

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 47 (Delegate McMillan)
 Ways and Means

Income Tax - Joint Returns - Married Couples

This bill requires a married couple who does not file a joint federal income tax return to file either a joint or a married filing separate State income tax return.

The bill takes effect July 1, 2013, and applies to tax year 2013 and beyond.

Fiscal Summary

State Effect: General fund revenues decrease by \$9.3 million in FY 2014, which reflects the impact of one and one-half tax years. Future year revenue estimates reflect annualization and annual growth of about 1%. No effect on expenditures.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	(\$9.3)	(\$6.3)	(\$6.4)	(\$6.4)	(\$6.5)
Expenditure	0	0	0	0	0
Net Effect	(\$9.3)	(\$6.3)	(\$6.4)	(\$6.4)	(\$6.5)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local income tax revenues are not expected to be materially impacted. No effect on local expenditures.

Small Business Effect: Minimal.

Analysis

Current Law: Except as otherwise provided, a taxpayer is required to file using the same filing status on a State income tax return as used on the federal income tax return.

Only a husband and wife may file married filing jointly or married filing separately. A husband and wife may only file married filing jointly or separately. A husband and wife who file a federal joint return are required to file a joint Maryland income tax return unless (1) one spouse is a resident and the other is a nonresident; (2) the spouses are domiciled or reside in different counties on the last day of the tax year; (3) the spouses have different tax periods; or (4) the Comptroller determines circumstances warrant.

Background:

State and Federal Marriage Laws

The federal Defense of Marriage Act (DOMA) defines marriage for federal purposes as a legal union between a man and woman only. The Act has been challenged in court and the U.S. Supreme Court will hear arguments on the constitutionality of the Act in March of this year.

The Civil Marriage Protection Act of 2012 (Chapter 2) (HB 438) altered the definition of a valid marriage in the State by repealing the reference to a man and a woman and specifying instead that a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland, thereby legalizing same-sex marriage in Maryland. The Act was ratified by voter referendum at the November 2012 general election. Although Chapter 2 legalized same-sex marriage, the Act did not amend the State tax laws to specifically authorize filing joint or married filing separately returns for State income tax purposes.

Income Tax Law

Although several states allow for same-sex marriage, DOMA prohibits recognition of these marriages for federal purposes. Therefore, provisions under the federal income tax related to married individuals do not apply to these same-sex couples. Same-sex couples who are legally married for state purposes cannot file married filing separately or jointly at the federal level. In addition, one spouse may not file as head of household if the only other dependent is the same-sex spouse. Conversely, the federal prohibition from a spouse itemizing deductions if the other spouse claims the standard deduction does not apply to a same-sex couple. Other federal tax provisions can vary for same-sex spouses, including passive loss rental real estate losses and ability for both spouses to claim dependents and related tax benefits.

The federal income tax forms the basis of the Maryland income tax as many components of the federal tax are incorporated into the State income tax. For example, federal adjusted gross income is the starting point for calculating Maryland adjusted gross income and a taxpayer's tax liability. Except as otherwise specified by law, Maryland

conforms to federal income tax law. To the extent practical, the Comptroller is required to apply the administrative and judicial interpretations of the federal income tax law to the administration of State income tax laws. In addition, the Comptroller is required to adopt regulations necessary to administer the income tax. Although federal tax law forms the basis for state tax law, state tax laws can vary significantly.

Income Tax Treatment of Same-sex Couples in Other States

A number of states have authorized same-sex couples to marry or provide for partner benefits. Most of these states have already authorized same-sex couples to file jointly for state income tax purposes. In general, each partner files an individual federal tax return after which the partners file a hypothetical federal married tax return (pro forma return) or make adjustments to income on a state-provided worksheet. The couple will use this pro forma return or worksheet to prepare the married state income tax return. Some states require the taxpayer to submit their pro forma return for verification purposes.

State Fiscal Effect: The bill requires a married couple who does not file a joint federal income tax return to file for State income tax purposes either a joint return or a married filing separate tax return beginning in tax year 2013. The bill will have two impacts on the filing status of taxpayers. Under current law, a married couple who files a married filing separate federal income tax return is generally required to file a married filing separate State income tax return. Under the bill, the married couple may choose to file a joint State income tax return. In addition, the bill requires a married same-sex couple to file either a married filing jointly or separate State income tax return. It is assumed that taxpayers will select the filing status which offers the lowest State income tax liability and adjust withholdings and estimated payments accordingly. **Exhibit 1** shows the estimated impact of each provision, and the total impact of the bill on State revenues.

Exhibit 1
State Revenue Impact
Fiscal 2014-2015
(\$ in Millions)

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Same-sex Spouses	(\$0.5)	(\$0.3)	(\$0.3)	(\$0.3)	(\$0.4)
Husband and Wife	(8.8)	(6.0)	(6.0)	(6.1)	(6.1)
Total Impact	(\$9.3)	(\$6.3)	(\$6.3)	(\$6.4)	(\$6.5)

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Legislative Services

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