

A Step Toward Tax Equality for Registered Domestic Partners

By Christopher C. Melcher

The IRS has determined that registered domestic partners (RDPs) in California should receive the same tax treatment under federal law as married couples with respect to the reporting of community property income. See Priv. Ltr. Rul. 201021048. The ruling, although not binding as precedent, is consistent with prior U.S. Supreme Court holdings on the taxation of community income. See *Poe v. Seaborn* (1930) 282 U.S. 101 (1930); *U.S. v. Malcolm* (1931) 282 U.S. 792.

The ruling states that each RDP in California must report one-half of all community income received during the partnership on his or her federal income tax return. This has been the case under state tax law, but the IRS previously did not extend community property principles to income earned by RDPs. Under the ruling, if a RDP earns income during the partnership, each of them will have to report one-half of that income on his or her taxes beginning with the 2010 tax year. For the 2007 to 2009 tax years, RDPs have the option, but are not required to, file amended returns consistent with the ruling. Chief Counsel Advice 201021050.

The IRS took the position because California law recognizes that registered domestic partners have the same rights and obligations under the law as spouses. Effective January 1, 2007, California also began to treat earned income of RDPs as community property for state income tax purposes. Couples can register as RDPs in California if both partners are the same sex, or for opposite sex partners if at least one of them is 62 years or older. The ruling is limited to California RDPs, but could be applied to RDPs of any other state which extends its community property laws to RDPs in the same manner as California.

RDPs must continue to file as separate taxpayers on their federal income tax returns, since federal rules do not allow RDPs to file as “married filing jointly.” There are reduced federal tax rates for spouses who file jointly, and potentially higher taxes for spouses who file separately. So, although RDPs cannot file jointly, they are not penalized for filing separately.

There are many unanswered questions under federal tax law relating to RDPs. For example:

- If one RDP pays the mortgage interest and property taxes on a residence, can both partners claim one-half of the related deductions or can only the partner who made the payment?
- When RDPs dissolve their partnership and divide their community property, will gain be recognized on the transfer?
- If partner support is paid, the payor apparently gets no deduction, but does the recipient have to declare the support as income?
- How can interests in retirement plans be divided between RDPs without incurring taxes and penalties?

The treatment of RDPs under federal tax law as compared to spouses is far from equal, but this ruling is major step toward the application of federal law in a way that is consistent with the rights granted RDPs under California law.