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Recent IRS Rulings Clarify Tax Treatment of Registered Domestic Partners

by Alexis M. Petas

On May 28, 2010, the Internal Revenue Service released Private Letter Ruling 201021048 (the "Ruling") addressing several issues related to the federal income and gift taxation of registered domestic partners in California. Under the Ruling, income of registered domestic partners is treated consistently with California state law, and thus is treated as community property for federal income tax purposes.

Effective January 1, 2007, California conformed its personal income tax rules to its community property regime for registered domestic partners. Thus, for taxable years beginning after December 31, 2006, a California registered domestic partner must report one-half of the community income on his or her California personal income tax return. This rule applies to all community income, both that received as compensation for personal services and that received as income from property. As a result of this change, registered domestic partners are required to file either as "married/RDP filing jointly" or "married/RDP filing separately" for California personal income tax purposes. Under federal law, as interpreted by the IRS, registered domestic partners are not permitted to file joint federal income tax returns.

In the Ruling, the IRS states that a registered domestic partner is entitled to one-half of the credits for income tax withholding from the wages of each of the domestic partners, as that taxpayer is also the recipient of one-half of the community property income. The Ruling also addresses whether such treatment causes community property to be treated as a transfer for federal gift tax purposes under Internal Revenue Code section 2501. The IRS ruled that although a California taxpayer's earnings are treated as community property, and thus vested in the other member of the community, such treatment will not cause the vested property to be treated as a transfer for federal gift tax purposes.

Additionally, on May 28, 2010, the IRS released Chief Counsel Advice 201021050 (the "Memorandum") regarding the reporting of income of registered domestic partners in California. Under the Memorandum, and consistent with the Ruling, the Chief Counsel's Office states that for federal income tax purposes, it intends to treat income of California registered domestic partners in the same manner as California's treatment of community property income. This holding also applies to all community income, both that received as compensation for personal services and income from property. The Memorandum also provides that registered domestic partners may, but are not required to, amend their returns to report income according to the above-discussed guidelines for taxable years beginning after December 31, 2006, and before January 1, 2010.

Addressing another aspect of community property of registered domestic partners in California, the IRS released Chief Counsel Advice 201021049 on May 28, 2010, stating that the IRS can consider assets of a taxpayer's registered domestic partner in California when determining the reasonable collection potential of that taxpayer's Offer in Compromise under Internal Revenue Code section 7122. Previously, the IRS recognized that the assets of both owners of community property in community property states should be considered in determining the reasonable collection potential of a taxpayer's Offer in Compromise. Thus, the IRS concluded that because California community property law applies to registered domestic partners, such community property should similarly be considered in evaluating an Offer in Compromise.

Private letter rulings, technical advice memoranda, Chief Counsel advice and similar documents published by the IRS have no value as precedent and are generally treated in litigation with the IRS as entitled to no more weight than a position advanced by the Commissioner on brief. See, e.g., *Laglia v. Commissioner*, 88 T.C. 894, 897 (1987). Moreover, Internal Revenue Code section 6110(k)(3) provides that a "written determination" may not be "used or cited as precedent." Internal Revenue Code section 6110(b)(1) defines the term "written determination" as a "ruling, determination letter, technical advice memorandum, or Chief Counsel advice." However, private letter rulings are often helpful in understanding the position of the IRS with respect to the issues addressed. For example, in *Rowan Cos. v. United States*, 452 U.S. 247 (1981), footnote 17 at 261, the United States Supreme Court examined a series of private letter rulings in discussing the history of the IRS's interpretation of a provision of the Internal Revenue Code, but noted the lack of precedential value of those rulings. Additionally, Chief Counsel advice does have weight within the IRS; it is viewed as written advice or instruction prepared by the National Office which conveys an interpretation of a revenue provision or IRS position, and is recognized by the IRS as providing correct and impartial interpretations of the internal revenue laws. See IRM 33.1.3.1.1 (Definition of Chief Counsel Advice); IRM 4.46.1 (Overview of LMSB Guide for Quality Examinations).

On a related matter at the state level, on May 12, 2010, the State of New York Commissioner of Taxation and Finance issued New York Advisory Opinion No. TSB-A-10(2)I, May 12, 2010 (the "Opinion"), regarding whether marriage to a same-sex partner will be recognized for New York State personal income tax purposes. Under New York State law, an individual's marital filing status is the same as that individual's federal filing status. As previously noted, under the IRS' interpretation of federal law, same-sex married couples are not permitted to file joint federal income tax returns. Therefore, the Opinion concludes that marriage to a same-sex partner will not be recognized for purposes of New York State personal income tax.

If you have any questions regarding the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the attorneys below.

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