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# Pride 2022: Tax Court Cases, Federal Laws & More

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**For 2022 Pride, with all the chaos of the legal and political environment in the U.S., it is important to get perspective on the past, present, and future of the LGBTQIA+ community's progress for equality in the tax law. Some actions that are now the norm were fought over not very long ago, and there is continued work to be done with each passing year.**

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While the LGBTQIA+ community and supporters view many advancements as slam-dunk decisions, things often play out differently in the public sphere. To achieve progress requires continued support politically, legally, and economically.

Tax planning for the LGBTQIA+ community is necessary, with the potential to amend prior year income tax returns to file as married and/or take advantage of tax incentives previously not allowed to them.

## **Not-So-Distant Past: *Rhiannon O'Donnabhain v. Commissioner of Internal Revenue***

It was a mere 12 years ago that the Tax Court decided an important case for the transgender community regarding deductible medical expenses related to the cost of surgeries, transportation and other medical expenses for medical transition.

Rhiannon G. O'Donnabhain (“petitioner”) was a transgender woman who began transitioning around 1997. In 2001, she underwent gender confirmation surgery. Petitioner claimed a medical deduction under IRC Section 213 for the cost of the surgeries, transportation, feminizing hormones, and other related expenses. The IRS disallowed the deduction initially, and the case was taken to Tax Court. The Tax Court held that petitioner’s deduction of the costs of the surgery and hormone therapy were for medical treatment, and that the deductions were valid medical expense deductions for tax purposes.

While certain components of the surgery were considered cosmetic, overall the decision was a win for the transgender community and continues to assist the community in tax planning and compliance. It is important to keep in mind how the court ruled on the specifics of the matter in applying the code to transgender clients in your tax practice.

## **Current Docket: The PRIDE Acts**

The PRIDE Act of 2022, introduced in February, proposes the following:

- Expand the Offices of Minority and Women Inclusion to encompass LGBTQIA+ inclusion.

- Amendment to Dodd-Frank Wall Street reform and Consumer Protection Act to include LGBTQIA+ reference.

This act follows the PRIDE Act of 2021, which proposed legally married same-sex couples be allowed to amend their income tax returns and file as married for all previous years in which they were married. It also proposed corrections for gender-neutral language within the tax code.

With each of these acts introduced in the House, the tax law and our system have the opportunity to become more and more inclusive of LGBTQIA+ individuals. By expanding the offices of diversity to include the community and rewriting our tax code with gender-neutral language, we are continuously moving towards a society in which systemic issues are not holding back members of the community to the same degree as was the case historically.

Each of these acts were referred to House Committees on Financial Services or Ways and Means and await further action.

## **Advancement: President to Sign Executive Order Advancing Equality for LGBTQIA+ Individuals**

The latest White House press briefing gives insight into the administration's next steps to advance equality for the LGBTQIA+ community. Some key pieces of the executive order President Biden intends to sign are:

- Review access and barriers for families to federal programs and benefits.
- Promote expanded federal data collection on sexual orientation and gender identity.
- Appoint LGBTQIA+ leaders to the highest levels of the U.S. government.

While nothing specifically affects the tax landscape in these pieces of the Executive Order, it is promising to see the developments. By removing barriers, adding

representation, and backing bills with hard data, the administration is building a future for the U.S. in which LGBTQIA+ individuals are a part of change in legislation at all levels.

Many modern families are unable to take advantage of all the tax and general benefits of home ownership, and many LGBTQIA+ youth struggle with periods of homelessness. By reviewing access to federal programs and benefits for everyone within the community, , the administration is assisting many in upward mobility that is currently next-to impossible for countless cases. Economic empowerment will affect the tax situation for these families, and planning will become more crucial.

Visibility both in the data being collected and within the highest levels of government are extremely important to the advancement of the community. Representation through employment and the data utilized for shaping government programs may affect future policy decisions. These changes may not immediately affect what clients see on their tax returns, but the continued progress of the community will influence future developments in our tax code.

## **Advising Clients With Perspective**

When we look back on the past 10-15 years, it is apparent how much progress has been made for the LGBTQIA+ community in finding equality in the law. It is important to remember how this is accomplished: one act at a time. In the midst of national chaos, there are progressive actions being taken at both federal and state levels to push forward topics that could not have been brought to the table 15 years ago, to ensure equality under the law for the community.

Each year, tax planning becomes more and more crucial to LGBTQIA+ individuals as they become more integrated in our national systems and tax code. It is important for tax advisors to keep this in mind during year-end planning, especially when opportunities to amend multiple prior years' returns beyond normal statutes become an option for these clients.