



Weston Hurd Client Advisory - October 2013

OHIO DEPARTMENT OF TAXATION ISSUES GUIDELINES FOR SAME SEX COUPLES FILING STATE INCOME TAX RETURNS AND JOINT FEDERAL INCOME RETURNS

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Ohio's Constitution contains a ban on legal recognition of same sex unions. Consequently, despite a recent United States Supreme Court case permitting states to recognize same sex marriage, Ohio same gender spouses who file a joint federal tax return, may not file a joint Ohio state tax return even if they were married in a state that recognizes same gender marriage.

As a result, Ohio same sex couples filing jointly at the federal level may not file jointly at the state level but instead must file an Ohio Schedule ITS Form regarding their calculation of federal adjusted gross income on their individual state returns. They may file as single or head of household, but cannot file as married.

Guidance and directions are contained in the Ohio Department of Taxation's informational release IT 2013-01. [Click here to view the informational release.](#)



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Department of Taxation

Joseph W. Testa, Tax Commissioner

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Individual Income Tax - Information Release

IT 2013-01 - Filing Guidelines for Taxpayers Filing a Joint Federal Income Tax Return With Someone of the Same Gender - Issued Oct. 11, 2013

Introduction

This information release offers guidance to a taxpayer who is filing a joint federal income tax return with someone of the same gender and who is filing an Ohio income tax return meeting the following criteria:

- Original Ohio return for taxable year 2012 and earlier filed on or after September 16, 2013 (the date prescribed in IRS Revenue Ruling 2013-17).
- Original Ohio return filed for taxable years 2013 and after.

Background

On June 26, 2013, the U.S. Supreme Court issued a decision on the constitutionality of section 3 of the federal Defense of Marriage Act (DOMA), which had established a federal definition of marriage. Following the Court's decision, the Internal Revenue Service issued Revenue Ruling 2013-17. The ruling provides that a marriage between same-gender individuals performed in a jurisdiction that recognizes such a marriage will now be recognized for federal income tax purposes. As a result, same-gender married couples may file joint federal income tax returns on or after September 16, 2013 even if they are domiciled in a jurisdiction whose laws do not recognize a same-gender marriage.

Ohio Guidance

Under Article XV §11 of the Ohio Constitution, Ohio does not recognize marriage between persons of the same gender. Individuals who entered into such a marriage in another jurisdiction shall not use the filing status of "married filing jointly" or "married filing separately"

when filing Form IT 1040. Each individual must instead file an Ohio return in accordance with the following guidelines:

- File a separate Ohio income tax return using Form IT 1040 and check the box on the first page indicating that Schedule IT S (explained further below) will be filed.
- Use the filing status of “single” or, if qualified, “head of household”.
- Complete Ohio Schedule IT S, *Federal AGI to be Reported by Same-Gender Taxpayers Filing a Joint Federal Return*, which is a supplement to Form IT 1040. This is a schedule on which individuals shall allocate the federal adjusted gross income (“federal AGI”) reported on their joint federal income tax return. The Schedule enables each individual to determine federal AGI using the filing status of “single” or “head of household”. These amounts shall be reported as the individuals’ federal AGI for Ohio purposes including, but not limited to, on line 1 of the IT 1040. One Schedule IT S shall be completed and a copy submitted with each individual’s IT 1040 return. The Schedule and instructions are available online at <http://www.tax.ohio.gov/Forms.aspx>.
- Taxable year 2013 returns may be filed electronically using Ohio electronic filing services at www.tax.ohio.gov or by paper. Original returns for taxable years 2012 and prior must be filed via paper. Taxpayers may not file any of these returns using Form IT 1040EZ or TeleFile.

Although the IRS Revenue Ruling permits same-gender couples to file amended federal returns to change filing status to “married filing jointly” or “married filing separately”, no corresponding Ohio amended returns may be filed to change filing status for prior years.

Questions?

Taxpayers may visit www.tax.ohio.gov for more information. Questions may be submitted by clicking on the “Contact” link found at the top right of the page and then choosing the “Email Us” option. Taxpayers with additional questions regarding this subject may contact Individual Income Taxpayer Services at 1-800-282-1780.