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administration to answer a key regulatory question left unresolved by the Supreme Court when it struck down the federal Defense of Marriage Act.

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Same-sex couples and their tax advisors are anxiously waiting for the Obama administration to answer a key regulatory question left unresolved by the Supreme Court when it struck down the federal Defense of Marriage Act.

At issue is whether legally married same-sex couples will receive equal tax and Social Security benefits in all 50 states — or only in the 13 states where such marriages are legal.

“The people in limbo are those who live in a state where their marriage is not recognized,” said Nanette Lee Miller, an accountant in San Francisco who advises same-sex couples. “The IRS is discussing this, but it’s still up in the air.”

The Supreme Court’s opinion June 26 announced a clear principle, but it did not say precisely how it should be applied. The federal government must give equal treatment to “those persons who are joined in same-sex marriages made lawful by the state,” Justice Anthony M. Kennedy said. The decision is “confined to those lawful marriages,” he added.

But federal laws and regulations have differing rules for determining a lawful marriage. While some agencies look to the “place of celebration” — where the couple’s marriage took place — others look to the law in the state of their current “residence” or “domicile.”

That creates a complication that Justice Antonin Scalia highlighted in his dissent. “Imagine a pair of women who marry in Albany [N.Y.] and then move to Alabama, which does not ‘recognize as valid any marriage of parties of the same sex.’ When the

couple files their next federal tax return, may it be a joint one? Which state's law

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Marriage Act does NOT mean that your state must respect your marriage or that you will be eligible for all marriage-based federal benefits.”

Gay rights advocates urged the Obama administration to adopt the “place of celebration” rule for all federal benefits, and they appear to have the president on their side.

“It’s my personal belief — and I’m speaking now as a president, [not] as a lawyer — that if you’re married in Massachusetts and you move someplace else, you’re still married,” he said at a news conference in Senegal.

On June 28, the federal Office of Personnel Management announced that for federal civilian employees nationwide, the government would give equal health and pension benefits to “all legally married same-sex spouses” without regard to where their marriage took place or where they now live.

But working out the rules for other agencies — including the IRS, the Department of Veterans Affairs and the Social Security Administration — will take longer, officials said.

“Historically, the IRS has looked to the law of the place where you live, but there is no statute that dictates that approach,” said Susan Sommer, a lawyer for Lambda Legal in New York. “That may be something the administration can change. For Social Security, there is a statute that looks to the state where you reside at the time of an application.”

Although the administration may revise a regulation, it usually cannot change a provision written into law.

Tax advisors say wealthy couples need to consider how the IRS resolves questions over estate taxes, the issue that led to the Supreme Court’s ruling. Edith Windsor, a

New York resident, went to court after the IRS sent her a \$363,000 estate tax bill for

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rules.

“Everybody is waiting for guidance from the IRS and Treasury on this. It’s very unclear now,” said Laura Zwicker, a lawyer and tax advisor in Los Angeles. Until the rules are revised, it creates a complication for same-sex couples, she said.

“We are advising high-income individuals if they are thinking of moving — for example, from California to Nevada or Arizona — they need to do a complete economic analysis,” she said.

Leaders of the Human Rights Campaign in Washington say they are confident the administration will resolve the regulatory issues to make clear that legally married same-sex couples are treated as married, regardless of where they now live.

“We have been told guidance will be coming within days or weeks, not months or years,” said Fred Sainz, a spokesman for the advocacy group.

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