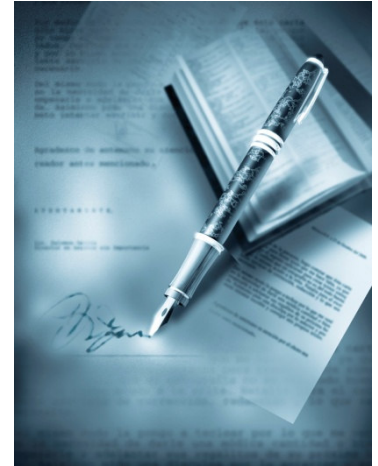


Tax Guidance

We recently issued an RK Alert on the Marriage Equality Act in which we referred to the taxation of certain benefits. At that time, we reported that the NYS Department of Taxation and Finance would be issuing guidance on how employers should be handling these taxes for same sex married couples. The information below was just posted to the NYS Tax Department website. Any tax questions should be referred to your Payroll Company or Accountant.



Withholding tax information regarding same-sex married employees

Same-sex married employees

- You may want to file a new [Form IT-2104](#), Employee's Withholding Allowances Certificate, with your employer because you'll file a New York return using a married status beginning in tax year 2011.
- Provide proof to your employer that you're legally married to have them stop withholding New York tax on the value of certain benefits (e.g. domestic partner health care coverage). This applies if your federal taxable wages subject to withholding include the value of the benefits, and the value of these benefits wouldn't be included in taxable wages if provided to a different-sex married spouse.

Employers

Don't withhold New York tax on certain benefits provided to a same-sex married employee. You don't need to withhold tax for New York State, New York City, or Yonkers income tax purposes on the value of certain benefits (e.g. domestic partner health benefit), even though it's subject to federal withholding. This applies if the employee's federal taxable wages subject to withholding include the value of the benefits, and the value of these benefits wouldn't be included in taxable wages if provided to a different-sex married spouse.

When reporting the annual wage totals on [Form NYS-45](#), Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return, Part C, column d; report the federal wages minus any amount of benefits discussed above that you don't withhold on for New York purposes (plus any amount of any taxable 414(h) retirement contributions and any IRC 125 amounts from a New York City flexible benefits program for governmental employees).

Continue to use the rules described in the [NYS-50](#), Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax for reporting State and local wages on federal Form W-2, Wage and Tax Statement.

This Summary is provided to you for general information purposes only and does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plan.