

DEPARTMENT OF TAXATION

2018 Fiscal Impact Statement

1. **Patron** Marcus B. Simon

3. **Committee** House Courts of Justice

4. **Title** Taxation; use of gender-neutral terms.

2. **Bill Number** HB 409

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would replace the terms "husband" and "wife" in Title 58.1, as well as related terms, with gender-neutral terms.

The effective date 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") has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

This bill would have no impact on state or local tax revenue.

9. Specific agency or political subdivisions affected:

Department of Taxation, Local Governments.

10. Technical amendment necessary: No.

11. Other comments:

Current Law

In cases where tax law provides special treatment for married taxpayers, the law often refers to a husband and wife or otherwise uses gender-specific terms for the spouses. For many years, Virginia law did not allow same-sex couples to marry, nor did it recognize a marriage of a same-sex couple that occurred in another state.

Following the decision of the U.S. Supreme Court in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), and an announcement by the I.R.S. that it would recognize same-sex marriages for federal tax purposes, the Department announced in Tax Bulletin 13-13 that it would recognize same-sex couples as married if they were so treated by the I.R.S. However, the I.R.S. only recognized marriages that were legal under state law. Since Virginia continued to disallow same-sex marriage, Virginia same-sex couples could not claim federal or Virginia tax benefits of marriage unless they were legally married in another state and filed federal returns as married.

On October 6, 2014, the Fourth Circuit Court of Appeal's ruling in *Bostic v. Rainey*, 760 F.3d 352 (4th Cir. 2014) became effective when the U.S. Supreme Court denied certiorari. The decision held that Virginia's ban on same-sex marriage was unconstitutional. Same-sex couples were then able to marry in Virginia. Following that decision, the Department issued Tax Bulletin 14-7 announcing that it would recognize same-sex marriages performed in Virginia or any other state.

Proposed Legislation

This bill would replace the terms "husband" and "wife" in Title 58.1 with gender-neutral terms such as "married individuals." The terminology changes comport with the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (June 26, 2015). *Obergefell* held that the fundamental right to marry is guaranteed to same-sex couples, which meant that all fifty states must lawfully perform and recognize the marriages of same-sex couples.

Because the Department had already recognized same-sex marriage for Virginia tax purposes following the *Bostic* decision, none of the proposed terminology changes affect substantive rights under Virginia tax law.

The effective date is not specified.

Similar Legislation

Senate Bill 603 would make similar terminology changes in Title 58.1 and other titles.

cc : Secretary of Finance

Date: 1/14/2018 JPJ
HB409F161