WINDSOR, DOMA AND STATE TAXATION OF FRINGE BENEFITS

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Introduction

On June 26, 2013, in *United States v. Windsor*, 133 S. Ct. 2675 (2013), the Supreme Court of the United State struck down section 3 of the Defense of Marriage Act ("DOMA"), which defines the terms "marriage" and "spouse" to exclude married same-sex couples for all federal purposes. Subsequently, the Internal Revenue Service ("IRS") issued guidance that, for all federal tax purposes, the IRS will recognize all legal marriages as determined by the laws of the jurisdiction in which the marriage was celebrated (the "State of Celebration Rule"). Accordingly, married same-sex couples were required to file their 2013 federal income tax returns in the same manner as all other married taxpayers, *i.e.*, either married filing jointly or married filing separately. In addition, the IRS clarified that a same-sex spouse is a "spouse" for purposes of certain exclusions from income for fringe benefits provided by an employer to an employee's spouse.

In response, many states that have statutory or constitutional prohibitions on the recognition of the marriages of same-sex couples ("Non-Recognition States") and state income taxes issued guidance requiring same-sex couple who file their federal returns as married to file their state income tax returns as single. In general, such guidance addressed only the tax filing issues and the allocation of the federal adjusted gross income ("AGI") determined on the married same-sex couple's federal return between the two individuals for purposes of filing their state income tax return.

To date, only four states[1] have issued guidance on the tax treatment of otherwise excludible fringe benefits provided by an employer to an employee's same-sex spouse. I selected Ohio as a representative sample of these four Non-Recognition States. Thus, the Ohio income tax code and the Ohio Tax Commissioner's guidance will be the focus of my analysis. This paper seeks to address the question of whether there is a legal basis for Ohio, and other Non-Recognition States, to require employers to impute income and withhold additional state income tax on the value of fringe benefits provided to an employee's same-sex spouse.

Conclusions

Based on my review of the relevant Ohio income tax and withholding statutes, as well as published guidance post-*Windsor*, I believe there is no statutory basis, and no plausible constitutional argument, for Ohio to tax employer-provided fringe benefits that are excludible

[1] Nebraska , North Carolina, Ohio and Wisconsin

from income under the Internal Revenue Code of 1986, as amended, (the "Code") and thus not included in a taxpayer's federal AGI.

Notwithstanding Ohio's guidance that specifically requires employers to impute additional income and withhold additional state income taxes on the value of such fringe benefits, Ohio does not have a mechanism for including such additional income on a state taxpayer's taxable income return and, thus, should eventually refund the excess withholding when a return is filed.

Background

a. *Federal Tax Treatment of Employer-Provided Fringe Benefits*

In general, all compensation, both cash and benefits, provided in exchange for services to an employee by an employer is includible in the employee's federal taxable income unless there is a specific exception in the Code. In addition, to the extent such compensation is considered wages, as defined by the Code, each employer is required to withhold applicable income and employment taxes.

One of the Code's exceptions to this general rule is that the value of certain employer-provided fringe benefits is excludible from an employee's income if such benefits are provided to the employee, the employee's spouse or the employee's dependents as defined in Code section 152. Such benefits include group health coverage, tuition reimbursements, health and dependent care flexible spending arrangements, group term life insurance and other benefits, whether provided by the employer or paid for on a pre-tax basis by an employee through an employer-sponsored cafeteria plan.

Under DOMA prior to *Windsor*, a same-sex spouse was not considered a taxpayer's spouse for purposes of these income tax exclusions. For purposes of the fringe benefit exclusions, however, a Code section 152 dependent can include an employee's same-sex spouse or domestic partner if the same-sex spouse or domestic partner resides in the same household with the employee and receives more than 50% of his or her support from the employee.

As a result of DOMA, employers who provided fringe benefits to an employee's same-sex spouse (or domestic partner[2]) were required to impute additional income to the employee equal to the fair market value of such benefits unless the employee could certify to the employer that his or her spouse (or domestic partner) was also a dependent. Additional income and employment taxes were withheld on such imputed income. Generally, the imputed income was reported in box 1, wages, tips and other compensation, of the employee's IRS Form W-2, as well as boxes 3, Social Security wages, box 5, Medicare wages, box 16, state wages, and box 18, local wages.[3]

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[2] Included in the post-*Windsor* guidance from the IRS was an FAQ on the status of registered domestic partners and civil union partners. In general, the IRS has determined that the term "spouse" includes only married individuals and does not apply to other state-recognized relationships such as registered domestic partners.

[3] It is important to note that the determination of whether a benefit is includible or excludible from an employee's wages is generally made by the employer. If the employer erroneously imputes income on the value of an excludible benefit, that amount will be included as wages in Boxes 1, 3, 5, 16 and 18 of the employee's W-2 and

The *Windsor* decision requires that the federal government recognize the legal marriages of same-sex couples. In response, the Executive Branch of the federal government has issued new regulations and policies to include such marriages. Generally, the new guidance provides that a marriage will be recognized by the federal government based on the State of Celebration Rule rather than the laws of the state in which the couple currently reside.

On August 29, 2013, the Internal Revenue Service issued Revenue Ruling 2013-17 to clarify that for all purposes of the Code and Treasury Regulations all legal marriages will be recognized based on the State of Celebration Rule. The Revenue Ruling further provides that employers could cease imputing income for fringe benefits provided to an employee's same-sex spouse or the spouse's dependent children.[4] Subsequent IRS guidance provided information on how an employer that previously imputed income for such benefits in 2013 could adjust prior quarterly wage withholding and provided that, for the 2013 tax year and following, the wages reported in boxes 1, 3 and 5 of an employee's Form W-2 should not include imputed income for excludible fringe benefits provided to the employee's same-sex spouse.

b. *State Income Tax Treatment in Non-Recognition States*

While most Non-Recognition States with a state income tax issued guidance on how married same-sex couples should file their state income tax returns, to date, all but four such states (Ohio, Nebraska, North Carolina and Wisconsin) remained silent on whether fringe benefits provided to an employee's same-sex spouse are excludible from income for state income tax purposes. *See* Exhibit I - *State Income Tax Withholding and Reporting for Same-Sex Spouse Fringe Benefits*.

One possible reason for the silence on this issue is that 35 of the 41 states with a state income tax conform to the federal Code ("Conformity States") either by adopting federal definitions as a starting point for calculating taxable income or by basing state taxable income on federal AGI. Twenty-nine of the Conformity States start with a taxpayer's federal AGI and modify the taxpayer's AGI by adding statutorily specified items of income and subtracting other specified types of income to determine state taxable income. In essence, then, these Conformity States have given over to the federal government most of the policy decisions involved in determining what is taxable income. Unless the state statute specifically modifies federal AGI to include or exclude a specific item of income, that item will be included or excluded for state income tax purposes as determined under the Code and Treasury Regulations.

Because a taxpayer's federal AGI begins with the value reported in box 1 of his or her IRS Form W-2, after *Windsor*, the taxpayer's federal AGI will not include imputed income for excludible fringe benefits provided by an employer to the taxpayer's same-sex spouse. The income tax codes of most Conformity States do not include provisions for determining whether fringe benefits are includible or excludible from state taxable income, relying instead on the policy

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additional income and employment taxes will be withheld. Unless the employee recognizes the error and requests a corrected W-2, the additional income will be included in the employee's federal and state AGI.

[4] For purposes of the applicable income exclusions, a spouse's children are the stepchildren of the employee and are considered the employee's dependents.

decisions of the U.S. Congress to determine which employer-provided benefits are taxable and which are not. In the absence of state income tax statutes specifically addressing the state tax treatment of compensatory fringe benefits, it is not surprising that most state taxing authorities have not addressed the issue of whether such benefits provided to a same-sex spouse are taxable.

For this reason, it is noteworthy that four Non-Recognition States have issued guidance requiring, for state income tax purposes, that employers impute income for fringe benefits provided to an employee's same-sex spouse.[5] *See* Guidance included as Exhibits II, III, IV and V.

The final section of this paper will focus on the interplay of Ohio's income tax provisions, its constitution, its guidance and its tax forms.

Ohio's Effort to Tax Benefits Provided to an Employee's Same-Sex Spouse and the Spouse's Dependent Children

a. Ohio's Income Tax Provisions

Section 5747.01 of the Revised Code of Ohio (the "Revised Code") provides a definition of "adjusted gross income" or "Ohio adjusted gross income" that is subject to state income taxes. The definition is based on federal AGI modified by 31 enumerated additions and deductions. None of the enumerated statutory modifications adds income with respect to employer-provided fringe benefits otherwise excludible under the Code and thus not included in federal AGI.[6]

Section 5747.06 of the Revised Code provides that an employer making payments of any compensation to an employee shall deduct "an amount substantially equivalent to the tax reasonably estimated to be due from the employee . . . with respect to the amount of such compensation included in the employee's adjusted gross income during the calendar year." Nothing in section 5747.06, however, provides for additional deductions if the employer-provided compensation, excludible under the Code, is a fringe benefit provided to an employee's same or opposite-sex spouse.

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[5] Four other Non-Recognition States (Georgia, Kentucky, Louisiana, and Oklahoma) have not specifically addressed this issue, but the guidance they administratively provided to their taxpayers requires those taxpayers to determine their federal AGI and, therefore, their state AGI as it would have been determined under the Code but for the *Windsor* decision and subsequent IRS guidance.

[6] Ohio's income tax statute actually expands the scope of excludible employer-provided fringe benefits for purposes of Ohio taxable income. Section 5747.01(A)(11)(c) of the Revised Code specifically excludes from Ohio taxable income amounts "not otherwise deducted or excluded in computing federal or Ohio adjusted gross income, any amount included in federal adjusted gross income under section 105 or not excluded under section 106 of the Internal Revenue Code solely because it relates to an accident and health plan for a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code." Thus, group health benefits provided by an employer for an employee's domestic partner may be excludible as benefits provided to a dependent if the domestic partner is a member of the employee's household without satisfying the support test of Code section 152(d)(1)(C). As noted above, such benefits are excludible from income for federal tax purposes only if the employee provides more than 50% of the dependent's support for the tax year.

b. Ohio's Constitution

Article XV §11 of the Ohio Constitution provides:

> *Marriage*.
>
> Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

This section was added to the Ohio Constitution by voter referendum in 2004. The first sentence of the section prohibits the state of Ohio and its political subdivisions from recognizing a marriage other than a "union between one man and one woman."

The provisions of Ohio's Revised Code define Ohio AGI by incorporating federal AGI without reference to the marital status of the taxpayer, the taxpayer's spouse or dependents. In other words, Ohio's income tax applies to an amount, Ohio AGI, not the specific items of compensation (including benefits) and other income upon which federal AGI is based. It is difficult to see how recognizing a dollar amount on line 37 of a taxpayer's Form 1040, *i.e.*, federal AGI, is a recognition of the taxpayer's marriage.

Absent references to the Code sections that exclude from income fringe benefits provided by an employer to an employee's spouse, the Revised Code's incorporation by reference of federal AGI does not appear sufficient in and of itself to implicate the Ohio Constitution's prohibition on the recognition of marriages by same-sex couples.

c. Ohio's Guidance

On November 14, 2013, Joseph W. Testa, Tax Commissioner of Ohio, issued *Employer Withholding Information Release*, EW 2013-11 (the "Release") (Exhibit II). The Release provides that under the Code certain employer-provided fringe benefits are excluded from an employee's income if provided to the employee's spouse and dependents. The Release describes the *Windsor* decision and subsequent IRS guidance that expands the definition of spouse to include same-sex spouses. Then, notwithstanding the specific statutory provisions of the Revised Code's definition of Ohio AGI or the fact that such definition contains no provisions for taxing fringe benefits provided by an employer to an employee that are excludible from income under the Code, the Release provides the following "Ohio Guidance:"

> Under Article XV §11 of the Ohio Constitution, Ohio does not recognize marriage between persons of the same gender. Accordingly, Ohio employer withholding taxes shall be determined based on the taxable gross earnings amount of each employee as if it was calculated in a manner that does not recognize same-gendered marriages. Employers must therefore treat benefits provided to the same-gender spouses of employees and the dependent children of those spouses as imputed income for Ohio income

> and school district income tax employer withholding purposes. Employers shall determine employees' Ohio taxable gross earnings amounts in a manner consistent with this guidance and report these amounts on box 16 of federal Form W-2. These amounts must also be used in determining the employer's liability for withheld income and school district income tax.

In essence, Ohio's Tax Commissioner is asserting that the Ohio Constitution compels the state to impose an extra-statutory tax on excludible fringe benefits in order to avoid recognizing the marriage of a taxpayer with a same-sex spouse. In making this leap from Ohio AGI, the basis of the income tax withholding for Ohio employers, the Tax Commissioner disregards the plain language of the statutory scheme, assumes that the Ohio Constitution is somehow implicated and imposes additional taxes on fringe benefits the Ohio legislature has chosen not to tax. As justification for this extra-statutory tax, the Tax Commissioner merely cites the fact that Ohio's Constitution does not recognize marriages of same-sex couples. Without having access to the legal analysis upon which the Tax Commissioner presumably relied, it is not possible to determine whether the Tax Commissioner's conclusion is correct or even legal.

d. Ohio has No Mechanism for Retaining the Additional Tax Imposed by the Guidance

In the long run, however, the additional imputed income required by the Tax Commissioner may not change the taxable income of the affected taxpayers. The Release requires that employers must determine an employee's Ohio "taxable gross earning in a manner consistent with this guidance and report these amounts on box 16 of the federal Form W-2." The Ohio Individual Income Tax Return, form IT 1040 (Exhibit VI) does not reference the amount reported as "state wages" in box 16. This is so because, consistent with the statutory scheme, "Ohio adjusted gross income" starts with federal AGI. Thus, line 1 of form IT 1040 is the taxpayer's federal AGI from IRS Form 1040 or Ohio form IT S (a form created for married same-sex couples who are required to file as single in Ohio that such married taxpayers use to divide the components of their joint federal AGI, *see* Exhibit VII). The statutory modifications are added and deducted on Schedule A of the Form IT 1040.

The instructions to Form IT 1040[7] are also silent with respect to amounts reported on Box 16. The Instructions include detailed filing requirements for completing Schedule IT S, but make no mention of an adjustment to include additional income reported in Box 16.

Without a mechanism for including the additional imputed income from Box 16, the final taxable income reported on line 3 of form IT 1040 will not include such amounts. To the extent additional taxes were withheld by an employer with respect to this (literally) excluded income, the excess withholding will increase the taxpayer's refund or reduce the amount of taxes otherwise due from the taxpayer.

[7] Available at http://www.tax.ohio.gov/Portals/0/forms/ohio_individual/individual/2013/PIT_IT1040_Booklet.pdf

Implications of Ohio's Tax Scheme

The fact that Ohio has no mechanism for retaining the excess withholding does not mean the affected taxpayers and their employers are unaffected. The direct result of Ohio's guidance is that each pay period throughout the year many married same-sex couples in Ohio will have less take-home pay. Ohio holds such excess amounts interest free for months. Only after overpaying taxes for months and submitting to the demeaning process of filing an Ohio tax return as "single" can an affected taxpayer obtain a return of the excess withholding.

Likewise, employers must treat a subset of their employees differently than other married employees and differently than they treat such employees for federal income and employment tax purposes. Affected employers must determine the amount of income to impute based on the fair market value of the employer-paid portion of otherwise-excludible fringe benefits. Moreover, such employers may need to create new payroll systems to withhold and report taxes on imputed income for otherwise excludible fringe benefits.

It is difficult to imagine why a state would be so careless in implementing its tax policy. Some might argue that it is gross negligence to impose additional taxes on a select group of taxpayers without any statutory basis or any articulated reason why the Ohio Constitution is implicated by a taxpayer's required use of his or her federal AGI. In this context, the fact that Ohio has no mechanism for retaining such excess taxes it is requiring employers to withhold could suggest callous indifference or malice. A federal district court judge has ruled that Ohio's ban on recognition of legally married same-sex couples violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution. This decision is on appeal to the Sixth Circuit Court of Appeals. Ohio has argued it has a rational basis for disregarding the marriages of same-sex couples. With respect to this tax scheme, Ohio's actions appear less like actions required to protect "traditional marriage" and more like animus towards same-sex couples who had the temerity to get married in another jurisdiction.

The views and opinions expressed in this paper are those of the author and do not necessarily reflect the views and opinions of the author's employer.

Exhibit I

STATE INCOME TAX WITHHOLDING AND
REPORTING FOR SAME-SEX SPOUSE FRINGE BENEFITS
(As of June 2, 2014)

States with No Income Tax on Wages – No issue.	Alaska, Florida, Nevada, South Dakota, Texas, Washington, Wyoming, New Hampshire, and Tennessee (the last two tax interest and dividend income only)
States with Income Tax on Wages that Recognize Marriages of Same-sex Couples– Fringe benefits provided by an employer to the same-sex spouse of an employee should not be taxable in these states.	California, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Oregon,[1] Rhode Island, and Vermont
States Recognizing Out-Of-State Marriages of Same-sex Couples for Tax Filing Purposes – Fringe benefits provided by an employer to the same-sex spouse of an employee should not be taxable in these states.	Colorado, Missouri, and Utah[2]
Non-Recognition States (with income tax system that "conforms" with federal tax system) that have not issued guidance on tax treatment of same-sex spouse benefits – Because state income tax is calculated using Federal adjusted gross income (which will not include imputed income for coverage of an employee's same-sex spouse) and these states generally follow the Federal withholding rules, it appears that state income tax withholding and reporting on the imputed cost of fringe benefits provided to a same-sex spouse should <u>not</u> be required at this point in these states.	Alabama,[3] Arizona,[4] Idaho,[5] Indiana,[6] Kansas,[7] Michigan,[8] Montana,[9] North Dakota,[10] South Carolina,[11] Virginia,[12] and West Virginia[13]

Non-Recognition States (with income tax system that "conforms" with federal tax system) that have issued guidance suggesting inclusion of imputed income for fringe benefits provided to an employee's same-sex spouse – These states have issued guidance stating either that (a) for state income tax filings, Federal adjusted gross income should be recalculated to include imputed income for same-sex spouse health benefits, or (b) state income tax filings should be based on Federal adjusted gross income that would have been provided prior to the issuance of IRS Revenue Ruling 2013 -17 (which suggests that imputed income for such benefits should be included). As a result, in the absence of other guidance, it appears that employers may want to impute income for state withholding and reporting purposes to the extent they would like to avoid any state tax compliance concerns in these states.	Georgia,[14] Kentucky,[15] Louisiana,[16] and Oklahoma[17]
Non-Recognition States (with income tax system that "conforms" with federal tax system) that have issued guidance requiring inclusion of imputed income for fringe benefits provided to an employee's same-sex spouse – These states have provided guidance requiring that employers impute income on health benefits provided to same-sex spouses for withholding and/or reporting purposes. As a result, it appears that, until further guidance is issued, employers should impute income for state income tax purposes to the extent they want to ensure that they are compliant with the withholding and reporting rules in these states.	Nebraska,[18] North Carolina,[19] Ohio,[20] and Wisconsin[21]
Non-Recognition States (with income tax system that does not "conform" with federal tax system) – It appears that separate state income tax withholding and reporting for the cost of same-sex spouse benefits should be done in these states.	Arkansas[22] and Mississippi

[1] **Oregon:** On May 19, 2014 a judge in Oregon overturned the state's same-sex marriage ban and did not stay the decision, permitting the state to begin issuing marriage licenses. On May 29, the National Organization for Marriage filed an application with the United States Supreme Court to stay the decision and permit it to appeal.

[2] **Utah:** Guidance on joint filing of Utah tax returns is limited to filings for 2013 only. In December 2013 a judge ruled Utah's ban on same-sex marriages unconstitutional. The ruling was stayed pending appeal on January 6, 2014. In April 2014 a judge decided that the state must recognize marriages performed in December 2013 and January 2014 before the stay.

[3] **Alabama:** "Same-sex couples who file a joint federal income tax return must allocate the federal income tax liability shown on the couple's joint federal return to each individual, based on the ratio of the individual's separate

federal adjusted gross income (AGI) to the combined federal AGI." http://revenue.alabama.gov/incometax/Tax-Guidance.pdf.

[4] **Arizona:** "Each taxpayer will determine his or her share of the federal adjusted gross income reported on their joint federal income tax return. Each taxpayer will use his or her share of the amounts to complete his or her Arizona individual income tax return. Only one Arizona Schedule S is to be completed by the couple; and a copy of Arizona Schedule S must be attached to each taxpayer's Arizona individual income tax return" (see instructions to Schedule S). http://www.azdor.gov/News/tabid/74/newsid530/476/A-New-2012-Individual-Income-Tax-Form-is-now-Available-For-Same-Sex-Couples-That-File-A-Joint-Federal-Tax-Return-To-Determine-Their-Starting-Point-For-Their-Arizona-Single-Returns-/Default.aspx.

[5] **Idaho:** "Recompute your federal income tax return as if you had used either the single (or head of household, if qualified) filing status." http://tax.idaho.gov/forms/EIN00046_11-22-2013.pdf, at 5. In May 2014, a judge overturned Idaho's ban on same-sex marriage; the decision is stayed pending appeal.

[6] **Indiana:** "In order to calculate Indiana income tax liability, same-sex spouses who file federal returns with a married filing status must each complete a "sample" federal return (IRS Form 1040), entering information as if single." http://www.in.gov/dor/4895.htm.

[7] **Kansas:** "Same-sex individuals who file a joint federal income tax return must complete a worksheet that will be available at www.ksrevenue.org to show the amount of income as reported on the joint federal return that is allocable to each individual, and determines the federal adjusted gross income to be used by each individual for Kansas tax purposes." http://www.ksrevenue.org/taxnotices/notice13-18.pdf.

[8] **Michigan:** "Each individual who has income attributable to Michigan and who has filed a joint return with the IRS as a same-sex couple must separately report adjusted gross income (AGI) for Michigan income tax as a single filer. Each individual must recalculate their federal adjusted gross income as if they had filed a single federal return." http://www.michigan.gov/documents/taxes/DOMAnotice_434103_7.pdf. In March 2014, a judge ruled Michigan's ban on same-sex marriage unconstitutional; the decision is stayed pending an appeal.

[9] **Montana:** https://revenue.mt.gov/Portals/9/committees/Revenue_Transportation/2013-2014/october/Discussion_of_Same_Sex_Marriage.pdf (pertains to filing status only).

[10] **North Dakota:** "If the individuals file a joint federal income tax return, they must complete Schedule ND-1S, Allocation of Income by Same-Sex Individuals Filing a Joint Federal Return. This is a supplemental schedule to Form ND-1 on which the individuals will determine their separate shares of the adjusted gross income and taxable income amounts reported on their joint federal income tax return." http://www.nd.gov/tax/indincome/pubs/guide/same-sexmarriageguideline.pdf?20131223172303.

[11] **South Carolina:** "To prepare Form SC 1040, each individual must first prepare a "separate" federal income tax return for South Carolina purposes only (pro forma federal income tax return) using a filing status of single or head of household and complete it as though the individual is not married." http://www.sctax.org/NR/rdonlyres/EFB2ADDB-503F-4504-B2E6-868FAACC14FA/0/RR141.pdf.

[12] **Virginia:** "Because the computation of an individual's Virginia taxable income begins with his or her federal adjusted gross income ("FAGI") pursuant to Va. Code § 58.1-322, affected individuals must create pro forma federal returns using a filing status of either "single" or "head of household" and must account for expenses and other factors on a separate basis. The recalculated FAGI and other tax attributes from the pro forma federal return must then be used when filing the single Virginia income tax return to determine Virginia taxable income." http://www.tax.virginia.gov/Documents/TB_13-13_DOMA.pdf. In February 2014, a judge ruled Virginia's ban on same-sex marriage unconstitutional; the decision is stayed pending an appeal.

[13] **West Virginia:** "When a joint federal return is filed pursuant to Internal Revenue Service Rule 2013-17, each individual is required to file a West Virginia State return (IT-140) claiming "single" as the filing status. Each individual must compute the adjusted gross income separately as if the federal adjusted gross income of each had been determined on separately filed returns." http://www.state.wv.us/taxrev/forms/2013/it140.forms-and-instructions.pdf, at 16.

[14] **Georgia:** "For Georgia purposes, recompute Federal Adjusted Gross Income (including adjustments such as imputed income on employer-provided health insurance, etc. that would be required federally if the person was single) and itemized deductions (if applicable) as if the person had filed a single Federal return." https://etax.dor.ga.gov/TaxLawandPolicy/DOMA_bulletin_10-25-2013.pdf.

[15] **Kentucky:** "Each taxpayer must provide the same federal income tax information on the Kentucky state return that would have been provided prior to the issuance of IRS Revenue Ruling 2013-17, 2013–38 I.R.B. 201 (August 30, 2013)." http://revenue.ky.gov/NR/rdonlyres/9BA15C3D-34CC-45FE-BFB6-0D346D93BAC5/0/KYTaxAlertNov2013.pdf. In February 2014, a court ruled that Kentucky must recognize same-sex marriages performed in other states; the decision is stayed pending an appeal.

[16] **Louisiana:** "If a taxpayer's federal filing status of married filing jointly, married filing separately or qualifying widow is pursuant to IRS Revenue Ruling 2013-17, the taxpayer must file a separate Louisiana return as single, head of household or qualifying widow, as applicable…The taxpayer must provide the same federal income tax information on the Louisiana State Return that would have been provided prior to the issuance of Internal Revenue Service Revenue Ruling 2013-17." http://www.rev.state.la.us/forms/lawspolicies/RIB%2013-024.pdf

[17] **Oklahoma:** "Taxpayers impacted by this rule must provide the same federal income tax information on the Oklahoma state return that would have been provided prior to the issuance of the IRS Ruling 2013-17." http://www.tax.ok.gov/upmin092713.html. In January 2014, a judge ruled Oklahoma's ban on same-sex marriage unconstitutional; the decision is stayed pending an appeal.

[18] **Nebraska:** "Because Nebraska does not recognize a same-sex marriage, employers may not exclude the value of an employer-provided health insurance plan for a same-sex spouse from an employee's income." http://www.revenue.nebraska.gov/question/same-sex_FAQ.html#ss3.

[19] **North Carolina:** Guidance does not specifically require inclusion of imputed income for withholding purposes, but contemplates that if amounts are not included in gross income during the taxable year, they should be added to the federal taxable wages reported on the Form W-2: "Because the value of coverage for the same-sex spouse is no longer included in federal taxable wages, an adjustment must be made to the federal taxable wages when preparing the federal pro forma return in determining taxable wages. This adjustment is made to include what would have previously been reported in taxable wages for federal purposes when the employee's spouse was not recognized as the employee's legal spouse. This additional amount of taxable wages should be included in the total State taxable wages on the wage and tax statement (W-2) issued by the employer. This addition is required because North Carolina does not recognize same-sex marriage and this addition results in the same taxable wages had the taxpayer not been considered married for federal purposes. " http://www.dornc.com/faq/ssmarriage_faq.html.

[20] **Ohio:** "Ohio employer withholding taxes shall be determined based on the taxable gross earnings amount of each employee as if it was calculated in a manner that does not recognize same-gendered marriages. Employers must therefore treat benefits provided to the same-gender spouses of employees and the dependent children of those spouses as imputed income for Ohio income and school district income tax employer withholding purposes. Employers shall determine employees' Ohio taxable gross earnings amounts in a manner consistent with this guidance and report these amounts on box 16 of federal Form W-2. These amounts must also be used in determining the employer's liability for withheld income and school district income tax." http://www.tax.ohio.gov/Portals/0/communications/information_releases/DOMA_EWH_InforRelease11142013.pdf. Ohio also has provided FAQs similar to those of Nebraska and Wisconsin: http://www.tax.ohio.gov/faq/tabid/6315/Default.aspx?QuestionID=2906&AFMID=11354. In April 2014, a judge ruled that Ohio must recognize same-sex marriages performed out of state; the decision is expected to be stayed pending an appeal.

[21] **Wisconsin:** "Because Wisconsin does not recognize a same-sex marriage, employers may not exclude from employee income the value of an employer-provided health insurance plan for a same-sex spouse unless the same-sex spouse qualifies as a dependent of the employee." http://www.revenue.wi.gov/faqs/ise/samesex.html#samesex7.

[22] **Arkansas:** In May 2014 a judge overturned Arkansas' ban on same-sex marriages. The ruling is stayed pending an appeal.

Joseph W. Testa, Tax Commissioner
Issued: November 14, 2013

Employer Withholding - Information Release

EW 2013-01 - Guidelines for Employers Providing Benefits to Employees Married in a Jurisdiction That Recognizes Same-Gender Marriage - Issued Nov. 14, 2013

Introduction

This information release offers guidance to employers regarding the treatment of employee benefits provided to an employee who is married in a jurisdiction that recognizes a same-gender marriage.

Background

Under laws promulgated by the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code, certain employer-provided benefits[1] are excluded from an employee's gross income for federal income tax purposes. However, many of these exclusions are permitted only when such benefits are provided to the employee and the employee's "federal tax dependents", which include the employee's spouse and dependents as defined under IRC §152. If an employer provides benefits to an individual that is not an employee's federal tax dependent, the employer must include in the employee's gross income the fair market value of the benefits provided. This is known as "imputed income" and increases the employee's federal taxable gross earnings for the taxable year as reported on the employee's Form W-2 box 1.

On June 26, 2013, the U.S. Supreme Court issued a decision on the constitutionality of section 3 of the federal Defense of Marriage Act (DOMA), which had established a federal definition of marriage. Following the Court's decision, the Internal Revenue Service ("IRS") issued Revenue Ruling 2013-17 and Notice 2013-61. Likewise, the U.S. Department of Labor issued Technical

[1] Benefits include but are not limited to employer sponsored accident and health plans, health savings accounts (HSAs), flexible spending arrangements (FSAs), group term life insurance, qualified tuition reduction payments, meals or lodging reimbursements, dependent care assistance programs, other benefits provided through cafeteria plans and other fringe benefits. See IRC sections 79, 106, 117(d), 119, 125, 129 and 132 among others.

Release No. 2013-04. This guidance provided that a marriage between same-gender individuals performed in a jurisdiction that recognizes such a marriage will now be recognized for federal income tax and employee benefit purposes. As a result, employers may recognize same-gender married couples for these purposes even if the impacted employees are domiciled in a jurisdiction whose laws do not recognize a same-gender marriage.

Ohio Guidance

Under Article XV §11 of the Ohio Constitution, Ohio does not recognize marriage between persons of the same gender. Accordingly, Ohio employer withholding taxes shall be determined based on the taxable gross earnings amount of each employee as if it was calculated in a manner that does not recognize same-gendered marriages. Employers must therefore treat benefits provided to the same-gender spouses of employees and the dependent children of those spouses as imputed income for Ohio income and school district income tax employer withholding purposes. Employers shall determine employees' Ohio taxable gross earnings amounts in a manner consistent with this guidance and report these amounts on box 16 of federal Form W-2. These amounts must also be used in determining the employer's liability for withheld income and school district income tax.

Questions?

Taxpayers may visit www.tax.ohio.gov. Questions may be submitted by clicking on the "Contact" link found at the top right of the page and then choosing the "Email Us" option. Taxpayers with additional questions regarding this subject may contact Individual Income Taxpayer Services at 1-800-282-1780.

EXHIBIT III

Frequently Asked Questions for Individuals in a Same-Sex Marriage

See also Revenue Ruling 22-13-1 (2013)

- Can a validly married same-sex couple who files a married, filing jointly federal return, also file jointly in Nebraska?
- How does an individual in a same-sex marriage file his or her Nebraska income tax return?
- For federal purposes, an individual in a same-sex marriage can add his or her same-sex spouse to employer-provided health insurance plans without having to impute taxable income (include the value of the employer-provided health insurance plan in taxable income). Does this apply for Nebraska?
- If a same-sex spouse is added to an employer-provided health insurance plan, the employer is required to report imputed income for Nebraska on the employee's Wage and Tax Statement, Form W-2. How is the amount of imputed income determined?
- When filing their Nebraska income tax returns, is a same-sex married couple limited to 10% of the Earned Income Credit (EIC) claimed on their married, filing jointly federal return?
- When filing their Nebraska income tax returns, is a same-sex married couple limited to a percentage of the child/dependent care credit claimed on their married, filing jointly federal return?
- Is a copy of the pro forma federal return required to be filed with the Nebraska Form 1040N?
- Individuals in same-sex marriages are required to file federal income tax returns using a married filing status, but must file Nebraska income taxes using the single, or if qualified, head of household status. How can an individual avoid having too little Nebraska income tax withheld?
- If an individual in a same-sex marriage works in Nebraska (work state), but lives in another state that recognizes same-sex marriages (residence state), which state's rules apply in determining whether income must be imputed for employer-provided health insurance?

Can a validly married same-sex couple who files a married, filing jointly federal return, also file jointly in Nebraska?

No. A same-sex marriage is not recognized under the Nebraska Constitution. Individuals in a valid same-sex marriage for IRS purposes must file their Nebraska individual income tax returns separately using the single or, if qualified, head of household filing status. Only one individual per household may use the head of household filing status.

How does an individual in a same-sex marriage file his or her Nebraska income tax return?

- Each individual must complete a pro forma federal return (a "mocked up" return that is not actually filed with the IRS) using the single, or if qualified, head of household filing status.
- Each individual must use the numbers from the pro forma federal return to file a separate Nebraska Individual Income Tax Return, Form 1040N, using the single, or if qualified, head of household filing status.
- Each individual must use the tax rates, credits, deductions, and adjustments corresponding to the single or head of household filing status, whichever applies.

For federal purposes, an individual in a same-sex marriage can add his or her same-sex spouse to employer-provided health insurance plans without having to impute taxable income (include the value of the employer-provided health insurance plan in taxable income). Does this apply for Nebraska?

No. Because Nebraska does not recognize a same-sex marriage, employers may not exclude the value of an employer-provided health insurance plan for a same-sex spouse from an employee's income.

If a same-sex spouse is added to an employer-provided health insurance plan, the employer is required to report imputed income for Nebraska on the employee's Wage and Tax Statement, Form W-2. How is the amount of imputed income determined?

The amount of imputed income is equal to the fair market value of the employer-provided health insurance benefit as determined by the employer and the insurance provider. This is the amount of Nebraska taxable income that the employer must include in box 16, State wages, tips, etc. and box 18, Local wages, tips, etc. on the Form W-2, and is included in the amount subject to Nebraska income tax withholding.

When filing their Nebraska income tax returns, is a same-sex married couple limited to 10% of the Earned Income Credit (EIC) claimed on their married, filing jointly federal return?

No. Each individual in a same-sex marriage must complete a pro forma federal return using the single, or if qualified, head of household filing status. The Nebraska EIC for each individual is 10% of the EIC computed on the federal pro forma return, even if this amount is more or less than 10% of the amount of EIC computed on the federal married, filing jointly return.

When filing their Nebraska income tax returns, is a same-sex married couple limited to a percentage of the child/dependent care credit claimed on their married, filing jointly federal return?

No. Each individual in a same-sex marriage must complete a pro forma federal return using the single, or if qualified, head of household filing status. The Nebraska child/dependent care credit for each individual is a percentage of the child/dependent care credit computed on the federal pro forma return. A copy of the pro forma Child and Dependent Care Expenses, Federal Form 2441, completed with the pro forma federal return must be filed with the Nebraska income tax return to document the child/dependent care credit claimed.

Is a copy of the pro forma federal return required to be filed with the Nebraska Form 1040N?

Generally, no. However, in some instances, a copy of the federal return is required. For example, taxpayers claiming the Nebraska EIC, or who enter federal tax liability on line 27 of the 2013 Form 1040N, must file a copy of the pro forma federal return with the Nebraska income tax return. Instances where a copy of the federal return is required are noted in the Form 1040N instructions. Keep a copy of the pro forma federal return and all related documentation for your records.

Individuals in same-sex marriages are required to file federal income tax returns using a married filing status, but must file Nebraska income taxes using the single, or if qualified, head of household status. How can an individual avoid having too little Nebraska income tax withheld?

Generally, income tax withholding allowances are the same as the number of withholding allowances the employee claims on his or her Federal Form W-4. When an employee wants additional state income tax to be withheld, he or she should complete and submit a written statement to the employer requesting the additional amount to be withheld.

If an individual in a same-sex marriage works in Nebraska (work state), but lives in another state that recognizes same-sex marriages (residence state), which state's rules apply in determining whether income must be imputed for employer-provided health insurance?

The work state rules apply. Because the employer is located in Nebraska, the employer is required to report imputed income for Nebraska on the employee's Wage and Tax Statement, Form W-2.

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NORTH CAROLINA

EXHIBIT IV
(See Q & As 7 & 8)

Frequently Asked Questions for Same-Sex Marriage

Q1. Can same-sex spouses who are legally married in a state that recognizes same-sex marriages file their North Carolina return as married filing jointly or married filing separately?

A1. No. North Carolina General Statute 51-1.2 provides that "Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina." Although IRS Rev.Rul. 2013-17 allows same-sex spouses to file their federal income tax returns using the filing status of married filing jointly or married filing separately, the Department cannot follow the new definitions in Rev. Rul. 2013-17 because North Carolina does not recognize same-sex marriage as valid. Consequently, individuals who enter into a same-sex marriage in another state cannot file a North Carolina income tax return using the filing status of married filing jointly or married filing separately.

Q2. For North Carolina income tax purposes, can a taxpayer use the head of household filing status if the taxpayer's only dependent is his or her same-sex spouse for federal purposes?

A2. No. Pursuant to N.C.G.S. 105-134.1(6) head of household is defined in section 2(b) of the Code. When taxpayers are considered unmarried for federal purposes, a taxpayer cannot file as head of household if the taxpayer's only dependent is his or her same-sex partner for federal purposes. A person who is not related may be a dependent but not for purposes of determining head of household filing status.

Note: Effective for tax years beginning on or after January 1, 2014, a taxpayer may no longer claim a personal exemption for his or her self, spouse, children, or any other qualifying dependents.

Q3. If same-sex spouses have a child and file as married filing jointly for federal purposes, which parent may claim the child as a dependent for North Carolina purposes?

A3. If a child is a qualifying child under Code section 152(c) of both parents, either parent, but not both, may claim a personal exemption allowance for the qualifying child. If both parents claim a personal exemption allowance for the child on their income tax returns, the Department will treat the child as the qualifying child of the parent with whom the child resides for the longer period of time during the taxable year. If the child resides with each parent for the same amount of time during the taxable year, the Department will treat the child as the qualifying child of the parent with the higher adjusted gross income and the personal exemption allowance for the dependent child claimed on the other individual's North Carolina income tax return will be disallowed.

An individual may be a qualifying child for federal purposes but not for North Carolina purposes. Any individual that meets the qualifying child relationship test for federal purposes as a step child, or descendent of a step child, will not qualify as a qualifying child for North Carolina purposes if the step child relationship is due to a same-sex marriage. The individual may qualify as a qualifying relative if all the tests are met for an individual to be your qualifying relative.

Note: Effective for tax years beginning on or after January 1, 2014, a taxpayer may no longer claim a personal exemption for his or her self, spouse, children, or any other qualifying dependents.

Q4. For federal purposes, same-sex spouses choose to file as married filing jointly and claim federal itemized deductions. For North Carolina, these individuals are not allowed to file as married filing jointly but must file as single or, if qualified, head of household or qualifying widow(er). For North Carolina purposes, can this same-sex partner claim North Carolina itemized deductions if his or her same-sex partner claims the North Carolina standard deduction?

A4. Yes. A same-sex partner may itemize or claim the standard deduction, regardless of whether his or her same-sex partner itemizes or claims the standard deduction. Although N.C.G.S. 105-134.6(a2) prohibits a taxpayer from itemizing deductions if the taxpayer or the taxpayer's spouse claims the standard deduction, this provision does not apply to taxpayers who are considered unmarried for State purposes.

Note: Effective for tax years beginning on or after January 1, 2014, North Carolina's itemized deductions are limited to (a) charitable contributions as allowed for federal purposes; (b) mortgage interest paid with respect to any qualified residence; and (c) real estate property taxes. The total amount deducted for mortgage interest and real estate property taxes combined may not exceed $20,000.

Q5. If same-sex spouses adopt a child together, can one or both of the individuals qualify for the North Carolina adoption credit?

A5. Yes. N.C.G.S. 105-151.32 provides that "an individual who is allowed a federal adoption tax credit under section 23 of the Code for the taxable year is allowed a credit against the tax imposed by this Part." North Carolina continues to allow a percentage of the federal credit. The North Carolina General Assembly reduced the North Carolina credit from 50% to 30% of the federal credit for tax year 2013. Each individual may qualify to claim the adoption credit based

on the amount of the qualified adoption expenses paid by that individual for the adoption. Both individuals may not claim a federal credit for the same qualified adoption expenses, and the sum of the federal credit taken by each individual may not exceed the total amount paid. If both partners paid qualified adoption expenses to adopt the same child, the total federal expenses and the maximum federal credit available for the adoption for the tax year 2013 is $12,970. The maximum North Carolina adoption credit available for the same adoption for tax year 2013 is $3,891 ($12,970 x 30%).

Note: This tax credit expires for tax years beginning on or after January 1, 2014.

Q6. If a taxpayer adopts the child of his or her same-sex spouse, may the taxpayer ("adopting parent") claim the adoption credit for the qualifying adoption expenses he or she pays to adopt the child?

A6. Yes. The adopting parent may be eligible to claim an adoption credit. A taxpayer may not claim an adoption credit for the expenses of adopting the child of the taxpayer's spouse (Code section 23). However, this limitation does not apply to adoptions by partners not considered spouses. Because North Carolina does not consider the parents as married, this credit is available to the adopting parent on the North Carolina individual income tax return even if the credit wasn't claimed on the taxpayer's federal return due to filing jointly.

Note: This tax credit expires for tax years beginning on or after January 1, 2014.

Q7. If an employer provided health coverage for an employee's same-sex spouse and included the value of that coverage in the employee's gross income, can the employee file an amended North Carolina income tax return reflecting the employee's status as a married individual to recover State income taxes paid on the value of the health coverage of the employee's spouse?

A7. No. Although the IRS provides that this individual may file an amended federal income tax return, this individual is not considered married for North Carolina purposes. Therefore, this individual may not file an amended State income tax return.

Q8. If an employer currently provides health coverage for an employee's same-sex spouse and the value of that coverage is not included in the employee's gross income, will there be an addition required to the employee's federal taxable wages in determining North Carolina taxable wages?

A8. Yes. Because the value of coverage for the same-sex spouse is no longer included in federal taxable wages, an adjustment must be made to the federal taxable wages when preparing the federal pro forma return in determining taxable wages. This adjustment is made to include what would have previously been reported in taxable wages for federal purposes when the employee's spouse was not recognized as the employee's legal spouse. This additional amount of taxable wages should be included in the total State taxable wages on the wage and tax statement (W-2) issued by the employer. This addition is required because North Carolina does not recognize same-sex marriage and this addition results in the same taxable wages had the taxpayer not been considered married for federal purposes.

Q9. If an employer sponsored a cafeteria plan that allowed employees to pay premiums for health coverage on a pre-tax basis, can a participating employee file an amended North Carolina income tax return to recover State income taxes paid on premiums that the employee paid on an after-tax basis for the health coverage of the employee's same-sex spouse?

A9. No. Although the IRS provides that this individual may file an amended federal income tax return, this individual is not considered married for North Carolina purposes. Therefore, this individual may not file an amended State income tax return.

Q10. How is the out of state tax credit determined in the case where same-sex spouses filed a joint return with another state and one or both of the spouses are entitled to a tax credit for taxes paid to another state on their North Carolina return?

A10. N.C.G.S. 105-151 provides relief from double taxation to North Carolina residents when income has also been taxed by another state. The out of state tax credit is the lesser of the computed credit or the net tax paid to the other state. To determine the net tax paid to another state, a pro forma out of state return must be completed using the same filing status as required for North Carolina tax purposes. Net tax paid to the other state cannot exceed the amount of taxes actually paid to the other state by the individual claiming the North Carolina tax credit. If the North Carolina return is filed electronically, a copy of the pro forma out of state return and the return actually filed with the other state, along with proof of payment of any additional tax due on the return filed with the other state, must be made available upon request by the Department. Otherwise, both returns and proof of payment, if applicable, should be attached to the North Carolina income tax return when claiming this tax credit.

Q11. If same-sex spouses have a child and file as married filing jointly for federal purposes, which parent may claim the credit for children for North Carolina purposes?

A11. N.C.G.S. 105-151.24 provides an individual who is allowed a federal child tax credit under section 24 of the Code for the taxable year and whose adjusted gross income (AGI), as calculated under the Code, is less than the threshold set for the taxpayer's filing status is allowed a credit of $100 for each dependent child for whom the individual is allowed the federal credit. This tax credit was re-codified by the North Carolina General Assembly effective for tax years beginning on or after January 1, 2014 to N.C.G.S. 105-153.10. (HB 998, ss. 1.1.(a), 1.1.(e), S.L. 13-316.) Under the new law, the amount of the credit is $125, $100, or $0 per dependent child, depending on the taxpayer's AGI and filing status.

The parent who is allowed the personal exemption allowance for the qualifying child is allowed this North Carolina tax credit if that taxpayer's AGI does not exceed the threshold for that taxpayer's North Carolina filing status. See A3 for information on which parent may claim the child as a dependent for North Carolina purposes.

Note: Effective for tax years beginning on or after January 1, 2014, a taxpayer may no longer claim a personal exemption for his or her self, spouse, children, or any other qualifying dependents. The credit for children may be claimed by the parent who would have been allowed the personal exemption allowance for the qualifying children under A3.

Q12. If same-sex spouses have a child and file as married filing jointly for federal purposes, which parent may claim the credit for child and dependent care expenses for North Carolina purposes?

A12. N.C.G.S. 105-151.11 provides a tax credit for child and dependent care expenses. The North Carolina tax credit is allowed to an individual who is allowed the federal child and dependent care credit. This federal tax credit is allowed for a portion of qualifying child or dependent care expenses paid for a dependent of the taxpayer who is a qualifying child of the taxpayer and has not attained the age of 13 or a dependent of the taxpayer who is a qualifying child or qualifying relative of the taxpayer and is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than half of the year. The expenses must be paid for the purpose of allowing the taxpayer to be gainfully employed.

Because North Carolina does not recognize same-sex marriage and the filing status of these individuals is either single or, if qualified, head of household or qualifying widow(er), the individual who is allowed the personal exemption allowance for the dependent on the State return is eligible to claim this tax credit based on the amount of child and dependent care expenses paid by that individual.

Note: This tax credit expires for tax years beginning on or after January 1, 2014. In addition, effective for tax years beginning on or after January 1, 2014, a taxpayer may no longer claim a personal exemption for his or her self, spouse, children, or any other qualifying dependents.

Q13. If same-sex spouses claim the federal earned income tax credit (EITC), how is this credit computed for North Carolina income tax purposes?

A13. N.C.G.S. 105-151.31 provides a North Carolina tax credit to individuals based on a percentage of the earned income tax credit allowed on the federal return pursuant to section 32 of the Code. For tax year 2013, the percentage is reduced from 5% to 4.5% of the federal credit.

Under federal law, to be eligible to claim the credit, a taxpayer must have earned income with an adjusted gross income below a certain threshold, have a valid Social Security number, use a filing status other than married filing separately, be a U.S. citizen or resident alien, have no foreign income, and not have investment income in excess of $3,300 for tax year 2013.

Because North Carolina does not recognize same-sex marriage, each individual must compute this North Carolina credit based on a pro forma federal tax credit that would have been available had the taxpayers not filed their federal return as married filing jointly. The federal tax credit is determined based on the taxpayer's earned income, adjusted gross income, and the number of qualifying children. Generally, the individual entitled to claim a child as a dependent would treat that dependent as a qualifying child for purposes of computing the EITC. Individuals with no qualifying children may qualify to claim this federal tax credit and therefore may be eligible to claim the North Carolina credit.

There may be cases where taxpayers who are considered married and file as married filing jointly for federal purposes have earned income and adjusted gross income that exceeds the thresholds based on the sum of both spouses' incomes. In this case, they do not qualify to claim the tax credit for federal purposes. However, if the individual's earned income and adjusted gross income do not exceed the thresholds when determined separately, the individual may qualify to claim the tax credit for North Carolina purposes.

Note: This tax credit expires for tax years beginning on or after January 1, 2014.

Q14. If same-sex spouses electronically file their 2013 federal income tax return as married filing jointly or married filing separately, do they have to file a paper return with North Carolina to file as single or, if qualified, as head of household or qualifying widow(er)?

A14. No. When these taxpayers file electronically, each individual taxpayer would then select to file the "State only" return for North Carolina purposes. The taxpayer will then be prompted to complete another federal return with the North Carolina filing status of single or, if qualified, head of household or qualifying widow(er) and this pro forma federal return would be transmitted with the State return when the taxpayer files the "State only" return with North Carolina.

Q15. How will this impact my North Carolina tax withheld?

A15. Pursuant to N.C.G.S. 105-163.5, every employee shall furnish his or her employer a signed withholding exemption certificate informing the employer of the exemptions the employee claims. If, on any day during the calendar year, the amount of withholding exemptions to which the employee is entitled is greater than the amount of withholding exemptions claimed, the employee may furnish the employer a new withholding exemption certificate stating the amount of withholding exemptions claimed. The Form NC-4 or Form NC-4EZ must be completed based on the taxpayer's filing status of either single or, if qualified, head of household or qualifying widow(er).

EXHIBIT V
(See items 7 - 11)

Same-Sex Couples

1. Is a same-sex couple that is considered lawfully married for federal tax purposes considered married for Wisconsin income tax purposes?
2. For federal tax purposes, a lawfully married same-sex couple must generally file their federal return as married filing jointly or each must file as married filing separately. When does this first apply?
3. Can a same-sex couple that files a joint federal return file a joint Wisconsin return?
4. A member of a same-sex couple files a federal return as married filing separately? What filing status is used for Wisconsin?
5. How do same-sex individuals that are considered married for federal tax purposes file their Wisconsin income tax returns?
6. Can an amended return be filed for Wisconsin to change filing status?
7. As a member of a same-sex couple that is considered married for federal tax purposes, I can add my same-sex spouse to my employer-provided health insurance without having to impute taxable income. Does this apply for Wisconsin?
8. Because I added my same-sex spouse to my employer-provided health insurance, my employer is required to report imputed income on my Wisconsin Form W-2. How is the amount of imputed income determined?
9. I am filing an amended federal return to exclude imputed income related to my employer-provided health insurance reported on 2012 and prior year returns. Can I also file an amended Wisconsin return?
10. For federal tax purposes I have a health savings account that pays qualified medical expenses of myself and my same-sex spouse. What is the Wisconsin treatment of the health savings account?
11. For purposes of employer-provided health insurance and health savings accounts, when does a same-sex partner qualify as a dependent?
12. For federal tax purposes, my same-sex spouse and I each made contributions to a traditional IRA using the spousal IRA limitations. Are the amounts contributed to each IRA deductible for Wisconsin?
13. Am I subject to a Wisconsin penalty for an excess contribution to my IRA, even if I do not owe a federal penalty?
14. What is the tax treatment of a traditional IRA that I inherited from my same-sex spouse?
15. Do the required minimum distribution rules that apply to retirement accounts change when applied to a same-sex couple?
16. What is the tax treatment if I use my health flexible spending account to pay medical expenses for my same-sex spouse?
17. How do I determine my credit for tax paid to other states if I file a joint return in the other state?

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1. **Is a same-sex couple that is considered lawfully married for federal tax purposes considered married for Wisconsin income tax purposes?**

   No. Wisconsin does not recognize a same-sex marriage. Article XIII, section 13 of the Wisconsin constitution prohibits legal recognition of same-sex marriages. This section provides that "Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state."

2. **For federal tax purposes, a lawfully married same-sex couple must generally file their federal return as married filing jointly or each must file as married filing separately. When does this first apply**

   The requirement to file as married filing jointly or married filing separately applies to returns filed on or after September 16, 2013. This includes:

   - Returns for tax year 2012 filed on or after September 16, 2013
   - Late filed returns from prior years filed on or after September 16, 2013
   - Returns filed for tax year 2013 and going forward

3. **Can a same-sex couple that files a joint federal return file a joint Wisconsin return?**

   No. Section 71.03(2)(d), Wis. Stats., provides that a husband and wife may file a joint return for income tax purposes.

   Each member of the same-sex couple must file their Wisconsin income tax return separately using the filing status of single or, if qualified, head of household.

4. **A member of a same-sex couple files a federal return as married filing separately? What filing status is used for Wisconsin?**

   The member of a same-sex couple that files a federal return as married filing separately must file a Wisconsin return using a filing status of "single" or, if qualified, as "head of household."

5. **How do same-sex individuals that are considered married for federal tax purposes file their Wisconsin income tax returns?**

   In the case of same-sex individuals who are considered married for federal tax purposes:

   - Each individual must file a Wisconsin income tax return on Form 1 or Form 1NPR (if a nonresident or part-year resident of Wisconsin). Form 1A or Form WI-Z may not be filed for Wisconsin.
   - Each must file their Wisconsin income tax return separately using the filing status of single or, if qualified, head of household.
   - Same-sex individuals who file a joint federal income tax return must complete a new Wisconsin form, Schedule S, *Allocation of Income to be Reported by Same-Sex Couples Filing a Joint Federal Return.* Schedule S shows the amount of income as reported on the federal return that is allocable to each individual and determines the federal adjusted gross income to be used for Wisconsin tax purposes. Wisconsin marital property law does not apply to this allocation. A copy of Schedule S that is to be used for 2012 returns filed on or after September 16, 2013, is available from our website at http://www.revenue.wi.gov/forms/2012/taxind12.html. A copy of Schedule S that is to be used for late filed returns for years prior to 2012 is available at http://www.revenue.wi.gov/html/formpub.html. Select the year for which you need the form.
   - For tax year 2012 and late returns from prior years filed on or after September 16, 2013, returns may not be e-filed and must be filed on paper.
   - A complete copy of the federal return and Schedule S must be attached to Form 1 or 1NPR.

6. **Can an amended return be filed for Wisconsin to change filing status?**

   For tax year 2012, same-sex couples who filed their tax return before September 16, 2013, may choose (but are not required) to amend their federal tax returns to file using a filing status of married filing jointly or married filing separately. For tax years 2011 and earlier, same-sex couples who filed their tax returns timely may choose (but are not required) to amend their federal tax returns to file using a filing status of married filing jointly or married filing separately provided the period of limitations for amending the return has not expired.

   Although amended returns may be filed for federal tax purposes to change the filing status to married filing jointly or married filing separately, amended returns may not be filed for Wisconsin to change the filing status.

7. **As a member of a same-sex couple that is considered married for federal tax purposes, I can add my same-sex spouse to my employer-provided health insurance without having to impute taxable income. Does this apply for Wisconsin?**

   No. Wisconsin follows the Internal Revenue Code and excludes from income contributions to an accident or health plan for injuries or sickness incurred by the employee, his or her spouse, or dependents. Because Wisconsin does not recognize a same-sex marriage, employers may not exclude from employee income the value of an employer-provided health insurance plan for a same-sex spouse unless the same-sex spouse qualifies as a dependent of the employee.

8. **Because I added my same-sex spouse to my employer-provided health insurance, my employer is required to report imputed income on my Wisconsin Form W-2. How is the amount of imputed income determined?**

   The amount of imputed income is equal to the fair market value of the employer-provided health insurance benefit. This is the amount of Wisconsin taxable income that the employer must include on your Form W-2. The fair market value of the insurance provided to your same-sex spouse is determined by your employer and the insurance provider. The Department of Revenue cannot determine the fair market value of the coverage. You should contact your employer for further information.

9. **I am filing an amended federal return to exclude imputed income related to my employer-provided health insurance reported on 2012 and prior year returns. Can I also file an amended Wisconsin return?**

   No. Because Wisconsin does not recognize a same-sex marriage, the imputed income is taxable to Wisconsin. You may not file an amended Wisconsin return to exclude the imputed income.

10. **For federal tax purposes I have a health savings account that pays qualified medical expenses of myself and my same-sex spouse. What is the Wisconsin treatment of the health savings account?**

    The definition of a health savings account (HSA) requires that it be set up **exclusively** for the purpose of paying qualified medical expenses for the account holder, their spouse and any dependents. Because Wisconsin does not recognize a same-sex marriage, contributions to an HSA would not be deductible for Wisconsin tax purposes if the HSA provides benefits to a same-sex spouse that is not a dependent. Employer contributions to an HSA that provides benefits to a same-sex spouse would be taxable compensation to the employee and included as taxable wages on the employee's W-2 for Wisconsin.

11. **For purposes of employer-provided health insurance and health savings accounts, when does a same-sex partner qualify as a dependent?**

A same-sex partner is a dependent for purposes of employer-provided health insurance and health savings accounts if all of the following are met:

- The same-sex partner has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.
- The taxpayer provides over one-half of the same-sex partner's support for the year.
- The same-sex partner is a citizen or national of the United States or is a resident of the United States or a country contiguous to the United States.

This applies only for the employer-provided health insurance and health savings accounts. It does not apply to claiming the same-sex partner as a dependent on the Wisconsin income tax return. For claiming an individual other than a child as a dependent on the income tax return, the individual must have gross income for the calendar year of less than the federal exemption amount ($3,900 for 2013)

12. **For federal tax purposes, my same-sex spouse and I each made contributions to a traditional IRA using the spousal IRA limitations. Are the amounts contributed to each IRA deductible for Wisconsin?**

Under the Internal Revenue Code (IRC), individuals can contribute to their IRA, subject to limitations. For 2013, the contribution limit for an individual is the lesser of $5,500 or the amount of annual compensation. There is a special limitation for spouses filing jointly. The spousal limitation is the lesser of $5,500, or the total compensation of both spouses reduced by the other spouse's compensation.

Because Wisconsin does not recognize a same-sex marriage, each of the two individuals who filed a joint federal return will file their Wisconsin return subject to their own individual IRA limitation of the lesser of $5,500 or the amount of annual compensation.

Example: Taxpayer A and Taxpayer B are a same-sex couple who qualify to file a 2013 joint federal income tax return. Taxpayer A has compensation of $50,000 and Taxpayer B has compensation of $2,000. If A and B file a joint federal return, each can contribute $5,500 to a traditional IRA and then claim an $11,000 IRA deduction on their joint return. Because Wisconsin does not recognize a same-sex marriage, the federal spousal IRA provisions do not apply for this couple for Wisconsin. The maximum deductible IRA contribution for Taxpayer A is $5,500 and the maximum deductible IRA contribution for Taxpayer B is $2,000 (the amount of Taxpayer B's compensation).

In this example, Taxpayer B would also be subject to a Wisconsin penalty for an excess contribution of $3,500. See Question 13.

13. **Am I subject to a Wisconsin penalty for an excess contribution to my IRA, even if I do not owe a federal penalty?**

For a same-sex couple who file a joint federal return, because Wisconsin does not recognize a same-sex marriage, the federal spousal IRA limitations do not apply for Wisconsin. This may result in an individual making an excess contribution to an IRA. See Question 12.

For federal tax purposes, excess contributions to an IRA are subject to a 6% tax that must be paid each year that excess amounts remain in the IRA. This tax, even if not assessed by the federal Internal Revenue Service, would still apply for Wisconsin purposes. Section 71.83(1)(a)6., Wis. Stats., provides that any person who is liable for a penalty for federal income tax purposes under section 4973 of the Internal Revenue Code is liable for 33% of the federal penalty. In effect, if there is an excess contribution for Wisconsin purposes, then Wisconsin will assess a penalty in the amount of 1.98% of the excess contribution.

Taxpayers can avoid the excess contribution penalty by withdrawing the excess amount from the IRA. However, doing so may result in a federal early distribution penalty. Generally, a distribution paid to an individual under age 59 ½ will result in a 10% federal tax on the distribution.

The amount of the Wisconsin excess contribution penalty is reported on line 37 of Form 1 or line 63 of Form 1NPR (line numbers based on 2013 forms). The 6% federal penalty (even though not actually paid) is entered in the space provided. This amount is then multiplied by .33 which results in the Wisconsin penalty that is included on line 37 of Form 1 or line 63 of Form 1NPR.

Example: Using the facts in the example in Question 12, Taxpayer B has an excess contribution of $3,500. Taxpayer B would enter $210 ($3,500 x 6%) in space provided for the federal penalty by line 37 of Form 1. After multiplying the $210 by .33 ($210 x .33 = $69.30), Taxpayer B enters the Wisconsin penalty of $69.30 on line 37 of Form 1.

14. **What is the tax treatment of a traditional IRA that I inherited from my same-sex spouse?**

For federal tax purposes, special rules apply to an inherited IRA. If the beneficiary of a traditional IRA is the decedent's surviving spouse (including a same-sex spouse) who properly rolls over the distribution into another traditional IRA, the distribution is not currently taxed. A surviving spouse can also roll over tax free the taxable part of the distribution from other qualified plans including section 401(k) plans, section 403(b) plans, and section 457 plans.

Because Wisconsin does not recognize a same-sex marriage, for Wisconsin tax purposes the special rules that apply to a surviving spouse do not apply to the surviving member of a same-sex couple. If a beneficiary receives a lump-sum distribution from a traditional IRA he or she inherited, all or some of it may be taxable. The distribution is taxable in the year received as income in respect of a decedent up to the decedent's taxable balance. This is the decedent's balance at the time of death, including unrealized appreciation and income accrued to date of death, minus any basis (nondeductible contributions). Amounts distributed that are more than the decedent's entire IRA balance at the time of death are also the income of the beneficiary.

15. **Do the required minimum distribution rules that apply to retirement accounts change when applied to a same-sex couple?**

For federal tax purposes, various tables are provided to determine the required minimum distribution. The amount of a required minimum distribution is the same for married persons (including those in a same-sex marriage) and unmarried persons with one exception. If the spouse of the owner of the account is the sole beneficiary and the spouse is more than 10 years younger than the owner, the required minimum distribution may be less.

Because Wisconsin does not recognize a same-sex marriage, for Wisconsin tax purposes the owner of the account must determine the required minimum distribution as an unmarried person. If this is larger than the federal required minimum distribution, you may be subject to a Wisconsin penalty if this larger amount is not distributed.

Wisconsin law imposes a penalty on 33% of the federal penalty for required minimum distributions. The federal penalty is 50% of the amount by which the required minimum distribution exceeds the actual distribution. Even though a penalty may not be imposed for federal tax purposes, if a required minimum distribution is not made for Wisconsin purposes, the Wisconsin penalty is equal to 16.5% of the amount not distributed (50% x 33% = 16.5%).

The amount of the Wisconsin penalty is reported on line 37 of Form 1 or line 63 of Form 1NPR (line numbers based on 2013 forms). The 50% federal penalty (even though not actually paid) is entered in the space provided. This amount is then multiplied by .33 which results in the Wisconsin penalty that is included on line 37 of Form 1 or line 63 of Form 1NPR.

16. **What is the tax treatment if I use my health flexible spending account to pay medical expenses for my same-sex spouse?**

For federal tax purposes, an employer may provide a health flexible spending account (FSA) that is set up for the purpose of paying qualified medical expenses for the account holder, their spouse (including a same-sex spouse), and any dependents. The maximum amount that may be contributed to the FSA is $2,500 for 2013. The amount contributed to the FSA is considered a reduction in salary and is not subject to income tax.

Because Wisconsin does not recognize a same-sex marriage, contributions to a FSA would not be deductible for Wisconsin tax purposes if the FSA provides benefits to a same-sex spouse that is not a dependent. Employers may not reduce the employee's taxable wages for Wisconsin for amounts contributed to the FSA.

For example, if an employee designated $2,500 to a federal health FSA for 2013 that allows benefits to the employee's same-sex spouse, the entire $2,500 is included in the employee's taxable wages for Wisconsin.

17. **How do I determine my credit for tax paid to other states if I file a joint return in the other state?**

If only one member of a same-sex couple that resides in Wisconsin has income taxable to another state that is also taxable to Wisconsin, that member of the same-sex couple may be able to claim the credit for tax paid to another state on his or her Wisconsin return that is filed as single (or as head of household if qualified). The other member of the same-sex couple may not claim the credit. Complete Schedule OS, *Credit for Net Tax Paid to Another State,* to determine the amount of credit.

If a same-sex couple that resides in Wisconsin filed a joint return in another state and both members of the same-sex couple had income taxable to that state and the same income was taxable to Wisconsin, each member of the same-sex couple may be able to claim a credit for tax paid to another state on their separate Wisconsin return filed as single (or head of household if qualified). Each member of the same-sex couple must complete a separate Schedule OS. Certain adjustments must be made when completing Schedule OS.

- Part I of Schedule OS is for reporting income (and adjustments) taxable to the other state. Each member of the same-sex couple must complete Part I of their separate Schedule OS based on that member's separate income taxable to the other state.
- Each member of the same-sex couple would complete lines 26 and 27 of Schedule OS based on their separate amounts taxable to both Wisconsin and the other state.
- When completing line 28 of Schedule OS, the amount of tax from the joint income tax return of the other state is prorated for each member of the same-sex couple as follows:

$$\frac{\text{Income taxable to other state by the one member of the same-sex couple}}{\text{Total income taxable to other state by both members of the same-sex couple}} \times \text{Net tax paid to the other state} = \text{Amount to enter on line 28 of Schedule OS}$$

Example: Taxpayer 1 and Taxpayer 2 are a same-sex couple that reside in Wisconsin. Each taxpayer is required to file their Wisconsin return as single. The taxpayers file a joint return with another state to report income taxable to that state and pay net tax of $4,000 to that state. The income taxable to the other state is $20,000 of wages earned by Taxpayer 1 and $60,000 of wages earned by Taxpayer 2. The amount to be reported as net tax paid to the other state on line 28 of Schedule OS by Taxpayer 1 is $1,000 ($20,000 ÷ $80,000 x $4,000). The amount to be reported as net tax paid to the other state by Taxpayer 2 is $3,000 ($60,000 ÷ $80,000 x $4,000).

FOR MORE INFORMATION PLEASE CONTACT:

WISCONSIN DEPARTMENT OF REVENUE
Customer Service Bureau
PO Box 8949
Madison, WI 53708-8949
Phone: (608) 266-2486
Fax: (608) 267-1030
Email: DORIncome@revenue.wi.gov

Last updated November 1, 2013

EXHIBIT VI

Do not use staples.

Ohio | Department of Taxation

13000102

Use only black ink.

Taxable year beginning in **2013**

IT 1040 Rev. 11/13 Individual Income Tax Return

Taxpayer Social Security no. (required) ▶▶ If deceased

Spouse's Social Security no. (only if joint return) ▶▶ If deceased

Enter school district # for this return (see pages 43-48). SD# ▶▶

Use UPPERCASE letters.

Your first name | M.I. | Last name | check box

Spouse's first name (only if married filing jointly) | M.I. | Last name | check box

Mailing address (for faster processing, use a street address)

City | State | ZIP code | Ohio county (first four letters)

Home address (if different from mailing address) – do **NOT** show city or state | ZIP code | County (first four letters)

Foreign country (provide this information if the mailing address is outside the U.S.) | Foreign postal code

E-mail address

Ohio Residency Status – Check applicable box

☐ Full-year resident ☐ Part-year resident ☐ Nonresident Indicate state ▶▶

Check applicable box for spouse (only if married filing jointly)

☐ Full-year resident ☐ Part-year resident ☐ Nonresident Indicate state ▶▶

Filing Status – Check one (as reported on federal income tax return, with limited exceptions – see instructions on page 14)

☐ Single, head of household or qualifying widow(er)

☐ Married filing jointly

☐ Married filing separately (enter spouse's SS#) ▶▶

☐ Required to file Schedule IT S (see instructions on page 9)

Ohio Political Party Fund Yes No

Do you want $1 to go to this fund? ☐ ☐

If joint return, does your spouse want $1 to go to this fund? ☐ ☐

Note: Checking "Yes" will not increase your tax or decrease your refund.

Do not use staples, tape or glue. Place your W-2(s), check (payable to Ohio Treasurer of State) and Ohio form IT 40P after the last page of your return. Include forms W-2G and 1099-R if tax was withheld. Place any other supporting documents or statements after the last page of your return.

Go paperless. It's FREE!
Visit *tax.ohio.gov* to try Ohio I-File.

Most electronic filers receive their refunds in 5-7 business days by direct deposit!

INCOME AND TAX INFORMATION – If amount is negative, shade the negative sign (–) in the box provided.

1. **Federal adjusted gross income** (from IRS form 1040, line 37; 1040A, line 21; 1040EZ, line 4; 1040NR, line 36; 1040NR-EZ, line 10; or Ohio form IT S, line 31)	1.	0 0
2. Adjustments from line 50 on page 3 of Ohio form IT 1040 **(enclose page 3)**	2.	0 0
3. Ohio adjusted gross income (line 2 added to or subtracted from line 1)	3.	0 0
4. Personal exemption and dependent exemption deduction – multiply your personal and dependent exemptions _____ times $1,700 and enter the result here	4.	0 0
5. Ohio taxable income (line 3 minus line 4; enter -0- if line 3 is less than line 4)	5.	0 0
6. Tax on line 5 (see tax tables on pages 35-41 of the instructions)	6.	0 0
7. Schedule B credits from line 59 on page 4 of Ohio form IT 1040 **(enclose page 4)**	7.	0 0
8. Ohio tax less Schedule B credits (line 6 minus line 7; enter -0- if line 6 is less than line 7)	8.	0 0
9. Income-based exemption credit (see instructions on page 19)	9.	0 0
10. Ohio tax less exemption credit (line 8 minus line 9; enter -0- if line 8 is less than line 9)	10.	0 0

Ohio | Department of Taxation

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13000202

Taxable year beginning in **2013**

IT 1040 Rev. 11/13
Individual Income Tax Return

10a. Amount from line 10 on page 1 ..... 10a. 0 0

11. Joint filing credit. See the instructions on page 19 for eligibility and documentation requirements (this credit is for married filing jointly status only). _____ % times line 10a **(limit $650)** 11. 0 0

12. Ohio income tax less joint filing credit (line 10a minus line 11) 12. 0 0

13. Total credits from line 71 on page 4 of Ohio form IT 1040 **(enclose page 4)** 13. 0 0

14. Earned income credit (see the worksheet on page 20 of the instructions) 14. 0 0

15. Ohio adoption credit **($1,500 per child adopted during the year)** 15. 0 0

16. Manufacturing equipment grant. You must include the grant request form 16. 0 0

17. Ohio income tax (line 12 minus lines 13, 14, 15 and 16; enter -0- if the total of lines 13, 14, 15 and 16 is more than line 12) 17. 0 0

18. Interest penalty on underpayment of estimated tax. Enclose Ohio form IT/SD 2210 (see page 21 of the instructions) 18. 0 0

19. Unpaid Ohio use tax (see the worksheet on page 33 of the instructions) 19. 0 0

20. Total Ohio tax liability (add lines 17, 18 and 19) ..... **TOTAL TAX** ▶ 20. 0 0

21. Ohio income tax withheld (box 17 on W-2; box 15 on W-2G; and box 12 on 1099-R). Place W-2(s), W-2G(s) and 1099-R(s) after the last page of this return ..... **AMOUNT WITHHELD** ▶ 21. 0 0

22. Add the 2013 Ohio form IT 1040ES payment(s), 2013 Ohio form IT 40P extension payment(s) and 2012 overpayment credited to 2013 ..... 22. 0 0

23. Refundable credits from line 73 on page 4 of Ohio form IT 1040 **(enclose page 4)** 23. 0 0

24. Add lines 21, 22 and 23 ..... **TOTAL PAYMENTS** ▶ 24. 0 0

If line 24 is MORE THAN line 20, go to line 25. If line 24 is LESS THAN line 20, skip to line 29.

25. If line 24 is MORE THAN line 20, subtract line 20 from line 24 ..... **AMOUNT OVERPAID** ▶ 25. 0 0

26. Amount of line 25 to be credited to 2014 income tax liability ..... **CREDIT TO 2014** ▶ 26. 0 0

27. Amount of line 25 that you wish to **donate** to the following fund(s):

a. Military injury relief 0 0 b. Natural areas 0 0

c. Ohio Historical Society 0 0 d. Wildlife species 0 0

28. Line 25 minus the sum of lines 26 and 27a, b, c and d. Enter here, then skip to line 30 ..... 28. 0 0

29. If line 24 is LESS THAN line 20, subtract line 24 from line 20 ..... **AMOUNT DUE** ▶ 29. 0 0

30. Interest and penalty due on late-paid tax and/or late-filed return (see page 21 of the instructions) ..... **INTEREST AND PENALTY** ▶ 30. 0 0

If you entered an amount on line 28, skip to line 32. If you entered an amount on line 29, go to line 31.

31. Amount due plus interest and penalty (add lines 29 and 30). If payment is enclosed, make check payable to Ohio Treasurer of State and include Ohio form IT 40P (see our Web site at **tax.ohio.gov**) ..... **AMOUNT DUE PLUS INTEREST AND PENALTY** ▶ 31. 0 0

32. Refund less interest and penalty (line 28 minus line 30). Enter the amount here. (If line 30 is more than line 28, you have an amount due. Subtract line 28 from line 30 and enter this amount on line 31.) ..... **YOUR REFUND** ▶ 32. 0 0

SIGN HERE (required): I have read this return. Under penalties of perjury, I declare that, to the best of my knowledge and belief, the return and all enclosures are true, correct and complete.

If your refund is $1.00 or less, no refund will be issued. If you owe $1.00 or less, no payment is necessary.

▶ _____
Your signature — Date (MM/DD/YYYY)

▶ _____
Spouse's signature (see page 10 of the instructions) — Phone number (optional)

_____
Preparer's printed name (see page 10 of the instructions) — Phone number

Do you authorize your preparer to contact us regarding this return? Yes No

For Department Use Only

Code

MAILING INFORMATION

NO Payment Enclosed – Mail to:
Ohio Department of Taxation
P.O. Box 2679
Columbus, OH 43218-2679

Enclose your federal income tax return if line 1 on page 1 of this return is -0- or negative.

Payment Enclosed – Mail to:
Ohio Department of Taxation
P.O. Box 2057
Columbus, OH 43218-2057

If line 2 (on page 1) is -0- or blank, do not mail page 3.

Ohio | Department of Taxation

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SS#

Taxable year beginning in **2013**

IT 1040 Rev. 11/13 Individual Income Tax Return

SCHEDULE A – Income Adjustments (Additions and Deductions)

Additions (add income items only to the extent not included on page 1, line 1).

33.	Non-Ohio state or local government interest and dividends ....33.	0 0
34.	Certain Ohio pass-through entity and financial institutions taxes paid and Ohio Revised Code section 5733.40(A) pass-through entity adjustment ....34.	0 0
35a.	Federal interest and dividends subject to state taxation ....35a.	0 0
b.	Reimbursement of college tuition expenses and fees deducted in any previous year(s) and noneducation expenditures from a college savings account ....b.	0 0
c.	Losses from sale or disposition of Ohio public obligations ....c.	0 0
d.	Nonmedical withdrawals from a medical savings account ....d.	0 0
e.	Reimbursement of expenses previously deducted for Ohio income tax purposes, but only if the reimbursement is not in federal adjusted gross income ....e.	0 0
f.	Lump sum distribution add-back and miscellaneous federal income tax adjustments ....f.	0 0
g.	Adjustment for Internal Revenue Code sections 168(k) and 179 depreciation expense ....g.	0 0
36.	**Total additions** (add lines 33 through 35g and enter here). You must complete the applicable line items above ....36.	0 0

Deductions (deduct income items only to the extent included on page 1, line 1).

37a.	Federal interest and dividends exempt from state taxation ....37a.	0 0
b.	Adjustment for Internal Revenue Code sections 168(k) and 179 depreciation expense ....b.	0 0
38.	Employee compensation earned in Ohio by full-year residents of neighboring states and certain income earned by military nonresidents and civilian nonresident spouses ....38.	0 0
39a.	Military pay for Ohio residents, but only if the military pay is included on line 1 of this return and is received while the military member was stationed outside Ohio ....39a.	0 0
b.	Uniformed services retirement income and military injury relief fund amounts included in federal adjusted gross income (line 1 on page 1) ....b.	0 0
40a.	State or municipal income tax overpayments shown on IRS form 1040, line 10 ....40a.	0 0
b.	Refund or reimbursements shown on IRS form 1040, line 21 for itemized deductions claimed on a prior year federal income tax return ....b.	0 0
c.	Repayment of income reported in a prior year and miscellaneous federal tax adjustments ....c.	0 0
41.	Small business investor income deduction ....41.	0 0
42.	Disability and survivorship benefits (do not include pension continuation benefits) ....42.	0 0
43.	Qualifying Social Security benefits and certain railroad retirement benefits ....43.	0 0
44a.	Education: Ohio 529 contributions; tuition credit purchases ....44a.	0 0
b.	Pell/Ohio College Opportunity taxable grant amounts used to pay room and board ....b.	0 0
45.	Certain Ohio National Guard reimbursements and benefits ....45.	0 0
46a.	Unreimbursed long-term care insurance premiums, unsubsidized health care insurance premiums and excess health care expenses (see worksheet on page 27 of the instructions) ....46a.	0 0
b.	Funds deposited into, and earnings of, a medical savings account for eligible health care expenses (see worksheet on page 23 of the instructions) ....b.	0 0
c.	Qualified organ donor expenses **(maximum $10,000 per taxpayer)** and amounts contributed to an individual development account ....c.	0 0
47.	Wage expense not deducted due to the targeted jobs or the work opportunity tax credits ....47.	0 0
48.	Interest income from Ohio public obligations and from Ohio purchase obligations; gains from the sale or disposition of Ohio public obligations; public service payments received from the state of Ohio or income from a transfer agreement ....48.	0 0
49.	**Total deductions** (add lines 37a through 48 only). You must complete the applicable line items above ....49.	0 0
50.	Net adjustments – If line 36 is MORE THAN line 49, **enter the difference here and on line 2 as a positive amount.** If line 36 is LESS THAN line 49, **enter the difference here and on line 2 as a negative amount** ....50.	0 0

If line 7 (page 1) and lines 13 and 23 (page 2) are all -0- or blank, do not mail page 4.

Ohio | Department of Taxation

SS#

13000402

Taxable year beginning in **2013**

IT 1040 Rev. 11/13 Individual Income Tax Return

SCHEDULE B – Nonbusiness Credits

51. Retirement income credit **(limit $200 per return).** See the table on page 28 of the instructions 51. 0 0
52. Senior citizen credit (you must be 65 or older to claim this credit; **limit $50 per return**) 52. 0 0
53. Lump sum distribution credit (you must be 65 or older to claim this credit) 53. 0 0
54. Child care and dependent care credit (see the worksheet on page 29 of the instructions) 54. 0 0
55. Lump sum retirement credit 55. 0 0
56. If line 5 on page 1 is $10,000 or less, enter $88; otherwise, enter -0- or leave blank..... 56. 0 0
57. Displaced worker training credit (see the instructions and worksheet on pages 29 and 30) **(limit $500 per taxpayer)**..... 57. 0 0
58. Ohio political contributions credit **(limit $50 per taxpayer)** 58. 0 0
59. Total Schedule B credits (add lines 51 through 58). **Enter here and on page 1, line 7** 59. 0 0

SCHEDULE C – Full-Year Ohio Resident Credit

60. Enter the portion of line 3 on page 1 subjected to tax by other states or the District of Columbia while you were an Ohio resident (limits apply – see page 29 of the instructions)... 60. 0 0
61. Enter Ohio adjusted gross income (line 3 on page 1) 61. 0 0
62. Divide line 60 by line 61 and enter the result here (four digits; do not round). Multiply this factor by the amount on line 12 and enter the result here..... 62. 0 0
63. Enter the 2013 income tax, less all credits other than withholding and estimated tax payments and overpayment carryforwards from previous years, paid to other states or the District of Columbia (limits apply – see page 30 of the instructions) 63. 0 0
64. Enter the smaller of line 62 or line 63. This is your Ohio resident tax credit. Enter here and on line 69 below. If you filed a return for 2013 with a state(s) other than Ohio, enter the two-letter state abbreviation in the box(es) below 64. 0 0

SCHEDULE D – Nonresident / Part-Year Resident Credit (date of part-year residency _____ to _____)

65. Enter the portion of Ohio adjusted gross income (line 3) that was not earned or received in Ohio. Include Ohio form IT 2023 if required (see page 30 of the instructions)..... 65. 0 0
66. Enter the Ohio adjusted gross income (line 3 on page 1) 66. 0 0
67. Divide line 65 by line 66 and enter the result here (four digits; do not round). Multiply this factor by the amount on line 12. Enter here and on line 70 below 67. 0 0

SUMMARY OF CREDITS FROM SCHEDULES C, D AND E

68. Enter the amount from line 10 of Schedule E, Nonrefundable Business Credits (see page 31 of the instructions)..... 68. 0 0
69. Enter the amount from line 64 above..... 69. 0 0
70. Enter the amount from line 67 above..... 70. 0 0
71. Add lines 68, 69 and 70. **Enter here and on page 2, line 13** 71. 0 0

REFUNDABLE CREDITS – INCLUDE CERTIFICATE(S) AND K-1(S)

72a. Business jobs credit 0 0

72b. Pass-through entity credit 0 0

72c. Historic preservation credit 0 0

72d. Motion picture production credit 0 0

72e. Financial Institutions Tax (FIT) credit 0 0

73. Total of lines 72a-e. **Enter here and on page 2, line 23.** 0 0

EXHIBIT VII

Ohio | Department of Taxation

Schedule IT S
Prescribed 11/13

20 ____

Federal Adjusted Gross Income To Be Reported by Same-Gender Taxpayers Filing a Joint or Married Filing Separately Federal Return

Legal last name (Taxpayer 1)	Legal first name	M.I.	Social Security number
Legal last name (Taxpayer 2)	Legal first name	M.I.	Social Security number

10211411

	Allocation of Income			
	(a) Amount reported on federal joint return or married filing separately return for Taxpayer 1	(b) Amount reported on federal married filing separately return for Taxpayer 2	(c) Taxpayer 1 (see instructions)	(d) Taxpayer 2 (see instructions)
1. Wages, salaries, tips, etc. (box 16 from W-2)	.00	.00	.00	.00
2. Taxable interest	.00	.00	.00	.00
3. Ordinary dividends	.00	.00	.00	.00
4. Taxable refunds, credits, or offsets of state and local income taxes	.00	.00	.00	.00
5. Alimony received	.00	.00	.00	.00
6. Business income (or loss)	.00	.00	.00	.00
7. Capital gain (or loss)	.00	.00	.00	.00
8. Other gains (or losses)	.00	.00	.00	.00
9. IRA distributions	.00	.00	.00	.00
10. Pensions and annuities	.00	.00	.00	.00
11. Rental real estate, royalties, partnerships, S corporations, trusts, etc	.00	.00	.00	.00
12. Farm income (or loss)	.00	.00	.00	.00
13. Unemployment compensation	.00	.00	.00	.00
14. Social Security benefits	.00	.00	.00	.00
15. Other income	.00	.00	.00	.00
16. Combine the amounts in each column of lines 1 through 15	.00	.00	.00	.00
17. Educator expenses	.00	.00	.00	.00
18. Certain business expenses of reservists, performing artists and fee-basis govt. officials	.00	.00	.00	.00
19. Health savings account deduction	.00	.00	.00	.00
20. Moving expense	.00	.00	.00	.00
21. Deductible part of self-employment tax	.00	.00	.00	.00
22. Self-employed SEP, SIMPLE and qualified plans	.00	.00	.00	.00
23. Self-employed health insurance deduction	.00	.00	.00	.00
24. Penalty on early withdrawal of savings	.00	.00	.00	.00
25. Alimony paid	.00	.00	.00	.00
26. IRA deduction	.00	.00	.00	.00
27. Student loan interest deduction	.00	.00	.00	.00
28. Tuition and fees	.00	.00	.00	.00
29. Domestic production activities deduction	.00	.00	.00	.00
30. Add lines 17 through 29	.00	.00	.00	.00
31. Subtract line 30 from line 16. The amounts in columns c and d are your federal adjusted gross income for Ohio	.00	.00	.00	.00

IT S Instructions

Ohio Schedule IT S is to be used by taxpayers who file a joint or married filing separately federal income tax return with a person of the same gender. Pursuant to Article XV §11 of the Ohio Constitution, Ohio does not recognize a marriage between members of the same gender.

Therefore, taxpayers who filed a joint or married filing separately federal income tax return with someone of the same gender must use Schedule IT S to determine their federal income for Ohio purposes of using a "single" or, if qualified, "head of household" filing status.

Taxable Year
Enter the taxable year for which you are filing Schedule IT S.

Lines 1 Through 30
If you and your same-gender partner filed your federal return using the status of married filing jointly, enter the corresponding amounts from the first page of your federal income tax return, form 1040, into column (a) for each item. You must leave column (b) blank.

If you and your same-gender partner filed federal returns using the status of married filing separately, enter the corresponding amounts from the first page of each federal income tax return, form 1040, into column (a) for Taxpayer 1 and column (b) for Taxpayer 2 respectively.

For all items in columns (c) and (d), enter the amounts of each same-gender partner for every item as if each had filed the federal return using a "single" or, if qualified, "head of household" filing status. For line 1, columns (c) and (d), enter the amount of "state wages, salaries, tips, etc." reported on your federal form W-2, box 16, which was provided to you by your employer.

Line 31
The amounts on line 31 of columns (a) and (b) should equal line 37 of federal form 1040, line 21 of federal form 1040A or line 4 of federal form 1040EZ.

Each amount on line 31 of columns (c) or (d) is the federal adjusted gross income that must be reported to Ohio separately by each taxpayer.

Each taxpayer must report this amount on line 1 of Ohio form IT 1040. Further, this amount must be used everywhere the taxpayer is directed to use federal adjusted gross income for purposes of compiling the taxpayer's income tax and school district income tax returns. See the personal income and school district income tax instruction booklet for more information regarding taxpayer filing status and the federal adjusted gross income amount to be reported on line 1.

How to File
Each individual taxpayer must file a separate Ohio form IT 1040 (whether a nonresident or part-year resident of Ohio). If filing Schedule IT S, you may file an Ohio form IT 1040 electronically through Ohio's electronic filing service at **tax.ohio.gov** and commercial software products or by paper. You may not file your income tax return using Ohio form IT 1040EZ or TeleFile. Each individual must check the box on page 1 of the IT 1040 return indicating that they are filing Schedule IT S. A copy of Schedule IT S must be submitted by each taxpayer.

If you choose to file a paper IT 1040 return, include Schedule IT S with the return and mail both to the address specified on page 2 of the return. If you choose to file electronically through a commercial software product, obtain Schedule IT S from our Web site at the address listed above and attach as a PDF to the return. If the commercial software doesn't allow for PDF attachments, please mail Schedule IT S to the address below.

If you choose to file through Ohio's electronic filing service, a link will be provided to Schedule IT S as you begin to complete your return online. Print Schedule IT S, fill it out and mail it to the following address:

Ohio Department of Taxation
P.O. Box 182847
Columbus, OH 43218-2847

Contact Us
Taxpayers may visit **tax.ohio.gov** for more information. Questions may be submitted by clicking on the "Contact" link found at the top right of the page and then choosing the "Email Us" option. Taxpayers with additional questions regarding this subject may contact Individual Income Taxpayer Services at 1-800-282-1780.