

Domestic Partnership is nowhere near the same level of equality as marriage under federal law. Often times, there are many tax concerns for individuals in a federally recognized marriage, but for domestic partners, tax issues raise many questions and are much more complicated than we could imagine.

Under California state laws, rights for domestic partnerships are not on par with rights given to federally recognized marriages. For example, a same-sex couple with two children where one partner is working, and the other is not, would end up having to pay more in state income taxes each year than a couple in the same situation, in a federally recognized marriage.

California law says that alimony needs to be paid when dissolution of a domestic partnership takes place. However, this can create a problem. Since the partnership is not a federally recognized marriage, alimony that is paid is not deductible to the payer for federal purposes. Alimony paid to the recipient will then be taxable income, which is also used for federal purposes, thereby creating this situation known as double taxation.

This is a delicate subject that needs to be addressed and there are questions that do arise. When a domestic partnership is formed and one partner deeds an interest in his or her house to their partner, is it considered a gift? Does it generate gift tax issues? In a federally recognized marriage, these are questions that aren't even given the slightest bit of thought. But with domestic partnership it is something that has to be taken into account. When there's a large disparity in incomes between two partners and the mortgage and real estate taxes are paid jointly, the two partners are required by law to split the deduction along a ratio. Tax law states that whoever pays the interest and the taxes is the one that gets the deduction. For example, that means if there is an 80/20 ratio, the partner with the lower income could potentially not have enough deductions to itemize and the partner with the higher income comes out the loser.

But there is hope. Currently, there is a new bill making its way through the California Legislature. SB1827 would require domestic partners to file joint state-income tax returns, while continuing to file federal taxes separately. That means they would be allowed to use the same income tax filing status as married couples. This bill could affect thousands of same-sex couples throughout the state, giving them the same state income tax rights and responsibilities as other married couples. It is a huge step in the right direction toward equality and it would be a welcome relief to so many domestic partnerships, alleviating some of the unfair taxation, at least for California state taxpayers.

Even though tax laws for domestic partnership aren't on the same level as federally recognized marriages, make sure you are aware of all of the different tax issues in place so you make educated decisions when it comes to your taxes. The above is just a partial list. Please see your tax advisor for more information.

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