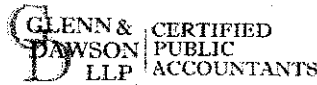


**Family Law Section  
Family Law Tax Case Update  
2/5/10**

**Leslie Dawson**



**Franchise Tax Board (FTB) Publication 776 – Tax Information for Same-Sex Married Couples:**

**Same-Sex Marriages**

1. Recognizes marriages occurring in California between 6/16/08 and 11/5/08 (passage of Proposition 8) as valid marriages.
2. Recognizes valid same-sex marriages performed outside of California prior to 11/5/08 as valid marriages.
3. Recognizes the same rights as married couples to same-sex marriages performed outside of California after 11/5/08.
4. Same-sex couples in the above categories file as married for California purposes.
5. Federal law still does not recognize same-sex marriages and thus, adjustments are needed to convert Federal return information into a form usable for the California returns.

**Franchise Tax Board (FTB) Publication 737 – Tax Information for Registered Domestic Partners:**

**Registered Domestic Partners**

1. No change from prior years.
2. Registered Domestic Partners file as married for California purposes.
3. Federal law still does not recognize same-sex marriages and thus, adjustments are needed to convert Federal return information into a form usable for the California returns.

**INFO 2009-0135 (9/25/09)**

**First-time Homebuyer Credit**

Husband was ordered to vacate the family residence in early 2006 but retained an ownership interest in the home until the divorce was final in 2009. Because of this ownership interest, the IRS ruled that he was NOT eligible for the first-time homebuyer credit when he purchased a new home in 2009.

A first-time homebuyer is one who has not had an ownership interest in a personal residence for three years prior to the purchase of a new home.

It should be noted that by retaining the ownership interest, Husband was able to retain his \$250,000 capital gain exclusion for a principal residence. Thus, if the residence was sold in

2009, Husband would have received a benefit for retaining an ownership interest. However, if Wife retained the home in the 2009 property division, Husband would not benefit from the exclusion and loses his ability to use the first-time homebuyer credit in a subsequent purchase.

**Benzin v. Commissioner (TC Summary Opinion 2009-198 - (12/28/09)**  
*Pension Distribution vs. Alimony*

This is another case in which one spouse was ordered to pay the other a portion of a monthly pension payment without a Qualified Domestic Relations Order (QDRO). The paying spouse attempted to deduct it as alimony despite the fact that the Marital Settlement Agreement indicated no alimony was to be paid. The Tax Court disallowed the deduction and recommended the parties obtain a QDRO for future years' payments.

**Bruen v. Commissioner (TC Memo 2009-249 - 11/3/09):**  
*Innocent Spouse*

Wife was granted innocent spouse relief for 50% of the unpaid tax liabilities for 2002 and 2003. She originally filed separately during those years as the parties were involved in divorce proceedings at the time of filing both returns. The Family Court ordered that the parties amend and file jointly. It explicitly ordered that the parties share the 2003 liability since the parties continued to live together, share income and share expenses. The Family Court did not address the 2002 tax liability but the Tax Court ruled it should be treated similar to 2003. Thus, Wife was responsible for only half of the liability.

The Tax Court granted equitable relief based on the Family Court Order and the knowledge that Husband had sufficient funds with which to pay his half of the liabilities.

This case addresses a common issue with the Family Courts ordering spouses to file jointly. It is encouraging that the IRS is taking these Court orders into account before enforcing the joint/several liability that accompanies filing jointly. It appears this case would have had a different result if the Court has not specifically stated the parties were to share the liability.

**Adkison v. Commissioner (105 AFTR 2d 2010-XXX - 1/21/10):**  
*Innocent Spouse*

Innocent Spouse cases involving adjustments resulting from a partnership proceeding under the "Tax Equity and Fiscal Responsibility Act" (TEFRA) follow different procedures than normal. Under IRC §6320(a)(3) an innocent spouse claim should be made within 60 days of the "notice of computational adjustment" is issued. This notice is issued after the completion of the partnership proceedings and assessment at the individual level.

If a spouse makes an innocent spouse claim, the assessment is abated (temporarily?) to allow the claim to proceed. The amount of the assessment cannot be altered, just who will be responsible for it.

In this case, the IRS issued an assessment to the individual before the partnership level proceedings had been concluded. The Court of Appeal agreed that under the normal innocent spouse proceedings, the claim would proceed because an assessment had been issued.

However, because the assessment and innocent spouse claim was based on changes to a partnership, it fell under the special rules of §6320 and could not be addressed until the partnership adjustments were finalized.

**Thomas v. Commissioner (TC Memo 2010-11 – 1/19/10):**  
*Dependency Exemption*

Husband attached a divorce decree in lieu of the Form 8332 "Release of Claim to Exemption for Child of Divorced or Separated Parents". The decree provided Husband would be entitled to claim the child *if his support obligations were current*. Because this was a conditional release, the decree does not conform to the requirements for a Form 8332. Husband is not entitled to deduct the dependency deduction.

This case pertained to a 2006 case. Last year, new regulations were passed tightening up the requirements for a Form 8332. A decree must not only release the exemption unconditionally, it's only purpose must be for the release of the exemption (i.e. cannot be part of the overall MSA).