



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
PO Box 157
Rancho Cordova CA 95741-0157
Telephone (916) 845-4300 Fax (916) 845-6614

JOHN CHIANG
Chair

BETTY T. YEE
Member

MICHAEL C. GENEST
Member

January 10, 2007

William E. Taggart Jr.
Taggart & Hawkins A Professional Corporation
1901 Harrison St Ste 1120
Oakland CA 94612-2604

Dear Mr. Taggart:

Thank you for the issue you raised in connection with the 2006 Taxpayers' Bill of Rights Hearing regarding the application of community property laws and rules for income tax purposes. Our legal staff reviewed your proposal and the following is their response:

One principal issue you raised is the difficulties that arise when one spouse/registered domestic partner exercises exclusive possession and control of an item of income and, by application of community property rules, one-half of that income is included in the taxable income of both spouses/registered domestic partners. Current federal and California income tax law provide relief from the application of community property rules if the individual meets specific criteria. In general, the individual seeking relief must establish that he or she did not know or have reason to know of the existence of that item of community income, and it would be inequitable to include that item of income in the individual's income. Also, the FTB/IRS may disallow the benefits of any community property law to a taxpayer concerning an item of income if that taxpayer acted as if he/she was solely entitled to that income and failed to notify the other spouse/registered domestic partner of the nature and amount of the income before the due date for filing the return.

To the extent that these provisions do not address your concerns, and to the extent that you are suggesting that community property should always be ignored for income tax purposes, we respond as follows:

Conformity to federal law is one of the bedrock policy principles of California income tax law. This principle has been repeatedly endorsed by numerous legislative enactments. Similarly, a well-established principle of federal tax law is that a state's community property rules are applicable for federal income tax purposes. Unless and until federal law is changed to ignore state community property law for income tax purposes, any effort to ignore community property law for California income tax purposes in contravention to federal law would add an enormous level of complexity to the tax requirements for many California taxpayers. This could include taxpayers

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that are domiciled in community property jurisdictions other than California, such as Texas and Wisconsin.

Since in most cases the application of community property law determines who pays tax on a particular item of income, but not the total amount of that item of income, your proposal is not expected to have any meaningful revenue impact.

Based on this analysis, we cannot recommend the Board move forward with your proposal. If you have any questions regarding this information, please feel free to contact me.

If you have any additional questions or proposals, please feel free to contact me anytime.

Sincerely,

Debbie Newcomb
Taxpayer Advocate

cc: Hon. John Chiang
Hon. Betty T. Yee
Hon. Michael C. Genest
Marcy Jo Mandel
Alan LoFaso
Anne Maitland