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HRC ISSUE BRIEF: FEDERAL TAXATION

THE PROBLEM

According to the 2010 Census, there are almost 650,000 same-sex partnered households in the United States who are raising over 250,000 children. Of these couples, 150,000 reported themselves as legally married. Lacking recognition in the majority of states and at the federal level, these families experience unequal treatment under our nation's tax laws and are denied benefits intended to assist working families. In many cases these families pay thousands more in taxes than married heterosexual parents raising children. Every April, LGBT families are forced to navigate unclear and often discriminatory policies just to file a federal income tax return. As Tax Day once again draws near, discriminatory tax laws will cost many families significantly more in taxes, and will deny access to the benefits designed to assist them. Repealing the Defense of Marriage Act (DOMA), which prohibits federal recognition of same-sex marriage, is only the first step. Marriage equality nationwide will ensure that all families are recognized and have full, fair access to the benefits they are entitled to.

DOMA denies same-sex couples equal treatment under the tax law

According to a report by the Government Accountability Office, there are 179 federal tax provisions that take marital status into account. But because of the Defense of Marriage Act (DOMA), even lawfully married same-sex couples are not treated as spouses by the federal government, including the Internal Revenue Service (IRS). As a result, same-sex couples and their children lose out on critical tax benefits created to help families. Same-sex spouses cannot file their federal income taxes jointly, and therefore may be denied the tax advantages of joint filing and pooling deductions. Transfers of property, gifts and inheritances between same-sex spouses are taxed – unlike those between heterosexual spouses. Even the health insurance benefits provided for a same-sex spouse or partner are treated as taxable income, unlike those provided to a heterosexual employee's spouse, costing the average same-sex couple over \$1,000 a year in additional taxes.

LGBT taxpayers must spend more time and money simply trying to file their taxes

Even lawfully married same-sex couples, at tax time, are forced to declare themselves “unmarried” to file their federal income tax returns. The federal tax system is already confusing for many taxpayers, and same-sex couples have the added burden of trying to figure out how to file and ensure that they are following the law. Many LGBT taxpayers go to professional tax preparers or use commercial tax software, spending more time and money than their heterosexual neighbors.

While DOMA is the principal obstacle to equal treatment in federal taxes, another hurdle is the lack of clear guidance from the IRS for LGBT people. Even professional tax preparers may not know how same-sex couples should file their federal taxes, including, for example, what deductions they can and cannot utilize. Without clarity, LGBT taxpayers who do the best they can may still face fines, interest and other penalties from the IRS if they are in error.

Inconsistent interpretation and enforcement disadvantages same-sex parents

Many same-sex couples use adoption to form their families and can incur significant expenses in doing so. Recognizing the need to support family formation, Congress created a federal tax credit for expenses related to the adoption of a child. However, despite clearly being able to take advantage of that credit under the law, same-sex adoptive parents have been denied consistent access to the adoption tax credit by the IRS.

Current IRS guidance and practice also prevents many same-sex parents from taking advantage of other tax benefits designed to ease the financial burdens of raising children. Under federal tax law, parents of a “qualifying child” have

access to the Earned Income Tax Credit, the Child Care Tax Credit, the Dependent Tax Credit and others. Many same-sex parents are denied these benefits because they live in jurisdictions that do not allow gay and lesbian couples to utilize joint or second parent adoptions. By themselves, these discriminatory state laws place non-biological parents at a distinct disadvantage and deny their children the security of having two legally recognized parents. But guidance from the IRS further harms these families by precluding the recognition of same-sex parents who are not able to legally adopt their children, but have nonetheless been co-parenting them since birth and intend to do so through adulthood.

WHAT IS HRC DOING TO END THIS DISCRIMINATION?

HRC is lobbying Congress to remove discriminatory tax laws

HRC is working to pass the Respect for Marriage Act (H.R. 1116, S. 598), legislation that would repeal DOMA and thereby ensure that lawfully married same-sex couples are treated equally under federal law, including tax law, and have access to the same rights, benefits and responsibilities as other married couples. The Congressional effort to repeal DOMA is being led by Senator Dianne Feinstein (D-CA) and Representatives Jerrold Nadler (D-NY) and Ileana Ros-Lehtinen (R-FL).

HRC is also working to address one specific tax burden that hurts thousands of same-sex couples, even those who do not have access to marriage in their states – the unfair taxation of employer-provided health benefits for LGBT families. Legislation called the Tax Parity for Health Plan Beneficiaries Act (H.R. 2088, S. 1171) would remove this discriminatory tax, ensuring that benefits for same-sex spouses and partners, like benefits for heterosexual spouses, are not treated as taxable income. Because the current, discriminatory law also forces fair-minded employers to pay more taxes, HRC has built a Business Coalition for Benefits Tax Equity, with more than 80 major companies also lobbying Congress to pass this important bill. The Congressional effort to end this discriminatory tax is being led by Representatives Jim McDermott (D-WA) and Richard Hanna (R-NY) and Senators Charles Schumer (D-NY) and Susan Collins (R-ME).

HRC is actively engaging the IRS and the administration to provide additional guidance

The IRS could provide valuable clarity regarding filing status and could end discrimination against many LGBT parents without Congress having to change any law. HRC continues to engage with the administration in the development of more comprehensive guidance and the adoption of fair, even-handed policies for all families.

DID YOU KNOW?

On average, an LGBT employee will pay

\$1,069

a year in federal taxes for employer provided spousal health care.

Because of DOMA, same-sex spouses and partners of federal employees cannot be covered by the federal government's health care plan – requiring them to find health insurance from another source. The average premium cost for a single person on the individual market is more than

\$2,500 A YEAR.

Families who cannot claim their child as a “qualifying child” for income tax purposes pay up to \$1,000 extra in federal income taxes each year. These families may also not have access to the earned income tax credit, costing on average

\$2,100.

Parents wrongfully denied the adoption tax credit can pay up to

\$13,360

more in taxes than other new adoptive parents who are able to take advantage of the credit.