Victory!

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

Poe v Seaborn

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>January, 2005</td>
<td>California RDP community property</td>
</tr>
<tr>
<td>February, 2006</td>
<td>IRS issues CCA 200608038</td>
</tr>
<tr>
<td>May, 2010</td>
<td>IRS issues PLR 201021048 &amp; CCA 201021050</td>
</tr>
</tbody>
</table>
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.
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:

<table>
<thead>
<tr>
<th>Taxable Incomes</th>
<th>&amp;</th>
<th>Taxable Incomes</th>
<th>&amp;</th>
<th>Save</th>
</tr>
</thead>
<tbody>
<tr>
<td>$82,258</td>
<td>$0</td>
<td>$4,859</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$114,799</td>
<td>$15,442</td>
<td>$2,286</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$130,153</td>
<td>$30,222</td>
<td>$1,153</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$296,444</td>
<td>&lt;$10,570&gt;</td>
<td>$22,496</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$591,390</td>
<td>&lt;$145,618&gt;</td>
<td>$34,771</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$612,243</td>
<td>$32,231</td>
<td>$560</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
Community Property v Separate Property

Separate Property

Separate Property

Community Property

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
Community Property Determination

- Divorce
- Death
- Federal Income Tax

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
Community Property

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

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
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

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, J D
Completing 2010 Returns

- Probably no e-filing
- Follow Pub 555 with caution
- Expect IRS correspondence
- Consult attorney first?
- Seek professional tax assistance?

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, J.D.
<table>
<thead>
<tr>
<th><strong>Community property</strong> is property:</th>
<th><strong>Separate property</strong> is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 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.)</td>
<td>• Property that you or your spouse owned separately before your marriage.</td>
</tr>
<tr>
<td>• That you and your spouse agreed to convert from separate to community property.</td>
<td>• Money earned while domiciled in a noncommunity property state.</td>
</tr>
<tr>
<td>• That cannot be identified as separate property.</td>
<td>• Property either of you received as a gift or inherited separately during your marriage.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Community Income</strong> (^1,^2,^3) is income from:</th>
<th><strong>Separate Income</strong> (^1,^2) is income from:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Community property.</td>
<td>• Separate property. Separate income belongs to the spouse who owns the property.</td>
</tr>
<tr>
<td>• Salaries, wages, or pay for services of you, your spouse, or both during your marriage.</td>
<td></td>
</tr>
<tr>
<td>• Real estate that is treated as community property under the laws of the state where the property is located.</td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Any income you earned during the marriage from a business that you owned before the marriage. This includes income from any separate property you earned. \(^2\) Any interest that you or your spouse earned on separate property while it was owned by you alone or by your spouse alone. \(^3\) Any interest that you or your spouse earned on community property while it was owned by both of you.
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.


© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
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

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
Who is likely to not benefit?

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

© Used with permission Karen K Stogdill, EA, Deb L Kinney, Esq., D. Chris Kollaja, CPA, Patricia Cain, JD
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, J D - Moderator

Karen K Stogdill, EA, CEBS
  KKS Tax Associates, Inc.
  www.taxkaren.com

Deb L. Kinney, Esq
  DLK Lawgroup, PC
  www.dlklawgroup.com

D. Chris Kollaja, CPA
  A.L. Nella & Company, LLP
  www.alnella.com
The 411 for Your 1040: Making Sense of the Major Federal Income Tax Changes for Same-Sex Couples