

Boomer Children Living Common Law?

Boomer parents may be finding that with university graduations come new living arrangements and that takes some tax planning! Surprises may be in store as they get ready to file 2007 tax returns for their adult children. Following is a checklist of tax facts to consider when conjugal relationships bloom into new living and filing requirements:

TAX CONSEQUENCES OF LIVING COMMON LAW

1. **Definitions for Tax Purposes:** The *Income Tax Act* considers only those who are legally married to be “spouses”. However, for tax purposes, spouses and common-law partners are treated equally. For common-law partners, there is no ceremony to fix the date at which the relationship can be deemed to begin so a definition is required.

For tax purposes, a common-law partner is a person who is not the individual's spouse and with whom the individual are living in a conjugal relationship, and that person:

- has been living with the individual in a conjugal relationship for at least 12 continuous months,
- is the parent of the individual's child by birth or adoption, or
- has custody and control of the individual's child and that child is wholly dependent on that person for support.

If the couple is no longer living together at the end of the tax year and is still separated 60 days after the end of the year, they are not longer considered to be common-law partners. However, they immediately become common-law partners again if they resume living together.

2. **Combine Net Income.** As a common-law couple, individual tax returns must be filed, but net family income must be combined for purposes of refundable tax credits like the CTB, GST and provincial credits.
3. **One Tax Exempt Principal Residence.** Common-law couples must be aware they can only have one tax-exempt principal residence per household (whereas singles can have one each).
4. **Spousal Credit Claims.** Depending on the size of net income for each person, one may be able to claim the other for the \$9,600 spousal credit (but this is reduced dollar for dollar by their net income).
5. **Options re Non-Refundable Tax Credits Claims.** In addition common-law couples can claim each other's medical expenses (usually claimed on the return of the spouse with the lower net income for maximum benefit) and maximize their charitable contributions (it's best to combine receipts so that they are over \$200 for a better tax break). The amount for minor children can also be claimed by either spouse or split between them to maximize the use of the credit.

6. **Tuition/Education/Textbook Credits.** Up to \$5000 of tuition, education and textbook credits can be transferred to a supporting spouse if they can use the credits to reduce their taxes.
7. **Spousal RRSP Contributions.** If the couple expects to remain together, they may wish to start making spousal RRSP contributions to equalize deposits there. Money can be withdrawn on a tax-free basis from an RRSP under the Home Buyer's Plan, so this might be a way for them to save for their first home on a tax-advantaged basis.
8. **Attribution Rules.** From an investment point of view a common-law couple is treated the same way as a married couple. That is, if a transfer of capital from the higher earner to the lower results in the earning of interest, dividends or capital gains, that income is reported by the transferee. These rules can only be avoided when an inter-spousal loan is drawn up so long as the rules that apply to the loan are adhered to.

More information on basic tax principles can be found in Evelyn Jacks' [*Essential Tax Facts*](#), which is a great gift to young adults who are setting out on an independent life.