a substantive difference. More inclusive language could mean significant clarification within federal tax law for same-sex couples. As stated previously, 35% of same-sex couples are unsure of their filing status.⁶³ In addition, when same-sex couples reference federal tax law, specifically the IRC, they do not see an accurate reflection of the changes made through *Windsor* and *Obergefell*.⁶⁴ Instead, same-sex couples see a message about who and what are—and have always been—prioritized by the federal tax law:

⁵⁴ See *supra* Section II.B.

⁵⁵ *Feminism and the Tax Code*, FORBES (Sept. 28, 2021, 5:20 PM), <https://www.forbes.com/sites/taxnotes/2021/09/28/feminism-and-the-tax-code/?sh=2d477a161a98> [<https://perma.cc/7JWX-HXAA>].

⁵⁶ Rev. Rul. 2013-17, 2013-38 I.R.B. 201, 202.

⁵⁷ H.R. 3299, 116th Cong. §§ 3–4 (2019).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* §§ 3(a)(1)(A)–(B); see also I.R.C. § 21(d)(2).

⁶¹ See H.R. 3299.

⁶² Rev. Rul. 2013-17, 2013-38 I.R.B. 201, 202.

⁶³ Mercado, *supra* note 2.

⁶⁴ *United States v. Windsor*, 570 U.S. 744 (2013); *Obergefell v. Hodges*, 576 U.S. 644 (2015); see *supra* Sections I.B–C.

heterosexual marriage and the traditional husband and wife. The language within the law matters, and it sends messages about who and what is valued and accepted. For example, in September of 2021, the state of California replaced the word “alien” with “noncitizen” or “immigrant” across several sections of state law.⁶⁵ Governor Gavin Newsom stated that the term “alien” was an “offensive term for a human being” and has “fueled a divisive and hurtful narrative.”⁶⁶ This provides an example of how the language of a law can send a message to those who read it.

Consistent gender-neutral language, in addition to providing clear guidance to and recognition of same-sex couples, promotes same-sex and nonbinary (or gender non-conforming)⁶⁷ inclusivity in tax law.⁶⁸ The growing adoption of gender-neutral language is seen in the relatively recent rule change in the United States House of Representatives’ Rules of the 117th Congress.⁶⁹ The House of Representatives passed House Resolution 8 (“H.R. Res. 8”) on January 4, 2021, which replaced gender-specific language in the Rules of the House of Representatives with gender-neutral language.⁷⁰ H.R. Res. 8 replaced words such as “chairman” with “chair” and “himself or herself” with “themselves.”⁷¹ It also adopted a more inclusive definition of “relative,” replacing words like “father,” “mother,” “son,” “daughter,” “brother,” and “sister” with words like “parent,” “child,” and “sibling.”⁷² The Speaker of the House, Nancy Pelosi, noted that this change was made in order to “honor all gender identities.”⁷³ States have also begun to swap their gendered terms with more inclusive, gender-neutral terms. For example, in

⁶⁵ Adam Beam, *California to Replace the Word “Alien” from Its Laws*, ABC NEWS (Sept. 25, 2021, 12:30 AM), <https://abcnews.go.com/Politics/wireStory/california-replace-word-alien-laws-80222732> [<https://perma.cc/7TFV-RTDD>].

⁶⁶ *Id.*

⁶⁷ “Nonbinary” and “gender non-conforming” are terms used to describe individuals who do not identify as male or female. See *Glossary of Terms*, HUM. RTS. CAMPAIGN, https://www.hrc.org/resources/glossary-of-terms?utm_source=GS&utm_medium=AD&utm_campaign=BPI-HRC-Grant&utm_content=454854043833&utm_term=lgbt%20meaning&gclid=Cj0KCCQiA2sqOBhCGARIsAPuPK0jQ8snBqF11FrixDJQstODwuOiFLPr0fwvELg6mg7FYC3RpujHG0Y8aAhXyEALw_wcB [<https://perma.cc/PD72-UA3Z>] (last visited Aug. 3, 2022).

⁶⁸ Margit Tavits & Efrén Pérez, *Language Influences Mass Opinion Toward Gender and LGBT Equality*, 34 PROC. NAT’L ACAD. SCI. 16781, 16785 (2019), <https://www.pnas.org/doi/epdf/10.1073/pnas.1908156116> [<https://perma.cc/HRE3-YW7X>].

⁶⁹ Camille Caldera, *Fact Check: US House Members Can Use Gendered Language; Rules Change Affected One Document*, USA TODAY (Jan. 16, 2021, 6:46 PM), <https://www.usatoday.com/story/news/factcheck/2021/01/16/fact-check-house-rules-only-changed-gendered-language-one-document/4175388001/> [<https://perma.cc/DR6X-H89D>].

⁷⁰ H.R. Res. 8, 117th Cong. (2021).

⁷¹ *Id.*

⁷² *Id.*

⁷³ Caldera, *supra* note 69.

2018, Pennsylvania replaced the terms “mother” and “father” with “parent” on birth certificates issued in the state.⁷⁴ More recently, in 2021, Wisconsin made a similar change to the language on birth certificates issued in the state.⁷⁵ Governor Tony Evers stated that this change was to further recognize that families within Wisconsin “are diverse and should be valued and respected.”⁷⁶

The necessity of adopting gender-neutral language within the law is supported by data from three Sweden studies which found that the use of gender-neutral pronouns, as opposed to masculine pronouns, “influences attitudes and beliefs about...tolerance toward LGBT individuals.”⁷⁷ This study provides strong evidence for the proposition that using gender-neutral language can increase empathy among individuals and improve societal acceptance of the LGBTQIA+ community, including gender-nonconforming and non-binary identifying individuals. Authors and political scientists, Margit Travits⁷⁸ and Dr. Efrén O. Pérez,⁷⁹ argue that this evidence suggests to policymakers that introducing gender-neutral language, rather than refusing to quash inequities between cisgender⁸⁰ heterosexual individuals and individuals in the LGBTQIA+ community, can increase the acceptance of these individuals throughout society without any major drawbacks on enforcing laws and regulations.⁸¹

Sections 3 and 4 of the PRIDE Act, amending the IRC to include gender-neutral language, must become law. As the law continues to evolve and become more inclusive, the language must reflect such evolution and inclusion; hence, it is time for the federal tax law language to at last reflect the changes fashioned by *Windsor* and *Obergefell*.⁸² The use of gender-

⁷⁴ *Removal of “Mother” and “Father” Designations from PA Birth Certificates Irks Some Lawmakers*, FOX43 (Jan. 11, 2018), <https://www.fox43.com/article/news/local/contests/removal-of-mother-and-father-designations-from-pa-birth-certificates-irks-some-lawmakers/521-18632c47-5fe5-44be-8f37-54b21968f346> [<https://perma.cc/A8VA-YVGU>].

⁷⁵ Benjamin Yount, *Gov. Evers Orders Changes to Mother, Father Designations on Wisconsin Birth Certificates*, CTR. SQUARE (June 28, 2021), https://www.thecentersquare.com/wisconsin/gov-evers-orders-changes-to-mother-father-designation-on-wisconsin-birth-certificates/article_13cfc86-d851-11eb-8a65-b7d7889018ae.html [<https://perma.cc/W4WB-B33D>].

⁷⁶ *Id.*

⁷⁷ Travits & Pérez, *supra* note 68, at 16786.

⁷⁸ Margit Travits, WASH. U. ST. LOUIS (2022), <https://sites.wustl.edu/mtavits/> [<https://perma.cc/A7QN-XYMG>].

⁷⁹ Efrén Pérez, *Ph.D.: Political Psychologist*, EFRÉN PÉREZ, <https://eoperez.com/> [<https://perma.cc/S2KS-3EUQ>].

⁸⁰ Cisgender refers to individuals who identify with the gender they were assigned with at birth. *See Glossary of Terms, supra* note 67.

⁸¹ Travits & Pérez, *supra* note 68, at 16786.

⁸² *United States v. Windsor*, 570 U.S. 744 (2013); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *see supra* Sections I.B–C.

neutral terminology will promote inclusion and send a message to same-sex couples and gender non-conforming individuals about who and what the law (and, therefore, society) now recognizes and values. It will also provide further clarification and allow federal tax law language to accurately reflect federal tax law for same-sex married couples to reference when filing their federal tax returns. For the tax law to accurately reflect prior rulings and the evolution of societal values, it must exchange its gendered language for gender-neutral language.

B. Amendments to Federal Tax Returns Should be Permissible to Reflect Joint Filing Status Past the Statute of Limitations

Along with language changes across the IRC, Section 2 of the PRIDE Act proposes an override of the three-year statute of limitations for amending federal tax returns, akin to a retroactive application of *Windsor*.⁸³ After *Windsor*, same-sex married couples received clearance from the IRS to amend their past federal tax returns to reflect their joint filing status, but the clearance was only for the prior three years (2010, 2011, and 2012) due to the existing three-year statute of limitations.⁸⁴ The PRIDE Act allows same-sex couples to amend their federal tax returns starting in 2004, when same-sex marriage was first recognized at the state level.⁸⁵ Section 2(a)(1) of the PRIDE Act states:

“[I]f such individual filed a return (other than a joint return) for a taxable year ending before September 16, 2013, for which a joint return could have been made by the individual and the individual’s spouse but for the fact that such holdings were not effective at the time of filing, such return shall be treated as a separate return . . . and the time prescribed . . . for filing a joint return after filing a separate return shall not expire before the date prescribed by law . . . for filing the return of tax for the taxable year that includes the date of the enactment of this Act.”⁸⁶

Moreover, same-sex married couples would be refunded for all years in which they could have filed jointly, if filing as such would have resulted in a

⁸³ H.R. 3299, 116th Cong. § 2(a) (2019).

⁸⁴ Eileen Y. Lee Breger, *\$57 Million in Tax Refunds for Same-Sex Couples*, BOWDITCH ATTORNEYS (June 27, 2019), <https://www.bowditch.com/diversityinclusionma/2019/06/27/57-million-in-tax-refunds-for-same-sex-couples/> [https://perma.cc/YUG9-U6XB].

⁸⁵ H.R. 3299 § 2(a); *see also* Rose Arce, *Same-Sex Couples Ready to Make History in Massachusetts*, CNN (May 17, 2004, 4:41 AM), <https://www.cnn.com/2004/LAW/05/17/mass.gay.marriage/> [https://perma.cc/27PA-ZD9Q].

⁸⁶ H.R. 3299 § 2(a)(1).

refund. The ability to amend federal tax filing status and obtain refunds will affect approximately 114,300 same-sex couples.⁸⁷

1. Amendments Will “Right a Wrong” for Some

If passed, Section 2 of the PRIDE Act would right many financial wrongs incurred by same-sex couples since the legalization of same-sex marriage, including the wrongs which stem from the inability to receive refunds for the years falling outside of the IRS’s statute of limitations.⁸⁸ This portion of the PRIDE Act was originally introduced in the House of Representatives as a separate piece of legislation: the Refund Equality Act of 2019 (“Refund Equality Act”).⁸⁹ The Refund Equality Act was introduced in the House of Representatives a few days prior to the PRIDE Act. It was never voted on, but instead was incorporated in its entirety into the PRIDE Act.⁹⁰ The Joint Committee on Taxation, which issues all official estimates for tax legislation considered by Congress, estimated that the Refund Equality Act portion of the PRIDE Act would return approximately \$57 million to same-sex married couples.⁹¹

As noted previously, while states had already begun to recognize same-sex marriage prior to *Windsor*, same-sex couples were barred from filing as married on federal income taxes due to a lack of recognition on the federal level prior to 2013.⁹² In reference to her home state of Massachusetts, the first state to legally recognize same-sex marriage in 2004, Senator Elizabeth Warren stated that there is a necessity to “call out” the federal government for the discriminatory practice of forcing same-sex couples to file as individuals—causing them to pay significantly more in taxes for over a decade.⁹³

Those who argue against this portion of the Act attack both the

⁸⁷ Brief for Timothy B. Bostic et al. as Amici Curiae Supporting Appellees and Intervenors, *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014) (No. 14-1167).

⁸⁸ H.R. 3299 § 2.

⁸⁹ The Refund Equality Act of 2019 was introduced on June 14, 2019. Its sole purpose was to provide refunds to same-sex married couples. H.R. 3294, 116th Cong. (as introduced in House of Representatives, July 14, 2019).

⁹⁰ H.R. 3294; H.R. 3299 § 2.

⁹¹ *Estimated Revenue Effects of H.R. 3299, The “Prompting Respect for Individuals’ Dignity and Equality Act of 2019,”* JOINT COMM. TAX’N (June 18, 2019), <https://www.jct.gov/publications/2019/jcx-27-19/> [<https://perma.cc/58RH-GQWW>].

⁹² Press Release, Senator Elizabeth Warren, *Warren Leads 40 Senators in Reintroducing Refund Equality Act to Provide Equal Tax Treatment for Married Same-Sex Couples* (June 11, 2021), <https://www.warren.senate.gov/newsroom/press-releases/warren-leads-40-senators-in-reintroducing-refund-equality-act-to-provide-equal-tax-treatment-for-married-same-sex-couples> [<https://perma.cc/ZM7J-KMHM>].

⁹³ *Id.*

Windsor ruling as a whole and the representatives and senators who support this portion of the PRIDE Act.⁹⁴ Opponents of *Windsor* argue that the traditional definition of marriage, as between a man and woman, should be the only definition of marriage, and that DOMA was wrongfully ruled unconstitutional.⁹⁵ This argument is seen clearly in Chief Justice Roberts' dissent in *Windsor* where he stated, “. . . Congress acted constitutionally in passing the Defense of Marriage Act.”⁹⁶ Roberts argued that maintaining the traditional definition of marriage, which DOMA protected, would promote uniformity and stability.⁹⁷

Roberts's argument translates over to the PRIDE Act—some argue that the PRIDE Act should not be passed because *Windsor* was wrongfully decided. This argument need not be refuted to a great extent because of the precedent set by the decisions in *Windsor* and *Obergefell*; in other words, this argument is outdated.⁹⁸ However, it is beneficial to note that both *Windsor* and *Obergefell* did promote uniformity and stability by evolving the law as both public views and states' laws changed.⁹⁹ The rulings provided uniformity between states themselves, and between the states and the federal government, by treating all married couples as equals under the law—regardless of gender or state of residence.¹⁰⁰

In addition, opponents argue that the individuals supporting Section 2 of the PRIDE Act also generally support increased taxes, asserting that those two positions cannot coexist.¹⁰¹ This argument is a logical fallacy or, perhaps, a false equivalence. This argument equates an increase in taxes with unequal treatment under federal tax law; in effect, if supporters do believe in higher taxes, they would not believe in treating same-sex married couples and opposite-sex married couples equally under tax law.

Section 2 of the PRIDE Act must become law due to the monetary benefit to same-sex couples, which would right the wrong created by the unequal tax treatment of those couples for over a decade. However, while the

⁹⁴ Jesse Rifkin, *Refund Equality Act Would Allow Same-Sex Couples to Receive Tax Refunds Owed from Before Federal Recognition of Same-Sex Marriage*, GOVTRACK INSIDER (July 20, 2021), <https://govtrackinsider.com/refund-equality-act-would-allow-same-sex-couples-to-receive-tax-refunds-owed-from-before-federal-34ad5832dc1> [<https://perma.cc/F8QU-ZWYC>].

⁹⁵ *See id.*

⁹⁶ *United States v. Windsor*, 570 U.S. 744, 775 (2013) (Roberts, J., dissenting); *see* Rifkin, *supra* note 94.

⁹⁷ *Id.*

⁹⁸ *United States v. Windsor*, 570 U.S. 744 (2013); *Obergefell v. Hodges*, 576 U.S. 644 (2015); *see supra* Sections I.B–C.

⁹⁹ *Windsor*, 570 U.S. at 772; *Obergefell*, 576 U.S. at 670.

¹⁰⁰ Laura A. Rosenbury, *The Role of Federal Law in Private Wealth Transfer: Federal Visions of Private Family Support*, 67 VAND. L. REV. 1835, 1859 (2014).

¹⁰¹ *See* Rifkin, *supra* note 94.

PRIDE Act appears to right the wrong for same-sex couples, there is still a large portion of same-sex couples left out: those in registered domestic partnerships and civil unions prior to *Windsor*.

2. Amendments Will Result in Nothing for Others

While the PRIDE Act would provide married same-sex couples with financial benefits and promote inclusion, individuals who were not legally married, due to a lack of recognition by most states, will not benefit from the federal tax return amendments.¹⁰² Further, the PRIDE Act will mostly benefit same-sex couples who were legally married prior to 2010.¹⁰³ In 2010, over 108,000 same-sex couples were in civil unions or registered domestic partnerships, compared to 114,300 same-sex couples who were legally married, and only four states had legalized same-sex marriage.¹⁰⁴ So, roughly 49% of same-sex couples who were in legally committed relationships, recognized in some form by their state, will not benefit from the PRIDE Act's allowance of federal tax return amendments.¹⁰⁵

a. History of Registered Domestic Partnerships and Civil Unions

Both registered domestic partnerships and civil unions were established as alternatives to marriage for same-sex couples in order to allow same-sex couples to reap some state benefits and protections, while marriage was not yet available to them.¹⁰⁶ In 1997, Hawaii became the first state to legalize registered domestic partnerships for same-sex couples.¹⁰⁷ Vermont followed suit in 1999, ruling that same-sex couples were able to enter into registered domestic partnerships or civil unions and receive the same benefits and protections as opposite-sex married couples.¹⁰⁸ More states began to legalize registered domestic partnerships and civil unions, but the rights and protections awarded to the partners differed from state to state, and these inconsistencies still persist today.¹⁰⁹ For example, Illinois provides civil

¹⁰² See H.R. 3299, 116th Cong. (2019).

¹⁰³ The PRIDE Act allows for individuals to amend tax returns for all years prior to the Windsor decision in 2013; however, the IRS already allowed amendments under the usual three-year statute of limitations. See *supra* notes 83–87 and accompanying text.

¹⁰⁴ Brief for Timothy B. Bostic et al., *supra* note 87.

¹⁰⁵ *Id.*

¹⁰⁶ *Domestic Partnerships and Civil Unions*, *supra* note 49.

¹⁰⁷ *A Timeline of the Legalization of Same-Sex Marriage in the U.S.*, GEO. U. L. LIBR., <https://guides.ll.georgetown.edu/c.php?g=592919&p=4182201> [<https://perma.cc/S8C4-QLZ9>] (last updated Feb. 28, 2022, 4:35 PM).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

unions with the same rights and legal protections as married couples, but the District of Columbia provides registered domestic partnerships with limited benefits in comparison to married couples.¹¹⁰ Along with state-to-state differences, since federal law does not recognize registered domestic partnerships and civil unions, individuals in these partnerships and unions receive none of the marital benefits at the federal level,¹¹¹ including the ability to file joint federal tax returns regardless of what benefits they receive from their state.¹¹²

b. Tax Return Amendments for Registered Domestic Partners and Civil Union Partners will Result in a More Inclusive PRIDE Act

As the PRIDE Act stands currently, it only affects same-sex couples legally married in a state that recognized same-sex marriage prior to 2013, and it has the greatest effect on same-sex couples legally married prior to 2010.¹¹³ Therefore, approximately 114,300 same-sex married couples would obtain a combined amount of about \$57 million.¹¹⁴ Using this estimate, the remaining 108,000 same-sex couples who were forced to resort to marriage alternatives—such as registered domestic partnerships and civil unions—possibly due to a lack of same-sex marriage recognition in their state, are missing out on approximately \$54 million in federal tax refunds.¹¹⁵

Unequal treatment of select same-sex couples is unjust as certain couples are unable to reap the benefits of the PRIDE Act due to their state's failure to recognize their union. Additionally, same-sex couples, along with opposite-sex couples, still find benefits in registered domestic partnerships and civil unions today, but they are unable to file as married couples on their federal income taxes, even if they are able to do so on their state income taxes.¹¹⁶ These couples have determined that the available alternatives are a

¹¹⁰ *Is There Any Reason to Get a Civil Union?*, ILL. LEGAL AID, <https://www.illinoislegalaid.org/legal-information/there-any-reason-get-civil-union> [https://perma.cc/KL2S-JBEE] (last updated May 24, 2020); *Same-Sex Marriage, Civil Unions, and Domestic Partnerships*, FINDLAW, <https://www.findlaw.com/family/marriage/same-sex-marriage-civil-unions-and-domestic-partnerships.html> [https://perma.cc/4X7M-F8UD] (last updated Dec. 28, 2021).

¹¹¹ See *supra* notes 10–22 and accompanying text.

¹¹² *Answers to Frequently Asked Questions*, *supra* note 50.

¹¹³ See H.R. 3299, 116th Cong. (2019).

¹¹⁴ Brief for Timothy B. Bostic et al., *supra* note 87.

¹¹⁵ *Id.*

¹¹⁶ See Adam Beam, *Heterosexual Couples Can Register for Domestic Partnerships Under New California Law*, CAP. PUB. RADIO (July 31, 2019), <https://www.capradio.org/articles/2019/07/31/heterosexual-couples-can-register-for-domestic-partnerships-under-new-california-law/> [https://perma.cc/U5XQ-54CC]; see also Nausica Palazzo, *Marriage Apostates: Why Heterosexuals Seek Same-Sex Registered Partnerships*, 42 COLUM. J. GENDER & L. 186, 190 (2021).

better fit for their situation, and yet, their commitment is not recognized as equivalent to marriage under federal tax law.¹¹⁷

C. Future Tax Treatment for Individuals in Registered Domestic Partnerships and Civil Unions

1. Registered Domestic Partnerships and Civil Unions Continue Today

While registered domestic partnerships and civil unions have been traditionally known as an alternative to marriage for same-sex couples, opposite-sex couples have also started acknowledging the benefit of these alternatives.¹¹⁸ Registered domestic partnerships and civil unions provide same-sex and opposite-sex couples alike with alternatives to marriage if they feel it is more suitable for their relationship. Six states currently allow opposite-sex couples to form registered domestic partnerships or civil unions.¹¹⁹ Some opposite-sex couples seek these alternatives to marriage because “they are not associated with traditional gender-differentiated roles and don’t have the same historic and cultural connotations that some people may find undesirable.”¹²⁰ These alternatives to marriage “can promote a more pluralistic model of relationship recognition and . . . offer legal protection to families that eschew the paradigm of the traditional marital family.”¹²¹

However, as of 2022, registered domestic partners and civil union partners are not recognized as married for federal tax purposes.¹²² The PRIDE Act is a milestone piece of legislation that could provide additional inclusion in federal tax law for registered domestic partnerships and civil unions.

2. States’ Tax Treatment for Registered Domestic Partnerships and Civil Unions

Along with providing equal treatment under federal tax law for individuals who decide to commit to one another in a nontraditional manner, permitting those in registered domestic partnerships and civil unions to file as married under federal tax law will also provide uniformity and further

¹¹⁷ Palazzo, *supra* note 116, at 234.

¹¹⁸ Palazzo, *supra* note 116, at 189.

¹¹⁹ *Same-Sex Marriage*, *supra* note 110.

¹²⁰ Adam Beam, *Heterosexual Couples Can Register for Domestic Partnerships Under New California Law*, CAP. PUB. RADIO (July 31, 2019), <https://www.caprдио.org/articles/2019/07/31/heterosexual-couples-can-register-for-domestic-partnerships-under-new-california-law/> [https://perma.cc/U5XQ-54CC].

¹²¹ *Id.*

¹²² *Answers to Frequently Asked Questions*, *supra* note 50.

inclusion.¹²³ Eleven states and the District of Columbia allow registered domestic partnerships, civil unions, or both.¹²⁴ Five of those states and the District of Columbia allow individuals in registered domestic partnerships and civil unions to file state income taxes as if they were married individuals.¹²⁵ For example, registered domestic partners in Oregon receive the same state tax treatment as married individuals: they may file either jointly or separately, and may not file using the single or head of household filing statuses.¹²⁶ Similarly, registered domestic partners in California must file their state income taxes jointly or separately.¹²⁷ Despite states allowing registered domestic partners to file as married, registered domestic partners and civil union partners are not recognized as married under federal tax law; consequently, they must file individual federal tax returns as single or head of household.¹²⁸

Federal tax law recognition of registered domestic partners and civil union partners as married would parallel the existing state tax law. Under current federal tax law, individuals in states that recognize registered domestic partnerships and civil unions face uncertainty when following both federal and state tax law. Registered domestic partners and civil union partners in Oregon, California, Connecticut, New Jersey, Oregon, Vermont, and the District of Columbia must complete two federal tax returns.¹²⁹ These individuals complete their own actual federal tax returns and what is often referred to as an “as-if” federal tax return.¹³⁰ The actual federal tax returns reflect one of two filing statuses: single or head of household, and the “as-if” federal tax returns reflect either a married filing jointly or married filing

¹²³ See Patricia A. Cain, *Taxing Families Fairly*, 48 SANTA CLARA L. REV. 805, 851 (2008).

¹²⁴ *Civil Unions and Domestic Partnership Statutes*, NAT'L CONF. STATE LEG.'S (Mar. 10, 2020), <https://www.ncsl.org/research/human-services/civil-unions-and-domestic-partnership-statutes.aspx#:~:text=Five%20states%20allow%20for%20civil,relationship%20known%20as%20reciprocal%20beneficiaries> [https://perma.cc/62QV-AMVF].

¹²⁵ *Does the IRS Recognize Domestic Partners as Being Married?*, H&R BLOCK, <https://www.hrblock.com/tax-center/filing/personal-tax-planning/irs-domestic-partners/> [https://perma.cc/5SRU-JE3N] (last visited Aug. 4, 2022).

¹²⁶ *Registered Domestic Partners*, OR. DEP'T REVENUE, <https://www.oregon.gov/dor/programs/individuals/Pages/rdp.aspx> [https://perma.cc/6YYM-QDLZ] (last visited Aug. 4, 2022).

¹²⁷ *Registered Domestic Partner (RDP)*, STATE CAL. FRANCHISE TAX BD., <https://www.ftb.ca.gov/file/personal/filing-status/registered-domestic-partner.html> [https://perma.cc/Q84T-M4AT] (last updated Jan. 3, 2022).

¹²⁸ *Tax Tips for Registered Domestic Partners and Unmarried Same Sex Couples in Community Property States*, TURBOTAX (Jan. 3, 2022, 1:44 PM), <https://turbotax.intuit.com/tax-tips/marriage/tax-tips-for-registered-domestic-partners-and-unmarried-same-sex-couples-in-community-property-states/L5fdFPiVh> [https://perma.cc/Y68T-VW9D].

¹²⁹ *Civil Unions and Domestic Partnership Statutes*, *supra* note 124.

¹³⁰ See *Registered Domestic Partners*, *supra* note 126.

separately status and are used to determine state tax liability.¹³¹ The actual federal tax returns are filed with the IRS and the “as-if” federal tax returns, which include alternative versions of all required federal schedules, are attached to and filed with state tax returns.¹³² Tax professionals encourage registered domestic partners and civil union partners to include a note explaining the difference in federal and state tax filing statuses.¹³³ This inconvenience is in stark contrast to married couples’ ability to file a single joint tax return for state and federal taxes with relative ease.¹³⁴

The unfortunate and usual result of this seemingly complex process (which is much more complex than an average tax filing) is a lower federal tax refund or higher tax liability for those in domestic partnerships or civil unions.¹³⁵ The typical registered domestic partnership or civil union may notice the “marriage bonus” on their state tax return, but it is unlikely on their federal tax return.¹³⁶ Along with the lower federal tax return, registered domestic partners and civil union partners lack several federal tax benefits that married couples receive.¹³⁷ These absent benefits include estate and gift tax exemptions, financial protection upon legal termination of the relationship, and more.¹³⁸

Registered domestic partnerships and civil unions continue to be utilized today, by opposite-sex couples and same-sex couples alike.¹³⁹ It is time for the federal tax law to acknowledge these commitments and to treat the individuals in these partnerships and unions as married. The PRIDE Act can extend its inclusivity and impact by proposing this change. The PRIDE Act should use its bipartisan support and its platform to lift the voices of individuals in registered domestic partnerships and civil unions and advocate for equal treatment under federal tax law.

V. RESOLUTION

In order to maximize inclusion and create uniformity between state and federal tax law, the PRIDE Act must be amended to include registered domestic partnerships and civil unions and, subsequently, become law. Individuals in registered domestic partnerships and civil unions must (1) be

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Tax Tips, supra* note 128.

¹³⁴ Kagan, *supra* note 13.

¹³⁵ Cautero, *supra* note 16.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *See id.*

permitted to amend their federal tax returns for the years prior to *Windsor* to reflect joint filing status and (2) be permitted to file joint tax returns in future taxable years.

By recognizing registered domestic partners and civil union partners as married for federal tax purposes, all individuals that may file as married under their state's tax law would also be able to file as such under federal tax law. This would simplify the filing process for individuals in such unions and partnerships and allow them to reap the same benefits that married couples have long received.

Creating this uniformity would also provide additional inclusion in federal tax law. Registered domestic partners and civil union partners would be treated equally, indistinguishable from married couples, further bringing an end to the prolonged chronical of unequal treatment under federal tax law. According to a study published by Pew Research Center in 2019, approximately 65% of adults in America favor "allowing unmarried couples to enter into legal agreements that would give them the same rights as married couples when it comes to things like . . . tax benefits."¹⁴⁰

It may be argued that registered domestic partnerships and civil unions should be treated differently than marriage because they are fundamentally and legally different than marriage; thus, they do not have the same social meaning. It may be further argued that same-sex couples do not need to rely on these unions any longer due to the legalization of same-sex marriage by *Obergefell*. These arguments rely on two assumptions: (1) that same-sex couples are the only couples seeking to enter into these unions, and (2) that marriage is somehow superior to and more sought-after than these unions. However, as stated above, opposite-sex couples and same-sex couples alike continue to enter into these unions and the majority of adults in America believe these unions should continue to exist as alternatives to marriage and carry the same rights and benefits as marriage.¹⁴¹ The PRIDE Act must be amended as described below in order to extend its applicability to individuals in registered domestic partnerships and civil unions prior to *Windsor* and now.

¹⁴⁰ Nikki Graf, *Key Findings on Marriage and Cohabitation in the U.S.*, PEW RSCH. CTR. (Nov. 6, 2019), <https://www.pewresearch.org/fact-tank/2019/11/06/key-findings-on-marriage-and-cohabitation-in-the-u-s/> [<https://perma.cc/QVS5-93SZ>].

¹⁴¹ *Id.*; see *supra* Section III.C.

A. Registered Domestic Partners and Civil Union Partners Shall be Permitted to Amend Their Federal Tax Returns for the Years Prior to the Windsor Ruling

As stated previously, Section 2 of the PRIDE Act's permission of amendments outside of the three-year statute of limitations only applies to same-sex couples who were legally married prior to *Windsor*.¹⁴² Section 2 of the PRIDE Act states that individuals may only amend their federal tax returns if “a joint return could have been made by the individual and the individual’s spouse but for the fact that such holdings were not effective at the time of filing...”¹⁴³ Section 2(a)(1) should be amended as follows:

(1) if such individual filed a return (other than a joint return) for a taxable year ending before September 16, 2013, for which a joint return could have been made by the individual and the individual’s spouse but for the fact that such holdings were not in effect at the time of filing, or if the individual was in a registered domestic partnership or civil union recognized by their state of residence, such return shall be treated as a separate return within the meaning of section 6013(b) of such Code and the time prescribed by section 6013(b)(2)(A) of such Code for filing a joint return after filing a separate return shall not expire before the date prescribed by law (including extensions) for filing the return of tax for the taxable year that includes the date of the enactment of this Act.

This amendment to the PRIDE Act would allow individuals who were unable to legally marry prior to 2013 and who had to rely on alternatives supplied by their state, such as registered domestic partnerships and civil unions, to file joint federal tax returns and be refunded, if applicable. This amendment will help remedy the financial loss suffered by these individuals due to the federal tax law’s lack of recognition of their relationship.¹⁴⁴

B. Registered Domestic Partners and Civil Union Partners Shall be Recognized for Federal Tax Purposes

Registered domestic partnerships and civil unions continue today and are utilized by both same-sex and opposite-sex couples.¹⁴⁵ The federal tax law does not recognize these partnerships and unions as marriages, despite

¹⁴² H.R. 3299, 116th Cong. § 2 (2019).

¹⁴³ *Id.* at § 2(a)(1).

¹⁴⁴ Cautero, *supra* note 16.

¹⁴⁵ *See supra* Section III.C.i.

the adoption of this approach by some states.¹⁴⁶ The PRIDE Act could achieve greater equality and inclusivity by proposing an amendment to the IRC. The PRIDE Act should propose the addition of a definition for spouse and married couple to the IRC that explicitly includes those in registered domestic partnerships and civil unions.

As the IRC exists now, the only definition provided in this realm is a cross-reference¹⁴⁷ to the Dictionary Act, which provides that “words importing the masculine gender include the feminine as well.”¹⁴⁸ This provision of the Dictionary Act has been recognized to require the term “husband and wife” to also include same-sex married couples.¹⁴⁹ Sections 3 and 4 of the PRIDE Act already address the language of the IRC, proposing that gendered terms (“husband,” “wife,” and “husband and wife”) be exchanged for gender-neutral terms (“spouse” and “married couple”).¹⁵⁰ However, they do not address the inclusion of registered domestic partners and civil union partners. The PRIDE Act should remedy this and require Section 7701 of the IRC, which contains definitions for terms throughout the IRC, to list definitions similar to the following:

(A) Spouse

The term “spouse” shall be construed to mean and include any individual that is legally married, in a registered domestic partnership, or in a civil union.

(B) Married Couple

The term “married couple” shall be construed to mean and include any couple that is legally married, in a registered domestic partnership, or in a civil union.

Including these definitions would provide a solution to the existing exclusion of registered domestic partnerships and civil unions in federal tax law. The proposed definitions would allow registered domestic partnerships and civil unions to be treated as marriages for federal tax law purposes. This would result in permission to file jointly under federal tax law for those in registered domestic partnerships and civil unions, allowing those in such relationships to finally be able to achieve the benefits provided to married couples.¹⁵¹

¹⁴⁶ See *Answers to Frequently Asked Questions*, *supra* note 50.

¹⁴⁷ I.R.C. § 7701(p)(1)(3).

¹⁴⁸ 1 U.S.C. § 1 (2012).

¹⁴⁹ See *Barry v. Comm’r*, 114 T.C.M. (CCH) 610 (2017) (collecting cases).

¹⁵⁰ See *supra* notes 57–61 and accompanying text.

¹⁵¹ See *supra* Section II.A.

C. Resolution Conclusion

The PRIDE Act has strong bipartisan support, but it is limited in its applicability. Individuals in registered domestic partnerships and civil unions prior to the *Windsor* ruling will be unable to reap any benefit from the PRIDE Act. Thus, the PRIDE Act should be amended as described above to include these individuals in the group eligible to amend their tax return status to “married” for the years prior to *Windsor*.¹⁵² Additionally, individuals are still entering into registered domestic partnerships and civil unions today. The PRIDE Act should be amended as described above to seize the opportunity to provide couples choosing these marriage alternatives with the same federal tax benefits provided to married couples.¹⁵³

IV. CONCLUSION

The passage of time has brought about a more inclusive definition of marriage in the United States. Throughout the nineteenth century, marriage between a man and woman was largely used as a political and economic tool.¹⁵⁴ The twentieth century brought about another meaning to marriage: the idea of fulfillment, attraction, and love between a man and woman.¹⁵⁵ In 1958, the definition of marriage evolved to include “marriage across racial lines,” when *Loving v. Virginia* legalized interracial marriage.¹⁵⁶ In 2016, the definition of marriage continued to progress when *Obergefell* legalized same-sex marriage.¹⁵⁷ Marriage is far from its “traditional” meaning and has been proven to be malleable, evolving and progressing along with the views on what is valued and accepted. It is no longer adequate to claim that marriage is a tradition, unaccepting of change and superior to all other unions.

Individuals and couples continue to change, whether it be their priorities, values, desires, or just the general perception of commitment and marriage; the law and its definition of marriage must continue to change with individuals and couples. Thus, federal tax law should not continue to “safeguard” benefits that have historically been given only to married individuals under the many different meanings of the term “marriage.” Federal tax law must provide uniformity with state tax law and include

¹⁵² See *supra* Section III. A.

¹⁵³ See *supra* Section III. B.

¹⁵⁴ Brittany Brolley, *How Marriages Have Changed Over the Last 100 Years*, THE LIST, <https://www.thelist.com/132979/how-marriages-have-changed-over-the-last-100-years/> [https://perma.cc/6FQS-TYRU] (last updated Mar. 31, 2021, 11:12 PM).

¹⁵⁵ *Id.*

¹⁵⁶ *Loving v. Virginia*, 388 U.S. 1 (1967).

¹⁵⁷ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

individuals who do not fit within the “traditional” definition of marriage. The PRIDE Act must utilize its strong, widespread, bipartisan support to include the amendment and additional provisions as noted above, which would allow individuals in registered domestic partnerships and civil unions to reap its benefits and be recognized as married under federal tax law.¹⁵⁸

Along with changes to the language in federal tax law, federal tax refunds must be provided to same-sex couples married prior to *Windsor*, who were robbed by the lack of recognition for their love and commitment to each other. The extension of the statute of limitations for federal tax returns for same-sex couples married prior to *Windsor*, provided by Section 2 of the PRIDE Act, will allow same-sex married couples to be refunded for the years in which they would have been able to file jointly.¹⁵⁹ Section 2 of the PRIDE Act should be amended as noted above to allow same-sex couples who relied on alternatives to marriage to amend their tax returns for the years prior to *Windsor*.¹⁶⁰ After Section 2 of the PRIDE Act is amended, it must become law.

Once inclusivity has been extended to all, the PRIDE Act must be passed. Just as the definition of marriage is subject to change and has continued to evolve over time, the ideas of who and what are valued continue to change and evolve as well. As this happens, laws must be altered. Federal tax law must change to reflect the monumental decisions of *Windsor* and *Obergefell* and to send a message about the value and acceptance of same-sex couples. Inclusive, gender-neutral language in the IRC will aid those referring to the IRC, allowing same-sex couples to read the text and know what applies to them.¹⁶¹ Same-sex couples will also receive the message about who and what is valued. Sections 3 and 4 of the PRIDE Act, adding more inclusive language, must become law.

The arguments against the PRIDE Act are only extensions of what has been argued for years, most notably documented in both the *Windsor* and *Obergefell* dissents.¹⁶² The arguments continue to focus on the idea that same-sex couples should be treated differently because they do not fit into the traditional idea of marriage.¹⁶³ The arguments against extending the PRIDE Act to include benefits for registered domestic partnerships and civil unions stem from the same heteronormative and “traditional” argument: any union other than marriage is inferior to marriage and should be treated as

¹⁵⁸ See *supra* Section V.B.

¹⁵⁹ See *supra* Section III.B.

¹⁶⁰ See *supra* Section V.A.

¹⁶¹ See *supra* Section III.A.

¹⁶² *United States v. Windsor*, 570 U.S. 744, 775 (2013) (Roberts, J., dissenting); see Rifkin, *supra* note 94.

¹⁶³ *Id.*

such under the law, including the federal tax law. These arguments are simply outdated.

As definitions, ideas, and values have changed and evolved, the federal tax law has been left behind. It is time for Congress to acknowledge these changes and pass a more inclusive PRIDE Act.