

## 2013 DRAFTING REQUEST

### Bill

Received: 7/3/2013 Received By: mshovers  
Wanted: As time permits Same as LRB:  
For: Mark Miller (608) 266-9170 By/Representing: Beth  
May Contact: Drafter: mshovers  
Subject: Tax, Individual - income Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Miller@legis.wisconsin.gov  
Carbon copy (CC) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Allow registered domestic partners to file as married joint

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### Instructions:

See attached. If registered domestic partners file federally as "married joint", allow them to file as "married joint" in WI

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 7/29/2013			_____			
/P1	mshovers 10/1/2013	jdyer 8/14/2013	rschluet 8/14/2013	_____	sbasford 8/14/2013		State
/1		jdyer 10/2/2013	rschluet 10/2/2013	_____	srose 10/2/2013	sbasford 2/6/2014	State

FE Sent For:

②  
INTRO.

<END>

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/?	mshovers 7/29/2013	10/2 jld					
/P1		jdye 8/14/2013	rschluet 8/14/2013		sbasford 8/14/2013		State

11 MES 10/1/13  
FE Sent For:

*10/2/13*  
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/?	mshovers	P1 8/14/13	J 8/14/13	_____			

FE Sent For:

<END>

**Shovers, Marc**

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**From:** Bier, Beth  
**Sent:** Friday, June 28, 2013 10:37 AM  
**To:** Shovers, Marc  
**Subject:** Bill Draft Request

*domestic partnerships  
under ch. 770*

Hi Marc,

If you are not the correct person for this request, please let me know who to send it to. Sen. Miller would like a bill drafted that allows persons registered on Wisconsin's domestic partnership registry to file jointly in Wisconsin if they file jointly for federal tax purposes.

He would also like a second bill that addresses the issue of inheritance for married couples not recognized in Wisconsin. He thinks that one might require some additional research to identify all the hurdles. If it does, would you or someone at Leg Council be able to look into it? Let me know any questions.

Thanks,  
Beth

-----  
Beth Bier  
Office of Senator Mark Miller  
PO Box 7882  
Madison, WI 53707

608.266.9170  
[Beth.Bier@legis.wisconsin.gov](mailto:Beth.Bier@legis.wisconsin.gov)



Wed.  
(Cmch)

jud  
RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-note

LX

1 AN ACT ...; relating to: authorizing certain registered domestic partners to file  
2 a joint individual income tax return.

**Analysis by the Legislative Reference Bureau**

Under current law, a married couple may file a joint individual income tax return. This bill authorizes domestic partners who are registered under Wisconsin law, and who file a joint federal income tax return, to file a joint return for Wisconsin income tax purposes on the same basis and subject to the same conditions as a married couple.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

3 SECTION 1. 71.03 (2) (d) of the statutes is amended to read:  
4 71.03 (2) (d) Husband and wife, domestic partners, joint filing. 1. Except as  
5 provided in subds. 2. and 3. and par. (e), a husband and a wife, and domestic partners  
6 under ch. 770 who file a joint federal income tax return, may file a joint return for



1 income tax purposes even though one of the spouses or domestic partners has no  
2 gross income or no deductions.

3 2. No joint return may be filed if either the husband or wife, or either of the  
4 domestic partners described under subd. 1., at any time during the taxable year is  
5 a nonresident alien, unless an election is in effect for the taxable year under section  
6 6013 (g) or (h) of the internal revenue code.

7 3. No joint return may be filed if the husband and wife, or the domestic partners  
8 described under subd. 1., have different taxable years, except that if their taxable  
9 years begin on the same day and end on different days because of the death of either  
10 or both the joint return may be filed with respect to the taxable year of each unless  
11 the surviving spouse remarries, or the surviving domestic partner under ch. 770  
12 enters into another domestic partnership under ch. 770, before the close of his or her  
13 taxable year or unless the taxable year of either spouse, or either domestic partner,  
14 is a fractional part of a year under section 443 (a) (1) of the internal revenue code  
15 Internal Revenue Code.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 3, 39, 269, 301, 305, 315; 1993 a. 16, 112, 204, 213, 491; 1995 a. 255, 428; 1999 a. 9; 2001 a. 23, 102; 2003 a. 83; 2005 a. 28, 49; 2009 a. 28.

16 **SECTION 2.** 71.03 (2m) of the statutes is created to read:

17 71.03 (2m) DOMESTIC PARTNERS. The provisions of sub. (2), as they apply to  
18 issues related to joint filing by a husband and wife, apply to domestic partners under  
19 ch. 770 who file a joint federal income tax return, and such domestic partners may  
20 file a joint return on the same basis and subject to the same conditions as married  
21 spouses.

22 **SECTION 3. Initial applicability.**

23 (1) This act first applies to taxable years beginning on January 1 of the year  
24 in which this subsection takes effect, except that if this subsection takes effect after

1 July 31 this act first applies to taxable years beginning on January 1 of the year  
2 following the year in which this subsection takes effect. ✓

3 (END)

*D-note*

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2741/7dn

MES...:...

date

PI  
JLD

Senator Miller:

Please review this draft carefully to ensure it meets your intent. Although the bill would authorize certain domestic partners to file a joint return, I don't think it would allow such individuals to claim credits that may be claimed by married persons, such as the married persons credit under s. 71.07 (6), without some changes being made to that credit. Is this OK? You may wish to have this draft reviewed by the Department of Revenue.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2741/P1dn  
MES:jld:rs

August 14, 2013

Senator Miller:

Please review this draft carefully to ensure it meets your intent. Although the bill would authorize certain domestic partners to file a joint return, I don't think it would allow such individuals to claim credits that may be claimed by married persons, such as the married persons credit under s. 71.07 (6), without some changes being made to that credit. Is this OK? You may wish to have this draft reviewed by the Department of Revenue.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

## Shovers, Marc

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**From:** Bier, Beth  
**Sent:** Tuesday, October 01, 2013 9:34 AM  
**To:** Shovers, Marc  
**Subject:** RE: changes to bill draft

Hi Mark,  
Just wanted to check in on the changes to the draft. Sen. Miller was wondering when it might be finished.  
Thanks,  
Beth

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**From:** Bier, Beth  
**Sent:** Wednesday, September 11, 2013 9:40 AM  
**To:** Shovers, Marc  
**Subject:** changes to bill draft

Hi Marc,  
Sen. Miller would like to make a change to the bill he had drafted which authorized people on the WI domestic partner registry to file a joint WI tax return. He would like it changed so it authorizes anyone who is eligible to file a joint federal return to file a joint Wisconsin return. No reference to the domestic partner registry anymore.  
Thanks!  
Beth

---

Beth Bier  
Office of Senator Mark Miller  
PO Box 7882  
Madison, WI 53707

608.266.9170  
[Beth.Bier@legis.wisconsin.gov](mailto:Beth.Bier@legis.wisconsin.gov)



## Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law

The following questions and answers provide information to individuals of the same sex who are lawfully married (same-sex spouses). These questions and answers reflect the holdings in [Revenue Ruling 2013-17](#) in 2013-38 IRB 201.

### Q1. When are individuals of the same sex lawfully married for federal tax purposes?

A1. For federal tax purposes, the IRS looks to state or foreign law to determine whether individuals are married. The IRS has a general rule recognizing a marriage of same-sex spouses that was validly entered into in a domestic or foreign jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple resides in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages.

### Q2. Can same-sex spouses file federal tax returns using a married filing jointly or married filing separately status?

A2. Yes. For tax year 2013 and going forward, same-sex spouses generally must file using a married filing separately or jointly filing status. For tax year 2012 and all prior years, same-sex spouses who file an original tax return on or after Sept. 16, 2013 (the effective date of Rev. Rul. 2013-17), generally must file using a married filing separately or jointly filing status. For tax year 2012, same-sex spouses who filed their tax return before Sept. 16, 2013, may choose (but are not required) to amend their federal tax returns to file using married filing separately or jointly filing status. For tax years 2011 and earlier, same-sex spouses who filed their tax returns timely may choose (but are not required) to amend their federal tax returns to file using married filing separately or jointly filing status provided the period of limitations for amending the return has not expired. A taxpayer generally may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later. For information on filing an amended return, go to Tax Topic 308, Amended Returns, at <http://www.irs.gov/taxtopics/tc308.html>.

### Q3. Can a taxpayer and his or her same-sex spouse file a joint return if they were married in a state that recognizes same-sex marriages but they live in a state that does not recognize their marriage?

A3. Yes. For federal tax purposes, the Service has a general rule recognizing a marriage of same-sex individuals that was validly entered into in a domestic or foreign jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple resides in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages. The rules for using a married filing jointly or married filing separately status described in Q&A #2 apply to these married individuals.

### Q4. Can a taxpayer's same-sex spouse be a dependent of the taxpayer?

A4. No. A taxpayer's spouse cannot be a dependent of the taxpayer.

### Q5. Can a same-sex spouse file using head of household filing status?

A5. A taxpayer who is married cannot file using head of household filing status. However, a married taxpayer may be considered unmarried and may use the head-of-household filing status if the taxpayer lives apart from his or her spouse for the last 6 months of the taxable year and provides more than half the cost of maintaining a household that is the principal place of abode of the taxpayer's dependent child for more than half of the year. See Publication 501 for more details.

### Q6. If same-sex spouses (who file using the married filing separately status) have a child, which parent may claim the child as a dependent?

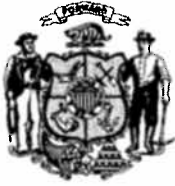
A6. If a child is a qualifying child under section 152(c) of both parents who are spouses (who file using the married filing separate status), either parent, but not both, may claim a dependency deduction for the qualifying child. If both parents claim a dependency deduction for the child on their income tax returns, the IRS will treat the child as the qualifying child of the parent with whom the child resides for the longer period of time during the taxable year. If the child resides with each parent for the same amount of time during the taxable year, the IRS will treat the child as the qualifying child of the parent with the higher adjusted gross income.

### Q7. Can a taxpayer who is married to a person of the same sex claim the standard deduction if the taxpayer's spouse itemized deductions?

A7. No. If a taxpayer's spouse itemized his or her deductions, the taxpayer cannot claim the standard deduction (section 63(c)(6)(A)).

### Q8. If a taxpayer adopts the child of his or her same-sex spouse as a second parent or co-parent, may the taxpayer ("adopting parent") claim the adoption credit for the qualifying adoption expenses he or she pays or incurs to adopt the child?

A8. No. The adopting parent may not claim an adoption credit. A taxpayer may not claim an adoption



2013 BILL

RMP

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

WANTED:  
Wed. a.m.

two individuals of the same sex who are eligible to,

1 **AN ACT to create** 71.03 (2m) of the statutes; **relating to:** authorizing certain  
2 ~~registered domestic partners~~ <sup>of same-sex couples</sup> to file a joint individual income tax return. ✓

**Analysis by the Legislative Reference Bureau**

Under current law, a married couple may file a joint individual income tax return. This bill authorizes ~~domestic partners who are registered under Wisconsin law and who~~ <sup>same-sex couples</sup> file a joint federal income tax return, to file a joint return for Wisconsin income tax purposes on the same basis and subject to the same conditions as ~~an~~ <sup>an</sup> married couple. ✓

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

3 SECTION 1. 71.03 (2m) of the statutes is created to read:

4 71.03 (2m) ~~DOMESTIC PARTNERS~~ <sup>SAME-SEX MARRIED COUPLES ← CS</sup> The provisions of sub. (2), as they apply to

5 issues related to joint filing by a husband and wife, apply to ~~domestic partners under~~ <sup>are eligible to, and as a married couple</sup>

6 ~~an individual~~ <sup>two individuals of the same sex</sup> who file a joint federal income tax return, and such ~~domestic partners~~ <sup>same-sex couples</sup> may

two individuals of the same sex

same-sex couples

opposite sex

region

1  
2

4  
5  
6

2

*opposite-sex*

1 file a joint return on the same basis and subject to the same conditions as married  
2 spouses.

3 **SECTION 2. Initial applicability.**

4 (1) This act first applies to taxable years beginning on January 1 of the year  
5 in which this subsection takes effect, except that if this subsection takes effect after  
6 July 31 this act first applies to taxable years beginning on January 1 of the year  
7 following the year in which this subsection takes effect. ✓

8 (END)



**Rose, Stefanie**

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**From:** Bier, Beth  
**Sent:** Thursday, February 06, 2014 9:58 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -2741/1 Topic: Allow registered domestic partners to file as married joint

Please Jacket LRB -2741/1 for the SENATE.