



Virginia Department of Taxation Will Not Recognize Joint Returns for Same-Sex Couples After Windsor

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The Virginia Department of Taxation recently announced that same-sex couples married in another state must file separate Virginia income tax returns even though they file a federal return as a married couple.

Background. In *United States v. Windsor*, 570 U.S. 2675 (2013), the United States Supreme Court held that the federal government must recognize the marriage of same-sex couples lawfully married under state law. In accordance with its interpretation of *Windsor*, the IRS now allows married same-sex couples to file a joint return. In Revenue Ruling 2013-17, the IRS announced that same-sex married couples will be treated as married for federal tax purposes if they are legally married in a state that recognizes same-sex marriages, regardless of whether such couples live in a state that recognizes same-sex marriages.

Virginia's income tax law generally conforms to federal income tax law. However, Article 1, §15-A of the Constitution of Virginia and Va. Code §20-45.2 specifically prohibit the recognition of any marriage in Virginia other than a marriage between one man and one woman.

Virginia Bulletin. On November 8, 2013, the Virginia Department of Taxation announced that, although Virginia generally conforms to federal income tax law, Article I, §15-A of the Virginia Constitution and Va. Code §20-45.2 require that Virginia not conform to the federal income tax treatment of same-sex marriage. See P.D. 13-209. Other states whose constitutions prohibit same-sex marriage have taken a similar position.

In Virginia, if a same-sex married couple files a federal joint return, they must recompute their federal income tax liability, individually, as single or head of household in order to calculate their Virginia income tax liability. Businesses that deduct payments of fringe benefits to employees' same-sex spouses and dependents for federal income tax purposes must adjust the deductions they claim for Virginia income tax purposes.

The Department of Taxation plans to issue additional guidance on its website before the 2014 filing season.

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