

AMENDED IN SENATE JUNE 29, 2010

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 19, 2010

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

Assembly Joint Resolution

No. 29

Introduced by Assembly Member Feuer

(Principal coauthor: Assembly Member Portantino)

(Coauthors: Assembly Members Ammiano, Block, Blumenfield, Brownley, Fuentes, Huffman, Jones, Monning, Salas, Saldana, Skinner, Torlakson, Adams, Arambula, Bass, Beall, Bradford, Buchanan, Charles Calderon, Carter, Chesbro, Coto, Davis, De La Torre, De Leon, DeVore, Emmerson, Eng, Evans, Fong, Galgiani, Hall, Harkey, Hayashi, Hernandez, Hill, Jeffries, Lieu, Bonnie Lowenthal, Ma, Mendoza, Nava, Nestande, Nielsen, John A. Perez, V. Manuel Perez, Ruskin, Solorio, Swanson, Torres, Torrico, and Yamada)

(Coauthors: Senators Alquist, Kehoe, and Leno)

January 21, 2010

Assembly Joint Resolution No. 29—Relative to ~~domestic partners~~
same-sex couples tax equity.

LEGISLATIVE COUNSEL'S DIGEST

AJR 29, as amended, Feuer. Federal income tax: ~~domestic partners~~
same-sex couples.

This measure would ask the Internal Revenue Service to ~~reconsider a specified memorandum and issue a new memorandum ruling~~ with respect to the federal income tax treatment ~~of property rights~~ of registered domestic partners and same-sex spouses *married couples*.

Fiscal committee: no.

1 WHEREAS, On May 28, 2010, the Internal Revenue Service
2 (IRS) issued a Chief Counsel advisory memorandum number
3 201021050 (CCA) regarding federal tax treatment of California
4 registered domestic partners, which recognized changes in
5 California law between 2005 and 2007 that expanded the property
6 rights and obligations of registered domestic partners and that
7 characterized their income as community property; and

8 WHEREAS, As a result of the IRS CCA, registered domestic
9 partners in California must now combine their income and each
10 report half of it on his or her federal tax return; and

11 WHEREAS, The IRS CCA did not address the federal tax
12 treatment of income of California same-sex married couples; and

13 WHEREAS, California statutes (see Chapter 893 of the Statutes
14 of 2001, Chapter 421 of the Statutes of 2003, and Chapter 802 of
15 the Statutes of 2006) and case law (In re Marriage Cases (2008)
16 43 Cal.4th 757; and Strauss v. Horton (2009) 46 Cal.4th 364)
17 confirm that registered domestic partners and married same-sex
18 couples whose marriages remain valid under California law have
19 the same rights and responsibilities under California law as
20 heterosexual married couples, including those rights and
21 responsibilities related to community property, and further, that
22 California income tax reporting is the same for registered domestic
23 partners and married individuals; and

24 WHEREAS, Property, including income, acquired while
25 domiciled in California by registered domestic partners or married
26 same-sex couples whose marriages are still valid in California is
27 community property under California law; and

28 WHEREAS, Federal tax law cited in the IRS CCA holds that
29 the characteristics of property ownership, including community
30 property, are determined by the states, and taxation of that property
31 is determined by the federal government; and

32 WHEREAS, The Supreme Court of the United States has held
33 that the IRS must defer to state law determining property
34 ownership, including the existence of community property; and

1 WHEREAS, Pursuant to a Presidential Memorandum Regarding
2 Preemption issued by the White House on May 20, 2009,
3 preemption of state law by executive departments and agencies
4 should be undertaken only with full consideration of the legitimate
5 prerogatives of the states and with a sufficient legal basis for
6 preemption; now, therefore, be it

7 *Resolved*, BY THE ASSEMBLY AND SENATE OF THE
8 STATE OF CALIFORNIA, JOINTLY, That the Legislature of
9 the State of California asks the IRS to issue a Revenue Ruling that
10 applies the legal analysis and conclusions of the IRS CCA *and the*
11 *California case law and statutes cited above* to both California
12 registered domestic partners and same-sex married couples; and
13 be it further

14 *Resolved*, That the Legislature requests that, consistent with
15 established legal precedents, the IRS defer to California law on
16 treatment of property belonging to same-sex spouses, including
17 the existence of community property, so that for tax years
18 beginning after December 31, 2010, when filing separate federal
19 income tax returns, each same-sex spouse must include in his or
20 her gross income one-half of the community's income; and be it
21 further

22 *Resolved*, That for tax years beginning before ~~June 1, 2010~~
23 *January 1, 2011*, the Legislature requests that the Revenue Ruling
24 referred to above further determine that same-sex married couples
25 may, but are not required to, amend their returns to report income
26 in accordance with the Revenue Ruling; and be it further

27 *Resolved*, That the Chief Clerk of the Assembly transmit copies
28 of this resolution to the President and Vice President of the United
29 States, to the Speaker of the House of Representatives, to the
30 Majority Leader of the Senate, to each Senator and Representative
31 from California in the Congress of the United States, to the
32 Secretary of the Treasury, to the Commissioner of the Internal
33 Revenue Service, and to the Internal Revenue Service Office of
34 Chief Counsel.

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