

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(2)I
Income Tax
May 12, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I090921A

On September 21, 2009 a Petition for Advisory Opinion was received from [REDACTED]

The petition asks whether marriage to a same-sex partner will be recognized for New York State personal income tax purposes as a result of Governor David Paterson's 2008 directive to all State Agencies regarding same-sex marriage recognition.

We conclude that since marriage to a same-sex partner is not a marriage for federal income tax purposes, it is not a marriage for New York State personal income tax purposes.

Analysis

Section 607(a) of the Tax Law provides that any term found in the personal income tax provisions of the Tax Law shall have the same meaning as the term has for federal income purposes, unless a different meaning is clearly required *but* such meaning shall be subject to exceptions or modifications prescribed by the personal income tax provisions of the Tax Law or by other statute. If a different meaning is clearly required, departure from the federal definition is acceptable even though there is no specific exemption or modification in the Tax Law. However, section 607(b) of the Tax Law supplements section 607(a) of the Tax Law by specifically providing that an individual's marital status is the same as that individual's marital status established for federal income tax rate setting purposes. Section 651(b) of the Tax Law provides that an individual's New York filing status is determined by his or her federal filing status for federal income tax purposes. Therefore, New York State follows the federal determination of filing status.

Under the Federal Defense of Marriage Act, the Internal Revenue Service does not recognize same-sex marriages for federal income tax purposes, including for purposes of filing a joint return. Therefore, same-sex partners of a same-sex marriage are not treated as married for federal income tax purposes.

Accordingly, a marriage to a same-sex partner will not be recognized for purposes of New York State personal income tax.

DATED: May 12, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.