

July 7, 2015

## Filing an Original or Amended Nebraska Individual Income Tax Return as a Same-Sex Married Couple

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### Issue

How should same-sex individuals who are lawfully married file their Nebraska individual income tax returns?

### Conclusion

Same-sex couples who were lawfully married during the tax year for which they are filing must file their Nebraska individual income tax returns using the same filing status as used for their federal income tax returns unless otherwise allowed by Nebraska law.

### Analysis

[Neb. Rev. Stat. § 77-2732](#) provides:

- (1) If the federal tax liability of husband or wife is determined on separate federal returns, their tax liabilities in this state shall be separately determined.
- (2) Except as provided in subsection (3) of this section, if the federal tax liability of husband and wife is determined on a joint federal return, their tax liability shall be determined in this state jointly and their tax liability shall be joint and several.
- (3) If the federal tax liability of husband and wife is determined on a joint federal return and either husband or wife is a nonresident individual or partial-year resident individual and the other a resident individual, separate taxes shall be determined on their separate tax liabilities in this state on such forms as the Tax Commissioner shall prescribe and their tax liability shall be separate unless both elect to determine their joint tax liability in this state as if both were resident individuals, in which

case their tax liability shall be joint and several. If a husband and wife file a joint federal income tax return but determine their tax liabilities in this state separately, they shall compute their tax liabilities in this state as if their federal tax liabilities had been determined separately.

(4) During the time a claim for credit or refund may be filed pursuant to section 77-2793, a husband and wife electing to be taxed as if both were residents of this state may revoke the election by each filing a separate return on such forms and in such manner as may be required by the Tax Commissioner.

Pursuant to the decision issued by the Supreme Court of the United States in [\*Obergefell v. Hodges\*](#) and Neb. Rev. Stat. § 77-2732, for tax years 2015 and after, lawfully married same-sex couples must file their Nebraska individual income tax returns using the same filing status as used to file their federal income tax returns. Additionally, lawfully married same-sex couples who file an original Nebraska individual income tax return on or after June 29, 2015, for a tax year prior to 2015, must file their returns using the same filing status as used to file their federal income tax returns.

For tax year 2014, lawfully married same-sex couples who filed their original Nebraska individual income tax returns before June 29, 2015, may choose, but are not required, to amend their Nebraska individual income tax returns to change their filing status to married, filing jointly or married, filing separately as reflected on their federal income tax return, in which case all items required to be reported on the Nebraska individual income tax return must be adjusted to be consistent with the new married filing status.

For tax years before 2014, lawfully married same-sex couples may choose, but are not required, to amend their Nebraska individual income tax returns to change their filing status to married, filing jointly or married, filing separately as reflected on their federal return, if the time period for filing an amended income tax return for the tax year has not expired.

[Neb. Rev. Stat. § 77-2793](#) provides that taxpayers may file a claim for credit or refund of an overpayment of any income tax within three years from the date the return was filed or two years from the time the tax was paid, whichever period expires later.

APPROVED:



Leonard J. Sloup  
Acting Tax Commissioner

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