Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Migden	Analyst:	Anne Mazur	Bill Number:	SB 11
Related Bills:	See Legislative History	Telephone:	845-5404	Introduced Date:	December 4, 2006
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Domestic Partnerships

SUMMARY

This bill would broaden eligibility for domestic partnerships.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to provide equity for modern-day families that choose not to marry.

EFFECTIVE/OPERATIVE DATE

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

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under current state law, the Family Code permits the establishment of domestic partnerships. Registered domestic partners (RDPs) have 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.

At the time of filing a Declaration of Domestic Partnership with the Secretary of State, the two persons must:

- Have a common residence;
- Not be married to someone else or in another domestic partnership with someone else;
- Not be related by blood in a way that would prevent them from being married;
- Be at least 18 years old;

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Selvi Stanislaus	3/1/07
_______ N	_______ OUA	___X___ PENDING		

- Be of the same sex or one or both are over 62 years old and meet the eligibility requirements for old age benefits under the Social Security Act; and
- Be capable of consenting to a domestic partnership.

Effective for taxable years beginning in 2007, RDPs are required to file a personal income tax return jointly or separately by applying the standards applicable to married couples under federal income tax law. (SB 1827, Migden, Stats. 2006, Ch. 802.)

For federal income tax purposes, each individual in a domestic partnership may only use the filing status of single or head-of-household, as applicable.

THIS BILL

This bill would amend the Family Code to eliminate the requirement that to become an RDP the persons must either be of the same-sex or be over 62 years of age. The bill would also make nonsubstantive technical amendments to an unrelated provision of the Probate Code.

IMPLEMENTATION CONSIDERATIONS

Implementation issues relating to California income tax return preparation have been identified as a result of recently enacted legislation—SB 1827 (Migden, Stats. 2006, Ch. 802)—requiring RDPs to file joint or married filing separate returns. These preparation issues arise because RDPs will have a different filing status for their federal income tax returns than they will for their California income tax returns.

In addition, tax issues associated with AB 205 (Goldberg, Stats. 2003, Ch. 421), which gave RDPs the same rights and obligations granted to and imposed upon spouses in a civil marriage, with some exceptions, are implicated by this bill. Assuming opposite-sex RDPs are not treated as spouses for federal purposes, to the extent more couples register as domestic partners as a result of this bill, the number of taxpayers impacted by these issues would increase accordingly. Such issues arise because RDPs are not treated as spouses for purposes of federal law, but federal law would be applied for California income tax purposes as if they were spouses. For example, alimony reporting for California income tax purposes currently follows federal law, allowing alimony payments to be deductible by the payer and reportable as income to the payee. The federal law limits alimony treatment to payments between spouses. Payments between RDPs could be treated as alimony for California purposes. It is not clear how these payments would be treated for federal purposes in the case of RDPs.

The department anticipates a delay in the ability of the automated systems to compare information reported on the taxpayer's federal income tax return to the amount reported on the state tax return because of the difference in the federal and state filing status—i.e., joint or married filing separate for state purposes versus single or head of household for federal purposes. The systems would be required to process the federal information more than once as the systems search for the primary taxpayer and the secondary taxpayer individually.

LEGISLATIVE HISTORY

SB 1827 (Migden, Stats. 2006, Ch. 802) requires RDPs to file personal income tax returns using the same rules applicable to married couples. In addition, this bill eliminated a provision that made a distinction between earned and unearned income of an RDP for purposes of applying community property rules for state income tax purposes.

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. It also added language that required the same filing status on a state income tax return as used on the federal income tax return and provided that earned income is not community property for state income tax purposes.

AB 25 (Migden, Stats. 2001, Ch. 893) allowed several existing taxpayer benefits for medical expenses and health insurance benefits to be made available to a taxpayer’s domestic partner as the taxpayer’s spouse.

AB 26 (Migden, Stats. 1999, Ch. 588) allowed the establishment of domestic partnerships for couples meeting specified conditions.

OTHER STATES’ INFORMATION

New Jersey limits domestic partnerships to same-sex couples or opposite-sex couples where at least one person is over the age of 62. *Vermont*, *Connecticut*, and *Hawaii* permit civil unions or domestic partnerships for same-sex couples only. *Maine* permits domestic partnerships regardless of gender. No other states permit civil unions or domestic partnerships.

FISCAL IMPACT

The department’s costs to implement and administer this bill are estimated to be $205,000 annually. The department anticipates customer service contacts from taxpayers seeking clarification of tax return filing requirements. Staff also anticipates additional manual processing or review of returns to the extent that automated systems are unable to compare federal and state tax information.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

Based on data and assumptions discussed below, the personal income tax revenue loss from this bill would be as follows:

Estimated Revenue Impact of SB 11 Effective On Or After January 1, 2008 Enactment Assumed After June 30, 2007 ($ in Millions)		
2008/2009	2009/2010	2010/2011
– $7	– $9	– $11

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

Revenue Discussion

According to the California Secretary of State, there were 41,925 registered domestic partnerships as of December 6, 2006. It is unknown how many additional couples meeting the specified criteria would choose to register as domestic partners if this bill is enacted.

According to Census 2000, California has over 90,000 same-sex partner households. The tax liability change of RDPs, now required to file personal income tax returns using the same rules applicable to married couples, was approximated by using a sample of data records with reported incomes for each partner. Households with tax liability reductions made up 59% of the total households and averaged $473. Households with tax liability increases made up 12% of the total and averaged $755. The remainder (29%) had little or no tax change.

Census 2000 counted 4.9 million different-sex unmarried partner households in the United States. The California population represents 12% of the U.S. total. Assuming California has 12% of different-sex unmarried partner households, there would be 588,000 such households. A 2000 study in the Annual Review of Sociology shows that 10% of different-sex unmarried partners remain in an unmarried relationship for 5 years or longer. The 10% figure was used to arrive at the 58,800 the number of different-sex households that may register as domestic partnerships (588,000 x 10%). It was assumed that different-sex seniors permitted to register under existing law make up 10% of the population of different-sex households, reducing the estimated population impacted by the bill to 52,900 households (58,800 x 90%). The 52,900 figure for 2000 was grown out to 2008 using an average annual state population growth rate of 1.6% to arrive at an estimated of 60,100 households.

The average tax reduction of $473 and tax increase of $755 was applied to the 2008 projected number of couples that would register if this bill is enacted. The revenue loss for 2008 was calculated as follows:

60,100 x 59% (% with tax reduction) x $473 (average tax reduction)	= – $17 million
60,100 x 12% (% with tax increase) x $755 (average tax increase)	= $ 5 million
	– $12 million

It was further assumed that there would be a three-year learning curve as couples register. In the first year, only half of the eligible population would register, 70% in the second year, and 90% in the third year, reducing the impact to a revenue loss of $6 million in 2008. The calendar year revenue losses were adjusted for fiscal years in the Revenue Estimate table above.

LEGISLATIVE STAFF CONTACT

Anne Mazur
Franchise Tax Board
916-845-5404
anne.mazur@ftb.ca.gov

Brian Putler
Franchise Tax Board
916-845-6333
brian.putler@ftb.ca.gov