

June 4, 2014

## **Implementation of Same Sex Marriage Decision in Relationship to Federal Tax Requirements**

### **BACKGROUND**

Since 2007, same sex couples have been authorized to register as domestic partners, allowing these couples to have most of the same rights and responsibilities as different sex couples who are married. For state employees who were part of a registered domestic partnership, this meant that the employee could obtain health benefits for his or her registered domestic partner. However, because this relationship was not recognized by the Internal Revenue Service (IRS) as a marriage, the premium payment could not be excluded from gross income and wages to reduce the employee's taxable income.

In 2012, Referendum Measure No. 74 was passed by the voters in the November 6<sup>th</sup> election. This measure authorized the marriage of same sex couples and bestowed all state rights and responsibilities as different sex couples who are married. The measure also authorized all same sex registered domestic partnerships to automatically convert to marriage on June 30, 2014 unless a proceeding for dissolution, annulment or legal separation is pending. In addition, the measure provided that regardless of whether the couple had a marriage through solemnization or through the automatic conversion mechanism, the date of the original state registered domestic partnership is the legal date of the marriage. However, because of the federal Defense Against Marriage Act (DAMO), the IRS continued to disallow the premium payment for sex same spouses to be excluded from gross income and wages.

On June 26, 2013, the United States Supreme Court, in the case of *United States v. Windsor*, struck down Section 3 of the DOMA as unconstitutional, stating that the federal government cannot discriminate against same sex couples. In response to this opinion, on August 29, 2013 the IRS announced in Rev. Rul. 2013-17 (attached) that the IRS recognizes the marriage of same sex individuals if validly entered into in a state whose laws authorize marriage between two individuals of the same sex. This holding is applied prospectively as of September 16, 2013.

### **ISSUES**

There have been a number of questions posed by both employees and state agencies regarding the effect of the Supreme Court decision and subsequent IRS holding in relation to employees who are in a registered domestic partnership and have either had a solemnization ceremony for their marriage or whose partnership will convert to a marriage on June 30, 2014. Below are the questions and answers on how to proceed in regards to the treatment of past payments for health benefits for the employee's partner/spouse.

## GUIDANCE

- **What documents are needed as evidence of a valid marriage?**
  - There are two ways that two same sex individuals can become married, either by a solemnization ceremony or through the automatic conversion mechanism in [RCW 26.60.100\(3\)](#). Therefore, as evidence of marriage, the employee may provide either the marriage certificate or the registration of domestic partnership issued by the Secretary of State's Office, if married by conversion.
  
- **What is the date of marriage that should be used for tax purposes?**
  - As authorized by [RCW 26.60.100\(4\)](#), if a couple was in a registered domestic partnership, the legal date of marriage is the date of the original domestic partnership. This is true regardless of whether the couple has the marriage solemnized or the partnership is converted on June 30, 2014.
  
- **What documents are needed to evidence the marriage and legal marriage date?**
  - A couple has the ability to have their marriage certificate include the legal marriage date as opposed to the date of solemnization or conversion. If the couple chooses to have the legal date included in the marriage certificate, then the marriage certificate can serve as evidence of the legal date of marriage. If the couple does not choose to have the marriage certificate reflect the legal date of marriage, then the employee would need to provide both the marriage certificate and the original registration of domestic partnership. The date on the registration serves as evidence of the legal marriage date. Finally, effective July 1, 2014, if the marriage is through conversion, the original registration of domestic partnership serves as evidence of the legal marriage date.
  
- **Is there a timeframe within which the couple must have the registration date added to the marriage certificate?**
  - No, there is no timeframe within which to add the registration date. The couple may choose to never add the registration date. In that case, the original registration serves as evidence of the legal date of marriage.
  
- **Are there tax implications to the legal marriage of same sex individuals?**
  - For the state as an employer, agencies should be aware that an employee who has a same sex spouse by a legal marriage is entitled on a going forward basis to have the payment of benefits for his or her spouse treated in the same manner as an employee who has a different sex spouse. Certain payments of benefits may be excluded from gross income, lowering the amount of taxable income to the employee. In addition, under IRS rules, employees may be entitled to a refund of taxes previously paid due to the failure to exclude benefit payments from taxable income. It is up to the employee as to whether he or she seeks a refund. For other possible tax implications, employees should seek advice from a tax professional.

- **Does an agency have to automatically convert an agency employee who has a registered domestic partnership to marriage status?**
  - All same sex registered domestic partnerships automatically convert to marriage on June 30, 2014 unless a proceeding for dissolution, annulment or legal separation is pending. Prior to an agency changing the status of the employee, the agency should check with the employee as to whether there is a dissolution, annulment or legal separation proceeding pending. If no such proceeding is pending, then the agency should change the employee's status consistent with law.
  
- **Since the original state registered domestic partnership date is the legal marriage date, can the employee seek a refund back to that date?**
  - Refund filings are subject to a statute of limitations. Regardless of the date of marriage, the refund may only be for a period of three years from the date the return was filed or two years from the date the tax was paid, whichever is later. Refunds can only be sought for 2021, 2022 and 2023.
  
- **What does an agency need to do if an employee wants to seek a refund?**
  - An agency will need to file an amended IRS Form W-2 (using Form W-2c) for all agency employees who seek a refund. In addition, an agency will need to file an IRS Form 941-X with the IRS. The IRS developed a streamline process for employers who need to do amended filing due to this ruling. See Notice 2013-61 (attached) for information about the streamlined process.
  
- **Can an agency ask agency employees if they are going to seek a refund?**
  - If an agency has been notified that an employee is going to seek a refund, then the agency will need to do a corrected filing with the IRS as specified in the above question. In order for the agency to only have to do one filing for all affected agency employees, it would be appropriate to send an agency wide communication asking employees to notify the finance or payroll office if they are going to seek a refund. This notice should go out agency wide but should not include any tax advice. If an employee needs advice on whether or how to file for a refund, the agency should direct the employee to obtain help from a private accountant or tax attorney.
  
- **What about overpayments the agency may have made for Social Security and Medicare taxes paid on the higher income amount?**
  - An agency may seek a refund for overpayments made for Social Security and Medicare taxes paid as a result of the higher income amount claimed.

**IRS Documents:**



IRS\_Rev\_Rul\_2013-17.pdf



IRS\_Notice\_2013-61.pdf