



State of California
Franchise Tax Board

06.20.2008

FTB NOTICE 2008-5

SUBJECT: California Income Tax Treatment and Tax Return Filing Obligations of Same-Sex Married Couples

Purpose

The purpose of this Notice is to advise same-sex married couples of their California income tax treatment and tax return filing obligations resulting from the California Supreme Court's recent decision in *In re Marriage Cases* (2008) 43 Cal.4th 757.

Background

The California Supreme Court recently invalidated two segments of the Family Code that prevented same-sex couples from getting married. (*In re Marriage Cases* (2008) 43 Cal.4th 757.) Under the Court's decision, same-sex couples were allowed to marry beginning at 5:00 p.m. on Monday, June 16, 2008. Questions have arisen regarding the California income tax treatment and tax return filing obligations of same-sex married couples.

In General

Generally the term "spouse" refers to an individual that is married to another individual. Pursuant to the California Supreme Court's decision *In re Marriage Cases*, an individual may marry another individual of the same sex. Consequently, for purposes of the Revenue and Taxation Code (RTC) and those provisions of the Internal Revenue Code that are applicable for California income tax purposes, the term "spouse" includes every individual married to another individual in a legal relationship recognized as a marriage under California law, including individuals married to another individual of the same sex.

Joint/Married Filing Separate Returns and Adjusted Gross Income

In general, taxpayers that are required to file an income tax return who are married as of the last day of a taxable year may file either a joint return or a married filing separate return. Pursuant to *In re Marriage Cases*, marriages of same-sex couples are valid marriages in this state. Consequently, for California income tax purposes, taxpayers married to another individual of the same sex are required to file either a joint return or a married filing separate return for a taxable year if they are married as of the last day of that taxable year.

Taxpayers are required to use their adjusted gross income (AGI) for various income tax purposes, including computing their allowable itemized deductions and the deductibility of contributions to an Individual Retirement Account. Where California has conformed to these federal rules, California taxpayers are required to use their federal AGI. However, since same-sex married couples are not allowed to file a joint federal income tax return, when filing their California income tax returns, same-sex married couples are required to instead use an amount equal to what their federal AGI would have been if they were treated as married under federal law and filed a federal income tax return using the same filing status they use to file their California income tax return. In many cases, this amount is equal to the sum of the AGI of each of the same-sex spouses as reflected on their separate federal income tax returns for the same taxable year.

Withholding and Estimated Tax Payments

Generally taxpayers are required to either pay estimated taxes or have income tax withheld from wages and certain other payments during a taxable year in order to satisfy their income tax liability for the taxable year. Penalties are imposed for the underpayment of estimated tax, unless an exception applies. Therefore, newly-married couples need to carefully review their income tax withholding and estimated tax payments to avoid a penalty. One exception to the imposition of the penalty for underpayment of estimated tax is based on the amount of taxes paid for the prior year. If two taxpayers filed a single, head of household, or married filing separate returns for a prior taxable year and file a joint return for the current taxable year, to determine whether the prior year's exception to the penalty for underpayment of estimated tax will apply, the tax paid by each spouse is added to determine the amount of tax paid for the prior year.

The principal author of this notice is Jean Cramer of the Franchise Tax Board, Legal Division. For further information regarding this notice, contact Ms. Cramer at the Franchise Tax Board, Legal Division, P.O. Box 1720, Rancho Cordova, CA 95741-1720.