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Double trouble on taxes for gays

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Newly married facing two sets of filing rules

By Kay Lazar, Globe Correspondent | December 30, 2004

Ruth Davidson and Emily Sherwood waited years for the right to marry. The extraordinary tax fallout from the Lynn couple's union will come a lot more swiftly.

The state's first-in-the-nation same-sex marriage decision will soon produce historic tax headaches for nearly 5,000 same-sex Massachusetts couples who tied the knot in 2004. Because the federal government does not recognize same-sex marriage, couples must file as single on their federal income tax forms, but married on their state returns, a system that will require extra, complex calculations and will probably produce confusion, specialists say.

"The past year has been really a whirlwind, because I've been focused on making sure we don't lose this right" to marry, said Davidson, a 46-year-old marketing consultant who married her partner of 23 years in May.

"I'm nervous that when I talk to my accountant, she will not know about" the tax complications, Davidson said. "I haven't focused on my own personal financial dealings."

The arrival of W-2 forms in mailboxes across the Commonwealth in coming weeks will probably change that.

"No one is quite sure how this is going to play out," said Dana Levit, a certified financial planner with Back Bay Financial Group, which has an office in Wakefield.

Levit said tax preparation for gay couples will require calculating federal taxes twice. Each partner's income will need to be submitted on the federal forms as if each were single, because the federal government does not recognize them as a couple. Then the income taxes must be calculated again, based on what the couple would have paid the federal government as a married couple, because those calculations are needed to compute the couple's state income taxes. Massachusetts requires married couples to file jointly.

By comparison, tax preparation for heterosexual married couples does not require the pair's income to be calculated twice, once as individuals and again as a couple, Levit said.

While tax preparation often produces frustrations, the process married gay couples now face is galling, advocates say.

"Imagine if there were a separate tax system for black people in America," said Julia Maycock, 42, a Hamilton lawyer who married her companion, Jill Thornton, on Dec. 21.

"I pay the same taxes as all the heterosexual folks do," Maycock said. "Why should I bear the same tax burden without having the advantages of that, if I am willing to assume the responsibility of marriage?"

In November 2003, the Massachusetts Supreme Judicial Court ruled that the state constitution guarantees gay and lesbian couples the right to marry. That right became effective May 17. Since then, 4,837 same-sex marriage certificates have been filed, according to unofficial data compiled by the state's Registry of Vital Records.

Marriage entitles same-sex couples to dozens of state financial protections and other rights, but not federal benefits.

That discrepancy, specialists say, can affect tax filings for same-sex couples in many ways. For instance, if one same-sex spouse is listed under the other's health insurance, the federal government considers that benefit as income and will tax the employee on the fair market value of the insurance.

But Massachusetts, which now recognizes gay marriages, will treat that health insurance as a benefit, as it does with heterosexual married couples, and will not require it to be reported as taxable income.

"Employers are supposed to be figuring this when they are doing your W-2, but I would advise readers to make sure that employers [deduct the amount of the health care benefit] when they figure your [state] income," Levit said. "I have a feeling that a lot of employers are not going to get that right."

The confusion newly married same-sex couples and their accountants may face for the first time in Massachusetts is similar to the financial uncertainties couples encountered in Vermont after civil unions became legal in summer 2000.

"We have learned a lesson from what happened in Vermont," said Karen Loewy, a lawyer with Gay & Lesbian Advocates & Defenders, a New England legal rights organization.

"We are strongly encouraging people to work with a tax preparer if they can," Loewy said. "We don't want people to be in a position where they are overpaying, or worse, underpaying their taxes and then owe penalties."

GLAD is also encouraging married gay couples to include a cover letter or disclosure form to the IRS clearly explaining that each partner is filing as a single person on their federal tax returns but as married on their state forms.

"When you sign your federal tax return, you swear that everything is true," Loewy said. "You don't want to have committed fraud. You don't want to have sworn you are not married."

That disclosure explaining the discrepancy could be crucial in the future for other purposes not directly tax-related, such as applying for student loans or a mortgage, when consumers often are asked for a copy of their federal income tax returns, Loewy said.

Still, Rowley software engineer Stuart Wells worries there will be computer glitches that trigger audits for married gay couples.

"Cover sheets are read by humans, but audits are triggered by computer programs," said Wells, 37, who married his partner in May. Wells has been doing both of their taxes for the past decade, often using the popular software TurboTax, and he wonders whether the program will be able to address the new questions from Massachusetts couples.

TurboTax software is ready, said Scott Gulbransen, a spokesman for the California-based firm.

"If you search for gay marriage or same-sex union, [the software] will give you instructions for how to handle that," Gulbransen said. Consumers who bought their software early may not have the updated information, but Gulbransen said the disc is programmed to automatically alert the consumer to download updates when it is inserted into the computer.

"If you have an early version," Gulbransen said, "my suggestion is make sure you go through with the updates."

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