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Obergefell v. Hodges: How the Supreme Court Decision Allowing Same-Sex Marriage Affects Estate Planning – PART II

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As we learned in Part I ("Obergefell v. Hodges: How the Supreme Court Decision Allowing Same-Sex Marriage Affects Estate Planning"), same-sex couples can now file joint federal tax returns the same as opposite-sex couples. This sounds like a great opportunity, but filing jointly is not always the most beneficial option. It is important for same-sex couples to know the pros and cons of filing joint tax returns given the new opportunity to do so. As always, couples must be married to file jointly.

First and foremost, joint filers are eligible for more deductions and credits than those who file separately. For example, the earned income tax credit, educational tax credits, adoption expenses, child and dependent care costs and the student loan interest deductions are not available to married couples who file separately. Joint filers benefit from a higher standard deduction and often tend to have a lower tax liability as a result. The majority of married taxpayers benefit from filing jointly, but that is not always the case.

There are times when married couples would be better off filing separately. If one spouse is eligible for certain tax deductions because of particularly high or low income, it might be advantageous for the couple to file separately. For example, casualty losses and medical expenses must each exceed 10 percent of a taxpayer's Adjusted Gross Income in order to be deducted. If one spouse would be eligible to deduct medical expenses based on his or her own income individually, but not with the couple's income combined, this may be reason enough to file separately. Or, if one spouse would be eligible to deduct casualty losses based on his or her own income individually, but not with the couple's income combined, the taxpayers might also be better off filing separately.

A spouse should always be aware of his or her partner's honesty and accuracy when it comes to filing tax returns. If one spouse is wary about fraud or misrepresentation on his or her partner's return, he or she should file separately to protect himself/herself from potential claims from the IRS.

It is also important to note that when married couples file separately, if one spouse itemizes deductions, the other spouse must also itemize deductions. In other words, if spouses file separately, both partners must use the same method of claiming deductions.

As always, same-sex couples will have to weigh the pros and cons of their individual circumstances in order to decide whether they are better off filing jointly or separately, however, in most cases the ability to file jointly will be a huge benefit.