



STATES ISSUE TAX GUIDANCE FOR SAME-SEX MARRIAGE

With its recent decision in *Obergefell v. Hodges*, the United States Supreme Court determined that the 14 same-sex couple petitioners from Michigan, Kentucky, Ohio, and Tennessee have a constitutional right to marry. Simultaneously, the Court put to rest related questions for the whole nation, by ultimately concluding that the 14th Amendment, which protects certain fundamental liberties, requires all states to issue marriage licenses for same-sex couples, including for those whose marriages were performed and licensed in a different state.

All married couples now share the same tax filing options, according to the *Tax Foundation*. Likewise, same-sex couples could end up with either a tax bonus or penalty, depending on the circumstances. As it currently stands, more couples enjoy a marriage bonus, which often exists for partners with large disparities in income. On the other hand, when both partners earn about the same and are relatively well off, the tax burden is higher.

Another point of simplification comes from the fact that same-sex married couples will not have to endure the complications associated with the need to characterize their statuses differently for state and federal income tax filing purposes. In addition, same-sex spouses are now eligible for social security payments, property inheritance, and hospital visitations rights.

Beyond all of this, *Bloomberg* reports, employers will be making major changes in their health coverage policies, survivor benefits, and any benefits they offer to unmarried couples, which will create uniform rules across the country. And finally, same-sex married couples will be free to divorce, so they can utilize qualified domestic relations orders to divide retirement plan assets, an option previously unavailable.

In light of these changes, Ohio, Michigan, and Louisiana have issued the following tax guidance:

Ohio

The Buckeye State's **Information Release** (Release) on July 2, 2015, provides instruction to taxpayers filing a joint or "married filing separately" federal income tax return, and who are filing either an original Ohio income tax return for taxable year 2013 and earlier (filed on or after September 16, 2013) or filing an original Ohio income tax return for taxable year 2014 and after. Among other things, the Release offers these guidelines:

- All married individuals shall use the filing status of "married filing jointly" or "married filing separately" when filing Ohio Form IT 1040;
- Ohio taxpayers who filed original Ohio returns on or after October 11, 2013, using Ohio Schedule IT-S may amend those returns to reflect the same status and federal adjusted gross income as their corresponding federal returns;
- IRS Revenue Ruling 2013-17 permitted same-sex married couples to file amended federal returns to change filing status to "married filing jointly" or "married filing separately." For federal returns so amended, corresponding Ohio amended returns must also be filed on or after June 26, 2015, to change Ohio filing status for previous years.
- Some employer-provided spousal benefits are now subject to employer withholding, as set forth in Information Release EW 2015-01;
- Ohio will interpret the terms 'spouse,' 'husband and wife,' 'husband,' and 'wife' to include individuals lawfully married in any jurisdiction, and the term 'marriage' to include all lawful marriage;
- Ohio will not interpret these terms 'spouse,' 'husband and wife,' 'husband,' and 'wife' to include those individuals who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, or the term 'marriage' to include such formal relationships.

Michigan

Similarly, Michigan issued its **Notice** on July 1, 2015, acknowledging that *Obergefell* invalidated its definition of marriage. As a result, the state now recognizes the marriages of same-sex spouses.

Accordingly, as of June 26, 2015:

- Same-sex spouses who file Michigan income tax returns and who are married under Michigan law, or under the laws of another state, must claim either "married filing jointly" or "married filing separately" status on a Michigan income tax return;
- If the spouses file a joint federal income tax return, they must also file a joint Michigan return;
- If the spouses did not file a joint federal return, they may choose to file separately or jointly;
- Michigan income tax returns may be amended to claim "married filing jointly" but the Department of Treasury will not require amended returns. If an amended return is filed, refunds will only be issued if the return is filed within four years of the date that the original return was due.

Louisiana

On July 2, 2015, Louisiana issued a **Revenue Information Bulletin** (Bulletin) recognizing the right of married same-sex couples to file returns utilizing the "married filing jointly" status, subject to other applicable laws, regulations, and policies.

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Accordingly, same-sex couples in Louisiana, like other married taxpayers, may amend a state return within three years of the filing deadline for the original tax return, or one year from the time when the tax was paid, whichever is later. The taxpayer must file a claim for the credit or refund before the expiration of this three-year or one-year period.

What's next?

Obergefell does not resolve every issue concerning same-sex couples. In May, the **BerkelyBlog** pointed out that only 22 states have laws prohibiting discrimination based on sexual orientation, which the Supreme Court decision does not address. Even so, the blog suggested, the holding could have "potent precedential value by establishing new constitutional norms."

ILLINOIS: UNCERTAINTY SURROUNDS THIS YEAR'S BUDGET PROCESS

The Prairie State's new fiscal year started on July 1, 2015, without a budget. The **Illinois Policy**, an independent research and education organization wants to know what happens next. However, no one really knows, beyond the fact that without a budget, Illinois cannot spend any money on programs that require an annual appropriation, including most state programs and services. Education is one such program, as are Medicaid, addiction and child-care services, the senior meal program, parks, museums, and casinos.

For certain critical matters that are subject to annual appropriations, there is a work-around. For example, with respect to public education, on June 24, 2015, Governor Rauner signed **House Bill 3763**, authorizing the necessary amounts to ensure that public schools are funded in fiscal year 2016. Consequently, schools will be open for the upcoming academic year even if lawmakers fail to adopt a balanced budget. *The State Journal Register* explained that HB 3763 also authorized funding for early childhood education programs, bilingual education, and required payments to the downstate teacher pension system.

Things like pensions and debt payments are continuing appropriations, so are not at risk in the current budget battle. And local government operations will continue to receive their share of state income, sales, and motor-fuel taxes.

Illinois Policy noted that the current impasse is the result of a budget plan in which spending exceeds the 2016 revenue estimate by approximately \$4 billion. This is nothing new for Illinois. In a January 2015 fact sheet titled *Apocalypse Now? The Consequences of Pay-Later Budgeting in Illinois: Updated Projections from IGPA's Fiscal Futures Mode*, the Institute of Government and Public Affairs (IGPA), a public policy research organization at the University of Illinois, observed that Illinois has been spending more than it can support with viable revenue sources for years. The "IOUs" that the state has been using to sustain itself – in the form of bonds, unpaid bills, unfunded liabilities for pensions and retiree healthcare – generate interest obligations that crowd out what Illinois can spend on other priorities in the future. Indeed, the projected deficit is \$9 billion in fiscal year 2016, and without policy changes, \$14 billion in fiscal year 2026.

IGPA notes that this leaves Illinois with few good choices to eliminate deficit spending. For instance, an across-the-board increase on all taxes and fees would need to be more than 25 percent. Bringing back the 2011-2014 tax rates on personal and corporate incomes will only close about one-half of the projected gap. Borrowing, with its inherent interest costs, will only exacerbate the problem by creating more debt. Spending cuts would need to be very steep, more than 20 percent, and on crucial services to eliminate the deficit.

Some painful combination of the above, along with changes in awareness, expectations, and policies, plus several years of time, is the only way to solve Illinois' fiscal problems, opines the IPGA.

COLORADO: MARIJUANA REVENUES TRIGGER TABOR REFUNDS

In November 2000, Colorado voters approved the use of marijuana for medical purposes, and in 2012, it did the same for recreational marijuana. In 2014, the state collected more than \$76 million in tax revenues and related licenses and fees. This includes the 2.9 percent retail and medical marijuana sales tax, 10 percent retail marijuana special sales tax, 15 percent marijuana excise tax, and retail/medical marijuana application and license fees.

A May 2015 *Tax Foundation* report explained that because marijuana revenues were substantially outpacing projections, Colorado is proceeding with a Taxpayer's Bill of Rights (TABOR) involving taxpayer refunds. The Colorado **Constitution** established its TABOR in 1992. It requires voter approval for tax increases, and institutes taxpayer refunds when state revenues exceed the rate of inflation and population growth.

How TABOR works

Between 1992 and 2001, the state returned over \$2 billion to Coloradans. Since 2001, the recession, combined with a voter referendum suspending the revenue limit to allow the state to recover, created a "five-year timeout period" that allowed the state to spend \$11.6 billion that would have otherwise been subject to refund. But now, because marijuana revenues are exceeding projections, the Centennial State is "on the brink" of issuing TABOR refunds for the first time in 15 years.

The TABOR scheme includes three refund mechanisms. All of the excess revenues from fiscal year 2014, \$69.7 million, will be refunded under the first mechanism, a six-tier sales tax refund (though the refund is not related to the actual sales tax).

Each tier is based on the taxpayer's income. Single filers in the lowest tier, income between \$0 and \$36,500, can expect a refund of \$15 in the current tax year. Those in the highest tier, in which income exceeds \$181,000, will receive a \$47 refund. The six-tier mechanism is the first one to kick in when returning excess funds to taxpayers.

The second refund mechanism is the Earned Income Tax Credit (EITC), which is set at 10 percent of the federal credit. Colorado last paid the EITC in 2001, but in 2013, lawmakers enacted legislation that makes the EITC permanent the next time it is triggered. Revenue is projected to be \$116.8 million above the TABOR limit at the end of the current fiscal year, which would trigger the EITC and make it a permanent part of Colorado's spending.

The third refund mechanism is a temporary income tax rate reduction, which only comes into play if the EITC is triggered and sufficient excess revenue remains to cover the projected amount of an income tax rate reduction. Under this mechanism, a temporary reduction of the individual and corporate income tax from 4.63 percent to 4.5 percent would go into effect the subsequent year.

The report ties it all together as follows:

Current projections show an anticipated \$434.9 million surplus in FY 2016. Since the EITC should already have been made permanent by the end of that fiscal year, this would be enough to cover the cost of the income tax rate reduction (\$226.6 million) while still leaving \$208.3 million to return to taxpayers through the sales tax rebate mechanism.

It should be noted that the figures are all based on projections, so they can change.

Is TABOR constitutional?

On June 30, 2015, the United States Supreme Court granted the petition for a writ of certiorari (petition) filed by Colorado's Governor John Hickenlooper, appealing a District Court decision involving the constitutionality of TABOR. The case stems from a group of plaintiffs, including certain state legislators, which filed a lawsuit in 2011, asserting that 1) TABOR causes Colorado's government to no longer be Republican in form; and 2) that TABOR violates the Guarantee Clause of the United States Constitution. The Guarantee Clause provides that "The United States shall guarantee to every state in this Union a Republican Form of Government..."

As noted above, Colorado's Constitution allows its citizens to engage directly in lawmaking by way of the 1992 TABOR provision. According to the governor's petition, the purpose of the lawsuit was to invalidate TABOR because "raising taxes is a 'core governmental function,' and legislators' decisions on that topic cannot be subjected to 'plebiscite.' Under this view, TABOR deprives Colorado citizens of a republican form of government."

The Governor asked the District Court to dismiss the case, on the procedural grounds that the plaintiffs lacked standing because they did not suffer a redressible injury and because

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the question is political in nature, and should not be addressed by the courts. The District Court disagreed, so the governor appealed to the 10th Circuit Court of Appeals, where he lost again. The governor then sought Supreme Court review, finally making some progress; the court reversed and sent the case back for further review.

Despite all this movement, the substantive question, whether TABOR is constitutional, has not been resolved. Until it is, taxpayers can expect to receive some portion of the projected \$208.3 million through the sales tax rebate mechanism triggered by the excess marijuana revenues.

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