

Tax Considerations

The pursuit of marriage equality for same-sex couples brings much-needed focus to the everyday needs of lesbian and gay couples. Without full legal recognition and protections, same-sex couples confront a variety of complicated legal and financial issues—including numerous tax matters. Lambda Legal has assembled this general information to assist same-sex couples as they meet with professionals for legal and tax advice specific to their situation.

Lambda Legal recommends that your life and financial planning team include an attorney, a financial advisor, and, depending upon your circumstances, a certified public accountant, all with experience addressing the issues that affect same-sex and/or unmarried different-sex couples differently from heterosexual married couples.

Please note: This information is not legal or tax advice. Consult a professional regarding your specific tax and other potential legal obligations.

FIRST STEPS

1. For tips regarding titling and ownership of shared property and a discussion of related estate and gift tax consequences, see “Tools for Protecting Your Assets During Life,” Tools for Protecting Your Assets After Death,” and visit www.lambdalegal.org/taxconsiderationsforsamesexcouples
2. Consult the following resources for legal help:
 - Lambda Legal’s Help Desk, 866-542-8336 or send email by visiting www.lambdalegal.org/help/online-form (for information about LGBT and HIV-related legal issues or help identifying an LGBT/HIV friendly attorney in your area)
 - www.lawhelp.org (for help determining whether there is an affordable attorney in your area)
 - www.abanet.org/legalservices/findlegalhelp/home.cfm (to find attorneys in your area who may reduce charges)

INCOME TAX FILINGS

Due to the discriminatory provisions of federal law, the Internal Revenue Service will not respect a same-sex couple's marriage, no matter where the couple married or makes their home. Married same-sex couples thus must file their federal income tax returns separately, each with a "single" filing status, which can be financially disadvantageous. State income tax treatment of same-sex couples who are married or who have entered into a civil union or registered with the state as domestic partners varies by state.

Take the Power! If you are married but required to file "single" status, consult with a local tax practitioner to evaluate your options under state law, and consider filing a disclosure statement with your federal and possibly state tax return(s).

Why do I need this power tool?

Some tax professionals advise married couples who must file "single" to affirm their married status in their returns to ensure that those "single" returns cannot be used against them in other contexts in which they can and wish to be recognized as married.

How it works: Below is a sample disclosure statement to review with your tax professional, who can advise

you as to whether this is a wise approach for you.

SHARING A FINANCIAL LIFE

Some couples choose to co-mingle their finances; others prefer to remain economically distinct. Same-sex couples may own together some or all of their assets, such as their home, bank accounts, investments, etc. Joint ownership of assets can make life simpler in many ways and may expedite transfer of property upon death of one partner. However, assets transferred during life or passed upon death possibly can become subject to federal (and in some cases, state) estate and gift taxation.

Take the Power! Make sure that the beneficiary designations for your retirement assets include Lambda Legal as a beneficiary.

HEALTH INSURANCE

Health insurance provided by employers for an employee's domestic partner or same-sex spouse is subject to federal income taxation (the same is not true for different-sex spouses), and thus employers who provide such insurance must report its value as taxable income imputed to their employees. State tax treatment of this insurance varies.

Take the Power! Consider talking with your employer about increasing your base salary to account for this discriminatory impact.

COMMUNITY PROPERTY

In May 2010 the IRS advised that both members of a California registered domestic partnership who have community property under that state's broad domestic partnership laws must report one-half of the couple's jointly owned "community income" on their respective individual federal income tax returns, whether that income is from wages or from property sources. This policy change may have implications for people living in a "community property" state that also has broad domestic partnership or marriage recognition for same-sex couples (such as California, Nevada and Washington). For helpful information about this issue, go to www.lambdalegal.org/ttp-community-property.

SAMPLE ATTACHMENT TO FEDERAL TAX RETURN

This form accompanies the federal income tax return for taxpayer _____.

The above named taxpayer married a person of his/her same sex in [place] in [year]. The taxpayer has not filed as "married" on the federal income tax return and/or filed a joint federal tax return solely because, pursuant to the Defense of Marriage Act, the federal government defines marriage as a legal union between a man and a woman. By filing as "single," the taxpayer is in no way disavowing his/her marriage.

Signature: _____

Date _____

Social Security #: _____