

FINANCIAL ISSUES FOR SAME-SEX COUPLES

Be cognizant of these unique challenges.

Provided by Timothy C. Hucks, CEP, President, Rising Tide, Inc.

Many states have passed laws barring housing, credit and employment discrimination against LGBT couples and individuals. Yet these civil rights moves have not removed the financial penalties that gay, lesbian, bisexual and transgender couples face directly and indirectly.

State civil rights legislation hasn't changed the mind of the IRS. Yes, there are progressive states like Massachusetts that have afforded gay and lesbian couples full marriage rights. But there is still a huge financial problem: federal tax law doesn't recognize same-sex marriages, civil unions or partners. If a gay or lesbian couple marries, they are still single filers to the IRS, and each partner has to figure out their income separately on federal tax forms.¹

In one area, the corporate sector is ahead of the government. While the U.S. government doesn't provide employee benefits to same-sex couples, the majority of Fortune 500 companies now offer health insurance and other forms of benefits to LGBT employees and their same-sex partners. However, LGBT couples pay federal taxes on employer-provided benefits. (Married heterosexual couples don't.)¹

Extra \$ for basic protection. Once straight people marry, they can count on certain legal and financial protections. In states that don't recognize same-sex marriage or civil unions, it is much more involved and expensive for gay and lesbian couples to realize these same assurances.

A recent *Chicago Tribune* article pointed out the difference in Illinois: a gay couple with two children paid \$10,000 to a lawyer to create two revocable trusts, powers of attorney and wills that would approximate the legal, medical and financial protection conveyed to straight spouses by a \$40 marriage license.²

Retirement planning issues. While gay couples pay equally into the Social Security system, no spousal or survivor benefits can be granted to them under federal law. (That's because of the 1996 Defense of Marriage Act signed into law by President Clinton.) Many pension plans don't allow survivor benefits to a same-sex couple either.^{1,2}

This has prompted many gay and lesbian couples to look into long-term income-producing investments for retirement, and to adopt a long-range growth investing approach as a sudden loss of SSI or pension benefits may raise the risk that they will one day tap into their principal. Younger gay and lesbian couples who recognize this potential retirement hazard can maximize contributions to IRAs, 403(b)s and 401(k)s in the present and consider converting traditional IRAs to Roths for tax-free growth.

Estate planning issues. Same-sex couples do not get the tax breaks the IRS gives to married heterosexual couples. This makes for some heavy-duty estate planning. Multiple powers of attorney may be needed per person; privacy waivers permit same-sex partners to access each other's medical records in an emergency. Trusts may need to be created for real property and life insurance policies.

For 2010, Colorado and Wisconsin have passed laws that include estate planning protections for same-sex couples.³

Eldercare planning & nursing home care. Long term care planning is especially wise for the gay or lesbian couple. When the need for nursing home care arises, all couples fear the possibility of spending down their assets to the point that they need Medicaid. Yet federal law is crueler in this circumstance to domestic partners. If one of two straight spouses enters a nursing home and applies for Medicaid, the other spouse can stay in the couple's jointly-owned residence without fear of losing the home. Yet if domestic partners own a home jointly and one applies for Medicaid, the healthy partner must buy out the ill partner's ownership share to remain in that home.⁴

How George W. Bush gave gay couples a tax break. As a closing note, here's an interesting financial wrinkle. When President Bush signed the Worker, Retiree and Employer Recovery Act of 2008, an opportunity that was once merely allowed became legally required. As of January 1, 2010, a surviving partner of a same-sex couple can roll over lump-sum inherited retirement savings from an employer-sponsored retirement plan to an IRA without a tax penalty. Before 2010, companies could prohibit this kind of rollover. Now, all employer-sponsored retirement plans that pay lump sums to non-spouse beneficiaries must provide the option.⁵

Let's talk. Have you and your partner, husband or wife considered the amount of money you'll need for the future? Have you taken time to look at your options in terms of trying to protect yourself from financial risk? A chat with a financial consultant can prove informative and illuminating. Have it now rather than later.

Timothy C. Hucks, CEP, is a Certified Estate Planner, Registered Investment Advisor and President of Rising Tide, Inc. He may be reached at www.risingtideinc.com, 919-968-8675, or tim@risingtideinc.com. Securities offered through [Capital Investment Group, Inc.](#) Corporate Office: 17 Glenwood Avenue, Raleigh, NC 27603 • 919.831.2370. Member [FINRA/SIPC](#).

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Citations.

¹ businessweek.com/debateroom/archives/2008/04/_pro_preempting.html [4/08]

² chicagotribune.com/news/chi-gays-pay-more-18-jan18,0,2205178.story [1/18/10]

³ outinamerica.com/home/news.asp?articleid=33842 [1/26/10]

⁴ edgeboston.com/index.php?ch=business_finance&sc=finance&sc2=news&sc3=&id=101539 [1/22/09]

⁵ coloradoindependent.com/18531/bush-signs-law-requiring-same-sex-couples-to-enjoy-retirement-tax-break [12/30/08]