

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER
OFFICE OF TAX AND REVENUE



OTR TAX RULING 2005-01

Subject: Same-Sex Filing Status

Advice has been requested as to whether a married couple, under the circumstances described below, can file a Form D-40 return either on a joint or married filing combined-separate basis for District of Columbia (“District”) income tax purposes.

FACTS

A same-sex couple was married under the laws of another state. The couple qualifies as a resident of the District for income tax purposes.

ISSUE

The specific issue is whether a couple (either heterosexual or same-sex), under existing District income tax law, is permitted to file a joint or combined-separate income tax return in the District where such couple did not or could not file a joint income tax return with the Internal Revenue Service (“IRS”).

CONCLUSION

As discussed below, because a same-sex couple cannot file a joint return for Federal income tax purposes, that couple cannot file a joint return or a combined-separate return for District income tax purposes. In addition, a heterosexual couple that does not elect to file a joint return for Federal tax purposes cannot file jointly or combined-separately for District purposes.

LEGAL ANALYSIS

A. Requirement for Filing at the Federal Level

The District of Columbia Income and Franchise Tax Act of 1947 (“Revenue Act”), Pub. L. No. 80-195, 61 Stat. 328 (1947), is the act that established the District’s current system of taxing income. The purpose of that Revenue Act, in part, was to bring the District’s taxing structure more in line with the Internal Revenue Code (“IRC”). S. REP. NO. 80-280, at 2 (1947). The Revenue Act required all single individuals and all

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individuals who are married and not living together to file individual returns, provided their gross income exceeded \$1,000. Revenue Act, tit. V, sec. 2(a)(1). Although the Revenue Act as originally enacted contained no provision specifically authorizing the filing of joint returns, the personal exemption provisions explicitly, and the return-filing-requirement provisions implicitly, of that act acknowledged that a husband and wife living together could file a joint return. Revenue Act, tit. V, sec. 2(a)(2), (4), tit. VI, sec. 2(b)

Between 1947 and 1982 the Congress and then the Council made amendments to the District's income tax return filing requirements, personal exemptions, and tax rates that continued to acknowledge that a husband and wife could file a joint return. For example, section 106 of the Individuals, Estates, and Trusts Federal Conformity Tax Act, D.C. Law 4-118, effective June 11, 1982, 29 D.C. Reg. 1770, involved return filing requirements for a married individual living with a spouse in the District filing either jointly or separately.

In 1983, the Council enacted the District of Columbia Income and Franchise Tax Conformity Act of 1983 ("1983 Conformity Act"). D.C. Law 5-32, effective October 8, 1983, 30 D.C. Reg. 4013. The 1983 Conformity Act added, in part, a subsection (e) to title V, section 1, of the Revenue Act (codified at D.C. Official Code § 47-1805.01(e)). The subsection reads as follows:

(e) Requirement to file joint federal returns. — Whenever a taxpayer is required by the Internal Revenue Code of 1986 to file a joint income tax return with his or her spouse in order to qualify for a tax benefit under the Internal Revenue Code of 1986, the taxpayer and spouse shall file either a joint return or separate returns on a combined individual form prescribed by the Mayor in order to qualify for a similar benefit afforded under this chapter.

Emphasis added.

Subsection (e) was one of a number of "technical amendments to clarify or correct elements of the District's income and franchise tax." D.C. Council Rep., Bill 5-103, District of Columbia Income and Franchise Tax Conformity Act of 1983, at 4 (1983). The subsection explicitly authorizes the filing of a District joint income tax return and conditions that filing on whether a taxpayer and spouse had filed a joint Federal income tax return. In addition, this subsection allows a taxpayer and spouse to file separate returns on a combined individual form ("combined-separate return"), provided they also filed a joint Federal return. In this regard, the legislative history states that the 1983 Conformity Act "[a]dds a new subsection which allows a husband and wife

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to file a combined-separate District income tax return in order to qualify for benefits normally available only when filing joint Federal and District returns.” *Id.* Emphasis added.

After the enactment of the 1983 Conformity Act, the Department of Finance and Revenue, the Office of Tax and Revenue (“OTR’s”) predecessor, interpreted D.C. Official Code § 47-1805.01(e) to require the filing of a joint Federal return as a pre-condition to filing a joint return or a combined-separate return for District income tax purposes. This interpretation reflects OTR’s long-standing position and administrative practice.

B. Federal Conformity

The Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996) (“DOMA”) was signed into law on September 21, 1996. Section 3 of DOMA provides definitions of the terms “marriage” and “spouse” and the meaning of “husband and wife,” applicable to any Act of Congress. Section 3 has been codified at 1 USC § 7 (2003) as a general rule of construction.¹ Since the IRC consists of Acts of Congress, DOMA’s definitions apply. Specifically, section 3 of DOMA states that:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.

Prior to DOMA, the IRS generally relied solely on state law for purposes of determining if a couple were married for Federal income tax purposes. Rev. Rul. 58-66, 1958-1 C.B. 60 (involving common-law marriages). Congress enacted DOMA to limit which marriages can be recognized for purposes of Federal law, and DOMA’s restrictive language and clarifications are applicable to the IRC. *See* H. Rep. No. 104-664, at 30-31 (1996).

Based upon DOMA’s definitions of marriage and spouse, the IRS has ruled that a same-sex domestic partner is not a spouse of an employee for purposes of the IRC. *E.g.*, PLR 9850011 (1998). That ruling concerned the proper Federal income tax treatment of

¹ This ruling addresses DOMA’s definitions of “marriage” and “spouse” and its meaning of “husband and wife” as applied to the IRC and does not provide advice on any of DOMA’s other applications.

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providing health benefits to same-sex domestic partners of employees who qualified for such benefits under certain health plans.²

Pursuant to D.C. Official Code § 47-1805.01(e), a couple may not file a District joint or combined-separate income tax return unless the couple filed a joint Federal income tax return and that couple was eligible to file such a return. IRC § 6013, which is contained in an Act of Congress, provides that only a husband and wife can file a joint Federal income tax return. That section variously refers to a husband and wife as a “spouse” or a “surviving spouse.” IRC §6013(d)(2) further indicates that in order for a couple to retain their status as husband and wife for joint return purposes, they must be legally married.

Because DOMA provides that in any Act of Congress referring to a marriage, including a Federal tax statute, that the husband is a man, the wife is a woman, and a spouse is a person of the opposite sex who is a husband or wife, only a married, heterosexual couple may file a joint Federal income tax return. A married same-sex couple may therefore not file a joint Federal income tax return.

District income tax law provides for automatic Federal conformity. Thus, under automatic Federal conformity, whenever Congress amends a provision of the IRC that is cited in a District income tax law, the District law is automatically amended to incorporate the revised provision of the IRC unless the Council legislates a rejection of that revision. D.C. Official Code §§ 47-1801.04(28A), 1816.03(a).

Accordingly, it is concluded that because a married, same-sex couple may not file jointly for Federal tax purposes, the couple cannot file a joint or combined-separate income tax return under the District’s income tax laws. OTR believes this conclusion will not change even if the District recognizes the validity of an out-of-state marriage involving a same-sex couple. The eligibility to file such returns depends on meeting Federal requirements for filing a joint return, not whether the District recognizes the couple as legally married. In addition, if a heterosexual couple fails to file a joint return for federal income tax purposes, it cannot file jointly or combined-separately for District income tax purposes.

² Although the IRS position is that a private letter ruling can only be relied on by the taxpayer to whom the ruling was issued, the ruling nonetheless suggests that the IRS will interpret any Federal income tax statute that refers to “marriage,” “spouse,” or “husband and wife” pursuant to DOMA.