

DIRECTIVE

Subject: Same-Sex Marriage and Filing Status
Tax: Individual Income Tax and Withholding
Law: Article 4 Part 2 and Article 4A
Issued By: Income Tax Division, Personal Taxes Section
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This Directive replaces Directive PD-13-1, issued on October 18, 2013. Directive PD-13-1 addressed the impact of Internal Revenue Service Revenue Ruling 2013-17 on North Carolina individual income tax and withholding.

Under Directive PD-13-1, the Department advised that North Carolina did not recognize the marriage of same-sex couples who were legally married under any state law as valid. Consequently, individuals who entered into a same-sex marriage could not file a North Carolina income tax return using the filing status of married filing jointly or married filing separately. Instead, each such individual was required to file a North Carolina individual income tax return, Form D-400, claiming the filing status of single or, if qualified, head of household or qualifying widow(er).

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

In light of the recent court procedures that upheld the Fourth Circuit Court of Appeals decision that overturned the ban on same-sex marriage, North Carolina will now recognize same-sex marriages.

Filing North Carolina Individual Income Tax Returns

Tax Year 2014

Same-sex couples who are legally married under any state law by December 31, 2014 must generally file a North Carolina income tax return using the same filing status claimed on the federal income tax return. However, if one spouse is a nonresident individual and has no North Carolina taxable income for the tax year, the spouse that is a resident of North Carolina or has North Carolina taxable income may elect to file a return as married filing separately. Individuals in a domestic partnership, civil union, or long-term relationship, but not legally married, must claim the filing status of single or, if qualified, head of household or qualifying widow(er).

North Carolina Department of Revenue

Tax Years Prior to 2014

- Original returns - Same-sex couples who were legally married prior to 2014, but who have not filed original returns for those tax years as of October 24, 2014 also must generally file a North Carolina income tax return using the same filing status claimed on the federal income tax return.
- Amended returns - Individuals who entered into a same-sex marriage prior to 2014 and filed a federal income tax return with a filing status of married filing jointly or married filing separately but filed separate North Carolina income tax returns prior to October 24, 2014 claiming the filing status of single or, if qualified, head of household or qualifying widow(er) as required under Directive PD-13-1, may, but are not required to, amend their North Carolina income tax returns for any corresponding tax years within the statute of limitations. Generally, a taxpayer must file a claim for refund within the later of three years after the due date of the return or two years after the payment of the tax. Use Form D-400X to amend a North Carolina individual income tax return.

Withholding of North Carolina Income Tax

Individuals who have entered into a same-sex marriage under any state law must furnish a new Form NC-4 or NC-4 EZ, Employee's Withholding Allowance Certificate, completed as a married individual to their employers. Both spouses must agree as to whether they will each complete the Allowance Worksheet based on married filing jointly or married filing separately.

Married taxpayers completing the Allowance Worksheet based on married filing jointly will consider the sum of both spouses' incomes, adjustments, additions, deductions, and credits on the Allowance Worksheet to determine the number of allowances. If married taxpayers complete the worksheet on the basis of married filing separately, each spouse will consider only his or her portion of income, adjustments, additions, deductions, and credits on the Allowance Worksheet to determine the number of allowances.

Questions

If you have any questions about this directive, please call the Department at 1-877-252-3052 (toll-free).