Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Goldberg, et. al | Analyst: LuAnna Hass | Bill Number: AB 205

Related Bills: See Prior Analysis | Telephone: 845-7478 | Amended Date: August 18, 2003

Attorney: Patrick Kusiak | Sponsor: _____

SUBJECT: Filing Status/Domestic Partners

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended July 16, 2003.

X FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED July 16, 2003, STILL APPLIES.

____ OTHER - See comments below.

SUMMARY

This bill would allow domestic partners to file California personal income tax returns as either 1) married filing joint, or 2) married filing separate.

In addition, this bill would make changes to various California laws regarding domestic partners, including the creation of community property rights. These changes do not affect the department and are not discussed in this analysis.

SUMMARY OF AMENDMENTS

The August 18, 2003, amendments double-join this bill and SB 1065 (Senate Revenue and Taxation, 2003). Both bills amend the same section of the Revenue and Taxation Code, which outlines the general rules for incorporating the provisions of the Internal Revenue Code. The double-joining language would provide that the section in this bill containing the provision that incorporates the amendments made by this bill and by SB 1065 would go into effect only if both bills are enacted into law and this bill is enacted after SB 1065.

For convenience, the department's remaining concerns and the economic impact are provided below. The remainder of the department's analysis of the bill as amended July 16, 2003, still applies.

Board Position:			Legislative Director	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR	Brian Putler	8/21/03
_____ N	_____ OUA	X PENDING		

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update. However, the department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- The department uses automated systems to compare taxpayer return information to files received from other state and federal agencies, including the Internal Revenue Service (IRS). These automated systems search through IRS records by Social Security Number and name and compare information on the taxpayer's federal income tax return to the information on the California income tax return. Since current law generally requires the filing status of the taxpayer for the state tax return to be the same filing status as on the federal return, the systems have the ability to verify joint returns based on the primary taxpayer's information. Since domestic partners are required to file separate federal income tax returns and this bill would allow domestic partners to file a joint state income tax return, the department anticipates a significant delay in the ability of the automated systems to compare taxpayer information. The systems would be required to run through the federal information more than once as the systems search for the primary taxpayer and the secondary taxpayer individually because each taxpayer would have a separate return at the federal level. The systems would need additional programming and testing prior to being operational.
- A provision of this bill would create community property laws for domestic partners. It appears the intent of the author is to allow domestic partners to have the same community property privileges and burdens as those given to civil marriage partners. This general provision could be construed to allow domestic partners to be treated as joint owners for all provisions regarding income taxes, including division of income and credits. However, if this is the intent, department staff would recommend a clarifying amendment within the Revenue and Taxation Code to specify the exact provisions where domestic partners would be considered spouses. Department staff is available to work with the author's office to draft amendments to resolve this concern.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Revenue Impact Effective January 1, 2005 ($ Millions)				
Fiscal Year	2004-05	2005-06	2006-07	2007-08
Revenue Loss	Minor loss	-4	-5	-5

Minor loss is less than $500,000.

This bill does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

According to the Census 2000, California has over 90,000 same-sex partner households. The tax liability change of these partners was approximated by using a sample of these data records with reported incomes for each partner. Households with tax reductions made up 59% of the total households. Households with tax increases made up 12% of the total. The remaining 29% had little or no tax change. The average tax reduction and tax increase based on census data was applied to the projected number of Registered Domestic Partnerships (RDPs).

As of July 2003, there were 20,550 RDPs in California. It was estimated that by the end of 2005, the number of RDPs would increase to approximately 22,500. The revenue loss for the 2005/2006 fiscal year was calculated as follows:

22,500 (RDPs) x 59% (% RDP with tax reduction) x -$473 (avg. tax reduction)	= -$6.3 million
22,500 (RDPs) x 12% (% RDP with tax increase) x $755 (avg. tax increase)	= $2.0 million
Total	= -$4.3 million

For 2006 the projected number of RDPs is 23,500, and the projected RDPs for 2007 is 24,500.

ARGUMENTS/POLICY CONCERNS

This bill could have an impact on federal income tax law since those laws rely on each states' laws regarding married persons and their property. Currently, since California is a community property state, spouses who file separate federal income tax returns are required to split the community incomes of each spouse to be claimed on each return. This bill would create community property laws for domestic partners that are similar to existing laws for civil marriage. Federal income tax law does not recognize domestic partners as married. However, since federal law relies on state laws regarding community property, domestic partners would be required to claim half of each others' community income on their separate federal returns (single filing status). For example, under current federal law domestic partners with a filing requirement must file separate returns and pay the tax attributable to the individual returns. Assume Partner A has federal adjusted gross income (AGI) of $50,000 and Partner B has federal AGI of $100,000. For the 2002 tax year, assuming each partner takes a standard deduction and one exemption, Partner A would have a tax of $7,760, and Partner B would have a tax of $22,013, for a total of **$29,773**. Since the federal tax laws generally follow the state community property laws, the domestic partners would continue to file individual federal returns. However, they would be required to split the community income of the partners. In the example above, Partner A would claim $25,000 of his/her income and $50,000 of Partner B's income. Partner B would do the same. Therefore, each partner would pay tax on an AGI of $75,000. Again, assuming they each take a standard deduction and claim one exemption, each partner would pay $14,510 in tax for a total of **$29,020** for both partners. Therefore, depending on the individual circumstances of the taxpayer, this bill could result in domestic partners paying less federal income tax.

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