

2008 WL 4760987 (Conn.A.G.)

Office of the Attorney General

State of Connecticut  
Opinion No. 2008-018  
October 28, 2008

\*1 Honorable Pam Law  
Commissioner of Revenue Services  
25 Sigourney Street  
Hartford, CT 06106-5032

Dear Commissioner Law:

You have asked for advice with regard to the impact on state tax laws of the Supreme Court's decision in *Kerrigan v. Commissioner of Public Health* regarding same-sex marriages. In particular, state personal income tax statutes are tied to a taxpayer's federal income tax status. An analogous issue previously arose after the enactment of the civil union law, and the legislature addressed the issue by requiring state tax law to be construed as if civil unions were recognized under federal law. See [Conn. Gen. Stat. § 46b-38pp](#). In light of *Kerrigan's* holding that same sex couples have the right under our state constitution to marry and be accorded all the rights and benefits of marriage under state law, [Conn. Gen. Stat. § 46b-38pp](#) must be construed to accord parties to a same sex marriage the same tax treatment as parties to civil unions or other marriages.

As you know, many of the statutory provisions determining the Connecticut personal income tax are dependent on the taxpayer's federal filing status. In particular, the rate of personal income tax is determined by whether the taxpayer or taxpayers file a return under the federal income tax as (1) “an unmarried individual or married individual filing separately”; (2) “a head of household”; or (3) “*any husband and wife who file a return under the federal income tax ... as married individuals filing jointly ...*” [Conn. Gen. Stat. § 12-700](#) (emphasis added). The same distinctions are made for other provisions of the personal income tax, including those relating to the determination of adjusted gross income, *id.*, § 12-701(20), personal exemptions, *id.*, § 12-702, credits based on adjusted gross income, *id.*, § 12-703, and credits for property taxes, *id.*, § 12-704c.

In light of the definition in Federal Defense of Marriage Act that limits “marriage” to “a legal union between one man and one woman as husband and wife,” [1 U.S.C. § 7](#), there is no question that under federal law a “husband and wife who file a return ... as married individuals filing jointly” refers to a man and a woman who are married. See [26 U.S.C. § 1](#). Thus, a same-sex couple married under Connecticut law may not file a federal income tax return as “married individuals filing jointly.”

This issue similarly arose after the enactment of the Connecticut civil union law. Although the legislature's intent in enacting the civil union law clearly was to afford civil union couples the same legal rights as married couples, state tax statutes are expressly tied to federal filing status. The issue was resolved by legislation. See [Conn. Gen. Stat. § 46b-38pp](#) (providing that the state income tax laws “shall apply to parties to a civil union under the laws of this state as if federal income tax law and federal estate and gift tax law recognized such a civil union in the same manner as Connecticut law”).

\*2 In *Kerrigan*, the Supreme Court concluded that, under the Connecticut Constitution, same-sex couples cannot be denied the freedom to marry. Under the court's reasoning in *Kerrigan*, treating same-sex marriages differently under the tax laws would violate equal protection principles. We must therefore interpret [Conn. Gen. Stat. § 46b-38pp](#) as including same-sex marriages. Parties to a same-sex marriage must be accorded the same tax treatment afforded parties to other marriages, so they may file jointly as married couples. See [State v. Cook, 287 Conn. 237, 245 \(2008\)](#) (statutes must be construed to avoid constitutional infirmities). For the sake of clarity and consistency, we recommend that legislation be sought to revise the statutes to conform to the Supreme Court's decision in *Kerrigan*.

Very truly yours,

Richard Blumenthal  
Attorney General

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