



Illinois Civil Unions

The new law permitting Civil Unions did not change the Illinois income tax laws. Under the income tax act, you may file a joint Illinois income tax return only if you file a joint federal income tax return. Married couples and partners to civil unions who file separate federal returns may not file joint Illinois returns.

The legal explanation of the effects of the Civil Union law on Illinois income tax:

IITA Section 502(c) permits joint returns only when a joint return is filed federally. The federal Defense of Marriage Act (which is being challenged in the courts) does not allow joint returns by partners to a civil union, so the IITA does not allow joint returns either.

IITA Section 204(c) allows an exemption for every exemption allowed on the taxpayer's federal return. IRC Section 151 basically allows an exemption for every dependent. Under IRC Section 152, any person who is a member of the taxpayer's household and who is sufficiently dependent on support from the taxpayer can generally qualify as a dependent. One exception is in IRC Section 152(f)(3), which provides that a person cannot be a member of a taxpayer's household if their relationship "is in violation of local law." Prior to the Civil Union Act, this provision would arguably have prevented same-sex partners from ever qualifying as dependents. Now they can qualify.

Under IITA Section 204(d), a taxpayer can claim the blind and age 65 exemptions for his or her spouse on a separate return, if the spouse has no gross income and cannot be claimed as a dependent on another's return. Under the Civil Union Act, "spouse" in this provision will now include partners in civil unions. This is important as long as joint returns cannot be filed, because the blind and age 65 exemptions are not allowed for dependents of the taxpayer, so a partner who qualifies as a dependent would not otherwise be eligible.

Any tax advice contained herein was not intended or written by the practitioner to be used, and it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer.