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## The Shifting Tax Landscape for the Modern Family

by Michael Pytka

**While many people are aware that discrimination at work is illegal and a huge problem for members of the LGBTQ+ community, fewer accounting professionals realize the financial needs of this community differ greatly from their heterosexual counterparts. Marcum was the first accounting firm to offer services specifically geared toward these individuals, and here, they explain how the needs of this population differ to help you better understand your non-traditional clients.**

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When it comes to preserving your wealth and protecting your family's future, planning is crucial. But what if you or your family does not fit the traditional definitions and assumptions underlying our country's tax and estate planning laws?

The typical American family is no longer comprised of a mother, a father and two-and-a-half kids. Today, married households are on the decline, while unmarried and

other non-traditional family households are increasing and becoming the “new normal.” Divorce and second and third marriages (or more) are commonplace. And same-sex marriage – with and without children – is on the rise.

Whether they're heterosexual or LGBTQ, married or unmarried, with or without children, now more than ever, clients need to rely on experts and specialists experienced in navigating the complex, hyper-local and shifting tax landscape for the modern family in America.

In 2012, Marcum became the first national accounting firm to establish a tax and estate planning practice dedicated to the complex rules faced by people who don't fit traditional definitions. Today, Marcum's Modern Family & LGBT Services practice is the thought leader in the specialty area of tax compliance and consulting services for high-net-worth modern families, same-sex couples and LGBTQ+ individuals.

One of the most frequently asked questions we get is: “Should we or should we not get married?” (financially speaking, of course). This question leads to a whole host of other income tax questions and planning points that unmarried LGBTQ+ couples should carefully consider. For example: "If we make the decision to adopt a child, are we entitled to an adoption credit for adoption expenses incurred, and does getting married affect our ability to obtain the benefit of the credit?" They also ask, "If we have a child through assistive reproductive technology, are we entitled to a deduction for medical expenses paid?" "Who is entitled to take our child as a dependent if we file our tax returns separately?" "Can one of us take the other partner as a dependent?" "Can two unmarried partners both file as 'Head of Household'?" The list goes on.

There are several income tax advantages and disadvantages for LGBTQ+ individuals to carefully review before making the decision to get married. In many cases, it may make more sense from a tax perspective to remain unmarried. For instance, unmarried couples have the ability to sell their individual assets to the other partner, and they are able to recognize a loss on the sale of the assets, while avoiding the related party loss rules and keeping the assets within the family. Another tax advantage for unmarried couples would be to double up on the mortgage interest deduction, as the mortgage interest debt limitation is applied on a per-taxpayer basis and would therefore apply to both unmarried individuals. Under either scenario, getting married or remaining unmarried, income tax planning for LGBTQ+ couples is imperative.

In addition to myriad income tax considerations, the landmark 2015 U.S. Supreme Court decision in *Obergefell v. Hodges*, which legalized same-sex marriage nationwide, has led to several estate and gift tax planning opportunities for unmarried couples and married same-sex couples to consider.

Legally married same-sex couples must receive equal treatment under the law, which led the IRS to expand the definition of “husband and wife,” for tax purposes, to include any legally married couple, regardless of gender.

The IRS has also been forced to equalize regulations and procedures for same-sex married couples, relative to gift and estate taxation. For example, same-sex married couples now benefit from regulations that permit any legally married couple, irrespective of gender, to gift (i.e., transfer) assets between spouses during lifetime and at death, without limitation. Similarly, for same-sex married couples with assets over a certain threshold, any estate tax exemption remaining from a deceased spouse is granted to the surviving spouse (“portability”).

In addition, the IRS provided new procedures in 2017 to enable same-sex spouses to seek a retroactive recalculation of their lifetime estate and gift tax exemption amounts (including the generation-skipping transfer tax exemption).

These are just a few of the many gift and estate tax considerations for same-sex couples to factor into their decision to marry (or even divorce, as the case may be), making planning for LGBTQ+ individuals even more crucial.

As accountants, we are most often considered historians; however, for our LGBTQ+ and other modern family clients, we need to be as forward-looking as possible, as there can be a great deal of pre-planning needed to support LGBTQ+ individuals in achieving their goals.

Take, for example, a same-sex couple that has been together for decades and is now considering getting married. Assets have been acquired and liabilities incurred over all those unmarried years – so how will marriage impact them from a tax, financial, and legal perspective? It should be noted that this is very different conversation than planning for a heterosexual couple who were able to marry relatively early in their relationship. There is a distinctive catch-up component for couples who have been circumstantially unmarried long-term. Unmarried same-sex couples who have been together for a significantly longer term than many heterosexual couples inherently require a much more extensive historical review, which leads to considerably more preplanning and prospective planning opportunities.

In order to accommodate the needs of our LGBTQ+ clients, who differ from heterosexual clients, we set up a Modern Family & LGBT Services Group. It offers a wide array of tax, financial and legal services and assists our clients with identifying and leveraging nuanced opportunities that are unique to the needs of the LGBTQ+ community and other nontraditional individuals and families. We celebrate diversity and inclusion and demonstrate it by being caring and compassionate for our modern

family clients. We provide a safe and comfortable environment for them to come to us, so that we can offer our support and expertise. Our clients can be assured that when they walk through our office doors, they are walking into a space that is free of judgment. By taking steps to recognize the needs of these individuals are different, we will help move the accounting profession into the more inclusive mindset that is necessary both now and in the future.

*Editor's Note: Michael Pytka co-authored this article with his colleague Janis Cowhey, Partner and National Leader, Modern Family & LGBT Services at Marcum LLP.*