Paying the Piper

Here are some issues for same-sex couples to consider as we approach tax season.

In *Gone With the Wind*, Margaret Mitchell famously wrote: "Death, taxes and childbirth! There's never any convenient time for any of them." Unfortunately, for same-sex couples, April 15th can be especially inconvenient and troublesome, because our relationships are not treated equally under the law. However, there are steps couples can take now and throughout the year to help keep our money from blowing in the wind.

Although tax authorities frequently allow different-sex spouses to transfer property or provide benefits to each other without being taxed, the IRS and many state governments refuse that privilege to same-sex partners. Certain states that allow same-sex marriages, civil unions, and domestic partnerships also allow those couples to file joint state tax returns and enjoy state tax benefits, but they still cannot file joint federal tax forms.

LGBT families may have a difficult time determining where to report jointly-held assets, expenses and dependent children. In the meantime, here are some of the more common issues that you may wish to address with a financial planner and tax attorney.

Taxes on Spouse or Partner Health Insurance

Even though more public and private employers are offering insurance benefits to same-sex partners, the federal government taxes these benefits unfairly. The IRS considers different-sex married couples' insurance benefits to be tax-deductible, but because of the Defense of Marriage Act (DOMA), insurance benefits that you receive through your same-sex spouse's employer are generally taxable—instead of being considered a tax-deductible family health benefit as they are for different-sex couples, they are considered extra income to the employee. As a result, same-sex couples can lose thousands of dollars per year in taxes that different-sex couples do not pay. DOMA's discriminatory tax policies are already being challenged in court, and the pending health care bill may eliminate the discriminatory insurance tax, but in the meantime, you should consider the federal tax consequences before accepting insurance benefits from your partner's employers.

Married under state law, single under federal

If you are a married same-sex couple but you and your spouse are filing taxes separately because of DOMA or state law, there are several pitfalls you should try to avoid. First, try to talk to an expert like a tax attorney or accountant about how you should report joint property, accounts, income, and expenses. If you have children, discuss whether one or both of you may file as "head of household," which may lower your tax burden. Finally, some attorneys advise that same-sex married couples who are filing separately should include disclaimers on their tax forms saying that they are only filing separately because of DOMA or state law, if that is indeed the case. These disclaimers can help prevent a third party—such as an insurance company that offers spousal benefits—from claiming that you are not married just because you said you were "single" on your tax forms. Discuss this possibility with an attorney, and for a sample disclaimer, see the Lambda Legal's website and toolkit, "Take the Power!"

Protecting your partner after your death

If you want your partner to receive your property or benefits after your death, consult with a financial planner and tax attorney about how to properly structure these transfers. State and federal governments generally place a lower tax burden on surviving spouses, but since federal tax authorities currently do not recognize your marriage, your partner may face steep taxes upon your death. Some of these taxes may be unavoidable, but if you plan your estate strategically, such as by using contracts or trusts to transfer assets, you may be able to keep taxes to a minimum.

Visit **www.lambdalegal.org/lifeplanningtaxtips** for an overview of the tax considerations facing same-sex couples.