# SCHOOL AND COLLEGE LEGAL SERVICES
## of California

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# LEGAL UPDATE

October 9, 2013

**To:** **Presidents/Superintendents/Chancellors, Member Community College Districts**

**From:** **Loren W. Soukup, Associate General Counsel** LS

**Subject:** **Same-Sex Marriage and Domestic Partnership Benefit Taxation**
**Memo No. 08-2013(CC)**

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Our office issued a 2010 Legal Update (Memo No. 16-2010(CC)) setting forth the federal and state taxation requirements for domestic partner benefits. In light of the recent Supreme Court rulings[1] and the issuance of the Internal Revenue Service ("IRS") Ruling 2013-17[2], the federal taxation requirements for same-sex marriages and domestic partnerships has been modified as follows:

1. The IRS has determined that, for federal tax purposes, the IRS Code terms "spouse", "husband and wife", "husband" and "wife" now include an individual in a same-sex marriage if they are married under a state law that allows marriage between individuals of the same sex.

2. The IRS has determined that, for federal tax purposes, the IRC Code term "marriage" now includes a marriage of individuals of the same sex if they are married under a state law that allows such a marriage.

3. The IRS has determined that the above terms only apply to individuals who have entered into marriage, whether the individuals are of the opposite sex or the same sex. As such,

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[1] *United States v. Windsor* (2013) 133 S.Ct. 2675; *Hollingsworth v. Perry* (2013) 133 S. Ct. 2652.
[2] http://www.irs.gov/pub/irs-drop/rr-13-17.pdf

registered domestic partners will not enjoy the same benefits as married couples for federal tax purposes. However, the benefits received by registered domestic partners under state law will remain the same.

The IRS Ruling became effective on September 16, 2013, and districts should rely upon it retroactively for the purpose of benefit taxation. Therefore, beginning September 16, 2013, the district-paid portion of the premium for same-sex spouse health benefits should be excluded from the employee's income and any contribution that the employee makes should be made through a pre-tax salary reduction arrangement. If these requirements have not been complied with, districts will need to retroactively revise the employee's Section 125 plan or W-2 reporting to reflect the correct pre-tax salary reductions.

Additionally, districts will need to ensure that they have revised their payroll systems to prospectively treat same-sex marriages like opposite-sex marriages for district-provided benefits.

It is also recommended that districts provide notification to all employees of these new requirements and inform the employees of their obligation to notify the district of their same-sex marriage status, whether the marriage occurred before Proposition 8 or after the above court rulings.

Please contact any of the attorneys in our office for further information regarding this or any other legal issue.