

# States Provide Income Tax Filing Guidance to Same-Sex Couples

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## Executive Summary

Gay and lesbian couples holding a valid marriage certificate from a state that recognizes same-sex marriage will be able to file a joint federal tax return for tax year 2013. Just under half the states—22—do not recognize same-sex marriage while requiring taxpayers to reference their federal return when filing state income tax.

Revenue officials in these states must therefore provide guidance for taxpayers.

## Key Findings

- 5 states have adopted the “Wisconsin approach,” instructing same-sex taxpayers to allocate income to two single returns using a state-provided schedule (Arizona, Kansas, North Dakota, Ohio, and Wisconsin).
  - 12 states have adopted the “Louisiana approach,” instructing same-sex taxpayers to complete pro forma federal single tax returns and use that information for the state returns (Georgia, Idaho, Indiana, Kentucky, Louisiana, Michigan, Nebraska, North Carolina, Oklahoma, South Carolina, Virginia, and West Virginia). These “dummy” federal tax returns are not filed with federal authorities but used only for calculating state tax liability. (Utah also issued guidance using this approach prior to the December 2013 court decision permitting same-sex marriage in the state.)
  - 1 state (Alabama) instructs same-sex taxpayers to apportion income according to a ratio.
  - 3 states will allow same-sex taxpayers to file jointly (Colorado, Missouri, and Oregon).
  - Montana will advise same-sex taxpayers not to file jointly but concedes that it has no way of verifying that information.
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## Introduction

In June 2013, the U.S. Supreme Court struck down Section 3 of the Defense of Marriage Act (DOMA), invalidating the federal definition of marriage as between one man and one woman.<sup>1</sup> With respect to tax returns, the Internal Revenue Service (IRS) had to choose either (1) a “state of residency” standard, where the federal government piggybacks on the state definition of marriage in each state, or (2) a “state of celebration” standard, where the federal government recognizes a marriage if the couple holds a valid marriage certificate issued by any state. It was important to clarify matters, because a married couple filing jointly can face significantly different tax burdens than two single taxpayers earning the same income.<sup>2</sup>

In August 2013, the IRS opted for the “state of celebration” standard for recognizing marriages for tax year 2013.<sup>3</sup> Couples may also seek federal tax refunds for the 2010, 2011, and 2012 tax years if they were married in those years.<sup>4</sup> Consequently, any same-sex couple possessing a marriage license from a state whose laws authorize the marriage of two individuals of the same sex may file a joint federal tax return. This is in line with private industry practice, which provides benefits to any employee that can demonstrate they are married, regardless of where they live. For gay and lesbian couples in the 17 states<sup>5</sup> and the District of Columbia that recognize same-sex marriage, they can file joint returns both at the federal and state levels and potentially retroactively for past years as well.

Further guidance is needed, however, by the 22 states that do not recognize same-sex marriage but require taxpayers to reference the federal tax return when filling out their state tax form. Same-sex couples in those states will be able to file a joint federal income tax return but need guidance on how to prepare their state income tax return. Assuming a state does not opt to recognize same-sex marriage by next year, viable options pursued by states include:

- Permitting taxpayers to “split” their income from the joint federal return into two state returns. Wisconsin was the first state to adopt this approach, which is being followed in 5 states.
- Permitting taxpayers to reference a pro forma, or “dummy,” federal return reflecting single filing status for their state return. Louisiana was the first state to adopt this approach, which is being followed in 11 states.

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1. *United States v. Windsor*, 570 U.S. 12 (2013).

2. For information on how the tax code offers marriage bonuses and marriage penalties for different categories of taxpayers, see Nick Kasprak, *Effects of Marriage on Tax Burden Vary Greatly with Income Level, Equality*, TAX FOUNDATION FISCAL FACT NO. 352 (Jan. 10, 2013), <http://taxfoundation.org/article/effects-marriage-tax-burden-vary-greatly-income-level-equality>.

3. Internal Revenue Service, Rev. Rul. 2013-17, <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>; U.S. Department of the Treasury, *All Legal Same-Sex Marriages Will Be Recognized for Federal Tax Purposes*, Aug. 29, 2013, <http://www.treasury.gov/press-center/press-releases/Pages/jl2153.aspx>.

4. *See id.*

5. The states that currently recognize same-sex marriage are California, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Washington. Over 1,000 same-sex marriages have been conducted in Utah as a result of a federal district court ruling overturning Utah’s ban on same-sex marriage. However, due to a stay issued by the U.S. Supreme Court, no further same-sex marriages will be conducted in Utah during the appeals process, and state officials have been instructed not to recognize the marriages as valid for state tax purposes. Further litigation is likely.

- Permitting taxpayers to apportion income between two single returns using a ratio. Alabama is following this approach.

Since August 2013, we have communicated with states to ensure that they provide guidance to taxpayers. An option that no state should adopt, and no state has adopted, is to “delink,” or “decouple,” the state’s tax code from the federal tax code. Such a step would impose huge compliance costs on nearly all state taxpayers and potentially cause economic damage. Such a response would be disproportionate since other viable options are available.

## Tax Filing by Same-Sex Couples Before and After the IRS Ruling

To illustrate, take two same-sex couples, one living in Maryland (which recognizes same-sex marriage) and one living in Virginia (which does not). The Maryland couple, in the past, has been able to file a joint state return but has had to file separate federal returns. (Because Maryland’s return references information on the federal return, Maryland and other same-sex marriage states have previously permitted taxpayers to prepare a pro forma, or “dummy,” federal joint return to reference when preparing the state return.) Under either a “state of celebration” or “state of residency” rule, the Maryland couple would now be able to file joint returns at both the federal and state levels.

The Virginia couple has never been able to file joint returns at the federal or state levels, but because the IRS has adopted a “state of celebration” standard, they may now file a joint federal return so long as they have a marriage certificate issued by another state that recognizes same-sex marriage. Under a “state of residence” standard, state law defining marriage would apply and the couple would not be able to file federal or state joint returns. But under a “state

Table 1: Differences between “State of Residency” and “State of Celebration” Standards

	Under DOMA	Post-DOMA “State of Residency” Standard	Post-DOMA “State of Celebration” Standard
State recognizes same-sex marriage (e.g., Maryland)	Couple can file joint state return but must file separate federal returns; pro forma or “dummy” federal return needed to fill out state return	Couple can file joint state and federal returns	Couple can file joint state and federal returns
State does not recognize same-sex marriage (e.g., Virginia)	Couple must file separate returns at both state and federal levels	Couple must file separate returns at both state and federal levels	Couple can file joint federal return but must file separate state returns, depending on state law

Source: Tax Foundation analysis

of celebration” standard, the couple can file jointly at the federal level but must continue to file separately at the state level.

Presently, 17 states and the District of Columbia issue same-sex marriage licenses, 4 states recognize same-sex civil unions or domestic partnerships, and 29 states ban same-sex marriage by statute or by constitutional provision. Nearly all states that have a state income tax reference the federal tax code at some point to minimize taxpayers’ calculation, record keeping, and compliance burdens. Thirty states and the District of Columbia start with federal adjusted gross income, 6 states start with federal taxable income, and only 5 states do not reference the federal tax code at all (see Table 2.)

Table 2: State Laws on Federal Tax Conformity and Same-Sex Marriage

State	Coupled to Federal Tax Code?	Same-Sex Marriage Status	Guidance to Taxpayers Issued
Alabama	Yes. Taxpayer must recalculate income using state method, but can deduct federal tax paid.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must apportion federal tax onto two single returns, using the ratio of each taxpayer’s federal AGI to the couple’s federal AGI. <sup>6</sup>
Alaska	No state income tax.	Bans same-sex marriage constitutionally.	Guidance not required, as state has no income tax.
Arizona	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage constitutionally.	Yes. Same-sex taxpayers must allocate income to two single returns using a state-provided schedule (Schedule S). <sup>7</sup>
Arkansas	No. Taxpayer must recalculate income using state method.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Guidance not required, as state is not coupled to federal tax code.
California	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Colorado	Yes. Taxpayer starts with federal taxable income and applies one tax rate.	Bans same-sex marriage constitutionally but recognizes civil unions.	Yes. Same-sex couples may file jointly. <sup>8</sup>
Connecticut	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Delaware	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.

<sup>6</sup> Alabama Department of Revenue, *Alabama Income Tax Filing Status for Same-Sex Couples*, Dec. 5, 2013, <http://bit.ly/19mBUYg>.

<sup>7</sup> Arizona Department of Revenue, *2012 Arizona Individual Income Tax Filing Requirements for Same-Sex Couples*, Oct. 11, 2013, <http://www.azdor.gov/LinkClick.aspx?fileticket=mDpbGMu7LmU%3D&tabid=257&mid=878>.

<sup>8</sup> Colorado Department of Revenue, *Income Tax Filing Status for Same-Sex Couples*, Nov. 29, 2013, <http://www.colorado.gov/cs/Satellite/Revenue-Main/XRM/1251648326143>.

Florida	No state income tax.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Guidance not required, as state has no income tax.
Georgia	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>9</sup>
Hawaii	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage. Couples not married but in a civil union are treated as married for Hawaii tax purposes, so they must complete pro forma federal single returns and use that information for the state returns. <sup>10</sup>
Idaho	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>11</sup>
Illinois	Yes. Taxpayer starts with federal adjusted gross income and applies one tax rate.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Indiana	Yes. Taxpayer starts with federal adjusted gross income and applies one tax rate.	Bans same-sex marriage by statute.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>12</sup>
Iowa	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Kansas	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must allocate income to two single returns using a state-provided worksheet (Kansas Allocation of Income Worksheet). <sup>13</sup>

9 Georgia Department of Revenue, "Informational Bulletin IT-2013-10-25," Oct. 25, 2013, [https://etax.dor.ga.gov/TaxLawandPolicy/DOMA\\_bulletin\\_10-25-2013.pdf](https://etax.dor.ga.gov/TaxLawandPolicy/DOMA_bulletin_10-25-2013.pdf).

10 Hawaii Department of Taxation, "Re Act 1, Second Special Session Laws of Hawaii 2013, Relating to Equal Rights," Announcement No. 2013-26, Dec. 23, 2013, <http://www.state.hi.us/tax/announce/ann13-26.pdf>.

11 Idaho State Tax Commission, "Info for same-sex marriage filers," Oct. 4, 2013, <http://tax.idaho.gov/n-feed.cfm?idd=424>.

12 Indiana Department of Revenue, "Same-Sex Marriage Tax Filing Guidance," Nov. 22, 2013, <http://www.in.gov/dor/4895.html>.

13 Kansas Department of Revenue, Guidance for Same-Sex Couples, Notice 13-18, Oct. 4, 2013, <http://www.ksrevenue.org/taxnotices/notice13-18.pdf>; Kansas Department of Revenue, *2013 Kansas Allocation of Income Worksheet*, <http://www.ksrevenue.org/pdf/iiallocation13.pdf>. Two couples have sued to demand the right to file joint tax returns. See Gay couples sue to overturn Kansas tax filing policy, ASSOCIATED PRESS, Dec. 31, 2013, <http://www.kansascity.com/2013/12/31/4722574/gay-couples-sue-to-overturn-kansas.html>.

Kentucky	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>14</sup>
Louisiana	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>15</sup>
Maine	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Maryland	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Massachusetts	Yes. Taxpayer starts with federal gross income and applies state rate.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Michigan	Yes. Taxpayer starts with federal adjusted gross income and applies one tax rate.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>16</sup>
Minnesota	Yes. Taxpayer starts with federal taxable income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Mississippi	No. Taxpayer must re-calculate income using state method.	Bans same-sex marriage constitutionally.	Guidance not required, as state is not coupled to federal tax code.
Missouri	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage constitutionally.	Yes. Same-sex couples may file jointly, although eligibility for exemptions, deductions, and credits is uncertain. <sup>17</sup>
Montana	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage constitutionally.	Unclear. If asked if same-sex taxpayers can file jointly, they "will advise that this is not a valid filing option," but memorandum notes that Montana does not verify taxpayers' marital status. <sup>18</sup>

14 Kentucky Department of Revenue, *Same-Sex Married Couples Filing Guidance*, KENTUCKY TAX ALERT, Nov. 2013, <http://www.revenue.ky.gov/nr/rdonlyres/9ba15c3d-34cc-45fe-bfb6-0d346d93bac5/0/kytaxalertnov2013.pdf>.

15 Louisiana Department of Revenue, *Impact of the Internal Revenue Service Revenue Ruling 2013-17*, Revenue Information Bulletin No. 13-024, Sep. 13, 2013, <http://revenue.louisiana.gov/forms/laws/policies/RIB%2013-024.pdf>. While the revenue bulletin does not mention a pro forma return, conversations with revenue officials confirm that is the approach taxpayers are instructed to take.

16 Michigan Department of Treasury, *Same-Sex Couples Filing Joint Federal Income Tax Return Must File Michigan Income Tax Returns as Single Filers*, Sep. 19, 2013, [http://www.michigan.gov/documents/taxes/DOMAnotice\\_434103\\_7.pdf](http://www.michigan.gov/documents/taxes/DOMAnotice_434103_7.pdf).

17 Missouri Gov. Jay Nixon, Executive Order 13-14, Nov. 14, 2013, <http://governor.mo.gov/orders/2013/13-14.html>.

Nebraska	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>19</sup>
Nevada	No state income tax.	Bans same-sex marriage constitutionally but recognizes domestic partnerships.	Guidance not required, as state has no income tax.
New Hampshire	Yes. State income tax applies only to interest and dividends.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
New Jersey	No. Taxpayer must recalculate income using state method.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
New Mexico	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
New York	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
North Carolina	Yes. Through December 2013, taxpayer starts with federal taxable income and applies state rates and brackets. As of January 2014, taxpayer starts with federal adjusted gross income and applies one tax rate.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>20</sup>
North Dakota	Yes. Taxpayer starts with federal taxable income and applies state rates to the federal brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must allocate income to two single returns using a state-provided schedule (ND-1S). <sup>21</sup>
Ohio	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must allocate income to two single returns using a state-provided schedule (Schedule IT S). <sup>22</sup>

18 Montana Department of Revenue, *Memorandum: Discussion of Same Sex Marriage*, Oct. 1, 2013, [http://www.revenue.mt.gov/content/committees/legislative\\_interim\\_committee/Discussion\\_of\\_Same\\_Sex\\_Marriage](http://www.revenue.mt.gov/content/committees/legislative_interim_committee/Discussion_of_Same_Sex_Marriage).

19 Nebraska Department of Revenue, *Frequently Asked Questions for Individuals in a Same-Sex Marriage*, [http://www.revenue.nebraska.gov/question/same-sex\\_FAQ.html](http://www.revenue.nebraska.gov/question/same-sex_FAQ.html); Nebraska Department of Revenue, *Tax Guidance for Individuals in a Same-Sex Marriage*, Rev. Rul. 22-13-1, Oct. 24, 2013, [http://www.revenue.nebraska.gov/legal/rulings/rr221301\\_same-sex\\_marriage.html](http://www.revenue.nebraska.gov/legal/rulings/rr221301_same-sex_marriage.html).

20 North Carolina Department of Revenue, *Same-Sex Marriage and Filing Status*, Directive PD-13-1, Oct. 18, 2013, <http://www.dornc.com/practitioner/individual/directives/pd-13-1.pdf>.

21 North Dakota Tax Commissioner, *Guideline: Filing By Individuals in a Same-Sex Marriage*, Oct. 2013, <http://www.nd.gov/tax/indincome/pubs/guide/same-sexmarriageguideline.pdf?20131223172303>.

22 Ohio Department of Taxation, *Filing Guidelines for Taxpayers Filing a Joint or Married Filing Separately Federal Income Tax Return With Someone of the Same Gender*, Information Release 2013-01, Oct. 11, 2013, rev. Dec. 19, 2013, [http://www.tax.ohio.gov/Portals/0/ohio\\_individual/individual/information\\_releases/DOMA%20PIT%20Information%20Release%202012-19-13.pdf](http://www.tax.ohio.gov/Portals/0/ohio_individual/individual/information_releases/DOMA%20PIT%20Information%20Release%202012-19-13.pdf).

Oklahoma	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>23</sup>
Oregon	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage constitutionally but recognizes domestic partnerships and out-of-state marriages.	Yes. Married couples may file jointly, but domestic partners must use the domestic partner filing status. <sup>24</sup>
Pennsylvania	No. Taxpayer must re-calculate income using state method.	Bans same-sex marriage by statute.	Guidance not required, as state is not coupled to federal tax code.
Rhode Island	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
South Carolina	Yes. Taxpayer starts with federal taxable income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>25</sup>
South Dakota	No state income tax.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Guidance not required, as state has no income tax.
Tennessee	State income tax applies only to interest and dividends, and is calculated using a state method.	Bans same-sex marriage constitutionally.	Guidance not required, as state is not coupled to federal tax code.
Texas	No state income tax.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Guidance not required, as state has no income tax.
Utah	Yes. Taxpayer starts with federal adjusted gross income and applies one tax rate.	Over 1,000 same-sex marriages have been conducted in Utah due to a federal district court ruling. However, due to a stay issued by the U.S. Supreme Court, no further same-sex marriages will be	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>26</sup> After the same-sex marriage court decision, authorities indicated that same-sex married couples would

23 Oklahoma Tax Commission, *Public Notice: Oklahoma Income Tax Filing Status for Same Sex Couples*, Sep. 27, 2013, <http://www.tax.ok.gov/upmin092713.html>.

24 Oregon Department of Revenue, *Oregon tax information for same-sex married couples*, <http://www.oregon.gov/dor/PERTAX/Pages/same-sex.aspx>; Oregon Department of Revenue, *Registered Domestic Partners in Oregon*, <http://www.oregon.gov/dor/PERTAX/Pages/same-sex.aspx>.

25 South Carolina Department of Revenue, *Same-Sex Marriage Filing Guideline (Income Tax)*, Draft of Revenue Ruling #13, Jan. 2, 2014, <http://www.sctax.org/NR/rdonlyres/5CEC78B8-5003-47FE-B5B7-392076D0E0B4/0/SameSexMarriageRRDraft.pdf>.

26 Utah State Tax Commission, *Same-sex couples may not file joint state income tax returns*, Oct. 9, 2013, <http://tax.utah.gov/commission/releases/2013-10-09.pdf>.

		conducted in Utah during the appeals process, and state officials have been instructed not to recognize the marriages as valid for state tax purposes. Further litigation is likely. State constitution bans same-sex marriage, civil unions, and domestic partnerships.	be able to file jointly but that is now on hold. <sup>27</sup> Further litigation is likely.
Vermont	Yes. Taxpayer starts with federal taxable income and applies state rates to the federal brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.
Virginia	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage, civil unions, and domestic partnerships constitutionally.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>28</sup>
Washington	No state income tax.	Recognizes same-sex marriage.	Guidance not required, as state has no income tax.
West Virginia	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage by statute.	Yes. Same-sex taxpayers must complete pro forma federal single returns and use that information for the state returns. <sup>29</sup>
Wisconsin	Yes. Taxpayer starts with federal adjusted gross income and applies state rates and brackets.	Bans same-sex marriage and civil unions constitutionally but recognizes domestic partnerships.	Yes. Same-sex taxpayers must allocate income to two single returns using a state-provided schedule (Schedule S). <sup>30</sup>
Wyoming	No state income tax.	Bans same-sex marriage by statute.	Guidance not required, as state has no income tax.
District of Columbia	Yes. Taxpayer starts with federal gross income and applies state rates and brackets.	Recognizes same-sex marriage.	Guidance not required, as state recognizes same-sex marriage.

Source: Tax Foundation review of state statutes.

27 Lisa Riley Roche, *State recognition of same-sex marriage on hold, governor's office says*, DESERET NEWS, Jan. 8, 2014, <http://www.deseretnews.com/article/865593743/State-recognition-of-same-sex-marriage-on-hold-governors-office-says.html>; Paul Nelson, *Utah officials work to allow same-sex couples to file joint taxes*, KSL NEWSRADIO, Dec. 26, 2013, <http://www.ksl.com/index.php?sid=28151113&nid=148&title=utah-officials-work-to-allow-same-sex-couples-to-file-joint-taxes>.

28 Virginia Department of Taxation, *Virginia Income Tax Treatment of Same-Sex Marriage*, Tax Bulletin 13-13, Nov. 8, 2013, [http://www.tax.virginia.gov/Documents/TB\\_13-13\\_DOMA.pdf](http://www.tax.virginia.gov/Documents/TB_13-13_DOMA.pdf).

29 West Virginia State Tax Department, *Personal Income Tax Forms & Instructions*, Jan. 2014, at 16, <http://www.state.wv.us/taxrev/forms/2013/it140.forms-and-instructions.pdf#page=16>.

30 Wisconsin Department of Revenue, *Tax Guidance For Individuals In A Same-Sex Marriage*, Sep. 6, 2013, <http://www.revenue.wi.gov/taxpro/news/130906.html>

## State Options for Providing Guidance to Taxpayers

After the IRS state of celebration ruling, states that do not recognize same-sex marriage but do require state taxpayers to reference their federal tax return when preparing their state tax return needed to provide guidance to taxpayers on how to proceed before the 2014 tax season. In these states, same-sex couples will file single returns at the state level but joint returns at the federal level. State law generally requires references to the federal return and filing status to match the federal return, which would be impossible without further state-level guidance. As of this writing, all states affected have now provided guidance.

Assuming a state does not opt to recognize same-sex marriage by next year, the states had several options for providing guidance to resolve this conflict:

- Permit taxpayers facing a federal-state filing status conflict to allocate their joint federal return via a schedule (the “Wisconsin approach” followed by 5 states) or by a ratio (the “Alabama approach”). Under this option, taxpayers in this situation will be provided with a state schedule or worksheet to allocate their income from the filed joint federal return to two single state returns. For example, if the couple reports \$50,000 in income on their joint federal return, the schedule will allocate this income to each taxpayer for the state returns. Depending on income disparity, this may have uneven effects on certain same-sex taxpayers, but would reduce compliance costs.
- Permit taxpayers facing a federal-state filing status conflict to reference a pro forma federal return (the “Louisiana approach” followed by 10 states). To resolve this with minimal impact to the state, taxpayers in this situation would be instructed to prepare a pro forma federal return reflecting single filing and reference that when preparing the state return. Taxpayers who file married filing separately at the federal level would be permitted to file as single at the state level. Most taxpayers will be unaffected by this change, and while some same-sex taxpayers may face additional compliance costs, they will get the benefits of joint federal filing.
- Create a new “federal joint return” filing status when a taxpayer files a federal joint return but cannot do so at the state level under state law. Presently, taxpayers may file as single, as married filing jointly, as married filing separately, or as head of household. This option would create a new “federal joint return” status for couples who file married filing jointly or married filing separately at the federal level but are not permitted to do so at the state level under state law. Taxpayers would reference their federal return when preparing their state return, but the state would not recognize

same-sex marriage. Three states that do not recognize same-sex marriage are permitting same-sex taxpayers to file jointly (Colorado, Missouri, and Oregon).

Depending on state law, guidance may require only an administrative ruling by revenue officials. Alternatively, governors and legislators can enact changes legislatively.

## **States Should Resist Calls to Decouple from Federal Tax Law**

Officials in the 24 states which do not recognize same-sex marriage may face calls for the state to “delink,” or “decouple,” from the federal tax code to eliminate the need to clarify what same-sex couples filing jointly at the federal level should reference when preparing their state tax return. At first glance, this may seem a viable solution, since deleting all state references to the federal tax code eliminates all need to refer to the federal tax return. However, decoupling would impose new compliance costs on all state taxpayers.

### *Decoupling Would Impose Compliance Costs on All Taxpayers*

A principle of sound tax policy is that tax systems should be as simple as possible because the cost of complying with complex tax systems is a real economic loss that distorts incentives and economic behavior. Decoupling violates this principle because it requires taxpayers to calculate income, exemptions, deductions, and credits with two conflicting accounting and tax systems. Taxpayers would need to keep two sets of books: one for federal law and one for each decoupled state with unique definitions and rules. This essentially doubles the cost of complying with the income tax, which would likely harm investment, job creation, and long-term tax revenues.

Taxpayers consistently complain about the complexity of the tax code, for good reason: in 2005, the estimated time and money cost of complying with the federal income tax code was 6 billion man-hours worth \$265 billion. The code that year stood at 7 million words in 736 code sections, up from 718,000 words in 103 code sections in 1955. Decoupling makes this worse, by increasing both the cost of compliance for taxpayers and the cost of administration to revenue officials who track and enforce the code.

### *Decoupling Sends the Signal that the State is Unfriendly to Business and Investment*

The extent to which a state welcomes business owners and entrepreneurs making decisions about where to locate investment capital, equipment, and jobs

depends on a number of factors that the Tax Foundation attempts to gauge in our annual *State Business Tax Climate Index*. States can be termed “unfriendly” if they consistently move the state tax system away from a sound tax policy, such as with increased complexity, retroactivity, high burdens, economic distortions, and a lack of transparency.

Decoupling is a move away from sound tax policy, because it increases tax burdens, reduces stability, and exacerbates an already complex income tax code. Individuals and businesses should be wary of states that have decoupled, since it signals that the state cares more about parochial definitions and rules instead of long-term economic growth. While remaining coupled or recoupling is not in itself a signal of welcoming new investment, it signals a commitment to principled tax policy.

## Conclusion

The concept of physical presence is tightly connected to tax and spending policy. Taxpayers pay income taxes, sales taxes, property taxes, and other taxes based on where they are when assessed, and taxpayers receive benefits based on which state they live in. The rise of swift transportation, instantaneous communication, and an interconnected world continue to challenge these deeply rooted historical standards. Using a state of celebration standard may be more realistic and more accurate, but in the short-term can present states with challenges in reconciling federal and state law conflicts. However, states have pursued viable options for accommodating this federal change with minimal effort that affect only a few taxpayers.

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