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Date: August 2, 2007

Re: Registered Domestic Partner Questions and Responses

Hello,

We appreciate you taking time to review the draft worksheet with instructions and providing us with your questions and comments. Attached are the questions we received and our responses. In addition, we are providing you with a brief description of the amendments to SB 105.

The June amendments to SB 105 made the following changes:

- Added that an RDP and former RDP shall not be treated as the spouse of a taxpayer for California purposes relating to a qualified federal deferred compensation plan and a tax favored account. (ARISA)
- Added that a penalty would be prohibited from being imposed for underpayment of tax resulting from the new RDP filing requirement for taxable year 2007.
- Revised the definition of "adjusted gross income" for limitation purposes of RDPs and former RDPs. The significance of this is that the new language would require that AGI for limitations is the federal AGI computed as if the RDPs were treated as spouses for federal purposes.

The AGI limitation amendment to SB 105 reduces the need for FTB to provide one standard reporting requirement and allows practitioners, software developers, and taxpayers the flexibility to use a Pro Forma return approach, or an FTB worksheet, or one/both RDP copies of a federal return.

Our next deliverable to you for review will be our draft RDP publication. We hope to have that out by mid August. It may be prudent to have another informal meeting to discuss implementation and remaining issues in late August. If you feel that this would be beneficial, please let us know. As always, please keep your comments and questions coming, so that we can work towards the most effective implementation possible.

Best regards,

Anne Miller, Chief  
Filing Division  
Franchise Tax Board  
(916) 845-4905

## RDP Draft Instructions and Worksheet - Questions and Responses

Subject	Questions	Responses	Action Item
Definition of Pro Forma	What does Pro Forma mean?	When we refer to "Pro Forma" regarding the worksheet and instructions, we are referring to a federal Form 1040 that has been recalculated as if the filing status was MFJ.	Definitions will be added to FTB Pub. 737, Tax Information for Registered Domestic Partners.
Worksheet/Federal Return	Is the worksheet required to be included with the California return or can a federal Pro Forma return be used instead?	In light of the amendments to SB 105, we are currently researching our filing method options.	
Purpose of Worksheet	Is the purpose of the worksheet to calculate a Pro Forma 1040 return so column D is meant to be the same as a Pro Forma "as if MFJ" 1040 return?	Yes - The amounts in column D would be the same amounts that would be recalculated on a "MFJ Form 1040".	Explanations will be added to FTB Pub. 737, Tax Information for Registered Domestic Partners.
Worksheet	RDPs filing MFJ will not need to make adjustments in many of the lines on the worksheet. Should RDPs filing MFJ have a separate worksheet than RDPs filing MFS since most of the adjustments in column (C) do not apply?	RDPs filing MFJ may not need to use most of the lines on the worksheet. However, MFS filers do need most of the lines. Our instructions will specify which lines MFJ and MFS filers would need to adjust. Separate schedules for MFJ and MFS will not be created due to the small population expected to use the worksheet.	Instructions will be added to inform MFJ and MFS RDP filers which lines require adjustments.
Column C - Instructions	Are the instructions for column C that state "to make filing status adjustments on line 7 through line 21 and line 23 through line 35 following the federal 1040 except where indicated below" correct?"	The instructions for column C are not accurate. There is relevant information indicated on every line. The specific line adjustments are indicated by the "Exceptions" to federal law.	These instructions will be changed to read, "Use column C to make California RDP filing status adjustments on line 7 through 21 and line 23 through line 35 following the specific line instructions below. If the amount is less than zero (negative), enter the result in parentheses. For example: (12,345).
Other state tax credits	Will RDPs be given instructions regarding what attachments are required when the Other State Tax Credit is taken on the tax return?	Schedule S, Other State Tax Credit, General Information, instructs taxpayers to attach the Schedule S and a copy of the return(s) filed with the other state(s) to your California return.	Under review.
	Will RDPs be given instructions regarding how to combine the other states information from two separate returns for CA Sch S in the RDP return?	Schedule S, Other State Tax Credit, instructs taxpayers that when a joint return is filed in California, the entire amount of tax paid to the other state may be used to figure the credit, regardless of which spouse/RDP paid the other state tax or whether a joint or separate return is filed in the other state. This information is in Section B, Application of the Credit.	Explanations will be added to FTB Pub. 737, Tax Information for Registered Domestic Partners.
	Will RDPs be given instructions about separating out the RDP California amounts to send to other states for their Other State Tax Credit calculation in the separate returns?	Taxpayers will follow the instructions of the state granting the credit. The credit will follow the income. Each taxpayer will report the amount of taxes paid to the other state in relation to the amount of double-taxed income reported.	Explanations will be added to FTB Pub. 737, Tax Information for Registered Domestic Partners.

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Application of Worksheet	What are the differences between Current Law, Pro Forma & Alternative? When do each of them apply? What should be followed? Does the worksheet apply to all of them?	For an explanation of the differences between Current Law, Pro Forma, and the Alternative, please go to our RDP website and look at the Registered Domestic Partner AGI Discussion Paper dated 02/20/2007. In light of the amendments to SB 105, we are currently researching our filing method options.	Under review.
Column D, Instructions	Column D has a note about the social security benefits on page 5. Why is this line different than any other line for column (D)?	The difference is that for social security you must first figure column (D). Then you would subtract the totals of columns (A) and (B) from column (D) to arrive at column (C). This is the only line figured in this manner	Instructions will be modified for further clarification.
Line 11 - Alimony Received	Line 11 appears to be an adjustment to include alimony not included on the federal return. Is that different from the amount entered on Schedule CA, column C?	Yes, the amount on Schedule CA will be different from the worksheet adjustment depending on the federal treatment of alimony. At this time federal treatment of alimony is uncertain.	Look to federal for further guidance.
Alternative 4, Schedule CA(540) instructions	Can you revise the instruction in the Schedule CA(540) instructions, page 1 for Alternative 4, to more clearly state that the Federal amounts are the combined amounts as adjusted.	Yes, information will be added to the instructions for clarification.	
Check Box on PIT tax forms	Will FTB be adding a check box on the front of the 540 for filing status?	Yes, a check box will be placed on the front of the Forms 540, 540A, 540 2EZ, and 540NR long and short.	The following sentence will appear on all 2007 Forms 540, 540A, 540 2EZ, and 540NR long and short. "If your California filing status is different from your federal filing status, fill in the circle here..."
Acquisition and Home Equity Indebtedness	The interest limitations, as defined in the line 38 instructions are confusing, if not wrong. For acquisition indebtedness, I think it should state that if the RDPs have mortgages in excess of \$1M, that they need to adjust out the interest on acquisition indebtedness in excess of \$1M; I don't now why you have the \$500K amount in there, except that you were working off MFS. Ditto for the home equity indebtedness, in that it should state that if the RDPs have combined home equity indebtedness in excess of \$100K, the interest on the excess portion needs to be adjusted out. The investment interest expense could also be explained the same way, probably suggesting a recalculated Form 3526.	We're changing our instructions to clearly state that an adjustment is needed.	Acquisition Indebtedness The aggregate amount treated as acquisition indebtedness for any period shall not exceed \$1,000,000 (\$500,000 in the case of a married individual filing a separate return). If your combined interest deduction is over \$1,000,000, enter \$1,000,000 on your recalculated federal Form 1040, line 10 or line 11, Schedule A. Home equity Indebtedness The aggregate amount treated as acquisition indebtedness for any period shall not exceed \$100,000 (\$50,000 in the case of a married individual filing a separate return). If your combined interest deduction is over \$100,000, enter \$100,000 on your recalculated federal Form 1040, line 10 or line 11, Schedule A.

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Alerting Taxpayers	How do you plan to alert taxpayers to the filing requirements?	Information will be provided in the "What's New" section, "Additional Information" section, "Frequently Asked Questions" section, in our tax booklets and on our Website.	FTB has held interested party meetings with the public, created an RDP website, provided news releases, public service bulletins, and outreach meetings to assist in taxpayer awareness.
Line 38 Worksheet	Should the note following line 38 just point the taxpayer to the instructions rather than explain the 7.5% or the 2% limitations?	We feel taxpayers will benefit from the note under line 38. The note alerts taxpayers to the adjustment for the recalculated limitations.	No action, the note will remain on the line 38 of the worksheet.
Line 38 Instructions	Should the instruction for line 38 be expanded, saying that the 1040 Schedule A, line 1 should be combined and then apply the 7.5% and 2% limitations?	Yes, we will expand our instructions to include combining the Medical and Dental Expenses and the Misc. Deductions.	The new Instructions will read as follows: Medical and Dental Expenses Combine your medical and dental expenses and apply the 7.5% limitation rule to your recalculated joint adjusted gross income to arrive at the amount for line 4 of the federal Form 1040, Schedule A. Job Expenses and Certain Miscellaneous Deductions Combine your job expenses and miscellaneous deductions and apply the 2% limitation rule to your recalculated joint adjusted gross income to arrive at the amount for line 26 of the federal Form 1040, Schedule A.
Attachments	Will there be different conditions for including federal forms to RDP returns than other returns?	In light of the amendments to SB 105, we are currently researching our filing method options.	
	Will the federal return attachments be from the separate single returns filed at the federal level or from a recalculated Pro Forma "as if MFJ" 1040 return or both?	In light of the amendments to SB 105, we are currently researching our filing method options.	
Worksheet Instructions Line 13	Instructions for the Filing Status Adjustment Worksheet line 13 say to include the Federal Schedule D. Is that a single recalculated Pro Forma version or each separate one?	In light of the amendments to SB 105, we are currently researching our filing method options.	
e-file	Is any information available yet concerning what is to be included in the electronic file?	In light of the amendments to SB 105, we are currently researching our filing method options.	
	Will the "as if MFJ" federal return be required or allowed to be included in the e-file?	In light of the amendments to SB 105, we are currently researching our filing method options.	
Carryover	Will guidance be available for amounts that carryover to the next year federal return to indicate how to divide the amounts for the two separate returns?	Taxpayers will follow federal guidelines or mutual agreements between partners to determine carryovers for the following years.	Look to federal for further guidance.
Equivalency of Domestic Partnerships/Civil Unions Entered Into In	Will the publication have information on where persons may go for information on how to register as a domestic partner with the California Secretary of State?	Yes, we will provide information on registering with Secretary of State in our publication.	Explanations will be added to FTB Pub. 737, Tax Information for Registered Domestic Partners.

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Other States	Are persons who have a California filing requirement but were registered as domestic partners in a state other than California required to file a California return using the same filing status as a married couple?	Under review.	Under review.
Investment Interest Expense Adjustment	The investment interest expense adjustment on the Filing Status Adjustment Worksheet looks at some threshold amount of \$10,000 or \$5,000 because of IRC 163(d). That appears to have been phased out a few years ago. Is that adjustment still to be made?	No, we will remove the paragraph.	
Community Property, Column C adjustment	Would it be more appropriate to refer MFS RDPs to federal Pub 555 rather than expand the worksheet to make those MFS adjustments?	Yes, we will instruct MFS RDPs to make adjustments using the federal Pub 555.	Explanations will be added to FTB Pub. 737, Tax Information for Registered Domestic Partners.
Worksheet Instructions	Could the phrase "California filing status adjustments" be changed to "California RDP filing status adjustments" to avoid confusion?	Yes, we will change the phrase to "California RDP filing status adjustments."	All references to filing status adjustments will be changed to "California RDP filing status adjustments".