

## Same Sex Marriage Questions: Guidance for County Clerks (June 29, 2015)

On June 26, 2015, the United States Supreme Court issued its opinion in *Obergefell et al. v. Hodges, Director Ohio Department of Health, et al.*, 576 U. S. \_\_\_\_ (2015). In its opinion, the Court reversed the Sixth Circuit Court of Appeal's ruling that upheld Tennessee's constitutional ban on same sex marriage. The Supreme Court held that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state.

No one has all of the answers to every question at this time. The Department of Revenue is complying with the United States Supreme Court decision and ensuring that it does so as quickly as possible. Realizing the county clerks are on the front line of communication with our customers, the Department wants every clerk's office to know that the Department is here to help in any way it can. If you are uncertain about any question from the public, please contact Katie Bryan, Communications Manager of the Vehicle Services Division, at (615) 253-7262.

### Frequently Asked Questions

The following are answers to commonly asked questions. If you start to receive repeated questions that are not addressed below, and would like an answer developed and circulated, please contact Katie Bryan.

- **Marital Status – Registration, Titles, Sales and Use Tax.** Several tax or fee exemptions, registration, title, and license plate laws relate to marital status. If any member of the public inquires as to the qualification of a specific tax, fee, registration, title, or license plate law as it relates to his or her marital status, please follow the below:
  - All properly married couples whether same sex or opposite sex are to be treated equally under the law.
  - Any reference to spouse, husband, or wife should be treated the same regardless of the combination of genders.
  - Same sex married couples and opposite sex married couples should be subject to the same documentation requirements—no more and no less. Accordingly, if it is your standard protocol to ask for a marriage license when processing a specific request, you may continue to do so regardless of

whether it is a same sex couple or an opposite sex couple. You may not ask for a marriage license only from a same sex couple, if it would not be routine or within the ordinary course of business, and if the same request would not be made to an opposite sex couple.

- **License Plates.** My spouse and I are in a same sex marriage. One of us qualifies for a specialty license plate. Can my spouse also receive the specialty plate?
  - Any spouse, regardless of gender, may receive a license plate for which you qualify, if the law specifically references that a spouse is eligible to receive the plate.
  
- **Vehicle or Aircraft Transfer – Sales Tax Refund.** My spouse and I have been in a same-sex marriage and recently transferred a vehicle or aircraft between each other. Can we apply for a refund for the sales and use tax that we paid on the transfer of the vehicle or aircraft between us?
  - Yes. You may apply for sales and use tax refund within three years from December 31<sup>st</sup> of the year in which the sales or use tax was paid.
  - If you paid use tax to the county clerk when you transferred the vehicle or aircraft, please submit a sales and use tax refund request directly to the Department of Revenue within the applicable statute of limitations. If a customer has any questions regarding the filing of a refund claim, please ask him or her to call the Department at (615) 741-0443.
  
- **Motor Vehicle Sales to Member of Armed Forces – Sales Tax Refund.** I am a member of the Armed Forces who qualifies under TENN. CODE ANN. § 67-6-303 for an exemption from sales and use tax for my motor vehicle. My spouse and I are in a same sex marriage and recently purchased a vehicle. We were charged sales and use tax even though I was on the title and registration with my spouse. May we apply for a refund of the sales and use tax paid on the vehicle?
  - Yes. If you and your spouse were lawfully married in any state at the time of purchasing the vehicle, you may apply for sales and use tax refund within three years from December 31 of the year in which the sales or use tax was paid.
  - If you paid use tax to the county clerk when you registered the vehicle, please submit a sales and use tax refund request within the three year time period directly to the Department of Revenue.
  - If you paid sales tax to the dealer when you bought the vehicle, please ask the dealer for a refund, and the dealer may apply to the Department of Revenue for its refund.
  
- **Automobile Transfers – Sales Tax Refund.** My spouse and I were in a same-sex marriage and recently transferred a vehicle between each other as a result of our

divorce terminating our marriage. Can we apply for a refund for the sales and use tax paid on the transfer of the vehicle between us?

- Yes. You may apply for sales and use tax refund within three years from December 31 of the year in which the sales or use tax was paid.
  - To apply for a refund of the use tax that you paid to the county clerk, please submit a sales and use tax refund directly to the Department of Revenue.
- **Recordation Tax.** My spouse and I are in a same sex marriage. We recently transferred real estate between us and paid the recordation tax to the clerk. We believe we are entitled to an exemption from the tax under TENN. CODE ANN. § 67-4-409(a)(3)(A). Can we file for a refund?
    - Yes. If you believe you are entitled to an exemption from the recordation tax that you previously did not qualify for because of Tennessee's non-recognition of your same sex marriage, you may request a refund directly from the Department of Revenue for the tax paid.
    - Any requests for refunds extending from the amended returns are limited to three years from December 31 of the year in which the tax was paid.