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Navigating Income Taxes for Married Same-Sex Couples

How to deal with federal and state income taxes is an issue that arises for nearly everyone and is made particularly complicated by the possibility that your state may respect your marriage, but the federal government will not. Adding to the uncertainty, many states require that a person use the same marital status classification for state and federal income taxes. Further, single people and married couples are often subject to different tax penalties, so incorrectly designating one's status may result in a person overpaying his or her taxes, or, more dangerously, underpaying his or her taxes, which may trigger penalties and interest payments. GLAD urges you to contact your own attorney or tax professional for assistance specific to your situation. The following discussion is not intended as advice, but can provide you information for discussing these issues with a qualified professional.

Federal Income Taxes

In light of federal marriage discrimination (that is, the so-called "Defense of Marriage Act" or "DOMA"), the federal government does not consider a married same-sex couple as married for purposes of federal laws, including for filing of federal income taxes. **As a result, on FEDERAL tax returns, same-sex married couples are NOT allowed to use the married filing jointly or married filing separately status, but each member of a married same-sex couple MUST file as single.**

GLAD recommends, however, that couples consider designating in some way that the marriage has occurred. Ideas for designating your true marital status without claiming that status are discussed below. Doing so could help to avoid penalties for underpaying taxes and could also prevent others from using the designation of "single" on the tax return to argue or prove that a person is not really married when that issue arises in other legal contexts (i.e. applying for a mortgage or other loan). In order to acknowledge both the discriminatory federal law as well as the truth of your marriage, accountants suggest two options for designating your marital status on a "single" return:

1. Include a cover letter or disclosure form with the tax return. The disclosure form allows a taxpayer to highlight to the IRS issues raised by the tax return. It could include a statement that the taxpayer was married to a person of the same sex as of a certain date (and the marriage certificate could be attached as well), and that the only reason he or she is filing as a single person is because of the federal discriminatory law known as "DOMA."

2. On the tax return itself, put an asterisk by the “x” in the “single” box, and indicate somewhere on the form (such as the margin) that the taxpayer is married to a person of the same-sex, the date of the marriage, and that this designation as “single” is for federal income tax filing purposes only.

State Income Taxes

How married couples should file taxes in their home state depends on the way the home state’s tax law is structured, as well as the existence or non-existence of a state marriage restriction. There are essentially three different kinds of states with regard to the filing of state income taxes:

1. Those in which state filing status is tied to federal filing status,¹ whether or not the state has its own marriage restriction.
2. Those in which state filing status is not tied to federal status, but have a marriage restriction prohibiting respect for marriages between same-sex couples entered into elsewhere.
3. Those in which state filing status is not tied to federal status and there is no marriage restriction.

For the first category of states, it is likely that the rule tying state filing status to federal filing status is binding, and thus the federal discrimination of “DOMA” is incorporated into state law. It is not clear if this is true in all circumstances, and it is crucial to consult with a tax attorney or CPA in your state. If federal discrimination is incorporated into state law, married couples have the same options with regard to their state income tax forms as with regard to the federal. (See above).

For states that do not link the state and federal filing statuses, but which have their own marriage restrictions (by law or constitutional amendment), married couples have the same options with regard to their state income tax forms as with regard to the federal. (See above).

For the third category of states, a couple fills out two **federal** forms. One designates the individual as single to submit to the IRS; the other is completed listing the taxpayers as married in order to calculate their income for purposes of a state return, which they file under the rates and obligations for married persons in that state. In most cases, the couple will file as married filing jointly but some will choose to file as married filing separately.

¹ Note that there is a difference between having to use the numbers set out on a federal tax form to calculate state tax obligations and a mandate that the marital status be identical on state and federal income tax forms. Even in states that do not mandate identical filing status, couples will still likely have to calculate the numbers using a federal form that does not end up getting submitted to the IRS. Conversely, the obligation to use those numbers does not mean that your state mandates identical filing status. Look carefully at the tax laws of your state and consult with a qualified tax practitioner.

How to File Income Taxes in Each of the Six New England States

The following indicates how to file income taxes in each of the New England states. **In states where the tax law requires that a same-sex married couple file as single, GLAD recommends indicating that the person is married using one of the options described in the section above on Federal Income Taxes.**

MASSACHUSETTS

Same-sex married couples in Massachusetts **MUST** file as single on their federal return and **MUST** file as married on their state return (either as married filing jointly or as married filing separately, as the case may be). For information about filing a Massachusetts income tax return, the Massachusetts Department of Revenue has issued Technical Information Release 04-17 on “Massachusetts Tax Issues Associated with Same-Sex Marriages” at: [http://www.mass.gov/?pageID=dorterminal&L=7&L0=Home&L1=Businesses&L2=Help+%26+Resources&L3=Legal+Library&L4=Technical+Information+Releases&L5=TIRs+-+By+Year\(s\)&L6=2004+Releases&sid=Ador&b=terminalcontent&f=dor_rul_reg_tir_tir_04_17&csid=Ador](http://www.mass.gov/?pageID=dorterminal&L=7&L0=Home&L1=Businesses&L2=Help+%26+Resources&L3=Legal+Library&L4=Technical+Information+Releases&L5=TIRs+-+By+Year(s)&L6=2004+Releases&sid=Ador&b=terminalcontent&f=dor_rul_reg_tir_tir_04_17&csid=Ador).

CONNECTICUT

Same-sex married couples in Connecticut **MUST** file as single on their federal return and **MUST** file as married on their state tax return (either as married filing jointly or as married filing separately, as the case may be). Civil union couples in Connecticut **MUST** file as single on their federal returns but **MUST** file as a civil union couple on their state returns—either civil union filing jointly or civil union filing separately, as the case may be.

RHODE ISLAND

At present, even though Rhode Island has in many ways recognized the marriages of same-sex married couples, Rhode Island tax law requires tax filers to use the same filing status that they are using for their federal tax filings, and so married couples would file as single on both their federal and state returns.

VERMONT

GLAD was told by the Vermont Department of Taxes that same-sex married couples in Vermont should file as though they are a civil union couple, and so file as single on their federal returns and as a civil union couple on the state return (either civil union filing jointly or civil union filing separately, as the case may be). **To provide complete disclosure and prevent any appearance of fraud, GLAD recommends indicating that the couple is married using one of the options described above on Federal Income Taxes.**

MAINE

Maine tax law requires tax filers to use the same filing status that they are using for their federal return, and so married couples would file as single on both returns.

NEW HAMPSHIRE

New Hampshire has no state income tax and so same-sex married couples would only need to complete a federal return and would file as single.

Due to the complexity of tax law and the additional complications same-sex married couples face, GLAD recommends consulting a tax attorney or an accountant to consider your specific situation and weigh the legal and financial risks involved.

This document is intended to provide general information only and is not intended to provide legal advice as to anyone's specific situation. Moreover, the law is constantly changing and this publication is based upon the information that is known to us as of this printing. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. Check our website, www.glad.org, for the latest information.

If you have questions about this publication, other legal issues or need lawyer referrals, call GLAD's Legal InfoLine weekdays between 1:30 and 4:30 p.m. at: (800) 455-GLAD (4523) or (617) 426-1350.

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