



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

July 27, 2011

Number: **2011-0068**  
Release Date: 9/30/2011

CC:ITA:B04  
CONEX-129032-11

UIL: 61.00-00

The Honorable Barbara Boxer  
United States Senator  
1700 Montgomery Street, Suite 240  
San Francisco, CA 94111

Attention:

Dear Senator Boxer:

I am responding to your inquiry of June 16, 2011, on behalf of your constituent, . He wrote about difficulties that he and his partner experienced filing their federal income tax returns for 2010 as registered domestic partners in California and his concern that federal tax law does not treat registered domestic partners the same as heterosexual married couples.

States vary in the degree to which they recognize same-sex relationships (civil unions, same-sex marriages, registered domestic partners). The Internal Revenue Code, on the other hand, has just two categories, married and unmarried. Registered domestic partners are not married under California law and thus, the law does not recognize them as married for federal tax purposes. In addition, under current law, the Defense of Marriage Act defines marriage as a union between a man and a woman. Consequently, the IRS cannot recognize same-sex married couples as "married" individuals or "spouses" for purposes of federal tax law.

The IRS has taken the position that, because federal tax law respects California community property law, registered domestic partners and same-sex married couples in California must each report one-half of his or her community income for federal income tax purposes (Chief Counsel Advice 201021050, issued May 5, 2010). The IRS is aware that the extension of community property laws to registered domestic partners in California has caused some taxpayers to incur increased tax return preparation fees and has raised some additional legal and compliance issues. The IRS is currently reviewing these issues and considering how best to ensure that registered domestic partners receive the information they need to timely and accurately complete their federal income tax returns.

CONEX-129032-11

2

I hope this information is helpful in responding to . If you have any questions,  
please contact me or at .

Sincerely,

Michael J. Montemurro  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)