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

SC TEMPORARY REVENUE RULING #14-8

SUBJECT: South Carolina Income Tax Treatment of Same-Sex Marriages
(Income Tax)

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

SUPERSEDES: SC Revenue Ruling #14-1

REFERENCES: S.C. Constitution, Article XVII, Section 15
S.C. Code Ann. Section 20-1-10 (2014)
S.C. Code Ann. Section 20-1-15 (2014)
S.C. Code Ann. Section 12-6-5000 (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Temporary Revenue Ruling is to provide immediate 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 It is, however, temporary, and is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

South Carolina’s Income Tax Treatment of Same-Sex Marriages

As a result of recent court decisions same-sex marriages that are recognized for federal income tax purposes are now required to be recognized by South Carolina for income tax purposes. Accordingly, same-sex couples who are legally married under any state law must file their South Carolina income tax returns as a married couple – either “married filing jointly” or “married filing separately” depending on their filing status for federal income tax purposes for the taxable year.

A same-sex married couple who filed a federal income tax return using a married filing status (“married filing jointly” or “married filing separately”) and South Carolina income tax returns using a single filing status (“single” or “head of household”) in a previous taxable year may amend their South Carolina income tax returns to change their filing status to a married filing status for any taxable years within the applicable statutory time limitation.

For information on the recognition of same-sex marriages for other taxes, see SC Temporary Revenue Ruling #14-9.

Note: To provide immediate guidance, this advisory opinion is being issued as a temporary revenue ruling. This will provide guidance to the public and to Department employees while the Department seeks comments concerning this advisory opinion. Standard Department practice is to hold a three-week public comment period on advisory opinions. Once the comment period ends and the Department completes its review of the public comments, the Department will issue a final revenue ruling. This temporary revenue ruling represents the official opinion of the Department until such time as a final revenue ruling is issued.

Legal History Regarding Same-Sex Marriages

On June 26, 2013, the United States Supreme Court ruled in United States v. Windsor, 133 S. Ct. 2675 (2013), that Section 3 of the Defense of Marriage Act, which denies same-sex couples federal benefits, was unconstitutional as applied to same-sex couples who are legally married under the laws of their state. In response to Windsor, the Internal Revenue Service (IRS) issued guidance on same-sex marriages in Revenue Ruling 2013-17, which provides that 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. Additionally, same-sex married couples may file amended federal income tax returns to change their filing status to a married filing status for prior years if the applicable limitations period for filing such a claim has not expired.

In Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014), the Fourth Circuit Court of Appeals held that the statutory scheme in Virginia banning same-sex marriage is unconstitutional. The Fourth Circuit acknowledged in its opinion that three other states in the Fourth Circuit have similar bans, including South Carolina. On October 6, 2014, the United States Supreme Court denied the petition for a writ of certiorari, upholding the decision of the Fourth Circuit. Schaefer v. Bostic, 135 S. Ct. 308 (2014).

On November 12, 2014, South Carolina District Court Judge Richard Gergel held that South Carolina’s ban on same-sex marriage under S.C. Const. art. XVII, Section 15, S.C. Code Sections 20-1-10 and 20-10-15 is unconstitutional and issued an Order permanently enjoining South Carolina from enforcing the above provisions or any other state law or policy prohibiting the marriage of same-sex couples. Condon v. Haley, 2:14-cv-04010-RMG. In the same Order, Judge Gergel imposed a temporary stay of the enforcement of the injunction until November 20, 2014, at 12:00 noon. Id. On November 18, 2014, the Fourth Circuit Court of Appeals declined to extend Judge Gergel’s stay.¹ On November 20, 2014, the United States Supreme Court declined to extend Judge Gergel’s stay. As a result, South Carolina recognizes same-sex marriages for income tax purpose.

¹ Also on November 18, 2014, South Carolina District Court Judge J. Michelle Childs held that South Carolina’s ban on same-sex marriage under S.C. Const. art. XVII, Section 15 and S.C. Code Ann. Sections 20-1-10 and 20-1-15 is unconstitutional. Bradacs v. Haley, 3:13-cv-02351-JMC.

Recognition of Same-Sex Marriage for South Carolina Income Tax Purposes

For federal income tax purposes, a same-sex couple legally married under any state law must file as a married couple – either “married filing jointly” or “married filing separately.” S.C. Code Section 12-6-5000 provides that with limited exceptions, married couples must file their South Carolina income tax returns using the same filing status they use for federal income tax purposes for the taxable year. Accordingly, same-sex couples legally married under any state law must file their South Carolina income tax return as a married couple – either “married filing jointly” or “married filing separately” depending on their filing status for federal income tax purposes for the taxable year. In other words, same-sex marriages that are recognized for federal income tax purposes will now be recognized for South Carolina income tax purposes. Same-sex couples filing with a married status for federal income tax purposes must now file for using a married status for South Carolina income tax purposes. Accordingly, SC Revenue Ruling #14-1 is no longer valid.

Additionally, a same-sex married couple who in a previous taxable year filed a federal income tax return using a married filing status and South Carolina income tax returns using a single filing status may amend their South Carolina income tax returns to change to a married filing status for any corresponding taxable years within the applicable statutory time limitation.

Same-Sex Marriage Questions and Answers

1. Must legally married same-sex couples file their South Carolina income tax return using a married filing status?

Yes, beginning with tax year 2014, same-sex couples who are legally married under state law during the taxable year must file their South Carolina income tax return as “married filing jointly” or as “married filing separately” depending on how the couple filed their federal income tax return for that year.

2. If a same-sex couple is in a domestic partnership, civil union, or long-term relationship, but not legally married, can they file a South Carolina income tax return using a married filing status?

No, only a couple who is legally married under state law can file a South Carolina income tax return using a married filing status.

3. If a same-sex couple was legally married in a state other than South Carolina, are they considered married for South Carolina income tax purposes?

Yes.

4. If a same-sex couple was legally married prior to 2014, can they amend their South Carolina income tax returns filed for previous taxable years to change to a married filing status?

Yes, a same-sex couple legally married before 2014 may amend their South Carolina income tax returns for any taxable year within the statutory time limitations to change to a married filing status. However, in order to file an amended South Carolina income tax return using a married filing status for a particular taxable year, the couple must have been legally married during that year and have filed a federal income tax return using the same married filing status for that year.

NOTE: The tax consequences of amending a South Carolina income tax return for a prior taxable year will depend on a taxpayer's unique facts and circumstances. All taxpayers should consult their tax advisor to determine the impact of amending a South Carolina income tax return for a prior taxable year.

5. If a same-sex couple filed South Carolina income tax returns using a single filing status for a previous taxable year during which they were legally married, are they now required to file an amended South Carolina income tax return for the purpose of changing their filing status for that year?

No.

Questions

Taxpayers who have further questions should consult the Department's website at www.sctax.org or call the Policy Department at (803) 898-5171 or (803) 898-5144.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

December 2, 2014
Columbia, South Carolina