



## Same-sex married couples denied joint filing status, businesses may be required to make adjustments in Virginia

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The Virginia Department of Taxation (the Department) recently issued **Tax Bulletin 13-13**. Legal counsel to the Department advised "that Article I, § 15-A of the Constitution of Virginia and Va. Code § 20-45.2 require Virginia to deconform from the federal income tax treatment of same-sex marriage." The Department decided to heed this advice and take the position that it is disallowing joint tax return filing status to same-sex married couples.

The federal income tax treatment that the Department's statement is referring to is Internal Revenue Service Revenue Ruling 2013-17. Revenue Ruling 2013-17 held, in part, that: (1) "husband" and "wife" include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage; and (2) a marriage of same-sex individuals that was validly entered into in a state whose law authorizes the marriage of two individuals of the same sex will be recognized by the IRS even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

As a result of the Department's position and Virginia law, same-sex married couples who filed jointly for federal income tax purposes will be required to file individually for Virginia income tax. This will affect many federally-reported line items for the individuals, including above-the-line deductions to each of their adjusted gross incomes, and standard or itemized deduction amounts reported.

The Tax Bulletin also covers adjustments that must be made by businesses that claim deductions for certain expenses incurred for same-sex partners of employees. For example, if your business claimed a federal deduction for payments of fringe benefits to employees' same-sex spouses and dependents, your business may be required to adjust the deductions claimed for Virginia income tax purposes. The Department may not recognize these deductions because the Department does not recognize same-sex marriage.



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