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~~, and Torlakson~~ *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 tax equity.

LEGISLATIVE COUNSEL'S DIGEST

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

This measure would ask the Internal Revenue Service to reconsider 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.

WHEREAS, The Internal Revenue Service (IRS) issued a memorandum (Office of Chief Counsel IRS Memorandum 200608038 dated February 24, 2006), which indicated that an individual who is a registered domestic partner in California must report all of his or her income earned from the performance of his or her personal services, notwithstanding the California Domestic Partner Rights and Responsibilities Act of 2003; and

WHEREAS, As a consequence, for federal income tax purposes California registered domestic partners could not claim a community property interest in the income of both partners, but instead had to report all of each partner's income separately, without reference to the income of the other partner; and

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

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

WHEREAS, Federal case law 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; 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 different-sex 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; now, therefore, be it

Resolved, by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California asks the IRS to reconsider Memorandum 200608038 and issue a new memorandum based on the fact that settled federal law acknowledges the state's role in defining property rights and the federal government's role in deciding how it will be taxed for federal purposes; furthermore, the enactment of SB 1827 (Chapter 802 of the Statutes of 2006) corrected an exception for state income tax purposes of earned income from registered domestic partners' community property under AB 205 (Chapter 421 of the Statutes of 2003), such that California registered domestic partners and same-sex spouses now are required to file state income tax returns using the same rules as are applicable to heterosexual spouses, including the choice between filing jointly or separately with a reference to the filer's marital or registration status, thus making California income tax reporting the same for registered domestic partners and married individuals regardless of sexual orientation; 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 registered domestic partners and same-sex spouses, including the existence of community property, so that when filing separate federal income tax returns, each registered domestic partner and same-sex spouse should include in his or her gross income one-half of the community's income; 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.

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