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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

MICHAEL NELSON, and CHARLES DEDMON,)
ROBERTA WOODRICK, and JULIA WOODRICK,)
Plaintiffs,)

Case No. 13 C 1465

vs.)

Division 7

THE KANSAS DEPARTMENT OF REVENUE, and,)
NICK JORDAN, as Kansas Secretary of Revenue,)
Defendants.)

Petition pursuant to K.S.A. 77-601 *et. seq.*

PETITION

COME NOW, the Plaintiffs and state:

INTRODUCTION

1. Plaintiffs bring this action under the Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.*
2. Plaintiffs, legally married same-sex couples residing in Kansas, seek a writ of mandamus requiring the Kansas Department of Revenue and Secretary of Revenue, Nick Jordan, to comply with Kansas statutes and allow them to file joint income tax returns as married persons as they are required to do under federal law.

3. Plaintiffs also bring this action seeking temporary and permanent injunctive and declaratory relief against the Kansas Department of Revenue and Secretary of Revenue Nick Jordan to prevent them from violating Plaintiffs' rights to due process and equal protection under the United States and Kansas Constitutions.
4. Plaintiffs have no plain, speedy, or adequate remedy at law other than the relief requested in this Petition and postponement of judicial review would result in an inadequate remedy and irreparable harm to Plaintiffs.

PARTIES

5. Plaintiff Michael Nelson is a resident of the State of Kansas, having a residential mailing address of 24125 Bunnytrail Road, Alma, Wabaunsee County, Kansas, 66401.
6. Plaintiff Charles Dedmon is a resident of the State of Kansas, having a residential mailing address of 24125 Bunnytrail Road, Alma, Wabaunsee County, Kansas, 66401.
7. Plaintiff Michael Nelson, a male, and Plaintiff Charles Dedmon, a male, were legally married on November 17, 2013, in Claremont, Los Angeles County, California.
8. Plaintiff Roberta Woodrick is a resident of the State of Kansas, having a residential mailing address of 2831 Alabama Street, Lawrence, Douglas County, Kansas, 66046.

9. Plaintiff Julia Woodrick is a resident of the State of Kansas, having a residential mailing address of 2831 Alabama Street, Lawrence, Douglas County, Kansas, 66046.
10. Plaintiff Roberta Woodrick, a female, and Plaintiff Julia Woodrick, a female, were legally married on October 8, 2008, in Laguna Hills, Orange County, California.
11. Defendant The Kansas Department of Revenue has a mailing address of Docking State Office Building, 2nd Floor, 915 S.W. Harrison Street, Topeka, Shawnee County, Kansas, 66612.
12. Defendant Nick Jordan, Kansas Secretary of Revenue, has a mailing address of Docking State Office Building, 2nd Floor, 915 S.W. Harrison Street, Topeka, Shawnee County, Kansas, 66612.

AGENCY ACTION AT ISSUE

13. On October 4, 2013, Defendant Nick Jordan, Secretary, on behalf of the Kansas Department of Revenue issued "Notice 13-18, Guidance for Same-Sex Couples" which stated in relevant part: "Individuals of the same sex cannot file a Kansas income tax returns using a tax status of married filing jointly or married filing separately."
14. Notice 13-18 acknowledges that under the United States Internal Revenue Service regulations (Rev. Rul. 2013-17), the IRS:

"... will recognize a marriage of same-sex individuals that was validly entered into in a state whose laws authorize such a union. This applies even if the couple is domiciled in a state that does not recognize the validity of same-sex marriages."

15. Notice 13-18 also states:

"Although Rev. Rul. 2013-17 provides that under certain circumstances amended returns for prior tax years may be filed for federal tax purposes to change the filing status to married filing jointly or married filing separately, no such amended returns may be filed for Kansas to change the filing status."

16. Notice 13-18 advises that same-sex couples who file as "married" for federal tax purposes will need to 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."

17. Notice 13-18 is attached to this Petition as Exhibit 1.

18. A new form, "2013 Kansas Allocation of Income Worksheet," has been developed for use by "same-sex couple[s] married under the laws of another state and [who] filed a joint federal income tax return." Included with the worksheet are the following instructions:

"Kansas recognizes marriages that are only between one woman and one man (see Article 15, Section 16, of the Kansas Constitution). Kansas Statutes Annotated (K.S.A. 79-32,115) provide that a husband and wife shall file a joint or married filing separate return for income tax purposes. Individuals of the same sex cannot file a Kansas income tax

return using a tax status of married filing jointly or married filing separately; instead, they must file separate Kansas returns using the filing status of *single* or, if qualified, *head of household*.

"To determine the federal adjusted gross income amounts for filing separate Kansas income tax returns (Form K-40), complete lines 1 through 31 of this worksheet. **Taxpayer 1** will enter the amount from line 31, column B, on line 1 of their Form K-40. **Taxpayer 2** will enter the amount from line 31, column C on line 1 of their Form K-40.

"After completing the allocation of income worksheet, each taxpayer will use the following information to complete their Kansas Form K-40.

"Filing Status. Select the appropriate filing status for your situation – either *Single* or, if qualified *Head of Household*.

"Exemptions and Dependents. Determine the exemptions and dependents you can claim on your Kansas return as if you had filed your federal income tax return using a *single* or *head of household* filing status.

"Standard Deduction or Itemized Deductions. As a single or head of household filer, you may either itemize or take the Kansas standard deduction on your Form K-40. If either taxpayer in the same-sex relationship chooses to itemize deductions on the Kansas return, that taxpayer should complete a federal Schedule A, as if that taxpayer had filed a federal income tax return with the same filing status used on the taxpayer's Kansas return.

"Use the modified federal Schedule A to determine the authorized Kansas itemized deductions you may claim pursuant to the instructions for Form K-40. Be sure to keep a copy of this federal Schedule A with your tax records.

"Earned Income Tax Credit (EITC). If you are both Kansas residents and filed a joint federal income tax return qualifying for the federal earned income tax credit (EITC), the amount of qualified federal EITC must be allocated equally between each taxpayer in calculating the Kansas EITC. After allocating the federal EITC equally between Taxpayer 1 and

Taxpayer 2, use the instructions for line 16 of Form K-40 and complete the EITC worksheet to determine the EITC allowed for Kansas by each taxpayer.

"Food Sales Tax Credit. Line E under the "Food Sales Tax Credit" section of Form K-40 requires the taxpayer claiming this credit to enter the "number of exemptions claimed on your federal income tax return." This instruction does not apply to Kansas resident taxpayers in a same-sex relationship who have filed a joint federal income tax return.

"Instead, each individual will file a separate Kansas return and determine the exemptions and dependents as instructed in that section of these instructions, then enter on Line E the number of exemptions you would have claimed on your federal income tax return had you filed it using a *single or head of household* filing status."

19. The "2013 Kansas Allocation of Income Worksheet," and instructions are attached to this Petition as Exhibit 2.
20. Kansas taxpayers may begin filing income tax returns for tax year 2013 on or after January 1, 2014.
21. On October 4, 2013, the Kansas Department of Revenue issued a Press Release announcing implementation of the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 to media in the state and provided a link to the announcement on its website.
22. A copy of the Press Release is attached to this Petition as Exhibit 3.
23. Subsequent to the issuance of Notice 13-18, the Kansas Department of Revenue issued a publication entitled, "Kansas 2013 Individual Income Tax" which included the following instruction under a heading "What's New:"

"FILING STATUS. Under IRS Revenue Ruling 2013-17, individuals of the same sex who are validly married under the law of the state of celebration are required to file their 2013 federal income tax returns as *married filing separate* or *married filing joint*. However, Kansas law does not recognize marriage between individuals of the same sex; therefore, they may not use either filing status on Kansas income tax returns. Each taxpayer must file their Kansas return using the *single* or *head of household* filing status, whichever is applicable. Consult Notice 13-18 at ksrevenue.org for further instructions and a worksheet for use in preparing your Kansas income tax return."

24. The cover and first page of the Kansas 2013 Individual Income Tax instruction booklet and the first page with the "What's New" section is attached to this Petition as Exhibit 4.

FACTS JUSTIFYING JUDICIAL REVIEW

25. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
26. Plaintiffs are Kansas taxpayers who seek to file Kansas income tax returns for tax year 2013 as married persons and to have their taxes calculated using tax schedules for married persons.
27. Plaintiffs are legally married and the federal government and the IRS recognize their marriage; thus, they are required to file federal tax returns as married persons.

28. Plaintiffs will comply with federal tax law and will file their 2013 federal income tax returns as married persons.

29. Plaintiffs understand, at least based on a review of their respective 2012 tax filings, that as a result of filing as married in Kansas, their collective tax obligations will actually be higher than their obligations would be if they filed as single.

30. The Kansas Legislature has directed that the Kansas income tax code conform to the Federal Tax code. For example,

a. K.S.A. 79-32,109 states in relevant part:

“(a)(1) Any term used in this act shall have the same meaning as when used in a comparable context in the federal internal revenue code. Any reference in this act to the ‘federal internal revenue code’ shall mean the provisions of the federal internal revenue code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the taxable year.” L. 2013, ch. 87, § 2; Apr. 25.

b. K.S.A. 79-32,117 states in relevant part:

“(a) The Kansas adjusted gross income of an individual means such individual’s federal adjusted gross income for the taxable year, with the modifications specified in this section.” L. 2013, ch. 133, § 35; July 1.

c. K.S.A. 79-3221 states in relevant part:

“(a) All returns required by this act shall be made as nearly as practical in the same form as the corresponding form of income

tax return by the United States. Unless another identifying number has been assigned to an individual by the internal revenue service for purposes of filing such individual's federal income tax return, the social security number issued to an individual, the individual's spouse, and all dependents of such individual for purposes of section 205 (c)(2)(A) of the social security act shall be used as the identifying number and included on the return when filing such return."

d. K.S.A. 79-3230 states in relevant part:

"(f) Any taxpayer whose income has been adjusted by the federal internal revenue service or by the income tax collection agency of another state is required to report such adjustments to the Kansas department of revenue by mail within 180 days of the date the federal or other state adjustments are paid, agreed to or become final, whichever is earlier. Such adjustments shall be reported by filing an amended return for the applicable taxable year and a copy of the federal or state revenue agent's report detailing such adjustments." L. 2009, ch. 142, § 5; May 28.

31. It is also interesting to note that at the time of preparing this Petition, if one went to the Kansas Department of Revenue web page for "Frequently Asked Questions About Individual Income" (<http://www.ksrevenue.org/faqs-taxii.html>), the following could be found:

"What is my Kansas filing status?

"The filing status on your Kansas return must be the same as on your Federal return. There is one exception. If your filing status on your Federal return is Qualifying Widow or Widower with Dependent Child, your filing status on the Kansas return is Head of Household."

32. A screen shot of the Kansas Department of Revenue Frequently Asked Questions About Individual Income followed by a complete print-out of all questions and answers is attached to this Petition as Exhibit 5.
33. Pursuant to K.S.A. 75-5101, the Department of Revenue is "administered under the direction and supervision of the secretary of revenue." L. 2008, ch. 121, § 25; July 1.
34. Pursuant to K.S.A. 75-5155, the Secretary of the Department of Revenue is "authorized to adopt rules and regulations necessary to administer [the department] and not inconsistent with the provisions of chapters 41 and 79 of the Kansas Statutes Annotated." L. 2002, ch. 186, § 2; July 1.
35. The Department of Revenue is not complying with the Kansas Income Tax Code, K.S.A. 79-3201 *et. seq.*, by requiring Plaintiffs, legally married couples, to file Kansas income tax returns based on a marital status that is not in conformity with the marital status reported on their federal income tax returns.
36. In adopting and implementing the rules, regulations and policies adopted in accordance with and announced by Notice 13-18, the Kansas Department of Revenue failed to follow any of the mandatory requirements for administrative rule making in violation of the Kansas Rules and Regulations Filing Act, K.S.A. 77-415, *et. seq.*
37. Notice 13-18 effectively announces adoption of rules and regulations carrying the force of law and inappropriately goes beyond the agency's authority to issue a "guidance document" under K.S.A. 77-438.

38. Plaintiffs believe that by filing Kansas tax returns for tax year 2013 and not using their "married" status they would be violating K.S.A. 79-3228 by filing fraudulent tax returns and be guilty of committing a felony.
39. If forced to comply with the directives in Notice 13-18, Plaintiffs will incur additional accounting fees to comply with Department of Revenue requirements that they complete an additional tax form or forms that are not required of other married couples in Kansas.
40. The practice instituted under the terms of Notice 13-18 creates two classes of married taxpayers in Kansas without a valid justification for doing so and in the process denies Plaintiffs their Constitutional rights to due process and equal treatment under the law.
41. The practice instituted under the terms of Notice 13-18 places Plaintiffs, whose marriages are recognized under federal law, in a position of being in second-tier marriage and demeans the Parties whose rights are constitutionally protected.
42. Plaintiffs are suffering irreparable harm by the denial of their rights as protected by the Kansas and United States Constitutions.
43. The issue presented is not whether Plaintiffs have a constitutional right to marry in Kansas, but rather whether Kansas can effectively deprive them of an existing marital status by treating their legal marriages as nullities.
44. Kansas's broad authority over the law of domestic relations does not include complete jurisdiction over Plaintiffs' marital status which a sister state validly

conferred, the federal government recognizes, and the U.S. Constitution protects.

EXHAUSTION OF REMEDIES NOT REQUIRED

45. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
46. K.S.A. 77-612 generally requires Parties to exhaust administrative remedies before seeking review under the Act for Judicial Review and Civil Enforcement of Agency Actions.
47. Judicial review of certain agency actions, however, can be permitted without exhaustion of administrative remedies. See, e.g., *Heiland v. Dunnick*, 270 Kan. 663, 668-669, 19 P.3d 103, 107 (2001) (“actionable claims which fall outside the authority of an agency to grant can support a separate action by an aggrieved party”; exhaustion of administrative remedies not required. [citations omitted.]).
48. Notice 13-18 creates and announces the establishment of standards, requirements, and policies of general application that have the force and effect of law, purportedly for the purpose of implementing and interpreting statutes.
49. There have been no adjudicative proceedings challenging the Department of Revenue’s implementation of the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 preceding the filing of this Petition for Relief.

50. The challenge in this case is to the rules and regulations implemented by the Kansas Department of Revenue in violation of the Kansas Income Tax Act and the Kansas Rules and Regulations Filing Act; and, to the rules and regulations based on the denial of Petitioner's Constitutional rights to due process and equal treatment under the law.
51. Pursuant to K.S.A. 77-612, "for judicial review of a rule or regulation [Plaintiffs] need not have participated in the rulemaking proceeding upon which that rule and regulation is based, or have petitioned for its amendment or repeal." L. 2009, ch. 109, § 25; July 1.
52. Pursuant to K.S.A. 77-617, Plaintiffs may obtain judicial review of their objections to the rules and regulations expressed in Notice 13-18, and adopted after filing of Notice 13-18, without first raising their concerns with the agency because the agency action effectively implements rules and regulations and Plaintiffs have not been parties in any adjudicative proceedings in which they might have been provided an adequate opportunity to raise their objections. Indeed, no hearings were held.
53. Plaintiffs may seek judicial relief without exhausting administrative remedies to challenge the constitutionality of the Department of Revenue's actions. See *e.g.*, *Kansas Appellate Practice Handbook*, 5th Ed., 2013, Kansas Judicial Council, §6.5, P. 6-5. *Citing with approval: Zarda v. State*, 250 Kan. 364, 826 P.2d 1365 (1992). See also *Copeland v. Robinson*, 25 Kan. App. 2d 717, 721,

970 P.2d 69, 74 (1998)(Administrative boards and agencies may not rule on constitutional questions).

54. Practically speaking, since the Department of Revenue has not followed the dictates of the Kansas Rules and Regulations Filing Act, K.S.A. 77-415, *et. seq.*, Plaintiffs have been denied their statutorily protected rights as taxpayers to comment on and to challenge the implementation of Notice 13-18 and the resulting rules and regulations.

REASONS RELIEF SHOULD BE GRANTED

The Department of Revenue Acted Beyond the Jurisdiction conferred by K.S.A. 75-5101

55. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
56. Plaintiffs' primary objection regarding the rules and regulations contained in and adopted after issuance of Notice 13-18 is that the Department of Revenue exceeded its statutory jurisdiction in implementing rules and regulations that are directly counter to the legislation directing and governing the Department of Revenue's action.
57. The rules of statutory construction are well established. The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607, 214 P.3d 676 (2009).

58. By enacting K.S.A. 75-5155 (authorizing the Secretary to adopt rules and regulations not inconsistent with the provisions of chapters 79) the Legislature clearly expressed its intent that, in addressing income tax matters (K.S.A. 79-3201 *et. seq.*) Kansas should follow the lead of the federal government.
59. In a section of the code specifically titled, "Conformity with Federal Code," K.S.A. 79-32,109 *et. seq.*, sets forth the dictates that, in part:
- "As used in this act, unless the context otherwise requires,
(a) Any terms used in this act shall have the same meaning as when used in a comparable contest in the federal internal revenue code." K.S.A. 79-32,109.
60. As the Kansas Department of Revenue recognized in Notice 13-18, IRS Rev. Rule 2013-17 states in relevant part:
- "1. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex, if the individuals are lawfully married under state law, and whether, for those same purposes, the term "marriage" includes such a marriage between individuals of the same sex.
- "2. For Federal tax purposes, the [Internal Revenue] Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages."
61. IRS Rev. Rule 2013-17 also allows "affected taxpayers" to:
- "rely on this revenue ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or

refund for any overpayment of tax resulting from these holdings, provided the applicable limitations period for filing such claims under section 6511 has not expired.”

62. IRS Rev. Rule 2013-17 is attached as Exhibit 6.
63. There is no question, that by applying federal definitions to the Kansas Tax Code, Plaintiffs would be allowed, indeed required, to file income taxes in Kansas as married persons.
64. Notice 13-18 relies on a provision of the Kansas Constitution and a Kansas marriage statute for the basis of its holding.
65. In 2005, the Kansas Constitution was amended to state in relevant part:

“Marriage shall be constituted by one man and one woman only. All other marriages are declared to be contrary to the public policy of this state and are void.” Kan. Const. Art. 15 §16, K.S.A. Supp. 2012.
66. K.S.A. 23-2508 states:

“All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places in this state. It is the strong public policy of this state only to recognize as valid marriages from other states that are between a man and a woman.” L. 1996, ch. 142, § 3; July 1
67. The general language contained in the Kansas Constitution and K.S.A. 23-2508 does not address the question of filing status for income tax purposes.
68. K.S.A. 79-32,109, *et. seq.*, does provide direction for determining filing status for Kansas citizens: it directs that terms of federal law control.

69. Arguably, there is no conflict; the authorities cited by the Department of Revenue in Notice 13-18 have nothing to do with taxes. The dictates of K.S.A. 79-32,109, *et. seq.*, should govern.
70. If credence is given to the argument there is conflict, when faced with an apparent conflict between a general statute or a specific, the specific must control. See, *e.g.*, " *In re K.M.H.*, 285 Kan. 53, 82, 169 P.3d 1025 (2007), cert. denied 555 U.S. 937, 129 S.Ct. 36, 172 L.Ed.2d 239 (2008), ("A specific statute controls over a general statute. [Citation omitted.] Likewise, a specific provision within a statute controls over a more general provision within the statute.")
71. In this instance, the general dictates of the Kansas Constitution and the marriage statute which do not address tax concerns at all should be considered general in nature; and, the more specific, clearly on-point, instructions of K.S.A. 79-32,109, *et. seq.*, should govern.
72. Once the conclusion is reached that the terms of K.S.A. 7-32,109, *et. seq.*, should govern, it is clear the Department of Revenue and the Secretary have acted beyond the jurisdiction conferred by any provision of law.
73. Any attempt by the Department of Revenue to formulate a policy that violates state law is *ultra vires* and void. See, *e.g.*, *Gragg v. U.S.D. No. 287*, 6 Kan.App.2d 152, 155, 627 P.2d 335, 339 (1981).

**The Department of Revenue Engaged
In an Unlawful Procedure in Adopting Notice 13-18**

74. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
75. The Department of Revenue has announced Notice 13-18 to the media, and to other state officials, but has neither satisfied the requirements of the Filing Act (K.S.A. 77-421), nor provided adequate information to tax payers regarding the dual system for treating legally married taxpayers that has been adopted as reported in Notice 13-18.
76. Notice 13-18 announces standards, requirements, and policies of general application that have the force and effect of law, purportedly for the purpose of implementing and interpreting statutes. It does so without notice, opportunity for public comment, publication, or any of the other hallmarks of the formal promulgation of rules and regulations.
77. The Filing Act, K.S.A. 77-421, establishes a specific process for rulemaking that guarantees that the public is informed of an agency's intent to promulgate a rule, has an opportunity to comment on the rule, and receives a response to its comments and an explanation of why a particular rule was chosen.
78. The Filing Act sets forth specific procedures for the promulgation of rules and regulations, including that an agency must give 60 days of notice of intended rulemaking and publish notice in the Kansas Register, which contains: a summary of the substance of the proposed rules; a summary of the economic

impact on government, persons subject to the proposed rules, and the general public; the address where a complete copy of the proposed rules may be obtained; the time and place of the public hearing; the manner in which interested parties may present their views; and a specific statement that the 60 days' notice constitutes a public comment period; and the address where such comments may be submitted. K.S.A. 77-421(a).

79. The agency must also give all interested parties a reasonable opportunity to present their views at the hearing, orally or in writing. K.S.A. 77-421(b).
80. Upon adoption of a rule, the agency must also prepare a statement of the principal reasons for adopting the rule, including the reasons for not accepting arguments made in testimony and comments and the reasons for any substantial change between the text in the published notice and the text adopted.
81. These requirements are mandatory. "Any rule or regulation not filed and published as required by this act shall be of no force or effect." K.S.A. 77-425. "If a state agency fails to submit a policy that by content and effect is a regulation to the notice and publication requirements of the Act, the policy is void." *Taylor v. Kan. Dept't of Health & Env't*, 305 P.2d 729 734 (Kan. Ct. App. 2013)(citing *Bruns v. Kan. State Bd. Of Technical Professions*, 255 Kan. 728, 734, 877 P.2d 391 (1994)).

82. Notice 13-18, and the rules, regulations and policies announced, have been implemented without the required formal rulemaking procedures and the result is that Plaintiffs, have been arbitrarily denied equal treatment under the law.

**Notice 13-18 Violates Basic Constitutional
Due Process and Equal Protection Rights**

83. The rules, regulations and policies adopted and announced by Notice 13-18 have the principal effect to identify and stigmatize a subset of federally sanctioned marriages and make them unequal.

84. The primary division created under the rules, regulations and policies adopted and announced by Notice 13-18 is between same-sex married couples and different-sex married couples.

85. There is also a separate dichotomy: the recognition of some marriages performed out of state and the refusal to recognize other marriages performed out of state.

86. In either situation, by creating two contradictory marriage regimes within the same state, the rules, regulations and policies adopted and announced by Notice 13-18 (and arguably the Kansas Constitution and marriage statutes) force same-sex couples to live as married for the purpose of federal law and the laws of the states where they were married, but unmarried for the purpose of Kansas law, thus diminishing the stability and predictability of basic personal relations the federal government has found it proper to acknowledge and protect.

87. Historically, Kansas has recognized marriages as valid if the marriages were valid in the states in which they were performed, even if the marriages violated Kansas public policy. See, e.g., *In re Estate of Loughmiller*, 229 Kan. 584, 585, 589, 590, 629 P.2d 156, 160, 161, (1981)(Supreme Court held then that it could uphold "a marriage which is incestuous under the laws of Kansas but is valid where celebrated.")
88. By treating lawfully married same-sex couples differently than it treats lawfully married opposite sex couples, the Department of Revenue violates Plaintiffs' constitutionally protected rights of equal protection under the Kansas and United States Constitutions.
89. The Defendants' action in implementing Notice 13-18 and related rules, regulations and policies, places same-sex couples in an unstable position of being in a second-tier marriage which the United States Supreme Court has held to be a direct violation of Constitutional protections of due process and equal protection. *U.S. v. Windsor*, 133 S. Ct. 2675, 2694 (2013).
90. The Department of Revenue's action unconstitutionally "operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages." *Windsor*, at 2693.
91. In the tax context, the rules and regulations contained in and adopted after issuance of Notice 13-18 impose an undue burden on Plaintiffs forcing them to recalculate their taxes and incur additional accounting fees to do so, while not

requiring other married persons to complete the same forms or follow the same procedures.

92. The principal purpose of the rules, regulations and policies adopted and announced by Notice 13-18 is to unconstitutionally impose inequality on Plaintiffs and other legally married same-sex couples by denying recognition of their legally sanctioned marital relationship and rights with no justifiable governmental purpose.
93. It should also be noted that by imposing the rules and regulations of Notice 13-18, the Department of Revenue is acting against the financial interest of the State, at least when considering Plaintiffs, denying it the right to receive the additional taxes Plaintiffs would owe as married persons.
94. Plaintiffs seek to escape the stigma that historically has been associated with same-sex marriage and are eager to receive recognition of the duties and responsibilities that are an essential part of their married life, including the obligation to pay their fair share of taxes to the State of Kansas.
95. The rules, regulations and policies adopted in and announced by Notice 13-18 have been arbitrarily implemented in violation of Plaintiffs' Constitutional rights to due process and equal protection which have most recently been reviewed and affirmed by the United States Supreme Court in the *Windsor* decision.

RELIEF SOUGHT

WHEREFORE, Plaintiffs pray the Court for the following:

A. Mandamus

96. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
97. K.S.A. 60-801 states: "Mandamus is a proceeding to compel some inferior court, tribunal, board, or some corporation or person to perform a specified duty, which duty results from the office, trust, or official station of the party to whom the order is directed, or from operation of law." L. 1963, ch. 303, 60-801; Jan. 1, 1964.
98. A writ in mandamus may be issued to require the Department of Revenue to comply with the dictates of Kansas statutes and to protect Plaintiffs' Constitutional rights. See, e.g., *Copeland v. Robinson*, 25 Kan. App. 2d at 718, 970 P.2d at 72 (case remanded with order that lower court issue writ in mandamus requiring Kansas Department of Revenue act to protect taxpayer's constitutional rights of procedural due process).
99. Plaintiffs seek an order in mandamus requiring the Kansas Department of Revenue and the Secretary of Revenue to comply with the terms of K.S.A. 79-32,109 *et. seq.*, and adopt the definitions of marriage contained in IRS Rev. Rul. 2013-17; thereby, nullifying the effect of all rules, regulations and policies adopted in and announced by Notice 13-18.

B. Temporary and Permanent Injunction

100. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
101. K.S.A. 60-901 states: "Injunction is an order to do or refrain from doing a particular act. It may be the final judgment in an action, and it may also be allowed as a provisional remedy." L. 1963, ch. 303, 60-901; Jan. 1, 1964.
102. Plaintiffs seek a temporary injunction requiring the Defendants to refrain from requiring compliance with the dictates of the rules, regulations and policies adopted and announced by Notice 13-18, in effect allowing and requiring all married couples in Kansas to file Kansas tax returns as "married" persons pending the final outcome of this proceeding.
103. Plaintiffs seek a temporary injunction prohibiting the Defendants from requiring same-sex married couples to complete any additional forms or provide any additional documentation that would not also be required of other married persons filing Kansas income tax returns pending the final outcome of this proceeding.
104. Plaintiffs seek a permanent injunction against Defendants prohibiting them from ever enforcing the dictates of the rules, regulations and policies adopted and announced by Notice 13-18 or implementing any future rules or regulations that would treat married same-sex couples any differently than any other married couples who would be required to file Kansas income tax returns.

C. Declaratory Judgment

105. Plaintiffs repeat and incorporate by reference all the above allegations of their Petition as though fully set forth herein.
106. K.S.A. 60-1701 states in relevant part:
- “Courts of record within their respective jurisdictions shall have power to declare the rights, status, and other legal relations whether or not further relief is, or could be sought. . . . The declaratory may be either affirmative or negative in nature; and such declarations shall have the force and effect of a final judgment.” L. 1993, ch. 202, § 1; July 1.
107. K.S.A. 60-1703 states:
- “Further relief based on a declaratory judgment may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment, to show cause why further relief should not be granted.” L. 1993, ch. 202, § 8; July 1.
108. Plaintiffs seek an order of the Court declaring that in enacting the rules, regulations and policies adopted and announced by Notice 13-18, the Defendants exceeded their statutory authority and as a result of the *ultra vires* action, the rules, regulations and policies adopted and announced before or after issuance of Notice 13-18 are null and void.
109. Plaintiffs seek an order of the Court declaring that the Department of Revenue is not complying with the Kansas Income Tax Code, K.S.A. 79-3201 *et. seq.*, by requiring Plaintiffs, legally married couples, to file Kansas income tax returns

based on marital status that is not in conformity with the marital status reported on their federal income tax returns.

110. Plaintiffs seek an order of the Court declaring that K.S.A. 79-32,109 *et. seq.*, requires the Defendants to use the definitions of "marriage," "spouse," "husband and wife," "husband," and "wife" as adopted by the United States Internal Revenue Service.
111. Plaintiffs seek an order of the Court declaring that the Defendants failed to follow any of the mandatory requirements for administrative rule making in violation of the Kansas Rules and Regulations Filing Act, K.S.A. 77-415, *et. seq.*, and therefore the rules, regulations and policies adopted and announced by Notice 13-18 shall have no effect.
112. Plaintiffs seek an order of the Court declaring that the practice instituted under the terms of the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 creates two classes of married taxpayers in Kansas without a valid justification for doing so and in the process denies Plaintiffs their Constitutional rights to due process and equal treatment under the law.
113. Plaintiffs seek an order of the Court declaring that the practice instituted under the terms of the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 place Plaintiffs, whose marriages are recognized under federal law, in a position of being in second-tier marriage and demeans the Parties whose rights are constitutionally protected.

114. Plaintiffs seek an order of the Court declaring that the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 have been implemented without the required formal rulemaking procedures and the result is that Plaintiffs, have been arbitrarily denied equal treatment under the law.
115. Plaintiffs seek an order of the Court declaring that by treating lawfully married same-sex couples differently than lawfully married opposite sex couples are treated, Defendants are violating constitutionally protected rights of equal protection and due process under the Kansas and United States Constitutions.
116. Plaintiffs seek an order of the Court declaring that the Defendants' action in implementing Notice 13-18 places them (and all other legally married same-sex couples) in an unstable and untenable position of being in a second-tier marriage which the United States Supreme Court has held to be a direct violation of Constitutional protections of due process and equal protection.
117. Plaintiffs seek an order of the Court declaring that the Department of Revenue's action unconstitutionally "operates to deprive same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages." *Windsor*, at 2693.
118. Plaintiffs seek an order of the Court declaring that, in the tax context, the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 impose an undue burden on Plaintiffs forcing them to recalculate their taxes and incur additional accounting fees to do so, while not requiring other married persons to complete the same forms or follow the same procedures.

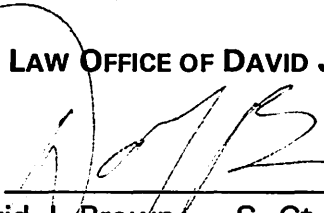
119. Plaintiffs seek an order of the Court declaring that the principal purpose of the rules, regulations and policies adopted in accordance with and announced by Notice 13-18 is to unconstitutionally impose inequality on Plaintiffs and other legally married same-sex couples by denying recognition of their legally sanctioned marital relationship and rights with no justifiable governmental purpose.

Procedural Requests

120. Plaintiffs seek an immediate hearing on their petition for provisional relief in the form of temporary injunctions as discussed above. Plaintiffs hereby request the Court set a hearing on their request for temporary orders as quickly as possible.
121. Plaintiffs also request the Court set a scheduling conference to set dates to govern discovery as well as a final disposition hearing and briefing schedule.

Respectfully submitted,

THE LAW OFFICE OF DAVID J. BROWN, LC

By: 
David J. Brown, S. Ct. #14409
1040 New Hampshire, Suite 14
Lawrence, Kansas 66044
785-842-0777
Djbrown@davidbrownlaw.com
Attorneys for Plaintiffs

STATE OF KANSAS)
)ss:
COUNTY OF DOUGLAS)

Roberta Woodrick, of lawful age, being first duly sworn upon oath says:
That she is a Petitioner in the above-entitled action; that she has read the forgoing Petition, knows the contents thereof; and that all statements therein made are true.

Roberta Woodrick
Roberta Woodrick

Subscribed and sworn to before me this 30th day of December, 2013.



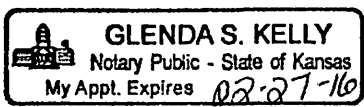
Glenda S. Kelly
Notary Public
My Appointment expires:

STATE OF KANSAS)
)ss:
COUNTY OF DOUGLAS)

Julia Woodrick, of lawful age, being first duly sworn upon oath says:
That she is a Petitioner in the above-entitled action; that she has read the forgoing Petition, knows the contents thereof; and that all statements therein made are true.

Julia Woodrick
Julia Woodrick

Subscribed and sworn to before me this 30th day of December, 2013.

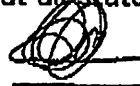


Glenda S. Kelly
Notary Public
My Appointment expires:

VERIFICATIONS

STATE OF KANSAS)
 Riley)ss:
COUNTY OF ~~WABAUNSEE~~)


Michael Nelson, of lawful age, being first duly sworn upon oath says:
That he is a Petitioner in the above-entitled action; that he has read the forgoing
Petition, knows the contents thereof; and that all statements therein made are true.



Michael Nelson

Subscribed and sworn to before me this 30th day of December, 2013.




Notary Public
My Appointment expires: 2-1-2014

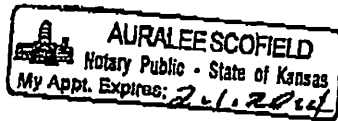
STATE OF KANSAS)
 RILEY)ss:
COUNTY OF ~~WABAUNSEE~~)

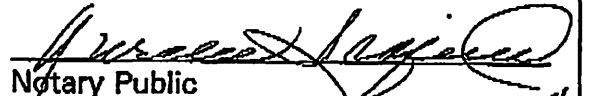
Charles Dedmon, of lawful age, being first duly sworn upon oath says:
That he is a Petitioner in the above-entitled action; that he has read the forgoing
Petition, knows the contents thereof; and that all statements therein made are true.



Charles Dedmon

Subscribed and sworn to before me this 30 day of December, 2013.




Notary Public
My Appointment expires: 2-1-2014

NOTICE 13-18

GUIDANCE FOR SAME-SEX COUPLES (October 4, 2013)

Federal Tax Treatment

For federal tax purposes, Rev. Rul. 2013-17 provides that the Internal Revenue Service (IRS) will recognize a marriage of same-sex individuals that was validly entered into in a state whose laws authorize such a union. This applies even if the couple is domiciled in a state that does not recognize the validity of same-sex marriages.

As a result, for tax year 2013 and going forward, same-sex spouses generally must file their federal income tax returns using a filing status of married filing jointly or married filing separately.

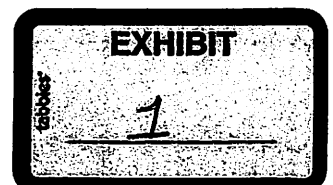
Kansas Income Tax Treatment

Kansas only recognizes marriages between one woman and one man. (See Article 15, Section 16, of the Kansas Constitution.) Kansas Statutes Annotated (K.S.A. 79-32,115) provide that a husband and wife shall file a joint or married filing separate return for income tax purposes. Individuals of the same sex cannot file a Kansas income tax return using a tax status of married filing jointly or married filing separately.

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

- As has been the practice since the initiation of the Kansas income tax, each individual must file a separate Kansas income tax return on Form K-40, 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 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.

The above guidance applies to returns filed for tax year 2013 and going forward.



Although Rev. Rul. 2013-17 provides that under certain circumstances amended returns for prior tax years may be filed for federal tax purposes to change the filing status to married filing jointly or married filing separately, no such amended returns may be filed for Kansas to change the filing status.

Returns can be filed electronically through www.webtax.org, or, if it is available, through commercial tax preparation software. Returns can be filed on paper, although the Department of Revenue prefers that returns be filed electronically.

Taxpayer Assistance

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about income tax, please contact:

Taxpayer Assistance Center
Kansas Department of Revenue
915 SW Harrison St., 1st Floor
Topeka, KS 66612-1588
Phone: 785-368-8222
Hearing Impaired TTY: 785-296-6461
Fax: 785-291-3614

INSTRUCTIONS FOR KANSAS ALLOCATION OF INCOME WORKSHEET

Kansas recognizes marriages that are only between one woman and one man (see Article 15, Section 16, of the Kansas Constitution). Kansas Statutes Annotated (K.S.A. 79-32,115) provide that a husband and wife shall file a joint or married filing separate return for income tax purposes. Individuals of the same sex cannot file a Kansas income tax return using a tax status of married filing jointly or married filing separately; instead, they must file separate Kansas returns using the filing status of *single* or, if qualified, *head of household*.

To determine the federal adjusted gross income amounts for filing separate Kansas income tax returns (Form K-40), complete lines 1 through 31 of this worksheet. **Taxpayer 1** will enter the amount from line 31, column B, on line 1 of their Form K-40. **Taxpayer 2** will enter the amount from line 31, column C on line 1 of their Form K-40.

After completing the allocation of income worksheet, each taxpayer will use the following information to complete their Kansas Form K-40.

Filing Status. Select the appropriate filing status for your situation – either *Single* or, if qualified *Head of Household*.

Exemptions and Dependents. Determine the exemptions and dependents you can claim on your Kansas return as if you had filed your federal income tax return using a *single* or *head of household* filing status.

Standard Deduction or Itemized Deductions. As a single or head of household filer, you may either itemize or take the Kansas standard deduction on your Form K-40. If either taxpayer in the same-sex relationship chooses to

itemize deductions on the Kansas return, that taxpayer should complete a federal Schedule A, as if that taxpayer had filed a federal income tax return with the same filing status used on the taxpayer's Kansas return.

Use the modified federal Schedule A to determine the authorized Kansas itemized deductions you may claim pursuant to the instructions for Form K-40. Be sure to keep a copy of this federal Schedule A with your tax records.

Earned Income Tax Credit (EITC). If you are both Kansas residents and filed a joint federal income tax return qualifying for the federal earned income tax credit (EITC), the amount of qualified federal EITC must be allocated equally between each taxpayer in calculating the Kansas EITC. After allocating the federal EITC equally between Taxpayer 1 and Taxpayer 2, use the instructions for line 16 of Form K-40 and complete the EITC worksheet to determine the EITC allowed for Kansas by each taxpayer.

Food Sales Tax Credit. Line E under the "Food Sales Tax Credit" section of Form K-40 requires the taxpayer claiming this credit to enter the "number of exemptions claimed on your federal income tax return." This instruction does not apply to Kansas resident taxpayers in a same-sex relationship who have filed a joint federal income tax return.

Instead, each individual will file a separate Kansas return and determine the exemptions and dependents as instructed in that section of these instructions, then enter on Line E the number of exemptions you would have claimed on your federal income tax return had you filed it using a *single* or *head of household* filing status.

— KEEP THIS WORKSHEET FOR YOUR RECORDS —

DO NOT SEND IT TO THE DEPARTMENT OF REVENUE OR INCLUDE IT WITH YOUR FORM K-40.



2013

KANSAS ALLOCATION OF INCOME WORKSHEET

If you are a same-sex couple married under the laws of another state and filed a joint federal income tax return, use this worksheet to determine your federal adjusted gross income as required to file your Kansas income tax returns (see instructions on back). **DO NOT send this worksheet to KDOR (Kansas Department of Revenue);** instead, keep a copy for your records as KDOR reserves the right to request it at a later date.

Name (Taxpayer 1)	Social Security Number
Name (Taxpayer 2)	Social Security Number

	(A) Amount reported on joint federal return	(B) Taxpayer 1 Amount to report on Kansas return	(C) Taxpayer 2 Amount to report on Kansas return
1. Wages, salaries, tips, etc.	_____	_____	_____
2. Taxable interest	_____	_____	_____
3. Ordinary dividends	_____	_____	_____
4. Taxable refunds, credits, or offsets of state and local income taxes	_____	_____	_____
5. Alimony received	_____	_____	_____
6. Business income or loss	_____	_____	_____
7. Capital gain or loss	_____	_____	_____
8. Other gains or losses	_____	_____	_____
9. IRA distributions	_____	_____	_____
10. Pensions and annuities	_____	_____	_____
11. Rental real estate, royalties, partnerships, S corporations, trusts, etc.	_____	_____	_____
12. Farm income or loss	_____	_____	_____
13. Unemployment compensation	_____	_____	_____
14. Social Security benefits	_____	_____	_____
15. Other income	_____	_____	_____
16. Total each column of lines 1 through 15	_____	_____	_____
17. Educator expenses	_____	_____	_____
18. Certain business expenses of reservists, performing artists, and fee-based government officials	_____	_____	_____
19. Health savings account deduction	_____	_____	_____
20. Moving expenses	_____	_____	_____
21. Deductible part of self-employment tax	_____	_____	_____
22. Self-employed SEP, SIMPLE, and qualified plans	_____	_____	_____
23. Self-employed health insurance deduction	_____	_____	_____
24. Penalty on early withdrawal of savings	_____	_____	_____
25. Alimony paid	_____	_____	_____
26. IRA deduction	_____	_____	_____
27. Student loan interest deduction	_____	_____	_____
28. Tuition and fees	_____	_____	_____
29. Domestic production activities deduction	_____	_____	_____
30. Total each column of lines 17 through 29	_____	_____	_____
31. FEDERAL ADJUSTED GROSS INCOME (Subtract line 16 from line 30)	_____	_____	_____

KEEP FOR YOUR RECORDS
DO NOT MAIL

Office of the Secretary
915 SW Harrison St.
Topeka, KS 66612



cell: 785-250-5467
phone: 785-296-0671
fax: 785-368-8392
Jeannine.Koranda@kdor.ks.gov
www.ksrevenue.org

Nick Jordan, Secretary
Jeannine Koranda, P.I.O.

Sam Brownback, Governor

Oct. 4, 2013

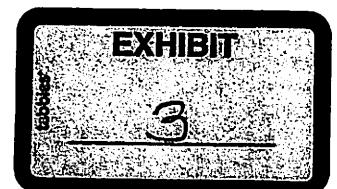
State provides tax guidance for same-sex couples filing in Kansas


TOPEKA – The Kansas Department of Revenue issued guidance, Notice 13-18, today instructing same-sex couples to continue filing state income tax returns next year as they always have in the state, using the single filing status.

For same-sex couples filing as married for the first time at the federal level, the department will provide a worksheet for calculating the income, deductions, and credit data to enter on each person's Kansas return. The worksheet will use the federal adjusted gross income (FAGI) and provide an allocation method for Kansas adjusted gross income (KAGI) deductions, and credits for each taxpayer.

The approach is one recommended by Federation of Tax Administrators and adheres to the Kansas Constitution definition of marriage as being between one man and one woman. It is supported by the recent U.S. Supreme Court case, *Windsor*, in which the Court upheld the rights of states to define and regulate marriage.

Link to the notice: <http://www.ksrevenue.org/taxnotices/notice13-18.pdf>



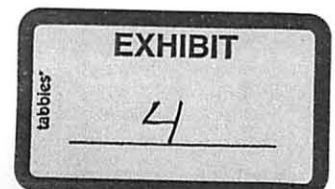


Kansas 2013

Individual Income Tax

Get your refund fast – file electronically! Try one of the simple, secure electronic filing options for an accurate return that is processed quickly. See back cover for details.

webtax.org



What's In This Book

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Schedule S Instructions	17
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What's New

INCOME TAX RATES. The Kansas income tax rates have been reduced for tax year 2013 to 3.0% for the bottom bracket and 4.9% for the top bracket. Beginning in tax year 2014, the bottom and top brackets will be reduced to 2.7% and 4.8% respectively. The tax rates will continue to drop through tax year 2018.

FOOD SALES TAX PROGRAM. This program is partially restored after being repealed by legislation enacted in 2012. Eligible taxpayers may claim a *nonrefundable* tax credit in the amount of \$125 for every eligible exemption claimed on the taxpayer's federal income tax return. The credit must be applied to Kansas tax liability after all other credits.

NEW MODIFICATIONS. Individuals that report business or farm income on their federal income tax return may be able to modify that income on their Kansas income tax return. See instructions for Part A of Schedule S.

FILING STATUS. Under IRS Revenue Ruling 2013-17, individuals of the same sex who are validly married under the law of the state of celebration are required to file their 2013 federal income tax returns as *married filing separate* or *married filing joint*. However, Kansas law does not recognize marriage between individuals of the same sex; therefore, they may not use either filing status on Kansas income tax returns. Each taxpayer must file their Kansas return using the *single* or *head of household* filing status, whichever is applicable. Consult Notice 13-18 at ksrevenue.org for further instructions and a worksheet for use in preparing your Kansas income tax return.

STANDARD DEDUCTION. The standard deduction level for married taxpayers filing jointly and for heads-of-household filers changed to \$7,500 and \$5,500 respectively. This deduction remains at \$3,000 for single and married filing separate filers.

ITEMIZED DEDUCTIONS. Itemized deductions for tax year 2013 are reduced by 30% (except for charitable contributions, which is fully retained). To compute your Kansas itemized deductions, complete Part C of Schedule S.

CHILD AND DEPENDENT CARE CREDIT. A Kansas tax credit for child and dependent care expenses is no longer available.

RURAL OPPORTUNITY ZONE (ROZ) CREDIT EXPANDED. An additional 23 counties have been added into the ROZ program. This program offers individuals who relocate from outside Kansas to a ROZ county a tax credit. To claim this tax credit you must file your return electronically (see page 28).

If you purchased goods online or through catalogs, newspapers, TV ads, etc. and did not pay sales tax, then you likely owe Kansas Compensating Use Tax



What is Compensating Use Tax? Since 1937 Kansas has imposed a compensating use tax on goods purchased from outside Kansas and used, stored or consumed in Kansas. Its purpose is to protect Kansas retailers from unfair competition from out-of-state retailers who sell goods tax-free by applying a tax on these items equal to the Kansas rate. It also helps to assure fairness to Kansans who purchase the same items in Kansas and pay Kansas sales tax.

Individuals and businesses buying items from retailers in other states may be subject to Kansas compensating use tax on those purchases. The use tax applies to the total cost of the merchandise, including postage, shipping, handling or transportation charges. The use tax rate is the same as the combined state and local sales tax rate in effect where the buyer takes delivery in Kansas. For individuals, this is usually our home. For businesses, it will be the office, shop, job site, etc. where the item(s) are used.

Do I owe this tax? Kansans that buy goods in other states or through catalogs, internet, mail-order companies, or from TV, magazine and newspaper ads must pay Kansas use tax on the purchases if the goods are used, stored or consumed in Kansas and the seller does not charge a sales tax rate equal to or greater than the Kansas retailers' sales tax rate in effect where the item is delivered or first used. **EXAMPLE:** An Anytown, KS resident orders a computer from a company in New York over its web site. Total cost for the computer is \$2,000 plus \$10 shipping. The Anytown resident will owe Kansas use tax of 8.95% (current Anytown sales tax rate) on the total charge of \$2,010. ($\$2,010 \times 0.0895 = \179.90)

How do I pay the Compensating Use Tax? To pay Kansas use tax on your untaxed out-of-state purchases made during calendar year 2013, refer to the instructions for line 19 of Form K-40 on page 8. You may either use the chart, or compute the tax due by applying the state and local sales tax rate in effect for your address to the total purchases subject to the tax. *Don't know your sales tax rate?* Go to www.ksstt.kdor.ks.gov/lookup.cfm to look up the rate for your location.

If you have any questions about use tax or about your responsibilities for reporting and paying this tax as an individual Kansas consumer, please contact our Taxpayer Assistance Center (see page 28).



PHOTO BY Bob Gress, www.birdsinfocus.com

The WHOOPING CRANE is the tallest flying North American bird and is listed as an endangered species by the United States Fish and Wildlife Service and also by the Kansas Department of Wildlife, Parks, and Tourism. Recovering from a low of only 15 birds in the wild, in the 1940's, to around 600 birds today, the Whooping Crane's recovery is one of conservation's most inspiring success stories. These birds use Cheyenne Bottoms Wildlife Area, Quivira National Wildlife Refuge, and other Kansas wetlands as stop over habitat during both spring and fall migration. Contribute to chickadee checkoff to help conserve this bird's habitat and habitats of other fascinating Kansas critters.

ProLaw <http://www.ksrevenue.org/faqs-taxii.html> 77-438 ksrevenue.org Kansas De... How to take ...

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Department of Revenue

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Frequently Asked Questions About Individual Income

These questions and answers apply to the 2013 tax year.

What is my Kansas filing status?
The filing status on your Kansas return must be the same as on your Federal return. There is one exception. If your filing status on your Federal return is Qualifying Widow or Widower with Dependent Child, your filing status on the Kansas return is Head of Household.

What is Head of Household?
To qualify for Head of Household filing status on your Kansas return, you must claim Head of Household or Qualifying Widow or Widower with a Dependent Child on your federal return.

Should I file as a resident or nonresident of Kansas?
If you moved into Kansas last year, you have the option to file a Kansas return as either a resident or a nonresident. As a resident, you must file a Kansas income tax return if you file a Federal income tax return or if your income is greater than the combined total of your Kansas standard deduction and your personal exemption amount.

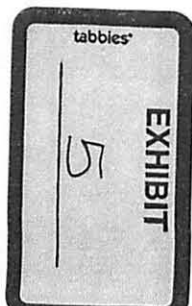
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FILE YOUR TAXES ONLINE

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Frequently Asked Questions About Individual Income

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Should I file as a resident or nonresident of Kansas?

If you moved into Kansas last year, you have the option to file a Kansas return as either a resident or a nonresident. As a resident, you must file a Kansas income tax return if you file a Federal income tax return or if your income is greater than the combined total of your Kansas standard deduction and your personal exemption amount.

As a nonresident, you must file a Kansas income tax return if you have any income from Kansas sources.

It is to your benefit to examine both the resident and nonresident filing options in determining your tax liability.

What if I am a Kansas resident with income from another state?

You must file as a Kansas resident and report all income to Kansas, regardless of where it was earned. If the other state requires an income tax return to be filed, you must complete the worksheet in the Kansas tax booklet to determine your credit for taxes paid to other states. Be sure to include a copy of the other state's return with your Kansas return. Copies of the other state's W-2 forms alone are not acceptable. If the other state does not require an income tax return, you cannot claim a credit on the Kansas return.

What if I am a resident of another state with income from Kansas?

You are required to file a Kansas income tax return. File as a nonresident and complete Kansas Schedule S, Part B.

What if my spouse is a resident of another state?

Kansas law provides that if a husband or wife is a resident of Kansas while the other is a nonresident of Kansas, and file a married filing joint federal return, they must file a married filing joint Kansas return and file as "non-residents" of Kansas.

What if I am a Kansas resident in the military?

If your military home of record is Kansas, you are required to file a Kansas income tax return, even if you were not stationed in Kansas last year.

What if I am in the military and stationed in Kansas?

The service pay you or your spouse received as members of the armed forces is taxable only by your state of legal residence. Usually your state of legal residence is the state you lived in at the time of induction into the service.

Kansas income for services performed by a non-military spouse of a nonresident military servicemember is exempt from Kansas income tax. To qualify for this exemption, the spouse must be residing in Kansas solely because the military servicemember is stationed in Kansas under military orders. The exemption from Kansas income tax does not extend to income from Kansas sources earned by the nonresident servicemember. See Notice 09-12

What is the Servicemembers' Civil Relief Act (SCRA)?

The Servicemember Civil Relief Act (SCRA) is a federal statute allowing servicemembers to suspend or postpone some civil obligations so the servicemember can devote full attention to military duties. The original Soldiers' and Sailors' Civil Relief Act was passed during World War I. The statute was reenacted during World War II and was modified during Operation Desert Storm.

How does the SCRA help me?

The Kansas Department of Revenue (KDOR) follows the IRS in automatically extending income tax deadlines for 180 days after deactivation for filing returns, paying taxes, filing claims for refunds, and taking other actions with KDOR if any of the following situations apply:

- You serve in the Armed Forces in a combat zone or you have qualifying service outside of a combat zone.
- You serve in the Armed Forces in a qualified hazardous duty area or are deployed overseas away from your permanent duty station in support of operations in a qualified hazardous duty area, but your deployment station is outside the qualified hazardous duty area.
- You serve in the Armed Forces on deployment outside the United States away from your permanent duty station while participating in a contingency operation. A contingency operation is a military operation that is designated by the Secretary of Defense or results in calling members of the uniformed services to active duty (or retains them on active duty) during a war or a national emergency declared by the President or Congress.

By extending tax deadlines, KDOR hopes to provide servicemembers with a smooth and convenient transition before, during, and after deployment.

Who should complete and submit the form for SCRA?

If you qualify for deferment of taxes based on the criteria above and find yourself in one or more of the following situations, then you should complete Form KS-2848, Servicemember Mobilization Notice, and submit it to KDOR:

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[Resolve tax issues](#)

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Kansas Department of Revenue - Frequently Asked Questions About Individual Income

- You cannot file your income tax return and pay any tax due until you return from deployment.
- You have an existing debt with KDOR for taxes due and are unable to pay while you are deployed.
- You have received an assessment or a set-up return notice from KDOR and will not be able to file your return and/or pay the tax due until you return from deployment.

For your convenience, Form KS-2848 is available online as a "fill-in" form. You can simply type the required information in the blank fields, print the form, sign it, and mail it to KDOR. Get the fillable Kansas Servicemember Mobilization Notice (KS-2848) [here](#) .

Where do I send Form KS-2848 and enclosures?

Send your completed Form KS-2848, along with a copy of your deployment orders and any KDOR assessment or set-up return notices you may have received, to the following address:

Kansas Department of Revenue
915 SW Harrison Street
Topeka, KS 66625-2001

What must I do if I have a business?

You must continue to file sales and withholding returns and remit any tax due unless you are a sole proprietor with no sales tax or withholding obligations. If your business continues to operate while you are deployed and you have employee(s) obligations, you should seek additional advice from your accountant or Certified Public Accountant.

What should I do when I return to normal duty?

When you return you should file the appropriate tax documents and/or pay the balance due to bring your account up-to-date. You may contact the Kansas Department of Revenue at 785-368-8222 and a Customer Representative will assist you with that process.

What about the SCRA for other states?

To obtain information for SCRA requirements in other states, visit the Federation of Tax Administrators (FTA) web site at www.taxadmin.org/fta/link/. Using the map that is displayed, click on the desired state.

What is the number of exemptions I can claim?

The same number as claimed on your Federal return. However, if you file as Head of Household or Qualifying Widow or Widower on your Federal return you are allowed to claim one additional exemption on your Kansas return.

If another person claims you as a dependent on their Federal return, you may not claim an exemption for yourself on your Kansas return.

Do I need to provide Social Security numbers for each dependent?

Yes. Social Security numbers are required for each dependent in order to claim most Kansas tax credits such as the earned income credit. Social Security numbers for dependents are also required to claim a food sales tax credit. You will also need to provide dependents date of birth to claim the credits.

The primary taxpayer, spouse and all dependents must have a valid SSN in order to receive a Kansas earned income credit and any refundable credit except for credit for taxes paid to another state(s). For example, if the K-40 has 5 exemptions (MFJ and 3 children) and one of the children has an ITIN, the entire K-40 is disqualified from receiving the Kansas tax credits.

Dependent information must be sent on all K-40 returns regardless of whether or not the return is claiming any credits.

I filed a Federal 1040EZ, how do I know the number of exemptions to claim on my Kansas return?

Federal Form 1040EZ does not specifically identify the number of exemptions. Therefore, if you are filing Federal Form 1040EZ as single, you are allowed one exemption on your Kansas return. If you are filing Federal Form 1040EZ as married you are allowed two exemptions on your Kansas return. If you are filing Federal Form 1040EZ, and another person claims you as a dependent on their Federal return, you may not claim an exemption for yourself on your Kansas return.

Are Kansas Public Employees Retirement System (KPERs) contributions taxable to Kansas?

The amount you contributed from your salary to the Kansas Public Employees Retirement System is not taxable on your Federal return but is taxable on the Kansas return. Therefore, you must report this amount on Kansas Schedule S, Part A.

To determine the amount to be reported on your Kansas income tax return, you must subtract the amount shown on your W-2 in the wages, tips and compensation income box from the amount shown in the state and local wages income box on your W-2. Some employers will provide this figure for you on your W-2, indicating the amount is KPERs.

Are Kansas Public Employees Retirement System (KPERs) retirement benefits taxable to Kansas?

The amount you received as retirement benefits from the Kansas Public Employees Retirement System is not taxable on your Kansas return. The retirement benefits must be included in your federal adjusted gross income before it can be subtracted on your Kansas return. Retirement benefits taxed on your Federal return must be entered on Kansas Schedule S, Part A.

Other common Kansas pension plan retirement benefits that are not taxable on the Kansas return are Kansas Police and Fireman's Retirement System Pensions, Kansas Teacher's Retirement Annuities, Kansas Highway Patrol pensions, Justices and Judges Retirement system, Board of Public Utilities and State Board of Regents.

Are Kansas Public Employees Retirement System (KPERs) Lump Sum Roll Overs taxable to Kansas?

KPERs retirement benefits, and all earnings thereon, that are rolled over into a qualified retirement account are not subject to Kansas income tax. Subsequent distributions from these qualified retirement accounts of KPERs retirement benefits and earnings thereon are also exempt from Kansas Income Tax as KPERs retirement benefits whether the KPERs benefits are segregated from or commingled with, other retirement funds.

Therefore, amounts withdrawn from a qualified retirement account, including any earnings thereon, are not subject to Kansas income tax to the extent the amounts withdrawn were: 1) Originally received as a KPERs lump sum payment at retirement that you rolled over into a qualified retirement account (or earnings thereon), and 2) the amount of the withdrawn is included in federal adjusted gross income.

Are State Board of Regents Kansas Public Employees Retirement System (KPERs) Lump Sum Roll Overs taxable to Kansas?

State Board of Regents: Retirement annuity contracts purchased for faculty and others employed by the State Board of Regents or by educational institutions under its management with either their direct contributions or through salary reduction plans are exempt from Kansas Income Tax. However, when these Regents retirement benefits are rolled into

an unrelated retirement plan and distributions are taken from these unrelated retirement plans, said distributions are subject to Kansas Income Tax.

Are Social Security benefits taxable to Kansas

If your federal adjusted gross income is \$75,000 or less, regardless of your filing status, your social security benefits are exempt from Kansas income tax. The exemption for social security benefits applies only to the extent the benefits are included in your federal adjusted gross income.

Is my state income tax refund taxable to Kansas?

If you have reported a previous year's state income tax refund on your current Federal income tax return, you must subtract this on your Kansas return by entering the amount of the refund on Kansas Schedule S, Part A.

Are military pensions taxable to Kansas?

No. The retirement benefits must be included in your federal adjusted gross income before it can be subtracted on your Kansas return. Retirement benefits taxed on your Federal return must be entered on Kansas Schedule S, Part A.

Are Federal Civil Service annuities taxable to Kansas?

No. The retirement benefits must be included in your federal adjusted gross income before it can be subtracted on your Kansas return. Retirement benefits taxed on your Federal return must be entered on Kansas Schedule S, Part A.

Are Railroad Retirement benefits taxable to Kansas?

No. Retirement plans administered by the U.S. Railroad Retirement Board are not taxable. This includes U.S. Railroad Retirement Benefits, tier one, tier two, dual vested benefits, and supplemental annuities. The retirement benefits must be included in your federal adjusted gross income before it can be subtracted on your Kansas return. Retirement benefits taxed on your Federal return must be entered on Kansas Schedule S, Part A.

Are Learning Quest Education Savings Programs taxable to Kansas?

You may reduce the amount of income you pay Kansas Income Tax on by the amount you contribute to the Learning Quest Education Savings Programs up to a maximum of \$6,000 per student if you are married filing a joint return, and \$3,000 per student for any other filing status. You enter the amount to be subtracted on Kansas Form Schedule S, Part A. Any taxpayer who contributes to the account is entitled to the deduction regardless of whether or not they are the account owner. For more information about Learning Quest, call 1-800-579-2203, or you may visit their web site at www.learningquestsavings.com.

Contributions to another state's qualified 529 tuition program are also eligible for the above described subtractions. For example, a taxpayer with Kansas source income may contribute to any other state's qualified 529 program and still take a deduction on their Kansas income tax return up to the maximum of \$6,000 per student for married taxpayers filing a joint and \$3,000 per student for any other filing status.

What is the single filing status standard deduction?

\$3,000

An additional \$850 can be claimed if you are 65 years or older. An additional \$850 can also be claimed if you are blind. If you are claimed on another person's return, your parents, for example, the standard deduction would be \$500 or the amount of your earned income up to \$3,000, whichever is more. Examples of earned income include wages earned from a job or farm income reported on your Federal return. Interest and dividends are not considered earned income.

What is the married filing joint filing status standard deduction?

\$7,500

An additional \$700 can be claimed if you are 65 years or older. An additional \$700 can also be claimed if you are blind. If your spouse is 65 years or older, you can claim an additional \$700. An additional \$700 can also be claimed if your spouse is blind.

What is the married filing separate filing status standard deduction?

\$3,000

An additional \$700 can be claimed if you are 65 years or older. An additional \$700 can also be claimed if you are blind. If your spouse is over 65 years old and is claimed on your return, an additional \$700 can be claimed. If your spouse is blind and is claimed on your return, an additional \$700 can also be claimed.

What is the head of household filing status standard deduction?

\$5,500

An additional \$850 can be claimed if you are 65 years or older. An additional \$850 can also be claimed if you are blind.

Can I itemize my Kansas deductions?

Not unless you itemize deductions on your Federal return.

Can I take a credit for taxes I paid to another state?

If you are a resident of Kansas but worked in another state and are required to file an income tax return there, you may claim a credit for the taxes paid to that state. You must complete the worksheet for residents in the Kansas tax booklet to determine your credit. Be sure to include a copy of the other state's return with your Kansas return. Copies of the other state's W-2 forms alone are not acceptable. If the other state does not require an income tax return, you will not receive a credit from Kansas.

If you lived in Kansas part of the year and you worked in another state while living here and you are now filing as a nonresident, you may claim a credit for the taxes paid to the other state. Income earned in another state must be reported on Kansas Schedule S, Part B, in the column labeled "amount from Kansas sources." You must complete the worksheet for part year residents in the Kansas tax booklet. Be sure to include a copy of the other state's return with your Kansas return. Copies of the other state's W-2 forms alone are not acceptable. If the other state does not require an income tax return, you will not receive a credit from Kansas.

Please note, credit for taxes paid to other states is based on the other state's actual tax liability, not the other state's withholding.

Can I take a credit if I paid income taxes to a local jurisdiction such as a city?

In Kansas local jurisdictions cannot impose an income tax. If you do pay an income tax to a local jurisdiction in another state, there is no credit allowed for these payments on the Kansas income tax return. Kansas only allows a tax credit for income tax paid to another state or foreign country.

Can I claim an earned income credit?

Kansas residents claiming an earned income credit on your Federal return, can claim an earned income tax credit on your Kansas income tax return.

Nonresidents cannot claim the earned income credit.

How do I calculate the earned income credit?

Seventeen percent of the federal earned income credit. If you do not know the amount of your federal earned income credit by the filing due date, file your Kansas return without claiming the earned income credit and pay any amount due. Once you know the amount of your federal earned income credit, amend your Kansas return to claim the earned income credit.

How do I make my individual income tax payment?

To pay your Kansas tax by credit card, visit the service provider's website. A convenience fee will be charged by the service provider based on the amount of tax you are paying. You can find out what the fee is by visiting the provider's website. Information on paying your Kansas taxes by credit card.

If you file using WebFile you can have your payment directly debited from your bank account. This allows you to file now and pay later. Taxpayers do not have the option of direct debit when filing their paper Individual Income Tax (K-40) return, but they can make an Individual Income Tax payment through the Department's web site at <https://www.kdor.org/personaltax/Login.aspx>.

If paying by check send the check or money order with a completed Kansas Payment Voucher (K-40V) for the balance due on your return. The Kansas Payment Voucher (K-40V) must be completed in black or blue ink. Do not staple, tape or attach your payment to the voucher. The payment must be made payable to Kansas Income Tax. Please write your Social Security number on the check or money order and on the voucher. If you filed a joint return include your spouses name and Social Security number on both your payment and the voucher.

Can I use my credit card to pay my individual income tax?

The Kansas Department of Revenue will accept credit card payments for your individual income tax. To pay by credit card, visit the service provider's website. You will be provided a confirmation number at the end of the payment transaction. This confirmation number and your credit card statement will provide verification of your credit card payment to the Kansas Department of Revenue. A convenience fee will be charged by the service provider based on the amount of tax you are paying. You can find out what the fee is by visiting the provider's web site. The Department of Revenue cannot answer questions regarding your credit card statement. Information on paying your Kansas taxes by credit card.

What if I am unable to pay my individual income tax due?

If you are not able to pay the full amount due, you should file your Kansas income tax return and pay as much as you can by the filing date. Penalties and interest will accrue on any unpaid balance until fully paid. Contact our department at 1-785-368-8222 to make arrangements to pay the remaining balance. Send a Kansas Payment Voucher (K-40V) with each payment being made. Payments must be made payable to Kansas Income Tax. Please write your Social Security number on the check or money order and on the voucher. If you filed a joint return, include your spouse's name and Social Security number on both your payment and the voucher.

Additional Kansas forms are available on the Kansas Department of Revenue's form page. Forms may also be requested by calling the Kansas Taxline at 1-785-368-8222.

Can I make payments if I owe a tax debt ?

Yes. See Payment Plan Request if you owe an individual income tax debt or taxes for your business.

Can you direct deposit my individual income tax refund?

Direct deposit is a quick and convenient method to receive your Kansas income tax refund. Direct deposit is available if you use WebFile or Federal / State electronic filing. The Kansas Department of Revenue will deposit your refund in your checking or savings account. Simply provide the Kansas Department of Revenue your bank routing number and account number. You can get this information from your financial institution. The Kansas Department of Revenue uses this information only to deposit your refund. With direct deposit, you can avoid any possible postal delays and long lines at your bank.

How do I check on my current year individual income tax refund?

Normal processing time for a paper return is 16 weeks.

You may check on the status of your current year individual income tax refund by accessing the Web Refund Status application. You will need to provide the Social Security number shown on your return as well as the exact amount of your refund, in whole dollars only.

You may also get this information by calling 1-800-894-0318 using a touch-tone telephone. You will need to provide the Social Security number shown on your return as well as the exact amount of your refund, in whole dollars only.

Refund information regarding prior year tax returns or amended returns is not available using these systems.

Can I credit my individual income tax refund forward?

Your refund, or part of your refund, can be applied to next year's Kansas estimated income tax. The amount you credit forward needs to be claimed on next year's Kansas return as an estimate tax payment.

By state law refunds less than \$5 will not be sent to you or directly deposited into your bank account. Therefore, it would be to your benefit to credit forward refunds less than \$5 to be claimed as an estimated payment on your next year's Kansas income tax return.

What is the nongame wildlife contribution (Chickadee Checkoff Program)?

You may use your refund, or part of your refund, to contribute to the Kansas nongame wildlife improvement program. This donation is tax deductible. The contributions for this program have been used for protecting threatened and endangered species, monitoring bald eagles and peregrine falcon nesting and many other important programs protecting our wildlife.

If you do not have a refund on your return or you have a balance due, you may still donate to this program by writing one check for your balance due plus the amount you wish to contribute to the Kansas nongame wildlife program.

What is the Senior Citizens Meals on Wheels Contribution?

You may use your refund, or part of your refund, to contribute to the Senior Citizens Meals on Wheels Contribution Program. All contributions are used solely for the purpose of providing funds for the Senior Citizens Meals on Wheels Contribution Program. If you do not have a refund on your return, or you have a balance due, you still may donate to this program by writing a check for your balance due plus the amount you wish to contribute to the Senior Citizens Meals on Wheels Contribution Program.

What is the Breast Cancer Research Fund Contribution?

The Breast Cancer Research Fund was created to support research related to the prevention, diagnosis and treatment of breast cancer with the hope of ending the suffering and death cause by this disease. If you do not have a refund on your return, or you have a balance due, you still may donate to this program by writing a check for your balance due plus the amount you wish to contribute to the Breast Cancer Research Fund.

Kansas Department of Revenue - Frequently Asked Questions About Individual Income

What is the Military Emergency Relief Fund Contribution?

Contributions will be used to help military families with the cost of food, housing, utilities and medical services incurred while a member of the family is on active military duty. If you do not have a refund on your return, or you have a balance due, you still may donate to this program by writing a check for your balance due plus the amount you wish to contribute to the Military Emergency Relief Fund.

How do I claim a refund for a deceased taxpayer?

You must check the appropriate box below the heading of the paper Individual Income Tax (K-40) indicating the taxpayer is deceased.

If you are a surviving spouse requesting a refund of less than \$100, you must enclose ONE of the following with the return:

- Federal Form 1310 - Statement of person claiming refund due a deceased taxpayer OR
- Death Certificate OR
- Obituary statement OR
- Funeral home notice OR
- Kansas Decedent Refund Claim (RF-9)

If you are a surviving spouse requesting a refund of over \$100, or if a refund of any amount is being requested by someone other than the surviving spouse, you must submit with the return:

- Proof of death which can be a death certificate, obituary statement or funeral home notice AND
- Kansas Decedent Refund Claim (RF-9)

What does it mean when my refund is set off due to a debt?

Kansas law provides that your income tax refund, or part of your refund, can be applied to certain government debts incurred by you. These unpaid debts could include such things as Kansas taxes, back child support, student loans, parking tickets or a city water bill. This will also reduce the amount of the Kansas refund you originally expected. The remaining amount will be refunded to you. If the remaining balance of your refund is less than \$5, by Kansas law that amount will not be refunded.

How do I file for an extension of time?

If you file Form 4868 with the Internal Revenue Service requesting an automatic extension of time to file your federal tax return, you will automatically receive an extension of time to file your Kansas return. A copy of form 4868 must be enclosed with your Kansas income tax return when filed. This is not an extension of time to pay.

To make an extension payment on your Kansas income tax, use the Kansas Payment Voucher (K-40V). Check the box on the voucher for extension payment. The extension payment must be postmarked on or before April 15.

Any balance due remaining after April 15 will accrue interest. To avoid a separate penalty charge, 90% of your tax must be paid by April 15 and the return filed and any remaining balance due paid within the extended due date.

If any due date falls on a Saturday, Sunday, or legal holiday, substitute the next regular workday.

How long do I have to file a Kansas Income Tax return in order to claim a refund?

Kansas law provides that if a return was not filed by the original due date, the taxpayer must file the return within 3 years of the original due date (plus extensions) in order to receive a refund. If the return is filed later than 3 years after the original due date - no refund will be issued.

When do I file an amended return?

An amended return is filed when it is necessary to make a correction to your original Kansas tax return.

If you amend your Federal return or your Federal return was changed by the Internal Revenue Service, you must report these changes to the Kansas Department of Revenue. Your amended return must be filed within 180 days of the date the federal adjustments are paid, agreed to or become final, whichever is earlier. To avoid penalties, any additional Kansas tax owed must be paid with interest when filing your amended return.

What form do I use to amend my return?

To report changes to your current Kansas tax return, you must complete the Individual Income Tax (K-40) and check the box for amended return. In addition, check one of the boxes to show the reason for amending.

When filing an amended return include copies of all supporting documentation, such as your amended federal return and additional W-2 forms.

What is Use Tax?

Compensating use tax is due on the purchase price of items purchased from vendors located outside of Kansas and used, stored or consumed within Kansas, upon which no sales tax has been paid. Examples of purchases made without paying Kansas sales tax are goods bought over the internet and from catalogs.

How much is my Use Tax?

If you have purchased items from retailers located outside of Kansas on which no sales tax was paid (including any freight, shipping and handling fees) and the items were used, stored or consumed within Kansas, the purchase is subject to compensating use tax. If you know the actual amount of use tax, enter that amount on the K-40 return. For example, if the sales tax rate in your location is 7.3% and you purchased an item for \$35 and the shipping and handling was \$1.50 and no sales tax was paid, the use tax amount would be $\$36.50 \times .073 = \2.66 . You would round to the nearest whole dollar and enter \$3 on form K-40. If you paid Kansas sales tax on all of your purchases, enter zero (0).

Get more information here.

Where can I get help with my taxes?

Customers needing help are encouraged to visit the various sections of our website or call the Kansas Taxline at 1-785-368-8222. The Kansas Department of Revenue also provides free assistance in Topeka, on the first floor of the Docking State Office Building at 915 Southwest Harrison. Our hours in Topeka are 8:00 a.m. to 4:45 p.m., Monday through Friday.

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Rev. Rul. 2013-17.

ISSUES

1. Whether, for Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex, if the individuals are lawfully married under state¹ law, and whether, for those same purposes, the term “marriage” includes such a marriage between individuals of the same sex.

2. Whether, for Federal tax purposes, the Internal Revenue Service (Service) recognizes a marriage of same-sex individuals validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the state in which they are domiciled does not recognize the validity of same-sex marriages.

3. Whether, for Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include individuals (whether of the opposite sex or same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the

¹ For purposes of this ruling, the term “state” means any domestic or foreign jurisdiction having the legal authority to sanction marriages.



laws of that state, and whether, for those same purposes, the term “marriage” includes such relationships.

LAW AND ANALYSIS

1. Background

In Revenue Ruling 58-66, 1958-1 C.B. 60, the Service determined the marital status for Federal income tax purposes of individuals who have entered into a common-law marriage in a state that recognizes common-law marriages.² The Service acknowledged that it recognizes the marital status of individuals as determined under state law in the administration of the Federal income tax laws. In Revenue Ruling 58-66, the Service stated that a couple would be treated as married for purposes of Federal income tax filing status and personal exemptions if the couple entered into a common-law marriage in a state that recognizes that relationship as a valid marriage.

The Service further concluded in Revenue Ruling 58-66 that its position with respect to a common-law marriage also applies to a couple who entered into a common-law marriage in a state that recognized such relationships and who later moved to a state in which a ceremony is required to establish the marital relationship. The Service therefore held that a taxpayer who enters into a common-law marriage in a state that recognizes such marriages shall, for purposes of Federal income tax filing status and personal exemptions, be considered married notwithstanding that the

² A common-law marriage is a union of two people created by agreement followed by cohabitation that is legally recognized by a state. Common-law marriages have three basic features: (1) A present agreement to be married, (2) cohabitation, and (3) public representations of marriage.

taxpayer and the taxpayer's spouse are currently domiciled in a state that requires a ceremony to establish the marital relationship. Accordingly, the Service held in Revenue Ruling 58-66 that such individuals can file joint income tax returns under section 6013 of the Internal Revenue Code (Code).

The Service has applied this rule with respect to common-law marriages for over 50 years, despite the refusal of some states to give full faith and credit to common-law marriages established in other states. Although states have different rules of marriage recognition, uniform nationwide rules are essential for efficient and fair tax administration. A rule under which a couple's marital status could change simply by moving from one state to another state would be prohibitively difficult and costly for the Service to administer, and for many taxpayers to apply.

Many provisions of the Code make reference to the marital status of taxpayers. Until the recent decision of the Supreme Court in United States v. Windsor, 570 U.S. ___, 133 S. Ct. 2675 (2013), the Service interpreted section 3 of the Defense of Marriage Act (DOMA) as prohibiting it from recognizing same-sex marriages for purposes of these provisions. Section 3 of DOMA provided that:

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

1 U.S.C. § 7.

In Windsor, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of equal protection. It concluded that this section “undermines both the public and private significance of state-sanctioned same-sex marriages” and found that “no legitimate purpose” overcomes section 3’s “purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect[.]” Windsor, 133 S. Ct. at 2694-95. This ruling provides guidance on the effect of the Windsor decision on the Service’s interpretation of the sections of the Code that refer to taxpayers’ marital status.

2. Recognition of Same-Sex Marriages

There are more than two hundred Code provisions and Treasury regulations relating to the internal revenue laws that include the terms “spouse,” “marriage” (and derivatives thereof, such as “marries” and “married”), “husband and wife,” “husband,” and “wife.” The Service concludes that gender-neutral terms in the Code that refer to marital status, such as “spouse” and “marriage,” include, respectively, (1) an individual married to a person of the same sex if the couple is lawfully married under state law, and (2) such a marriage between individuals of the same sex. This is the most natural reading of those terms; it is consistent with Windsor, in which the plaintiff was seeking tax benefits under a statute that used the term “spouse,” 133 S. Ct. at 2683; and a narrower interpretation would not further the purposes of efficient tax administration.

In light of the Windsor decision and for the reasons discussed below, the Service also concludes that the terms “husband and wife,” “husband,” and “wife” should be interpreted to include same-sex spouses. This interpretation is consistent with the

Supreme Court's statements about the Code in Windsor, avoids the serious constitutional questions that an alternate reading would create, and is permitted by the text and purposes of the Code.

First, the Supreme Court's opinion in Windsor suggests that it understood that its decision striking down section 3 of DOMA would affect tax administration in ways that extended beyond the estate tax refund at issue. See 133 S. Ct. at 2694 ("The particular case at hand concerns the estate tax, but DOMA is more than simply a determination of what should or should not be allowed as an estate tax refund. Among the over 1,000 statutes and numerous Federal regulations that DOMA controls are laws pertaining to . . . taxes."). The Court observed in particular that section 3 burdened same-sex couples by forcing "them to follow a complicated procedure to file their Federal and state taxes jointly" and that section 3 "raise[d] the cost of health care for families by taxing health benefits provided by employers to their workers' same-sex spouses." Id. at 2694-2695.

Second, an interpretation of the gender-specific terms in the Code to exclude same-sex spouses would raise serious constitutional questions. A well-established principle of statutory interpretation holds that, "where an otherwise acceptable construction of a statute would raise serious constitutional problems," a court should "construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988). "This canon is followed out of respect for Congress, which [presumably] legislates in light of constitutional limitations," Rust v.

Sullivan, 500 U.S. 173, 191 (1991), and instructs courts, where possible, to avoid interpretations that “would raise serious constitutional doubts,” United States v. X-Citement Video, Inc., 513 U.S. 64, 78 (1994).

The Fifth Amendment analysis in Windsor raises serious doubts about the constitutionality of Federal laws that confer marriage benefits and burdens only on opposite-sex married couples. In Windsor, the Court stated that, “[b]y creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of Federal law, thus diminishing the stability and predictability of basic personal relations the State has found it proper to acknowledge and protect.” 133 S. Ct. at 2694. Interpreting the gender-specific terms in the Code to categorically exclude same-sex couples arguably would have the same effect of diminishing the stability and predictability of legally recognized same-sex marriages. Thus, the canon of constitutional avoidance counsels in favor of interpreting the gender-specific terms in the Code to refer to same-sex spouses and couples.

Third, the text of the Code permits a gender-neutral construction of the gender-specific terms. Section 7701 of the Code provides definitions of certain terms generally applicable for purposes of the Code when the terms are not defined otherwise in a specific Code provision and the definition in section 7701 is not manifestly incompatible with the intent of the specific Code provision. The terms “husband and wife,” “husband,” and “wife” are not specifically defined other than in section 7701(a)(17), which provides, for purposes of sections 682 and 2516, that the terms “husband” and “wife” shall be

read to include a former husband or a former wife, respectively, and that “husband” shall be read as “wife” and “wife” as “husband” in certain circumstances. Although Congress’s specific instruction to read “husband” and “wife” interchangeably in those specific provisions could be taken as an indication that Congress did not intend the terms to be read interchangeably in other provisions, the Service believes that the better understanding is that the interpretive rule set forth in section 7701(a)(17) makes it reasonable to adopt, in the circumstances presented here and in light of Windsor and the principle of constitutional avoidance, a more general rule that does not foreclose a gender-neutral reading of gender-specific terms elsewhere in the Code.

Section 7701(p) provides a specific cross-reference to the Dictionary Act, 1 U.S.C. § 1, which provides, in part, that when “determining the meaning of any Act of Congress, unless the context indicates otherwise, . . . words importing the masculine gender include the feminine as well.” The purpose of this provision was to avoid having to “specify males and females by using a great deal of unnecessary language when one word would express the whole.” Cong. Globe, 41st Cong., 3d Sess. 777 (1871) (statement of Sen. Trumbull, sponsor of Dictionary Act). This provision has been read to require construction of the phrase “husband and wife” to include same-sex married couples. See Pedersen v. Office of Personnel Mgmt., 881 F. Supp. 2d 294, 306-07 (D. Conn. 2012) (construing section 6013 of the Code). The Dictionary Act thus supports interpreting the gender-specific terms in the Code in a gender-neutral manner “unless the context indicates otherwise.” 1 U.S.C. § 1. “Context” for purposes of the Dictionary Act “means the text of the Act of Congress surrounding the word at issue, or

the texts of other related congressional Acts.” Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council, 506 U.S. 194, 199 (1993). Here, nothing in the surrounding text forecloses a gender-neutral reading of the gender-specific terms. Rather, the provisions of the Code that use the terms “husband and wife,” “husband,” and “wife” are inextricably interwoven with provisions that use gender-neutral terms like “spouse” and “marriage,” indicating that Congress viewed them to be equivalent. For example, section 1(a) sets forth the tax imposed on “every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013,” even though section 6013 provides that a “husband and wife” make a single return jointly of income. Similarly, section 2513 of the Code is entitled “Gifts by Husband or Wife to Third Party,” but uses no gender-specific terms in its text. See also, e.g., §§ 62(b)(3), 1361(c)(1).

This interpretation is also consistent with the legislative history. The legislative history of section 6013, for example, uses the term “married taxpayers” interchangeably with the terms “husband” and “wife” to describe those individuals who may elect to file a joint return, and there is no indication that Congress intended those terms to refer only to a subset of individuals who are legally married. See, e.g., S. Rep. No. 82-781, Finance, Part 1, p. 48 (Sept. 18, 1951). Accordingly, the most logical reading is that the terms “husband and wife” were used because they were viewed, at the time of enactment, as equivalent to the term “persons married to each other.” There is nothing in the Code to suggest that Congress intended to exclude from the meaning of these terms any couple otherwise legally married under state law.

Fourth, other considerations also strongly support this interpretation. A gender-neutral reading of the Code fosters fairness by ensuring that the Service treats same-sex couples in the same manner as similarly situated opposite-sex couples. A gender-neutral reading of the Code also fosters administrative efficiency because the Service does not collect or maintain information on the gender of taxpayers and would have great difficulty administering a scheme that differentiated between same-sex and opposite-sex married couples.

Therefore, consistent with the statutory context, the Supreme Court's decision in Windsor, Revenue Ruling 58-66, and effective tax administration generally, the Service concludes that, for Federal tax purposes, the terms "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if they were lawfully married in a state whose laws authorize the marriage of two individuals of the same sex, and the term "marriage" includes such marriages of individuals of the same sex.

3. Marital Status Based on the Laws of the State Where a Marriage Is Initially Established

Consistent with the longstanding position expressed in Revenue Ruling 58-66, the Service has determined to interpret the Code as incorporating a general rule, for Federal tax purposes, that recognizes the validity of a same-sex marriage that was valid in the state where it was entered into, regardless of the married couple's place of domicile. The Service may provide additional guidance on this subject and on the application of Windsor with respect to Federal tax administration. Other agencies may

provide guidance on other Federal programs that they administer that are affected by the Code.

Under this rule, individuals of the same sex will be considered to be lawfully married under the Code as long as they were married in a state whose laws authorize the marriage of two individuals of the same sex, even if they are domiciled in a state that does not recognize the validity of same-sex marriages. For over half a century, for Federal income tax purposes, the Service has recognized marriages based on the laws of the state in which they were entered into, without regard to subsequent changes in domicile, to achieve uniformity, stability, and efficiency in the application and administration of the Code. Given our increasingly mobile society, it is important to have a uniform rule of recognition that can be applied with certainty by the Service and taxpayers alike for all Federal tax purposes. Those overriding tax administration policy goals generally apply with equal force in the context of same-sex marriages.

In most Federal tax contexts, a state-of-domicile rule would present serious administrative concerns. For example, spouses are generally treated as related parties for Federal tax purposes, and one spouse's ownership interest in property may be attributed to the other spouse for purposes of numerous Code provisions. If the Service did not adopt a uniform rule of recognition, the attribution of property interests could change when a same-sex couple moves from one state to another with different marriage recognition rules. The potential adverse consequences could impact not only the married couple but also others involved in a transaction, entity, or arrangement. This would lead to uncertainty for both taxpayers and the Service.

A rule of recognition based on the state of a taxpayer's current domicile would also raise significant challenges for employers that operate in more than one state, or that have employees (or former employees) who live in more than one state, or move between states with different marriage recognition rules. Substantial financial and administrative burdens would be placed on those employers, as well as the administrators of employee benefit plans. For example, the need for and validity of spousal elections, consents, and notices could change each time an employee, former employee, or spouse moved to a state with different marriage recognition rules. To administer employee benefit plans, employers (or plan administrators) would need to inquire whether each employee receiving plan benefits was married and, if so, whether the employee's spouse was the same sex or opposite sex from the employee. In addition, the employers or plan administrators would need to continually track the state of domicile of all same-sex married employees and former employees and their spouses. Rules would also need to be developed by the Service and administered by employers and plan administrators to address the treatment of same-sex married couples comprised of individuals who reside in different states (a situation that is not relevant with respect to opposite-sex couples). For all of these reasons, plan administration would grow increasingly complex and certain rules, such as those governing required distributions under section 401(a)(9), would become especially challenging. Administrators of employee benefit plans would have to be retrained, and systems reworked, to comply with an unprecedented and complex system that divides married employees according to their sexual orientation. In many cases, the tracking of

employee and spouse domiciles would be less than perfectly accurate or timely and would result in errors or delays. These errors and delays would be costly to employers, and could require some plans to enter the Service's voluntary compliance programs or put benefits of all employees at risk. All of these problems are avoided by the adoption of the rule set forth herein, and the Service therefore has chosen to avoid the imposition of the additional burdens on itself, employers, plan administrators, and individual taxpayers. Accordingly, Revenue Ruling 58-66 is amplified to adopt a general rule, for Federal tax purposes, that recognizes the validity of a same-sex marriage that was valid in the state where it was entered into, regardless of the married couple's place of domicile.

4. Registered Domestic Partnerships, Civil Unions, or Other Similar Formal Relationships Not Denominated as Marriage

For Federal tax purposes, the term "marriage" does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state law that are not denominated as a marriage under that state's law, and the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a formal relationship. This conclusion applies regardless of whether individuals who have entered into such relationships are of the opposite sex or the same sex.

HOLDINGS

1. For Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the

individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex.

2. For Federal tax purposes, the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

3. For Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 58-66 is amplified and clarified.

PROSPECTIVE APPLICATION

The holdings of this ruling will be applied prospectively as of September 16, 2013.

Except as provided below, affected taxpayers also may rely on this revenue ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund for any overpayment of tax resulting from these holdings, provided the applicable limitations period for filing such claim under section 6511 has not expired. If an affected taxpayer files an original return, amended return, adjusted

return, or claim for credit or refund in reliance on this revenue ruling, all items required to be reported on the return or claim that are affected by the marital status of the taxpayer must be adjusted to be consistent with the marital status reported on the return or claim.

Taxpayers may rely (subject to the conditions in the preceding paragraph regarding the applicable limitations period and consistency within the return or claim) on this revenue ruling retroactively with respect to any employee benefit plan or arrangement or any benefit provided thereunder only for purposes of filing original returns, amended returns, adjusted returns, or claims for credit or refund of an overpayment of tax concerning employment tax and income tax with respect to employer-provided health coverage benefits or fringe benefits that were provided by the employer and are excludable from income under sections 106, 117(d), 119, 129, or 132 based on an individual's marital status. For purposes of the preceding sentence, if an employee made a pre-tax salary-reduction election for health coverage under a section 125 cafeteria plan sponsored by an employer and also elected to provide health coverage for a same-sex spouse on an after-tax basis under a group health plan sponsored by that employer, an affected taxpayer may treat the amounts that were paid by the employee for the coverage of the same-sex spouse on an after-tax basis as pre-tax salary reduction amounts.

The Service intends to issue further guidance on the retroactive application of the Supreme Court's opinion in Windsor to other employee benefits and employee benefit plans and arrangements. Such guidance will take into account the potential

consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries. The Service anticipates that the future guidance will provide sufficient time for plan amendments and any necessary corrections so that the plan and benefits will retain favorable tax treatment for which they otherwise qualify.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Richard S. Goldstein and Matthew S. Cooper of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Mr. Goldstein and Mr. Cooper at 202-622-3400 (not a toll-free call).