



## Federal Court upholds bans on same-sex marriage

DAVID KALL | TAX AND BENEFITS CHALLENGES | NOV 18, 2014

*On November 6, 2014, the Sixth Circuit Court of Appeals filed a decision upholding bans on same-sex marriages in Ohio, Kentucky, Tennessee, and Michigan. The Sixth Circuit is the only federal appeals court to uphold these kinds of bans. Last month, the Supreme Court of the United States let stand three appellate court rulings that struck down laws prohibiting same-sex marriage.*

same-sex\_marriage\_ban\_upheld.jpg



This surprised many, including those in the know. In a recent Alert, we referred to a speech that United States Supreme Court Justice Ruth Bader Ginsberg gave in September at the University of Minnesota Law School. The Justice foreshadowed the Court's hands-off approach when she indicated that there would be no need to rush to address the bans on same-sex marriage if the lower courts all ruled in the same way. In light of the Sixth Circuit's decision, the Supreme Court will almost certainly need to step in.

### The Sixth Circuit decision

Author Circuit Judge Jeffrey S. Sutton declares at the outset that "the question is not whether American law will allow gay couples to marry; it is when and how that will happen."

Ultimately, Judge Sutton justified upholding the same-sex marriage bans on the grounds that it is the people that should resolve these kinds of questions, not the courts. Wrote he, "[w]hen the courts do not let the people resolve new social issues like this one, they perpetuate the idea that the heroes in these change events are judges and lawyers. Better in this instance, we think, to allow change through the customary political processes, in which the people, gay and straight alike, become the heroes of their own stories by meeting each other not as adversaries in a court system but as fellow citizens seeking to resolve a new social issue in a fair-minded way."

### Tax Implications

Taxpayers in Ohio, Kentucky, Tennessee, and Michigan will not see any changes in the way they file their taxes. According to a special report by the *Tax Foundation*, this means the following:

- In Ohio, which bans same-sex marriage, civil unions and domestic partnerships, a Department of Taxation information release advised that married same-sex taxpayers will start with federal adjusted gross income and apply state rates and brackets. The state will continue to instruct these taxpayers to allocate income to two single returns using a state-provided schedule.
- Likewise in Kentucky, which also bans same-sex marriage, civil unions and domestic partnerships, a Tax Alert provided guidance for same-sex taxpayers married in a state that

## federal court upholds bans on same sex marriage

---

recognizes the union. They will start with federal adjusted gross income and apply state rates and brackets. They also must complete pro-forma federal single returns and use that information for their state returns.

- In Tennessee, which has a constitutional ban on same-sex marriage, there already is no income tax beyond that on interest and dividends, which is calculated using a state method. As a result, no additional guidance is required, because the return is not linked to the federal tax code.
  - In Michigan, as in Ohio and Kentucky, there is an existing ban on same-sex marriage, civil unions and domestic partnerships. A Notice to Taxpayers directed that married same-sex taxpayers will start with federal adjusted gross income and apply one state tax rate. These taxpayers must complete pro-forma federal single returns and use that information for their state returns.
- 



DAVID KALL

[Read More](#)