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TO: All Certifying Officers, Human Resource Directors, and Benefits Administrators participating in the State Health Benefits Program and School Employees' Health Benefits Program

FROM: New Jersey Division of Pensions and Benefits

SUBJECT: **Health Benefits Coverage for Legally Married Same-sex Couples**

OVERVIEW

The U.S. Department of the Treasury and the Internal Revenue Service (IRS) recently ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage. Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory, or a foreign country will be covered by the ruling.

Please note that this ruling does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law.

IMPACT ON HEALTH BENEFITS COVERAGE

This ruling extends health benefits eligibility to same-sex spouses of employees and retirees enrolled in the State Health Benefits Program (SHBP) and the School Employees' Health Benefits Program (SEHBP) in the same manner as opposite-sex spouses. This includes:

- Employees and retirees of Local Government and Educational employers that participate in the SHBP and the SEHBP, and
- Employees and retirees of State Employers including State employees paid through the State Centralized Payroll Unit, the State colleges and universities, the Palisades Interstate Parkway Commission, the New Jersey Building Authority, and the State Library.

Employees who previously added a same-sex spouse to their health insurance coverage should send a copy of their marriage certificate to the attention of Kevin Gribbon at the Division of Pensions and Benefits' address at the top of the page so their health insurance coverage can be updated. Employees should include their name and the last four digits of their Social Security number on the copy of the marriage certificate for identification purposes.

IMPACT ON TAX\$AVE PROGRAM & IMPUTED INCOME RULES

The U.S. Department of the Treasury and IRS ruling allows employees who have added a same-sex spouse to their health and/or dental insurance coverage to pay the member share of the additional coverage on a pre-tax basis under the Tax\$ave Premium Option Plan. Previously, the

member's share of the added coverage for the same-sex spouse was required to be made on an after-tax basis unless the same-sex spouse was a qualified tax dependent of the employee.

In addition, as a result of this ruling, medical expenses incurred by a same-sex spouse can now be reimbursed from the employee's FSA account. Prior to the ruling, medical expenses incurred by a same-sex spouse could only be reimbursed from an FSA account if the spouse was recognized as the employee's tax dependent for federal tax purposes.

The marriage of a same-sex couple also qualifies as a change marital status allowing an employee to change his or her FSA election.

This ruling also eliminates the imputed income requirement when a same-sex spouse is added to an employee's health and/or dental coverage. Prior to the ruling, unless the same-sex spouse qualified as the employee's tax dependent, the value of the added spousal coverage was considered imputed income and was subject to federal income tax, social security tax and Medicare tax.

PAYROLL AND WITHHOLDING CHANGES REQUIRED

If an employee paid income taxes on the health and/or dental coverage for their same-sex spouse, the employee is now entitled to a tax refund. To obtain a refund of the income and employment taxes paid on the spousal coverage, the employee should contact their employer's payroll office. If the employee paid income taxes in a prior tax year on his/her same-sex spouse's coverage, the employee must file an Amended Tax Return in order to obtain a refund of the federal income taxes paid. Information on how to file an amended return can be found in **Tax Topic 308, Amended Returns** at <http://www.irs.gov/taxtopics/tc308.html>. Generally, a taxpayer may file a claim for refund for three years from the date the return was filed or two years from the date the tax was paid, whichever is later.

Employees who are entitled to a prior year refund should request a corrected W-2 from their employer.

PENSION IMPLICATIONS

The impact of this ruling on pension benefits is still under review and will be communicated in a separate Certifying Officer letter.

INFORMATION RESOURCES

Employers and employees should consult with the Internal Revenue Service or their tax advisor if they have any questions regarding the tax implications of this ruling or procedures that must be followed in order to obtain a tax refund.

For additional information, please refer to the IRS's website at www.irs.gov, **Frequently Asked Questions for same-sex couples** at <http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>, **Revenue Ruling 2013-17** and **IRS Notice 2013-61**.

If you have any questions about this letter, please contact the Division at the address above or email us at: pensions.nj@treas.state.nj.us