

PUBLIC DRAFT

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Comments Due by: **January 29, 2021**

SC REVENUE RULING 21-x [DRAFT - 1/14/2021]

SUBJECT: Common-Law Marriage Tax Treatment and Permitted Filing Statuses in Light of *Stone v. Thompson* (Individual Income Tax)

EFFECTIVE DATE: Applies to all periods open under the statute, except as otherwise noted.

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 Revenue Ruling is to provide guidance to the public and Department personnel. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

PURPOSE

The purpose of this advisory opinion is to provide guidance to individuals on permitted filing statuses in light of the 2019 South Carolina Supreme Court decision to abolish the ability of couples to enter into common-law marriages.

OVERVIEW OF FILING STATUS AND DETERMINING MARITAL STATUS

South Carolina requires a taxpayer to use the same filing status on his or her individual income tax return as used on his or her federal individual income tax return.¹ The federal and South Carolina filing statuses are:

1. Single
2. Married filing jointly
3. Married filing separately
4. Head of Household²

¹Code Section 12-6-40(B) provides that all elections for federal income tax purposes in connection with Internal Revenue Code sections adopted by South Carolina automatically apply for South Carolina income tax purposes, unless otherwise provided. See Internal Revenue Code Section, "Definitions and Special Rules" and Code Section 12-6-5000 concerning the filing of separate or joint returns by spouses.

²An individual may be able to choose head of household filing status instead of married filing separately if he or she is considered unmarried because he or she lives apart from the spouse and meets certain other head of household tests.

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5. Qualifying Widow or Widower³

In general, a person's filing status depends on whether he or she is considered married or unmarried. State law (not federal law) governs whether two individuals are married. "Marriage" is the legal union between two people and can be a traditional ceremonial marriage⁴ or a common-law marriage. A common-law marriage does not require a ceremony.

A common-law marriage is formed when the parties contract to be married, either expressly or impliedly by circumstance. The key element in discerning whether parties are common-law married is mutual assent: each party must intend to be married to the other and understand the other's intent.⁵

Whether an individual is married is determined at the end of the tax year. If one spouse dies before the end of the other's tax year, the marital status is determined at the time of the spouse's death. A person legally separated under a decree of divorce at the end of the tax year must use the filing status of single, unless the qualifications are met for another filing status.

SOUTH CAROLINA COMMON-LAW MARRIAGE – ABOLISHED PROSPECTIVELY IN 2019

Effective July 24, 2019, the South Carolina Supreme Court abolished the ability of couples to enter into a common-law marriage in South Carolina.⁶ The filing statuses⁷ available for use by common-law married individuals on their South Carolina individual income tax returns are discussed below.⁸

Common-Law Marriage Established Prior to July 24, 2019. The marital status of individuals under state law is recognized for federal income tax purposes.⁹ As such, a couple living in South Carolina in a common-law marriage established prior to July 24, 2019 is married for federal and South Carolina income tax purposes. Accordingly, such South Carolina couples will file their federal and South Carolina individual income tax returns using the filing status "married filing jointly" or "married filing separately." They cannot file using the filing status "single."

³The year of death is the last year for which a surviving spouse can file jointly with a deceased spouse. The spouse may be eligible to use the qualifying widow(er) status for two years following the year the spouse died, if the spouse remains unmarried.

⁴ See Title 20 of SC Code of Laws.

⁵ *Stone v. Thompson*, 428 S.C. 79 (2019). (Internal citations omitted.)

⁶ *Id.*

⁷ Note: Although certain individuals who are or were in a common-law marriage may qualify to file as a "head of household" or "qualifying widow(er)" these situations are not discussed in this ruling.

⁸See Code Section 12-6-5000 for additional filing status rules applicable to married individuals on their South Carolina individual income tax return. The permitted status depends, in part, on the residency status of each spouse and their federal filing status, if they have one.

⁹The Internal Revenue Service recognizes South Carolina marriages. Rev. Rul. 58-66, 1958-1 C.B. 60.

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Inability to Enter into a Common Law Marriage on or after July 24, 2019. In *Stone v. Thompson*,¹⁰ the Court concluded that “parties may no longer enter into a valid marriage in South Carolina without a license” on or after July 24, 2019. Accordingly, on or after July 24, 2019, unmarried South Carolina couples must obtain a marriage license and certificate to use the filing status “married filing jointly” or “married filing separately” on their South Carolina and federal individual income tax returns.

Common-Law Marriage Established in another State. Regardless of the date a couple enters into a valid common-law marriage in another state, South Carolina continues to recognize the couple as married when they establish their domicile in South Carolina or are required to file as a South Carolina “nonresident.” They must use the filing status “married filing jointly” or “married filing separately” on their South Carolina income tax return. They cannot file using the filing status “single.”

¹⁰ 428 S.C. 79, 82 (2019).