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For Domestic Partners, Complicated Tax Issues

By Kathy Kristof, published November 5, 2006.
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No one needs to tell Anita Zubere about the legal and economic challenges of being in a domestic partnership rather than a marriage. She has learned from experience.

The 62-year-old Venice hypnotherapist said she and her partner, Lisa Bartoli, 52, who have been together for 26 years, registered as domestic partners to recognize their union as much as state law allows.

And yet neither will ever be able to collect Social Security based on the other's work record. Nor can one take family leave when the other is seriously ill. Unlike a married couple, they can't transfer their assets to one another at death without tax consequences. Even filing income and property taxes is complex.

"There are so, so many things," Zubere said. "It's overwhelming."

Domestic partnership is a relatively new legal status, mostly for gay and lesbian couples, as well as for elderly heterosexual couples who choose not to marry for practical reasons.

It confers many of the legal rights and responsibilities of marriage -- including being responsible for the partner's debts. However, the status is recognized only in some states, including California, but not by the federal government.

As a result, where some challenges -- such as not being able to visit a partner in the hospital -- are diminishing for unmarried couples, the tax issues are getting more complicated, experts said.

"I know how difficult it is for individuals to comply with the tax codes -- they don't make sense to the layperson," said John Chiang, chairman of the

California State Board of Equalization, who recently co-hosted a tax seminar for domestic partners. "Taxes are one of the issues that you don't want to be uncertain about."

Unfortunately, for the thousands of couples in states that legally recognize domestic partnerships, tax uncertainty is inevitable, said Alma Beck, a San Francisco tax attorney who specializes in domestic partnerships.

Consider the task of declaring a filing status on an income tax return. For most, that's simple -- you're single, married or a single parent, which would make you a "head of household."

Gay and lesbian couples in California can't marry, but they can register as domestic partners.

Starting in 2007, registered domestic partners will be required to file California tax returns just as married couples do. In other words, they'll file jointly or check the "married filing separately" box.

However, the Internal Revenue Service has ruled that the federal Defense of Marriage Act, enacted in 1996, bars same-sex couples from filing jointly -- or as married filing separately -- on federal returns.

The bottom line: Domestic partners can either choose a tax authority to defy or file state tax returns that are completely different from their federal returns, Beck said.

How different are the returns?

Under state law, domestic partners would combine their income and then file jointly or split the combined income and deductions and file two nearly identical "married filing separately" returns.

Under federal law, each partner would list his or her own income and deductions. If the partners have children, they'd have to decide who would claim the children as dependents.

Assuming that the partners don't have identical incomes and identical deductions, their federal returns would bear few similarities to the returns filed with the state.

That's particularly vexing because California's income tax form -- the 540 -- starts with the taxable income listed on federal returns. That number would surely be inaccurate for domestic partners.

California tax authorities are planning to hold hearings this month to figure out how to handle the issue, said Denise Azimi, a spokeswoman for the Franchise Tax Board.

Tax attorney Beck said, "There are all sorts of conundrums that are arising as the result of the differences between state and federal tax laws."

Estate tax issues are equally troublesome for much the same reason, she said.

The state's domestic partnership law recognizes each partner's equal right to the household's community property, but federal law does not.

Under current federal estate tax laws, for instance, married couples get a 100% exclusion from estate taxes. That means that when a man dies, his assets go to his wife without triggering a tax bill. It's only after the surviving spouse's death that estate tax becomes an issue.

With domestic partners, there's no comparable exclusion from estate taxes, Beck said. But in a community-property state, such as California, there's a question about to whom the assets belong.

That's because community-property laws assume that married couples -- and now domestic partners -- are 50-50 owners of most assets.

If the household owned a $3-million house but only one person was on the title, for example, the state's presumption would be that each spouse owned $1.5 million of the total.

But because the federal government doesn't recognize domestic partnerships, it may take the position that the house is owned by only the person on the title, Beck said.

"So if a domestic partner dies with a $3-million estate, is $3 million subject to estate tax, or is the estate only $1.5 million?" she said. "We don't know.

"It's putting people in a situation where they have certain rights under the state and not under the federal system -- and every step of the way, they need to know what their rights are," Beck added.

Because there are so many conflicts, complying with the tax laws is a bit of a gamble, she said.

"It comes down to making all sorts of judgment calls."

Kathy M. Kristof welcomes your comments but regrets that she cannot respond to every question. Write to Personal Finance, Business Section, Los Angeles Times, 202 W. 1st St., Los Angeles, CA 90012, or e-mail kathy.kristof@latimes.com. For previous columns,
visit latimes .com/kristof.