

## **INFORMATION REGARDING TAXATION OF DOMESTIC PARTNER/SAME SEX SPOUSE BENEFITS**

A domestic partner or same sex spouse and his or her dependent children may qualify under Internal Revenue Code Section 152 as dependents of an employee provided certain conditions are met. Health and dental insurance coverage provided by an employer for a dependent of an employee is not subject to federal income tax. Additionally, the employee's cost of such coverage can be provided on a pretax basis through the employee's flexible benefits plan. If a domestic partner or same sex spouse and his or her dependent children do not qualify as IRC Section 152 dependents, the federal tax advantages are not available. However, for Massachusetts income tax purposes, the coverage provided for a same sex spouse is not taxable to the employee.

To qualify as an IRC Section 152 dependent of an employee during a given tax year, the same sex spouse/domestic partner and spouse's/partner's children must:

1. Share his or her principal residence with the employee for the full tax year (January 1 through December 31), except for temporary absences such as vacation, military service, or education. Unless the marriage/partnership commences by January 1, the same sex spouse/domestic partner and his or her children cannot be considered a Section 152 dependent during the first year of the marriage/partnership. Similarly, if the marriage/partnership dissolves during the year for reasons other than the death of the spouse/partner, the tax exclusion is lost for the entire year. If the relationship terminates due to the death of the spouse/partner, the spouse/partner qualifies as a dependent for the entire tax year.
2. Have the same principal place of residence as the employee and receive more than half his or her support for the calendar year from the employee. The rules for determining support are more involved than simply determining which spouse/partner is the primary 'breadwinner' of the household. For example, certain non-financial types of support – such as providing the home (assuming the home is owned by one of the spouses/partners) – must be taken into account when determining support. Employees are encouraged to consult with a tax advisor to determine whether they satisfy this requirement.
3. Not have gross income in excess of the personal exemption (\$3,200 for 2005).
4. Be a citizen or resident of the U.S. or of a country contiguous to the United States.
5. Lastly, the relationship between the employee and the domestic partner must not violate local law.