

Assembly Joint Resolution

No. 29

Introduced by Assembly Member Feuer

January 21, 2010

Assembly Joint Resolution No. 29—Relative to domestic partners tax equity.

LEGISLATIVE COUNSEL'S DIGEST

AJR 29, as introduced, Feuer. Federal income tax: domestic partners.

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

Fiscal committee: no.

1 WHEREAS, The Internal Revenue Service (IRS) issued a
2 memorandum (Office of Chief Counsel IRS Memorandum
3 200608038 dated February 24, 2006), which concluded that an
4 individual who is a registered domestic partner in California must
5 report all of his or her income earned from the performance of his
6 or her personal services, notwithstanding the California Domestic
7 Partner Rights and Responsibilities Act of 2003; and
8 WHEREAS, As a consequence, for federal income tax purposes
9 California registered domestic partners could not claim a
10 community property interest in the income of both partners, but
11 instead had to report all of each partner's income separately,
12 without reference to the income of the other partner; and

1 WHEREAS, The IRS memorandum found that state community
2 property laws apply only to a husband and wife in a heterosexual
3 marriage, and not outside that context; and

4 WHEREAS, The IRS memorandum further indicated that the
5 rights afforded domestic partners under the California Domestic
6 Partner Rights and Responsibilities Act of 2003 were not made an
7 incident of marriage by the inveterate policy of the state and that
8 the relationship between registered domestic partners was not
9 marriage under California law, and that accordingly they could
10 not file separately with each claiming one-half of the community's
11 total earned income for federal tax purposes; and

12 WHEREAS, Federal case law holds that the characteristics of
13 property ownership, including community property, are determined
14 by the states, and taxation of that property is determined by the
15 federal government; and

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

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

25 WHEREAS, California statutes (see Chapter 893 of the Statutes
26 of 2001, Chapter 421 of the Statutes of 2003, and Chapter 802 of
27 the Statutes of 2006) and case law (In re Marriage Cases (2008)
28 43 Cal.4th 757; and Strauss v. Horton (2009) 46 Cal.4th 364)
29 confirm that registered domestic partners and married same-sex
30 couples whose marriages remain valid under California law have
31 the same rights and responsibilities under California law as
32 different-sex married couples, including those rights and
33 responsibilities related to community property, and further, that
34 California income tax reporting is the same for registered domestic
35 partners and married individuals; and

36 WHEREAS, Property, including income, acquired while
37 domiciled in California by registered domestic partners or married
38 same-sex couples whose marriages are still valid in California is
39 community property under California law; now, therefore, be it

1 *Resolved, by the Assembly and Senate of the State of California,*
2 *jointly,* That Legislature of the State of California asks the IRS to
3 reconsider the conclusion in its Memorandum 200608038 and
4 issue a new memorandum based on the fact that settled federal
5 law acknowledges the state's role in defining property rights and
6 the federal government's role in deciding how it will be taxed for
7 federal purposes; furthermore, the enactment of SB 1827 (Chapter
8 802 of the Statutes of 2006) corrected an exception for state income
9 tax purposes of earned income from registered domestic partners'
10 community property under AB 205 (Chapter 421 of the Statutes
11 of 2003), such that California registered domestic partners and
12 same-sex spouses now are required to file state income tax returns
13 using the same rules as are applicable to heterosexual spouses,
14 including the choice between filing jointly or separately with a
15 reference to the filer's marital or registration status, thus making
16 California income tax reporting the same for registered domestic
17 partners and married individuals regardless of sexual orientation;
18 and be it further

19 *Resolved,* That the Legislature requests that, consistent with
20 established legal precedents, the IRS defer to California law on
21 treatment of property belonging to registered domestic partners
22 and same-sex spouses, including the existence of community
23 property, so that when filing separate federal income tax returns,
24 each registered domestic partner and same-sex spouse should
25 include in his or her gross income one-half of the community's
26 income; 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.