



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

Draft

Date Amended:	Enrolled	Bill No:	SB 105
Tax:	Income	Author:	Migden
Related Bills:		Position:	Support

BILL SUMMARY

The bill would, among other things, clarify that a registered domestic partner or former registered domestic partner shall be treated the same as the spouse or former spouse for purposes of applying the Personal Income Tax Law, specified franchise and income tax laws, the Corporation Tax Law, and the Katz-Harris Taxpayer's Bill of Rights Act, except as specified.

ANALYSIS

CURRENT LAW

Under existing state law, registered domestic partners are required to use the same filing status as married persons, and are treated the same as married couples in determining ownership of business interests and stock shares.

Under federal law, there are five different filing status choices for federal income tax purposes: married filing jointly, married filing separately, head of household, single, or qualifying widow(er) with dependent child(ren). However, under federal law, registered domestic partners only have the filing status choices of "single" or "head of household."

PROPOSED LAW

This bill would amend Section 17021.7 of the Personal Income Tax Law to clarify that a domestic partner *shall not* be treated as a spouse in the following circumstances:

- 1) Where the treatment would result in the classification of a business entity that would be different than the classification of that business entity for federal income tax purposes,
- 2) Where the treatment would result in disqualification for federal income tax purposes of a deferred compensation plan that otherwise qualifies under 401(a) of the Internal Revenue Code, and
- 3) Where the treatment would result in a tax-favored account that would not be qualified as a tax-favored account for federal income tax purposes, as specified.

This bill would also amend Section 17024.5 of the Personal Income Tax Law to revise the method of computing registered domestic partners' calculation of their joint federal adjusted gross income.

Additionally, this bill would add Section 19136.13 to the Personal Income Tax Law to prohibit the imposition of the penalty for understating the estimated tax for the 2007 taxable year to the extent that underpayment was created by the provisions of this bill or the provisions of SB 1827 (Ch. 802, Stats. 2006).

The provisions of the bill would become effective immediately.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

BACKGROUND

In 2003, enactment of AB 205 (Goldberg, Ch. 421) extended most of the rights and responsibilities available only to spouses under state law to domestic partners. The bill made changes to various California laws regarding domestic partners, including the creation of community property rights. However, the bill did not amend the laws to enable registered domestic partners to use filing statuses available to spouses for purposes of the state income tax laws.

However, in 2006, SB 1827 (Migden, Ch. 802) was enacted to require registered domestic partners, beginning in the 2007 taxable year, to file either a joint state income tax return, or a separate state income tax return, applying the standards applicable to spouses under federal income tax law (prior to enactment of this bill, state law required registered domestic partners to use the same filing status as that used on the federal income tax return for the same taxable year; therefore, prior to enactment of SB 1827, registered domestic partners only had the filing status choices of "single" or "head of household" for state purposes). In addition, the bill:

- 1) Provided a rule to determine the application of limits based on adjusted gross income for domestic partners by combining the amounts reflected as adjusted gross income on the federal income tax return of each domestic partner.
- 2) Revised provisions of law to treat registered domestic partners as spouses for purposes of filing status as follows: a) If couples are registered as of the close of the taxable year, they may file separate returns if either partner was either an active member of the Armed Forces or any auxiliary branch thereof, or was a nonresident for the entire taxable year who had no income from a California source; b) Domestic partners may not file separate returns for any taxable year where a joint return has already been filed after the original filing period to file a return has expired; c) No joint return can be made if the domestic partners have different taxable years, subject to exception; and d) Extends to registered domestic partners the same rules with respect to filing status that are applicable in the event of the death of one or both spouses.
- 3) Applied the California community property rules to registered domestic partners in the same manner as married couples.

COMMENTS

1. **Sponsor and purpose.** Senator Migden is sponsoring this measure in an effort to clarify and resolve issues relating to SB 1827 (Migden, Ch. 802, Stats. 2006) which enacted the requirement that registered domestic partners use the same filing status as married persons, and to ensure an effective implementation of the enacted law.
2. **There are no current cases pending that would be affected by these provisions.** Since the requirement that registered domestic partners use the same filing status as married persons was enacted in 2006, the first taxable year to which that requirement - as well as the provisions of this bill - would apply is the 2007 taxable year. Therefore, only returns filed in 2008 and beyond would fall under these new provisions.

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3. **What does SB 105 exactly do?** According to the Franchise Tax Board's analysis of this measure, this bill makes it clear that registered domestic partners *will not* be treated as spouses under California income tax law in three specific situations:

Where treatment would result in the classification of a business entity for California purposes differently than for federal purposes. An example is an S corporation that exceeds the 100-owner limit under federal law because registered domestic partners are counted separately under federal law, but does not exceed the limit under state law.

Where treatment would result in the disqualification of a federally qualified deferred compensation plan under the rules established by the Internal Revenue Code.

Where treatment would result in the creation of a California-only tax-favored account (e.g., a qualified tuition program, Coverdell education savings account) that would not be qualified for federal income tax purposes.

Also, the bill would revise current law with respect to how registered domestic partners calculate their joint federal adjusted gross income for state income tax purposes (federal adjusted gross income is used as a basis for various state calculations, including determining the limitation on certain itemized deductions, such as medical expenses and miscellaneous deductions). This bill would specify that registered domestic partners calculate this amount as the amount that would have been computed on a federal tax return if the registered domestic partners would have been allowed to file a joint or separate federal tax return and used the same filing status on the federal return that was used on the California tax return (current law requires that the adjusted gross income be calculated by summing the adjusted gross income reported on the federal tax return of each partner).

Finally, this bill would specify that no penalty would be imposed for any underpayment of tax resulting from the provisions added by this bill or SB 1827.

COST ESTIMATE

To the extent this bill clarifies issues that could have resulted in additional appeals for returns filed for the 2007 taxable year and future years, some insignificant administrative cost savings could occur.

REVENUE ESTIMATE

According to the Franchise Tax Board, the revenue impact for the provisions under SB 105 would be inconsequential.

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