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# Tax advice for Pennsylvania's LGBT spouses-to-Be



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David H. Glusman, Guest Columnist

Now that the federal courts have ruled that Pennsylvania's ban on same-sex marriages is unconstitutional, and Governor Corbett has announced that the Commonwealth of Pennsylvania will not appeal the ruling, it is an appropriate time to consider the gains and losses, pluses and minuses, and financial planning challenges for LGBT and other non-traditional couples.

It has been determined that LGBT couples can file joint federal income tax returns if they are married. In fact, if they were legally married in a state or country that recognized same-sex marriages, they are required to file joint federal income tax returns or, alternately, "married filing separately." As with traditional heterosexual couples, the decision to file either *married* or *married filing separately* can be based on a variety of financial and other considerations.

Perhaps most importantly, with the law in Pennsylvania now settled, Pennsylvania LGBT couples need to look at income tax planning, estate tax planning, gift planning and other aspects of their wills, trusts and joint decisions with essentially the same options for processes and pitfalls, as traditional married couples. Other nontraditional couples -- whether same-sex or opposite sex, living together, owning property together and considering themselves to be "life partners" -- need to continue to recognize where good planning, tax advice and legal advice are

required to avoid unforeseen problems for the couple, their families, their children and other loved ones.

The writing, or rewriting, of a last will and testament ensures both that your wishes are met and, in concert with your tax planning, that your estate is able to enjoy optimal tax benefits based on federal and state law. Where appropriate, a trust may be a desired mechanism for directing how your funds are to be used (especially for minor children or younger adults who may not yet be deemed capable of properly managing substantial funds upon your death). With marriage comes the need to verify that the beneficiary designations are up-to-date for all pension-related assets. This includes an IRA account, a 401(k), a 403B or any other type of pension. In some cases, companies have other deferred compensation arrangements, and making sure, through your HR office, that these are up-to-date is imperative. It is important to remember that in the case of pension assets, the spouse routinely needs to “sign off” if a beneficiary other than the spouse is designated.

For LGBT couples considering marriage in Pennsylvania, there are other issues that relate to the taxability of certain benefits that need to be addressed. Often, you can save current tax dollars by taking advantage of employer-sponsored benefits that cover your “partner,” once he or she becomes your spouse. While many employers, perhaps including those in Pennsylvania, offered partner benefits prior to the recognition of same-sex marriage and the U.S. Supreme Court *Windsor* case in 2013, benefits for a non-spouse were taxable. In Pennsylvania, and other recognition states, these benefits are no longer taxable to the employee. It is important to make certain that your HR department knows of your marriage and that you are therefore obtaining the optimal benefit. Likewise, your employer may have other spousal benefits that come into play with a formal marriage, recognized by Pennsylvania.

One of the important financial planning tools that may need to be modified after marriage is a durable power of attorney. This is a legal tool that allows another person, often the spouse, to transact many types of business, financial and contractual arrangements in your stead, whether simply because you are unavailable or because of a disability. While they are three separate documents, the thought process for a durable power of attorney is often done along with a healthcare proxy and a living will. All of these documents should be prepared by legal counsel, but need to be done in concert with any other financial, tax and estate decisions that are being made.

Many couples own property in the name of only one partner or spouse, often because the real estate was owned before the couple existed and because the cost to “transfer” property can be prohibitive. Generally, there is no real estate transfer tax in Pennsylvania when a property is transferred from title in one name to being jointly titled with a spouse. The decision whether or not to transfer a real property title should be made in conjunction with other estate and income tax planning decisions. Sometimes, the opposite decision may be beneficial. For relatively large estates, it may be desirable to have property separated and titled in only one name.

With marriage, unfortunately, sometimes comes divorce; statistically, it is projectable that some of Pennsylvania’s newlywed same-sex couples will decide not to remain married. While Pennsylvania has not yet had its first same-sex couple file for divorce, and it is presently unclear

how such actions will be handled, many attorneys assume that all aspects of matrimonial law will now be read to include same-sex couples. So issues of alimony, child support and equitable distribution may not be too far off.

The advent of legal same-sex marriage in Pennsylvania does not mean that all same-sex couples will choose to be married. The decision to marry may be made for a variety of reasons, but if a couple decides not to go forward with marriage, it may be important to establish written agreements to provide for the disposition of assets in the event of separation, death or other life events. This is often referred to as “a cohabitation agreement” and may have similar terms and conditions as prenuptial and postnuptial agreements.

These are just some of the immediate issues that will arise as same-sex couples in Pennsylvania consider the “I Do’s and Don’ts” of marriage.

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