



For gay and lesbian couples, a new wrinkle at tax time

By Judith E. Schaeffer

As April 15 approaches and our thoughts turn once again to springtime and tax returns, most Americans, particularly heterosexuals, have no difficulty in determining which box to check on their Form 1040s regarding filing status. It's pretty clear to them whether they are "single," "married filing jointly," or "married filing separately."

But for me, and for the many other gay and lesbian Americans who have now been legally married under civil law, either in another country or in Massachusetts, Form 1040 has suddenly become a perplexing dilemma. Though a Form 1040 can contain many complicated things, deciding one's filing status should not be one of them.

Canadian wedding

Last summer, my partner of 26 years and I were legally married in Toronto. For opposite-sex American couples, getting married can be as simple as a visit to their local justice of the peace (or, in Las Vegas, an Elvis impersonator). But my partner and I not only had to leave our home state of Virginia, we had to leave our own country in order to get married — because in no state in America can same-sex couples marry, except Massachusetts.

There, gay and lesbian couples have been able to marry for the past year, thanks to a decision by the state's highest court holding that the denial of equal marriage rights to same-sex couples constitutes impermissible discrimination under the state constitution.

Since then, lower courts in other states, most recently New York and California, have issued similar rulings under their own state constitutions. This has prompted renewed calls from some quarters for an amendment to the U.S. Constitution that would prohibit recognition of the marriages of same-sex couples and deny us the more than 1,000 legal rights and benefits that flow from marriage.

Against this backdrop looms Form 1040. If my spouse and I were an opposite-sex couple, Virginia and the federal government would recognize our Canadian marriage under the rules of comity and respect traditionally applied to marriages legally performed in and recognized by another sovereign nation. Filing our tax returns would then be simple. But because of the so-called federal Defense of Marriage Act and similarly discriminatory laws in Virginia, neither the IRS nor the state of Virginia recognizes our marriage.

Although my spouse and I have been in a committed relationship that has lasted longer than the marriages of many heterosexual couples, America considers us to be legal strangers. We work, we pay taxes (plenty), we keep up our house, we clean up after our dog, we are friendly with our neighbors and we daily confront the same trials and tribulations that married heterosexual couples do, but still we lack the important legal protections that they have. This is fundamentally wrong.

One day, of course, this will all be resolved. But for now, tax returns must be filed, and gay and lesbian Americans are being forced to grapple with an insulting absurdity that our heterosexual counterparts don't face: deciding which filing status box to check on Form 1040.

I am married, but if I check "married" on my Form 1040, the IRS might accuse me of filing a false return. Indeed, according to the IRS Web site, "Your filing status depends on whether you are considered unmarried or married. A marriage means only a legal union between a man and a woman as husband and wife." However, I cannot simply check "single" because I am not.

Filing under protest

The best that I can come up with is to put an asterisk next to "single" and explain the truth — that I am legally married, that I understand that because of federal and state laws my marriage is not recognized, that I consider this to be an unconstitutional deprivation of the equal protection of the laws to which my spouse and I are entitled, that I am filing the return as "single" under protest, and that I should be given the opportunity to file as "married," which I am.

So for now, until the arc of the moral universe bends just a little bit further toward justice, label me "single filing asterisk."

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