116TH CONGRESS
1ST SESSION

S. 515

To amend the Internal Revenue Code of 1986 to clarify that all provisions shall apply to legally married same-sex couples in the same manner as other married couples, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2019

Mr. WYDEN (for himself, Mr. BENNET, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. REED, Mr. LEAHY, Mr. MURPHY, Mr. VAN HOLLEN, Mrs. SHAHEEN, Mr. BLUMENTHAL, Mr. CASEY, Mr. CARPER, Ms. SMITH, Mr. KAINE, Mr. MARKEY, Mr. BOOKER, Mr. DURBIN, Ms. STABENOW, Mr. SANDERS, Mr. MENENDEZ, Mr. COONS, Mr. KING, Ms. BALDWIN, Ms. WARREN, Ms. KLOBUCHAR, Ms. CORTEZ MASTO, Ms. HIRONO, Ms. HASSAN, Mrs. FEINSTEIN, Mrs. MURRAY, Mr. SCHUMER, Mr. PETERS, Mr. JONES, Mr. BROWN, Mr. TESTER, Ms. HARRIS, Mr. HEINRICH, Mr. UDALL, Ms. DUCKWORTH, Mr. WARNER, Mr. CARDIN, Ms. ROSEN, Mr. MERKLEY, Mrs. GILLIBRAND, Mr. SCHATZ, Ms. SINEMA, and Mr. MANCHIN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to clarify that all provisions shall apply to legally married same-sex couples in the same manner as other married couples, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Equal Dignity for Married Taxpayers Act of 2019''.

SEC. 2. RULES RELATING TO ALL LEGALLY MARRIED COUPLES.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended—

(1) in section 21(d)(2)—

(A) by striking ''HIMSELF'' in the heading and inserting ''SELF''; and

(B) by striking ''any husband and wife'' and inserting ''any married couple'';

(2) in section 22(e)(1)—

(A) by striking ''husband and wife who live'' and inserting ''married couple who lives''; and

(B) by striking ''the taxpayer and his spouse'' and inserting ''the taxpayer and the spouse of the taxpayer'';

(3) in section 38(c)(6)(A), by striking ''husband or wife who files'' and inserting ''married individual who files'';

(4) in section 42(j)(5)(C), by striking clause (i) and inserting the following new clause:

''(i) MARRIED COUPLE TREATED AS 1 PARTNER.—For purposes of subparagraph

(B), individuals married to one another (and their estates) shall be treated as 1 partner.'';

(5) in section 62(b)(3)—

(A) in subparagraph (A)—

(i) by striking ''husband and wife who lived apart'' and inserting ''married couple who lived apart''; and

(ii) by striking ''the taxpayer and his spouse'' and inserting ''the taxpayer and the spouse of the taxpayer''; and

(B) in subparagraph (D), by striking ''husband and wife'' and inserting ''married couple'';

(6) in section 121—

(A) in subsection (b)(2), by striking ''husband and wife who make'' and inserting ''married couple who makes''; and

(B) in subsection (d)(1), by striking ''husband and wife make'' and inserting ''married couple makes'';

(7) in section 165(h)(4)(B), by striking ''husband and wife'' and inserting ''married couple'';

(8) in section 179(b)(4), by striking ''a husband and wife filing'' and inserting ''individuals married to one another who file'';

(9) in section 213(d)(8), by striking ‘‘status as husband and wife’’ and inserting ‘‘marital status’’;

(10) in section 219(g)(4), in the matter preceding subparagraph (A), by striking ‘‘A husband and wife’’ and inserting ‘‘Married individuals’’;

(11) in section 274(b)(2)(B), by striking ‘‘husband and wife’’ and inserting ‘‘married couple’’;

(12) in section 643(f), by striking ‘‘husband and wife’’ in the second sentence and inserting ‘‘married couple’’;

(13) in section 761(f)—

(A) in paragraph (1), by striking ‘‘husband and wife’’ and inserting ‘‘married couple’’; and

(B) in paragraph (2)(A), by striking ‘‘husband and wife’’ and inserting ‘‘married couple’’;

(14) in section 911—

(A) in subsection (b)(2), by striking subparagraph (C) and inserting the following new subparagraph:

‘‘(C) TREATMENT OF COMMUNITY INCOME.—In applying subparagraph (A) with respect to amounts received from services performed by a married individual which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such individual and such individual's spouse under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.''; and

(B) in subsection (d)(9)(A), by striking ''where a husband and wife each have'' and inserting ''where both spouses have'';

(15) in section 1244(b)(2), by striking ''a husband and wife filing'';

(16) in section 1272(a)(2)(D), by striking clause (iii) and inserting the following new clause:

''(iii) TREATMENT OF A MARRIED COUPLE.—For purposes of this subparagraph, a married couple shall be treated as 1 person. The preceding sentence shall not apply where the spouses lived apart at all times during the taxable year in which the loan is made.'';

(17) in section 1313(c)(1), by striking ''husband and wife'' and inserting ''spouses'';

(18) in section 1361(c)(1)(A)(i), by striking ''a husband and wife'' and inserting ''a married couple'';

(19) in section 2040(b), by striking "CERTAIN JOINT INTERESTS OF HUSBAND AND WIFE" in the heading and inserting "CERTAIN JOINT INTERESTS OF MARRIED COUPLE";

(20) in section 2513—

(A) by striking "**GIFT BY HUSBAND OR WIFE TO THIRD PARTY**" in the heading and inserting "**GIFT BY SPOUSE TO THIRD PARTY**"; and

(B) by striking paragraph (1) of subsection (a) and inserting the following new paragraph:

"(1) IN GENERAL.—A gift made by one individual to any person other than such individual's spouse shall, for the purposes of this chapter, be considered as made one-half by the individual and one-half by such individual's spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by an individual of an interest in property if such individual creates in the individual's spouse a general power of appointment, as defined in section 2514(c), over such interest. For purposes of this section, an individual shall be considered as the spouse of another only if the individual is married to the individual's spouse at the time of the gift and does not remarry during the remainder of the calendar year.'';

(21) in section 2516—

(A) by striking ''Where a husband and wife enter'' and inserting the following:

''(a) IN GENERAL.—Where a married couple enters''; and

(B) by adding at the end the following new subsection:

''(b) SPOUSE.—For purposes of this section, if the spouses referred to are divorced, wherever appropriate to the meaning of this section, the term 'spouse' shall read 'former spouse'.'';

(22) in section 5733(d)(2), by striking ''husband or wife'' and inserting ''married individual'';

(23) in section 6013—

(A) by striking ''**JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE**'' in the heading and inserting ''**JOINT RETURNS OF INCOME TAX BY A MARRIED COUPLE**'';

(B) in subsection (a), in the matter preceding paragraph (1), by striking ''husband and wife'' and inserting ''married couple'';

(C) in subsection (a)(1), by striking "either the husband or wife" and inserting "either spouse";

(D) in subsection (a)(2)—

(i) in the first sentence, by striking "husband and wife" and inserting "spouses"; and

(ii) in the second sentence, by striking "his taxable year" and inserting "such spouse's taxable year";

(E) in subsection (a)(3)—

(i) in the first sentence, by striking "his executor or administrator" and inserting "the decedent's executor or administrator";

(ii) in the first sentence, by striking "with respect to both himself and the decedent" and inserting "with respect to both the surviving spouse and the decedent"; and

(iii) in the second sentence, by striking "constitute his separate return" and inserting "constitute the survivor's separate return";

(F) in subsection (b), by striking paragraph (1) and inserting the following new paragraph:

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by the individual and the individual's spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and such spouse may nevertheless make a joint return for such taxable year. A joint return filed under this subsection shall constitute the return of the individual and the individual's spouse for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in a separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by the decedent's executor or administrator.'';

(G) in subsection (c), by striking ''husband and wife'' and inserting ''spouses'';

(H) in subsection (d)(1), by striking ''status as husband and wife'' and inserting ''the marital status with respect to each other'';

(I) in subsection (d)(2), by striking ''his spouse'' and inserting ''the spouse of the individual'';

(J) in subsection (f)(2)(B), by striking ''such individual, his spouse, and his estate shall be determined as if he were alive'' and inserting ''such individual, the individual's spouse, and the individual's estate shall be determined as if the individual were alive''; and

(K) in subsection (f)(3)—

(i) in subparagraph (A), by striking ''for which he is entitled'' and inserting ''for which such member is entitled''; and

(ii) in subparagraph (B), by striking "for which he is entitled" and inserting "for which such employee is entitled";

(24) in section 6014(b), by striking "husband and wife" in the second sentence and inserting "a married couple";

(25) in section 6017, by striking "husband and wife" and inserting "married couple";

(26) in section 6096(a), by striking "of husband and wife having" and inserting "reporting";

(27) in section 6166(b)(2), by striking subparagraph (B) and inserting the following new subparagraph:

"(B) CERTAIN INTERESTS HELD BY MARRIED COUPLE.—Stock or a partnership interest which—

"(i) is community property of a married couple (or the income from which is community income) under the applicable community property law of a State, or

"(ii) is held by a married couple as joint tenants, tenants by the entirety, or tenants in common,

shall be treated as owned by 1 shareholder or 1 partner, as the case may be.";

(28) in section 6212(b)(2)—

(A) by striking ‘‘return filed by husband and wife’’ and inserting ‘‘return’’; and

(B) by striking ‘‘his last known address’’ and inserting ‘‘the last known address of such spouse’’;

(29) in section 7428(c)(2)(A), by striking ‘‘husband and wife’’ and inserting ‘‘married couple’’;

(30) in section 7701(a)—

(A) by striking paragraph (17); and

(B) in paragraph (38), by striking ‘‘husband and wife’’ and inserting ‘‘married couple’’; and

(31) in section 7872(f), by striking paragraph (7) and inserting the following new paragraph:

‘‘(7) MARRIED COUPLE TREATED AS 1 PERSON.—A married couple shall be treated as 1 person.’’.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 12 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 2513 and inserting the following new item:

‘‘Sec. 2513. Gift by spouse to third party.’’.

(2) The table of sections for subpart B of part II of subchapter A of chapter 61 of such Code is

amended by striking the item relating to section 6013 and inserting the following new item:

"Sec. 6013. Joint returns of income tax by a married couple.".

SEC. 3. RULES RELATING TO THE GENDER OF SPOUSES, ETC.

(a) IN GENERAL.—The following provisions of the Internal Revenue Code of 1986 are each amended by striking "his spouse" each place it appears and inserting "the individual's spouse":

(1) Subsections (a)(1) and (d) of section 1.

(2) Section 2(b)(2)(A).

(3) Subsections (d)(1)(B) and (e)(3) of section 21.

(4) Section 36(c)(5).

(5) Section 71(b)(1)(C).

(6) Section 179(d)(2)(A).

(7) Section 318(a)(1)(A)(i).

(8) Section 408(d)(6).

(9) Section 469(i)(5)(B)(ii).

(10) Section 507(d)(2)(B)(iii).

(11) Clauses (ii) and (iii) of section 613A(c)(8)(D).

(12) Section 672(e)(2).

(13) Section 704(e)(2).

(14) Subparagraphs (A) and (B)(ii) of section 911(c)(3).

(15) Section 1235(c)(2).

(16) Section 1563(e)(5).

(17) Section 3121(b)(3)(B).

(18) Section 4946(d).

(19) Section 4975(e)(6).

(20) Subparagraphs (A)(iv) and (B) of section 6012(a)(1).

(21) Section 7703(a).

(b) CONFORMING AMENDMENTS.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking ‘‘his spouse’’ each place it appears and inserting ‘‘the taxpayer’s spouse’’:

(A) Section 2(a)(2)(B).

(B) Subparagraphs (B) and (C) of section 2(b)(2).

(C) Paragraphs (2) and (6)(A) of section 21(e).

(D) Section 36B(e)(1).

(E) Section 63(e)(3)(B).

(F) Section 86(c)(1)(C)(ii).

(G) Section 105(c)(1).

(H) Section 135(d)(3).

(I) Section 151(b).

(J) Subsections (a) and (d)(7) of section 213.

(K) Section 1233(e)(2)(C).

(L) Section 1239(b)(2).

(M) Section 6504(2).

(2) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "his spouse" each place it appears and inserting "the employee's spouse":

(A) Section 132(m)(1).

(B) Section 401(h)(6).

(C) Section 3402(l)(3).

(3) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "his taxable year" each place it appears and inserting "the individual's taxable year":

(A) Section 2(b)(1).

(B) Section 7703(a)(1).

(4) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "his taxable year" each place it appears and inserting "the taxpayer's taxable year":

(A) Subparagraphs (B) and (C) of section 2(b)(2) (as amended by paragraph (1)(B)).

(B) Section 63(f)(1)(A).

(5) The following provisions of the Internal Revenue Code of 1986 are each amended by striking ''his home'' and inserting ''the individual's home'':

(A) Section 2(b)(1)(A).

(B) Section 21(e)(4)(A)(i).

(C) Section 7703(b)(1).

(6) The Internal Revenue Code of 1986, as amended by this section, is amended—

(A) in section 2(a)(1)(A), by striking ''his two taxable years'' and inserting ''the taxpayer's two taxable years'';

(B) in section 2(a)(1)(B), by striking ''his home'' and inserting ''the taxpayer's home'';

(C) in paragraphs (1)(A) and (2)(A) of section 63(f), by striking ''for himself if he'' both places it appears and inserting ''for the taxpayer if the taxpayer'';

(D) in section 63(f)(4), by striking ''his'' both places it appears and inserting ''the individual's'';

(E) in section 105(b)—

(i) by striking ''his spouse, his dependents'' and inserting ''the taxpayer's spouse, the taxpayer's dependents''; and

(ii) by striking ''by him'';

(F) in the heading of section 119(a), by striking ", HIS SPOUSE, AND HIS DEPENDENTS" and inserting "AND THE EMPLOYEE'S SPOUSE AND DEPENDENTS";

(G) in section 119(a), by striking "him, his spouse, or any of his dependents by or on behalf of his employer" and inserting "the employee or the employee's spouse or dependents by or on behalf of the employer of the employee";

(H) in section 119(a)(2), by striking "his" both places it appears and inserting "the employee's";

(I) in section 119(d)(3)(B), by striking "his spouse, and any of his dependents" and inserting "the employee's spouse, and any of the employee's dependents";

(J) in section 129(b)(2), by striking "himself" and inserting "the spouse's self";

(K) in section 170(b)(1)(F)(iii)—

(i) by striking "his spouse" and inserting "the spouse of such donor"; and

(ii) by striking "his death or after the death of his surviving spouse if she" and inserting "the death of the donor or after the death of the donor's surviving spouse if such surviving spouse'';

(L) in section 213(c)(1)—

(i) by striking ''his estate'' and inserting ''the estate of the taxpayer''; and

(ii) by striking ''his death'' and inserting ''the death of the taxpayer'';

(M) in section 213(d)(7), by striking ''he'' and inserting ''the taxpayer'';

(N) in section 217(g)—

(i) by striking '', his spouse, or his dependents'' in paragraph (2) and inserting ''or the spouse or dependents of such member'';

(ii) by striking ''his dependents'' in paragraph (3) and inserting ''dependents''; and

(iii) by striking ''his spouse'' each place it appears in paragraph (3) and inserting ''the member's spouse'';

(O) in section 217(i)(3)(A), by striking ''his'';

(P) in section 267(c), by striking ''his'' each place it appears and inserting ''the individual's'';

(Q) in section 318(a)(1)(A)(ii), by striking ‘‘his’’ and inserting ‘‘the individual’s’’;

(R) in section 402(l)(4)(D), by striking ‘‘, his spouse, and dependents’’ and inserting ‘‘and the spouse and dependents of such officer’’;

(S) in section 415(l)(2)(B), by striking ‘‘, his spouse, or his dependents’’ and inserting ‘‘or the participant’s spouse or dependents’’;

(T) in section 420(f)(6)(A), by striking ‘‘his covered spouse and dependents’’ each place it appears and inserting ‘‘the covered spouse and dependents of such retiree’’;

(U) in section 424(d)(1), by striking ‘‘his’’ and inserting ‘‘the individual’s’’;

(V) in section 544(a)(2), by striking ‘‘his’’ each place it appears and inserting ‘‘the individual’s’’;

(W) in section 911(c)(3), by striking ‘‘him’’ each place it appears in subparagraphs (A) and (B)(ii) and inserting ‘‘the individual’’;

(X) in section 1015(d)(3), by striking ‘‘his spouse’’ and inserting ‘‘the donor’s spouse’’;

(Y) in section 1563(e)—

(i) by striking ‘‘his children’’ both places it appears in paragraphs (5)(D) and

(6)(A) and inserting ‘‘the individual’s children’’; and

(ii) by striking ‘‘his parents’’ both places it appears in subparagraphs (A) and (B) of paragraph (6) and inserting ‘‘the individual’s parents’’;

(Z) in section 1563(f)(2)(B), by striking ‘‘him’’ and inserting ‘‘the individual’’;

(AA) in section 2012(c), by striking ‘‘his spouse’’ and inserting ‘‘the decedent’s spouse’’;

(BB) in section 2032A(e)(10), by striking ‘‘his surviving spouse’’ and inserting ‘‘the decedent’s surviving spouse’’;

(CC) in section 2035(b)—

(i) by striking ‘‘his estate’’ and inserting ‘‘the decedent’s estate’’; and

(ii) by striking ‘‘his spouse’’ and inserting ‘‘the decedent’s spouse’’;

(DD) in subsections (a) and (b)(5) of section 2056, by striking ‘‘his’’;

(EE) in section 2523(b)—

(i) by striking ‘‘(or his heirs or assigns) or such person (or his heirs or assigns)’’ in paragraph (1) and inserting "(or the donor's heirs or assigns) or such person (or such person's heirs or assigns)";

(ii) by striking "himself" in paragraph (1) and inserting "the donor's self";

(iii) by striking "he" in paragraph (2) and inserting "the donor"; and

(iv) by striking "him" each place it appears in the matter following paragraph (2) and inserting "the donor";

(FF) in section 2523(d), by striking "himself" and inserting "the donor's self";

(GG) in section 2523(e), by striking "his spouse" and inserting "the donor's spouse";

(HH) in section 3121(b)(3)—

(i) by striking "his father" in subparagraph (A) and inserting "the child's father";

(ii) by striking "his father" in subparagraph (B) and inserting "the individual's father"; and

(iii) by striking "his son" in subparagraph (B) and inserting "the individual's son";

(II) in section 3306(c)(5)—

(i) by striking "his son" and inserting "the individual's son"; and

(ii) by striking "his father" and inserting "the child's father";

(JJ) in section 3402(l)—

(i) by striking "he" each place it appears in paragraphs (2) and (3)(A) and inserting "the employee"; and

(ii) by striking "his taxable year" both places it appears in paragraph (3)(B) and inserting "the employee's taxable year";

(KK) in section 4905(a), by striking "his spouse" and inserting "such person's spouse";

(LL) in section 6046(c), by striking "his" both places it appears and inserting "the individual's";

(MM) in section 6103(e)(1)(A)(ii), by striking "him" and inserting "the individual";

(NN) in section 7448(a)(8), by striking "his death" and inserting "the individual's death";

(OO) in subsections (d), (m), and (n) of section 7448, by striking "his" each place it appears and inserting "the individual's";

(PP) in subsection (m) of section 7448, as so amended, by striking "he" each place it appears and inserting "such judge or special trial judge"; and

(QQ) in section 7448(q)—

(i) by striking "his" both places it appears and inserting "such judge's"; and

(ii) by striking "to bring himself" and inserting "to come".

○