**8502. Who is allowed to file a joint federal income tax return?**

Only legally married spouses may file joint returns. As a result of the Supreme Court’s decision in the *Windsor* case, the federal government is compelled to recognize same-sex marriages that were legally executed in any U.S. state. As a result, the IRS must apply the tax laws to same-sex spouses in the same way as it is applied to all spouses.

Although the income and deductions of both spouses are reported, a joint return may be filed even if only one spouse has income. If one spouse dies during the tax year, the spouses are considered married for the entire year; and, thus, may file a joint return.

**8502.02 Who is eligible to file as a qualifying widow(er) with a dependent child?**

For 2 years following the death of a spouse, the surviving spouse may file as a “qualifying widow(er)” with a dependent (using the joint filer tax brackets), if he or she meets the following:

* Was entitled to file a joint return with the deceased spouse in the year of death, even if a joint return was not filed
* Has a child or stepchild (excludes a foster child) for whom an exemption can be claimed
* Child lived with the surviving spouse all year
* Paid more than half of the cost of keeping up the home[[1]](#endnote-1)

Finally, if the surviving spouse remarries, he or she can no longer file as a qualifying widow(er); and, instead must file married filing separately or married filing jointly.

1. IRC sec. 2. [↑](#endnote-ref-1)