IRS

Questions and Answers for Registered Domestic Partners in Community Property States and Same-Sex Spouses in California

Publication 555, Community Property, provides general information for taxpayers, including registered domestic partners and same-sex spouses, who reside in community property states. The following questions and answers provide additional information to registered domestic partners in California, Nevada, and Washington, and to same-sex spouses in California (for convenience, both referred to as "registered domestic partners" in these questions and answers) who are subject to their state's community property laws:

Q-1: How do registered domestic partners determine their gross income for 2010?

A-1: Registered domestic partners must each report half the combined community income earned by the partners. In addition to half of the community income, a partner who has income that is not community income must report that separate income.

Q-2: Can registered domestic partners or same-sex spouses whose marriage is recognized under state law file federal tax returns using a married filing jointly or married filing separately status?

A-2: No. Registered domestic partners cannot file using a married filing separately or jointly filing status, because they are not spouses as defined by federal law. Likewise, same-sex partners who are married under state law may not file using a married filing separately or jointly filing status because federal law does not treat same-sex partners as spouses.

Q-3: Can a registered domestic partner qualify to file his or her tax return using head-of-household filing status?

A-3: Generally, to qualify as a head-of-household, a taxpayer must provide more than half the cost of maintaining his or her household during the taxable year, and that household must be the principal place of abode of the taxpayer's dependent for more than half of the taxable year. If registered domestic partners pay all of the costs of maintaining the household from community funds, each partner is considered to have incurred half the cost and neither can qualify as head of household. However, if one of the partners pays more than half by contributing separate funds, that partner may qualify as head-of-household.

Q-4: Can a registered domestic partner be a dependent of his or her partner for purposes of the dependency deduction under section 151?

A-4: A registered domestic partner can be a dependent of his or her partner if the requirements of sections 151 and 152 are met. However, it is unlikely that registered domestic partners will satisfy the gross income requirement of section 152(d)(1)(B) and the support requirement of section 152(d)(1)(C). To satisfy the gross income requirement, an individual's gross income must be less than the exemption amount ($3,650 for 2010). Because registered domestic partners each report half the combined community income earned by both partners, it is unlikely that a registered domestic partner will have gross income that is less than the exemption amount.

To satisfy the support requirement, more than half of an individual's support for the year must be provided by the person seeking the dependency deduction. If a registered domestic partner's (Partner A's) support comes entirely from community funds, that partner is considered to have provided half of his or her own support and cannot be claimed as a dependent by another. However, if the other registered domestic partner (Partner B) pays more than half of the support of Partner A by contributing separate funds, Partner A may be a dependent of Partner B for purposes of section 151, provided the other requirements of sections 151 and 152 are satisfied.

Q-5: Can a registered domestic partner be a dependent of his or her partner for purposes of the exclusion in section 105(b) for reimbursements of expenses for medical care?

A-5: A registered domestic partner (Partner A) may be a dependent of his or her partner (Partner B) for purposes of the exclusion in section 105(b) only if the support requirement (discussed in Question 4, above) is satisfied. Unlike section 152(d), section 105(b) does not require that Partner A's gross income be less than the exemption amount in order for Partner A to qualify as a dependent.

Q-6: If a child is a qualifying child under section 152(c) of both parents who are registered domestic partners, which parent may claim the child as a dependent?

A-6: If a child is a qualifying child under section 152(c) of both parents who are registered domestic partners, either parent, but not both, may claim a dependency deduction for the qualifying child. If both parents claim a dependency deduction for the child on their income tax returns, the IRS will treat the child as the qualifying child of the parent with whom the child resides for the longer period of time. If the child resides with each parent for the same amount of time during the taxable year, the IRS will treat the child as the qualifying child of the parent with the higher adjusted gross income.

Q-7: Is a registered domestic partner the stepparent of his or her partner's child?

A-7: If a registered domestic partner is the stepparent of his or her partner's child under the laws of the state in which the partners reside, then the registered domestic partner is the stepparent of the child for federal income tax purposes.

Q-8: How should registered domestic partners report wages, other income items, and deductions on their federal income tax returns?

A-8: Registered domestic partners should report wages, other income items, and deductions according to the instructions to Form 1040, U.S. Individual Income Tax Return, and related schedules. In addition, registered domestic partners should attach the Allocation Worksheet in Table 2 of Publication 555, Community Property, to their separate returns showing how the partners computed the income, deductions, and federal income tax withholding that each reported. Each partner should write the social security number of the other partner in the "Notes" section of the worksheet. If a registered domestic partner does not attach a worksheet, he or she must attach a copy of his or her partner's Form W-2 or 1099-R (in addition to his or her own) and make a notation on the form showing the division of income and tax withholding.

Q-9: Should registered domestic partners report social security benefits as community income for federal tax purposes?

A-9: Generally, state law determines whether an item of income constitutes community income. Accordingly, if social security benefits are community income under state law, then they are also community income for federal income tax purposes. If social security benefits are not community income under state law, then they are not community income for federal income tax purposes.

Q-10: Can a registered domestic partner itemize deductions if his or her partner claims a standard deduction?

A-10: Yes. A registered domestic partner may itemize or claim the standard deduction regardless of whether his or her partner itemizes or claims the standard deduction. Although the law prohibits one spouse from itemizing deductions if

A-11: Half of the income, deductions, and net earnings of a business operated by a registered domestic partner must be reported by each registered domestic partner on a Schedule C (or Schedule C-EZ). In addition, each registered domestic partner owes self-employment tax on half of the net earnings of the business. Although the employment tax rules prohibit spouses from treating net earnings as community income (section 1402(a)(5)), registered domestic partners are not spouses as defined by federal law and this provision does not apply to them.

Q-12: Are registered domestic partners each entitled to half of the credits for income tax withholding from the combined wages of the registered domestic partners?

A-12: Yes. Because each registered domestic partner is taxed on half the combined community income earned by the partners, each is entitled to a credit for half of the income tax withheld on the combined wages.

Q-13: Are registered domestic partners each entitled to take credit for half of the total estimated tax payments paid by the partners?

A-13: No. Unlike withholding credits, which are allowed to the person who is taxed on the income from which the tax is withheld, a registered domestic partner can take credit only for the estimated tax payments that he or she made.

Q-14: Are community property laws taken into account in determining earned income for purposes of the dependent care credit, the refundable portion of the child tax credit, the earned income credit, and the making work pay credit?

A-14: No. The federal tax laws governing these credits specifically provide that earned income is computed without regard to community property laws in determining the earned income amounts described in section 21(d) (dependent care credit), section 24(d) (the refundable portion of the child tax credit), section 32(a) (earned income credit), and section 36A(d) (making work pay credit).

Q-15: Are community property laws taken into account in determining adjusted gross income (or modified adjusted gross income) for purposes of the dependent care credit, the child tax credit, the earned income credit, and the making work pay credit?

A-15: Yes. Community property laws must be taken into account in determining the adjusted gross income (or modified adjusted gross income) amounts in section 21(a) (dependent care credit), section 24(b) (child tax credit), section 32(a) (earned income credit), and section 36A(b) (making work pay credit).

Q-16: If two registered domestic partners adopt a child together, can one or both of the partners qualify for the adoption credit?

A-16: Each registered domestic partner may qualify to claim the adoption credit on the amount of the qualified adoption expenses paid or incurred for the adoption. The partners may not both claim credit for the same qualified adoption expenses, and neither partner may claim more than the amount of expenses that he or she paid or incurred. The adoption credit is limited to $13,170 per child in 2010. Thus, if two registered domestic partners each paid qualified adoption expenses to adopt the same child, and the total of those expenses exceeds $13,170, the maximum credit available for the adoption is $13,170. The partners may allocate this maximum between them in any way they agree, but the amount allocated to a partner may not be more than the amount of expenses he or she paid or incurred. The same rules generally apply in the case of a special needs adoption. The total credit for such an adoption is limited to $13,170, but the amount that each partner may claim is not limited by the amount of expenses paid or incurred.

Q-17: If a registered domestic partner adopts the child of his or her partner as a second parent or co-parent, may the adopting parent claim the adoption credit for the qualifying adoption expenses he or she pays or incurs to adopt the child?

A-17: The adopting parent may claim an adoption credit to the extent provided under § 36C. Section 36C(d)(1)(C) does not allow taxpayers to claim an adoption credit for expenses incurred in adopting the child of the taxpayer's spouse. However, the limitation in section 36C(d)(1)(C) does not apply to adoptions by registered domestic partners because registered domestic partners are not spouses as defined by federal law.

Q-18: Do provisions such as section 66 (treatment of community income) and section 469(i)(5) (passive loss rules for rental real estate activities) that apply to married taxpayers apply to registered domestic partners?

A-18: No. Like other provisions of the federal tax law that apply only to spouses or married taxpayers, section 66 and section 469(i)(5) do not apply to registered domestic partners.

Q-19: Are registered domestic partners who reported income without regard to community property laws required to amend their pre-2010 returns to each report half the combined community income of the partners?

A-19: Registered domestic partners who reported community income without regard to community property laws for a taxable year beginning before 2010 are generally not required to amend those returns to report half of the community income. The following rules apply for taxable years prior to 2010:

- Registered domestic partners in California received full community property rights in 2007. Thus, in California, registered domestic partners may, but are not required to, amend their returns for taxable years beginning in 2007, 2008 and 2009 to report half of the community income of the partners.
- In Nevada, the state's community property laws apply to registered domestic partners as of October 1, 2009. Thus, registered domestic partners may, but are not required to, amend their returns for a taxable year beginning in 2009 to report half of the community income of the partners for the period beginning October 1, 2009, and ending on the last day of the partner's 2009 taxable year.
- In Washington, the state's community property laws apply to registered domestic partners as of June 12, 2008. Thus, registered domestic partners may, but are not required to, amend their returns for a taxable year beginning in 2009 to report half of the community income of the partners. For 2008, the partners may, but are not required to, amend their returns to report half of the community income of the partners for the period beginning June 12, 2008, and ending on the last day of the partner's 2008 taxable year.

In all cases, if one of the partners amends his or her return to report half of the community income, the other partner must report the other half.

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