

Issue Brief

Tax Treatment of Benefits Provided to Same-Sex Married Couples

Issue Date: September 2013

Summary

The IRS has issued guidance clarifying the tax treatment of employee benefits provided to same-sex married couples. Prior to the Supreme Court's DOMA ruling, employers who chose to offer benefits to same-sex spouses were generally required to treat the benefits provided to those spouses as taxable income to the employee.

Due to the Court's ruling, health and welfare benefits provided to legally married same-sex spouses will now be subject to the same federal tax treatment as any other married couple. However, the Court's ruling did not address the issue of state of marriage vs. state of residence in determining tax status.

Federal Tax Status Based on State of Marriage Not State of Residence

In Revenue Ruling 2013-17, the IRS states that federal tax law will apply to same-sex married couples based on the location of their marriage, not their current state of residence. If same-sex couples are legally married in a state, the District of Columbia, a U.S. territory, or a foreign country which recognizes same sex marriage, the couple will be treated as married for federal tax purposes regardless of where they live.

In the ruling the IRS recognized that basing federal tax law on the state of residence would have created significant administrative burdens on employers. Specifically the IRS stated that... *"A rule of recognition based on the state of a taxpayer's current domicile would also raise significant challenges for employers...as well as the administrators of employee benefit plans."*

Effective Date

The IRS will begin applying the ruling on September 16, 2013. However, employers and individuals can file for a credit or refund of prior tax overpayments resulting from the ruling (within the time frame allowed by the Code). Generally, a taxpayer may file a claim for refund for three years from the date the return was filed, or two years from the date the tax was paid, whichever is later. Consequently, employees may file amended tax returns, and employers may file amended payroll tax returns, to collect refunds for taxes paid on benefits during the allowed period.

How to Handle 2013 Taxes

The IRS also clarified that employers may adjust the current year's tax treatment of employee benefits provided prior to the ruling as long as the adjustment is made prior to the end of the year.

The IRS stated it plans to issue additional guidance for employers regarding cafeteria plans, and how other tax-favored arrangements should treat same-sex spouses for periods before the effective date of the ruling. However, it does not appear (pending further guidance) that employers are required to retroactively adjust the tax treatment of benefits. If an employer chooses not to adjust the tax treatment of 2013 benefits provided prior to the ruling, the employee will be able to make an adjustment when filing their 2013 tax return.

State Tax Issues

Employers may still need to treat these benefits as taxable income to the employee for state tax purposes in states that do not recognize same-sex marriage depending on specific state tax laws. Employers will need to work closely with their tax advisors to determine the application of state tax law to benefits provide to their employees.

Other Forms of Relationships

A number of states have laws granting some form of recognition to other forms of same-sex relationships. Registered domestic partnerships, civil unions, or other similar arrangements are affected by this ruling. Employers who choose to provide benefits to same-sex couples in these types of relationships, but who are not legally married in a state that recognizes same sex marriage, will still need to continue to treat benefits provide to a “non-married” partner as taxable income to the employee.

Summary

Revenue Ruling 2013-17 can be found at <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>. The IRS also issues an FAQ addressing many of the questions employees may have. The FAQ can be found at <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>.

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