

One Minute Memo[®]



Illinois Announces Civil Union Partner Benefits Not Taxable

Beginning June 1, 2011, the Religious Freedom Protection and Civil Union Act (the "Civil Union Act") required sponsors of fully-insured plans in Illinois that cover spouses to offer coverage to civil union partners. For more information on the Civil Union Act, click [here](#). Notably, though, early guidance indicated that benefits provided to civil union partners (under insured or self-funded plans) would be taxable, in most instances. Recently the Illinois Department of Revenue changed course, noting that coverage provided to civil union partners will not be taxable, for state income tax purposes.

As background, federal law does not recognize same-sex marriages, domestic partnerships or civil unions. As a result, employer-sponsored health coverage provided to a civil union partner is taxable to the employee, unless the civil union partner qualifies as the employee's "dependent" under the Internal Revenue Code. Premiums or contributions paid by the employer for coverage are imputed in income, and amounts paid by the employee must be paid with after-tax dollars. The result is that employer and employee contributions are reflected in the employee's taxable wages on Form W-2.

While Illinois generally follows federal law for state tax purposes, in January, the Illinois Department of Revenue published a Q&A addressing how civil union partners should complete their Illinois tax returns. The Q&A indicates that civil union couples will be treated the same as married couples for Illinois income tax purposes. For example, the Q&A states that the premiums an employee paid for a same-sex civil union partner coverage "will be included in [the employee's] taxable wages" shown on the W-2, but should be excluded from taxable income for Illinois income tax purposes. Although the Q&A does not mention employer contributions, these contributions should be excluded from taxable income as well, to further the general principle that civil union partners should be treated the same as married couples.

The Q&A also explains the mechanics of excluding these amounts. Civil union partners must file a joint Illinois income tax return, either using "married filing jointly" or "married filing separately" status. Where the Illinois return asks for information from the federal return, civil union partners should enter information from a mock federal "as-if-married" return, completed only for purposes of preparing the Illinois return. In completing the mock return, the premiums the employee paid for a same-sex civil union partner's coverage should be excluded from taxable income. The Q&A indicates that individuals should contact their employer to determine the amount of imputed income that should be excluded from gross income.

This change only impacts the taxation of premiums paid for medical, dental, vision and other benefits that would be excluded from income for federally-recognized dependents under Internal Revenue Code Section 105(b). Individuals are still prohibited from seeking reimbursement through a flexible spending account or health savings account for expenses incurred by non-dependent civil union partners.

While the Q&A places the onus on individuals to request information from employers regarding imputed income, employers with employees in Illinois may wish to restructure payroll to automatically remove this amount from gross income for state tax purposes.

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