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SOCIAL JUSTICE

Would PRIDE Act Help? Tax Code Causes Problems For LGBTQ Couples

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A new bill co-sponsored by Virginia Congressman Don Beyer would help fix problems LGBTQ couples have with the tax code.

RICHMOND – Even though same-sex marriage has been legalized since 2017, LGBTQ couples still run into problems with the tax code. The issue, **Janis Cowhey** says, is that the code hasn't been updated.

Cowhey is a partner at the accounting and advising firm **Marcum LLP**. She specializes in account management for modern families including LGBTQ couples.

“The tax code has not kept up with the world and how it works right now,” Cowhey said.

One of the main examples is called the ‘marriage penalty’. As Cowhey explains, it’s a policy that financially rewards couples in which one partner stays at home and the other is the primary breadwinner.

“If you have two people who get married and one stays at home and one is a high breadwinner, they will pay less in taxes than a couple that are married and both have high wages,” Cowhey said. “And that’s because the code was again based on dad was going to go to work and mom was going to stay home.”

It’s something Virginia Congressman Don Beyer and other federal lawmakers hope to fix, through a new bill called the PRIDE Act.

The PRIDE Act

“I cosponsored the PRIDE Act because it would bring tax fairness to LGBTQ Americans,” Beyer said. “[This] would help correct past discrimination, since ruled unconstitutional by the United States Supreme Court. This is important for couples in Northern Virginia and across the country as a basic issue of equality.”

Beyer’s fellow sponsors of the Promoting Respect for Individuals’ Dignity and Equality ([PRIDE Act](#)) agree. They say it’s an important step towards ensuring same-sex couples get equal treatment under the law.

“Pride Month is a chance for us to celebrate that all love is equal. Nevertheless, our tax code does not reflect this equality with discriminatory language that ignores the reality of same-sex couples and restrictions that deny married couples the same benefits heterosexual couples were able to access,” said California congressman Judy Chu, who filed the bill.

The bill does two things. First, it removes gendered language like “husband” and “wife” from the tax code. It replaces those terms with ones like “married couple” and “spouse.”

Second, the bill allows same-sex couples who were married before the Defense of Marriage Act (DOMA) was struck down in 2013 to receive a refund for the years they were denied the right to file and claim their tax refunds jointly.

According to the Congressional Budget Office ([CBO](#)), it would cost the government \$57 million to refund those same-sex couples.

Cowhey says the PRIDE Act will help, but problems with the tax code run deeper than pronouns.

“It’s not enough. It’s a first step,” said Cowhey. “[The problem is] more about nuances.”

Problems For LGBTQ Couples

Before the Supreme Court legalized same-sex marriage, many same-sex couples would enter into domestic partnerships as an alternative. Domestic partnerships, like marriages, are legal contracts that bind two people who live together and share a domestic life. People in these partnerships receive some, but not all, of the benefits that go along with marriage. However, those benefits do not extend to filing taxes jointly.

“That goes back to, again, not keeping up with the times. The federal government’s position is, you’re either married or you’re not. There’s no in-between,” said Cowhey.

Steve Muir and his partner Mary Jane French have been in a domestic partnership since February. Muir says he wishes they could remain simply partners, because those relationships are easier to form and dissolve than marriages.

“All of our legal intertwinement is completely for financial reasons and things like that. It’s so I can get health insurance, it’s so that doing our taxes is easier, it’s so that if one of us dies then the inheritance works correctly. It’s not for any personal reasons. And so I

wish that it was much simpler and domestic partnership just sort of encapsulated all of those things,” Muir said.

LGBTQ Families Face Discrimination When Adopting

For couples hoping to adopt or have a baby via surrogacy, there are also problems with the US tax code that the PRIDE Act doesn't fix.

For example, people who adopt children in the US can claim an adoption credit that refunds their costs for adopting. That refund totals over \$14,000. But, that credit doesn't apply when someone adopts the child of their spouse. This doesn't specifically discriminate against LGBTQ couples, but again Crowley says it penalizes what she calls modern families.

“It's not just LGBTQ couples. It's unmarried couples, it's second marriage, it's third marriages,” said Cowhey. “This adoption credit, we can do a little planning. If couples come to me before they get married I say make sure you adopt your partner's child before the marriage and take the credit. It helps pay for the wedding.”

Discrimination in Deducting the Cost of Surrogacy

Certain types of same-sex couples also can not under the US tax code deduct the medical expenses associated with having a baby via a surrogate. Queer couples composed of two people assigned male at birth can not claim those costs because the code only permits people who physically have the child to deduct associated medical expenses.

“The tax code says you can only deduct medical expenses if they happen to you and your body, or your dependent. And the surrogate was not their dependent, and it wasn't happening to either of them. So they were unable to deduct it. And it was a significant number,” Cowhey said. “Whereas, I had a female same-sex couple who were able to not have to go the surrogacy route, they were able to just get a sperm donation, and then went

through the whole process themselves. And they were able to take the medical deductions. Because it happened to them and it happened to their body.”

Muir says that even without the ability to deduct the cost of medical expenses for having a child, he and his partner aren't considering surrogacy because it's still too expensive.

“We have loose plans to adopt,” Muir said. “But we've never even looked at surrogacy because it's too expensive outright.”

Accessing Accounting for LGBTQ Couples

Muir also says that as someone in a queer relationship and a domestic partnership, they envision that tax season next year will be difficult to navigate.

“I know that we're going to have an absolute headache of it. Because we're going to get married in '22 but we're buying a house together right now. And so filing taxes for having bought a house while in a domestic partnership is going to be real fun,” said Muir.

He isn't alone. According to Cowhey, there's a lot of confusion among the LGBTQ community about the best strategies when filing their taxes. According to her, that lack of access exacerbates existing financial inequities in the LGBT community.

“We specialize in this but most accountants don't. There may be some solo practitioners who may be in the community and may be aware of more of these. But as you get on a larger scale, there's not a lot of information out there. And there's misinformation too,” Cowhey said. “It does result in inequities. Missing out on a \$14,000 credit, that's a big number.”

How Can You Access LGBT-Friendly Accounting Services?

For a directory of accounting firms that specialize in serving LGBTQ clients and families, visit the Gay Lesbian Directory [here](#).