

December 14, 2005

Hon. Eric Solomon
Deputy Assistant Secretary for Regulatory Affairs
Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

Re: California Domestic Partner Act – IRS Guidance Needed

Dear Mr. Solomon,

Effective January 1, 2005, California enacted the Domestic Partner Act through AB 205 and AB 2580, affecting registered domestic partners. The new law gives such partners most of the same state-based rights and responsibilities as spouses, including community property rights. However, it does not give domestic partners any of the tax benefits given by the federal government. Additionally, the law creates a conflict between state community property laws and federal tax laws.

The Family Law Section of the Litigation Sections of the California Society of Certified Public Accountants has reviewed the Domestic Partner Act and has discussed the issues the law raises with attorneys and members of the judiciary in California, however, guidance from the IRS is needed quickly.

As 2005 comes to a close, one issue for registered domestic partners and their CPAs is determining how to report the earned income of domestic partners on each partner's federal tax return. One alternative is that each partner report half of both partners' earned income under California community property law (see *Poe v. Seaborn* and *U.S. v. Malcom*). Another alternative is that each partner reports only the income from his or her personal services. The partners will also need to determine whether the provision making the new law retroactive to the partners' pre-2005 date of registration results in a taxable transfer of property on the effective date of January 1, 2005.

We understand that the IRS has been reviewing these and other issues associated with the California Domestic Partner Act for some time and we urge you to issue public guidance as to how to address these issues as early as possible.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact us: Leslie Dawson (925)945-7722 or leslie@forensiccpa.com; and Andy Mintzer (310) 395-0599 or andy@mintzercpa.com.

Sincerely,



Leslie O. Dawson, CPA
Chair, Family Law Section, Litigation Sections
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Andrew M. Mintzer, CPA
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cc Hon. Heather Maloy
Acting Deputy Chief Counsel (Technical)
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