

**Professor Patricia Cain, JD - Moderator**

**Karen K Stogdill, EA, CEBS**

*KKS Tax Associates, Inc.*

**[www.taxkaren.com](http://www.taxkaren.com)**

**Deb L. Kinney, Esq**

*DLK Lawgroup, PC*

**[www.dlklawgroup.com](http://www.dlklawgroup.com)**

**D. Chris Kollaja, CPA**

*A.L. Nella & Company, LLP*

**[www.alnella.com](http://www.alnella.com)**

# *Victory!*

Community Property Rights Recognized for  
Registered Domestic Partners  
(& Same Sex Married Couples)

## Poe v Seaborn

# History

January, 2005 California RDP community property

February, 2006 IRS issues CCA 200608038

May, 2010 **IRS issues  
PLR 201021048 &  
CCA 201021050**

# IRS Publication 17

## *California, Nevada, and Washington domestic partners.*

A registered domestic partner in California, Nevada, or Washington **must** report half the combined community income earned by the individual and his or her domestic partner. See Publication 555.

# IRS Form 1040 Instructions

*Nevada, Washington, and California domestic partners.*

A registered domestic partner in Nevada, Washington, or California (**or a person in California who is married to a person of the same sex**) generally **must** report half the combined community income earned by the individual and his or her domestic partner (or same-sex spouse). See Pub. 555.

# Amending Prior Year Returns

- ◆ Allowed but NOT required
- ◆ 2007, 2008 and 2009
- ◆ Both spouses must amend
- ◆ 2007 may be due 4/15/2011

# Examples from Amended Returns:

## Taxable Incomes

- ◆ \$ 82,258 & \$0 – save \$ 4,859
- ◆ \$114,799 & \$15,442 – save \$ 2,286
- ◆ \$130,153 & \$30,222 – save \$ 1,153
- ◆ \$296,444 & <\$10,570> – save \$ 22,496
- ◆ \$591,390 & <\$145,618> – save \$ 34,771
- ◆ \$612,243 & \$32,231 – owes \$ 560

# Community Property v Separate Property

**Separate Property**



**Separate Property**



**Community Property**





# Community Property Determination

**Divorce**

**Death**

**Federal  
Income Tax**

# Community **Property**

- ◆ Acquired living in community property state
- ◆ Agreed to convert
- ◆ Not identifiable as separate

# Community **Income**

Income from:

- ◆ Community property
- ◆ **Salaries, wages, pay**
- ◆ Real estate treated by state as community property

# Separate **Property**

- ◆ Owned before community
- ◆ Earned living in noncommunity property state
- ◆ **Gift or inheritance**
- ◆ Acquired with separate property
- ◆ **Agreed to convert**
- ◆ Part of property if commingled

# Separate **Income**

Income from:

- ◆ Separate property

# Forensic Accounting

- ◆ Reasonable basis
- ◆ Documentation of methodology
- ◆ Agreement between partners

# California Joint Tax Return

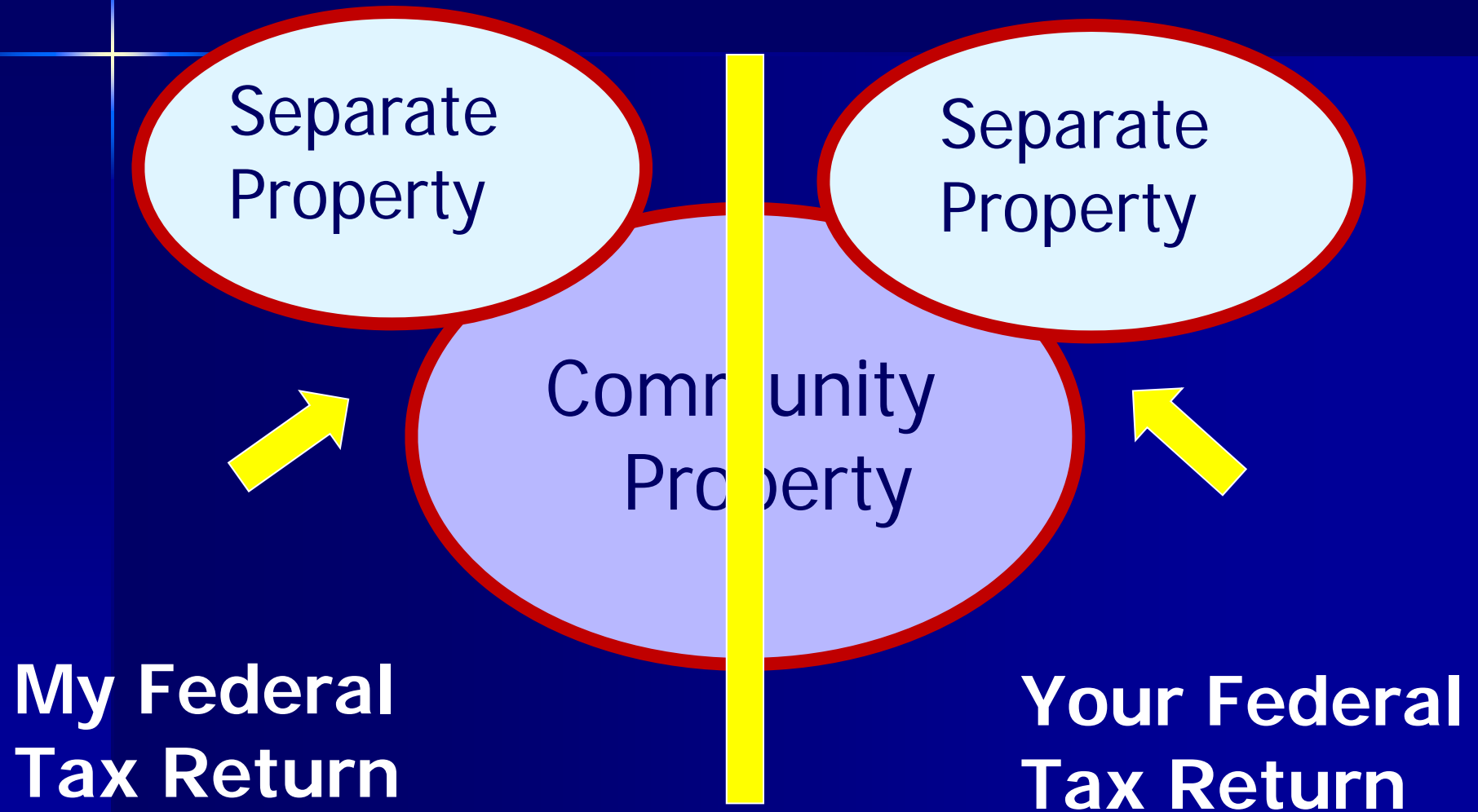


Separate  
Property

Separate  
Property

Community  
Property

# Community Property Splitting Federal Returns





# Completing 2010 Returns

- ◆ Probably no efilings
- ◆ Follow Pub 555 **with caution**
- ◆ Expect IRS correspondence
- ◆ Consult attorney first ?
- ◆ Seek professional tax assistance ?



Department of the Treasury  
Internal Revenue Service

**Publication 555**

(Rev. May 2007)

Cat. No. 15103C

**Community  
Property**

**Table 1. General Rules — Property and Income: Community or Separate?**

**Community property** is property:

- That you, your spouse, or both acquire during your marriage while you are domiciled in a community property state. (Includes the part of property bought with community property funds if part was bought with community funds and part with separate funds.)
- That you and your spouse agreed to convert from separate to community property.
- That cannot be identified as separate property.

**Separate property** is:

- Property that you or your spouse owned separately before your marriage.
- Money earned while domiciled in a noncommunity property state.
- Property either of you received as a gift or inherited separately during your marriage.
- Property bought with separate funds, or exchanged for separate property, during your marriage.
- Property that you and your spouse agreed to convert from community to separate property through an agreement valid under state law.
- The part of property bought with separate funds, if part was bought with community funds and part with separate funds.

**Community Income** <sup>1,2,3</sup> is income from:

- Community property.
- Salaries, wages, or pay for services of you, your spouse, or both during your marriage.
- Real estate that is treated as community property under the laws of the state where the property is located.

**Separate Income** <sup>1,2</sup> is income from:

- Separate property. Separate income belongs to the spouse who owns the property.

# CAUTION! CAUTION!

IRS Publication 555 has not yet been updated. In the May, 2007 version you must **IGNORE** the paragraph that says it does NOT apply to California Registered Domestic Partners.

Check [www.irs.gov](http://www.irs.gov) and search for Pub 555.

# Who is likely to benefit?

- ◆ Disparate *taxable* incomes
  - ◆ Line 6 - 1040 EZ, Line 27 - 1040A  
Line 43 - 1040
- ◆ Already splitting mortgage
- ◆ Suspended losses –  
rental/capital/net operating

# Who is likely to not benefit?

- ◆ Close *taxable* incomes
- ◆ Not splitting mortgage
- ◆ Both claiming head of household
- ◆ Qualifying for credits

# Issues/Concerns

- ◆ Financial aid
- ◆ Head of Household
- ◆ Debts – IRS & other
- ◆ Stock Options
- ◆ Social Security
- ◆ IRAs

# Issues/Concerns

- ◆ Using separate property to pay on community property
  - Right of reimbursement
  - Loss of deduction ?
- ◆ Using community property to pay on separate property
  - Community is acquiring an interest
  - Loss of deduction ?



**Professor Patricia Cain, JD - Moderator**

**Karen K Stogdill, EA, CEBS**

*KKS Tax Associates, Inc.*

**[www.taxkaren.com](http://www.taxkaren.com)**

**Deb L. Kinney, Esq**

*DLK Lawgroup, PC*

**[www.dlklawgroup.com](http://www.dlklawgroup.com)**

**D. Chris Kollaja, CPA**

*A.L. Nella & Company, LLP*

**[www.alnella.com](http://www.alnella.com)**

# The 411 for Your 1040: Making Sense of the Major Federal Income Tax Changes for Same-Sex Couples

**NCLR**

NATIONAL CENTER FOR LESBIAN RIGHTS



**EQ**

**CA**

