



TAX BULLETIN 14-7

Virginia Department of Taxation

October 7, 2014

This Tax Bulletin supersedes Tax Bulletin 13-13 (11/08/13).

Virginia Income Tax Treatment of Same-Sex Marriage

On October 6, 2014, the United States Supreme Court denied certiorari in the *Bostic* case, thereby upholding the Fourth Circuit Court of Appeals decision that overturned Virginia's ban on same-sex marriage. Accordingly, same-sex marriages that are valid under the law of any state will now be recognized for Virginia income tax purposes.

Virginia Legal History Regarding Same-Sex Marriage

On June 26, 2013, the United States Supreme Court ruled in *United States v. Windsor*, 133 S. Ct. 2675 (2013), that the federal law defining marriage as a marriage between one man and one woman was unconstitutional. As a result of the *Windsor* decision, the IRS announced in Revenue Ruling 2013-17 that same-sex married couples could file their income tax returns as married couples.

Lawsuits were subsequently filed in both of the federal district courts in Virginia to challenge Virginia's ban on same-sex marriage. The first case, *Bostic v. Schaefer*, was filed in the United States District Court for the Eastern District of Virginia on July 18, 2013. On February 13, 2014, the judge in *Bostic* struck down Virginia's same-sex marriage ban, finding that it violates the equal protection clause under the Fourteenth Amendment to the United States Constitution. The case was appealed to the Fourth Circuit Court of Appeals, and the judge's ruling was stayed pending the result of the appeal.

On July 28, 2014, the Fourth Circuit Court of Appeals upheld the lower court's decision that Virginia's ban on same-sex marriage is unconstitutional. This decision was stayed pending a Supreme Court decision. On October 6, 2014, the United States Supreme Court denied certiorari, which means the Supreme Court refused to hear the case, therefore upholding the previous decision.

Recognition of Same-Sex Marriage for Virginia Income Tax Purposes

Same-sex marriages that are recognized for federal income tax purposes will now be recognized for Virginia income tax purposes. As a result, same-sex couples who are legally married under any state law may file joint Virginia income tax returns, and compute items on their Virginia income tax returns as married individuals. Alternatively, such couples may file their Virginia income tax returns as married couples filing separately.

A same-sex married couple who filed a joint federal income tax return and separate Virginia income tax returns in a previous taxable year may, but is not required to, amend

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their Virginia income tax returns for any corresponding taxable years within the three-year statute of limitations to file joint Virginia income tax returns. Any same-sex married couple electing to do so must compute items on their amended Virginia income tax return as married individuals.

The Department previously released Tax Bulletin 13-13 (Public Document 13-209), which required each individual in a same-sex marriage to file separate Virginia income tax returns, and required such individuals to compute certain items on the Virginia income tax return as if they were single individuals. This Tax Bulletin repeals Tax Bulletin 13-13 (Public Document 13-209).

For more information, please contact the Office of Customer Services at (804) 367-8031, or use the “Live Chat” service on the Department’s website. This Tax Bulletin, along with other reference documents, is available online in the Laws, Rules and Decisions section of the Department of Taxation’s website, located at www.tax.virginia.gov.