

Assembly Joint Resolution No. 29

RESOLUTION CHAPTER 102

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

[Filed with Secretary of State August 23, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 29, Feuer. Federal income tax: same-sex couples.

This measure would ask the Internal Revenue Service to issue a new ruling with respect to the federal income tax treatment of registered domestic partners and same-sex married couples.

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

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

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

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

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

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

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

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

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California asks the IRS to issue a Revenue Ruling that applies the legal analysis and conclusions of the IRS CCA and the California case law and statutes cited above to both California registered domestic partners and same-sex married couples; and be it further

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

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

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