

Illinois Issues blog

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State says couples in civil unions can't file joint Illinois tax returns

By Jamey Dunn

Less than a month after civil unions became available in Illinois, one state agency says it cannot allow for a benefit that lawmakers promised would come along with the partnerships.

The Illinois Department of Revenue says it will not allow couples in civil unions to file joint state income tax returns because Illinois residents must file the state return the same way they file their federal one, and the federal government does not recognize civil unions. Married couples who file separate federal returns must file their state taxes separately. However, married couples not required to file a federal return can file a joint Illinois return. [An explanation of the policy on the department's website](#) cites the federal Defense of Marriage Act, which President Barack Obama's administration has said it will no longer defend against legal challenges.

Chicago Democratic state Rep. Greg Harris, who sponsored legislation that legalized civil unions in the state, said the Department of Revenue's decision came as a surprise. He says lawmakers intended for couples entering into civil unions to be

afforded all the same rights and obligations that the state gives to married people, including filing a tax return together. “On the face of it, it seems to contradict the intentions of the legislature. ... The lawmakers in debates in discussion of this bill explicitly said it [would allow couples to file joint state tax returns,]” said Bernard Cherkasov, chief executive officer of the advocacy group Equality Illinois.

“I think they’re taking the easy way out,” said Jill Metz, president of the American Civil Liberties Union of Illinois’ board of directors. “Other states have disagreed with their position that they have to stay in line with the federal tax policy.” Other states that have civil unions or domestic partnerships, such as California and New Jersey, do allow couples to file joint state returns. Metz said in such states, couples create a joint federal return that they do not file, but they use the joint income number calculation to plug into their state returns. The Illinois Department of Revenue maintains that there isn’t a monetary benefit to filing as a couple on the state level. “Illinois has flat tax, and so whether you are single or married, you will pay the same amount of tax,” said Sue Hofer, a department spokeswoman.

“I don’t know how the state of Illinois could possibly know all the circumstances of people’s lives to know whether there is or isn’t a benefit to filing a joint state tax return,” Metz said. Anthony Madonia, an adjunct professor at the John Marshall Law School in Chicago, said there are some potential benefits to filing state taxes as a couple. “There’s no ladder to climb as far as rates go. ... I guess the difference is, if one of the members of the civil union is not working, then their exemption is wasted.” He said if someone did not have income, they could apply their personal tax exemption, as well as other potential exemptions, to their partner’s income.

“Prior to this, we were planning on filing joint returns for clients who are in civil unions,” said Madonia, His Chicago-based firm,

Anthony J. Madonia & Associates, focuses on tax and business law. “We thought that there would be a joint return. We just did.”

Metz said many people are willing to take an extra step to calculate their combined income as if they were filing a federal return, so they can put the number on their state forms and file as a couple, regardless of the benefits. “It’s about the recognition. It’s about the inclusiveness. It’s about the respect,” she said.

Harris said that the department’s argument illustrates the need to overturn the federal Defense of Marriage Act. He said until the federal government recognizes the unions of same-sex couples, legal disputes such as this one will continue to pop up across the country. “This just shows why we still have such a long way to go in terms of marriage equality in this country.”

Harris said he hopes the issue can be resolved, but he said it might take a lawsuit against the state from a couple in a civil union. “I look forward to somebody filing it.”

Cherkasov and Metz both say their organizations are looking into ways the department could allow couples to file together. Metz called on the department to rethink its policy to avoid lawsuits. “They could make the right decision and keep the promise that is in that civil unions bill. ... I think somebody in the Illinois Department of Revenue needs to take a second look.”

Cherkasov said there is still time to ensure that couples in civil unions can file their first joint state tax returns next year. “It’s alarming that this is their opinion. ... But at the same time, the 2011 tax returns for the state of Illinois have not been printed yet.”

An analysis of the department's decision from John Marshall Law School assistant professor Anthony Niedwiecki is available [here](#).