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Family Law Corner: Local Attorney Obtains Ground-Breaking Private Letter Ruling for Gay Couples

By Ariel Sosna and Sarah Van Voorhis
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On May 5, 2010, the IRS issued a ground-breaking private letter ruling stating that California registered domestic partners (RDPs) must be treated the same as heterosexual couples for tax purposes. Bay Area tax attorney Don Read requested a private letter ruling on behalf of a client asking for clarification on how the client and his RDP should file their federal taxes. The IRS explained that pursuant to California community property law, each RDP obtains ownership of half of the community

RDPs will not be filing "married filing jointly," but rather "single" or "head of household." Thus, they will also not be subject to the so-called "marriage penalty."

This ruling raises a lot of questions for a family law practitioner. Currently, upon dissolution (divorce) of a registered domestic partnership, a transfer of property/assets from one partner to the other is presumed a taxable event. This is not the case in heterosexual divorces pursuant to IRC Section 1041. Often upon divorce, RDPs divide their property and assets by "gifting," and must report these transfers as gifts to the IRS. When asked whether this ruling applies to property transfers upon divorce of a

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income by operation of law and not by a transfer. Therefore, the sharing of income does not result from a transfer independently subject to gift or income tax. Specifically, the 58,000 RDPs in California should combine their income and each report half of it on their separate federal tax returns. RDPs must also equally split the credits for income tax withheld by the employer(s) of RDPs.

RDP, Don Read commented "with respect to property division, there is an old line of pre-section 1041 cases that indicates that the equal division of the community estate is a nontaxable division, not a transfer. The respect the IRS is showing for community property rights of California RDPs should encourage us to think that it will apply these cases to RDP's; but there is nothing here that specifically does that."

The private ruling (201021048) was made public in a redacted version on May 28, 2010, and a Chief Counsel Advice (201021050) was issued announcing the same rule. This is the first time the IRS has treated gay couples as a "partnership" for tax purposes. This offers a clear tax benefit for RDPs where one partner earns significantly more than the other. Of course,



Ariel Sosna and Sarah Van Voorhis are founding partners of Van Voorhis & Sosna.

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