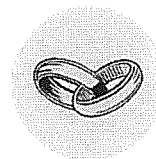


Gay & Lesbian Advocates & Defenders

Taxes on Employment Benefits for Same-Sex Spouses



Federal Taxes

Under the 1996 federal Defense of Marriage Act, the federal government will recognize marriages only when they occur between a man and a woman. Therefore, federal tax law will not respect or recognize the marriage of a same-sex couple. Among other things, this refusal to respect the marriages of same-sex couples will lead to federal taxation discrepancies between married same-sex couples and married different-sex couples.

This tax discrepancy is readily apparent in the employment benefits arena. When an employer provides a benefit, like health insurance, to an employee's different-sex spouse, the benefit is excluded from gross income tax federally. That means that an employer may provide tax-free health benefits to an employee's different-sex spouse. However, when an employer extends a benefit to an employee's same-sex spouse, the employee will be taxed federally on the fair market value of the benefit provided to his or her same-sex spouse. The value of the benefit will be treated as wages paid to the employee for federal employment tax purposes.

There is one exception to this general rule of federal taxation. If your same-sex spouse qualifies as a "dependent" under IRS rules (without regard to his or her status as a spouse under Massachusetts law), the value of the benefit to your "dependent" is not taxed as wages to the employee.

State Taxes

Massachusetts

The Commonwealth of Massachusetts will not tax employment benefits paid to the same-sex spouse of an employee. The absence of a Massachusetts tax obligation arises from the fact that the constitutional principles in *Goodridge* preclude Massachusetts from enforcing a state tax system that treats same-sex spouses differently from opposite-sex spouses.

Connecticut

The State of Connecticut does not impose a state tax upon any employment benefits paid to the civil union spouse of an employee. However, unlike Vermont, the Connecticut Attorney General has opined that Connecticut will not recognize the marriage of a same-sex couple. Although GLAD disagrees with this opinion, at the moment it appears that same-sex married couples in Connecticut will pay a state tax on employment benefits unless the couple also has a civil union. Once again, GLAD strongly recommends that a tax accountant or lawyer familiar with this issue be consulted.

Rhode Island

The State of Rhode Island recently passed a law that exempts insurance benefits paid to a domestic partner or same-sex spouse from state taxation. Some employers may not be aware of this change in the law, and so you should contact GLAD's Legal InfoLine if you are paying a state tax on this spousal employment benefit.

Maine

Although GLAD believes that all states should recognize the marriages of same-sex couples, currently Maine is not providing this recognition for spousal benefits provided by the employer, and so is taxing those benefits.

New Hampshire

New Hampshire has no state income tax and so there is no state tax on spousal employment benefits.

Vermont

The State of Vermont does not impose a state tax upon any employment benefits paid to the civil union spouse of an employee. For that reason, it is likely that Vermont also will not impose a state tax on employment benefits extended to an employee's same-sex spouse through marriage. However, Vermont has not specifically addressed the situation of same-sex married spouses, and consequently, GLAD strongly recommends that a tax accountant or lawyer familiar with this issue be consulted.

Non New England States

For employees whose wages are subject to taxation by states outside New England, there is no clear indication as to how these states will tax employment benefits extended to an employee's same-sex spouse. It will depend on whether the taxing state recognizes the marriage and the structure of its tax laws. (See GLAD's publication, *Navigating Income Taxes for Married Same-Sex Couples*.) This is an evolving area of the law in which there is no certainty. GLAD will update this publication as soon as additional information becomes available and recommends that you consult our website for any updates. GLAD also strongly recommends that a tax accountant or lawyer familiar with this issue be consulted.

A Word on Domestic Partnerships

In general, non-married persons receiving health benefits under domestic partnership plans will be taxed on the value of the benefit at both the federal and state level. There are two exceptions to this general rule. First, employment benefits extended to civil union spouses in Vermont will be taxed at the federal level but not the state level. Second, GLAD is aware that some employers have chosen to extend marital benefits to the same-sex spouses of their employees under domestic partnership plans, rather than under their general plans (i.e., plans generally applicable to single employees and employees with different-sex spouses). Married employees receiving benefits under a domestic partnership plan can follow the general principles outlined above for married same-sex spouses, notwithstanding the fact that the underlying benefits may be provided under a domestic partnership plan.

'Freedom to Marry Rings' image upper right © H. Mitchell.

Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression.

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