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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-149319-09
Date: May 5, 2010

Legend

Taxpayer =
Domestic Partner =
Date 1 =

Dear :

This letter responds to your , request for rulings regarding your federal income and gift tax reporting status.

FACTS

Taxpayer uses the cash method of accounting and files federal income tax returns on a calendar year basis.

Since 1999, California law has granted certain civil and property rights to domestic partners who register their partnership with California. California has maintained a registry of domestic partnerships since 2000. On Date 1 (after 2000), Taxpayer and Domestic Partner registered with California as registered domestic partners by filing a Statement of Domestic Partnership. Their registration is still valid.

On September 19, 2003, California enacted Assembly Bill 205, the California Domestic Partner Rights and Responsibilities Act of 2003 (AB 205), adopting California Family Code (CFC) Section 297.5, which became effective on January 1, 2005. AB 205 significantly expanded the rights and obligations of persons entering into a California domestic partnership. In relevant part, CFC Section 297.5 provides as follows:

- (a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.
- (e) To the extent that provisions of California law adopt, refer to, or rely upon, provisions of federal law in a way that otherwise would cause registered domestic partners to be treated differently than spouses, registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law.

However, CFC section 297.5(g) provided that “[e]arned income may not be treated as community property for state income tax purposes.”

On September 29, 2006, California enacted Senate Bill 1827. Senate Bill 1827, effective January 1, 2007, repealed CFC section 297.5(g), which provided that earned income was not to be treated as community property for state income tax purposes. Consequently, as of January 1, 2007, California treats the earned income of registered domestic partners as community property for both property law purposes and state income tax purposes.

Finally, California gives registered domestic partners the right to enter into agreements identical to premarital agreements between prospective spouses, to modify or avoid the application of the community property laws. Taxpayer and Domestic Partner have not entered into such an agreement.

LAW AND ANALYSIS

Issue #1

Whether Taxpayer must report on his individual federal income tax return one-half of the combined income that Taxpayer and Domestic Partner earn from the performance of personal services and one-half of the combined income derived from their community property assets.

Section 61(a)(1) of the Internal Revenue Code provides that gross income includes all income from whatever source derived including compensation for services, including fees, commissions, fringe benefits, and similar items.

Federal tax law generally respects state property law characterizations and definitions. *U.S. v. Mitchell*, 403 U.S. 190 (1971), *Burnet v. Harmel*, 287 U.S. 103 (1932). In *Poe v. Seaborn*, 282 U.S. 101 (1930), the Supreme Court held that for federal income tax purposes a wife owned an undivided one-half interest in the income earned by her

husband in Washington, a community property state, and was liable for federal income tax on that one-half interest. Thus, the Court concluded that husband and wife must each report one-half of the community income on his or her separate return regardless of which spouse earned the income. *U.S. v. Malcolm*, 282 U.S. 792 (1931), applied the rule of *Poe v. Seaborn* to California's community property laws.

California community property law developed in the context of marriage and originally applied only to the property rights and obligations of spouses. The law operated to give each spouse an equal interest in each community asset, regardless of which spouse is the holder of record. *d'Elia v. d'Elia*, 58 Cal. App. 4th 415 (1997).

By 2007, California had extended *full community property treatment*¹ to registered domestic partners. Applying the principle that federal law respects state law property characterizations, the federal tax treatment of community property should apply to California registered domestic partners. Consequently, Taxpayer, a registered domestic partner in California, must report one-half of the community income, whether received in the form of compensation for personal services or income from property, on his federal income tax return.

Issue #2

Whether Taxpayer is entitled to half of the credits for income tax withholding from the wages of Taxpayer and Domestic Partner.

Section 3402 of the Code provides that every employer making a payment of wages must deduct and withhold income taxes from wages (commonly referred to as federal income tax withholding).

Section 31 provides that the amount withheld under the withholding provision shall be allowed to the recipient of the income as a credit against the income tax imposed on such income.

Section 1.31-1(a) of the Income Tax Regulations provides that the recipient of the income is the person subject to the tax imposed under the income tax provisions upon the wages from which the tax was withheld. In an example, the regulation states that if a husband and wife domiciled in a community property state file separate returns, each reporting for income tax purposes one half of the wages received by the husband, each spouse is entitled to one half of the credit allowable for the tax withheld at source with respect to such wages.

¹ Prior to January 1, 2007, the earned income of a registered domestic partner was treated as community property for state property law purposes but not for state income tax purposes.

Because Taxpayer is the recipient of half of the community property income, Taxpayer is entitled to half of the amount withheld as a credit against the income tax imposed on the income.

Issue #3

Whether the requirement under California law, effective January 1, 2007, to treat, for state property law and income tax purposes, Taxpayer's earnings as community property, and thus half of Taxpayer's earnings as vested in his partner, results in a transfer of property by Taxpayer to his partner for federal gift tax purposes.

Effective January 1, 2007, taxpayer's earnings are treated as community property under California law for state income tax and property law purposes. The Supreme Court has concluded that when earnings are treated as community property under state law, such earnings vest one-half in each spouse for federal tax purposes. See *Poe v. Seaborn*, *supra*, and *U.S. v. Malcolm*, *supra*. This vesting occurs by operation of law. There is no transfer, deemed or otherwise, by one spouse to another of community earnings.

In *Poe* and *Malcolm*, the taxes at issue were income taxes. However, the Supreme Court's rationale regarding the effect of state law on the characterization of Taxpayer's earnings applies equally to gift taxes. Therefore, the vesting of half of Taxpayer's earnings in his partner does not result in a transfer of property by Taxpayer to his partner for federal gift tax purposes under § 2501 of the Code.

CONCLUSIONS

1. Taxpayer must report on his individual federal income tax return one-half of the combined income that Taxpayer and Domestic Partner earn from the performance of personal services and one-half of the combined income derived from their community property assets.
2. Taxpayer is entitled to half of the credits for income tax withholding from the wages of Taxpayer and Domestic Partner.
3. The requirement under California law to treat Taxpayer's earnings as community property, and thus half of Taxpayer's earnings as vested in his partner, does not result in a transfer of property by Taxpayer to his partner for federal gift tax purposes under § 2501 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings, but it is subject to verification on examination.

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc:

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **201021050**

Release Date: 5/28/2010

PRESP-111796-10

UILC: 61.00-00, 61.31-00

date: May 05, 2010

to: Cheryl Sherwood
Director, Campus Compliance Services, SB:S:CCS:CRC

Brady Bennett
Director, Compliance SE:W:C

from: Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

subject:

California Registered Domestic Partners

On February 24, 2006, the Office of Associate Chief Counsel (Income Tax & Accounting) issued Chief Counsel Advice (CCA) 200608038 concluding that an individual who is a registered domestic partner in California must report all of his or her income earned from the performance of personal services. In light of a change to California law, effective in 2007, you asked us whether California registered domestic partners should each report half of the community income on their federal returns. You also asked whether individuals who filed returns in accordance with CCA 200608038 must amend those returns.

FACTS

In 2005, California law significantly expanded the rights and obligations of persons entering into a California domestic partnership for state property law purposes, but not for state income tax purposes. Specifically, the California Domestic Partner Rights and Responsibilities Act of 2003 (the California Act), effective on January 1, 2005, provided that "Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law . . . as are granted to and imposed upon spouses." However, the California Act provided that "earned income may not be treated as community property for state income tax purposes."

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On September 29, 2006, California enacted Senate Bill 1827. Senate Bill 1827 repealed the language of the California Act providing that earned income was not to be

treated as community property for state income tax purposes. Thus, effective January 1, 2007, the earned income of a registered domestic partner must be treated as community property for state income tax purposes (unless the RDPs execute an agreement opting out of community property treatment). As a result of the legislation, California, as of January 1, 2007, treats the earned income of registered domestic partners as community property for both property law purposes and state income tax purposes.

LAW AND ANALYSIS

Section 61(a)(1) of the Internal Revenue Code provides that gross income means all income from whatever source derived including compensation for services such as fees, commissions, fringe benefits, and similar items.

Federal tax law generally respects state property law characterizations and definitions. *U.S. v. Mitchell*, 403 U.S. 190 (1971), *Burnet v. Harmel*, 287 U.S. 103 (1932). In *Poe v. Seaborn*, 282 U.S. 101 (1930), the Supreme Court held that for federal income tax purposes a wife owned an undivided one-half interest in the income earned by her husband in Washington, a community property state, and was liable for federal income tax on that one-half interest. Accordingly, the Court concluded that husband and wife must each report one-half of the community income on his or her separate return regardless of which spouse earned the income. *United States v. Malcolm*, 282 U.S. 792 (1931), applied the rule of *Poe v. Seaborn* to California's community property law.

California community property law developed in the context of marriage and originally applied only to the property rights and obligations of spouses. The law operated to give each spouse an equal interest in each community asset, regardless of which spouse is the holder of record. *d'Elia v. d'Elia*, 58 Cal. App. 4th 415 (1997).

By 2007, California had extended *full community property treatment*¹ to registered domestic partners. Applying the principle that federal law respects state law property characterizations, the federal tax treatment of community property should apply to California registered domestic partners. Consequently, for tax years beginning after December 31, 2006, a California registered domestic partner must report one-half of the community income, whether received in the form of compensation for personal services or income from property, on his or her federal income tax return.

¹ Prior to January 1, 2007, the earned income of a registered domestic partner was treated as community property for state property law purposes but not for state income tax purposes.

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You also asked how to treat a registered domestic partner who reported all of his or her earned income in accordance with CCA 200608038. For tax years beginning before June 1, 2010, registered domestic partners may, but are not required to, amend their returns to report income in accordance with this CCA.

Please call Shareen Pflanz or Steve Toomey at (202) 622-4920 if you have any questions concerning this memorandum.