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**NOTICE**  
**MICHIGAN INCOME TAX TREATMENT**  
**OF EMPLOYEE BENEFITS FOR SAME-SEX SPOUSES**  
**July 16, 2015**

On June 26, 2015, the Supreme Court of the United States invalidated the Michigan Constitution's definition of marriage. In *Obergefell et al v Hodges*, the Court held that the State's definition of marriage as the union of one man and one woman denied same-sex couples the benefits of marriage and therefore denied them the equal protection of the law under the 14th amendment of the United States Constitution. As a result, Michigan now recognizes the marriages of same-sex spouses including marriages that occurred in other states either before or after June 26, 2015.

Recognition of same-sex marriage will exempt certain employee benefits for a same-sex spouse from taxation under the Michigan Income Tax Act. The guidance in this notice does not apply to domestic partnerships or other relationships that do not constitute state-sanctioned marriage.

Prior to the recognition of same-sex marriage in Michigan, the value of the employer's share of employer-provided health care coverage for a same-sex spouse was included in the employee's Michigan taxable income. In addition, pre-tax dollars used to pay the employee's share of health premiums for a same-sex spouse were also added to the employee's Michigan taxable income. Similarly, pre-tax dollars used to fund a flexible spending account for the benefit of a same-sex spouse and dependents of that spouse were added to the employee's Michigan taxable income.

If an employee is married to a same-sex spouse at any time during 2015, an employer should not withhold Michigan income tax from the employee's wages to cover the value of employee benefits for the spouse. If during 2015 an employer has been withholding Michigan tax on the value of the benefits, the employer should reduce withholding on the employee's wages for the rest of the year to correct any overwithholding. If a reduction in withholding does not correct the full amount of overwithholding, the employee may receive a refund of the overpaid withholding through the 2015 Michigan income tax return.

For tax years before 2015, an employee who was married to a same-sex spouse may seek a refund by filing an amended Michigan income tax return to deduct the value of any same-sex spousal benefits that had been included in Michigan taxable income for that tax year. For taxpayers with same-sex spousal benefits who only had Michigan wages, the value of those benefits will be the difference between the amount in box 1 and box 16 of a federal W-2.

If an amended return is filed, it must be filed within 4 years of the date the original return was due. The taxpayer must claim either "married filing jointly" or "married filing separately" status. For more information on filing status, refer to the Michigan Income Tax Filing Status for Married Same-Sex Couples notice that was issued by the Department on July 1, 2015.