Kilpatrick

July 30, 2015

State Income Tax Imputation for Same Sex Spouses

Since the Supreme Court allowed same sex marriage in all fifty states, employers have been busy turning off state income tax imputation for health benefits for those states that previously had not allowed same sex marriage. However, that only affects the period from and after June 26, 2015. Many employers have wondered what they should do with state income tax imputation that occurred January 1, 2015 through June 25, 2015.

To date, only two states have issued definitive guidance on that issue – Michigan (Tax Notice, July 16, 2015) and Ohio (Notice EW 2015-01, July 2, 2015).

For both Michigan and Ohio, same sex spouses who were married prior to June 26, 2015 and who had Michigan or Ohio state income taxes imputed for same sex spousal benefits, should be refunded the imputed income taxes for 2015 either by reducing future withholdings for the rest of 2015, or by adjusting the Form W-2 for state taxable income to back out the imputed taxable income. This only affects the period January 1, 2015 to June 25, 2015 (or later date when an employer terminated the state income tax imputation).

Other affected states have issued guidance for same sex spouses, but only for income tax and tax return filing issues, not for benefits imputation issues.