

Tax Day gets complicated for same-sex couples in states that don't recognize their marriages

AP

Associated Press April 13, 2015 | 6:58 a.m. EDT

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WASHINGTON (AP) — A necessary burden for most Americans, Tax Day is an accounting nightmare for thousands of gay and lesbian couples as they wrestle with the uneven legal status of same-sex marriage in the United States.

They live in a country that recognizes their marriages, but some reside in the 13 states that do not, an issue that will be argued before the Supreme Court later this month.

At tax time, and Wednesday is the filing deadline, it gets complicated because most state income tax returns use information from a taxpayer's federal return.

Straight couples simply copy numbers from one form to another. But that doesn't work for same-sex couples reporting combined incomes, deductions and exemptions on their federal tax returns. These couples must untangle their finances on their state returns, where they are still considered single.

"We're adults, we're contributing to the welfare of society and yet, here's this one thing that just reaches up every year and kind of slaps us in the face," said Brian Wilbert, an Episcopal priest who lives in Oberlin, a small college town in northern Ohio.

Wilbert married his husband, Yorki Encalada, in 2012, at a ceremony in upstate New York. He is filing a joint federal tax return for the second time this year. But Ohio, which doesn't recognize same-sex marriages, requires the couple to file their state tax returns as if they were single.

"It may not be the most burning thing," Wilbert said. "But as we think about equality and marriage equality, this is an important thing because it's part of what couples do."

The number of states that recognize same-sex marriages has grown to 37, plus the District of Columbia, since the Supreme Court struck down part of the federal Defense of Marriage Act in 2013.

After the ruling, the IRS announced that it would recognize same-sex marriages for federal tax purposes, even if couples lived in states that did not.

The Supreme Court is scheduled hear arguments in another same-sex marriage case April 28. Advocates hope the court will compel the remaining states to recognize gay and lesbian marriages.

Opponents of same-sex marriage want the court to send the issue back to the states. They note that recognition of same-sex marriage has spread largely through court orders, rather than the ballot box.

"It's not about the rights of a handful of people who want to change the institution of marriage," said Phil Burress of Citizens for Community Values, an Ohio group. "It's about the will of the people."

The benefits of marriage are a mixed bag when it comes to taxes. Some couples, especially those with disparate incomes, can lower their combined tax bills by getting married. Others pay a marriage penalty.

The vast majority of married couples in the U.S. file joint federal tax returns in which they combine their incomes, exemptions, deductions and credits to calculate their tax liability. But same-sex couples are not allowed to file joint tax returns in most states that don't recognize their marriages. Instead, they have to unravel their finances and file separate state returns.

"So you have this one return that would normally give you the numbers to do your state tax return, but instead you have to split all your incomes again and pretend like you're not married," said Deb L. Kinney, a partner at the law firm of Johnston, Kinney & Zulaica in San Francisco.

"Your health care benefits will be taxed differently and your credits will be different. Your interest deduction could be different, and then you have to go through the allocation on each return," Kinney said. "It's much more expensive and cumbersome."

With the tax filing deadline approaching on Wednesday, states that don't recognize same-sex marriages are dealing with these issues in different ways. Five states require same-sex couples to fill out multiple federal tax returns, sometimes called dummy returns, so they can come up with the appropriate numbers for their state returns. This is how it works in Georgia, Kentucky, Louisiana, Michigan and Nebraska.

First, a same-sex couple fills out a joint federal income tax return, just like any other married couple. This is the return they file with the IRS.

Next, each spouse fills out a separate federal return as if the filer was single. Information from these returns is used to fill out state income tax returns, which are filed as if each was single.

"You have to literally make out five returns and file three," said Scott Squillace, a tax lawyer who wrote a legal guide for gay and lesbian couples called, "Whether To Wed."

"It's dizzying."

There's more.

"If someone with a joint bank account writes a check for a charitable donation, the question is, do you split it 50-50? Or is it that person's deduction when they file a single return?" said Arianne Plasencia, a tax lawyer at the Carlton Fields law firm in Miami.

Kansas, North Dakota and Ohio take a different approach. These states provide worksheets that same-sex couples must complete to separate their finances. In Ohio, the form has 31 lines, though most couples don't need to fill out every line.

"There is no way that I, as a Joe Q. Public, who happens to be gay and in a same-gender marriage, would figure out how to fill this form out," said Wilbert, the Episcopal priest. "I mean, it's just impossible."

Wilbert said he had to hire an accountant to do his taxes for the first time in his life. "I also had to get an extension, which I never had to do."

The issue is moot in South Dakota because there is no state income tax. It's less of an issue in Arkansas and Mississippi because these states don't use information from federal returns on their state income tax forms.

Alabama has same-sex married couples divide the income and taxes they report on their federal returns, based on each spouses' share of their combined income.

Missouri doesn't recognize same-sex marriages, but Gov. Jay Nixon issued an executive order requiring gay and lesbian couples to file joint state tax returns if they file a joint federal return.

This is much simpler than in other states. But what if filing as a married couple causes your taxes to go up?

"For the people it hurts, how unfair," said Janis Cowhey, a tax partner at the Marcum accounting firm in New York. "You won't recognize my marriage, but you're going to make me pay more in taxes because I got married somewhere else."