

1 IN THE SENATE

BY HALFORD AND PEARCE

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SENATE JOINT RESOLUTION NO. 8

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTEENTH LEGISLATURE - FIRST SESSION

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Urging a change under the Internal

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Revenue Code in the tax treatment of the

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transfer of real property subject to a

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mortgage that is a recourse loan when

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the indebtedness on the property is

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discharged through foreclosure, repos-

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session, or surrender of the property.

12 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 WHEREAS, under current provisions of the Internal Revenue Code and  
14 pertinent regulations defining "gross income," a voluntary foreclosure,  
15 repossession of real property, or surrender of real property that serves as  
16 collateral for an indebtedness is treated as a disposition similar to the  
17 sale or exchange of real property; and

18 WHEREAS, if real property is transferred through foreclosure or repos-  
19 session to satisfy a debt secured by the property or the property is sur-  
20 rendered, the property owner may realize a gain or loss; and

21 WHEREAS in a foreclosure, repossession, or surrender, the difference  
22 between the mortgage debt discharged and the fair market value of the real  
23 property given up is called "discharge of indebtedness" income; and

24 WHEREAS "discharge of indebtedness" income is taxable to the real  
25 property owner as ordinary income if the loan discharged is a "recourse  
26 loan," in which the owner is personally liable for repayment of the loan,  
27 if the fair market value of the real property foreclosed, repossessed, or  
28 surrendered is less than the amount of the debt discharged, and if the  
29 lending institution forgives payment of the balance of the underlying debt;

1 and

2 WHEREAS many Alaska homeowners have mortgages that are recourse loans;

3 and

4 WHEREAS, having only a small equity in their residences and unable to  
5 make current monthly mortgage payments in a declining economy, a number of  
6 these homeowners have had their residences foreclosed on or repossessed;

7 and

8 WHEREAS, as an alternative to foreclosure or repossession, other  
9 homeowners in similar circumstances have surrendered the mortgaged property  
10 to the lending institution; and

11 WHEREAS, in a substantial number of the loans of these homeowners, the  
12 fair market value of the property foreclosed on, repossessed, or surren-  
13 dered is substantially less than the amount of the indebtedness discharged,  
14 giving rise to a "discharge of indebtedness" income; and

15 WHEREAS, even after these homeowners lose their residences through  
16 foreclosure, repossession, or surrender, the Internal Revenue Code and its  
17 regulations may apply to impose substantial liability for taxation on the  
18 homeowner's discharge of indebtedness income; and

19 WHEREAS the Alaska Legislature believes that the loss of a residence  
20 through foreclosure, repossession, or surrender due to the homeowner's  
21 financial problems in a time of economic uncertainty combined with incur-  
22 rence of tax liability for that loss is inequitable and works a substantial  
23 hardship on these families;

24 BE IT RESOLVED by the Alaska State Legislature that the Congress is  
25 urged to amend the applicable Internal Revenue Code provisions to except  
26 from treatment as income the liability of taxpayers incurring "discharge of  
27 indebtedness" income tax liability under a recourse loan on foreclosed,  
28 repossessed, or surrendered residential property in these circumstances.

29 COPIES of this resolution shall be sent to Lawrence B. Gibbs,

1 Commissioner of the Internal Revenue Service; and to the Honorable Ted  
2 Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable  
3 Don Young, U.S. Representative, members of the Alaska delegation in  
4 Congress.

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