Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Leno, et al.	Analyst:	Anne Mazur	Bill Number:	AB 43
Related Bills:	See Legislative History	Telephone:	845-5404	Introduced Date:	December 4, 2006
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Religious Freedom And Civil Marriage Protection Act/Gender-Neutral Marriage

SUMMARY

This bill would change the definition of marriage to a civil contract between two persons.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to end discrimination against same-sex couples and to ensure that the rights and responsibilities of spouses are secured without regard to gender.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative as of January 1, 2008.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current federal law, under the Defense of Marriage Act (DOMA), defines marriage for federal purposes as a legal union between a man and a woman as husband and wife and uses the term spouse to refer only to a person of the opposite sex who is a husband or a wife. In addition, this Act provides that no state is required to give effect to any public act, record, or judicial proceeding of another state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of that state. Federal tax law provides that a husband and a wife may file a joint income tax return.

State law, under the Family Code, defines marriage as a personal relation that arises out of a civil contract between a man and a woman. All real or personal property, wherever situated, that is acquired by a married person during the marriage while domiciled in California is considered community property. By application of community property rules for income tax purposes, each spouse is taxable on one half of the income that is considered community property income.

Board Position:			Department Director	Date
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In 2003, California implemented the California Domestic Partner Rights and Responsibilities Act (Goldberg, Stats. 2003, Ch. 421) that extends, with certain exceptions, the rights and duties of marriage to persons registered as domestic partners with the Secretary of State. This act gives registered domestic partners (RDPs) generally the same rights, protections, and benefits as married persons. This act also makes RDPs subject to generally the same responsibilities, obligations, and duties as imposed upon married persons. This act requires RDPs to use the same filing status on their California income tax return as was used for federal income tax purposes. However, effective for taxable years beginning in 2007, RDPs will be required to file a California personal income tax return jointly or separately by applying the standards applicable to married couples under federal income tax law. (Migden, Stats. 2006, Ch. 802.)

For federal income tax purposes, RDPs use the filing status of single or head of household, as applicable.

Under federal and state income tax law, spouses who file a joint tax return are each responsible for the accuracy of the return and for the full tax liability for that tax year. These obligations apply regardless of which spouse earns the income. The concept of obligating each spouse separately for all of the tax liability reflected on the joint return is called joint and several liability. Under certain circumstances individuals who file joint returns may be eligible for relief from joint and several liability.

THIS BILL

This bill would do the following:

- Amend the definition of marriage under the Family Code from a personal relation arising out of a civil contract between a man and a woman to a personal relation arising out of a civil contract between two persons,
- Construe gender-specific terms to be gender-neutral where necessary to implement the rights and responsibilities of spouses, and
- Provide that a priest, minister, or rabbi of any religious denomination or an official of any nonprofit religious institution authorized to solemnize marriages are not required to solemnize any marriage in violation of his or her right to the free exercise of religion guaranteed by the First Amendment of the U.S. Constitution and provisions of the California Constitution.

IMPLEMENTATION CONSIDERATIONS

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.

1. Current state law generally requires taxpayers—including married taxpayers—to use the same filing status on the state tax return as used on the federal tax return. The requirement for RDPs to file a joint return is an exception. DOMA would prevent same-sex spouses from filing a joint federal income tax return. Therefore, it appears California law would have to be expressly amended to require same-sex spouses to file a joint California income tax return.

2. Only unmarried individuals or those treated as unmarried under federal law are eligible to file as head of household. Without modification of the head of household filing status for California purposes, this bill would allow a same-sex spouse to file as head of household for California purposes—if eligible for head of household status at the federal level—even though such spouse is married under California law.

3. The computation of California taxable income begins with federal amounts. Department staff relies on federal law (where applicable) to determine California adjustments—that is, federal-state differences—that are required to be reported on California Schedule CA for the process of computing California taxable income. Because same-sex marriages and same-sex spouses are not recognized under federal law, it would not always be clear what those adjustments would be.

TECHNICAL CONSIDERATIONS

Subdivisions (e) and (h) of Section 3 of the bill appear to be identical and therefore redundant. The author may want to consider eliminating one of those subdivisions.

LEGISLATIVE HISTORY

AB 849 and AB 19 (Leno, et al., 2005/2006) proposed the Religious Freedom and Civil Marriage Protection Act and contained identical language as this bill. AB 19 was held in the Assembly. AB 849 was vetoed by Governor Schwarzenegger. The Governor stated: "I do not believe the Legislature can reverse an initiative approved by the people of California," in reference to Proposition 22 relating to marriage passed by the voters in 2000.

SB 1827 (Migden, Stats. 2006, Ch. 802) requires RDPs to file personal income tax returns as either married filing joint or married filing separate.

AB 205 (Goldberg, Stats. 2003, Ch. 421) gave RDPs the same rights, such as community property rights, and obligations that are granted to and imposed upon spouses in a civil marriage, with some exceptions.

OTHER STATES' INFORMATION

The states surveyed include *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York*. The laws of these states were reviewed because their tax laws are similar to California's income tax laws. These states have no provisions allowing marriage between same-sex couples, except for *Massachusetts*.

For tax periods ending on or after May 16, 2004, *Massachusetts* recognizes the right of same-sex couples to be married. As a consequence, same-sex spouses must file *Massachusetts's* income tax returns as married filing joint or married filing separate.

FISCAL and ECONOMIC IMPACT

In its current form, this bill would not impact the state's income tax revenue or the Franchise Tax Board's administration of state income tax because it would not change the manner in which taxpayers currently file income tax returns for California purposes.

POLICY CONCERNS

Staff has identified the following policy concerns:

1. Because this bill would allow same-sex spouses to avoid joint filing status for California purposes, same-sex spouses would be treated differently for California income tax purposes than different-sex spouses and registered domestic partners.

2. California income tax laws follow federal tax laws for treatment of income and deductions. For same-sex spouses, this bill would create differences between federal and California income tax laws, much like those that exist for RDPs, that would not exist for different-sex married couples. For example

   - Current state and federal law provides for the transfer of an asset between spouses without tax consequences. Because federal law does not recognize same-sex marriages, upon enactment of this bill, such transfers could be subject to federal tax while being tax-free for California purposes. Further, because federal law would not recognize a same-sex marriage, it would not recognize a same-sex divorce. As such, the subsequent division of assets of the same-sex marriage for tax purposes may be governed by different rules to determine the tax treatment. The federal tax treatment is not clear, but may result in increased capital gains tax for same-sex couples.

   - Alimony reporting currently follows federal law, allowing alimony payments to be deductible by the payer and reportable as income to the payee. It is not clear how these payments would be treated for federal purposes in the case of former same-sex spouses.

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