Office of Chief Counsel
Internal Revenue Service
memorandum

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

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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."

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 Senate Bill 1827 repealed the language of the California Act providing that earned income was not to be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.

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.