From:
Brian Haile
Senior Vice President for Health Policy
**Jackson Hewitt Tax Service Inc.**

**Preliminary Analysis: Impact of Supreme Court's DOMA Ruling on ACA Programs**

Under the federal income tax rules as currently written, taxfilers may be able to claim a same-sex partner as a dependent if they live together for the year, if the partner resides legally in the U.S., if the taxfiler provides at least 50% of the total support for the partner and the household, and if the partner has very limited income. This is a murky area – and the Court's decisions only partially clarify the law.

To the extent that the Court's rulings expand the federal definition of marriage, then many of these individuals in jurisdictions that recognize same-sex marriages may now be able to file as "spouses" rather than "dependents." Other same-sex individuals who did not meet the restrictive dependent test may now become part of the taxfiler's household as a spouse in those states that recognize same-sex marriage. (For reference, 12 states and the District of Columbia marry same sex couples.) However, the marital status vis-à-vis federal law of same-sex couples who live in states that do not recognize their marriage remains unclear.

Before rushing to the courthouse in the states that do recognize same-sex marriage, though, same-sex partners should consider a few implications related to the new health care programs under the ACA and the Internal Revenue Code:

1. **Same-sex partners with similar incomes may lose out.** For example, same-sex partners who each have an income of $40,000 may be eligible for the premium assistance tax credits under the ACA – but only if they remain single. If they marry (in those states that allow same-sex marriage), then they would lose eligibility because their income would be over the threshold for a household of two.

2. **Same-sex partners with different incomes may gain**. For example, two persons in a same-sex relationship who had incomes of $30,000 and $80,000, respectively, would not qualify for the tax credits if they were married in states that recognize same-sex marriage (because their combined income is above the limit for a couple). However, the individual making $30,000 would qualify for the tax credits if he or she remains **un**married (as that individual's income is below the threshold for a household of one). Of course, the couple may end up paying a lower marginal tax rate if they marry and exercise a new right to file jointly – so part of the decision about whether and when to marry in states that recognize same-sex marriage may involve a complicated trade-off between minimizing taxes and accessing insurance.

3. **Same-sex couples who currently access domestic partner benefits may gain.** Under the current federal income tax rules, the value of the benefits that employers provide to opposite-sex spouses is largely excluded from income; however, the opposite is true from same-sex partners – and they have to pay taxes on the full value of the employer's contribution for same-sex partner health insurance, etc. These taxfilers may no longer have to treat the value of the health insurance as imputed income if they get married in states that allow them to do so –

meaning that their taxes may go down. The same is true for employers: they may pay lower payroll taxes if the couple marries and no longer has to treat the value of the employer's contribution as imputed income.

4. **Same-sex couples who do not have or do not access domestic partner benefits may lose out.** If the couple marries (assuming that they live in a state that recognizes same sex marriage) and one employer offers spouse or dependent coverage, then the same-sex spouse may lose eligibility for the ACA tax credits. The ACA limits the tax credits to spouses and dependents who do not have access to coverage. Even if the employer does not subsidize spouse or dependent health coverage, the fact that a spouse has access may disqualify him or her from the tax credit program.

5. **Married same-sex couples receiving ACA tax credit will have to file jointly.** If a same sex couple were to get married in a state that allows them to do so and claim the new tax credits under the ACA, then the ACA rules require them to file a joint return for the respective tax year (as is the case with opposite-sex married couples).

Even with the Court's decisions, HHS still faces several related policy questions. The final rules about the new insurance marketplaces clarify that the marketplaces and insurers must "…[n]ot discriminate based on race, color, national origin, disability, age, sex, gender identity or sexual orientation."* Consequently, many observers had a number of questions about how HHS would interpret these requirements in the context of the small group marketplace even before the Court's rulings. For example, must the small group marketplace require insurance companies to provide same-sex domestic partner coverage to participating employers and employees? To my knowledge, the agency's only requirement in this regard is that insurers in the federal marketplace self-attest that they do not discriminate on this basis.**

Surprisingly, many same-sex couples (particularly lower-income same-sex couples) may be better off if HHS answers "no" to such questions. The reason is simple but not intuitive: the final rule on premium tax credit eligibility states that individuals who have access to "affordable" employer-sponsored coverage are ineligible for premium tax credits. However, "affordability" of employer-sponsored insurance is determined only with regard to the employer contribution to the employee-only coverage. Consequently, a same-sex partner (and for that matter, any dependent) may be ineligible for tax credits if the employer offers same-sex coverage – even if the employer makes no contribution to toward the associated premium. However, if partner or other dependent coverage is unavailable, then a same-sex partner or other dependent may have some hope of qualifying for a tax credit.

Suffice it to say, it's complicated – and these are just the **federal** tax issues! Further, we expect guidance from the Internal Revenue Service and other federal agencies later this year to clarify some of the outstanding questions. Particularly for these reasons, we encourage you to seek tax advice from the professionals at Jackson Hewitt Tax Service.

* 45 CFR § 155.120(c)(2); 45 CFR § 156.200(e).

** Letter to Issuers, April 5, 2013, available at http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014_letter_to_issuers_04052013.pdf.