Beat: Politics

MAY v. SHALL Debate Arises in Maryland Income Tax Bill for Married Couples

Barve: MAY McMillan: SHALL

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USPA NEWS - Within days after the November 2012 General Election, and the passage of Question 6, which allowed County Clerks of the Court to issue Marriage Licenses to same sex couples effective January 1, 2013, Delegate Herb McMillan (R-30) recognized an issue in the Md. tax code and pre-filed HB 47 to fix it.

As currently written, the filing status on your Maryland income tax return MUST mirror that of your Federal income tax return, meaning, that if your filing status on your Federal income tax return is “Single“, so must be the filing status on your Maryland income tax return.

As the former President of the Maryland Taxpayers Association, McMillan realized this would present a problem, as same sex couples went to file their 2013 Maryland income tax returns. The Federal Government does not recognize same sex marriages and thus doesn´t allow for couples to file as married on their Federal tax return.

In order for this to happen in Maryland, the tax law needed to be changed. McMillan had a bill drafted and pre-filed that replaced the wording “Husband and Wife“ with “Married Couple“ throughout the existing tax code and added the following section:

(2) A MARRIED COUPLE WHO DOES NOT FILE A JOINT FEDERAL INCOME TAX RETURN SHALL FILE:

(I) A JOINT MARYLAND INCOME TAX RETURN; OR

(II) A MARRIED FILING SEPARATELY INCOME TAX RETURNS.

On January 25, 2013, House Majority Leader Kumar Barve, (D-17) supposedly not knowing of McMillan´s Bill filed the exact same piece of legislation, with one material difference; the word “MAY“. Majority Leader Barve´s bill also replaces the wording “Husband and Wife“ with “Married Couple“ throughout the existing tax code and added the following section:

(2) A MARRIED COUPLE WHO DOES NOT FILE A JOINT FEDERAL INCOME TAX RETURN MAY FILE:

(I) A JOINT MARYLAND INCOME TAX RETURN; OR

(II) A MARRIED FILING SEPARATELY INCOME TAX RETURNS.

Yes, the “material“ difference between these two bills is a single word. McMillan´s pre-filed HB 47 says “SHALL“ and Barve´s filed January 25 says “MAY“. Does a single word really matter? In this case, Yes, and it´s difference is legally significant.

SHALL requires performance of the law. In this case it would require all married couples to file their Maryland income tax return as either “Married filing jointly“ or “Married filing separately“.

MAY makes no performance requirement. In this case, married couples could file their Maryland income tax returns as “Married filing jointly“, “Married filing separately“, or Single.

A married couple filing their Maryland income tax return as single makes no sense, and goes against the spirit of the law. The change in the law was meant to achieve equality, not equality with a benefit of being able to file married or single, whichever way is financially best for you.

Hopefully, Majority Leader Barve and his 55 co-sponsors will recognize the significance of the word “MAY“ and come together with

Delegate McMillan to use the proper word “SHALL“.

Both bills are scheduled for public hearing on Tuesday, February 26, at 1:00PM before the House Ways and Means Committee.

Article online:
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