

## **2004 Law Change Affecting Same-Sex Joint Filers for Tax Periods Ending on or after May 16, 2004:**

### Special Provisions for Same-Sex Marriages

For Massachusetts state income tax purposes, beginning May 16, 2004 Massachusetts recognizes the right of same-sex couples to be married. Same-sex spouses will file as married persons, and will have the option of filing either a Massachusetts joint return or a married filing separate return. Massachusetts will recognize valid same-sex marriages for tax periods that end on or after May 16, 2004, but will not recognize same-sex marriages for tax periods ending prior to May 16, 2004.

Items which may require special attention:

Medical/dental expenses

Allowable unreimbursed business expenses and certain miscellaneous deductions.

Passive activity losses from rental real estate  
Student loan interest deduction

Dependent care expenses

sales and use tax

### Special Calculations to Arrive at the Proper Massachusetts Tax:

Same-sex spouses preparing Massachusetts joint returns will be combining figures from their separate federal returns. For deductions such as alimony payments, moving expenses, etc., same-sex joint filers will combine the amounts from their federal returns to arrive at the amount to be reported on the Massachusetts return. Where elements of Massachusetts taxation derive from federal law, such as the definition of gross income, or state deductions that are based on a federal counterpart, same-sex spouses may need to perform special calculations to arrive at the proper Massachusetts tax figure. Typically the calculation requires refiguring the federal as if it was filed jointly.

Same-sex joint filers will combine the number of dependents from their federal returns to arrive at the number of Massachusetts dependents.

Special Tax Issues:

Head of Household Filing Federally in a Same Sex Marriage Are Not Eligible for Massachusetts Purposes:

Same-sex spouses who file as head of household federally will generally not be eligible to file as head of household for Massachusetts purposes. The term "head

of household" as used in Massachusetts derives from the federal definition, which generally allows the status only for unmarried people. Since the spouses are married under state law, applying the federal definition renders them generally ineligible for head of household status.

#### Qualifying Widow(er) with Dependent Child - Massachusetts Rules:

The surviving taxpayer may elect to file married filing jointly for the tax year in which the spouse dies.

Since Massachusetts does not have a filing status equivalent to the federal qualifying widow(er) with dependent child, a surviving spouse is eligible to file as Head of household for 2 years following the year of death of his or her spouse since a qualifying widow(er) must meet essentially the same qualifications as the head of household. Qualifying widow(er)s requirements are less broad than the requirements for head of household. i.e., a head of household can claim a parent as a dependent and does not have to be a widow(er).

Taxpayers are considered unmarried on the last day of the tax year if they are legally separated from their spouses under a divorce or separate maintenance agreement.-same as federal

Employer obligations/Employee benefits.

#### General rule

Because federal law does not recognize same-sex marriage, the taxability of employee benefits will differ for federal and state tax purposes in some cases. Certain benefits that are tax-exempt when extended to opposite sex spouses and the children of opposite sex spouses will be taxable federally when they are provided for same-sex spouses and their children, unless the same-sex spouse or the children qualify as dependents under I.R.C. § 152.[1][9] See, e.g., 1 USCS § 7 (2004), I.R.C. §§ 105, 106, 117, 125, 132. For Massachusetts tax purposes, if an employee benefit is tax-exempt when extended to the opposite sex spouse of an employee, or to the children if the spouse, the benefit is tax-exempt when extended to a same-sex spouse or his or her children.

Specific examples of benefits that have different treatment under federal and state law.

(i) Employer provided health insurance and other benefits, under I.R.C. § 106.

Certain employer-provided benefits that extend to spouses, such as health insurance benefits, are excluded from gross income federally. I.R.C. § 106. However, the fair market value of benefits provided to same-sex spouses that do not qualify as dependents under I.R.C. § 152 is included in gross income and is taxable federally to the spouse who receives the benefit from his or her

employer. I.R.C. § 61(a)(1), Treas. Reg. § 1.61-21(a)(4), (b)(1). The fair market value of such benefits is excluded from gross income for Massachusetts purposes.

(ii) Cafeteria plans under I.R.C. § 125.

Employees are often allowed a variety of benefits under I.R.C. § 125, known as cafeteria plans. In general, employee contributions to these plans are tax-exempt. I.R.C. § 125(a). A common benefit allows employees to pay a portion of their health insurance coverage on a pre-tax basis. If the benefit extends to same-sex spouses that do not qualify as dependents under I.R.C. § 152, however, the employee contribution attributable to the spouse is taxable for federal purposes. This employee payment is excluded from gross income for Massachusetts purposes.

(iii) Qualified tuition reduction.

Federal gross income does not include the value of qualified tuition reduction offered employees and their spouses by undergraduate educational institutions. I.R.C. § 117(d). The value of this reduction must be added to gross income federally when extended to domestic partners. See I.R.C. §§ 117(d), 132(h). For Massachusetts purposes, the value of the reduction is excluded from gross income when the benefit is extended to same-sex spouses.

### Employer withholding issues

Generally, income is subject to Massachusetts income tax withholding if it is taxable under Massachusetts personal income tax law and if several other conditions are met. 830 CMR 62B.2.1(3)(a). The value of spousal benefits that are tax-exempt for opposite-sex spouses under federal law are also tax-exempt for same-sex spouses under Massachusetts law, and are not subject to withholding for state income tax purposes. This rule applies both to employer-provided benefits and to tax-exempt employee contributions attributable to a same-sex spouse or the children of a same-sex spouse. Employers should report the reduced Massachusetts income figure on the wage statement the employer furnishes the employee by January 31.<sup>[2]</sup><sup>[10]</sup> See 830 CMR 62B.2.1(5)(d). This requirement supersedes in part the general rules with respect to withholding on fringe benefits found in 830 CMR 62B.2.1(11).

### Estate Tax Issues

Massachusetts imposes a tax on the transfer of the estates of individuals who, at the time of death, were residents of the Commonwealth, or were non-residents who owned real property situated in the Commonwealth or tangible personal property having an actual situs in the Commonwealth. The tax is a so-called “sponge tax” and is computed using the amount of the credit for state death taxes

allowable to a decedent's estate as computed under I.R.C. § 2011, as in effect on December 31, 2000.

The estate of a single taxpayer may be subject to estate tax in Massachusetts if the value of the decedent's gross estate exceeds \$850,000 for a death occurring in 2004. The gross estate includes all property in which the decedent had an interest. For any jointly owned property, the full value of the jointly owned property is included in the estate of the first-to-die joint tenant unless the surviving joint owner can prove monetary contribution to the acquisition of the jointly owned property. Joint property owned by a husband and wife is not subject to this contribution test. Instead, fifty percent of the value of the jointly owned property is included in the estate of the first-to-die spouse.

Since the federal Defense of Marriage Act prevents recognition of same-sex marriages, the contribution test will apply to jointly held property for federal, but not state, purposes. As a result, computation of the proper amount Massachusetts estate tax due will require preparing a pro-forma federal estate return as if the same-sex marriage were federally recognized.

#### Gifts

Spouses in a same-sex marriage who elect to have a gift of one spouse considered as made one-half by each spouse for calculating their Massachusetts estate tax obligation must file a pro forma federal gift tax return.