



TAX INFORMATION MEMORANDUM

20 Dec 2013

05-13

Code 16 Legal Assistance POCs

Ms. Kate Somerville
Acting Division Director/
Navy Tax Counsel/ Voting
Assistance Officer Support
202-685-4639
kathlene.somerville@navy.mil

Ms. Karen Morrisroe
Navy DES Program Mgr.
202-685-7182
karen.morrisroe@navy.mil

LT Ericka Ensign
Action Officer
VITA/ELF Program Mgr.
202-685-4641
ericka.ensign@navy.mil

LT Matthew Bartholomaeus
Action Officer
202-685-4637
matthew.bartholomaeus@navy.mil

Mr. Mike Cole
Immigration Paralegal/ Assistant
Voting Assistance Officer Support
202-685-4643
michael.s.cole1@navy.mil

OJAG, Code 16
1322 Patterson Ave SE
Suite 3000
Washington Navy Yard, DC
20374
Phone: 202.685.4643
Fax: 202.685.5486

Subj: Federal and State Tax Treatment of Same-Sex Spouses

1. Federal Tax Treatment of Same-Sex Spouses

The past summer, the Supreme Court of the United States in its *United States v. Windsor* decision determined the Defense of Marriage Act is unconstitutional. As a result of this decision, the federal government recognizes the legality of all marriages under each state law, regardless of gender make-up of the marriage, for the purposes of taxation.

This represents the biggest change in tax law policy practitioners are expected to face during the 2014 filing season. Put simply, **same-sex couples that are legally married in jurisdictions that recognize their marriage will be treated as married for federal tax purposes.** This includes same-sex couples who were legally married outside of the jurisdiction where they live (known as the “state of celebration” provision). Such same-sex married couples must file as either “married filing jointly” or “married filing separately.” A few examples are needed to illustrate the point:

- a. A same-sex couple legally married in Massachusetts (where same-sex marriage is legal) who currently resides in Alabama (where same-sex marriage is not recognized) and are paying Alabama state taxes are recognized as married for federal tax purposes and must file as either “married filing jointly” or “married filing separately.”
- b. A same-sex couple legally married in New York (where same-sex marriage is legal) who currently resides in California (where same-sex marriage is legal) and are paying California state taxes are recognized as married for federal tax purposes and must file as either “married filing jointly” or “married filing separately.”
- c. A same-sex couple in a **civil union** under New Hampshire law who currently resides in Hawaii (where same-sex marriage is recognized) and are paying Hawaii state taxes are **not** recognized as married for federal tax purposes and must file as either “single” or “head of household,” if so qualified.

The final example illustrates that **only marriages** are recognized as such under federal law and tax regulations. Registered domestic partnerships, civil unions, or other formalized relationship recognized under state laws are **not** considered legal marriages.

Important Note: As the Court decision invalidated a previously standing federal law, legally-married same-sex couples have the right and are encouraged to file amended tax returns for past tax years with the IRS, if it is to their benefit. A professional tax-preparer or accountant is recommended for couples interested in filing these amendments.

2. State Tax Treatment of Same-Sex Spouses

In comparison to federal tax preparation above, state tax treatment of same-sex spouses is a much thornier issue, as laws differ because of timing or legal definitions across all 50 states. Though some states, like Massachusetts, have had same-sex marriage legalized

for almost one decade, a majority of states have not legalized same-sex marriage. For the purposes of Tax Year 2013, 15 states and the District of Columbia have legalized same-sex marriage:

California, Connecticut, Delaware, the District of Columbia, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Hampshire, New York, Rhode Island, Vermont, and Washington

A 16th state, Illinois, has legalized same-sex marriage. However, this law will not take effect until 01 June 2014. Illinois tax guidance has not yet been published in regards to recognition of either same-sex marriages or registered relationships.

A 17th state, New Mexico, recently legalized same-sex marriage through court action on 19 December 2013. It is unknown whether this will or will not have an effect on tax preparation for this year.

Further complicating the matter, many states have registered same-sex relationships that are given preferential tax treatment, but fall short of being called “marriages.” This is in opposition to federal law, which only recognizes legal relationships called marriage under state law. Federal law does not recognize civil unions, domestic partnerships and the like for federal taxation purposes.

Though a comprehensive listing of each states approach to same-sex marriage, same-sex registered relationships and taxation is not currently available, these two examples demonstrate the tax law changes in Hawaii (a state recognizing same-sex marriage and certain registered relationships) and Alabama (a state that does not recognize either same-sex marriage or registered relationships):

- a. Hawaii – Under Hawaii state taxation law, same-sex married couples or same-sex members of civil unions must file their Hawaii state income tax returns “in the same manner as opposite-sex married couples.” Marital status on the last tax day of the year (December 31, 2013) determines the filing status. Hawaii also recognizes same-sex marriages from other states. *Marriage in Hawaii - FAQ*, Hawaii Gov. Neil Abercrombie, November 26, 2013.
- b. Alabama – Alabama law prohibits recognition of same-sex marriage. Same-sex couples that file a joint federal income tax return must file Alabama income tax returns separately, using the filing status of single or, if qualified, head of household. Federal income tax liability shown on the couple’s joint federal return must be allocated to each individual, based on the ratio of each individual’s federal adjusted gross income to the combined federal adjusted gross income. *Tax Guidance*, Alabama Department of Revenue, December 5, 2013.

These two examples demonstrate only Hawaii and Alabama state law. Other state taxation codes may treat the issue differently and must be consulted in the preparation of state income tax returns.

A comprehensive summary of State Tax Treatment information will be published at a later date through dissemination of the State Tax Guide, projected to occur no later than February 2014.

3. Further Information.

Please contact Code 16 for additional guidance, questions or comments regarding this TIM. Code 16 contact information is located in the sidebar.