
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #14-1

SUBJECT: Same-Sex Marriage Filing Guidance
(Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S.C. Constitution, Article XVII, Section 15
S.C. Code Ann. Section 20-1-10 (Supp. 2012)
S.C. Code Ann. Section 20-1-15 (Supp. 2012)
S.C. Code Ann. Section 12-6-5000 (2000)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 2012)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2012)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

How do individuals in a same-sex marriage recognized by the Internal Revenue Service (IRS) file their South Carolina income tax returns?

Conclusion:

South Carolina does not recognize same-sex marriages. Same-sex couples considered married for federal income tax purposes must use a filing status of single or, if applicable, head of household for South Carolina income tax purposes and prepare their South Carolina returns as though they are single.

Federal Tax Treatment:

In United States v. Windsor¹ the United States Supreme Court found that Section 3 of the Defense of Marriage Act², which denies same-sex couples federal benefits, violates the Fifth Amendment's guarantee of due process and equal protection as it applies to same-sex couples who are legally married under the laws of their state. Section 2 of the Defense of Marriage Act³ allows states to refuse to recognize same-sex marriages performed under the laws of another state. Section 2 was not challenged in Windsor and remains a valid federal law.

In response to Windsor, the Internal Revenue Service (IRS) issued guidance on same-sex marriages in Revenue Ruling 2013-17. For federal income tax purposes, a same-sex couple legally married in a state **must** file as a married couple; either married filing jointly or married filing separately, even if the state where the couple lives does not recognize same-sex marriages.⁴ Additionally, same-sex married couples may file amended federal income tax returns to change their filing status to married filing jointly or married filing separately for prior years if the applicable limitations period for filing such a claim has not expired.

South Carolina Tax Treatment:

South Carolina has both constitutional and statutory prohibitions against same sex marriage. S.C. Constitution, Article XVII, Section 15 provides:

A marriage between one man and one woman is the only lawful domestic union that shall be valid or recognized in this State. This State and its political subdivisions shall not create a legal status, right, or claim respecting any other domestic union, however denominated. This State and its political subdivisions shall not recognize or give effect to a legal status, right, or claim created by another jurisdiction respecting any other domestic union, however denominated. Nothing in this section shall impair any right or benefit extended by the State or its political subdivisions other than a right or benefit arising from a domestic union that is not valid or recognized in this State. This section shall not prohibit or limit parties, other than the State or its political subdivisions, from entering into contracts or other legal instruments.

Additionally, S.C. Code Section 20-1-10 provides, in part, that no man shall marry another man and no woman shall marry another woman and S.C. Code Section 20-1-15 provides that “[a] marriage between persons of the same sex is *void ab initio* (i.e. null from the beginning) and against the public policy of this State.”

¹ ___ U.S. ___, 133 S.Ct. 2675 (2013)

² 1 U.S.C. § 7

³ 28 U.S.C. §1738C

⁴ Prior to the Windsor case, same-sex marriages were not recognized for federal income tax purposes under Section 3 of Defense of Marriage Act and same-sex couples could not file federal income tax returns as either married filing jointly or married filing separately.

For South Carolina income tax filing purposes, S.C. Code Section 12-6-5000 provides that with limited exceptions, a husband and wife must file their South Carolina income tax return using the same filing status they use for federal income tax purposes.⁵ In Revenue Ruling 2013-17, the IRS concluded that the terms “husband” and “wife” and “spouse” are interpreted for federal income tax purposes to include same-sex spouses. South Carolina has clearly established in its Constitution and in its statutes that South Carolina does **not** recognize same-sex marriage. As a result, consistent with South Carolina law, the Department will continue to interpret the terms “husband” and “wife” as gender specific and “spouse” as referring to a person of the opposite sex for South Carolina income tax purposes. In other words, S.C. Code Section 12-6-5000 requires the same filing status for South Carolina and federal income tax purposes only for married couples of the opposite sex.

Since South Carolina does not recognize same-sex marriages, same-sex couples that file as married for federal income tax purposes must file separately for South Carolina income tax purposes as follows:

Each individual must file a separate South Carolina income tax return using Form SC 1040;

Each individual must use a single, or if qualified, head of household filing status;

To prepare Form SC 1040, each individual must first prepare a “separate” federal income tax return for South Carolina purposes only (pro forma federal income tax return) using a filing status of single or head of household and complete it as though the individual is not married.

IRS Revenue Ruling 2013-17 permits same-sex married couples to file amended federal returns to change their filing status to "married filing jointly" or "married filing separately." Since South Carolina does not recognize same-sex marriages, amended returns cannot be filed for this purpose.

Further guidance on filing 2013 income returns will be posted on the Department’s website at www.sctax.org in the near future. If you have further questions, you may call (803) 898-5000.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume, Jr.

William M. Blume, Jr., Director

February 3 _____, 2014
Columbia, South Carolina

⁵ The exceptions are in S.C. Code Section 12-6-5000(C)(2) and (D) are not applicable to the same-sex marriage issue.