

How Gay Marriage Will Change Couples' Financial Lives

By [TARA SIEGEL BERNARD](#)

Couples may marry for love, but the partnership is also an economic one. And now that New York has become the sixth state to perform same-sex marriage, couples who tie the knot here will gain a variety of financial benefits and legal rights.

Some of the changes will be significant. While New York had already recognized same-sex marriages performed elsewhere, that recognition didn't extend to state income taxes. Now, couples who marry and live in New York will be able to file their state tax returns jointly. Wealthier couples may end up paying more in taxes, but families with lower incomes may owe less.

Couples who decide to marry will also be first in line to inherit their spouses' assets, even in the absence of a will. They'll gain an array of smaller benefits as well, down to the ability to transfer a lobstering license.

"There are hundreds of different protections and benefits under New York law," said Susan Sommer, director of constitutional litigation at Lambda Legal, a legal advocacy organization for the gay community.

Of course, there's still a long list of federal benefits that will remain out of reach. Since the federal Defense of Marriage Act — which defines marriage as between a man and a woman — is still being enforced, gay couples in New York will still need to file separate federal tax returns. They will not be eligible for Social Security spousal or survivor benefits. And they will continue to owe extra income taxes on their spouse's health insurance benefits — a cost that opposite-sex married couples don't have to pay.

So how will life change for same-sex couples who decide to marry? Here are some of the highlights (some of these items already apply to New Yorkers who live here but were married out of state):

Income Taxes Married couples will be able to file their state tax returns jointly, though they will still need to file separate federal tax returns (either as single or head of household). Some couples who jointly earn less than \$65,000 may end up paying less in state income taxes than if they filed individual tax returns because they will get what known as a marriage bonus. But some couples with higher income may be end up in a higher tax bracket by filing jointly. In other words, they would owe less if they remained single and filed separate returns, said Tina Salandra, a New York accountant with expertise in planning for same-sex couples.

Filing joint state returns is also likely to complicate matters for federal tax purposes, and it's likely to cost the couple more in tax preparation fees (or time, if they fill out their own returns).

Here's why: Even though the couple must file separate federal tax returns (as single or head of household), they must still prepare a dummy federal tax return using a married filing status, so that they can use that data for filing their joint state return.

Otherwise, nothing changes on the federal tax front since they must file separately. (Generally speaking, couples with similar incomes or really high incomes save money by filing individual tax returns, Adding their income together often pushes them into a higher tax bracket. But couples with a stay-at-home parent or a couple with disparate incomes would typically pay less if they could file joint returns).

Estate and Gift Taxes Individuals with large estates will benefit because New York State allows spouses to transfer an unlimited amount of assets at their death. Everyone else must pay state estate taxes on estates that exceed \$1 million.

But same-sex married couples will continue to be subject to federal gift taxes and estate taxes, unlike their opposite-sex counterparts.

Health Insurance People who work for companies that offer domestic partner insurance [must pay income taxes](#) on the value of their partner's benefits, unless they are considered a dependent. Heterosexual married couples aren't subject to the tax since the federal government recognizes them as an economic unit. Now that same-sex couples have the ability to marry in New York, they won't owe those taxes at the state level, but they will still owe the taxes at the federal level, experts said.

Inheritance Rights It's always wise to have a basic will outlining your wishes. If you don't, your estate will be divided according to New York State law, which puts spouses first in line of inheritance. But if the deceased spouse has children, the spouse will get \$50,000 plus one half of the estate, while the children share the rest. Surviving spouses can also determine what they want to do with their spouse's remains.

State Employee Benefits The spouses of gay people who work for the state in some capacity — whether they're governmental office workers or professors at the State University of New York — will be able to treat their spouses as just that. That means they'll be eligible for health insurance, pension survivor benefits and any other benefits normally extended to spouses.

Parentage When a married lesbian gives birth to a child in New York, the woman who did not give birth, but who is recognized as a parent, will be automatically put on the child's birth certificate (even if she doesn't have biological ties to the child or hasn't adopted the child). Even so, it may be wise to adopt.

“Having a birth certificate reflect the child's parentage from the start is a big help for the family,” Ms. Sommer said. For instance, it allows the nonbiological parent to easily put the child on her health insurance, as well as make health care decisions for the child. “But an adoption is the best way to secure the child's legal relationship to both of the child's parents not just in New York, but everywhere.”

For two married men, however, the situation remains a bit more complicated. If two men are using a surrogate to carry their child, only the biological father can be automatically listed on the birth certificate. Because of New York State law, the surrogate must first relinquish her rights to the child, at which point the nonbiological father can adopt the child. (Also keep in mind that surrogacy contracts are not legal in New York, so two men who want their own biological children typically enter into such a contract with a woman in a state where surrogacy contracts are enforceable, said Allen Drexel, a family lawyer in New York with expertise in same-sex family issues).

Other Rights If a person dies from a work-related injury or illness, their spouse may be entitled to worker's compensation benefits. Spouses also have the ability to bring wrongful death claims on behalf of their significant other.

Potential future benefits If the Defense of Marriage Act, known as DOMA, is ultimately struck down, being able to marry in New York will open the door to the many [federal benefits](#) that come with marriage.

“New York opens the door for couples who get married to be in a position to get those federal rights and protections when the day comes, in the not distant future, that DOMA falls,” Ms. Sommer said. “Marriage in New York brings the upside of access to these federal protections.”

Of course, for many couples, just being able to describe their status with one easy word — marriage — is the biggest benefit of all. “The big gain here is going to be in the security, clarity and dignity that comes with being able to say, ‘We are married,’ said Evan Wolfson, president of Freedom to Marry, an advocacy group in New York. “This is above love and commitment, more than the legal and economic matters.”

What other benefits, obligations or costs might married same-sex couples encounter in New York?