IT 12-0003-GIL 02/07/2012 RETURNS

General Information Letter: Preparation of pro-forma federal returns by partners to same-sex civil unions explained.

February 7, 2012

Dear:

This is in response to your letter dated February 1, 2012, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. *See* 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www. tax.illinois.gov.

In your letter you have stated the following:

> We represent several Illinois employers that provide health care benefits to same-sex civil union partners though self-insured group health plan arrangements. We are writing to request additional information concerning the guidance published on your website entitled, "Same-Sex Civil Unions." The second bullet point, under the section entitled, "Special situations you may encounter while completing your federal 'as-if-married' return," provides:
>
> > For example, if your employer-provided health insurance covers your partner, the premiums you paid for your partner's coverage would not be included in your taxable wages shown on your W-2 form if federal law treated you as spouses, but they will be included in your taxable wages if you are in a same-sex civil union. You should exclude the cost of these premiums from your taxable wages when completing your federal "as-if-married" return. Contact your employer to determine the amounts needed to make this adjustment.
>
> We are looking for information concerning how an employer should determine, for an employee covering his or her domestic partner, "the premiums you paid for your partner's coverage." We interpret this guidance to mean an amount equal to the portion of the employee-only health plan premium (or payroll contribution) attributable to the domestic partner. Please confirm our understanding is correct.
>
> Also, this guidance appears inconsistent with the treatment of health costs on actual federal income tax returns. Under federal tax rules, an employee's income includes the full fair market value of the coverage provided to a non-federal tax dependent civil union party, including the value of any employer subsidy for that coverage. Under your guidance, the value of that employer subsidy would appear to remain taxable wages for Illinois purposes. Please confirm that you intend the Illinois tax treatment to be inconsistent with the federal treatment.

Response

The notice from which you quote informs same-sex partners to civil unions that they must choose to file either a joint Illinois income tax return or married-filing separately returns, and that in either case they must complete a pro-forma federal income tax return for use as the basis for completing the Illinois return. The notice states:

> Complete your federal "as-if-married" return(s), including all schedules and attachments, applying all the federal rules for the married filing status you choose (see a list of special situations below). Enter the federal "as-if-married" return information where Illinois requires federal information.

The notice also contains a few specific examples of issues that will arise in the completion of the pro-forma federal returns, and states, "This list contains examples and is not an all-inclusive list."

The particular example you quote deals with a situation in which an employee is paying for employer-provided health insurance for the employee's same-sex civil union partner by having amounts withheld from wages. The withheld amounts are included in the employee's federally-taxable wages, but would not be included if federal law recognized the civil union as a marriage. The employee is directed to exclude the withheld wages on his or her pro-forma federal return.

As you correctly point out, this example is not all-encompassing. It does not specifically address situations in which the health insurance is subsidized, so that some or all of the premiums or other costs are paid by the employer without withholding from the employee. However, the same principle would apply, that the amounts included in the employee's federally-taxed wages would be excluded from taxable wages on the employee's pro-forma federal return to the extent they would have been excluded from federally-taxed wages if federal law recognized the civil union as a marriage. The example also does not address the situation where the employee's partner is a dependent for federal income tax purposes, and so any withholding or subsidies for health care costs for the partner would be excluded from federally-taxed wages in the same manner as they would if federal law recognized the civil union as a marriage. In that case, the employee's taxable wages on the pro-forma return would be identical to the taxable wages on the actual federal return.

If you have additional questions, or believe that additional guidance should be added to the existing notice, please do not hesitate to contact me.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax