

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Robert G. Marshall

3. **Committee** House Finance

4. **Title** Individual Income Filing Status; Married
Persons.

2. **Bill Number** HB 444

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would state that, notwithstanding the filing status used for purposes of a federal income tax return, the legal status of a relationship for any federal purposes, or any other provision of Virginia law, only those persons who are in a union that is a marriage recognized under Virginia law may file a joint Virginia income tax return for married persons or a separate Virginia income tax return as a spouse.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact:** (See Line 8).

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine and does not require additional funding.

Fiscal Impact

This bill would have no impact on General Fund revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. **Technical amendment necessary:** No.

11. Other comments:

Federal Law

In *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Supreme Court overturned the provision of the federal Defense of Marriage Act (“DOMA”) that defined the term “marriage” for federal purposes. The Supreme Court’s holding, however, did not address the provision of DOMA that allows States the right to refuse the right to recognize same-sex marriages under the laws of other States.

Following the *Windsor* decision, the Internal Revenue Service published Revenue Ruling 2013-17, providing that same-sex couples will be treated as married for all federal income tax purposes if they were legally married in a state that recognizes same-sex marriage, regardless of whether such couple lives in a jurisdiction that recognizes same-sex marriage.

Other States

Currently, same-sex marriage is prohibited in 33 states and permitted in 17 states and the District of Columbia. Of the states that prohibit same-sex marriage, 26 states do so by constitutional amendment and state law, 3 states do so by constitutional amendment only, and 4 states do so by state law only.

Of the states that prohibit same-sex marriage, 26 states impose an individual income tax. Of these states, 20 states prohibit same-sex couples who are legally married in other states from filing joint tax returns in their state, 3 states (Colorado, Missouri, and Oregon) permit same-sex couples who are legally married in other states to file joint tax returns in their state, and 3 states (Arkansas, South Carolina, and West Virginia) provide no further guidance.

Virginia Law

For federal income tax purposes, the IRS generally recognizes marriages that are valid under state law. For Virginia income tax purposes, taxpayers that file joint federal returns as a husband and wife may generally file either a joint Virginia income tax return or two Virginia income tax returns as married taxpayers filing separately. Married couples that file separate federal returns are required to file their Virginia returns as married couples filing separately.

Under Article 1, §15-A of the Virginia Constitution, the term “marriage” is defined as a union between one man and one woman, and the recognition of any other marriage is prohibited. Similarly, Virginia law prohibits marriage between persons of the same sex. As a result, same-sex couples who file their federal income tax returns as married couples cannot file their Virginia income tax returns as joint filers or as married couples filing separately.

Because the Virginia Constitution and current law prohibit Virginia from recognizing same-sex couples as legally married, such taxpayers may not file Virginia income tax returns as

married couples. To explain this policy, the Department issued Tax Bulletin 13-13 (November 8, 2013) based on informal advice received from the Attorney General's office.

Proposed Legislation

This bill would state that, notwithstanding the filing status used for purposes of a federal income tax return, the legal status of a relationship for any federal purposes, or any other provision of Virginia law, only those persons who are in a union that is a marriage recognized under Virginia law may file a joint Virginia income tax return for married persons or a separate Virginia income tax return as a spouse.

This bill would also state that all other persons are considered single persons for purposes of any requirement to file an individual income tax return, individual income tax imposed by Virginia law, and such other provisions under Virginia law relating to the individual income tax, and that such persons would be required to file as single persons for individual income tax purposes.

This bill would codify, in the taxation title of the Virginia Code, the current policy that is set forth in the Virginia Constitution and the domestic relations title of the Virginia Code.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 1/21/2014 mjm
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