



Department of Taxation

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Employer Withholding - Information Release

EW 2013-01 - Guidelines for Employers Providing Benefits to Employees Married in a Jurisdiction That Recognizes Same-Gender Marriage - Issued Nov. 14, 2013

Introduction

This information release offers guidance to employers regarding the treatment of employee benefits provided to an employee who is married in a jurisdiction that recognizes a same-gender marriage.

Background

Under laws promulgated by the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code, certain employer-provided benefits¹ are excluded from an employee's gross income for federal income tax purposes. However, many of these exclusions are permitted only when such benefits are provided to the employee and the employee's "federal tax dependents", which include the employee's spouse and dependents as defined under IRC §152. If an employer provides benefits to an individual that is not an employee's federal tax dependent, the employer must include in the employee's gross income the fair market value of the benefits provided. This is known as "imputed income" and increases the employee's federal taxable gross earnings for the taxable year as reported on the employee's Form W-2 box 1.

On June 26, 2013, the U.S. Supreme Court issued a decision on the constitutionality of section 3 of the federal Defense of Marriage Act (DOMA), which had established a federal definition of marriage. Following the Court's decision, the Internal Revenue Service ("IRS") issued Revenue Ruling 2013-17 and Notice 2013-61. Likewise, the U.S. Department of Labor issued Technical

¹ Benefits include but are not limited to employer sponsored accident and health plans, health savings accounts (HSAs), flexible spending arrangements (FSAs), group term life insurance, qualified tuition reduction payments, meals or lodging reimbursements, dependent care assistance programs, other benefits provided through cafeteria plans and other fringe benefits. See IRC sections 79, 106, 117(d), 119, 125, 129 and 132 among others.

Release No. 2013-04. This guidance provided that a marriage between same-gender individuals performed in a jurisdiction that recognizes such a marriage will now be recognized for federal income tax and employee benefit purposes. As a result, employers may recognize same-gender married couples for these purposes even if the impacted employees are domiciled in a jurisdiction whose laws do not recognize a same-gender marriage.

Ohio Guidance

Under Article XV §11 of the Ohio Constitution, Ohio does not recognize marriage between persons of the same gender. Accordingly, Ohio employer withholding taxes shall be determined based on the taxable gross earnings amount of each employee as if it was calculated in a manner that does not recognize same-gendered marriages. Employers must therefore treat benefits provided to the same-gender spouses of employees and the dependent children of those spouses as imputed income for Ohio income and school district income tax employer withholding purposes. Employers shall determine employees' Ohio taxable gross earnings amounts in a manner consistent with this guidance and report these amounts on box 16 of federal Form W-2. These amounts must also be used in determining the employer's liability for withheld income and school district income tax.

Questions?

Taxpayers may visit www.tax.ohio.gov. Questions may be submitted by clicking on the "Contact" link found at the top right of the page and then choosing the "Email Us" option. Taxpayers with additional questions regarding this subject may contact Individual Income Taxpayer Services at 1-800-282-1780.