

# Summary of Same-Sex Marriage Tax Law Changes

CAUTION: These points are merely designed to help summarize general changes and may not be applicable to all situations. Please contact us if you have specific questions.

## Income Tax Effects

- Treated as Married for all issues regardless of the issue
  - Effective September 2013
- May choose, but not required, to file amended returns for all open years.
- Cannot choose to file as single. Must file MFJ/MFS
- Will face same marriage penalties
  - Tax brackets
  - Obamacare tax
  - Medicare Surtax
  - Phaseout thresholds (personal exemption, Itemized deductions, etc)
- Civil Unions/Domestic Partnerships – cannot file joint tax returns
- **All states now recognize same sex marriage!!!**

## Estate and Gift Tax Effects

- Gift Splitting is available for same sex marriages
  - Must be elected on original return (cannot amend if statute of limitations is closed)
- Marital deduction available for same sex marriages
  - Can amend estate and gift tax returns
- Portability is available for same sex marriages
  - Cannot amend to claim portability

### **Employee Benefit Plan Effects**

- Same Sex marriages are not entitled to spousal rights
- Can now take advantage of a QDRO
- Required Minimum Distributions (RMDs) – same sex marriages can now utilize spousal benefits
- Entitled to survivor benefits
- May take a 401(k) hardship distribution for same sex spouse

### **Health Insurance Effects**

- Employer does not have to include same sex spouse's cost of health insurance in W2 wages
  - Employer must make the claim for refund for excess FICA taxes paid on included income

### **Defined Benefit Plans Effects**

- Same sex spouse can take advantage of cafeteria plans
- Same sex spouse can take advantage of Flexible spending accounts
- Same sex spouse can no longer be reimbursed for Dependent care from FSA

### **COBRA Effects**

- COBRA is available to married same sex couples
- Family Medical Leave Act is available to married same sex couples
- Social Security/Medicare survivor benefits available to married same sex couple