

Federal Tax Treatment of Group Health Plan Benefits Provided to Domestic Partners and Children of Domestic Partners

Federal law permits only certain individuals (employees, same or opposite-sex spouses, tax dependents as defined under Code § 152, and any child of the employee who has not attained the age of 27 as of the end of the taxable year¹) to receive tax favored treatment of the benefits provided under our group health plan.²

If your domestic partner (and any child of the domestic partner – *if applicable*) is covered by our health plan (medical, dental, vision coverage) **and is not your tax dependent**, there are potential income tax consequences. The value of the coverage provided to your domestic partner, less any after-tax contributions you make, will be taxable as income to you.

Further, expenses of a non-tax dependent are not eligible for reimbursement through the Health Flexible Spending Account (FSA) or Health Savings Account (HSA).

Whether or not your domestic partner (and any child of a domestic partner – if applicable) qualifies as your tax dependent is based on your personal situation. As your employer, we cannot make that determination on your behalf. If you have specific questions regarding your personal situation, please consult with your tax advisor.

The following is a general summary of the requirements under Internal Revenue Code Section 152 to qualify as a tax dependent. A domestic partner (and any child of a domestic partner – if applicable) must generally be a **Qualifying Relative** in order to receive tax-favored benefits.

QUALIFYING RELATIVE³

- The individual (other than your spouse) must live with you for the full taxable year and share your primary residence as a member of your household, in compliance with local law.⁴
- You provide the individual more than fifty percent (50%) of his/her **support** for the taxable year.
- The individual is not your Qualifying Child⁵ or the Qualifying Child of any other taxpayer.
- The individual is a citizen, national or resident of the United States, or a resident of Canada or Mexico.

WHAT IS SUPPORT?

The term *support* generally includes (but is not limited to) food, shelter, clothing, medical and dental care, and education. Internal Revenue Service Publication 501 provides additional guidance for a taxpayer to determine whether or not over one-half (50%) of the support is provided to the qualifying individual.⁶ Generally, if a domestic partner is in the workforce earning an income, he/she may not satisfy the support requirement. Special rules apply when determining whether a registered domestic partner satisfies the support requirement in states with community property laws, such as Washington and California.⁷ Consult with your tax advisor.

CHILDREN OF DOMESTIC PARTNERS

Generally, the child of a domestic partner, who is not the child of the employee, may not qualify as tax dependent if another person can claim the child as his/her tax dependent. For example, if the domestic partner claims the child as his or her tax dependent, the child would not be the *Qualifying Relative* of the employee.

Different rules may apply with respect to registered domestic partners.⁸ If a registered domestic partner is the step-parent of his or her partner's child under the laws of the state in which the partners reside, then the registered domestic partner/employee may be the step-parent of the child for federal income tax purposes.⁹ Such a child does not need to be a *Qualifying Relative* of the employee in order to have tax-free coverage under the group health plan.¹⁰ These rules are based on informal guidance from the IRS and employees should consult with their tax advisor for advice on these issues.

PROVIDED FOR INFORMATIONAL PURPOSES

Disclaimer: This material is provided for informational purposes only based on our understanding of applicable guidance in effect at the time and without any express or implied warranty as to its accuracy or any responsibility to provide updates based on subsequent developments. For advice specific to your situation, please consult an attorney or tax professional.

FOOTNOTES & CITATIONS

¹ The terms “taxable year” generally means January 1 – December 31.

² For purposes of this Summary, “us” and “our” refers to the Employer, and “you” and “your” refers to the employee/taxpayer.

³ See Code § 105(b); Code §152; IRS Notice 2004-79; 2004-49 IRB 898 (11/17/2008). For purposes of health coverage, the determination of a tax dependent is made without regard to subsections (b)(1), (b)(2), and (d)(1)(B). Important note – the income limitation imposed in (d)(1)(B) does not apply with respect to a qualifying relative for purposes of tax-free health coverage.

⁴ This definition reflects only the portion of the Code provisions that pertain to a domestic partner’s status as a tax dependent. See Code Section 152(d) for a list of additional individuals that may satisfy the Qualifying Relative definition.

⁵ See Code Section 152(c).

⁶ See *IRS Publication 501 – Exemptions, Standard Deduction and Filing Information* – the current version is available at <http://www.irs.gov/pub/irs-pdf/p501.pdf> (updated annually).

⁷ Special rules apply when determining whether a registered domestic partner satisfies the support requirement in states with community property laws. Generally, if a registered domestic partner’s support comes entirely from community funds, that partner is considered to have provided half of his or her own support and cannot be claimed as a dependent by another. See Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions <https://www.irs.gov/uac/answers-to-frequently-asked-questions-for-registered-domestic-partners-and-individuals-in-civil-unions>; see also IRS Publication 555, Community Property (updated annually) <http://www.irs.gov/pub/irs-pdf/p555.pdf>. Individuals should discuss these requirements with their tax advisors.

⁸ See Q/A-6; Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions <https://www.irs.gov/uac/answers-to-frequently-asked-questions-for-registered-domestic-partners-and-individuals-in-civil-unions>; see also IRS Publication 555, Community Property (updated annually) <http://www.irs.gov/pub/irs-pdf/p555.pdf>.

⁹ See Q/A-7; Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions <https://www.irs.gov/uac/answers-to-frequently-asked-questions-for-registered-domestic-partners-and-individuals-in-civil-unions>; see also IRS Publication 555, Community Property (updated annually) <http://www.irs.gov/pub/irs-pdf/p555.pdf>.

¹⁰ See Code Sections 105(b) and 152(f)(1). Contact your personal tax advisor for advice on this matter.