

IRS Approves Income-Splitting for Registered Domestic Partners Subject to Community Property Laws

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Garvey Schubert Barer Legal Update, June 10, 2010.

What the Law Is

The IRS recently announced that starting in the 2007 tax year, each registered domestic partner in California must report one-half of the community income on his or her federal income tax return. Chief Counsel Advice 201021050 (May 28, 2010). This is because California expanded full community property treatment to registered domestic partners starting in 2007. However, in recognition of the fact that many California registered domestic partners already filed tax returns reporting the income earned by each partner separately on his or her return, the IRS stated that those tax payers may, but are not required to, file amended returns in accordance with this announcement. Although this announcement is consistent with the long-established tax law principle that property rights are created by state law, it is significant from a policy perspective because it represents a complete reversal from the IRS's previous position on this matter.

What This May Mean to You

The same reasoning should apply to Washington registered domestic partners. Washington registered domestic partners are also subject to the state's community property laws, effective as of the Legislature's adoption of this law in 2008. Rev. Wash. Code § 26.16.030 (2008). Presumably, the IRS will require each Washington registered domestic partner to report one-half of the couples' income for his or her 2010 tax return. Furthermore, some taxpayers may be entitled to a refund by filing amended returns for 2008 and 2009, provided that they were registered at that time.