

# QUEER OUR TAXES TAXPAYER GUIDE



**Need help understanding your tax return?  
We're here to help.**





# LGBTQ TAXPAYER CHECKLIST

The tax system in the United States performs many of the very functions that progressive activists are tirelessly advocating for – it tries to redistribute accumulated wealth, lifts millions of people out of poverty every year, and makes education more affordable for low- and middle-income people. Long before the Affordable Care Act made insurance coverage for transition-related care a possibility, the tax return made surgical transition a fiscal possibility.

Yet many members of our community remain in the dark about how to access these and other budget-saving benefits, and don't know what questions to ask to make sure they're getting what they deserve. The guide below

will help you navigate the often unnerving process of filing your taxes. Because every tax situation is different, we can't give you personalized advice. The best resource for more information is a tax preparer you trust at a provider that feels safe and affirming. Since we know that these resources can feel few and far between, we hope this guide will get you started.

Note: The Task Force does not provide tax, legal or accounting advice. This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, tax, legal or accounting advice. You should consult your own tax, legal and accounting advisors before engaging in any transaction.

## INCOME QUICK TIPS



**Do I have to pay taxes on payments I receive from the state to support my foster children?** No, those payments are meant for child-related expenses, and are not taxed on your return.

**Do I have to pay taxes on child support payments I received from my ex-spouse?** No, those payments are meant for child-related expenses, and are not taxed on your return.

**Do I have to pay taxes on tips I receive from waitressing/bartending/cab driving?** Yes, you have to pay taxes on any money you receive for work.



# FOR STARTERS

## Name and Gender

Your tax program or preparer will start out by asking you for your name; some will also enter a gender marker. If you've changed your name or gender marker on some (but not all) of your identity documents, it can be confusing to know how to answer. The IRS checks your name against the Social Security Administration's records.

## Filing Status

### Married vs. Single?

Your preparer just needs to know if you were legally married on the last day of the tax year (December 31). Keep in mind, the Federal government recognized marriages performed in any state or jurisdiction where it was legally recognized (your place of celebration) even before the Supreme Court's *Obergefell* decision, even if the state/jurisdiction where you lived (your place of residence) didn't recognize your marriage.

### Joint vs. Separate?

If you were married as of December 31, you must file either Married Filing Jointly (MFJ) or Married Filing Separately (MFS). For most people, filing jointly is the better financial decision, but you should talk it over with your tax preparer if you're not sure.

### Single: Can I be Head of Household?

If you're not married as of December 31, you must file either Single or Head of Household.<sup>1</sup> In order to be Head of Household, you must be the "head" of someone else – a dependent that you're claiming on your return. For more information about dependents, see below. Otherwise, you should just file as "single."

*Head of Household Test:* In order to file as Head of Household, you must have either:

- A Qualifying Child;
- A Qualifying Relative who is your parent, but only if you can claim an exemption for them; or
- Any other Qualifying Relative under the "relationship test" who lived with you for more than half the year and for whom you can claim an exemption.

For more information on Qualifying Child and Qualify Relative, see the "Dependents" section on the following page.

<sup>1</sup> There is also a "Qualifying Widower" status, which you can claim if your partner passed within the last two years, you had previously filed MFJ, and you are claiming dependents. This status is less common than the rest.

## << Quick Tips

If you need to change your name or gender marker with Social Security in order to feel safe at a tax preparer's office, you can access information about how to do that here: Social Security ([www.transequality.org/know-your-rights/social-security](http://www.transequality.org/know-your-rights/social-security))

If you're married, your tax preparer might ask which name you want listed first on your return. It makes no difference, but if you put the same partner's name first every year, most preparers/programs will carry much of your tax information forward from the year before.

## << Quick Tips

Some people can amend tax returns for previous years to file as married if you didn't know your place of celebration trumped the place of residence's rules for tax purposes.

If you're paying off student loans, filing separately sometimes has an impact on your monthly payment amounts.



# DEPENDENTS

Claiming dependents is sometimes confusing for LGBTQ families -- some people who are raising children lack legal ties to them, and therefore may not be able to claim the child for tax purposes. There are two ways to claim a dependent on your tax return. Check out both of the tests below to see if you can claim your dependent.

## Quick Tips >>

If you can claim your dependent as a "Qualifying Child," don't bother trying the "Qualifying Relative" test.

**QUALIFYING CHILD:** If your dependent meets the following five tests, you can claim them as a "Qualifying Child":

- 1. Relationship Test:** The child must be your son, daughter,<sup>2</sup> stepchild, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of them. Think of this as a tree. Your children/grandchildren qualify, and so do your siblings and your nieces/nephews and any of their kids.
- 2. Age Test:** At the end of the year, the child must be under 19, under 24 if a student, or any age if they are permanently and totally disabled.
- 3. Residency Test:** The child must have lived with you for more than half of the year.
- 4. Support Test:** The child must not have provided more than half of their own financial support. In other words, you need not provide more than half of the child's support to meet this test, the child just cannot be providing more than half of their own support!
- 5. Joint Return Test:** The child must not be filing their own "married filing jointly" return for the year.

**QUALIFYING RELATIVE:** If your dependent meets the following four tests, you can claim them as a "Qualifying Relative":

- 1. Qualifying Child Test:** Person cannot be the qualifying child of any other taxpayer. NOTE: If the person would be the Qualifying Child of someone else, but that person isn't filing a return, you may still be able to claim them if you meet the rest of this test!
- 2. Household/Relationship Test:** The person must meet either the --
  - a) Member of Household Test:** Anyone who lived with you all year; OR the
  - b) Relationship Test:** This test is similar to the "Qualifying Child" relationship above, with some important differences. The person must be your son, daughter,<sup>3</sup> stepchild, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, niece, or nephew. Parents, grandparents, and stepparents also qualify, as do aunts and uncles. Your in-laws also qualify (i.e., sister-in-law, father-in-law)
- 3. Gross Income Test:** Person's income cannot exceed \$3950 (standard deduction), unless the person has a disability and receives income from sheltered workshop.<sup>4</sup>
- 4. Support Test:** You provide more than half of the person's support for the year. Unlike for the "Qualifying Child" support test above, for Qualifying Relatives, you must provide more than half the person's support.

<sup>2,3</sup> Adopted children are treated as children, so long as the adoption is complete by December 31.

<sup>4</sup> More commonly referred to as a "work center," a sheltered workshop primarily (or sometimes exclusively) employs people with disabilities at sub-minimum wages.

TAX

# CREDITS & DEDUCTIONS

Credits, deductions, and other tax benefits aren't just for the wealthy. But the complexity of the tax code often means that tax preparers and tax software lead taxpayers through only to the most common questions. While there are no credits or deductions that are designed specifically for LGBTQ people, there are many that might be used more commonly, or in a unique way, by members of our community. We highlight some of them here for you, but ask your tax preparer if you have more questions!

## Adoption Credit and Adoption Assistance Programs

Many LGBTQ people who want to adopt children find that the costs associated with adoption put a big strain on the family budget. The Adoption Credit or Adoption Assistance Program tax break can help many families offset those costs. Basically, a taxpayer may be able to receive a credit for any qualified adoption expenses incurred to adopt an eligible child. The credit has a maximum of \$13,400 of expenses per child, and the credit does have an income limitation (it is not available for people with incomes of \$241,000 or above). In addition, a taxpayer who gets financial assistance payments from their employer to help with adoption expenses may be able to exclude those payments from their income. See Quick Tips bar on this page for more information that might help you determine whether you qualify for the credit.

People who adopt a child with "special needs" can claim the full amount of the credit, \$13,190, whether or not they have qualifying expenses. "Special needs" refers to children that the state has determined cannot be adopted without providing assistance to the adoptive parents. This determination typically hinges on the child's age, ethnic background, or minority status, or whether the child has mental or physical disabilities or is a member of a sibling group. Thus, many young people of color and young people who identify as LGBTQ may be included within this category.

## Education Credits/Deductions:

Going to college can feel out of reach to many LGBTQ people, especially those who have lower incomes or lack family support. There are several tax credits and deductions that can help offset the costs of higher education. We give you a brief summary of those credits and deductions below. If you're trying to see if going to college might fit into your budget, talk to a tax professional about whether you qualify for any of these benefits!

1. American Opportunity Tax Credit (AOTC)\* – The AOTC is a tax credit that can reduce your tax bill by up to \$2,500 for qualified education expenses. This credit is available during your first four years of higher education, as long as you're enrolled at least half time. This credit is partially refundable, meaning you might end up with a bigger refund even if you don't owe any taxes to the government overall. This credit is often the best choice for filers, especially those who are going to a less-expensive college, university, or community college.

### << Quick Tips

A few more pieces of information might help you determine whether you qualify for Adoption credit:

"Qualifying expenses" include adoption fees, court costs, attorney fees, and travel expenses.

An "eligible child" is someone who is under 18 or who is physically or mentally incapable of self-care.

You cannot claim the credit for a surrogacy arrangement or for adopting your spouse's child.



# CREDITS & DEDUCTIONS

## Quick Tips >>

American Opportunity Tax Credit (AOTC) credit is not available to people who have a felony drug conviction on their record. The credits below are available regardless of criminal history.

Qualified education expenses include your tuition and fees, even if you've taken out a loan to pay for those expenses.

2. Lifetime Learning Credit (LLC)\* – The LLC is a tax credit that can reduce your tax bill by up to \$2,000 for qualified education expenses. This credit is based on a percentage of your qualifying expenses, so it is a higher credit if your school is more expensive. There is no limit on the number of years you can claim this credit, so it is often a good choice for people who are returning to school after a break.
3. Tuition and Fees Deduction\* – This deduction reduces your taxable income by up to \$4,000 for qualified education expenses. While the credits above are often more beneficial, some taxpayers who aren't eligible for the credits may still be able to claim this deduction.

\* These tax benefits are mutually exclusive. In any given year, a person can only claim one.

Done with school? Check out the Student Loan Interest Deduction, which reduces your taxable income by up to \$2,500 based on the amount of student loan interest you paid during the year.

## Medical Deductions

You can deduct medical expenses on your tax return if you pay for them out of pocket (in other words, if they are not covered by your health insurance for any reason). Because this deduction is often only worthwhile for people who are already itemizing, tax preparers will often speed through this section of the return unless people flag that they have "big ticket" medical costs. Common "big ticket" costs include fees paid to long-term care facilities. Because many expenses borne by members of the LGBTQ have historically not been covered by health insurance, and it may still be difficult to access reimbursements, we wanted to flag a few items that are deductible if paid out of pocket for you or a dependent:

- Transition related care, including surgery
- HIV and Hep C-related care
- Abortions, fertility treatments, and other reproductive healthcare
- Substance use-related care, including rehabilitation

If you have any of these expenses, or any other "big ticket" medical cost, you should speak with a tax preparer to see if itemizing your medical deductions makes sense for you.



# CREDITS & DEDUCTIONS

## Child-Related Credits for Lower-Income Households

Several tax credits are available for lower-income taxpayers with children, even if those children are stepchildren, foster children, or adopted children. These credits lift millions of people out of poverty every year. If you're eligible, we want to make sure you're getting what you deserve.

- **Child and Dependent Care Credit:** If you paid for the care of a child or a dependent during the year, you may be eligible for the Child and Dependent Care Credit based on the amount of qualifying expenses you've incurred. The credit is based on up to \$6,000 of qualifying expenses. To qualify, the child must be your "Qualifying Child" (see p. 3), must have lived with you for more than half the year, and must be under 13. You can also receive this credit for a dependent who is over 13 but unable to provide self-care.
- **Child Tax Credit:** If you have a child under the age of 17 as of December 31 that you claim as a dependent, you may qualify for the Child Tax Credit (CTC). This credit is up to \$1,000 per eligible child, and you might be able to receive this credit even if you don't owe any money to the government.
- **Earned Income Tax Credit:** The Earned Income Tax Credit (EITC) is a credit that benefits workers with low to moderate incomes. The income limit varies by your filing status and number of qualifying children. Unlike the credits above, taxpayers may be eligible for this credit even if they do not have children. However, the amount of the credit for taxpayers who don't have children is significantly smaller. If you qualify, you may be able to receive this credit even if you don't owe any money to the government.

### << Quick Tips

Only four out of five eligible taxpayers claim and get their EITC. If your income is under \$53,267 and you claim dependent children on your return, check to see if you're eligible. If your income is under \$20,330 and you don't have any dependents, you should check your eligibility too!

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If you qualify for the EITC, you have to file a return in order to get it, even if you're not required to file.

## DID YOU KNOW?

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The Earned Income Tax Credit and Child Tax Credit lifted 9.4 million people out of poverty in 2013, and made 22 million other people less poor.

Young children in low-income families that receive state or federal Earned Income Tax Credits are more likely to go to college.

Researchers have linked increased Earned Income Tax Credits to improvements in infant health indicators like birth weight and premature birth.



# AMENDMENTS & REFERENCES

## WAIT!!! I could have claimed that???

If you noticed a credit or deduction in this guide that would have applied to you on a recent return, all is not lost. You can amend your return for up to three years. Ask a local preparer for help!

## Resources

Need more information? These resources might be helpful:

- **IRS's Frequently Asked Questions for Same-Sex Married Couples:**  
<https://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>
- **IRS's General Help Page:** <https://www.irs.gov/Help-&-Resources>
- **Free Tax Return Preparation (run by IRS):**  
<https://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers>
- **AARP's Tax-Aide Program:** [http://www.aarp.org/money/taxes/aarp\\_taxaide/](http://www.aarp.org/money/taxes/aarp_taxaide/)
- **HRC's State Income Tax Requirements Guide:**  
<http://www.hrc.org/resources/overview-of-state-income-tax-requirements>
- **National Women's Law Center's Federal Tax Policy page:** <http://nwlc.org/issue/federal-tax-policy/>
- **National Immigration Law Center's page on taxes for immigrants:** <https://www.nilc.org/taxes.html>
- For more information on the **Earned Income Tax Credit and the LGBTQ community:**  
Check out this fact sheet <http://www.thetaskforce.org/fact-sheet-lgbtq-community-earned-income-tax-credit-2015/>
- For more on **LGBTQ tax policy**, see our website: <http://queerourtaxes.org/>

### **Still have questions? Want to tell your LGBTQ tax story?**

Our tax policy expert can't give you individualized advice, but they do want to hear from you!  
Contact Meghan Maury, Senior Policy Counsel, at: [mmaury@thetaskforce.org](mailto:mmaury@thetaskforce.org)

