

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1827

Introduced by Senator Migden

February 24, 2006

An act relating to ~~protective orders~~ to amend Sections 17024.5 and 18521 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1827, as amended, Migden. ~~Protective orders: workplace safety. Taxation: domestic partners.~~

The Personal Income Tax Law imposes tax on taxable income and provides, among other things, that specified definitions govern the construction of that law. Existing law allows married couples to file joint or separate state tax returns, as specified.

This bill would allow registered domestic partners to file joint or separate state tax returns, as specified.

~~Existing law authorizes an employer to obtain a temporary restraining order and an injunction against unlawful workplace violence or credible threats of workplace violence against an employee.~~

~~This bill would state the intent of the Legislature to enact legislation that would expand workplace protective orders to cover multiple employees at a worksite.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17024.5 of the Revenue and Taxation
2 Code is amended to read:

3 17024.5. (a) (1) Unless otherwise specifically provided, the
4 terms "Internal Revenue Code," "Internal Revenue Code of
5 1954," or "Internal Revenue Code of 1986," for purposes of this
6 part, mean Title 26 of the United States Code, including all
7 amendments thereto as enacted on the specified date for the
8 applicable taxable year as follows:

9 10 11 12	Taxable Year	Specified Date of Internal Revenue Code Sections
13 14 15	(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983.....	January 15, 1983
16 17 18	(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984.....	January 1, 1984
19 20 21	(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985.....	January 1, 1985
22 23 24	(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986.....	January 1, 1986
25 26 27	(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988.....	January 1, 1987
28 29 30	(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989.....	January 1, 1989
31 32 33	(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990.....	January 1, 1990
34 35 36	(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991.....	January 1, 1991

- 1 (I) For taxable years beginning on or after
- 2 January 1, 1992, and on or before December
- 3 31, 1992..... January 1, 1992
- 4 (J) For taxable years beginning on or after
- 5 January 1, 1993, and on or before December
- 6 31, 1996..... January 1, 1993
- 7 (K) For taxable years beginning on or after
- 8 January 1, 1997, and on or before December
- 9 31, 1997..... January 1, 1997
- 10 (L) For taxable years beginning on or after
- 11 January 1, 1998, and on or before December
- 12 31, 2001..... January 1, 1998
- 13 (M) For taxable years beginning on or after
- 14 January 1, 2002, and on or before December 31,
- 15 2004..... January 1, 2001
- 16 (N) For taxable years beginning on or after
- 17 January 1, 2005..... January 1, 2005

18

19 (2) (A) Unless otherwise specifically provided, for federal

20 laws enacted on or after January 1, 1987, and on or before the

21 specified date for the taxable year, uncodified provisions that

22 relate to provisions of the Internal Revenue Code that are

23 incorporated for purposes of this part shall be applicable to the

24 same taxable years as the incorporated provisions.

25 (B) In the case where Section 901 of the Economic Growth

26 and Tax Relief Act of 2001 (Public Law 107-16) applies to any

27 provision of the Internal Revenue Code that is incorporated for

28 purposes of this part, Section 901 of the Economic Growth and

29 Tax Relief Act of 2001 shall apply for purposes of this part in the

30 same manner and to the same taxable years as it applies for

31 federal income tax purposes.

32 (3) Subtitle G (Tax Technical Corrections) and Part I of

33 Subtitle H (Repeal of Expired or Obsolete Provisions) of the

34 Revenue Reconciliation Act of 1990 (Public Law 101-508)

35 modified numerous provisions of the Internal Revenue Code and

36 provisions of prior federal acts, some of which are incorporated

37 by reference into this part. Unless otherwise provided, the

38 provisions described in the preceding sentence, to the extent that

39 they modify provisions that are incorporated into this part, are

40 declaratory of existing law and shall be applied in the same

1 manner and for the same periods as specified in the Revenue
2 Reconciliation Act of 1990.

3 (b) Unless otherwise specifically provided, when applying any
4 provision of the Internal Revenue Code for purposes of this part,
5 a reference to any of the following is not applicable for purposes
6 of this part:

7 (1) Except as provided in Chapter 4.5 (commencing with
8 Section 23800) of Part 11 of Division 2, an electing small
9 business corporation, as defined in Section 1361(b) of the
10 Internal Revenue Code.

11 (2) Domestic international sales corporations (DISC), as
12 defined in Section 992(a) of the Internal Revenue Code.

13 (3) A personal holding company, as defined in Section 542 of
14 the Internal Revenue Code.

15 (4) A foreign personal holding company, as defined in Section
16 552 of the Internal Revenue Code.

17 (5) A foreign investment company, as defined in Section
18 1246(b) of the Internal Revenue Code.

19 (6) A foreign trust, as defined in Section 679 of the Internal
20 Revenue Code.

21 (7) Foreign income taxes and foreign income tax credits.

22 (8) Section 911 of the Internal Revenue Code, relating to
23 United States citizens living abroad.

24 (9) A foreign corporation, except that Section 367 of the
25 Internal Revenue Code shall be applicable.

26 (10) Federal tax credits and carryovers of federal tax credits.

27 (11) Nonresident aliens.

28 (12) Deduction for personal exemptions, as provided in
29 Section 151 of the Internal Revenue Code.

30 (13) The tax on generation-skipping transfers imposed by
31 Section 2601 of the Internal Revenue Code.

32 (14) The tax, relating to estates, imposed by Section 2001 or
33 2101 of the Internal Revenue Code.

34 (c) (1) The provisions contained in Sections 41 to 44,
35 inclusive, and Section 172 of the Tax Reform Act of 1984
36 (Public Law 98-369), relating to treatment of debt instruments, is
37 not applicable for taxable years beginning before January 1,
38 1987.

1 (2) The provisions contained in Public Law 99-121, relating to
2 the treatment of debt instruments, is not applicable for taxable
3 years beginning before January 1, 1987.

4 (3) For each taxable year beginning on or after January 1,
5 1987, the provisions referred to by paragraphs (1) and (2) shall
6 be applicable for purposes of this part in the same manner and
7 with respect to the same obligations as the federal provisions,
8 except as otherwise provided in this part.

9 (d) When applying the Internal Revenue Code for purposes of
10 this part, regulations promulgated in final form or issued as
11 temporary regulations by “the secretary” shall be applicable as
12 regulations under this part to the extent that they do not conflict
13 with this part or with regulations issued by the Franchise Tax
14 Board.

15 (e) Whenever this part allows a taxpayer to make an election,
16 the following rules shall apply:

17 (1) A proper election filed with the Internal Revenue Service
18 in accordance with the Internal Revenue Code or regulations
19 issued by “the secretary” shall be deemed to be a proper election
20 for purposes of this part, unless otherwise provided in this part or
21 in regulations issued by the Franchise Tax Board.

22 (2) A copy of that election shall be furnished to the Franchise
23 Tax Board upon request.

24 (3) (A) Except as provided in subparagraph (B), in order to
25 obtain treatment other than that elected for federal purposes, a
26 separate election shall be filed at the time and in the manner
27 required by the Franchise Tax Board.

28 (B) (i) If a taxpayer makes a proper election for federal
29 income tax purposes prior to the time that taxpayer becomes
30 subject to the tax imposed under this part or Part 11
31 (commencing with Section 23001), that taxpayer is deemed to
32 have made the same election for purposes of the tax imposed by
33 this part, Part 10.2 (commencing with Section 18401), and Part
34 11 (commencing with Section 23001), as applicable, and that
35 taxpayer may not make a separate election for California tax
36 purposes unless that separate election is expressly authorized by
37 this part, Part 10.2 (commencing with Section 18401), or Part 11
38 (commencing with Section 23001), or by regulations issued by
39 the Franchise Tax Board.

1 (ii) If a taxpayer has not made a proper election for federal
2 income tax purposes prior to the time that taxpayer becomes
3 subject to tax under this part or Part 11 (commencing with
4 Section 23001), that taxpayer may not make a separate California
5 election for purposes of this part, Part 10.2 (commencing with
6 Section 18401), or Part 11 (commencing with Section 23001),
7 unless that separate election is expressly authorized by this part,
8 Part 10.2 (commencing with Section 18401), or Part 11
9 (commencing with Section 23001), or by regulations issued by
10 the Franchise Tax Board.

11 (iii) This subparagraph applies only to the extent that the
12 provisions of the Internal Revenue Code or the regulation issued
13 by “the secretary” authorizing an election for federal income tax
14 purposes apply for purposes of this part, Part 10.2 (commencing
15 with Section 18401) or Part 11 (commencing with Section
16 23001).

17 (f) Whenever this part allows or requires a taxpayer to file an
18 application or seek consent, the rules set forth in subdivision (e)
19 shall be applicable with respect to that application or consent.

20 (g) When applying the Internal Revenue Code for purposes of
21 determining the statute of limitations under this part, any
22 reference to a period of three years shall be modified to read four
23 years for purposes of this part.

24 (h) When applying, for purposes of this part, any section of the
25 Internal Revenue Code or any applicable regulation thereunder,
26 all of the following shall apply:

27 (1) References to “adjusted gross income” shall mean the
28 amount computed in accordance with Section 17072, except as
29 provided in paragraph (2).

30 (2) ~~References—~~(A) *Except as provided in subparagraph (B),*
31 *references* to “adjusted gross income” for purposes of computing
32 limitations based upon adjusted gross income, shall mean the
33 amount required to be shown as adjusted gross income on the
34 federal tax return for the same taxable year.

35 (B) *In the case of registered domestic partners filing a joint*
36 *return under Section 18521, adjusted gross income for the*
37 *purposes of computing limitations based upon adjusted gross*
38 *income, shall mean the total of the amount required to be shown*
39 *as adjusted gross income on the federal tax return for the same*
40 *taxable year of each registered domestic partner.*

1 (3) Any reference to “subtitle” or “chapter” shall mean this
2 part.

3 (4) The provisions of Section 7806 of the Internal Revenue
4 Code, relating to construction of title, shall apply.

5 (5) Any provision of the Internal Revenue Code that becomes
6 operative on or after the specified date for that taxable year shall
7 become operative on the same date for purposes of this part.

8 (6) Any provision of the Internal Revenue Code that becomes
9 inoperative on or after the specified date for that taxable year
10 shall become inoperative on the same date for purposes of this
11 part.

12 (7) Due account shall be made for differences in federal and
13 state terminology, effective dates, substitution of “Franchise Tax
14 Board” for “secretary” when appropriate, and other obvious
15 differences.

16 (i) Any reference to a specific provision of the Internal
17 Revenue Code shall include modifications of that provision, if
18 any, in this part.

19 *SEC. 2. Section 18521 of the Revenue and Taxation Code is*
20 *amended to read:*

21 18521. (a) (1) Except as otherwise provided in this section,
22 an individual shall use the same filing status that he or she used
23 on his or her federal income tax return filed for the same taxable
24 year.

25 (2) If the Franchise Tax Board determines that the filing status
26 used on the taxpayer’s federal income tax return was incorrect,
27 the Franchise Tax Board may, under Section 19033 (relating to
28 deficiency assessments), revise the return to reflect a correct
29 filing status.

30 (3) If either spouse was a nonresident for any portion of the
31 taxable year, a husband and wife who file a joint federal income
32 tax return shall be required to file a joint nonresident return.

33 (b) In the case of an individual who is not required to file a
34 federal income tax return for the taxable year, that individual
35 may use any filing status on the return required under this part
36 that he or she would be eligible to use on a federal income tax
37 return for the same taxable year if a federal income tax return
38 was required.

1 (c) Notwithstanding subdivision (a), a husband and wife may
2 file separate returns under this part if either spouse was either of
3 the following during the taxable year:

4 (1) An active member of the armed forces or any auxiliary
5 branch thereof.

6 (2) A nonresident for the entire taxable year who had no
7 income from a California source.

8 (d) *Notwithstanding subdivision (a), registered domestic*
9 *partners, as described in Section 297 of the Family Code, who*
10 *are registered as domestic partners as of the close of the taxable*
11 *year, may either file a joint return or file separately by applying*
12 *the standards applicable to married couples under federal*
13 *income tax law. A separate return filed by a domestic partner of*
14 *a registered domestic partnership shall be subject to the same*
15 *conditions and limitations applicable to the separate return of a*
16 *married individual.*

17 (e) Except for taxpayers described in subdivision (c) *or (d)*, for
18 any taxable year with respect to which a joint return has been
19 filed, a separate return shall not be made by either spouse *or*
20 *domestic partner* after the period for either to file a separate
21 return has expired.

22 ~~(e)~~

23 (f) No joint return shall be made if the husband and wife *or the*
24 *domestic partners* have different taxable years; except that if
25 their taxable years begin on the same day and end on different
26 days because of the death of either or both, then a joint return
27 may be made with respect to the taxable year of each. The above
28 exception shall not apply if the surviving spouse remarries *or the*
29 *surviving domestic partner enters into a new domestic*
30 *partnership* before the close of his or her taxable year, or if the
31 taxable year of either spouse *or domestic partner* is a fractional
32 part of a year under Section 443(a) of the Internal Revenue Code.

33 ~~(f)~~

34 (g) In the case of the death of one spouse *or domestic partner*
35 *or both spouses or both domestic partners* the joint return with
36 respect to the decedent may be made only by the decedent's
37 executor or administrator; except that, in the case of the death of
38 one spouse *or domestic partner*, the joint return may be made by
39 the surviving spouse *or surviving domestic partner* with respect
40 to both that spouse *or domestic partner* and the decedent if no

1 return for the taxable year has been made by the decedent, no
2 executor or administrator has been appointed, and no executor or
3 administrator is appointed before the last day prescribed by law
4 for filing the return of the surviving spouse *or surviving domestic*
5 *partner*. If an executor or administrator of the decedent is
6 appointed after the making of the joint return by the surviving
7 spouse *or surviving domestic partner*, the executor or
8 administrator may disaffirm the joint return by making, within
9 one year after the last day prescribed by law for filing the return
10 of the surviving spouse *or surviving domestic partner*, a separate
11 return for the taxable year of the decedent with respect to which
12 the joint return was made, in which case the return made by the
13 survivor shall constitute his or her separate return.

14 ~~SECTION 1. It is the intent of the Legislature to enact~~
15 ~~legislation that would expand workplace protective orders to~~
16 ~~cover multiple employees at a worksite.~~