

# Domestic Partnership Update: New IRS Ruling

March 28, 2011

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# IRS Circular 230 Notice

To the extent that this presentation concerns tax matters, it is not intended to be used and cannot be used by a taxpayer for the purpose of avoiding penalties that may be imposed by law.



# Karen K. Stogdill, EA, CEBS

- **Karen K Stogdill** is a leading authority on Registered Domestic Partner and Same-Sex Married taxation. Her expertise is sought by taxpayers, colleagues and governmental officials alike and she is a frequent speaker on the topic. It was Ms. Stogdill's tax clients who with their attorney, Don Read, secured the right, for the first time ever, for same-sex taxpayers to file their federal income tax returns splitting their community property income.
- Ms. Stogdill received her Bachelor's degree (cum laude) from Ball State University, Muncie, Indiana, and her Certified Employee Benefits Specialist designation from the Wharton School, University of Pennsylvania. She has studied taxation in the Golden Gate University Masters in Taxation program. She is an Enrolled Agent authorized to represent clients before the Internal Revenue Service.
- Karen Stogdill's tax practice, KKS Tax Associates, Inc., has offices in downtown San Francisco and in Albany, California and serves taxpayers from all over the state of California and beyond. KKS Tax Associates, Inc. is committed to excellence, service and diversity.



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- Deb has a B.A. from University of California at Berkeley, a J.D. from New College School of Law, is a member of the California State Bar Trusts and Estates Section, the Bar Association of San Francisco and the American Bar Association. Deb serves on the Board of Directors of Horizons Foundation and Equality California.
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# Chris Kollaja, CPA

- Chris Kollaja has been in public accounting for over twenty years. A California Certified Public Accountant, Mr. Kollaja received his master's of public accounting degree in taxation from the University of Texas at Austin, where he also earned a bachelor's degree in accounting.
- Mr. Kollaja's experience has addressed such industries as professional services, tax-exempts, real estate, construction, retail, wholesale, insurance and other areas. He has worked for Ernst & Young (formerly Arthur Young & Company) and Grant Thornton, and also held the post of chief financial officer for a real estate company. With his experience as a financial officer, Mr. Kollaja understands the importance of internal accounting systems and financial reports.
- Mr. Kollaja's general activities include membership in the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants. He also serves on the board of directors of a healthcare foundation and is an active member of many charitable and religious organizations.

# *Legal Victory!*

Community Property Rights  
Recognized for  
Registered Domestic Partners  
(& Same Sex Married Couples)

Poe v Seaborn

# History

January, 2005      California RDP community property

February, 2006      IRS issues CCA 200608038

May, 2010

**IRS issues  
PLR 201021048 &  
CCA 201021050**

# IRS Publication 17

*California, Nevada, and Washington domestic partners.*

A registered domestic partner in California, Nevada, or Washington **must** report half the combined community income earned by the individual and his or her domestic partner. See Publication 555.

# IRS Form 1040 Instructions

## *Nevada, Washington, and California domestic partners.*

A registered domestic partner in Nevada, Washington, or California (or a person in California who is married to a person of the same sex) generally **must** report half the combined community income earned by the individual and his or her domestic partner (or same-sex spouse). See Pub. 555.

# CAUTION! CAUTION!

IRS Publication 555 has recently been updated. However, certain issues have yet to be addressed or reconciled.

Check [www.irs.gov](http://www.irs.gov) and search Pub 555 to find the updated version.

# Amending Prior Year Returns

- ◆ Allowed but NOT required
- ◆ 2007, 2008 and 2009
- ◆ Both spouses must amend
- ◆ 2007 may be due 4/15/2011

# Examples from Amended Returns:

## Taxable Incomes

◆\$ 82,258	&	\$0	–	save \$	4,859
◆\$114,799	&	\$15,442	–	save \$	2,286
◆\$130,153	&	\$30,222	–	save \$	1,153
◆\$296,444	&	<\$10,570>	–	save \$	22,496
◆\$591,390	&	<\$145,618>	–	save \$	34,771
◆\$612,243	&	\$32,231	–	owes \$	560

# Who is likely to benefit?

- ◆ Disparate *taxable* incomes
  - ◆ Line 6 - 1040 EZ, Line 27 - 1040A  
Line 43 - 1040
- ◆ Already splitting mortgage
- ◆ Suspended losses –  
rental/capital/net operating

# Who is likely to not benefit?

- ◆ Close *taxable* incomes
- ◆ Not splitting mortgage
- ◆ Both claiming head of household
- ◆ Qualifying for credits

# Community Property Determination

**Divorce**

**Death**

**Federal  
Income Tax**

# Determining CP and SP

- Common Misperceptions
- Nuances and well kept secrets
- Communication with Accountants

# Community Property

- ◆ Acquired living in community property state
- ◆ Agreed to convert
- ◆ Not identifiable as separate

# Community **Income**

Income from:

- ◆ Community property
- ◆ Salaries, wages, pay
- ◆ Real estate treated by state as community property

# Separate Property/Income

- ◆ Owned before community
- ◆ Earned living in noncommunity property state
- ◆ Gift or inheritance
- ◆ Acquired with separate property
- ◆ Agreed to convert
- ◆ Part of property if commingled

# Forensic Accounting

- ◆ Reasonable basis
- ◆ Documentation of methodology
- ◆ Agreement

# California Joint Tax Return

Separate  
Property

Separate  
Property

Community  
Property

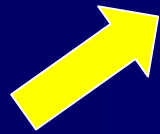
Thank you Franchise Tax Board!

# Community Property Splitting Federal Returns

Separate  
Property

Separate  
Property

Community  
Property



**My Federal  
Tax Return**

**Your Federal  
Tax Return**



# Completing 2010 Returns

- ◆ Probably no efilings
- ◆ Follow Pub 555 **with caution**
- ◆ Expect IRS correspondence
- ◆ Consult attorney first ?
- ◆ Seek professional tax assistance ?

# Issues/Concerns

- ◆ Self-Employment Tax
- ◆ Head of Household
- ◆ Debts – IRS & other
- ◆ Stock Options
- ◆ Social Security
- ◆ IRAs
- ◆ Financial Aid/Benefits

# Mixed Assets

- ◆ Using separate property to pay on community property debt
  - Right of reimbursement
  - Loss of deduction?
  
- ◆ Using community property to pay on separate property debt
  - Community is acquiring an interest
  - Loss of deduction?
  
- ◆ Business Started with Separate Property Investments
  - ◆ Normal return on investment
  - ◆ Community compensation





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Department of the Treasury  
Internal Revenue Service

**Publication 555**

(Rev. December 2010)

Cat. No. 15103C

# Community Property



**Get forms and other information faster and easier by:**

**Internet [IRS.gov](http://IRS.gov)**

## Contents

<b>Important Reminder</b> .....	<b>1</b>
<b>Introduction</b> .....	<b>1</b>
<b>Domicile</b> .....	<b>2</b>
<b>Community or Separate Property and Income</b> .....	<b>3</b>
<b>Identifying Income, Deductions, and Credits</b> .....	<b>4</b>
Income .....	4
Exemptions .....	5
Deductions .....	5
Credits, Taxes, and Payments .....	6
<b>Community Property Laws Disregarded</b> .....	<b>7</b>
<b>End of the Community</b> .....	<b>8</b>
<b>Preparing a Federal Income Tax Return</b> .....	<b>9</b>
Joint Return Versus Separate Returns .....	9
Separate Return Preparation .....	9
Allocation Worksheet .....	10
Example .....	11
<b>How To Get Tax Help</b> .....	<b>13</b>
<b>Index</b> .....	<b>16</b>

## Important Reminder

**Photographs of missing children.** The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

## Introduction

This publication is for married taxpayers who are domiciled in one of the following community property states:

- Arizona,
- California,
- Idaho,
- Louisiana,
- Nevada,
- New Mexico,
- Texas,
- Washington, or
- Wisconsin.

This publication does not address the federal tax treatment of income or property subject to the “community property” election under Alaska state laws.

Community property laws affect how you figure your income on your federal income tax return if you are married, live in a community property state or country, and file separate returns. For federal tax purposes, a marriage means only a legal union between a man and woman as husband and wife and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife. If you are married, your tax usually will be less if you file married filing jointly than if you file married filing separately. However, sometimes it can be to your advantage to file separate returns. If you and your spouse file separate returns, you have to determine your community income and your separate income.

Community property laws also affect your basis in property you inherit from a married person who lived in a community property state. See [Death of spouse](#), later.

**Nevada, Washington, and California domestic partners.** This publication is also for registered domestic partners (RDPs) who are domiciled in Nevada, Washington, or California and for individuals in California who, for state law purposes, are married to an individual of the same sex. For 2010, a RDP in Nevada, Washington, or California (or a person in California who is married to a person of the same sex) generally must follow state community property laws and report half the combined community income of the individual and his or her RDP (or California same-sex spouse).

These rules apply to RDPs in Nevada, Washington, and California in 2010 because they have full community property rights in 2010. California RDPs attained these rights as of January 1, 2007. Nevada RDPs attained them as of October 1, 2009, and Washington RDPs attained them as of June 12, 2008. For years prior to 2010, RDPs who reported income without regard to the community property laws may file amended returns to report half of the community income of the RDPs for the applicable periods, but are not required to do so. If one of the RDPs files an amended return to report half of the community income, the other RDP must report the other half.

RDPs (and individuals in California who are married to an individual of the same sex) are not married for federal tax purposes. They can use only the single filing status, or if they qualify, the head of household filing status.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service  
Individual Forms and Publications Branch  
SE:W:CAR:MP:T:I  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at [\\*taxforms@irs.gov](mailto:*taxforms@irs.gov). (The asterisk must be included in the address.) Please put “Publications Comment” on the subject line. Although we cannot respond individually to each email, we do appreciate your

feedback and will consider your comments as we revise our tax products.

**Ordering forms and publications.** Visit [www.irs.gov/formspubs](http://www.irs.gov/formspubs) to download forms and publications, call 1-800-829-3676, or write to the address below and receive a response within 10 days after your request is received.

Internal Revenue Service  
1201 N. Mitsubishi Motorway  
Bloomington, IL 61705-6613

**Tax questions.** If you have a tax question, check the information available at IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the addresses earlier on this page.

## Useful Items

You may want to see:

### Publication

- 504** Divorced or Separated Individuals
- 505** Tax Withholding and Estimated Tax
- 971** Innocent Spouse Relief

### Form (and Instructions)

- 8857** Request for Innocent Spouse Relief

See [How To Get Tax Help](#) near the end of this publication for information about getting these publications.

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## Domicile

Whether you have community property and community income depends on the state where you are domiciled. If you and your spouse (or RDP/California same-sex spouse) have different domiciles, check the laws of each to see whether you have community property or community income.

You have only one domicile even if you have more than one home. Your domicile is a permanent legal home that you intend to use for an indefinite or unlimited period, and to which, when absent, you intend to return. The question of your domicile is mainly a matter of your intention as indicated by your actions. You must be able to show with facts that you intend a given place or state to be your permanent home. If you move into or out of a community property state during the year, you may or may not have community income.

Factors considered in determining domicile include:

- Where you pay state income tax,
- Where you vote,
- Location of property you own,
- Your citizenship,
- Length of residence, and
- Business and social ties to the community.

**Amount of time spent.** The amount of time spent in one place does not always explain the difference between home and domicile. A temporary home or residence may continue for months or years while a domicile may be established the first moment you occupy the property. Your intent is the determining factor in proving where you have your domicile.

**Note.** When this publication refers to where you live, it means your domicile.

## Community or Separate Property and Income

If you file a federal tax return separately from your spouse, you must report half of all community income and all of your separate income. Likewise, a RDP (and an individual in California who is married to an individual of the same sex) must report half of all community income and all of his or her separate income on his or her federal tax return. Generally, the laws of the state in which you are domiciled govern whether you have community property and community income or separate property and separate income

for federal tax purposes. The following is a summary of the general rules. These rules are also shown in Table 1.

**Community property.** Generally, community property is property:

- That you, your spouse (or RDP/California same-sex spouse), or both acquire during your marriage (or registered domestic partnership/same-sex marriage in California) while you and your spouse (or RDP/California same-sex spouse) are domiciled in a community property state.
- That you and your spouse (or RDP/California same-sex spouse) agreed to convert from separate to community property.
- That cannot be identified as separate property.

**Community income.** Generally, community income is income from:

- Community property.
- Salaries, wages, and other pay received for the services performed by you, your spouse (or RDP/California same-sex spouse), or both during your marriage

**Table 1. General Rules — Property and Income: Community or Separate?**

<p><b>Community property</b> is property:</p> <ul style="list-style-type: none"> <li>• That you, your spouse (or RDP/California same-sex spouse), or both acquire during your marriage (or registered domestic partnership/same-sex marriage in California) while you are domiciled in a community property state. (Includes the part of property bought with community property funds if part was bought with community funds and part with separate funds.)</li> <li>• That you and your spouse (or RDP/California same-sex spouse) agreed to convert from separate to community property.</li> <li>• That cannot be identified as separate property.</li> </ul>	<p><b>Separate property</b> is:</p> <ul style="list-style-type: none"> <li>• Property that you or your spouse (or RDP/California same-sex spouse) owned separately before your marriage (or registered domestic partnership/same-sex marriage in California).</li> <li>• Money earned while domiciled in a noncommunity property state.</li> <li>• Property either of you received as a gift or inherited separately during your marriage (or registered domestic partnership/same-sex marriage in California).</li> <li>• Property bought with separate funds, or exchanged for separate property, during your marriage (or registered domestic partnership/same-sex marriage in California).</li> <li>• Property that you and your spouse (or RDP/California same-sex spouse) agreed to convert from community to separate property through an agreement valid under state law.</li> <li>• The part of property bought with separate funds, if part was bought with community funds and part with separate funds.</li> </ul>
<p><b>Community income</b> <sup>1,2,3</sup> is income from:</p> <ul style="list-style-type: none"> <li>• Community property.</li> <li>• Salaries, wages, or pay for services of you, your spouse (or RDP/California same-sex spouse), or both during your marriage (or registered domestic partnership/same-sex marriage in California).</li> <li>• Real estate that is treated as community property under the laws of the state where the property is located.</li> </ul>	<p><b>Separate income</b> <sup>1,2</sup> is income from:</p> <ul style="list-style-type: none"> <li>• Separate property. Separate income belongs to the spouse (or RDP/California same-sex spouse) who owns the property.</li> </ul>

<sup>1</sup> **Caution:** In Idaho, Louisiana, Texas, and Wisconsin, income from most separate property is community income.

<sup>2</sup> **Caution:** Check your state law if you are separated but do not meet the conditions discussed in *Spouses living apart all year*. In some states, the income you earn after you are separated and before a divorce decree is issued continues to be community income. In other states, it is separate income.

<sup>3</sup> **Caution:** Under special rules, income that can otherwise be characterized as community income may not be treated as community income for federal income tax purposes in certain situations. See [Community Property Laws Disregarded](#), later.