

Date: August 5, 2008

Code: TECHNICAL LETTER
HR/Benefits 2008-09

To: Human Resources Directors
Benefit Officers

From: Bruce Gibson 
Senior Director, Benefits
Human Resources Administration

Subject: Same-Sex Marriage and Enrollment in Benefit Programs

Overview

Audience: Benefit Officers or campus designees responsible for administering benefit programs

Action Item: Require benefits-eligible employees who marry or add a spouse to their benefits plan(s) on or after June 16, 2008, to complete the Gender Verification of Married Persons and Notice of Imputed Tax affidavit

Affected Employee Group(s)/Unit(s): Benefits-eligible employees who marry or add a spouse on or after June 16, 2008

Summary

The California Supreme Court recently legalized same-sex marriage in California requiring the California State University (CSU) to create new enrollment procedures for CSU benefit programs. A new form, Affidavit for Employees - Gender Verification of Married Persons and Notice of Imputed Tax, was created to determine taxability of certain benefits.

Campus designees responsible for administration of CSU benefit programs should review the Technical Letter in its entirety.

The recent California Supreme Court decision legalizing same-sex marriage in California requires the California State University (CSU) to create new enrollment procedures for California State University benefit programs. Effective June 16, 2008, CSU campuses are required to accept any valid marriage certificate issued in the State of California. The certificate is used to confirm marital status in order to enroll an eligible spouse in health, dental, and vision coverage.

Affidavit for Employees – Gender Verification of Married Persons and Notice of Imputed Tax

The Federal Government does not recognize same-sex marriage for tax purposes; as a result, the value of the additional benefits received by a same-sex marriage spouse is required to be added to the employee's taxable gross income. The tax liability is an "imputed value" based on the difference between the one and two party premium for the affected benefit plan. **Please note:** The party rate one premium is used as the baseline and the spouse in a same-sex marriage is treated as the first addition to the employee's coverage. However, if the spouse

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in a same-sex marriage meets the Internal Revenue Code definition for dependent, the value of the additional benefit will be exempt from the imputed tax upon certification from the employee.

The CSU is required to determine whether a marriage is a same-sex or opposite-sex marriage for the purpose of the imputed taxation. In order to meet this requirement, the Gender Verification of Married Persons and Notice of Imputed Tax affidavit (Attachment A) has been created and is to be completed and signed by all employees enrolling a spouse into a health and/or dental plan. The campus Benefits Officer or appropriate designee must review the affidavit for completeness and sign and date the form in the section "Campus Use Only" at the bottom of the form. A photocopy of the signed affidavit should be given to the employee and the original placed in the employee's personnel file.

Dental Plan Enrollment for Same-Sex Marriages

Campuses are to complete the Dental Plan Enrollment Form (STD. 692) using the following instructions:

Permitting Event Code:	17
Permitting Event Date:	Date of Marriage
Effective Date:	First of month following the STD. 692 received in the campus Benefits office
Party Code:	"A" (for Party Code 2) or "B" (for Party Code 3) except if the employee's same-sex spouse is declared an economic dependent. If the same-sex spouse is claimed as an economic dependent, use Party Code 2 or 3, as appropriate.

Note: If an employee is already enrolled with a Party Code 3, then the Party Code must be changed to B, unless the economic dependent portion of the Gender Verification of Married Persons and Notice of Imputed Tax affidavit is completed.

Send the completed STD. 692 to the Benefits Unit at the State Controller's Office (SCO) for processing. Please do not send the Gender Verification affidavit to the SCO as it is a campus responsibility to keep the form in the employee's personnel file for verification purposes.

Vision Program

The vision deduction is a composite rate fully paid by the CSU; therefore, the California Supreme Court decision legalizing same-sex marriage will not change the enrollment procedures for employees in same-sex marriages.

Health Benefits

Campuses are to follow the health benefit enrollment instructions for same-sex spouses provided in CalPERS Circular Letter 600-032-08 dated June 17, 2008. The Circular Letter may be found at: <http://www.calpers.ca.gov/eip-docs/employer/cir-ltrs/2008/600-032-08.pdf>. Please note that these are interim procedures and once CalPERS completes the update to its systems, CalPERS will notify campuses through a Circular Letter of any change to its enrollment process.

Domestic Partnership Benefits

Please note that there are no changes to the processes in place for enrolling a domestic partner into an employee's benefit plans. As a reminder, domestic partnership benefits are taxed at the Federal level unless the employee completes the Domestic Partner Dependent Certification form designating the domestic partner as a dependent. If an employee terminates his/her domestic partnership and then enters into a same-sex marriage (with the same individual) the marriage will not terminate the imputed taxation requirement unless the employee designates the same-sex spouse as a dependent.

Health Care Reimbursement Account Plan

Under the CSU's Health Care Reimbursement Account (HCRA) plan, current federal tax law excludes a spouse in a same-sex marriage in the definition of dependent. An employee in a same-sex marriage enrolled in a HCRA plan is precluded from claiming medical expenses for his/her spouse unless the same-sex spouse meets the definition of dependent under Internal Revenue Code Section 152.

Retiree Dental Enrollment

For retiree dental, campuses should continue to enroll employees utilizing party rate code 1, 2, or 3, as appropriate, as CalPERS does not utilize the "A – B" structure for coding same sex or domestic partnership benefits.

CMS Processing Instructions

CMS Baseline will be impacted by this change. Interim processing instructions will be provided in a future CMS communication.

Questions regarding this technical letter may be directed to Human Resources Administration at (562) 951-4411. This Technical Letter is available on Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

BG/pc

Attachment

AFFIDAVIT FOR EMPLOYEES – GENDER VERIFICATION OF MARRIED PERSONS AND NOTICE OF IMPUTED TAX

Employee Name (First, MI, Last)	Social Security Number - -	Tax Year
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Please print in ink or type

PLEASE READ THIS AFFIDAVIT CAREFULLY

Current Federal law does not recognize the marriage of same sex individuals in the same manner as marriages of persons of the opposite sex. Because of this treatment, for the purposes of Federal tax withholding, an imputed tax must be levied on an employee with a same-sex spouse. When a California State University (CSU) employee adds a same-sex spouse, the employee's imputed tax liability will be based on the amount of the increase in CSU contribution to benefits paid for the same-sex spouse, unless the same-sex spouse is claimed as an economic dependent for Federal Income Tax purposes as authorized by the Internal Revenue Service.

In order to verify whether there is a need to apply imputed tax liability when enrolling your spouse into a CSU dental plan and/or CalPERS-sponsored health plan, CSU requires that this married spouse gender verification affidavit be completed and signed by all CSU employees enrolling their spouse onto their benefits plan.

Please complete and sign this affidavit and return it to your Human Resources Benefits office. Failure to return this document may cause a delay in the processing of the enrollment of your spouse onto your benefits plan.

SECTION A – EMPLOYEE STATEMENT

Please read the following paragraph and print your name and that of your spouse in the appropriate areas:

I, _____, under penalty of perjury declare that the gender of my spouse, _____ is

(check one) Female Male

And that our marriage is considered (check one) Same Sex Opposite Sex

(For Employees marking same sex marriage – please read the statement below and check-off)

My spouse (check one) is or is not an economic dependent for the purposes of my Federal Income Taxes. I further affirm under penalty of perjury that if my spouse is the same sex as myself, and I no longer declare my spouse as a dependent for tax purposes, that I will immediately notify the CSU in writing of this fact. If my same sex spouse is being declared as an economic dependent for tax purposes, I understand that if I do not notify CSU in writing immediately of the change in dependency status for my same-sex spouse by completing a new Gender Verification of Married Persons Notice of Imputed Tax form, that I may be held liable for any taxes due based on when the economic dependency ended. By signing this document I also agree to permit an authorized representative of California State University or the State Controller's Office or their designee, full access to my tax records as related to the declaration of economic dependency of my tax filing documents, and/or any other supporting documentation as needed by the CSU to verify dependency for Federal Income Tax purposes.

SECTION B - SIGNATURES

EMPLOYEE SIGNATURE REQUIRED:

DATE:

/ /

CAMPUS USE ONLY Affidavit received on ____/____/____, by _____

CAMPUS NAME:

PLEASE RETAIN A COPY OF THIS FOR YOUR RECORDS

AFFIDAVIT FOR EMPLOYEES – GENDER VERIFICATION OF MARRIED PERSONS AND NOTICE OF IMPUTED TAX

PRIVACY STATEMENT

The Information Practices Act of 1977 (Civil Code Section 1798.17) and the Federal Privacy Act (Public Law 93-579) require that this notice be provided when collecting personal information from individuals.

Information requested on this form is used by the California State University and State Controller's Office for the purposes of payroll (e.g. deductions) and to properly identify you for income tax exemption. It is mandatory to furnish all information requested on this form. Failure to provide the mandatory information will result in the form not being processed, which may impact your tax withholding.

The State Controller's Office requires employee's social security number and name for identification purposes. Legal references authorizing maintenance of this information include Government Code Sections 1151 and 1153, Sections 6011 and 6051 of the Internal Revenue Code, and Regulation 4, Section 404.1256, Code of Federal Regulations, under Section 218, Title II of the Social Security Act.

Copies of this affidavit are maintained in the confidential files of your Human Resources office. Employees have the right of access to copies of their signed affidavit upon request. The official parties responsible for the access of this form will be the campus Human Resources office.