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 21, 2003
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Domestic Partners

____	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ______________________.
X	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 August 18, 2003.
X	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO ______________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED August 18, 2003, STILL APPLIES.
____	OTHER - See comments below.

SUMMARY

This bill would make changes to various California laws regarding domestic partners, including the creation of community property rights.

SUMMARY OF AMENDMENTS

The August 21, 2003, amendments resolved some, but not all of, the implementation and policy concerns as discussed in the department's analysis of the bill as amended August 18, 2003. Specifically, the amendments would:

- delete the income tax provisions allowing a domestic partner to file a California personal income tax return as either 1) married filing joint, or 2) married filing separate;
- specify that a domestic partner shall use the same filing status for state income tax purposes that was used or would have been used for federal income tax purposes; and
- specify that earned income may not be treated as community property for state income tax purposes.

As a result of the amendments, the department has identified an implementation and a technical concern and revised the economic and fiscal impacts, which are provided below. The remainder of the department's analysis of the bill as amended August 18, 2003, still applies.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Brian Putler	9/4/03
____ N	____ OUA	X PENDING		

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations. However, the department has identified the following implementation concern.

This bill would provide that "earned income" may not be treated as community property for state income tax purposes for a domestic partner. Since the term "earned income" does not encompass all types of income it could lead to confusion for taxpayers because forms of "unearned income," such as pension income, would still be treated as community property for state income tax purposes. Domestic partners would be required to claim half of community income other than earned income on their separate returns (single filing status). 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, while eliminating any impact to the state's income tax revenue. To achieve this intent, department staff would suggest replacing the term "earned income" with the phrase "property or income of a domestic partner."

FISCAL IMPACT

This bill would not have significant impact on the departments programs or operations. However, as a result of the amendment, the department anticipates customer service contacts from taxpayers seeking clarification of the types of income that are considered community property income for state income tax purposes. These costs are estimated to be $28,000.

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	Insignificant Loss	-$0.5	-$1.0	-$1.5

Insignificant loss is less than $100,000.

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

Revenue Discussion

This estimate reflects the impact of unearned income treated as community property for state income tax purposes.

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

The 2001 Adjusted Gross Income (AGI) Class tables were examined to determine the amount of unearned income that comprises total AGI. The composite percentage (20%) was then applied to obtain the proportionate estimates for unearned income. An adjustment was made to take into account the fact that property acquired prior to partnership registration may not qualify as community property. 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 AGI	= -$4.3 million

-$4.3 million x 20% (unearned income) = -$0.8 million. Adjusted to -$0.5 million for 2005-06.

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 rights for domestic partners that are similar to existing rights 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 could 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 could 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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