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LGBT married clients weather complicated tax season

Same-sex couples need new strategies in tough tax climate

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By **Darla Mercado**

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(Associated Press)



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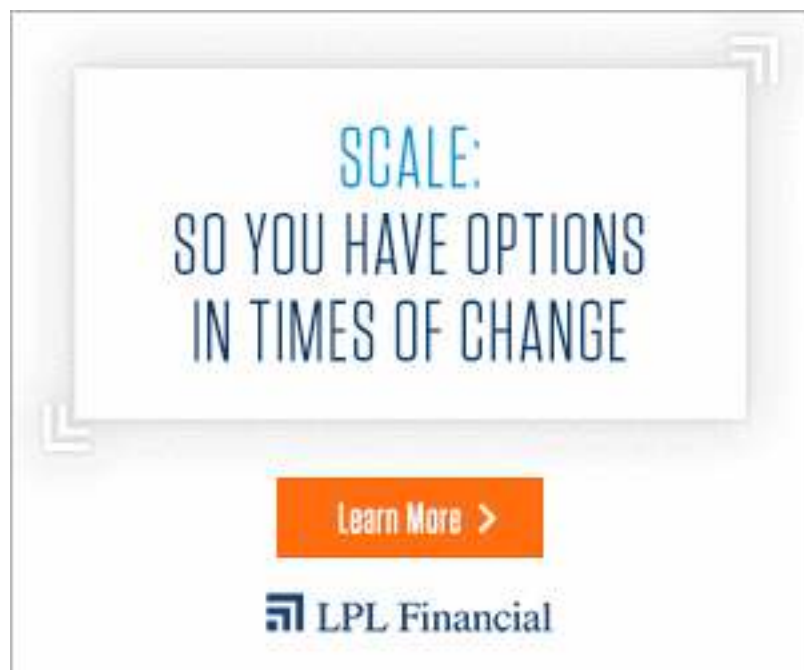
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Though same-sex married couples and their

advisers have been preparing for Tax Day since last year, many still faced tidal waves of paperwork in what could be the first of many complicated tax seasons.

Last June, U.S. v. Windsor, a key Supreme Court decision, knocked down Section 3 of the Defense of Marriage Act as being unconstitutional, paving the way for the recognition of married same-sex couples under federal law.

The plans of married lesbian, gay, bisexual and transgender clients were complicated by the fact that while the Windsor decision gave them protections and recognition under federal law, states could still choose whether they wanted to recognize these marriages. Thus far, only 17 states, plus Washington, D.C., recognize gay marriages.



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face a patchwork of different laws when **they file at the state level**. According to the Tax



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Foundation, **22 states do not recognize same-sex marriage**, but still require taxpayers to reference their federal return when they file for state income taxes.

Depending on how states treat these couples in the future, 2013 could also be the first in many complicated tax seasons for these LGBT filers.

“The paperwork is insane,” said Courtney C. Campbell, a certified public accountant in Cary, N.C., who estimated that it now takes “three times as long to do returns for LGBT married couples.”

That's because North Carolina is among a group of 12 states that require same-sex tax payers to complete “dummy” federal tax returns that are used to determine state tax liability, according to the Tax Foundation. The other 11 are Georgia, Idaho, Indiana, Kentucky, Louisiana, Michigan, Nebraska, Oklahoma, South Carolina, Virginia and West Virginia.

Same-sex married couples in North Carolina had to complete up to five tax returns this tax season as a result: One to the federal government if they file jointly, two more completed as “dummy” returns and then two state returns – one for each member of the couple.

The North Carolina returns were then calculated as if the two spouses were filing as singles, noted



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Lorraine Johnson, an adviser with Triangle Financial Advisors.

In other scenarios, some married LGBT taxpayers also filed as married on their state income tax returns, regardless of whether their jurisdiction recognizes the union. John McGowan, national leader of the LGBT and non-traditional family practice at Northern Trust Corp., has heard through conversations with others that filers were taking their chances and filing as married in non-recognition states. None of those affected were clients of his.

Mr. McGowan figured that there were a couple of reasons why these taxpayers would file married and run the risk of an audit: Such a decision could be based on principle or it could be that these couples are overburdened with the additional paperwork necessary to file taxes at a state level.

“I would advise none of my clients to go down that road, and to follow the law as closely as possible,” Mr. McGowan said. “As court cases are overturning the state-level DOMA, there will be an opportunity to amend your state income tax returns so that if you did miss out on tax benefits, you would more than likely be able to go back and collect them.”

Accountants who've been keeping track of the different tax treatments in the states — and who

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can handle the high level of paperwork tied to filing these complex returns – have become even more valuable. For example, five states (Arizona, Kansas, North Dakota, Ohio and Wisconsin) require same-sex taxpayers to allocate their income to two single returns using a state schedule, according to the Tax Foundation. Alabama is the one state that tells taxpayers to apportion their income according to a ratio, while Colorado, Missouri and Oregon permit them to file jointly.

Those are subtleties that individuals are unlikely to discover if they do their own taxes, Ms. Johnson noted. “People have had difficulty doing this in Turbo Tax,” she said. “Even if the software did [make these distinctions for state-level treatment of same-sex couples], it doesn't mean people know how to answer every question correctly so that it turns out right.”

The valuable lesson for advisers in this case is to link up with accountants who are familiar with the differences in state tax laws and the way they apply to LGBT clients, noted Michael Pellman Rowland, a financial adviser with The Vector Group at Morgan Stanley.

He noted that accountants have different styles: Some are aggressive when it comes to building tax strategies and seeking deductions; others less so.



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“You want an accountant who specializes in working with LGBT clients, but who is also a good fit on their expectations,” Mr. Rowland said.

“Clients have different risk tolerances, and the same applies to the type of accountant they're looking for.”

In other scenarios, high-income taxpayers who hurried to get married in 2013 after the Windsor decision are now realizing the hard reality of the marriage penalty — the higher income taxes a couple faces when they file jointly, compared to the taxes they would've had to pay filing as single.

“Many activist couples got caught up in equal rights to marry, but now there's an equal responsibility,” said Scott E. Squillace, founder of Squillace & Associates PC.

In light of the huge tax bill for 2013, it might be time to talk to those couples about mitigating their tax loads with charitable-giving strategies, such as accelerating a charitable donation in a donor-advised fund, Mr. Squillace said.

He suggested that advisers and accountants focus LGBT clients on the bigger picture and not just the income tax downside: There are estate planning benefits to being hitched.

“Remind people that there are pluses and minuses to being married,” he said. “The marriage penalty is a minus. But the other pluses include

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