VERMONT DEPARTMENT OF TAXES
TECHNICAL BULLETIN

TAX:	**INCOME**	**TB-55**
SUBJECT:	**EXCEPTIONS TO REQUIREMENT THAT VERMONT FILING STATUS MUST MIRROR FEDERAL FILING STATUS; PROCEDURES FOR ALLOCATION OF EXEMPTIONS AND DEDUCTIONS FOR RECOMPUTED FEDERAL INCOME TAX RETURNS**	**ISSUED: 10/7/10**

STATUTORY REFERENCES: **32 V.S.A. § 5811(6), (9), (10), (11); 32 V.S.A. § 5823; 32 V.S.A. § 5825**
REGULATORY REFERENCES: **REG. § 1.5811(11)**

Introduction

This bulletin addresses two related issues:

1. The limited exceptions to the general rule that a Vermont taxpayer is required to mirror federal filing status on the Vermont income tax return;[1] and
2. The method to be used to allocate federal deductions and expenses between spouses when Vermont either permits or requires a taxpayer-spouse to recompute their federal income tax return for Vermont income tax purposes.

As a general rule, taxpayers are required to use the same filing status for Vermont as they do on their federal tax return. Thus, when a husband and wife file a federal return using Married Filing Jointly status, they should file a Married Filing Jointly Vermont tax return. There are two exceptions to this general rule.

[1] This bulletin does not address the treatment of income for purposes of determining Household Income or preparation of the HI-144 schedule for Renter Rebate Claim or Property Tax Adjustment purposes.

The first exception to the general rule applies when a couple files a Married Filing Jointly federal tax return but only one spouse has sufficient nexus with Vermont to subject them to Vermont's tax jurisdiction. This can occur when one spouse is a nonresident of Vermont with no Vermont income and the other spouse meets the definition of Vermont full-year resident. In this circumstance, Vermont requires the filing of a Vermont tax return to reflect the Vermont income earned by the Vermont resident spouse. However, the Vermont resident can elect to file using Married Filing Separately status based on a federal tax return re-computed for Vermont purposes using that filing status. When a recomputed Married Filing Separately federal tax return for Vermont tax purposes is prepared, the recomputed return must allocate exemptions and deductions reasonably. This allocation process will be addressed in subsection B of this bulletin.

The second exception pertains to civil union partners and same sex spouses holding a civil marriage license. Because Vermont recognizes these relationships while the federal government does not (and therefore requires single filing status), individuals in a civil union or civil marriage are required to recompute their federal tax returns based on either a Married Filing Separately or Married Filing Jointly status and to then file a Vermont return mirroring the recomputed federal filing status.

A. Exceptions to the general rule that a Vermont taxpayer is required to follow federal filing status

(1) One spouse is not subject to Vermont tax jurisdiction

Although a husband and wife are presumed to share a single domicile, this presumption can be overcome if the couple provides affirmative evidence to the contrary.[2] Regulation 1.5811(11)(A)(i), sec. 6. This situation may arise when a couple resides in Vermont and one spouse leaves the state to establish a permanent residence and to

[2] This exception as it applies to civil union partners and same sex spouses is discussed in part (2) of section A.

obtain full time employment in another state while the other spouse continues to reside in Vermont or conversely when a couple resides in another state and one spouse moves into Vermont to obtain permanent employment and establishes a permanent residence, while the other spouse continues to reside in the original home state or establishes residence in a third state.

When one spouse is not a resident of Vermont, two filing options are available if: (1) the couple filed their federal return using Married Filing Jointly status; (2) the nonresident spouse has no Vermont income; and (3) the resident spouse is a full-year Vermont resident. The two filing options are:

1. The couple can elect to have the non Vermont resident treated as a resident of Vermont by filing a joint Vermont return including all income earned by both spouses. In this instance, the couple may be able to use *Schedule IN-112, Calculation B* to claim a credit for taxes paid to another state; or
2. The couple can elect to exclude the income of the non Vermont resident spouse by recomputing the Vermont resident individual's federal tax return for Vermont purposes as Married Filing Separately. The individual residing in Vermont should prepare a federal return *for Vermont tax purposes only* using the exemptions and deductions allowed by the IRS rules for those filing as Married Filing Separately. Exemptions and deductions should be reasonably allocated between the spouses. This recomputed federal return should be attached to the Vermont return and clearly marked ***Recomputed for VT Purposes.*** A copy of the joint return actually filed with the IRS should also be attached. The re-computed federal return should then be used to complete the Vermont "Married Filing Separate" tax return.

The first option is permitted because when a couple files as Married Filing Jointly, they are considered a single individual for the tax year with one single domicile and residence. 32 V.S.A. § 5811(6). By electing to file a Vermont Married Filing Jointly

return, the spouse with no Vermont Income or residence in Vermont is voluntarily electing to be treated as a Vermont full year resident for purposes of the return. All of the income, wherever earned must be included in the calculation of Vermont tax and the couple should use *Schedule IN-112, Calculation B* to take credit for income taxes paid to another state or Canadian province.

The second option, recomputation to Married Filing Separately status, is the only alternative available for a couple to exclude the nonresident spouse's income from the determination of Vermont tax. ***Under no circumstances is it permitted for a couple in which one member meets the definition of a full year Vermont resident to file a Married Filing Jointly Vermont return and then use Schedule IN-113, Part I to deduct the income of the spouse who does not live within Vermont.*** The use of *Schedule IN-113, Part I* is not permitted - it is intended for use only by non residents and part year residents and cannot be used to exclude income of full year residents of Vermont or spouses who elect that treatment. By filing the Vermont return as Married Filing Jointly the spouse who does not live in Vermont is deemed to voluntarily accept the tax jurisdiction of Vermont. Further, to permit the use of this schedule to exclude income would not achieve a reasonable allocation of exemptions and deductions, effectively allowing all expenses and deductions to reduce the income of the resident spouse.

In order to utilize the recomputation method, the excluded spouse cannot be a resident of Vermont. An individual is deemed a resident of Vermont if the individual is domiciled in Vermont or the individual maintains a permanent place of abode in Vermont and is present within the state for more than an aggregate of 183 days during the taxable year. 32 V.S.A. § 5811(11). An individual who is domiciled in Vermont is a Vermont resident regardless of physical presence. Therefore, a recomputed Vermont tax return may only be filed if the taxpayer affirmatively establishes that the spouse living outside Vermont is not domiciled in Vermont. The taxpayer bears the burden of proof on this issue. For

further information on the issue of domicile, see Department of Taxes Regulation 1.5811(11).[3]

Recomputation is not permitted when the couple files the federal return as Married Filing Separately under the general rule that a couple's Vermont filing status should mirror the federal filing status. There are no circumstances under which a married couple may file as Married Filing Separately for federal income tax purposes, but as Married Filing Jointly for Vermont.

If both spouses are full year residents of Vermont, then the only filing option available is for the couple to file their Vermont return using the same status that was used in filing the federal return. No recomputation is permissible because each member of the couple is subject to Vermont tax jurisdiction[4]and the filing status should match the federal filing status. If either or both spouses earned income from non Vermont sources, the couple should file their Vermont joint income tax return and use *Schedule IN-112, Calculation B* to take credit for income taxes paid to another state or Canadian province. 32 V.S.A. § 5825. The couple is prohibited from using *Schedule IN-113, part 1* to determine the percentage of income that is deemed Vermont Income because that schedule is limited to part-year residents and nonresidents of Vermont.

Part year residents or non residents of Vermont have a Vermont filing requirement when they earn or receive Vermont Income. 32 V.S.A. § 5823(b). Similarly, it is possible for one spouse who is a part year or non resident of Vermont to have a Vermont filing requirement while the other spouse is not subject to Vermont's tax jurisdiction. A "part year resident" is defined as an individual who meets the criteria of

[3] The Domicile regulation is available at the Vermont Department of Taxes website http://www.state.vt.us/tax/pdf.word.excel/legal/regs/15811.pdf

[4] It is possible for an individual to be deemed a "resident" of more than one state. For example, an individual who has moved to Vermont, established a permanent place of abode, and resided in Vermont for more than 183 days would be deemed a Vermont resident even if that individual had not abandoned his or her prior domicile. In this instance, an individual may be required to file more than one state return as a resident.

resident for only a portion of the tax year.[5] 32 V.S.A. § 5811(10). A "nonresident" is an individual who is neither domiciled in Vermont nor has established a permanent place of abode in Vermont in which the individual was present for more than 183 days. 32 V.S.A. § 5811(9). If ***either*** spouse is determined to be a part year resident, or a non resident with Vermont income, then the only filing option for that couple is to file a Vermont income tax return that matched their federal tax return and to use *Schedule 113, Part 1* to determine the percentage of their income which is attributable to Vermont Income. No recomputation of the federal tax return is permitted. When a couple files as Married Filing Jointly, they are deemed a single individual for the tax year with one single domicile and residence. 32 V.S.A. § 5811(6). Use of *Schedule IN-113, Part 1*, prevents the non Vermont income from being taxed by Vermont and therefore no re-computation is necessary.

(2) Civil unions and same sex marriages

For Vermont income tax purposes, civil union partners and same sex spouses are treated identically to traditionally defined spouses. This means that the couple must file their Vermont income tax return as Civil Union/Married Filing Jointly or as Civil Union/Married Filing Separately. Such couples do not have the option of filing a Vermont return using the Single status.

Because the federal government does not recognize same sex marriage or civil unions, a same sex couple is required to recompute their federal return ***for Vermont tax purposes only*** as either Married Filing Jointly or as Married Filing Separately. They should use the exemptions and deductions allowed by the IRS rules for those filing as Married Filing Separately or Married Filing Jointly. If the Married Filing Separately option is chosen, exemptions and deductions should be reasonably allocated between

[5] In determining whether an individual meets the definition of a part year resident, you must also examine whether that person has exceeded the threshold limits of 32 V.S.A. § 5811(11)(A)(ii). Any individual who

the civil union partners. This recomputed federal return should be attached to the Vermont return and clearly marked ***Recomputed for VT Purposes.*** A copy of the returns actually filed with the IRS should also be attached. The recomputed federal return should then be used as the basis for the Vermont Civil Union/Married Filing Jointly or Civil Union/Married Filing Separately tax return.

If only one of the Civil Union partners or civil marriage spouses is a full time resident of Vermont and the other partner is a non resident with no Vermont income, then the partners/spouses may file their recomputed federal return using joint status or may use married filing separately on the recomputed federal return. The Vermont return must follow the filing status used on the recomputed federal return.

B. Allocation of Exemptions and Deductions

When a taxpayer is permitted to recompute their federal tax return to Married Filing Separately status, the taxpayer is required to prepare the recomputed federal return file using the exemptions and deductions allowed by the IRS rules for those filing as Married Filing Separately. Vermont requires those exemptions and deductions to be reasonably allocated between the spouses or civil union partners. Note that certain programs such as the Earned Income Credit may not be available to a couple who chooses to file as Married Filing Separately.

Although the reasonable allocation of expenses is a factual issue to be determined on a case by case basis, the following general guidelines should be followed:

a. Any guidelines established by the IRS for the allocation of exemptions and deductions when filing as Married Filing Separately should be followed.
b. Any rules established by the IRS for the filing of Married Filing Separately returns should be followed.

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maintains a permanent place of abode in Vermont and is present within the state for more than an aggregate of 183 days will be deemed a full year resident.

c. Each spouse should claim those exemptions and deductions that are directly attributed to that spouse. Examples are each spouse's personal exemption and the deductions for state and local taxes paid by each spouse.
d. The Vermont resident spouse should not claim any deduction for real estate taxes paid on the property where the nonresident spouse resides in another state.
e. Deductions that can be attributed to the couple jointly, such as interest on joint accounts or joint investments, should be shared on a pro rata basis based on the income of the spouses.
f. Any exemptions for dependents should be shared on a pro rata basis based on the income of the spouses.
g. Deductions and exemptions must be allocated and shared between the spouses. The same exemption or deduction cannot be claimed by both spouses.

The purpose of this bulletin is to provide general information to the public on the specified subject and does not replace the need for competent legal advice. This technical bulletin supersedes all prior Department pronouncements on this subject.

Approved:

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