

1 IN THE SENATE

BY HALFORD, PEARCE AND FAIKS

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SENATE JOINT RESOLUTION NO. 8 am

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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:

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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

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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

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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

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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 and business owners have mortgages that
3 are recourse loans; and

4 WHEREAS, having only a small equity in their residences and businesses
5 and unable to make current monthly mortgage payments in a declining econo-
6 my, a number of these homeowners and business owners have had real property
7 that they own and have pledged as collateral foreclosed on or repossessed;
8 and

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

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

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

20 WHEREAS the Alaska Legislature believes that the loss of a residence
21 or business property through foreclosure, repossession, or surrender due to
22 the property owner's financial problems in a time of economic uncertainty
23 combined with incurrence of tax liability for that loss is inequitable and
24 works a substantial hardship on these borrowers and their families;

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

1 COPIES of this resolution shall be sent to Lawrence B. Gibbs, Commis-
2 sioner of the Internal Revenue Service; and to the Honorable Ted Stevens
3 and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don
4 Young, U.S. Representative, members of the Alaska delegation in Congress.

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