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Tax Implications for Same-Sex Couples

This week Americans will rush to complete their tax returns, and perhaps to write out a check to the Internal Revenue Service. For some taxpayers, the pain will be sharper, particularly for gay, lesbian, and bisexual individuals and their families. While same-sex couples in Massachusetts, Connecticut, and soon in Iowa and Vermont may marry, the federal government still does not recognize same-sex couples as married, no matter where they live. As a result, same-sex couples pay more in taxes and receive fewer benefits than do married different-sex couples.

Same-sex couples pay more in taxes than do married different-sex couples. Same-sex couples are treated as strangers by the federal government. In many instances, this means that same-sex couples pay more in taxes.

- *Taxation of Health Insurance Benefits:* Many employers provide health insurance benefits and other sorts of employer-provided benefits to their employees. Unlike coverage for spouses, domestic partner benefits for same-sex partners are taxed as income to the employee. Employees with partners pay an average of \$1,070 per year more in taxes than married employees with the same coverage. Overall, the taxation of domestic partner benefits cost American families and their employers \$235 million in additional income and payroll taxes.ⁱ
- *Lack of Protection from Estate Taxes:* When one member of a same-sex couple passes away, federal estate tax law continues to treat gays and lesbians differently. The estate tax allows married heterosexuals to transfer unlimited assets to their spouse at death without incurring estate tax liability, but same-sex couples are much more limited. In 2009, the differential treatment of same-sex and married couples in the estate tax code will affect an estimated 73 same-sex couples, costing them each, on average, more than \$3.3 million. In 2010 when the estate tax is repealed, same-sex couples will instead be excluded from beneficial capital gains provisions for the year that will cost 76 same-sex couples on average an additional \$177,000 in capital gains tax payments. When the estate tax returns with an exclusion limit of \$1 million in 2011, hundreds more same-sex couples will pay on average \$1.1 million more in estate taxes than their married counterparts.ⁱⁱ
- *No Options in Filing Income Taxes:* While many same-sex couples avoid the so-called "marriage penalty" associated with filing joint tax returns, many same-sex couples would gain from being able to file joint tax returns. Currently, those same-sex couples cannot take advantage of the option to reduce their tax burden. Same-sex couples must calculate two sets of state tax returns. In some states, same-sex couples can file their state returns as a married couple. But because federal law prohibits same-sex couples from filing as married couples, federal forms require tax calculations from state returns completed as if they were single. Same-sex couples have to spend more time and money completing their tax returns.

Many benefits are unavailable to same-sex couples. Despite paying taxes and contributing to programs such as Social Security, same-sex couples do not receive the same taxpayer-provided benefits provided to married couples.

- *No Social Security Survivor or Spousal Benefits:* Under the current system of Social Security, different-sex spouses of insured workers can get a monthly check for half their spouse's benefit if it is higher than what he or she would get on his or her own. Also, when one spouse dies and both receive social security, the surviving spouse gets the higher of the pair's monthly benefit amount. For example, for a married different-sex couple, the husband may receive \$12,073 each year while his wife may receive \$6,835 each year. When the wife passes away, the husband continues to receive his monthly payment of \$12,073. However, if the husband dies first, the wife would then begin receiving the higher of their payments, or \$12,073. Because the federal government does not recognize same-sex partners, same-sex couples do not benefit from this potential survivor benefit. This loss can be sizable. Recent data on same-sex couples aged 65 or older shows the difference in social security income between partners is \$5,700 for female same-sex couples and \$5,770 for male couples. If the partner receiving higher social security payments dies first, the surviving same-sex partner would lose this amount in potential benefits.ⁱⁱⁱ
- *Rendered Invisible:* Every ten years, the Census Bureau uses taxpayer money to count and collect information about all the people living in the United States. Same-sex married couples are not counted by the Census Bureau, however. Their relationships, even if legal in their own states, are rendered invisible by the bureau. For the upcoming 2010 survey, the bureau plans to change the responses of married same-sex couples and report them as unmarried couples. The Census Bureau argues that the federal Defense of Marriage Act, which defines marriage as between a man and a woman, prohibits it from recognizing same-sex marriages. Legally married couples living in Massachusetts, California, Connecticut, Iowa, Vermont or any other state will have their marriages rendered invisible and will be counted as unmarried partners.

ⁱ M.V. Lee Badgett. (2007). Unequal Taxes on Equal Benefits: The taxation of domestic partner benefits. *The Williams Institute and Center for American Progress*. <http://www.law.ucla.edu/williamsinstitute/publications/UnequalTaxesOnEqualBenefits.pdf>

ⁱⁱ Michael D. Steinberger. (2009). Federal Estate Tax Disadvantages for Same-Sex Couples. *The Williams Institute*. *In press*.

ⁱⁱⁱ Naomi G. Goldberg and M.V. Lee Badgett. (2009). The Impact of Inequality for Same-Sex Partners in Employer Retirement Plans. *The Williams Institute*. *In press*.