

Reproduced with permission from Tax Management Weekly State Tax Report, Filing Uncertainty for Same-Sex Couples in 2015, 01/09/2015. Copyright © 2015 by The Bureau of National Affairs, Inc. (800-372-1033)

<http://www.bna.com>

## Multistate Developments

### Filing Requirements

#### **Filing Uncertainty Remains For Married, Same-Sex Taxpayers in 2015**

**A**lthough the last two years have brought significant clarity at the state level regarding married, same-sex couples' filing status, many same-sex couples are still unable to file joint state returns in 2015.

Recent court rulings have added to the constantly changing landscape for same-sex couples, leaving many restricted to filing separately or unsure as to their appropriate filing status.

"That's the hardest part for same-sex couples — not knowing how to plan what their tax liability will be," Janis Cowhey, partner at the New York City Office of Marcum LLP, told Bloomberg BNA Dec. 19, 2014.

**Controversy.** Same-sex marriage bans in Kentucky, Michigan, Ohio and Tennessee were upheld by the U.S. Court of Appeals for the Sixth Circuit in *DeBoer v. Snyder*, 6th Cir., No. 14-1341, 11/6/14. Further, this ruling upheld the states' authority to refuse to officially recognize same-sex marriages performed in other states; thus, denying legally married, same-sex taxpayers the ability to file a joint state return.

Montana's ban on same-sex marriage was overturned in *Rolando v. Fox*, D. Mont., No. cv-14-40-GF-BMM, 11/19/14, making it the 35th state to recognize same-sex marriage at that time. An appeal in the *Rolando* case is pending before the U.S. Court of Appeals for the Ninth Circuit.

Arkansas added to the controversy in *Jernigan v. Crane*, E.D. Ark, No. 4:13-cv-00410, 11/25/14, with its holding that Arkansas's ban on same-sex marriage was unconstitutional. Arkansas's attorney general appealed the decision to the U.S. Court of Appeals for the Eighth Circuit Dec. 23, 2014.

**Current Bans.** Same-sex marriage bans remain in place in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee and Texas. These bans and appeals render some same-sex couples uncertain as to their filing status. "There are fifty states with fifty rules; you have to know them," Cowhey said.

Filing uncertainty may be dissipating as more states have increasingly recognized same-sex marriage for tax

purposes, but complications and disparity between states remain. Although it is likely we will see states continuing to recognize same-sex marriages for tax purposes in 2015, it is difficult to predict such events after seeing the controversy that existed among states last year.

Full text of the *DeBoer v. Snyder* ruling is available at <http://www.ca6.uscourts.gov/opinions.pdf/14a0275p-06.pdf>. Full text of the *Rolando v. Fox* ruling is available at <http://cdn.ca9.uscourts.gov/datastore/general/2014/11/19/rolando%20DC%20Order.pdf>. Full text of the *Jernigan v. Crane* ruling is available at <http://www.ore.uscourts.gov/sites/ared/files/413cv410.pdf>.

BY JESSICA WATKINS

To contact the reporter on this story: Jessica Watkins in Washington at [jWatkins1@bna.com](mailto:jWatkins1@bna.com)

To contact the editor responsible for this story: Steven Roll at [sroll@bna.com](mailto:sroll@bna.com)

□ *For additional discussion of same-sex marriage in Montana, see Individual Income Tax Navigator, at Montana 5.3. For additional discussion of same-sex marriage in Ohio, see Individual Income Tax Navigator, at Ohio 5.3. For additional discussion of same-sex marriage in Arkansas, see Individual Income Tax Navigator, at Arkansas 5.3.*