national news

IRS taxes domestic partner benefits

Domestic partner benefits offered by employers should generally be taxed, says the Internal Revenue Service. The decision came in what is known as a letter ruling, issued Jan. 19. It breaks no new ground on tax policy. But it does point to discrimination against same-sex couples not allowed to marry, and also to limited ways to avoid that burden.

"It's inherently unequal and unfair for unmarried employees who receive family health insurance to face a greater tax burden than their married colleagues," Suzanne D. Goldberg, an attorney with the Lambda Legal Defense and Education Fund, told the *Washington Post*.

The ruling states that "a Domestic Partner does not qualify as a spouse of a Qualified Employee unless recognized as such under state law." A few local jurisdictions, but no states, currently treat domestic partners in that manner. The governor of Hawaii has suggested such action as a way out of the gay-marriage legal challenge in his state, but there appears to be little enthusiasm for his idea.

"It's just one more way we are discriminated against," said financial planner Peg Downey. "We can't collect on our partner's Social Security or their retirement benefits, but we have to fund the retirement benefits of partners of straight people."

The IRS did allow that a domestic partner who "receives more than half of his or her support from the Qualified Employer for the calendar year," can qualify as a dependent. In that instance the benefits will not be taxed.

For same-sex couples who both work, benefits will likely be taxed. Those who may qualify as a dependent would likely have low or no income, such as a student, a partner staying at home with children, or someone not able to work because of a severe illness.

Letter rulings legally apply only to the company or individual requesting the decision. However, tax experts follow them closely, as they indicate the agency's thinking on a subject.

Achtenberg back to HUD

Roberta Achtenberg will return to the Department of Housing and Urban Development, which she left last April to run unsuccessfully for mayor of San Francisco. She told the *New York Times* she had discussed her return with Secretary Henry Cisneros and White House staff. An announcement will be forthcoming.

Roberta Achtenberg

Achtenberg will be returning to an agency where she was both liked and respected. She will not get back her old job, which requires Senate confirmation, but will serve as a senior advisor to Cisneros.

Her partner, Mary Morgan, and their son, Benjie, now in the fifth grade, remained in Washington, D.C., during the campaign.

"I have a job I really like [at the Justice Department]," Morgan had said at the time of Achtenberg's resignation.

She also voiced the practical: "It's the only paycheck we have right now."

Achtenberg has agreed to stay at HUD through the end of the school year. Some speculate she might find a position on Clinton's re-election campaign. Another permanent senior position within the administration likely would not come before a second Clinton term.

Illegal strip search brings big bucks

The U.S. government has agreed to pay $200,000 in settlement for an illegal strip search of ACT UP demonstrators. The incident took place seven years ago in Portland, Ore., and has been tied up in legal wrangling since then.

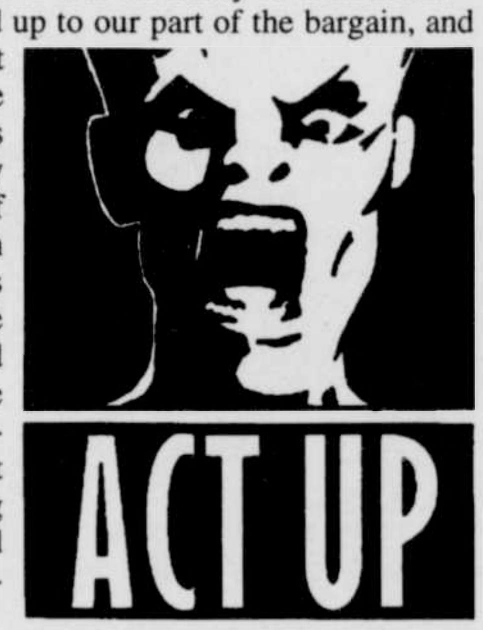
Ten ACT UP members were arrested on Feb. 27, 1989, for civil disobedience at the Portland office of the Food and Drug Administration. They were pushing for expanded access to and approval for experimental AIDS medications.

Wayne Harris was a central figure in the demonstration and in the subsequent lawsuit. He is a lawyer who had worked in the U.S. attorney's office in Portland. He returned to that office prior to the protest, to choreograph the action.

"I wanted them to be aware that it was going to happen so that the government would have enough resources there, so it wouldn't be a kind of panic response where somebody might get hurt," said Harris.

Six men and four women were arrested, detained and strip searched by U.S. marshals. The latter procedure is highly unusual, allowed only if there is reason to fear for safety or contraband.

"We lived up to our part of the bargain, and they didn't. It pissed me off," Harris said. "I really believe part of the reason they did it was these people were gay and they were AIDS activists. I just wasn't going to sit by and let that happen."



Harris had clerked in federal court and "knew the civil rights area pretty well."

He knew the lawyer he wanted to handle it. Tom Steenson, an attorney in private practice, readily agreed to take the case on a contingency fee basis. Lambda Legal Defense and Education Fund joined in with its resources and later recruited a team to write the appellate brief.

The government adopted a strategy of stalling and fighting. It won at trial in 1993, when the court accepted the marshals' argument that the protesters might have been carrying concealed weapons and posed a threat, thereby justifying the strip search.

But a three-member panel of the 9th Circuit U.S. Court of Appeals threw out that decision in June 1995. The unanimous opinion said there was "no reasonable cause" to conduct the strip search. The judges called it "invasive and humiliating," and ordered the case back to the trial court to determine liability and damages.

The government's offer to settle was finalized on Feb. 6. It calls for payment of $20,000 in damages to each of the 10 people arrested. It also allows the plaintiffs to review materials used by the government to train marshals in responding to issues of HIV/AIDS.

"We are delighted with the substantial settlement. It shows that the government pays a high price for trying to intimidate AIDS activists and other civil rights protesters," said Suzanne B. Goldberg, an attorney with Lambda.

For Harris, "The lawsuit was never intended to enrich any individual. The whole purpose was to rap the government's knuckles so that political activists would feel secure in engaging in nonviolent civil disobedience. I would hope the plaintiffs consider sizable contributions to the political causes of their choice."

Reported by Bob Roehr