

AGENDA

FOCUS GROUP: FILING BY REGISTERED DOMESTIC PARTNERS

January 30, 2007
Tuesday, 9:00 am-Noon
Franchise Tax Board, Town Hall, Golden State Room B
Conference Call-in: (916) 845-0610

Facilitators: Judi Bentzien

Attendees: Interested Parties

Meeting Preparation: Review Pre-meeting Materials: Legislation and Technical Analyses

Meeting Objective: ➤ **Determine how we can make filing of California individual income taxes by registered domestic partners as simple as possible and discussion of related problematic technical issues.**

Agenda Topics

	Topic	Person	Length
1	Introductions and Overview	Anne Miller	9:00-9:10
2	Review Current Legislation (SB 105 and SB 11)	Brian Putler	9:10-9:15
3	Review Technical Analyses	Patrick Kusiak	9:15-10:00
4	Review Comparison of Federal/State Law Application <ul style="list-style-type: none">Filing Status DifferencesNon-filing Status Differences	Patrick Kusiak	10:00-10:30

BREAK (10:30-10:45)

5	Clarify Relevant Filing Concepts (“As If” vs. CA Joint)	Patrick Kusiak	10:45-11:15
6	Discuss Potential Legislative Remedies to Clarify/Improve Implementation	Brian Putler	11:15-11:45
7	Wrap Up <ul style="list-style-type: none">Sharing of Today’s ResultsOpportunity for Future Discussion	Anne Miller	11:45-NOON

Registered Domestic Partner (RDP) Issues

Subject: Qualified Plans -- contributions and deductions for IRAs

Law: IRC §§219(c), 219(g)(7), 408, 4973

Discussion:

In general, IRC sec. 219 allows a taxpayer to make contribution to an IRA in an amount equal to the lesser of a fixed amount or that individual's compensation that is includible in gross income for the taxable year.

In the case of a married individual filing a joint return, IRC sec. 219(c) allows the compensation of a spouse to provide the basis for an increased contribution to an IRA when the taxpayer's compensation includible in gross income is less than includible compensation of his or her spouse.

IRC sec. 219(g) limits deductions for contributions to an IRA if an individual or the individual's spouse is an active participant in an employer-provided pension plan.

IRC sec. 4971 imposes a federal tax of 6% on excess contributions. California does not impose a tax on excess contributions.

Problem:

If IRC sec. 219 is applied by treating an RDP as a spouse for California purposes:

- The compensation of one RDP could provide the basis for an increased contribution to an IRA for California purposes. However, that increased contribution would be considered an excess contribution subject to an additional federal tax of 6%.
- An RDP who is not active participant in an employer-provided for federal purposes would be treated as the spouse of an individual that was an active participant in an employer-provided pension plan for California purposes. As such the deduction for contributions to an IRA could be reduced or eliminated for California purposes. A portion of any distribution from an IRA with nondeductible contributions is a nontaxable return of nondeductible contributions for California purposes only.

Alternatives:

1. Treat an RDP as a spouse for purposes of IRC sec. 219 for California purposes (The practical effect of this alternative would deprive an RDP of the benefit of making an increased contribution to an IRA while applying limitations on deductions that are allowable for federal purposes.)
2. Treat a contribution and deduction allowable under federal law to be allowable under California law. (This has the effect of not treating an RDP as a spouse for purposes of IRA contributions and deductions.)

Registered Domestic Partner (RDP) Issues

Subject: Substantive Changes Resulting From Change in Filing Status

Discussion: For many purposes, the Internal Revenue Code (IRC) treats a married couple as a single economic unit. The concept is embedded in the rules applicable for filing a joint return. In addition, where the IRC prescribes a specific dollar limit on a deduction, exclusion, or other rule, that dollar limit for a single taxpayer is the same as the dollar limit for two married persons who file a joint return and the dollar limit for a married person filing a separate return is equal to one-half of the dollar limit for other returns. In many cases, the treatment of a married couple is less favorable than the treatment provided to two single taxpayers. This treatment has been referred to as a marriage penalty.

Treating an RDP as a married person for California tax purposes has the substantive effect of reducing the dollar amount of various exclusions, deductions, etc. for California purposes. The provisions of the IRC identified below are applicable for California purposes. Until federal law allows RDPs to file a joint federal income tax return, there could be substantive differences in the treatment of the matters covered by these provisions for federal and California income tax purposes.

<u>Law</u>	<u>Description</u>
IRC 121	Exclusion of gain on sale of principal residence \$250,000/\$500,000 joint return exclusion
IRC 129	Dependent care assistance Maximum exclusion per year is \$5,000 (\$2,500 for MFS)
IRC 163(d)	Investment interest \$10,000 (\$5,000 MFS)
IRC 163(h)	Qualified residence interest \$1,000,000 acquisition loan, \$100,000 equity loan (MFS \$500,000, \$50,000)
IRC 179(b)	Expense depreciable property limit, MFS limit is 50%
IRC 194	Expensing of reforestation expenses Maximum deduction per year is \$10,000 (\$5,000 MFS)
IRC 221	Interest on education loan- for married person only deductible on joint return
IRC 469	Rental real estate passive loss \$25,000 max (\$12,500 MFS); phase out \$100,000 (\$50,000 MFS)
IRC 1044	Rollover of publicly traded securities gain into special small business investment company \$50,000/yr up to \$500,000 max (MFS \$25,000/yr, \$250,000 max)
IRC 1211	Maximum capital loss - \$3,000/yr (\$1,500/yr MFS)

Registered Domestic Partner (RDP) Issues

Subject: Qualified Plans – prohibited transactions, additional taxes, disqualification

Law: IRC §§408(e)(2), 4975; RTC §17501

Discussion:

In general, IRC sec. 408(e)(2) extinguishes the exemption from tax of any individual retirement account if an individual that owns the account or his or her beneficiary engages in a prohibited transaction as described in IRC sec. 4975 and any amounts in such as account are treated as a distribution subject to tax.

In addition, IRC sec. 4975 imposes a tax of 15% on each prohibited transaction. In general, a prohibited transaction consists of one of a number of specifically-described transactions involving the assets of a qualified plan and a disqualified person. A disqualified person includes the spouse of a fiduciary, a person providing services to a plan, an employer whose employees are covered by a plan, an owner of 50% or more of the stock of a corporation. California does not impose a tax on prohibited transactions.

Problem:

If, for purposes of IRC sec. 408(e)(2) for California purposes, IRC sec. 4975 is applied by treating an RDP as a spouse for California purposes, a transaction that would not be considered a prohibited transaction for federal purposes could be considered a prohibited transaction for California purposes. Consequently, an individual retirement account that is qualified for federal purposes could be considered non-exempt and currently taxable for California purposes. However, no additional tax would be assessed with respect to that prohibited transaction since California does not impose a tax on any prohibited transactions.

Alternatives:

1. Treat an RDP as a spouse for purposes of IRC sec. 4975 for California purposes (This alternative provides more beneficial treatment to an RDP than a spouse, unless California law is amended to imposed a tax on prohibited transactions.)
2. Treat a transaction as a prohibited transaction for California purposes only if the transaction is treated as a prohibited transaction for federal purposes. (This has the effect of not treating an RDP as a spouse for purposes of IRA contributions and deductions.)

Registered Domestic Partner (RDP) Issues

Subject:

Calculation of AGI limitations on a California personal income tax return filed for 2007 and subsequent tax years filed by a registered domestic partner (RDP).

Law:

RTC §18521, 17024.5(h)(2)(B)

Discussion:

SB 1827 provides that RDPs are required to use MFJ or MFS filing status on their California tax returns beginning with taxable year 2007. California also allows certain taxpayers whose spouses are either active military or nonresidents to use different filing statuses for California returns. These taxpayers may file joint for federal and married filing separate for state. Under California law, federal AGI is used to compute certain limitations, phaseouts and thresholds. Because California RDPs may not file a federal joint return, SB 1827 provided a rule to determine the application of AGI limits for RDPs by combining the amounts reflected as AGI income on the separate federal income tax return filed by each RDP. Combining AGIs for California triggers the phaseouts and thresholds that did not apply for federal.

Problem:

The current formula for computing AGI limitations on a RDP joint return has been criticized by various tax practitioners and representatives of tax preparation software companies. This formula allows FTB to use AGI figures from federal returns to verify California AGI. Also, federal adjustments to itemized deductions will apply for California. Citing to the Legislature's statutory intent to treat RDPs the same as married couples, these individuals argue that a different formula should not be used to compute AGI limitations for RDPs than is used for married couples. They also cite to difficulties in programming and using tax preparation software to perform all of the necessary calculations that this additional step would entail.

Alternatives:

1. Retain the current formula in SB 1827 (adding the federal AGIs).
2. Use AGI from a proforma federal joint return; or
3. Use the AGI from the California joint return. This method could be applied to any taxpayer who filed differently for federal.

Registered Domestic Partner (RDP) Issues

Subject: Treatment of out of state civil unions (other than a marriage)

Law: Family Code §§297 and 299.2; RTC §§17021.7, 18521, and 17024.5.

Discussion:

Family Code §297 provides the definition of domestic partners and states that a domestic partnership shall be established in California when both persons meet all of the statutory requirements and register with the California Secretary of State. In 2003, Family Code §299.2 was added to provide that a same sex legal union (other than a marriage) validly formed in another jurisdiction, and substantially similar to a California RDP, is considered to be a valid domestic partnership in California.

California income tax law provides that a registered domestic partner (RDP) shall be treated as the taxpayer's spouse for certain tax purposes including for certain tax benefits related to health care expenses. In addition, California RDPs are required to file returns using the same return filing status as married couples beginning with the 2007 taxable year.

Problem:

The RTC provides that the rights to certain tax benefits related to health care expenses and the obligation to file a joint/married filing separate return apply to individuals in a domestic partner relationship within the meaning of Family Code §297 (i.e., registered with the California Secretary of State). However, Family Code §299.2 provides that certain same sex legal unions entered into in other jurisdictions are to be considered "valid" in California. It is unclear if §299.2 is intended to confer those same tax benefits and obligations on out of state civil union taxpayers in substantially similar relationships as are provided to California RDPs. If out of state domestic partners are required to register as domestic partners in California, such a requirement would treat them differently than out of state married couples who are not required to have their marriages validated in California.

Alternatives:

1. Provide that California personal income tax rights and obligations only apply to those domestic partners who are registered with the California Secretary of State.
2. Provide that such rights and obligations also apply to those domestic partners who are filing California resident returns and who have entered into a same sex legal union in another jurisdiction that is substantially equivalent to a California RDP (legislation should define "substantially equivalent), or
3. Provide that these tax rights and obligations also apply to those domestic partners who are filing either California resident or non resident returns and who have entered into a same sex legal union in another jurisdiction that is substantially equivalent to a California RDP.

4. Others?

Registered Domestic Partner (RDP) Issues

Subject: Qualified Plans – contributions to a Roth IRA

Law: IRC §§408(i), 408A(c)(3), 4973(f); RTC §§17501, 17507(c)

Discussion:

IRC sec. 408A limits the amount of a contribution to a Roth IRA in a taxable year based on a taxpayer's modified adjusted gross income (AGI) that varies depending on filing status. Limitations on contributions begin to apply when modified AGI exceeds \$150,000 (for a taxpayer filing a joint return), \$95,000 (all other taxpayers other than a married individual filing a separate return), and \$0 (for a married individual filing a separate return). IRC sec. 408(i) requires the trustees of individual retirement account (including a Roth IRA) to make an annual report to the IRS regarding contributions made during a calendar year. If a taxpayer makes a contribution to a Roth IRA in excess of the amount authorized, IRC sec. 4973 imposes a tax of 6% each year the contribution continues to be an excess contribution.

RTC sec. 17501 makes IRC sec. 408A applicable for California purposes and RTC sec. 17507 requires a copy of the report required by IRC sec. 408(i) to be filed with the FTB. However, there is no tax imposed under the RTC comparable to the tax imposed under IRC sec. 4973 with respect to excess contributions.

Problem:

Pursuant to RTC sec. 18521, as amended by SB 1827, a RDP is required to file a joint or a separate California income tax return using the same rules applicable to a married individual. If the rules of IRC sec. 408A with respect to limitations on contributions on a Roth IRA are applied to an RDP required to file a joint or separate California income tax return, contributions allowable under federal law will be excess contributions under California law. But since California law does not currently impose a tax on excess contributions, compliance with this California-only limitation on contributions is legally unenforceable.

Alternatives:

1. Impose a tax on contributions that are allowable under federal law but excess contributions under California law.
2. Impose a tax on all excess contributions, including contributions described in alternative 1.
3. Treat every contribution allowable under federal law to be an allowable contribution for California purposes. (This has the effect of not treating an RDP as a spouse for purposes of contributions to a Roth IRA.)

Registered Domestic Partner (RDP) Issues

Subject: Tax-Favored Accounts (non-retirement)

Law: IRC §§220, 223, 530.

Discussion:

In general, the Internal Revenue Code establishes several tax-favored special purpose accounts – Archer Medical Savings Account (MSAs), health savings accounts (HSA), and education savings accounts (education IRA) to allow taxpayers to get special tax treatment for amounts accumulated to pay for particular expenses. In some cases, eligibility is limited to certain taxpayers. Eligibility rules may depend on the circumstances of a spouse or provide special rules for married individuals. Income earned on amounts in these accounts is exempt from tax. Contributions to some accounts are deductible. Excess contributions are subject to a federal excise tax every year the account has an excess contribution. Distributions from these accounts for qualified purposes are exempt from tax. Qualified expenses frequently include expenses for family members. Transfers of accounts incident to divorce are exempt from tax and may retain their status as a tax-favored account. A change in account beneficiary amongst members of the family may be nontaxable. Nonqualified distributions are includible in gross income and often subject to an additional tax.

In general, California provides comparable if not identical treatment for these accounts other than HSAs. Current California law does not recognize HSAs. There is no California tax on excess contributions to any account. California law allows a deduction for contribution to the same extent as allowable for federal purposes. In the case of an Archer MSA, the California deduction is based on the amount allowed on the federal return. California additional tax on nonqualified distributions is imposed at a lower rate.

Problems:

If provisions related to tax favored accounts are modified to treat an RDP as a spouse for California purposes, a person that is an eligible account owner for federal purposes may not be an eligible individual for California purposes. Distributions that could be a qualified distribution for California purposes may not be qualified for federal purposes. As a result, the amount of the distribution would be includible in gross income for federal purposes and subject to an additional tax. Transfer of a tax-favored account incident to divorce could be nontaxable for California purposes but taxable for federal purposes and subject to an additional tax. In addition, amounts transferred incident to divorce would not be a tax-favored account for federal purposes. A change in beneficiary to an RDP or dependent of a RDP might be a taxable distribution for federal purposes subject to inclusion in gross income and subject to an additional tax of distribution.

Alternatives:

1. Revise California law to establish California-only tax-favored accounts. (It's unclear whether a person engaged in the business of administering such accounts would do so for California-only tax-favored accounts.)
2. Revise California law to clarify the California tax treatment of a transaction or event involving an RDP to reduce adverse impacts, prevent unintended consequences, and minimize taxpayer burden.

Registered Domestic Partner (RDP) Issues

Subject: Related parties.

Law: See attached.

Discussion:

In general, the IRC sec. 267 provides that a spouse is a related party. Although sales or exchanges of property between spouses is governed by IRC sec. 1041, other provisions of the IRC establish special rules for related parties with respect to: (i) deduction for depreciable property acquired from a related party; (ii) unpaid expenses and interest owing to related parties; (iii) installment treatment for sales between related parties; (iv) determining amount at risk with respect to debt owing to related party; and (v) right to deduct accumulated passive activity losses denied where sale to related party.

In addition, other provisions make a spouse a related party for purposes of determining ownership of stock as follows: (i) IRC §318 (for purposes of subchapter C); (ii) IRC §958 (for purposes of CFC subpart); and (iii) IRC §1563 (for purposes of affiliated corporations).

In general, the provisions of the IRC identified above are applicable for California purposes. In addition, specific provisions of California law refer to the federal definition of related party in IRC sec. 267 as follows: (i) deduction of depreciable EZ, TTA, LAMBRA, and Joint Strike fighter property and (ii) denial of rice straw credit if purchaser related to grower. California law also relies on federal rules regarding ownership of stock for applying geographically targeted economic development area hiring credits to determine if new hire or rehire. Treating an RDP as a related party for provisions of California law will revise the substantive application of those rules. But since those provisions already deviate from federal law, such an application will not add additional complexity.

Problem:

If an RDP is not a related party for federal purposes but treated as a related party for California purposes, different treatment of the same transaction could substantially complicate the filing requirements for RDPs.

Alternatives:

1. Treat an RDP as a related party for purposes of applying all provisions of the IRC where a spouse is treated as a related party.
2. Treat an RDP as a related party but only with respect to those provisions of California law that are not based on conformity to the IRC.
3. Others?

Related party/family member/spouse references (revised 1/25/07)

Related party

IRC	179(d)(2)(A)	Option to expense depreciable property denied with respect to property acquired from related party
IRC	267(b)	Definition of related party
IRC	267(c)	Unpaid expenses and interest owing to related parties

CA-only

RTC	17267.2/24356.7	Enterprise Zone property
RTC	17267.6/24356.6	Targeted Tax Area property
RTC	17268/24356.8	LAMBRA property
RTC	17053.7/23637	Joint Strike Fighter property
RTC	17052.10/23610	No credit for rice straw if purchaser related to grower
RTC	17053.14/23608.2	Farm worker housing credit qualified accountant that certifies costs may not be related to taxpayer

IRC references

IRC	108(e)(4)(B)	Acquisition of indebtedness by person related to debtor
IRC	453(f)(1)	Installment agreement specially limited for sales between related parties
IRC	465(b)(3)(C)	Special rules for determining amount at risk with respect to debt owing to related person
IRC	469(g)(1)(B)	Right to deduct accumulated passive activity losses on sale of passive activity denied where sale to related person
IRC	643(i)	Related person for purposes of loans from foreign trusts
IRC	1235(d)	Related person for purposes characterizing gain on sale or exchange of patents including definition of "holder"

Stock attribution rules

IRC	318	Constructive ownership of stock for purposes of Subchapter C
IRC	958	Constructive ownership of stock for purposes of provisions applicable to Controlled Foreign Corporations (CFC)
IRC	1563	Constructive ownership of stock for affiliated corporations

CA only

RTC	17053.34, 23634 (TTA); 17053.46, 23646 (LAMBRA); 17053.74, 23622.7 (EZ) EDA (TTA, LAMBRA, EZ) hiring credits; controlled group of corporations is one corporation to determine if new hire or rehire
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Member of family/spouse

IRC	447(e)	Member of the family for purposes of applying limits for method of accounting for corporations engaged in farming
IRC	464	Spouse and member of family for applying limitations on deductions for certain farming
IRC	672(c)	Spouse is related or subordinate party for purposes of subpart E (IRC § 671-679) -- grantor trust rules
IRC	1092(d)(4)	Spouse is related person with respect to recognition of losses in connection with straddles

Registered Domestic Partner (RDP) Issues

Subject: Qualified Plans – anti-alienation, qualified domestic relations orders, survivor annuities, required distributions

Law: IRC §§401(a)(9), 401(a)(11), 401(a)(13), 414(p); RTC §17501
ERISA (29 USC §1001 et seq.); 29 USC §§1056(d), 1185(f)

Discussion:

In general, contributions to qualified deferred compensation plan are deductible by the contributor but not currently taxable to the employee. The IRC and the Employee Retirement Security Act (ERISA) establish qualification requirements for a broad category of private sector deferred compensation plans. Pursuant to these provisions a trust will not be treated as a qualified plan unless the plan provides that benefits provided under the plan may not be assigned or alienated, except in certain limited circumstances. One of the permissible forms of alienation is a qualified domestic relations order (QDRO) and another requires a qualified pre-retirement survivor annuity and qualified joint and survivor annuity at retirement. A QDRO is defined as a court order that creates or recognizes the interest of an alternate payee in assets of a qualified plan. Alternate payee is defined as a spouse, former spouse, child or other dependent of a plan participant. Federal law also provides that qualified deferred compensation plans must make distributions known as required minimum distributions (RMD). Special RMD rules are provided with respect to rollovers to spouse and non-spouse beneficiaries. Pursuant to RTC sec. 17501, these provisions of the IRC are applicable for California purposes. In addition, ERISA preempts any state law relating to an employee benefit plan governed by ERISA.

Problem:

ERISA's preemption of state law prevents the administrator of a federally qualified deferred compensation plan covered by ERISA from treating an RDP as a spouse for any purpose. In addition, to the extent a deferred compensation plan is not covered by ERISA, its requirements for federal tax-favored treatment may create a practical impediment to the creation of a similar plan only for only California purposes.

Alternatives:

There are no alternatives. The anti-alienation provisions of ERISA prohibit treating an RDP as a spouse with respect to an ERISA plan for California purposes. In addition, the absence of tax-favored federal treatment may create practical obstacles to providing equal treatment to RDPs.

**INTERNAL REVENUE CODE
JOINT RETURN, SPOUSE, MARRIED, HUSBAND/WIFE
DRAFT FOR DISCUSSION PURPOSES**

IRC Sec.	Topic	Notes	Comments
1	Tax Imposed		Different federal and state definitions of parent regarding unearned income of minor children (IRC section 1(g) and RTC section 17041(g)).
2	Definitions and special rules		Treat RDP as spouse for California law for definitions of surviving spouse, deceased spouse, head of household and married individuals.
21	Expenses for household/dependent care services		Treat RDP as spouse, etc., for California purposes related to dependent care credit for qualifying individual (spouse), expense dollar limits and earned income limits for married individuals, joint return and marital status issues, etc (multiple references).
42	Low-income housing credit	FTD	IRC 42(i)(3)(D)(ii). Application of federal rules would prevent eligibility for RDPs relating to non-disqualification of married student housing. Federal rules will control.
55	Alternative minimum tax imposed		Treat RDP as spouse/married for California purposes of marital and filing status in this provision.
62	Adjusted gross income defined		For California, treat RDP as spouse with reference to IRC 62(b)(3) relating to qualified performing artists special rules.
63	Taxable income defined		Modify IRC 63 for RDP regarding entitlement to standard deductions.
71	Alimony		Practitioner response to federal treatment may alter result.
72	Annuities; certain proceeds of endowment	COL	72(e)(4)(C)(ii) - RDP would not be able to take advantage of the exception for transfers of annuities without consideration between spouses/former spouses. 72(t)(8)(i) - first time homebuyer difference. Penalty under California law.
101	Certain death benefits		Treat RDP as spouse for California with respect to amounts excludible from gross income received on account of certain death or chronically ill benefits.
105	Amounts received under accident/health plans		IRC 105(b) already covered by RTC section 17021.7.
106	Contributions by employer to accident/health plans		Treat RDP as spouse - see RTC section 17021.7. May need to expand references to Archer MSAs, FSAs, and future conformity to HSAs.
108	Income from discharge of indebtedness		108(e)(4) Treat RDP as spouse fo California purposes in determining income of the debtor from discharge of indebtedness in the members of family provisions.
119	Meals/lodging for convenience of employer		Treat RDP as spouse for California for exclusion from gross income of meals/lodging provided to taxpayer's spouse.
120	Amounts received qualified group legal plans		Treat RDP as spouse for California purposes of the exclusion from gross income of amounts contributed by an employer
127	Educational assistance programs	COL	IRC section 127(b)(3); 17171(b)(2)(B) conforms. Equating RDP with spouse for California could result in invalidation of amounts paid for educational assistance program. No more than 5% of amounts paid/incurred by the employer may be provided for certain shareholders or owners including their spouses.

FTD = Federal Treatment Dominant
COL = California Only Limitation

**INTERNAL REVENUE CODE
JOINT RETURN, SPOUSE, MARRIED, HUSBAND/WIFE
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IRC Sec.	Topic	Notes	Comments
132	Certain fringe benefits		132(h) and 132(m). For California, treat RDP as spouse/surviving spouse in these provisions.
152	Dependent defined		For California, treat RDP as spouse or RDPship as husband and wife with respect to definitions of dependents.
165	Losses		165(l)(2) and (5). For California, treat RDP as spouse with respect to treatment of losses in insolvent financial institutions by qualified persons including spouses.
170	Charitable, etc., contributions and gifts	COL	170(b)(1)(E)(iii) - For California, contribution by taxpayer and spouse, RDP is considered a substantial contributor for state purposes but not federal; 170(f)(10)(H) - for purposes of split dollar life insurance/annuity/endowment contract, family includes a spouse.
215	Alimony, etc., payments		Practitioner response to federal treatment may alter result.
217	Moving expenses		217(g) and (i). For California, treat RDP as spouse for moving expense deduction granted to spouses.
221	Interest on education loans		221(e). Married taxpayers must file a joint return to claim the deduction.
263A	Capitalization and inclusion in inventory costs	COL	263A(e)(2)(c) For California, treat RDP as spouse in provision relating to effect of election on depreciation by taxpayer or related person (including spouse) for property used primarily in the farming business.
264	Certain amounts paid with insurance contracts	COL	264(f)(4)(A). Treat RDP as spouse in provision relating to exception to general rule of no deduction for portion of taxpayer's interest expense which is allocable to unborrowed policy cash values, where policy covers only one individual who is a 20% owner of the business (includes individual's spouse).
274	Disallowance of certain entertainment, etc., expenses	COL	274(b)(2)(B). For California, treat RDPship as husband and wife with respect to provision relating to treating husband and wife as one taxpayer with respect to gift limitation rules.
303	Distributions in redemption of stock to pay death taxes		303(b)(2)(B). For California, treat RDP as surviving spouse with respect to special rule where there is a redemption of stock in two or more corporations for the purposes of determining the value of a decedent's gross estate.
409	Qualifications for tax credit employee stock option		Analysis of employee benefit plans pending.
409A	Inclusion in gross income of deferred compensation		409A(a)(2)(B) - Distribution exception for unforeseeable emergency includes spouse. RDPs would not be included at federal level. However, further analysis pending.
415	Limitations on benefits/contributions qualified plans	FTD	415(l)(2)(b). Federal difference with respect to "spouse" would operate to prevent benefit.
417	Definitions/rules for minimum survivor annuity	FTD	417(a)(2). Federal difference with respect to "spouse" would operate to prevent benefit.
420	Transfers excess pension assets to retiree health	FTD	420(e)(1)(c)(ii). Federal difference with respect to "spouse" would operate to prevent benefit.

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JOINT RETURN, SPOUSE, MARRIED, HUSBAND/WIFE
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IRC Sec.	Topic	Notes	Comments
424	Definitions and special rules	FTD	424(c)(4) applies to transfers between spouses incident to divorce for 1041 transfers. Section 424(d) attribution of stock ownership for percentage limitations for incentive stock options and employee stock purchase plans. Federal result will probably control arrangements between the parties.
447	Method of accounting for corporations engaged in	FTD	447(e) members of the same family includes spouses.
464	Limitations on deductions for certain farming		464(c)(2)(E) Treat RDP as spouse for holdings attributable to active management of a farming syndicate, which includes holdings attributable to a member of a family or spouse of a member of a family.
501	Exemption from tax on corporations, certain trusts,	FTD	501(c)(19), 501(c)21, 501(c)26. Definitions of exempt organizations include references to spouses.
507	Termination of private foundation status	COL	507(d)(2)(B)(iii) Definition of substantial contributor includes contributions by spouse.
672	Definitions and rules	COL	672(e) - Grantor treated as holding any power or interest held by grantor's spouse. So, federal treatment would differ.
674	Power to control beneficial enjoyment	COL	674(c). See, response to 672.
675	Administrative powers	COL	675(3). References to grantor include the grantor's spouse for purposes of determining whether a grantor is an owner of the trust when trust funds have been borrowed and not repaid. See, response to 672.
677	Income for benefit of grantor	COL	677(a) - Grantor's spouse treated as grantor. 677(b) - Income not taxable if given to a beneficiary (other than spouse). Since RDP is spouse for California purposes, would be different treatment.
682	Income of an estate or trust in case of divorce, etc.		682 (a) - Gross income of wife who is divorced/legally separated includes certain trust income. 682(b) - Wife is considered a beneficiary for purposes of computing taxable income of estate/trust in this type of situation. For California, treat RDP as wife/spouse.
704	Partner's distributive share		704(e)(3) Family partnership issue. For California, treat RDP as spouse for purchase of interest by one member of family from another family member.
775	Electing large partnership defined	FTD	775(b)(2)(C). An election as a large partnership is not effective with respect to any partnership if substantially all of the partners are spouses of partners who are performing substantial services. Under California law, RDPs are treated as spouses. Election would not be effective.
1014	Basis of property acquired from a decedent		1014(b)(6). For California, treat RDP as surviving spouse for provisions for determining basis in property where property is community property.
1041	Transfers of property between spouses or incident to		Practitioner response to federal treatment may alter result.
1043	Sale of property to comply with conflict-of-interest		1043(b)(1)(B). Treat RDP as spouse for provision stating that eligible persons for nonrecognition of gain rules include spouse.
1233	Gains and losses from short sales	COL	1233(e)(2)(C). For purposes of short sale, taxpayer references include taxpayer's spouse if still married.

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**INTERNAL REVENUE CODE
JOINT RETURN, SPOUSE, MARRIED, HUSBAND/WIFE
DRAFT FOR DISCUSSION PURPOSES**

IRC Sec.	Topic	Notes	Comments
1256	Section 1256 contracts mark to market	COL	1256(e)(3)(C)(ii) Active management rules for syndicates include interests in entities held by spouses.
1272	Current inclusion in income of original issue discount		1272(a)(2)(E)(iii) For California purposes, treat RDPship as husband and wife in provision where husband and wife are treated as one person. Would not be treated as one person at the federal level.
1361	S corporation defined	FTD	1361(c) Husband and wife treated as one shareholder for purposes of the requirement that the S corp/small business corporation cannot have more than 75 shareholders. Federal law will control.
1366	Pass-thru of items to shareholders		1366(d)(2)(B) - For transfers of stock between spouses or incident to divorce, when a loss is disallowed, the stock is treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.
6013	Joint returns of income tax by husband and wife		This provision covers joint federal returns. California has its own provisions which now cover RDPs (section 18521 amended by SB 1827). Substitute RDP for spouse.
6654	Failure by individual to pay estimated income tax		6654(d)(1)(C). Married filing separate return - different AGI amount.
7508	Time for performing certain acts		7508(c)(ii) - In California, extension of time for performing certain acts for individuals performing Desert Shield services extended to spouses.
7703	Determination of marital status		This provision applies to determination of marital status. Substitute RDP status for marital status.
7872	Treatment of loans with below-market interest rates	COL	7872(f)(7) Husband and wife treated as one person for provisions regarding treatment of loans with below-market interest rates.

FTD = Federal Treatment Dominant
COL = California Only Limitation

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Chapter/R&TC Section	Topic	Comments
PART 10. PERSONAL INCOME TAX		
Chapter 1. General Provisions and Definitions (17001-17039.1)		
17014	Resident defined.	Definition of resident includes spouse of individual. Treat RDP as spouse.
17021	Husband and wife defined	Revise definition of husband and wife to include reference to RDPs.
17039	Order of credits	17039(e)(1) and (e)(3). Add reference to RDP to references to husband and wife in provisions dealing with allocation of credits.
Chapter 2. Imposition of Tax (17041-17063)		
17045	Computation of tax of husband and wife	Modify to refer to RDP (in the case of a joint return under 18521).
17046	Surviving spouse	Modify to refer to surviving RDP.
17052.6	Credit for household and dependent care	17052.6(f)(1). Consider modification to include a reference to domestic partners who were never in a registered domestic partnership.
17052.18	Employer tax credit for dependent care	17072.18(g)(1). Treat RDP as spouse in provision which denies a credit to employer, if the care provided to employee's dependent is provided by the employee's spouse.
17053.5	Renter's tax credit	Multiple references to married couples, joint returns, spouses, husband and wife, regarding allowance of renter's credit. Add RDP to these references.
17054	Credits for personal exemption	Add RDP to multiple references to "married" and "spouse" with regard to personal, dependent, and blind exemption credits.
17054.1	Reduction in credit personal exemption	This provision references federal AGI thresholds which will reduce certain credits. References to joint returns, surviving spouses, and married filing separate returns. Modify to include reference to RDPs.
17054.5	Credit for qualified joint custody HOH	Modify to include reference to RDP for joint custody HOH credit.
17062	Applicability of AMT provisions	Section 17062(b)(5) and (6) reference joint return and surviving spouse regarding exemption amounts under IRC sec. 55(d)(1). Modify to include reference to RDP.

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Chapter/R&TC Section	Topic	Comments
Chapter 3. Computation of Taxable Income (17071 - 17307)		
17073.5	Election to take standard deduction	References in section 17073.5 to surviving spouse, married couple, and joint return with regard to amounts for standard deduction. Modify to include references to RDP.
17077	Modifications on itemized deductions	References in section 17077 to married individual, joint return, surviving spouse, and husband and wife with regard to overall limitation on itemized deductions. Modify to include reference to RDP.
17132.4	Death benefits received	Military death benefits received by an eligible individual (including a spouse) after 1/1/05 not included in gross income. Modify to include reference to RDP.
17140.5	Military service provisions	Provisions relating to interest rates, time limitations and items includible in gross income of service members. References to spouse to be modified to include reference to RDP.
Chapter 6. Accounting Periods/Methods (17551 - 17570)		
17555	Allocation of income between spouses	Treat RDP as spouse in provision allowing FTB to allocate gross income between spouses filing separate returns.
Chapter 9. Estates, Trusts, Beneficiaries, and Decedents (17731 - 17779)		
17737	Spouse is considered beneficiary	Treat RDP as spouse in provision stating that gross income of a spouse who is divorced/legally separated includes certain trust income, and spouse is considered a beneficiary for purposes of computing taxable income of estate/trust.
Chapter 14. Rules for Capital Gains/Losses (18151 - 18181)		
18152.5	Small business stock	Treat RDP as spouse in provisions dealing with joint/married filing separate filing status amounts of gain to be taken into account.

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Chapter/R&TC Section	Topic	Comments
PART 10.2 ADMINISTRATION		
Chapter 2. Returns (18501 - 18677)		
18522	Filing of joint return after separate return filed	Cosmetic change to be compatible with section 18521.
18523	Prohibition against change in elections	Cosmetic change to be compatible with section 18521.
18524	Joint return filed after death of spouse	Cosmetic change to be compatible with section 18521.
18526	When joint return may not be made	Cosmetic change to be compatible with section 18521.
18527	When joint return deemed filed for refund/credit	Cosmetic change to be compatible with section 18521.
18528	When joint return deemed filed for assessment	Cosmetic change to be compatible with section 18521.
18530	Tax on joint return excess of aggregate	Add RDP to provisions governing penalties imposed when amount on joint return exceeds amount shown on separate. Rework to be compatible with section 18521.
18531	Return for purposes of criminal penalties	Add RDP to provisions governing when criminal penalties apply for separate returns filed after joint returns.
18531.5	Husband/wife with different taxable years	Add RDP to provisions governing surviving spouse's taxable years.
18532	Status as husband and wife	Add RDP to provisions governing how marital status is determined for these filing provisions.
18570	Extension for member of military	Add RDP to provision providing extensions of time for members of the military and their spouses.
Chapter 3. Voluntary Contributions (18701 - 18872)		
18803	Allocation of funds	Modify to address the term spouse.

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Chapter/R&TC Section	Topic	Comments
Chapter 4. Payments/Assessments (19001 - 19194)		
19006	Liability of spouses for community income	Add RDP to provision dealing with determination of liability between spouses.
19008	Installment payment agreement	Add RDP to installment payment arrangement provisions.
19035	Notices to persons filing joint returns	Add RDP to section providing for a single notice on a joint return.
19107	Overpayment by individual	Add RDP to section providing for offsets of overpayments to a spouse's deficiency.
19110	Overpayment resulting from correction	Add RDP to provision for offsets of overpayments against deficiencies for husbands and wives.
19136	Addition for underpayment of estimated tax	Add RDP to provision dealing with underpayment of estimated tax and married filing separate return.
Chapter 6. Overpayments and Refunds (19301 - 19444)		
19316	Financially disabled	Add RDP to SOL tolling provision.
19443	Authority to compromise final tax liability	Add RDP to offer in compromise provisions.
Chapter 7. Administration of Tax (19501 - 19584)		
19548	Disclosure of taxpayer return	Add RDP to provisions dealing with disclosure of information to the Parent Locator Service.
19557	Information furnished to FTB	Add RDP to provisions dealing with disclosure of information concerning student aid recipients.
19582.5	Option of using 540 2EZ	Add qualifying surviving RDP to provision stating who can file an 2EZ return (qualifying widow/widower).
19583	Forging spouse signature	Add RDP to form requirement adjacent to signature - it is unlawful to forge a spouse's signature.
Chapter 9. Violations (19701 - 19721)		
19701.5	Forgery of spouse's signature	Add RDP to provisions dealing with crimes for forging spouse's signature.
19717	Litigation costs	Add RDP to litigation award provisions.

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Chapter/R&TC Section	Topic	Comments
PART 10.5 SENIOR CITIZENS (20501 - 20646)		
20506	Definition of household	Add RDP to definition of who is considered to be part of an owner-claimant's household.
20511	Property tax defined	Add RDP to definition of property tax proration method and ownership interest of claimant's spouse.
20542	Base of assistance	Add RDP to assistance based provisions.
PART 10.7. TP BILL OF RIGHTS (21001 - 21028)		
21016	Release of levy	Add RDP to release of levy provisions.
21023	Disclosure	Add RDP to provisions dealing with disclosure of information to former/separated spouses.
PART 11. CORP TAX LAW (23001 - 25141)		
23707	Termination of status of organization	23707(b)(1)(A)(ix) - Add RDP to provision dealing with donor contribution to fund and death of surviving spouse.
25105	Income and apportionment factors	25105(b)(4) - member of family, (e)(1)(a) spouse - add RDP.

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SUBTITLE A - INCOME TAXES

Chapter 1. Normal Taxes and Surtaxes

Subchapter A. Determination of Tax Liability (IRC Sec. 1 - 59)

IRC Sec.	Topic	Conform	R&TC Section	Comments
1	Tax Imposed		17041(g), 17048	N/A, but for 17041(g) definition of parent
2	Definitions and special rules		17046, 17142.5	substitute DP for spouse ok
21	Expenses for household/dependent care services		17052.6	Sec 21 ok to substitute term DP for spouse
22	Credit for the elderly/permanently/totally disabled			N/A
23	Adoption expenses		17052.25	Sec 23 N/A (R&TC 17052.25 stand-alone)
24	Child tax credit			N/A
25A	Hope and Lifetime Learning Credits			N/A
25B	Elective deferrals and IRA contributions			N/A
31	Tax withheld on wages		19002	N/A
32	Earned income			N/A
35	Health insurance costs of eligible individuals			N/A
38	General business credit			N/A
42	Low-income housing credit		17057.5, 17058	42(l)(iii)(D)(ii)(II) married student housing. Application of federal rules will prevent eligibility for DPs.
45A	Indian employment credit			N/A
47	Rehabilitation credit			N/A
48	Energy credit		17053.84	IRC 48 N/A for CA
50	Other special rules			N/A
52	Special rules		17053.7	N/A
55	Alternative minimum tax imposed		17062,17062.3, 17062.5	substitute DP for spouse ok in IRC 55. Address issues in RTC 17062
Subchapter B. Computation of Taxable Income (IRC Sec. 61 - 291)				
62	Adjusted gross income defined		17072	substitute DP for spouse ok 62(b)(3)
63	Taxable income defined		17073,17073.5, 17301-17304	Modify IRC 63 for DP
66	Treatment of community income		18534	N/A for IRC 66. Stand alone RTC
68	Overall limitation on itemized deductions		17077	Yes, but numbers different in 17077
71	Alimony and separate maintenance payments		17081	Modify IRC 71 for DP
72	Annuities; certain proceeds of endowment		17081, 17085, 17085.7, 17087	72(e)(4)(C)(ii); 72(t)(8)(i) - first time homebuyer difference possible penalty under CA law. NEED TO REVISIT THIS SECTION
85	Unemployment compensation		17081, 17083	N/A
86	Social security and tier 1 RR retirement benefits		17081, 17087	N/A
101	Certain death benefits		17131	substitute DP for spouse ok
102	Gifts and inheritances		17131	N/A
103	Interest on State and local bonds		17131, 17133, 17143	N/A
104	Compensation for injuries or sickness		17131, 17132.7	N/A
105	Amounts received under accident/health plans		17087, 17131	IRC 105(b). Already covered 17021.7
106	Contributions by employer to accident/health plans		17131, 17131.4	Already covered 17021.7
108	Income from discharge of indebtedness			substitute DP for spouse OK
112	Certain combat zone compensation		17131, 17142.5	N/A
119	Meals/lodging for convenience of employer		17131	substitute DP for spouse OK
120	Amounts received qualified group legal plans		17131	substitute DP for spouse OK
121	Exclusion of gain from sale of principal residence		17131, 17152	substitute DP for spouse OK
125	Cafeteria plans		17131, 17131.5	125(e)(l)(D). Substitute DP for spouse OK. Could be highly compensated for CA and not federal MAY NEED TO REVISIT
127	Educational assistance programs		17131, 17151	127(b)(3); 17171(b)(2)(B) conforms. Substitute DP for spouse OK in both. NOT A GOOD THING
129	Dependent care assistance programs		17131	substitute DP for spouse OK
132	Certain fringe benefits		17131, 17154	132(h)(2). 132(m). Substitute OK
135	Income from U.S. savings bonds		17151	N/A
138	Medicare Advantage MSA		17131	N/A
143	Mortgage revenue bonds		17143	RTC 17143 says 141-150 doesn't apply

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IRC Sec.	Topic	Conform	R&TC Section	Comments
147	Other requirements private activity bonds		17143	RTC 17143 says 141-150 doesn't apply
151	Allowance of deductions for personal exemptions		17054, 17054.1	N/A. RTC 17054 needs to be modified
152	Dependent defined		17056	Need to look at stepchild of a DP
162	Trade or business expenses		17201, 17202, 1	162(l) and (n) are covered in 17021.7
163	Interest			163(d)(6)(C) ; 163(h)(3). Residence interest. DIFFERENT TREATMENT
164	Taxes			164(b)(5) - not conform. RTC 17222(b) says we don't conform. N/A
165	Losses			165(l)(2) and (5). Substitute DP for spouse OK
166	Bad debts			N/A
167	Depreciation			N/A
168	Accelerated cost recovery system			N/A
170	Charitable, etc., contributions and gifts			170(b)(1)(E)(ii) NEED TO REVISIT
172	Net operating loss deduction			N/A
178	Amortization of cost of acquiring a lease			N/A
179	Election expense depreciable business assets			179(b)(4). Substitute DP for spouse OK. NOT A GOOD THING
183	Activities not engaged in for profit			N/A
194	Treatment of reforestation expenditures			Dollar limitation separate. Substitute
197	Amortization of goodwill			N/A
212	Expenses for production of income			N/A
213	Medical, dental, etc., expenses			213(a) already covered 17021.7
215	Alimony, etc., payments		17302	Follows IRC 71
217	Moving expenses			substitute DP for spouse OK
219	Retirement savings			219(c) special rules for married individuals. Application of federal rules will prohibit eligibility for CA. PROBLEM AREA TO REVISIT
220	Archer MSAs			Application of federal rules will prohibit eligibility for CA PROBLEM AREA TO REVISIT
221	Interest on education loans			221(d)(1)(a). Modify to substitute DP for spouse OK
222	Qualified tuition and related expenses		17204.7	CA doesn't apply. N/A
223	Health savings accounts			CA doesn't apply. N/A
262	Personal, living, and family expenses			N/A
263	Capital expenditures			N/A
263A	Capitalization and inclusion in inventory costs			263A(e)(2)(c) okay to modify
264	Certain amounts paid with insurance contracts			264(f)(4)(A). Modify
265	Expenses/interest related to tax-exempt income			N/A
267	Losses/expenses/interest transactions btwn related tps			substitute DP for spouse OK
268	Sale of land with unharvested crop			N/A
273	Holders of life or terminable interest			N/A
274	Disallowance of certain entertainment, etc., expenses			274(b)(2). Substitute DP for spouse OK
Subchapter C. Corporate Distributions and Adjustments (IRC Secs. 301 - 386)				
301	Distributions of property			N/A
302	Distributions in redemption of stock			N/A
303	Distributions in redemption of stock to pay death taxes			303(b)(9B). Substitute DP
304	Redemption through use of related corporations			N/A
305	Distributions of stock and stock rights			N/A
311	Taxability of corporation on distribution			N/A
316	Dividend defined			N/A
318	Constructive ownership of stock			318(1)(A)(l) members of family. PROBLEM AREA TO REVISIT. NON-BENEFIT?
336	Gain or loss recognized on property			N/A
356	Receipt of additional consideration			N/A
382	Limitation on net operating loss carryforwards			382(l)(3)(B) N/A
Subchapter D. Deferred Compensation, Etc. (IRC Secs. 401 - 424)				
401	Qualified pension, profit-sharing, and stock bonus plans			401(a)(9)(b)(iv). Application of federal rules will prohibit eligibility for CA AREA TO REVISIT 401 - 420 are qualified plans
402	Taxability of beneficiary of employees' trust			402(c)(9) See 401

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IRC Sec.	Topic	Conform	R&TC Section	Comments
403	Taxation of employee annuities			N/A
404	Deduction contributions to employees' trust/annuity plan			404(b)(2). Federal rules
408	Individual retirement accounts			408(c)(2). 408(d)(6) 408(e)(2) Federal rules EXEMPTION ISSUE via prohibited transaction with member or DP is member of family.. REVISIT FOR TERMS
408A	Roth IRAs			408A(c)(3). Federal rules
409	Qualifications for tax credit employee stock option plans			409(o) REVISIT FOR TERMS
409A	Inclusion in gross income of deferred compensation			409A(a)(2)(B)
414	Definitions and special rules			414(p) Qualified domestic relations order. Federal difference
415	Limitations on benefits/contributions qualified plans			415(l)(2)(b). Federal difference to prevent benefit
417	Definitions/rules for minimum survivor annuity			417(a)(2); Federal difference to prevent benefit
420	Transfers excess pension assets to retiree health accounts			420(e)(1)(c)(ii). Should have been in 17021.7? Federal difference to prevent benefit
421	General rules			N/A
424	Definitions and special rules			424(c)(4), 424(d). Federal result probably controls
Subchapter E. Accounting Periods and Methods of Accounting (IRC Secs. 441 - 483)				
443	Returns for a period of less than 12 months			N/A
446	General rule for methods of accounting			N/A
447	Method of accounting for corporations engaged in farming			447(e) members of the same family
451	General rule for taxable year of inclusion			N/A
453	Installment method			453(l)(2)(B)(ii) Dealer disposition. Substitute spouse for DP
453B	Gain or loss on disposition of installment obligations			453B(g) Transfers between spouses. Different result between fed and CA. REVISIT
457	Deferred compensation plans			N/A
464	Limitations on deductions for certain farming			464(c)(2)(E) Substitute
469	Passive activity losses and credits limited			469(l) \$25,000 offset. Filing difference. Substantive also - substitute
483	Interest on certain deferred payments			N/A
Subchapter F. Exempt Organizations (IRC Secs. 501 - 530)				
501	Exemption from tax on corporations, certain trusts, etc.		17631, 17632	501(c)(19). Trusts. 23701(w). Substitute. VERIFY/SEARCH TERMS
507	Termination of private foundation status			507(d)(2)(B)(iii) Substitute
529	Qualified tuition programs			529(e)(2) Substitute
530	Coverdell education savings accounts			RTC 23712. 530(c)(1)(B) Substitute
537	Reasonable needs of the business			N/A
Subchapter G. Corporations Used to Avoid Income Tax on Shareholders (IRC Secs. 531 - 565)				
544	Rules for determining stock ownership			544(a)(2) substitute
Subchapter H. Banking Institutions (IRC Secs. 581 - 601)				
Subchapter I. Natural Resources (IRC Secs. 611 - 638)				
611	Allowance of deduction for depletion			N/A
612	Basis for cost depletion			N/A
613A	Limitations on percentage depletion		24831, 24831.6	N/A 613A(c)(8)(D)(ii) and (ii) substitute
Subchapter J. Estates, Trusts, Beneficiaries, and Decedents (IRC Secs. 641 - 692)				
641	Imposition of tax			N/A
642	Special rules for credits and deductions			N/A
643	Definitions applicable to subparts			643(l)(2)(B)(l) substitute
661	Deduction for estate and trust			N/A
662	Inclusion of amounts in gross income of beneficiaries			N/A
664	Charitable remainder trusts			N/A
665	Definitions applicable to subpart D			N/A

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IRC Sec.	Topic	Conform	R&TC Section	Comments
671	Trust income, deductions, and credits			N/A
672	Definitions and rules			672(c)(1); 672(e)
673	Reversionary interests			Check on lineal descendent definition
674	Power to control beneficial enjoyment			674(c).
675	Administrative powers			675(3)
676	Power to revoke			N/A
677	Income for benefit of grantor			677(a), (b) substitute
678	Person other than grantor treated as substantial owner			N/A
682	Income of an estate or trust in case of divorce, etc.			682 (a) and (b) substitute
691	Recepients of income in respect of decedents			N/A
692	Income taxes of members of Armed Forces, etc.			N/A
Subchapter K. Partners and Partnerships (IRC Secs. 701 - 775)				
701	Partners, not partnership, subject to tax			N/A
702	Income and credits of partner			N/A
704	Partner's distributive share			704(e)(3) substitute
708	Continuation of partnership			N/A
732	Basis of discribed property other than money			N/A
735	Character of gain or loss on disposition			N/A
736	Payments to a retiring partner			N/A
743	Special rules where section 754 election			N/A
754	Manner of election optional adjustment to basis			N/A
761	Terms defined			N/A
775	Electing large partnership defined			775(b)(2)(C).
Subchapter L. Insurance Companies (IRC Secs. 801 - 848)				
Subchapter M. Regulated Investment Companies and REITS (IRC Secs. 851 - 860)				
Subchapter N. Tax Based on Income from Sources Within or Without the U.S. (IRC Secs. 861 - 999)				
871	Tax on nonresident alien individuals			N/A
877	Expatriation to avoid tax			N/A
879	Tax treatment of certain community income			N/A
904	Limitation on credit			N/A
911	Citizens or residents of the U.S. living abroad			N/A
932	Coordiation of U.S. and Virgin Islands income taxes			N/A
Subchapter O. Gain or Loss on Disposition of Property (IRC Secs. 1001 - 1111)				
1001	Determination of amount of and recognition of gain or loss			N/A
1012	Basis of property - cost			N/A
1014	Basis of property acquired from a decedent			1014(b)(6) substitute
1015	Basis of property acquired by gifts		18031	1015(d)(3) and (e) substitute. Don't appear to conform? 17024.5
1016	Adjustments to basis			N/A
1022	Treatment of property acquired from a decedent			RTC 18036.6 says 1022 doesn't apply
1031	Exchange of property held for productive use			1031(f)(3) refers to 267(b). N/A
1041	Transfers of property between spouses or incident to divorce			substitute
1043	Sale of property to comply with conflict-of-interest			1043(b)(1)(B) substitute
1044	Rollover of publicly traded securities gain			1044(b)(3) Filing issue
1091	Loss from wash sales of stock or securities			N/A
1092	Straddles			1092(d)(4) substitute
Subchapter P. Capital Gains and Losses (IRC Secs. 1201 - 1298)				
1201	Alternative tax for corporations			N/A

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IRC Sec.	Topic	Conform	R&TC Section	Comments
1202	Partial exclusion for gain from certain small business stock			1202(b)(3) substitute
1211	Limitation on capital losses			1211(b)(1) filing
1212	Capital loss carrybacks and carryovers			N/A
1221	Capital asset defined			N/A
1231	Property used in the trade or business			N/A
1233	Gains and losses from short sales			1233(e)(2)(3) substitute
1235	Sale or exchange of patents			1235(d)(2) substitute
1237	Real property subdivided for sale			N/A
1239	Gain from sale of depreciable property			1239(b)(2) substitute
1244	Losses on small business stock			1244(b)(2) filing issue
1250	Gain from certain sales or exchanges			N/A
1256	Section 1256 contracts marked to market			1256(e)(3)(C)(ii) substitute
1272	Current inclusion in income of original issue discount			1272(a)(2)(E)(iii) substitute
1274	Determination of issue price			N/A
Subchapter Q. Readjustment of Tax Between Years and Special Limitations (IRC Secs. 1301 - 1351)				
1311	Correction of error			N/A
1313	Definitions			N/A
1314	Amount and method of adjustment			N/A
1341	Computation of tax where taxpayer restores claim of right		17049	N/A
Subchapter R. Election to Determine Corporate Tax on International Activities (IRC Secs. 1352 - 1359)				
Subchapter S. Tax Treatment of S Corporations (IRC Secs. 1361 -				
1361	S corporation defined			1361(c) Federal rules will control
1362	Election;revocation;termination			N/A
1366	Pass-thru of items to shareholders			1366(d)(2)(B) substitute
Subchapter T. Cooperatives and Their Patrons (IRC Secs. 1381 -				
Subchapter U. Designation and Treatment of Empowerment Zones, Etc. (IRC Secs. 1391 - 1397)				
Subchapter V. Title 11 Cases (IRC Secs. 1398 - 1399)				
1398	Rules relating to individuals title 11 cases			N/A
Subchapter W. District of Columbia Enterprise Zone (IRC Secs. 1400 - 1400C)				
1400C	First-time homebuyer credit for D.C.			N/A
Subchapter X. Renewal Communities (IRC Secs. 1400 E - 1400J)				
Subchapter Y. New York Liberty Zone Benefits (IRC Sec. 1400L)				
1400S	Additional tax relief provisions			N/A
Chapter 2. Tax on Self-Employment Income (IRC Secs. 1401 -				
1401	Rate of tax			N/A
1402	Definitions			N/A
Chapter 3. Withholding of Tax on Nonresident Aliens and Foreign Corporations (IRC Secs. 1441 - 1465)				
1441	Withholding of tax on nonresident aliens			N/A
Chapter 4. Repealed (IRC Secs. 1471 - 1482)				
Chapter 5. Repealed (IRC Secs. 1491 - 1494)				

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Chapter 6. Consolidated Returns (IRC Secs. 1501 - 1564)	IRC Sec.	Topic	Conform	R&TC Section	Comments
	1551	Disallowance of the benefits of graduated corporate rates			N/A
SUBTITLE B - ESTATE AND GIFT TAXES (IRC SECS. 2001 - 2704)	1563	Definitions and special rules			N/A
SUBTITLE C - EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX (IRC SECS. 3101 - 3510)	3121	Definitions			N/A - CHECK UI CODE
	3201	Rate of tax			N/A
	3231	Definitions			N/A
	3306	Definitions			N/A
	3401	Definitions			N/A
	3402	Income tax collected at source			N/A
	3405	Special rules for pensions, etc.			N/A
	3507	Advance payment of earned income credit			N/A
SUBTITLE D - MISCELLANEOUS EXCISE TAXES (IRC SECS. 4001 -					
SUBTITLE E - ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES (IRC SECS. 5001 - 5891)					
SUBTITLE F - PROCEDURE AND ADMINISTRATION (IRC SECS. 6001 - 7874)					
	6001	Notice or regulations requiring records			N/A
	6012	Persons required to make returns of income			Filing issue
	6013	Joint returns of income tax by husband and wife			Amended. See RTC 18521 as amended by SB
	6014	Income tax return - tax not computed by taxpayer			N/A
	6015	Relief from joint and several liability on joint return			OK as is. No issue
	6017	Self-employment tax returns			N/A
	6018	Returns relating to large transfers at death			N/A
	6019	Gift tax returns			N/A
	6020	Returns prepared for or executed by Secretary		18631	N/A
	6039C	Returns with respect to foreign persons			6039C(c)(3)(B) substitute
	6045	Returns of brokers			N/A
	6046	Returns as to organizations of foreign corporations			6046(c) substitute
	6051	Receipts for employees			N/A
	6058	Information required deferred compensation			N/A
	6061	Signing of returns and other documents			N/A
	6065	Verification of returns		18606	N/A
	6072	Time for filing income tax returns			N/A
	6081	Extension of time for filing returns			N/A
	6096	Designation by individual			N/A
	6103	Confidentiality and disclosure of returns		19542	N/A
	6109	Identifying numbers		18624	N/A
	6159	Agreements for payment of tax liability in installments			N/A
	6166	Extension of time for payment			N/A
	6203	Method of assessment			N/A
	6211	Definition of a deficiency		19403	N/A
	6212	Notice of deficiency		19043	N/A
	6213	Restrictions applicable to deficiencies; petition to Tax Court			N/A
	6214	Determination by Tax Court			N/A
	6221	Tax treatment determined at partnership level			N/A
	6223	Notice to partners of proceedings			N/A

IRC CODE SEARCH RESULTS
JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE

IRC Sec.	Topic	Conform	R&TC Section	Comments
6224	Participation in administrative proceedings			N/A
6230	Additional administrative provisions			N/A
6231	Definitions and special rules			N/A
6303	Notice and demand for tax			N/A
6321	Lien for taxes			N/A
6322	Period of lien			N/A
6323	Validity and priority against certain persons			N/A
6324	Special liens for estate and gift taxes			N/A
6330	Notice and opportunity for hearing before levy			N/A
6331	Levy and distraint		19231, 19236	N/A
6334	Property exempt from levy			N/A
6335	Sale of seized property		19301	N/A
6342	Application of proceeds of levy			N/A
6402	Authority to make credits or refunds		19301	N/A
6404	Abatements		19431, 19104	N/A
6428	Acceleration of 10 percent income tax bracket			N/A
6429	Advance payment of portion of increased child credit			N/A
6501	Limitations on assessment and collection		19057, 19058	N/A
6503	Suspension of running of period of limitation			N/A
6504	Cross references			6504(3) N/A
6511	Limitations on credit or refund			N/A
6512	Limitations in case of petition to Tax Court			N/A
6532	Period of limitation on suit			N/A
6601	Interest on underpayment, etc. of tax		19101	N/A
6611	Interest on overpayments		19340	N/A
6651	Failure to file tax return or to pay tax		19131, 19132	N/A
6653	Failure to pay stamp tax			N/A
6654	Failure by individual to pay estimated income tax		19136	6654(d)(1)(C) substitute
6655	Failure by corporation to pay estimated income tax		19026	N/A
6662	Imposition of accuracy-related penalty			N/A
6663	Imposition of fraud penalty		19164	6663(c) substitute
6664	Definitions and special rules			N/A
6672	Failure to collect and pay over tax			N/A
6673	Sanctions and costs awarded by courts		19714	N/A
6694	Understatement of taxpayer's liability			N/A
6871	Claims for income, estate, gift and certain excise taxes			N/A
6901	Transferred assets			N/A
6902	Provisions of special application to transferees			N/A
6903	Notice of fiduciary relationship			N/A
7121	Closing agreements			N/A
7122	Compromises			N/A
7201	Attempt to evade or defeat tax			N/A
7203	Willful failure to file return, etc.			N/A
7205	Fraudulent withholding exemption certificate			N/A
7206	Fraud and false statements			N/A
7207	Fraudulent returns, statements, or other documents			N/A
7213	Unauthorized disclosure of information			N/A
7301	Property subject to tax			N/A
7401	Authorization			N/A
7402	Jurisdiction of district courts			N/A
7403	Action to enforce lien			N/A
7405	Action for recovery of erroneous refunds			N/A
7421	Prohibition of suite to restrain assessment			N/A
7422	Civil action for refund			N/A

IRC CODE SEARCH RESULTS
JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE

IRC Sec.	Topic	Conform	R&TC Section	Comments
7426	Civil actions by persons other than taxpayers			N/A
7428	Declaratory judgments			N/A
7429	Review of jeopardy levy or assessment proceedings			N/A
7430	Awarding of costs and certain fees			N/A
7431	Civil damages for unauthorized inspection			N/A
7432	Civil damages for failure to release lien			N/A
7433	Civil damages for certain collection actions			N/A
7441	Status			N/A
7442	Jurisdiction			N/A
7448	Annuities to surviving spouses			N/A
7454	Burden of proof in fraud			N/A
7459	Reports and decisions			N/A
7463	Disputes involving \$50,000 or less			N/A
7482	Courts of review			N/A
7491	Burden of proof			N/A
7502	Timely mailing treated as timely filing and paying			N/A
7508	Time for performing certain acts		18570, 18571	7508(f)(1) substitute
7602	Examination of books and witnesses		19504	N/A
7604	Enforcement of summons			N/A
7609	Special procedures for third-party summonses		19064	N/A
7654	Coordination of U.S. and certain possession taxes			N/A
7701	Definitions			7701(a)(17), (a)(38) substitute
7702B	Treatment of qualified long-term care insurance		17020.6	N/A
7703	Determination of marital status		17021.5	substitute multiple
7801	Authority of Department of the Treasury			N/A
7803	Commissioner of Internal Revenue; other officials			N/A
7851	Applicability of revenue laws		17026	N/A
7871	Indian tribal governments treated as states			N/A
7872	Treatment of loans with below-market interest rates		18180	7872(f)(7) substitute
7873	Income derived by Indians from exercise of fishing rights			N/A

SUBTITLE G - THE JOINT COMMITTEE ON TAXATION (IRC SECS. 8001 - 8023)

SUBTITLE H - FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS (IRC SECS. 9001 - 9042)

SUBTITLE I - TRUST FUND CODE (IRC SECS. 9500 - 9602)

SUBTITLE J - COAL INDUSTRY HEALTH BENEFITS (IRC SECS. 9701 - 9722)

SUBTITLE K - GROUP HEALTH PLAN PORTABILITY, ETC. (IRC SECS. 9801 - 9833)

9801	Increased portability through limitation on preexisting condition			N/A
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IRC CODE SEARCH RESULTS
JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE

IRC Sec.	Topic	Conform	R&TC Section	Comments
1	Tax Imposed		17041(g), 17048	N/A, but for 17041(g) definition of parent
2	Definitions and special rules		17046, 17142.5	substitute DP for spouse ok
21	Expenses for household/dependent care services		17052.6	Sec 21 ok to substitute term DP for spouse
22	Credit for the elderly/permanently/totally disabled			N/A
23	Adoption expenses		17052.25	Sec 23 N/A (R&TC 17052.25 stand-alone)
24	Child tax credit			N/A
25A	Hope and Lifetime Learning Credits			N/A
25B	Elective deferrals and IRA contributions			N/A
31	Tax withheld on wages		19002	N/A
32	Earned income			N/A
35	Health insurance costs of eligible individuals			N/A
38	General business credit			N/A
42	Low-income housing credit		17057.5, 17058	42(l)(iii)(D)(ii)(II) married student housing. Application of federal rules will prevent eligibility for DPs.
45A	Indian employment credit			N/A
47	Rehabilitation credit			N/A
48	Energy credit		17053.84	IRC 48 N/A for CA
50	Other special rules			N/A
52	Special rules		17053.7	N/A
55	Alternative minimum tax imposed		17062,17062.3, 17062.5	substitute DP for spouse ok in IRC 55. Address issues in RTC 17062
Subchapter B. Computation of Taxable Income (IRC Sec. 61 - 291)				
62	Adjusted gross income defined		17072	substitute DP for spouse ok 62(b)(3)
63	Taxable income defined		17073,17073.5, 17301-17304	Modify IRC 63 for DP
66	Treatment of community income		18534	N/A for IRC 66. Stand alone RTC
68	Overall limitation on itemized deductions		17077	Yes, but numbers different in 17077
71	Alimony and separate maintenance payments		17081	Modify IRC 71 for DP
72	Annuities; certain proceeds of endowment		17081, 17085, 17085.7, 17087	72(e)(4)(C)(ii); 72(t)(8)(i) - first time homebuyer difference possible penalty under CA law. NEED TO REVISIT THIS SECTION
85	Unemployment compensation		17081, 17083	N/A
86	Social security and tier 1 RR retirement benefits		17081, 17087	N/A
101	Certain death benefits		17131	substitute DP for spouse ok
102	Gifts and inheritances		17131	N/A
103	Interest on State and local bonds		17131, 17133, 17143	N/A
104	Compensation for injuries or sickness		17131, 17132.7	N/A
105	Amounts received under accident/health plans		17087, 17131	IRC 105(b). Already covered 17021.7
106	Contributions by employer to accident/health plans		17131, 17131.4	Already covered 17021.7
108	Income from discharge of indebtedness			substitute DP for spouse OK
112	Certain combat zone compensation		17131, 17142.5	N/A
119	Meals/lodging for convenience of employer		17131	substitute DP for spouse OK
120	Amounts received qualified group legal plans		17131	substitute DP for spouse OK
121	Exclusion of gain from sale of principal residence		17131, 17152	substitute DP for spouse OK
125	Cafeteria plans		17131, 17131.5	125(e)(l)(D). Substitute DP for spouse OK. Could be highly compensated for CA and not federal MAY NEED TO REVISIT
127	Educational assistance programs		17131, 17151	127(b)(3); 17171(b)(2)(B) conforms. Substitute DP for spouse OK in both. NOT A GOOD THING
129	Dependent care assistance programs		17131	substitute DP for spouse OK
132	Certain fringe benefits		17131, 17154	132(h)(2). 132(m). Substitute OK
135	Income from U.S. savings bonds		17151	N/A
138	Medicare Advantage MSA		17131	N/A

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IRC Sec.	Topic	Conform	R&TC Section	Comments
143	Mortgage revenue bonds		17143	RTC 17143 says 141-150 doesn't apply
147	Other requirements private activity bonds		17143	RTC 17143 says 141-150 doesn't apply
151	Allowance of deductions for personal exemptions		17054, 17054.1	N/A. RTC 17054 needs to modified
152	Dependent defined		17056	Need to look at stepchild of a DP
162	Trade or business expenses		17201, 17202, 1	162(l) and (n) are covered in 17021.7
163	Interest			163(d)(6)(C) ; 163(h)(3). Residence interest. DIFFERENT TREATMENT
164	Taxes			164(b)(5) - not conform. RTC 17222(b) says we don't conform. N/A
165	Losses			165(l)(2) and (5). Substitute DP for spouse OK
166	Bad debts			N/A
167	Depreciation			N/A
168	Accelerated cost recovery system			N/A
170	Charitable, etc., contributions and gifts			170(b)(1)(E)(ii) NEED TO REVISIT
172	Net operating loss deduction			N/A
178	Amorization of cost of acquiring a lease			N/A
179	Election expense depreciable business assets			179(b)(4). Substitute DP for spouse OK. NOT A GOOD THING
183	Activities not engaged in for profit			N/A
194	Treatment of reforestation expenditures			Dollar limitation separate. Substitute
197	Amortization of goodwill			N/A
212	Expenses for production of income			N/A
213	Medical, dental, etc., expenses			213(a) already covered 17021.7
215	Alimony, etc., payments		17302	Follows IRC 71
217	Moving expenses			substitute DP for spouse OK
219	Retirement savings			219(c) special rules for married individuals. Application of federal rules will prohibit eligibility for CA. PROBLEM AREA TO REVISIT
220	Archer MSAs			Application of federal rules will prohibit eligibility for CA PROBLEM AREA TO REVISIT
221	Interest on education loans			221(d)(1)(a). Modify to substitute DP for spouse OK
222	Qualified tuition and related expenses		17204.7	CA doesn't apply. N/A
223	Health savings accounts			CA doesn't apply. N/A
262	Personal, living, and family expenses			N/A
263	Capital expenditures			N/A
263A	Capitalization and inclusion in inventory costs			263A(e)(2)(c) okay to modify
264	Certain amounts paid with insurance contracts			264(f)(4)(A). Modify
265	Expenses/interest related to tax-exempt income			N/A
267	Losses/expenses/interest transactions btwn related tps			substitute DP for spouse OK
268	Sale of land with unharvested crop			N/A
273	Holders of life or terminable interest			N/A
274	Disallowance of certain entertainment, etc., expenses			274(b)(2). Substitute DP for spouse OK
Subchapter C. Corporate Distributions and Adjustments (IRC Secs. 301 - 386)				
301	Distributions of property			N/A
302	Distributions in redemption of stock			N/A
303	Distributions in redemption of stock to pay death taxes			303(b)(9B). Substitute DP
304	Redemption through use of related corporations			N/A
305	Distributions of stock and stock rights			N/A
311	Taxability of corporation on distribution			N/A
316	Dividend defined			N/A
318	Constructive ownership of stock			318(1)(A)(l) members of family. PROBLEM AREA TO REVISIT. NON-BENEFIT?
336	Gain or loss recognized on property			N/A
356	Receipt of additional consideration			N/A
382	Limitation on net operating loss carryforwards			382(l)(3)(B) N/A

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IRC Sec.	Topic	Conform	R&TC Section	Comments
Subchapter D. Deferred Compensation, Etc. (IRC Secs. 401 - 424)				
401	Qualified pension, profit-sharing, and stock bonus plans			401(a)(9)(b)(iv). Application of federal rules will prohibit eligibility for CA AREA TO REVISIT 401 - 420 are qualified plans
402	Taxability of beneficiary of employees' trust			402(c)(9) See 401
403	Taxation of employee annuities			N/A
404	Deduction contributions to employees' trust/annuity plan			404(b)(2). Federal rules
408	Individual retirement accounts			408(c)(2). 408(d)(6) 408(e)(2) Federal rules EXEMPTION ISSUE via prohibited transaction with member or DP is member of family.. REVISIT FOR TERMS
408A	Roth IRAs			408A(c)(3). Federal rules
409	Qualifications for tax credit employee stock option plans			409(o) REVISIT FOR TERMS
409A	Inclusion in gross income of deferred compensation			409A(a)(2)(B)
414	Definitions and special rules			414(p) Qualified domestic relations order. Federal difference
415	Limitations on benefits/contributions qualified plans			415(l)(2)(b). Federal difference to prevent benefit
417	Definitions/rules for minimum survivor annuity			417(a)(2); Federal difference to prevent benefit
420	Transfers excess pension assets to retiree health accounts			420(e)(1)(c)(ii). Should have been in 17021.7? Federal difference to prevent benefit
421	General rules			N/A
424	Definitions and special rules			424(c)(4), 424(d). Federal result probably controls
Subchapter E. Accounting Periods and Methods of Accounting (IRC Secs. 441 - 483)				
443	Returns for a period of less than 12 months			N/A
446	General rule for methods of accounting			N/A
447	Method of accounting for corporations engaged in farming			447(e) members of the same family
451	General rule for taxable year of inclusion			N/A
453	Installment method			453(l)(2)(B)(ii) Dealer disposition. Substitute spouse for DP
453B	Gain or loss on disposition of installment obligations			453B(g) Transfers between spouses. Different result between fed and CA. REVISIT
457	Deferred compensation plans			N/A
464	Limitations on deductions for certain farming			464(c)(2)(E) Substitute
469	Passive activity losses and credits limited			469(l) \$25,000 offset. Filing difference. Substantive also - substitute
483	Interest on certain deferred payments			N/A
Subchapter F. Exempt Organizations (IRC Secs. 501 - 530)				
501	Exemption from tax on corporations, certain trusts, etc.		17631, 17632	501(c)(19). Trusts. 23701(w). Substitute. VERIFY/SEARCH TERMS
507	Termination of private foundation status			507(d)(2)(B)(iii) Substitute
529	Qualified tuition programs			529(e)(2) Substitute
530	Coverdell education savings accounts			RTC 23712. 530(c)(1)(B) Substitute
537	Reasonable needs of the business			N/A
Subchapter G. Corporations Used to Avoid Income Tax on Shareholders (IRC Secs. 531 - 565)				
544	Rules for determining stock ownership			544(a)(2) substitute
Subchapter H. Banking Institutions (IRC Secs. 581 - 601)				
Subchapter I. Natural Resources (IRC Secs. 611 - 638)				
611	Allowance of deduction for depletion			N/A
612	Basis for cost depletion			N/A
613A	Limitations on percentage depletion		24831, 24831.6	N/A 613A(c)(8)(D)(ii) and (ii) substitute

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IRC Sec.	Topic	Conform	R&TC Section	Comments
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IRC Sec.	Topic	Conform	R&TC Section	Comments
Subchapter J. Estates, Trusts, Beneficiaries, and Decedents (IRC Secs. 641 - 692)				
641	Imposition of tax			N/A
642	Special rules for credits and deductions			N/A
643	Definitions applicable to subparts			643(l)(2)(B)(l) substitute
661	Deduction for estate and trust			N/A
662	Inclusion of amounts in gross income of beneficiaries			N/A
664	Charitable remainder trusts			N/A
665	Definitions applicable to subpart D			N/A
671	Trust income, deductions, and credits			N/A
672	Definitions and rules			672(c)(1); 672(e)
673	Reversionary interests			Check on lineal descendent definition
674	Power to control beneficial enjoyment			674(c).
675	Administrative powers			675(3)
676	Power to revoke			N/A
677	Income for benefit of grantor			677(a), (b) substitute
678	Person other than grantor treated as substantial owner			N/A
682	Income of an estate or trust in case of divorce, etc.			682 (a) and (b) substitute
691	Recipients of income in respect of decedents			N/A
692	Income taxes of members of Armed Forces, etc.			N/A
Subchapter K. Partners and Partnerships (IRC Secs. 701 - 775)				
701	Partners, not partnership, subject to tax			N/A
702	Income and credits of partner			N/A
704	Partner's distributive share			704(e)(3) substitute
708	Continuation of partnership			N/A
732	Basis of disributed property other than money			N/A
735	Character of gain or loss on disposition			N/A
736	Payments to a retiring partner			N/A
743	Special rules where section 754 election			N/A
754	Manner of election optional adjustment to basis			N/A
761	Terms defined			N/A
775	Electing large partnership defined			775(b)(2)(C).
Subchapter L. Insurance Companies (IRC Secs. 801 - 848)				
Subchapter M. Regulated Investment Companies and REITS (IRC Secs. 851 - 860)				
Subchapter N. Tax Based on Income from Sources Within or Without the U.S. (IRC Secs. 861 - 999)				
871	Tax on nonresident alien individuals			N/A
877	Expatriation to avoid tax			N/A
879	Tax treatment of certain community income			N/A
904	Limitation on credit			N/A
911	Citizens or residents of the U.S. living abroad			N/A
932	Coordination of U.S. and Virgin Islands income taxes			N/A

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JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE

IRC Sec.	Topic	Conform	R&TC Section	Comments
Subchapter O. Gain or Loss on Disposition of Property (IRC Secs. 1001 - 1111)				
1001	Determination of amount of and recognition of gain or loss			N/A
1012	Basis of property - cost			N/A
1014	Basis of property acquired from a decedent			1014(b)(6) substitute
1015	Basis of property acquired by gifts		18031	1015(d)(3) and (e) substitute. Don't appear to conform? 17024.5
1016	Adjustments to basis			N/A
1022	Treatment of property acquired from a decedent			RTC 18036.6 says 1022 doesn't apply
1031	Exchange of property held for productive use			1031(f)(3) refers to 267(b). N/A
1041	Transfers of property between spouses or incident to divorce			substitute
1043	Sale of property to comply with conflict-of-interest			1043(b)(1)(B) substitute
1044	Rollover of publicly traded securities gain			1044(b)(3) Filing issue
1091	Loss from wash sales of stock or securities			N/A
1092	Straddles			1092(d)(4) substitute
Subchapter P. Capital Gains and Losses (IRC Secs. 1201 - 1298)				
1201	Alternative tax for corporations			N/A
1202	Partial exclusion for gain from certain small business stock			1202(b)(3) substitute
1211	Limitation on capital losses			1211(b)(1) filing
1212	Capital loss carrybacks and carryovers			N/A
1221	Capital asset defined			N/A
1231	Property used in the trade or business			N/A
1233	Gains and losses from short sales			1233(e)(2)(3) substitute
1235	Sale or exchange of patents			1235(d)(2) substitute
1237	Real property subdivided for sale			N/A
1239	Gain from sale of depreciable property			1239(b)(2) substitute
1244	Losses on small business stock			1244(b)(2) filing issue
1250	Gain from certain sales or exchanges			N/A
1256	Section 1256 contracts marked to market			1256(e)(3)(C)(ii) substitute
1272	Current inclusion in income of original issue discount			1272(a)(2)(E)(iii) substitute
1274	Determination of issue price			N/A
Subchapter Q. Readjustment of Tax Between Years and Special Limitations (IRC Secs. 1301 - 1351)				
1311	Correction of error			N/A
1313	Definitions			N/A
1314	Amount and method of adjustment			N/A
1341	Computation of tax where taxpayer restores claim of right		17049	N/A
Subchapter R. Election to Determine Corporate Tax on International Activities (IRC Secs. 1352 - 1359)				

**IRC CODE SEARCH RESULTS
JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE**

IRC Sec.	Topic	Conform	R&TC Section	Comments
Subchapter S. Tax Treatment of S Corporations (IRC Secs. 1361 - 1379)				
1361	S corporation defined			1361(c) Federal rules will control
1362	Election;revocation;termination			N/A
1366	Pass-thru of items to shareholders			1366(d)(2)(B) substitute
Subchapter T. Cooperatives and Their Patrons (IRC Secs. 1381 - 1388)				
Subchapter U. Designation and Treatment of Empowerment Zones, Etc. (IRC Secs. 1391 - 1397)				
Subchapter V. Title 11 Cases (IRC Secs. 1398 - 1399)				
1398	Rules relating to individuals title 11 cases			N/A
Subchapter W. District of Columbia Enterprise Zone (IRC Secs. 1400 - 1400C)				
1400C	First-time homebuyer credit for D.C.			N/A
Subchapter X. Renewal Communities (IRC Secs. 1400 E - 1400J)				
Subchapter Y. New York Liberty Zone Benefits (IRC Sec. 1400L)				
1400S	Additional tax relief provisions			N/A
Chapter 2. Tax on Self-Employment Income (IRC Secs. 1401 - 1403)				
1401	Rate of tax			N/A
1402	Definitions			N/A
Chapter 3. Withholding of Tax on Nonresident Aliens and Foreign Corporations (IRC Secs. 1441 1465)				
1441	Withholding of tax on nonresident aliens			N/A
Chapter 4. Repealed (IRC Secs. 1471 - 1482)				
Chapter 5. Repealed (IRC Secs. 1491 - 1494)				
Chapter 6. Consolidated Returns (IRC Secs. 1501 - 1564)				
1551	Disallowance of the benefits of graduated corporate rates			N/A
1563	Definitions and special rules			N/A
SUBTITLE B - ESTATE AND GIFT TAXES (IRC SECS. 2001 - 2704)				

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IRC Sec.	Topic	Conform	R&TC Section	Comments
SUBTITLE C - EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX (IRC SECS. 3101 - 3510)				
3121	Definitions			N/A - CHECK UI CODE
3201	Rate of tax			N/A
3231	Definitions			N/A
3306	Definitions			N/A
3401	Definitions			N/A
3402	Income tax collected at source			N/A
3405	Special rules for pensions, etc.			N/A
3507	Advance payment of earned income credit			N/A
SUBTITLE D - MISCELLANEOUS EXCISE TAXES (IRC SECS. 4001 - 5000)				
SUBTITLE E - ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES (IRC SECS. 5001 - 5891)				
SUBTITLE F - PROCEDURE AND ADMINISTRATION (IRC SECS. 6001 - 7874)				
6001	Notice or regulations requiring records			N/A
6012	Persons required to make returns of income			Filing issue
6013	Joint returns of income tax by husband and wife			Amended. See RTC 18521 as amended by SB
6014	Income tax return - tax not computed by taxpayer			N/A
6015	Relief from joint and several liability on joint return			OK as is. No issue
6017	Self-employment tax returns			N/A
6018	Returns relating to large transfers at death			N/A
6019	Gift tax returns			N/A
6020	Returns prepared for or executed by Secretary		18631	N/A
6039C	Returns with respect to foreign persons			6039C(c)(3)(B) substitute
6045	Returns of brokers			N/A
6046	Returns as to organizations of foreign corporations			6046(c) substitute
6051	Receipts for employees			N/A
6058	Information required deferred compensation			N/A
6061	Signing of returns and other documents			N/A
6065	Verification of returns		18606	N/A
6072	Time for filing income tax returns			N/A
6081	Extension of time for filing returns			N/A
6096	Designation by individual			N/A
6103	Confidentiality and disclosure of returns		19542	N/A
6109	Identifying numbers		18624	N/A
6159	Agreements for payment of tax liability in installments			N/A
6166	Extension of time for payment			N/A
6203	Method of assessment			N/A
6211	Definition of a deficiency		19403	N/A
6212	Notice of deficiency		19043	N/A
6213	Restrictions applicable to deficiencies; petition to Tax Court			N/A
6214	Determination by Tax Court			N/A
6221	Tax treatment determined at partnership level			N/A
6223	Notice to partners of proceedings			N/A
6224	Participation in administrative proceedings			N/A
6230	Additional administrative provisions			N/A

IRC CODE SEARCH RESULTS
JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE

IRC Sec.	Topic	Conform	R&TC Section	Comments
6231	Definitions and special rules			N/A
6303	Notice and demand for tax			N/A
6321	Lien for taxes			N/A
6322	Period of lien			N/A
6323	Validity and priority against certain persons			N/A
6324	Special liens for estate and gift taxes			N/A
6330	Notice and opportunity for hearing before levy			N/A
6331	Levy and distraint		19231, 19236	N/A
6334	Property exempt from levy			N/A
6335	Sale of seized property		19301	N/A
6342	Application of proceeds of levy			N/A
6402	Authority to make credits or refunds		19301	N/A
6404	Abatements		19431, 19104	N/A
6428	Acceleration of 10 percent income tax bracket			N/A
6429	Advance payment of portion of increased child credit			N/A
6501	Limitations on assessment and collection		19057, 19058	N/A
6503	Suspension of running of period of limitation			N/A
6504	Cross references			6504(3) N/A
6511	Limitations on credit or refund			N/A
6512	Limitations in case of petition to Tax Court			N/A
6532	Period of limitation on suit			N/A
6601	Interest on underpayment, etc. of tax		19101	N/A
6611	Interest on overpayments		19340	N/A
6651	Failure to file tax return or to pay tax		19131, 19132	N/A
6653	Failure to pay stamp tax			N/A
6654	Failure by individual to pay estimated income tax		19136	6654(d)(1)(C) substitute
6655	Failure by corporation to pay estimated income tax		19026	N/A
6662	Imposition of accuracy-related penalty			N/A
6663	Imposition of fraud penalty		19164	6663(c) substitute
6664	Definitions and special rules			N/A
6672	Failure to collect and pay over tax			N/A
6673	Sanctions and costs awarded by courts		19714	N/A
6694	Understatement of taxpayer's liability			N/A
6871	Claims for income, estate, gift and certain excise taxes			N/A
6901	Transferred assets			N/A
6902	Provisions of special application to transferees			N/A
6903	Notice of fiduciary relationship			N/A
7121	Closing agreements			N/A
7122	Compromises			N/A
7201	Attempt to evade or defeat tax			N/A
7203	Willful failure to file return, etc.			N/A
7205	Fraudulent withholding exemption certificate			N/A
7206	Fraud and false statements			N/A
7207	Fraudulent returns, statements, or other documents			N/A
7213	Unauthorized disclosure of information			N/A
7301	Property subject to tax			N/A
7401	Authorization			N/A
7402	Jurisdiction of district courts			N/A
7403	Action to enforce lien			N/A
7405	Action for recovery of erroneous refunds			N/A
7421	Prohibition of suite to restrain assessment			N/A
7422	Civil action for refund			N/A
7426	Civil actions by persons other than taxpayers			N/A

IRC CODE SEARCH RESULTS
JOINT RETURN, SPOUSE, MARRIED, HUSBAND /S WIFE

IRC Sec.	Topic	Conform	R&TC Section	Comments
7428	Declaratory judgments			N/A
7429	Review of jeopardy levy or assessment proceedings			N/A
7430	Awarding of costs and certain fees			N/A
7431	Civil damages for unauthorized inspection			N/A
7432	Civil damages for failure to release lien			N/A
7433	Civil damages for certain collection actions			N/A
7441	Status			N/A
7442	Jurisdiction			N/A
7448	Annuities to surviving spouses			N/A
7454	Burden of proof in fraud			N/A
7459	Reports and decisions			N/A
7463	Disputes involving \$50,000 or less			N/A
7482	Courts of review			N/A
7491	Burden of proof			N/A
7502	Timely mailing treated as timely filing and paying			N/A
7508	Time for performing certain acts		18570, 18571	7508(f)(1) substitute
7602	Examination of books and witnesses		19504	N/A
7604	Enforcement of summons			N/A
7609	Special procedures for third-party summonses		19064	N/A
7654	Coordination of U.S. and certain possession taxes			N/A
7701	Definitions			7701(a)(17), (a)(38) substitute
7702B	Treatment of qualified long-term care insurance		17020.6	N/A
7703	Determination of marital status		17021.5	substitute multiple
7801	Authority of Department of the Treasury			N/A
7803	Commissioner of Internal Revenue; other officials			N/A
7851	Applicability of revenue laws		17026	N/A
7871	Indian tribal governments treated as states			N/A
7872	Treatment of loans with below-market interest rates		18180	7872(f)(7) substitute
7873	Income derived by Indians from exercise of fishing rights			N/A
SUBTITLE G - THE JOINT COMMITTEE ON TAXATION (IRC SECS. 8001 - 8023)				
SUBTITLE H - FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS (IRC SECS. 9001 - 9042)				
SUBTITLE I - TRUST FUND CODE (IRC SECS. 9500 - 9602)				
SUBTITLE J - COAL INDUSTRY HEALTH BENEFITS (IRC SECS. 9701 - 9722)				
SUBTITLE K - GROUP HEALTH PLAN PORTABILITY, ETC. (IRC SECS. 9801 - 9833)				
9801	Increased portability through limitation on preexisting condition			N/A

BILL NUMBER: SB 105 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Migden

JANUARY 17, 2007

An act to amend Section 18521 of the Revenue and Taxation Code,
relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 105, as introduced, Migden. Taxation.

The Personal Income Tax Law imposes tax on taxable income and provides, among other things, that specified definitions govern the construction of that law. Existing law allows married couples and registered domestic partners to file joint or separate state tax returns, as specified.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 18521 of the Revenue and Taxation Code is amended to read:

18521. (a) (1) Except as otherwise provided in this section, an individual shall use the same filing status that he or she used on his or her federal income tax return filed for the same taxable year.

(2) If the Franchise Tax Board determines that the filing status used on the taxpayer's federal income tax return was incorrect, the

Franchise Tax Board may, ~~under~~ *pursuant to* Section 19033 (relating to deficiency assessments), revise the return to reflect a correct filing status.

(3) If either spouse or domestic partner was a nonresident for any portion of the taxable year, and the couple files a joint federal income tax return, the spouses or domestic partners shall be required to file a joint nonresident return.

(b) In the case of an individual who is not required to file a federal income tax return for the taxable year, that individual may use any filing status on the return required under this part that he or she would be eligible to use on a federal income tax return for the same taxable year if a federal income tax return was required.

(c) Notwithstanding subdivision (a), spouses and registered domestic partners, as described in Section 297 of the Family Code, who are registered as domestic partners as of the close of the taxable year, may file separate returns under this part if either spouse or registered domestic partner was either of the following during the taxable year:

(1) An active member of the Armed Forces or any auxiliary branch thereof.

(2) A nonresident for the entire taxable year who had no income from a California source.

(d) Notwithstanding subdivision (a), registered domestic partners, as described in Section 297 of the Family Code, who are registered as domestic partners as of the close of the taxable year and who are prohibited under federal law from filing a joint federal income tax return, shall either file a joint state income tax return or separate state income tax returns by applying the standards applicable to spouses who file separately pursuant to Section 6013 of the Internal Revenue Code. A separate return filed by a domestic partner of a registered domestic partnership shall be subject to the same conditions and limitations applicable to the separate return of a spouse.

(e) Except for taxpayers described in subdivision (c), for any taxable year with respect to which a joint return has been filed, a separate return shall not be made by either spouse or domestic partner after the period for either to file a separate return has

expired.

(f) No joint return shall be made if the spouses or the domestic partners have different taxable years; except that if their taxable years begin on the same day and end on different days because of the death of either or both, then a joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries or the surviving domestic partner enters into a new domestic partnership before the close of his or her taxable year, or if the taxable year of either spouse or domestic partner is a fractional part of a year under Section 443(a) of the Internal Revenue Code.

(g) In the case of the death of one spouse or domestic partner or both spouses or both domestic partners the joint return with respect to the decedent may be made only by the decedent's executor or administrator; except that, in the case of the death of one spouse or domestic partner, the joint return may be made by the surviving spouse or surviving domestic partner with respect to both that spouse or domestic partner and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse or surviving domestic partner. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse or surviving domestic partner, the executor or administrator may disaffirm the joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse or surviving domestic partner, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his or her separate return.

BILL NUMBER: SB 11 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Migden

DECEMBER 4, 2006

An act to amend Section 297 of the Family Code, and to amend Section 2854 of the Probate Code, relating to domestic partnerships.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, as introduced, Migden. Domestic partnerships.

Existing law provides that 2 unmarried, unrelated adults with a common residence may establish a domestic partnership by filing a declaration with the Secretary of State if both persons are members of the same sex or are over 62 years of age.

This bill would delete that latter same-sex or age eligibility requirement, thereby allowing any 2 persons who meet the other, specified criteria to register as domestic partners. The bill would also make a nonsubstantive, technical, and conforming change to an unrelated provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 297 of the Family Code is amended to read:

297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the

Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

(1) Both persons have a common residence.

(2) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(3) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(4) Both persons are at least 18 years of age.

~~(5) Either of the following:~~

~~(A) Both persons are members of the same sex.~~

~~(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.~~

~~(6)~~

(5) Both persons are capable of consenting to the domestic partnership.

(c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

SEC. 2. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any public conservator or public guardian with regard to his or her official acts in that capacity.

(b) This chapter does not apply to any conservator, guardian, or trustee when the person is related to the conservatee, ward, or trustor by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of ~~subdivision~~ *subdivisions* (a) and

~~paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.~~

(c) This chapter does not apply to any trustee who is serving for the benefit of not more than three people or not more than three families, or a combination of people or families that does not total more than three. The number of trust beneficiaries does not count for the purposes of calculating if a trustee falls within this exclusion. A trust excluded under subdivision (a) or (b) does not count for the purpose of calculating if a trustee falls within this exclusion. For the purposes of this subdivision, family means people who are related by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of ~~subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.~~

(d) This chapter does not apply to any conservator or guardian who is not required to file information with the clerk of the court pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including an attorney licensed to practice law in the State of California who acts as trustee of only attorney client trust accounts, as defined in Section 6211 of the Business and Professions Code.

(e) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

(f) This chapter does not apply to a trustee who is any of the following:

(1) Trust companies, as defined in Section 83.

(2) FDIC-insured institutions, their holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, "affiliate" means any entity that shares an ownership interest with or that is under the common control of, the FDIC-insured institution.

(3) Employees of any entity listed in paragraph (1) or (2) while serving as trustees in the scope of their duties.