# `Town hall' over taxes: Domestic partner filing is about to get very complicated

**By Mark Schwanhausser**

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**SACRAMENTO -** It sounds so simple on paper: Grant California's registered domestic partners the right to file their income taxes as married couples.

The state's Franchise Tax Board is finding, however, that a landmark tax bill signed into law in September has created so many unanticipated complications that officials held a ``town hall meeting" Thursday in Sacramento to explore the problems -- and identify new ones.

It's expected to be first of several such meetings to clarify scores of issues that cross over tax law, family law and rules for retirement plans, touching on everything from mortgage deductions and retirement savings to alimony and how property is split up in a ``divorce." All together, the law has created a tax tangle that some experts say hasn't been matched since the massive federal tax reform in 1986.

``This saga is only beginning rather than ending," said FTB attorney Pat Kusiak. ``This is an evolving issue. It will be many years before issues are resolved, and they may need to be resolved by litigation."

Despite the raft of unanswered questions, however, the state's 80,000 registered domestic partners must start planning to file their 2007 state tax returns as if they were legally married -- even though they can't do so when they pay Uncle Sam. Registered partners are generally defined as gays of all ages, but heterosexual couples can qualify if one partner is older than 62.

The tax agency's meeting drew more than three dozen FTB staffers, tax professionals, legislative aides, a software programmer and gay and lesbian advocates, plus others interacting via phone. Nearly four hours later, FTB staffers had filled at least 16 pages of poster-size pages with questions, issues and puzzles the Legislature and tax agency must try to solve.

To comply with the law, registered partners will need to calculate two versions of their federal 1040 form, which is the starting point for determining how much state tax they'll owe. Each will fill out the first 1040 the same as usual -- typically as a single taxpayer -- to calculate how much to pay Uncle Sam.

Then they will fill out the second hypothetical 1040 as if they were married, either a joint return or as married filing separately. They'll use this 1040 as a jumping-off point to calculate what they owe the state as a married couple.

But things quickly can get sticky because it's much more complicated than just adding each partner's income and deductions together. For example, experts pointed out that married couples can set aside a maximum of $5,000 from their paychecks in a dependent-care account -- but what happens if both partners did that? Similar issues could taint eligibility for saving in an IRA and affect how much capital losses a couple can deduct in a given year.

Instead of simply picking up their adjusted gross income from their federal returns, domestic partners will face a thicket of revisions to derive a ``magical, hypothetical" adjusted gross income figure as a married couple for state purposes.

``It's the most ridiculous thing I've heard,'' said Gregg Gamble, a tax software development analyst for Lacerte Software, an Intuit division in Dallas that sells software to tax pros. He jetted in from Dallas to push for quick action so software developers can begin sorting out the mess.

Though registered partners have until at least April 2008 before they must file their first tax returns as married couples, FTB staffers and tax professionals feel a sense of urgency. While the tax agency can iron out some problems, others will require action by the Legislature. Meanwhile, the clock is ticking on software developers like Gamble, who would like to see the Legislature take action no later than June 1.

But Berkeley tax practitioner Karen Stogdill, who attended the meeting with her registered partner, is bracing for the first round of questions from tax clients when tax-filing season kicks into gear in February. That's when she'll advise clients that she'll need tax information for both partners -- even if they're not both clients -- to calculate estimated tax payments and plan tax strategies for the year.

Stogdill worries that software developers won't have answers in time to devise ways to incorporate the hypothetical federal tax return -- leaving her to essentially do an extra return for each of the 150 affected gay and lesbian clients she serves.

``I don't have another 150 hours'' during tax season, Stogdill said. ``Those are the hours I sleep.''

In the end, registered partners are likely to face higher tax-preparation fees, said David Hatt, a Menlo Park enrolled agent licensed by the Internal Revenue Service to complete tax returns. Jokingly alluding to the expected backlash from affected clients, he asked if the FTB could add a line on the tax form so tax-preparation fees could be direct-deposited.

``No,'' said FTB attorney Kusiak, ``but I encourage you to make sure your malpractice insurance is up to date.''