Office of Chief Counsel
Internal Revenue Service

Memorandum

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from: Office of the Associate Chief Counsel
(Income Tax & Accounting)

subject: California Registered Domestic Partners

This Chief Counsel Advice responds to your request for assistance. Specifically, you have asked our office to address the manner in which the California Domestic Partner Rights and Responsibilities Act of 2003 is to be taken into account in computing the federal income tax of a registered domestic partner. In accordance with § 6110(k)(3) this advice may not be used or cited as precedent.

ISSUE

For tax year 2005, is a California individual who is a registered domestic partner, under the California Domestic Partner Rights and Responsibilities Act of 2003, required to include in gross income all of his or her earned income for 2005 or one-half of the combined income earned by the individual and his or her domestic partner?

CONCLUSION

An individual who is a registered domestic partner in California must report all of his or her income earned from the performance of his or her personal services.

FACTS

California is one of nine community property states. With respect to the community property rights of married couples in California, California Family Code section 760 and section 751 provide that all property "acquired by a married person during the marriage while domiciled in California is community property" and that the interests of husband and wife in community property during marriage are "present, existing and equal interests." Consequently, a spouse in California who files his or her tax return as married filing separately must include in gross income one-half of the combined earned income of both spouses.

Since 1999, California has extended certain rights of married couples to domestic partners who register their partnership with the California Secretary of State. A registry of such domestic partnerships has been maintained by the California Secretary of State since 2000.

On September 19, 2003, California enacted the California Domestic Partner Rights and Responsibilities Act of 2003 (the California Act). The California Act became effective on January 1, 2005.

Section 297.5(a) of the California Act provides as follows:

> Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

As proposed, the California Act allowed registered domestic partners to file joint income tax returns for California state tax purposes and to be taxed in the same manner as married couples for state income tax purposes. The enacted version of the California Act, however, deleted the joint return provision and required registered domestic partners to file separate returns. The pertinent provision of the legislation that has significant state tax implications (section 297.5(g)) is as follows:

> Notwithstanding this section, in filing their state income tax returns, domestic partners shall use the same filing status as is used on their federal income tax returns, or that would have been used had they filed federal income tax returns. Earned income may not be treated as community property for state income tax purposes.

On June 30, 2005, California enacted Assembly Bill 2580, which also became effective on January 1, 2005. Assembly Bill 2580 reenacted California Family Code section 297.5 with a series of technical amendments and clarifications. Assembly Bill 2580 added California Family Code section 297.5(m)(1), which states, in pertinent part, that

with respect to laws, regulations and policies concerning community property, “the date of marriage will be deemed to refer to the date of registration of a domestic partnership with the state.” Further, section 297.5(m)(2) gave domestic partners who registered before January 1, 2005, until June 30, 2005, to enter into agreements identical to premarital agreements between prospective spouses to modify or avoid the application of California’s community property laws.

LAW AND ANALYSIS

Section 61(a)(1) provides that gross income means all income from whatever source derived including compensation for services such as fees, commissions, fringe benefits, and similar items.

In general, a taxpayer’s gross income includes income earned by that taxpayer. As first enunciated in *Lucas v. Earl*, 281 U.S. 111 (1930), a taxpayer may not shift the tax burden of his or her earned income to another by contractually assigning all or a portion of it to someone else. In *Lucas v. Earl*, the Supreme Court held that all of a husband’s earnings are to be taxed to husband even though husband and wife had previously entered into an agreement under which all earnings of husband and wife “shall be treated and considered and hereby is declared to be received, held, taken, and owned by us as joint tenants, and not otherwise, with the right of survivorship.”

Poe v. Seaborn, 282 U.S. 101 (1930), addressed the issue of whether income earned by a husband is rightfully taxed to his wife in a community property state. In *Poe v. Seaborn*, the Supreme Court concluded that “the wife has, in Washington, a vested property right in the community property, equal with that of her husband; and in the income of the community, including salaries or wages of either husband or wife, or both.” Accordingly, the Court held that husband and wife were entitled to file separate returns, each treating one-half of the community income as his or her respective income. See *United States v. Malcolm*, 282 U.S. 792 (1931), which applied the rule of *Poe v. Seaborn* to California’s community property law.

The case law relating to income-splitting in community property states has always arisen solely in the context of spouses. *See Goodell v. Koch*, 282 U.S. 118 (1930), holding that *Poe v. Seaborn* applied to spouses in Arizona (“Enough has been said to show that our conclusion in *Poe v. Seaborn, supra*, holds here, and that the wife has such equal interest in community income as to entitle her to treat one-half thereof as her income, and file a separate return therefor under sections 210(a) and 211(a) of the Revenue Act of 1926”); *Hopkins v. Bacon*, 282 U.S. 122 (1930), applying *Poe v. Seaborn* to spouses in Texas (“It is held that the spouses' rights of property in the effects of the community are perfectly equivalent to each other”); and *Bender v. Pfaff*, 282 U.S. 127 (1930), applying *Poe v. Seaborn* to spouses in Louisiana (“Inasmuch, therefore, as, in Louisiana, the wife has a present vested interest in community property equal to that of her husband, we hold that the spouses are entitled to file separate returns, each treating one-half of the community income as income of each ‘of’ them as

an 'individual' as those words are used in §§ 210(a) and 211(a) of the Revenue Act of 1926").

In *Commissioner v. Harmon*, 323 U.S. 44 (1944), the Supreme Court distinguished its decision in *Poe v. Seaborn.* In *Commissioner v. Harmon,* a case addressing the tax consequences of an Oklahoma statute allowing married couples to elect community property status, the Court said:

> In *Poe v. Seaborn, supra,* the court was not dealing with a consensual community but one made an incident of marriage by the inveterate policy of the State. In that case the court was faced with these facts: The legal community system of the States in question long antedated the Sixteenth Amendment and the first Revenue Act adopted thereunder. Under that system, as a result of State policy, and without any act on the part of either spouse, one half of the community income vested in each spouse as the income accrued and was, in law, to that extent, the income of the spouse. The Treasury had consistently ruled that the Revenue Act applied to the property systems of those States as it found them and consequently husband and wife were entitled each to return one half the community income. The Congress was fully conversant of these rulings and the practice thereunder, was asked to alter the provisions of later revenue acts to change the incidence of the tax, and refused to do so. In these circumstances, the court declined to apply the doctrine of *Lucas v. Earl*.

Harmon, 323 U.S. at 46-47.

The Court also said: "The important fact is that the community system of Oklahoma is not a system, dictated by State policy, as an incident of matrimony." *Harmon,* 323 U.S. at 48.

The Supreme Court's decision in *Poe v. Seaborn* dealt with Washington's community property law, which applied to a husband and wife. We do not believe that the *Poe v. Seaborn* decision applies to the application of a state's community property law outside the context of a husband and wife. In our view, the rights afforded domestic partners under the California Act are not "made an incident of marriage by the inveterate policy of the State." The relationship between registered domestic partners under the California Act is not marriage under California law. Therefore, the Supreme Court's decision in *Poe v. Seaborn* does not extend to registered domestic partners.

Consequently, an individual who is a registered domestic partner in California must report all of his or her income earned from the performance of his or her personal services, notwithstanding the enactment of the California Act.