

March 2008

IRS' Recent Guidance on the Definition of Dependent Could Benefit Domestic Partners

The IRS recently issued guidance (Notice 2008-5) regarding the definition of dependent which could be beneficial to employees who have elected domestic partner medical coverage.

An employee can receive medical coverage for a domestic partner or a child of the domestic partner on a pre-tax basis if that individual qualifies as a dependent of the employee for federal income tax purposes. An individual can qualify as a dependent if they are either a qualifying child or a qualifying relative. However, with respect to the child of an employee's domestic partner, the difficulty in most instances was that an individual cannot be a qualifying relative of a taxpayer if the individual is a qualifying child of "any other taxpayer." Therefore, the child of a domestic partner of an employee would usually be ineligible to be the dependent of the employee taxpayer.

In Notice 2008-5, the IRS clarified that an individual is not a qualifying child of "any other taxpayer" if the individual's parent is not required under the Internal Revenue Code to file an income tax return and either (i) does not file an income tax return or (ii) files an income tax return solely to obtain a refund of withheld income taxes.

The domestic partner context is not the only situation in which Notice 2008-5 may be applicable. It also is relevant when a child and parent live with an unrelated friend or grandparent who helps support them.

If you have any questions about Notice 2008-5 or about whether an individual qualifies as a dependent under your medical plan, please call us.

Manes M. Merrit	212-451-2330
Nina Krauthamer	212-451-2242
Barry L. Salkin	212-451-2212
Annette Messano	212-451-2370

To ensure compliance with requirements imposed by the IRS, we inform you that unless specifically indicated otherwise, any tax advice contained in this communication (including any attachment to this communication, other than an attachment which is a formal tax opinion) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein.