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OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

I am responding to your e-mail to Senator Harry Reid on the federal income tax laws described in Internal Revenue Service Publication 555, *Community Property*. In particular, you questioned the fairness of requiring registered domestic partners who live in Nevada to report half of their combined community income and deductions in addition to their separate income and deductions.

Gross income is all income from whatever source derived including compensation for services such as fees, commissions, fringe benefits, and similar items (Section 61(a)(1) of the Internal Revenue Code).

Federal tax law generally respects state property law characterizations and definitions (*U.S. v. Mitchell*, 403 U.S. 190 (1971), *Burnet v. Harmel*, 287 U.S. 103 (1932)). In *Poe v. Seaborn*, 282 U.S. 101 (1930), the Supreme Court held that for federal income tax purposes a wife owned an undivided one-half interest in the income her husband earned in Washington, a community property state, and was liable for federal income tax on that one-half interest. The Court concluded that husband and wife must each report one-half of the community income on his or her separate return regardless of which spouse earned the income.

On May 5, 2010, we issued Chief Counsel Advice (CCA) 201021050, which addressed the federal tax treatment of community income by California registered domestic partners. California is a community property state and provides full community property treatment to registered domestic partners (Section 760 of the California Family Code; the California Domestic Partner Rights and Responsibilities Act of 2003 (the California Act)). The CCA concluded that, applying the principle that federal law respects state law property characterizations, the federal tax treatment of community property applies to California registered domestic partners, and a California registered domestic partner

must report one-half of the community income.

Nevada is a community property state (Section 123.220 of the Nevada Revised Statutes (1997)). In addition, similar to California, Nevada provides community property treatment to Nevada registered domestic partners under the Nevada Domestic Partnership Act, which took effect on October 1, 2009. Applying the principle that federal law respects state law property characterizations, the federal tax treatment of community property applies to Nevada registered domestic partners. Effective October 1, 2009, a Nevada registered domestic partner must report one-half of the community income, whether received in the form of compensation for personal services or income from property, on his or her federal income tax return.

I hope this information is helpful. If you have any questions, please contact _____, identification number _____, at _____.

Sincerely,

William A. Jackson
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)