MARRIAGE PENALTY TAX

HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 336

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954

S. 1247

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 TO REDUCE THE TAX EFFECT KNOWN AS THE MARRIAGE PENALTY BY PERMITTING THE DEDUCTION, WITHOUT REGARD TO WHETHER DEDUCTIONS ARE ITEMIZED, OF 10 PERCENT OF THE EARNED INCOME OF THE SPOUSE WHOSE EARNED INCOME IS LOWER THAN THAT OF THE OTHER SPOUSE

S. 1877

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 TO REDUCE THE TAX EFFECT KNOWN AS THE MARRIAGE PENALTY BY PERMITTING THE DEDUCTION, WITHOUT REGARD TO WHETHER DEDUCTIONS ARE ITEMIZED, OF 10 PERCENT OF THE EARNED INCOME OF THE SPOUSE WHOSE EARNED INCOME IS LOWER THAN THAT OF THE OTHER SPOUSE

AUGUST 5, 1980

Printed for the use of the Committee on Finance

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MARRIAGE PENALTY TAX

TUESDAY, AUGUST 5, 1980

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 9 a.m., in room 2221 Dirksen Senate Office Building, Hon. Harry F. Byrd, Jr. (chairman of the subcommittee) presiding.

Present: Senators Byrd, Moynihan, Bradley, Packwood, Dole, and Chafee.

[The press release announcing this hearing and the bills S. 336, S.1247, S. 1877, and the Joint Committee on Taxation description of the bills follow:]

P.R. #H-39

P R E S S R E L E A S E

FOR IMMEDIATE RELEASE
July 21, 1980

COMMITTEE ON FINANCE
UNITED STATES SENATE
SUBCOMMITTEE ON TAXATION
AND DEBT MANAGEMENT
2227 DIRKSEN SENATE OFFICE BLDG.

FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARING ON THE INCOME TAX TREATMENT OF MARRIED COUPLES AND SINGLE PERSONS

Senator Harry F. Byrd, Jr., Chairman of the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, announced today that the Subcommittee will hold a hearing on Tuesday, August 5, 1980, on the so-called "marriage penalty tax."

The hearing will begin at 9:00 A.M. in Room 2221 of the Dirksen Senate Office Building.

The Chairman noted that although the hearing will not be limited to particular bills, a number of bills have been introduced. These bills are as follows:

S. 336 -- Introduced by Senator Mathias. Would permit married persons to file single returns and pay tax at the same rate as single persons.

S. 1247 -- Introduced by Senator Gravel. Would permit married couples a deduction of 10% (limited to $2,000) of the earned income of the spouse earning the lesser amount of income.

S. 1877 -- Introduced by Senator Sasser. Would permit married couples a deduction of 20% (limited to $4,000) of the earned income of the spouse earning the lesser amount of income.

Witnesses who desire to testify at the hearing must submit a written request, including a mailing address and phone number, to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D. C. 20510, by no later than the close of business on July 28, 1980.

Consolidated Testimony.--Senator Byrd also stated that the Committee urges all witnesses who have a common position or the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than it might otherwise obtain. The Chairman urges very strongly that all witnesses exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.--Senator Byrd stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) A copy of the statement must be filed by noon the day before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Subcommittee, but are to confine their oral presentations to a summary of the points included in the statement.

Written Statements.--Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D. C. 20510, not later than August 29, 1980.

P.R. #H-39

96TH CONGRESS
1ST SESSION

S. 336

To amend the Internal Revenue Code of 1954.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5 (legislative day, JANUARY 15), 1979

Mr. MATHIAS (for himself, Mr. BAKER, Mr. JAVITS, and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) so much of subsection (c) of section 1 of the Internal Revenue Code of 1954 (relating to tax imposed) as precedes the table is amended to read as follows:

"(c) INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS) AND CERTAIN MARRIED INDIVIDUALS.—There is hereby imposed on the taxable income of—

II—E●

"(1) every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)),

"(2) every married individual (as defined in section 143) who—

"(A) does not make a single return jointly with his spouse under section 6013,

"(B) who elects, at such time and in such manner as the Secretary prescribes, to have this subsection apply, and

"(C) whose spouse elects, at such time and in such manner the Secretary prescribes, to have the provisions of this subsection apply,

a tax determined in accordance with the following table:".

(b) Section 1 of such Code is amended by adding at the end thereof the following new subsection:

"(f) COMMUNITY PROPERTY LAWS.—In the case of a married individual (as defined in section 143) who elects to have the provisions of subsection (c) apply with respect to his taxable income for any taxable year, the computation of such taxable income shall be made without regard to any community property laws.".

(c) Subsection (d) of section 1 of such Code is amended—

(1) by inserting "CERTAIN" before "MARRIED" in the heading thereof, and

(2) by inserting ", or who elects to have the provisions of subsection (c) apply," after "section 6013".

(d) Subsection (d) of section 63 of such Code (relating to the definition of taxable income) is amended—

(1) by inserting ", or who is married and makes an election under section 1(c)" before the comma at the end of paragraph (2), and

(2) by inserting "under section 1(d)" after "return" in paragraph (3).

(e) Clause (i) of section 6012(a)(1)(A) of such Code (relating to persons required to make returns of income) is amended—

(1) by striking out ", is not" and inserting in lieu thereof "and is not", and

(2) by inserting "or who is married (as so determined) and makes an election under section 1(c)," before "and for the taxable year".

SEC. 2. Subsection (c) of section 42 of the Internal Revenue Code of 1954 (relating to general tax credit) is amended by inserting "under subsection (d) of section 1" after "return".

SEC. 3. (a) Section 44A of the Internal Revenue Code of 1954 (relating to expenses for household and dependent care services necessary for gainful employment) is amended—

(1) by inserting ", or a married individual who makes an election under section 1(c) for such year" after "year" the first place it appears in subsection (e)(1)(A),

(2) by inserting "and who has not so elected" after "year" the first place it appears in subsection (e)(1)(B),

(3) by inserting "CERTAIN" before "MARRIED" in the heading of subsection (f)(2), and

(4) by inserting "or make the election provided under section 1(c) for such year" before the period at the end of subsection (f)(2).

(b) Section 152 of such Code (relating to definition of dependent) is amended—

(1) by striking out "or (e)" in subsection (a) and inserting in lieu thereof ", (e), or (f)", and

(2) by adding at the end thereof the following new subsection:

"(f) SUPPORT TEST IN CASE OF CREDIT FOR EMPLOYMENT-RELATED EXPENSES.—In the case of a married individual who makes an election under section 1(c) for the taxable year and who is entitled to claim the credit under section 44A with respect to any person but for the fact that he did not contribute over half of the support of such person, such person shall be treated for purposes of subsection (a) as having received over half of such support from such individual if—

"(1) over half of such support was received from such individual and his spouse;

"(2) the individual contributed over 10 percent of such support; and

"(3) the individual's spouse does not claim such person as a dependent in any taxable year beginning in such calendar year.".

SEC. 4. Section 1348 of the Internal Revenue Code of 1954 (relating to 50 percent maximum rate on personal service income) is amended by inserting "or make the election provided in section 1(c) for such year" before the period at the end of subsection (c).

SEC. 5. The amendments made by this Act apply to taxable years ending after the date of the enactment of this Act.

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96TH CONGRESS
1ST SESSION

S. 1247

To amend the Internal Revenue Code of 1954 to reduce the tax effect known as the marriage penalty by permitting the deduction, without regard to whether deductions are itemized, of 10 percent of the earned income of the spouse whose earned income is lower than that of the other spouse.

IN THE SENATE OF THE UNITED STATES

MAY 24 (legislative day, MAY 21), 1979

Mr. GRAVEL introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1954 to reduce the tax effect known as the marriage penalty by permitting the deduction, without regard to whether deductions are itemized, of 10 percent of the earned income of the spouse whose earned income is lower than that of the other spouse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWANCE OF DEDUCTION.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as 222 and by inserting after section 220 the following new section:

"SEC. 221. DEDUCTION TO REDUCE THE MARRIAGE PENALTY.

"(a) DEDUCTION ALLOWED.—In the case of a married individual who files a joint return for the taxable year with his spouse, there is allowed as a deduction in computing taxable income an amount equal to 10 percent of—

"(1) the earned income of the spouse whose earned income for the taxable year is less than the earned income of the other spouse for the taxable year, or

"(2) if the earned income of each spouse for the taxable year is the same, the earned income of one spouse for the taxable year.

"(b) LIMITATION.—The amount of the deduction allowed by subsection (a) for the taxable year shall not exceed $2,000.

"(c) DETERMINATION OF MARITAL STATUS.—For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

"(d) EARNED INCOME.—For purposes of subsection (a), the term 'earned income' means—

"(1) earned income (as defined in section 911(b)), plus

"(2) the amount of net earnings from self-employment for the taxable year (within the meaning of section 1402(a)).".

(b) DEDUCTION WITHOUT REGARD TO ITEMIZED DEDUCTIONS.—Section 63 of such Code (relating to definition of taxable income) is amended—

(1) by striking out "and" at the end of subparagraph (A) of subsection (b)(1),

(2) by inserting after subparagraph (B) of subsection (b)(1) the following new subparagraph:

"(C) the deduction to reduce the marriage penalty provided by section 221,",

(3) by striking out "and" at the end of paragraph (1) of subsection (f),

(4) by striking out the period at the end of paragraph (2) of subsection (f), and inserting in lieu thereof a comma and the word "and", and

(5) by adding at the end of subsection (f) the following new paragraph:

"(3) the deduction to reduce the marriage penalty provided by section 221.".

(c) CONFORMING AMENDMENT RELATING TO WITHHOLDING.—Subsection (m) of section 3402 of such Code (relating to withholding allowances based on itemized deductions) is amended—

(1) by striking out subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(A) the sum of—

"(i) his estimated itemized deductions, and

"(ii) the deduction allowed by section 221, over", and

(2) by striking out "section 151" in paragraph (2)(A) and inserting in lieu thereof "sections 151 and 221".

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out the last item and inserting in lieu thereof the following new items:

"Sec. 221. Deduction to reduce the marriage penalty.
"Sec. 222. Cross references.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1978.

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96TH CONGRESS
1ST SESSION

S. 1877

To amend the Internal Revenue Code of 1954 to reduce the tax effect known as the marriage penalty by permitting the deduction, without regard to whether deductions are itemized, of 10 percent of the earned income of the spouse whose earned income is lower than that of the other spouse.

IN THE SENATE OF THE UNITED STATES

OCTOBER 11 (legislative day, OCTOBER 4), 1979

Mr. SASSER introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to reduce the tax effect known as the marriage penalty by permitting the deduction, without regard to whether deductions are itemized, of 10 percent of the earned income of the spouse whose earned income is lower than that of the other spouse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWANCE OF DEDUCTION.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as 222 and by inserting after section 220 the following new section:

"SEC. 221. DEDUCTION TO REDUCE THE MARRIAGE PENALTY.

"(a) DEDUCTION ALLOWED.—In the case of a married individual who files a joint return for the taxable year with his spouse, there is allowed as a deduction in computing taxable income an amount equal to 20 percent of—

"(1) the earned income of the spouse whose earned income for the taxable year is less than the earned income of the other spouse for the taxable year, or

"(2) if the earned income of each spouse for the taxable year is the same, the earned income of one spouse for the taxable year.

"(b) LIMITATION.—The amount of the deduction allowed by subsection (a) for the taxable year shall not exceed $4,000.

"(c) DETERMINATION OF MARITAL STATUS.—For purposes of this section, the determination of whether an individual is married shall be made in accordance with the provisions of section 143(a).

"(d) EARNED INCOME.—For purposes of subsection (a), the term 'earned income' means—

"(1) earned income (as defined in section 911(b)), plus

"(2) the amount of net earnings from self-employment for the taxable year (within the meaning of section 1402(a)).".

(b) DEDUCTION WITHOUT REGARD TO ITEMIZED DEDUCTIONS.—Section 63 of such Code (relating to definition of taxable income) is amended—

(1) by striking out "and" at the end of subparagraph (A) of subsection (b)(1),

(2) by inserting after subparagraph (B) of subsection (b)(1) the following new subparagraph:

"(C) the deduction to reduce the marriage penalty provided by section 221,",

(3) by striking out "and" at the end of paragraph (1) of subsection (f),

(4) by striking out the period at the end of paragraph (2) of subsection (f), and inserting in lieu thereof a comma and the word "and", and

(5) by adding at the end of subsection (f) the following new paragraph:

"(3) the deduction to reduce the marriage penalty provided by section 221.".

(c) CONFORMING AMENDMENT RELATING TO WITHHOLDING.—Subsection (m) of section 3402 of such Code (relating to withholding allowances based on itemized deductions) is amended—

(1) by striking out subparagraph (A) of paragraph (1) and inserting in lieu thereof the following:

"(A) the sum of—

"(i) his estimated itemized deductions, and

"(ii) the deduction allowed by section 221, over", and

(2) by striking out "section 151" in paragraph (2)(A) and inserting in lieu thereof "sections 151 and 221".

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking out the last item and inserting in lieu thereof the following new items:

"Sec. 221. Deduction to reduce the marriage penalty.
"Sec. 222. Cross references.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to taxable years beginning after December 31, 1978.

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INTRODUCTION

This pamphlet presents a report by the staff of the Joint Committee on Taxation on the tax treatment of married couples and single persons. The report is in response to the Congressional interest expressed in the subject, such as the public hearings scheduled by the House Committee on Ways and Means for April 2-3, 1980. The Joint Committee staff began reviewing the tax treatment of married and single persons in connection with the Ways and Means Committee Task Force on the Tax Treatment of Single Persons and Married Couples Where Both Spouses Are Working, which met several times during the 94th Congress but did not make any recommendations or publish a report.

The first part of the pamphlet is a summary of the report. This is followed by a detailed discussion of the present treatment of married couples and single persons. The third part of the report gives a history of the federal income tax treatment of the family. Part IV presents a discussion of various tax issues involved, and Part V is an analysis of various proposals that have been made (including current legislative proposals). Finally, an Appendix presents data on trends in labor force participation.

I. SUMMARY

Present Law

The income tax law generally treats a married couple as one tax unit, which must pay tax on its total taxable income. While couples may elect to file separate returns, the tax law is carefully structured so that filing separate returns leads to a tax increase for almost all couples compared to filing a joint return. Different tax rate schedules apply to single persons and to single heads of households (persons who maintain households for certain relatives). Along with other provisions of the law, these rate schedules give rise to a "marriage penalty" or a "divorce bonus" when persons with relatively equal incomes marry or divorce each other.

Except for the policy of discouraging separate filing by married couples, there is little consistency in the way the tax law treats married couples relative to single persons. In some provisions, such as the social security payroll tax and some pension provisions of the income tax, a married couple is treated as two distinct individuals. In some provisions, such as the personal exemption, a couple is given exactly twice the benefit given to a single person. However, in other provisions, such as the $3,000 limit on the deductibility of capital losses against ordinary income, a married couple is given the same benefit as a single person. Still other provisions, such as the zero bracket amount (formerly the standard deduction), give the married couple more than a single person but less than twice as much.

The overall relationship between the tax burdens of married couples and single persons with the same income, and the actual marriage and divorce bonuses or penalties in particular cases, are the result of the combined effect of these varying approaches.

History

Under the initial version of the modern individual income tax, enacted in 1913, married couples were taxed as separate individuals. In 1930, the Supreme Court ruled that State community property laws were to be given effect for income tax purposes, which meant that, in the States with such laws, married couples could equally divide income considered community property, the split which minimizes a couple's combined tax burden in a progressive tax system. After the large increase in tax rates enacted to finance World War II, many States enacted community property laws in order to give their citizens the tax benefit of this income splitting.

To stop this community property epidemic, in 1948 Congress provided that all married couples could enjoy the benefits of income splitting by filing joint returns. Separate filing by married persons was allowed, but the loss of income splitting meant that this almost always led to a tax increase. Single persons were required to use the same rate schedules as married couples and received no special treatment to offset the married couples' benefit from income splitting; therefore, marriage almost always resulted in a tax reduction for married couples and divorce in a tax increase.

In 1951, Congress enacted the head-of-household rate schedule for single persons who maintain households for certain relatives. This provided a "divorce bonus" to married couples with children if they had relatively equal incomes.

In 1969, Congress enacted a special rate schedule for single persons to give them about one-half the benefit of income splitting and adjusted the head-of-household rate schedule to give these taxpayers about three-fourths of the benefit of income splitting. These changes increased the divorce bonus provided by the head-of-household rate schedule and created a "marriage penalty" when single persons with relatively equal incomes married each other.

Issues

The proper tax treatment of married couples and single persons involves judgments about equity, economic efficiency and complexity.

Equity

The first question is what should be the tax unit, the group whose income and deductions are pooled in determining tax liability. Many people believe that the tax system should be "marriage neutral"; that is, a married couple should have the same tax burden as two single persons, each of whom has the same income as one of the spouses. Many people, however, also believe that, because most married couples pool their income and spend as a unit, fairness requires that the tax burden of a married couple not depend on how their combined income is distributed between them. A third widely held proposition is that the tax system should be progressive; that is, as income rises, tax burdens should increase as a percentage of income. Many Americans, if asked, would express agreement with all three of these principles of tax equity: marriage neutrality, equal taxation of couples with equal incomes, and progressivity.

One problem with devising a satisfactory method of taxing married couples is that these three principles of tax equity are logically inconsistent. A tax system generally can have any two of them, but not all three. A progressive tax system that treats the individual, not the couple, as a tax unit preserves marriage neutrality but sacrifices equal taxation of couples with equal incomes because couples with unequal incomes would pay a larger combined tax than couples with relatively equal incomes. The present income tax sacrifices marriage neutrality, but maintains equal taxation of couples with equal incomes and progressivity. A proportional income tax could have both marriage neutrality and equal taxation of couples with equal incomes, but it would sacrifice progressivity (although some limited progressivity could be introduced through refundable per capita tax credits without violating the other two principles). Which of these three principles ought to be sacrificed is a subjective question.

A second equity issue is how the overall tax burden should be distributed between single persons, single heads of households, one-earner married couples and two-earner married couples. This too is essentially a subjective judgment. The enactment of income splitting in 1948 shifted the tax burden away from one-earner married couples and other couples with relatively unequal incomes. The special rate schedules for heads of households and for single persons shifted the burden away from these classes of taxpayers. Recent proposals to reduce the marriage penalty involve shifting the burden away from two-earner couples. Any proposal that shifts the tax burden away from one of these groups means increasing the relative burden on the others.

Efficiency

Considerations of economic efficiency dictate that tax rates be lowest on persons whose work effort would be most responsive to lower taxes. Virtually all statistical studies of the issue conclude that a wife's work effort is more responsive to reduced taxes than her husband's. Therefore, the present system of taxing both spouses' earnings at the same marginal tax rate is economically inefficient compared to a system with lower tax rates on the wife's earnings. (The marginal tax rate is the rate applicable to the next dollar of income.) However, the present system may have countervailing benefits to the extent society gains from uncompensated work performed by wives.

Complexity

Joint returns for married couples are simpler than separate returns. With separate returns, it is necessary to apportion unearned income and deductions between spouses, and there is no entirely satisfactory way of doing this. Attempting to allocate deductions and unearned income in a way that corresponds to how the couple would be taxed as two single persons would be complex and would invite manipulation of unearned income and deductions to achieve *de facto* income splitting and marriage bonuses. However, any arbitrary method of making these allocations could be considered unfair and would create its own marriage bonuses or penalties.

Alternative Proposals

Three basic proposals to change the current system have received most attention in recent years: mandatory separate filing by married couples using the same rate schedule as single persons; optional separate filing by married couples using the same rate schedule as single persons; and retention of the present system with *ad hoc* changes to reduce the marriage penalty, such as a deduction or credit for married couples based on the earnings of the spouse with the lower amount of earnings. Other suggestions, such as letting single persons use the joint return rate schedule, were popular in previous years but have not been prominently mentioned recently.

Mandatory separate filing

Under this proposal, separate filing by married couples would be mandatory or there would be no tax advantage to a joint return. This concept is embodied in H.R. 2553 (sponsored by Rep. McDonald) and

H.R. 108 (sponsored by Rep. Annunzio). If married persons were required to file separately and use the current single person's rate schedule, there would be tax increases for about 60 percent of married couples and tax cuts for the other 40 percent. Because there would be overall tax increase of between $12 and $18 billion, the rate schedule could be reduced below the current single person's rate schedule.

Any system in which separate filing was either mandatory or advantageous for many married couples would raise questions of how income (both earned income and investment income) and itemized deductions should be allocated between spouses. While these issues exist under present law, they are relevant only to the small number of married persons who file separately and are often resolved by penalizing the separate filers. There is no entirely satisfactory way of making these allocations in a system that encourage or mandates separate filing. Whatever method is adopted, however, will greatly affect the revenue impact. Some vestiges of joint filing would probably have to be maintained in provisions with phaseouts based on income; otherwise, low-income taxpayers with high-income spouses would receive tax benefits, such as the earned income credit, which were originally intended only for low-income families.

Mandatory separate filing would firmly resolve the equity question on the side of marriage neutrality, except to the extent that allocation rules for income and deductions created marriage bonuses or penalties or that vestiges of joint filing were retained. There would be a reduction in marginal tax rates on second earners. Also, there would be a shift in the tax burden away from two-earner couples and towards one-earner couples.

Optional separate filing

Under this proposal, separate filing by married couples using the single person's rate schedule would be optional. This concept is embodied in H.R. 3609 (sponsored by Rep. Fenwick), H.R. 5012 (sponsored by Rep. Moore) and S. 336 (sponsored by Sen. Mathias). The same technical issues raised by mandatory separate filing would also apply to optional separate filing, and an additional complexity would result from any tendency of married persons to compute their tax both separately and jointly to make sure they were minimizing their total tax burden.

Optional separate filing using the present single person's rate schedule would involve a tax cut of $7 to $9 billion, depending on how investment income and deductions were allocated between spouses. It would reduce marginal tax rates for second earners for those couples who elected separate filing, but not for others. It would shift the tax burden away from two-earner couples.

This proposal does not conclusively resolve the equity question. Optional separate filing would be characterized neither by marriage neutrality nor by equal taxation of couples with equal incomes. It would, however, eliminate marriage penalties.

Relief for second earners

Another group of proposals involves *ad hoc* relief for two-earner married couples, designed to reduce the marriage penalty and marginal tax rates on second earners while retaining the basic system of joint filing. Such relief could take the form of a deduction or credit equal to a percentage of the earnings of the spouse with the lower amount of earnings. A deduction of 10 percent of the first $10,000 of earnings is contained in H.R. 6203 (sponsored by Rep. Fisher), a deduction of 10 percent of the first $20,000 of earnings in S. 1247 (sponsored by Sen. Gravel) and H.R. 6822 (sponsored by Rep. Conable), and a deduction of 20 percent of the first $20,000 of earnings in S. 1877 (sponsored by Sen. Sasser). In H.R. 6822, the deduction is limited to couples where each spouse contributes at least 20 percent of the combined earned income. A credit of 10 percent of earnings, with a credit of $500, is contained in H.R. 6798 (sponsored by Rep. Patten).

A deduction or credit for second earners is one of the simplest ways to reduce the marriage penalty and the marginal tax rates on second earners. Per dollar of revenue loss, a deduction would be more effective in these respects; however, a credit gives more benefit to lower income couples than a deduction. If either a deduction or credit were adopted, the system would be characterized neither by marriage neutrality nor by equal taxation of couples with equal incomes.

Other proposals

Other proposals for resolving the married-single tax issue have been discussed in previous years, but have not been mentioned as prominently in the current debate. One suggestion is to return to the pre-1969 system by repealing the single person's rate schedule and requiring single persons to use the same rate schedule as married persons filing separate returns. This would eliminate the marriage penalty inherent in the rate schedules. However, it would shift the tax burden from both one- and two-earner married couples to single persons. The opposite proposal also has been discussed; that is, allowing single persons and heads of households to use the joint return rate schedule to reduce alleged discrimination against single persons. This is contained in H.R. 872 (sponsored by Rep. Yates). This proposal often is accompanied by suggestions for larger dependency exemptions and a deduction or credit for second earners.

Another possibility, which has received little attention, would be to reduce the marriage penalty by flattening out the tax rate schedule for single and joint returns. Byt itself, this would reduce progressivity, but there could be a tax credit equal to a flat amount per taxpayer (i.e., twice as much for a joint return as for a single return) to restore much of the progressivity lost by changing the rate schedule.

II. PRESENT LAW

Tax rate schedules and filing status

Rate schedules.—Under present law, there are four separate progressive tax rate schedules, and the particular schedule applicable to a taxpayer depends upon his or her filing status. Taxpayers are taxed at different rates depending upon whether they are single persons, married couples filing jointly, married couples filing separately, or single persons who maintain households for certain relatives (heads of households). The tax rates for married persons filing separately are the same as those for joint returns, but the tax brackets for separate returns are exactly one-half as wide. Thus, a married couple filing a joint return pays the same tax as two married persons filing separate returns, each of whom has one-half of the couple's combined taxable income. This feature of the tax law is known as "income splitting." The rate schedule for single persons lies about midway between the joint and separate return rate schedules (i.e., it gives single persons about half the benefit of income splitting), and the head-of-household rate schedule is about midway between the single person and joint return rate schedules.

The individual income tax applies to taxable income and begins at a marginal rate of 14 percent. There is no tax on the first tax bracket, referred to as the "zero bracket amount" (formerly the standard deduction). The zero bracket amount also is a floor under itemized deductions; that is, taxpayers may claim itemized deductions only to the extent the deductions exceed the applicable zero bracket amount. The zero bracket amount is $3,400 for married taxpayers filing jointly, $2,300 for single persons and heads of households, and $1,700 for married taxpayers filing separately (one-half the amount for married taxpayers who file jointly).

Joint returns.—Use of a joint return by married couples is elective and generally is allowed unless one of the spouses is a nonresident alien or the spouses have different taxable years. A consequence of filing a joint return is joint and several liability, not only for the tax reported, but also for deficiencies, interest and possible civil penalties.

If certain requirements are met, however, an "innocent spouse" may be relieved of liability for tax, including interest and penalties, attributable to an omission of gross income. First, income exceeding 25 percent of the gross income shown on the joint return must have been omitted from the return. The omitted income must be attributable solely to the spouse of the person seeking to avoid liability, and for the purposes of this requirement, attribution of income (except income from property) is determined without reference to community property laws. Second, the spouse seeking to avoid liability must prove that he or she did not, and had no reason to, know of the omitted income. Third, taking into account all the facts and circumstances, it must be inequitable to impose liability on the spouse seeking to avoid liability. In addition, the 50 percent fraud penalty cannot be imposed on a spouse who filed a joint return unless some part of the underpayment is due to the fraud of that spouse.

"Surviving spouses" are treated, for purposes of the tax rates, the same as married couples filing joint returns for the two years following the year of their spouse's death. Surviving spouses are widows or widowers who have not remarried and provide for certain dependents in their home.

Separate returns.—Because of the income splitting advantage of joint returns, the filing of a joint return almost always will result in less tax liability for a married couple than filing separate returns. Congress has adopted a general policy of not making it profitable for a married couple to file separately. Separate filing appears to be done when one spouse is unwilling to disclose income or deductions to the other spouse, when the couple is not in communication, when they cannot physically coordinate pooling the information needed for a joint return or when one spouse does not want to be liable for his or her spouse's tax on unknown or omitted income.

An example of one of the unusual situations in which filing separate returns actually produces a tax saving would be a couple with equal incomes where one spouse has incurred unusually large medical expenses. In this situation, because of the requirement that medical expenses may be deducted only to the extent they exceed 3 percent of adjusted gross income, separate returns (each with half of the couple's income) would produce a larger medical expense deduction and a lower tax liability than a joint return.

In certain situations, married couples are required to file joint returns in order to claim the benefit of certain exclusive or credits. This is a requirement, for example, in order for a married couple to claim the benefit of the earned income credit or the disability income exclusion, both of which provisions phase out as adjusted gross income rises. (If these tax benefits were not limited to joint returns, taxpayers could avoid the income phaseouts by using separate returns if the spouse eligible for the credit or exclusion had income below the phaseout range.)

When a fixed dollar amount is used in calculating the income tax for a joint return, the amount generally is halved for separate returns as part of the general policy to not encourage separate filing. This is the situation, for example, with respect to the limitation on the deduction for investment interest and on the deduction for moving expenses.

Single returns.—The tax rates applicable to single persons are higher than the tax rates applicable to married couples who have the same amount of income and file joint returns. Currently, for income levels between $10,000 and $100,000, the rate schedule for single persons provides tax liabilities which are 10 to 20 percent above those for married couples with the same taxable incomes, with the differential declining from 20 to 10 percent as income taxes. Two wage earners who have married generally pay more tax than they would if they were single as long as their incomes are sufficiently equally divided that their gain from income splitting is less than their loss of the single person's rate schedule.

Head-of-household returns.—In 1951, Congress enacted a special set of tax rates for "heads of households" out of concern for single taxpayers who must maintain a household for other individuals (i.e., pay more than half the costs of a household). In general, a head of household is an unmarried individual who maintains a household for himself or herself and one or more dependents. Eligible dependents include an unmarried child, or an unmarried descendant of a child or the taxpayer, even if no dependency exemption is allowable to the taxpayer with respect to that person. Also, the requirement that the taxpayer and the dependent live in the same household is waived for the taxpayer's parents as long as the taxpayer pays more than half the cost of the parent's household.

Provisions treating spouses separately

Several provisions of the tax law treat spouses separately; that is, they treat married couples as two distinct individuals even though they are filing a joint return. Among the provisions in this category are those relating to Keogh plans and most individual retirement accounts, the child care credit, the $100 dividend exclusion (except for 1981 and 1982) and the social security payroll tax.

Self-employment pension plans and IRAs.—Individuals who are self-employed may, assuming all requirements are met, set aside up to $7,500 or 15 percent of earned income, whichever is less, annually for retirement. In the case of a married couple, each of whom is self-employed, each spouse may have his or her own retirement plan (the contributions to which would depend upon each spouse's earned income).

In general, individuals who are not covered by qualified retirement plans may establish individual retirement accounts (IRAs). The maximum deductible contribution to an IRA is 15 percent of compensation includible in gross income for the year or $1,500, whichever is less. In the case of married individuals, the maximum deduction for retirement savings is computed separately for each spouse, and is applied without regard to any community property laws. Thus, in the case of a married couple, each of whom qualifies for an IRA, the maximum combined annual deduction would be $3,000—the same as for two single individuals with IRAs. Also, if one spouse is covered by a qualified retirement plan, the other may still qualify for an IRA.

However, there is an exception to the separate treatment of a married person's IRAs in the case of a one-earner married couple. The spouse with compensation (and who is eligible to deduct IRA contributions) can contribute up to $875 to his or her own IRA and up to $875 to an IRA separately owned by his or her spouse, or can contribute up to $1,750 to an IRA which credits up to $875 to a subaccount for the husband and up to $875 to a subaccount for the wife.

Child care credit.—Present law allows a credit with respect to expenses for household and dependent care services necessary for gainful employment. In general, this credit is an amount equal to 20 percent of employment-related expenses paid by an individual during the taxable year. ("Employment-related expenses" are expenses for household services and expenses for the care of one or more qualifying individuals,[1] if those expenses are incurred to enable the taxpayer to be gainfully employed for a period during which there are one or more qualifying individuals with respect to the taxpayer.) The maximum amount of employment-related expenses that may be taken into account for purposes of the credit is $2,000 if there is one qualifying individual (for a maximum credit of $400) or $4,000 if there are two or more qualifying individuals (for a maximum credit of $800). In the case of a married individual, the amount of employment-related expenses which may be taken into account for purposes of the credit cannot exceed the lesser of such individual's earned income or the earned income of his or her spouse (unless the lesser-earning spouse is a student or is incapacitated), so the tax liability may depend on who earns the income. Married couples must file a joint return in order to claim the credit.

Dividend exclusion.—A provision which makes a similar distinction is the partial exclusion for dividends received by individuals. In computing the dividend exclusion, the taxpayer excludes from gross income the first $100 of dividends received during the taxable year. In the case of a joint return, each spouse is entitled to the exclusion in an amount not in excess of $100 with respect to dividends received by such spouse (for a maximum total exclusion of $200 if each spouse has at least $100 of dividend income). For example, if a husband receives $200 of dividends and his wife receives $100, the amount excluded from gross income on a joint return is $200 ($100 of the husband's dividends and the $100 of dividends received by the wife). On the other hand, if the husband receives $150 of dividends and the wife only $50, the amount excluded is $150 ($100 of the husband's dividends and the $50 of dividends received by the wife).

For 1981 and 1982, this feature of the law was changed by the Crude Oil Windfall Profit Tax Act of 1980. That Act includes an exclusion for dividends and certain kinds of interest equal to a maximum of $200 for a single return and $400 for a married couple filing a joint return. The $400 limit applies without regard to which spouse receives the interest or dividend income.

Social security payroll tax.—Another area of the tax law in which the earnings of spouses are treated separately is the social security payroll tax. The Federal Insurance Contributions Act (FICA) imposes two taxes on employers and two taxes on employees which are used to finance the payment of old-age, survivor and disability insurance benefits and medicare. The employee portion of the FICA tax for 1980 is 6.13 percent of up to $25,900 in wages. This tax is computed separately with respect to all individuals who are employed in work covered under FICA. Thus, married couples do not pool their income for purposes of determining their total FICA tax. Instead, each spouse pays FICA tax in accordance with his or her separate covered earnings.

Self-employed individuals generally are required to pay self-employment taxes. These taxes (currently at a rate of 8.10 percent on up to $25,900 of earnings) are applied against "net earnings from self-

[1] A "qualifying individual" is a dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a dependency exemption; a dependent of the taxpayer who is physically or mentally incapable of caring for himself or herself; or the spouse of the taxpayer, if he or she is physically or mentally incapable of caring for himself or herself.

employment." In situations where both spouses have self-employment income, each spouse must determine his or her net earnings from self-employment and pay tax based on that amount.

Provisions giving married couples twice as much as single persons

Under present law, there are several provisions which give married couples filing joint returns twice as large a benefit as single individuals. Examples of provisions which are in this category are the personal exemption, the political contributions credit, the allowance for additional first-year depreciation, and the special provision relating to losses on small business stock. In addition, the new exclusion for dividends and interest (contained in the Crude Oil Windfall Profit Tax Act of 1980) falls into this category. In each case, heads of households are treated like other single persons.

Personal exemption.—Present law allows each taxpaying individual to claim an exemption of $1,000 for himself or herself and each of his or her qualified dependents. A single individual who has no dependents, thus, is entitled to a personal exemption deduction of $1,000. Married individuals who have no dependents may claim personal exemption deductions totaling $2,000 on a joint return. In addition, a married individual who files a separate return may claim an exemption for his or her spouse if the spouse has no gross income and is not the dependent of another taxpayer.

Political contributions credit.—Under present law, an individual is allowed a tax credit equal to one-half of all political contributions and all newsletter fund contributions made within the taxable year. The maximum amount of this credit for an individual is $50 for the taxable year. A married couple filing a joint return is entitled to a credit of up to $100.

First-year depreciation.—Under certain circumstances, taxpayers may claim additional first-year depreciation with respect to depreciable tangible personal property. The amount of such additional first-year depreciation generally is equal to 20 percent of the cost of the property. However, the maximum aggregate cost against which additional first-year depreciation may be claimed is limited to $10,000 in the case of an individual taxpayer. A husband and wife who file a joint return are allowed to claim additional first-year depreciation on up to $20,000 of new property.

Loss on small business stock.—The law allows individuals to treat losses with respect to certain small business stock as ordinary losses. Normally, a loss on the disposition of corporate stock held for investment purposes is either a short- or long-term capital loss depending upon the taxpayer's holding period and, thus, can offset only $3,000 of a taxpayer's ordinary income each year. The maximum amount of ordinary loss from the disposition of small business stock that may be claimed in any taxable year is limited to $50,000, except for taxpayers filing joint returns, in which case ordinary loss treatment is limited to $100,000.

Provisions treating single persons the same as married couples

Several provisions of the tax law treat single persons the same as married couples who file joint returns. Examples of provisions included in this category are the deduction of capital losses against ordinary income, the earned income credit, the investment credit, the work incentive credit, the targeted jobs tax credit, the add-on minimum tax, the disability income exclusion, the one-time exclusion of gain from the sale of a principal residence by individuals who are 55 or older, the deduction for investment interest, the casualty loss deduction, the deduction of expenditures to remove architectural and transportation barriers to the handicapped and elderly, the medical expense deduction for amounts paid for medical insurance, the deduction for moving expenses and the residential energy tax credits.

Capital loss deduction.—The limitation on the amount of ordinary income against which capital losses may be offset is the same amount ($3,000) for a single person as for a married couple. Thus, two single persons may deduct losses against twice as much ordinary income ($6,000) as a married couple.

Earned income credit.—The maximum amount of the earned income credit is $500 whether a taxpayer is married or single. Married couples must file joint returns to claim the credit. In the case of a two-earner couple, this can cause the credit to phase out more rapidly than for a single individual who qualifies for the credit because the phaseout range is the same for a married couple and a single person.

Investment credit.—The investment tax credit currently may not exceed $25,000 of an individual's tax liability, plus 70 percent of tax liability in excess of $25,000. (The 70 percent figure is scheduled to rise to 90 percent by 1982.) The same $25,000 limitation applies to married couples who file joint returns.

Minimum tax.—The add-on minimum tax is applied at a rate of 15 percent on certain tax preference items to the extent that they exceed the greater of $10,000 or one-half of the amount of regular taxes imposed during the year. The $10,000 exemption is the same for married couples filing jointly as for single persons.

Disability income exclusion.—Present law provides a maximum annual disability income exclusion of $5,200. Taxpayers are entitled to the same maximum exclusion whether they are single or are married and file joint returns. Married couples must file joint returns in order to claim the exclusion, which causes the exclusion to phase out more rapidly than for single taxpayers if each spouse has income.

Capital gain exclusion for homes.—The Revenue Act of 1978 provided a one-time exclusion, for taxpayers age 55 or older, for gain from the sale of a principal residence. The maximum amount of the exclusion is $100,000 whether taxpayers are single or are married and file joint returns. Also, a married person, whether filing separately or jointly, may not claim the exclusion if his or her spouse previously has claimed it. This feature of the law provides an incentive for someone age 55 or over whose home has appreciated in value to sell that home before marrying someone who previously has claimed the exclusion.

Investment interest.—In general, interest on investment indebtedness is limited to $10,000 per year, plus the taxpayer's net investment income. This limitation is the same for single taxpayers and married taxpayers who file joint returns.

Casualty loss deduction.—The casualty loss deduction allows taxpayers to deduct certain losses to the extent they exceed $100 per casualty. For purposes of the $100 limitation, a husband and wife filing a joint return are treated as one individual. Thus, spouses filing jointly are subject to the same limitation as single taxpayers.

Architectural barriers.—Present law allows taxpayers to deduct certain expenses (which otherwise would be capitalized) which are paid or incurred for the purpose of removing architectural and transportation barriers to the handicapped and elderly. The maximum amount of such expenses which may be deducted in any taxable year is $25,000 for a single person and a married couple.

Medical insurance deduction.—As part of the medical expense deduction, individuals are entitled to deduct an amount (not in excess of $150) equal to one-half of expenses paid for medical insurance. This limitation is the same whether a taxpayer is single, a married person filing separately or a married couple filing jointly.

Moving expense deduction.—Present law allows a deduction for certain moving expenses if all applicable requirements are met. Moving expenses which may be deducted without limit are travel expenses while en route from an old residence to a new residence and the costs of moving household goods and personal effects. In addition, up to $3,000 of the costs of premove househunting trips, temporary quarters, and expenses in connection with selling the old residence may be deducted (however, the costs of premove househunting trips and temporary quarters may not exceed $1,500). In general, these dollar limitations are the same for single persons and married couples.

Insulation credit.—Present law provides a credit for the installation of insulation and certain other energy-conserving items. This credit equals 15 percent of the first $2,000 of qualifying expenditures, for a maximum credit of $300. It is available only with respect to the installation of specifically enumerated items after April 19, 1977, and before January 1, 1986, with respect to a taxpayer's principal residence, if the residence was substantially completed before April 20, 1977. The maximum amount of credit ($300) is the same for single persons, married couples filing jointly and married persons filing separately. Similarly, the limitation on the expenditures eligible for the residential solar energy tax credit is the same for single persons, married couples filing jointly and married persons filing separately.

For each of the provisions discussed above except for the insulation credit, the solar credit and the $150 limit on deductible health insurance premiums, the relevant dollar amounts for married persons filing separate returns are one-half those for married couples filing joint returns.

Provisions allowing couples more than single persons but less than twice as much

Some provisions of the tax law fall in between giving single persons the same amount of benefit as married couples and giving married couples twice as much benefit as single persons. An example of such a provision is the credit for the elderly.

Elderly credit.—Under present law, an individual taxpayer age 65 or older is entitled to a tax credit equal to 15 percent of his or her credit base, minus certain offsets. The maximum credit base is:

Single individual or joint return where only one spouse is eligible	$2,500
Joint return where both spouses are eligible	3,750
Married individuals filing a separate return	1,875

The credit base is reduced by certain amounts received as a tax-free pension or annuity (for example, under social security or the railroad retirement system). In addition, it is reduced by one-half of the adjusted gross income in excess of certain limitations. These limitations are:

Single individuals	$7,500
Joint returns	10,000
Married individuals filing separate returns	5,000

Thus, a middle ground between single taxpayers and married couples filing joint returns is achieved under the credit for the elderly.

Zero bracket amount.—Another provision which achieves somewhat of a middle ground between single taxpayers and married taxpayers who file jointly is the zero bracket amount and the corresponding floor under itemized deductions, which replaced the standard deduction in 1977. The zero bracket amount equals $2,300 for single persons and $3,400 for married couples filing jointly. Thus, a married couple benefits from a zero bracket amount which is $1,100 more than for one single person, but $1,200 less than for two single people.

Unemployment compensation.—Under present law, unemployment compensation is includible in gross income in certain situations. In general, the amount of unemployment compensation included in gross income is an amount not greater than one-half of the excess of the taxpayer's adjusted gross income (including unemployment compensation) over the taxpayer's "base amount." The base amount is $25,000 in the case of a married couple filing a joint return, zero in the case of a married individual filing a separate return, and $20,000 in the case of all other individuals. The manner in which the provision operates can be illustrated by the following example, which assumes that the taxpayer has adjusted gross income of $20,000 plus unemployment compensation of $4,000:

(1) If the taxpayer is married and files a joint return, none of the unemployment compensation would be included in gross income;

(2) If the taxpayer is married and files a separate return, all of the unemployment compensation would be included in gross income; and

(3) If the taxpayer is single, $2,000 of the unemployment compensation would be included in gross income.

Income averaging

Under present law, individuals whose income fluctuates from year to year may take advantage of special provisions known as "income averaging." These provisions are designed to mitigate the impact of the progressive rate structure upon individuals whose income fluctuates widely from year to year or increases rapidly over a short period of time. Income averaging reduces the disparity that otherwise would exist between taxpayers whose income is received erratically and taxpayers whose income is approximately the same in the aggregate but which is spread more evenly from year to year.

Under the general income averaging provisions, income tax is computed by averaging income over a 5-year period. This 5-year period consists of the current taxable year (known as the "computation year") and a "base period" consisting of the four preceding taxable years. In general, a taxpayer must have "averagable" income in excess of $3,000 to be eligible for income averaging. For this purpose, averagable income is the excess of taxable income, after certain adjustments, over 120 percent of the average base-period income.

In the case of a taxpayer who, during the base period and computation years, has been single or, if married, has filed a joint return with the same spouse, no extraordinary adjustments need be made for purposes of income averaging.

However, if the taxpayer's marital status changed, or separate returns were filed, during the 5-year averaging period, then the taxpayer generally is required to reconstruct his or her income for the years affected.

If the taxpayer is married to the same person in the computation year and any base-period year, and the couple files a joint return in the computation year but filed separate returns for any base-period year, then base period taxable income for that base-period year is the sum of the taxable incomes of each spouse for that year. Moreover, if the taxpayer is married and files jointly in the computation year but both spouses were unmarried in a base-period year, base period taxable income for that base-period year is the sum of the taxable income of each spouse for that year.

Additional complexities arise if the taxpayers file a joint return for the computation year but filed joint returns with different spouses during any base-period year, or if the taxpayer files a separate return for the computation year but filed a joint return during any base-period year. In these types of situations, each taxpayer must, in computing adjusted gross income for the base-period year, use only those deductions applicable to items of his or her own gross income. If a joint return was filed for a base-period year, then in computing the taxpayer's taxable income for the base-period year, his or her separate deductions are determined by multiplying the total amount of such deductions on the joint return for the base-period year by a fraction, the numerator of which is the taxpayer's separate adjusted gross income and the denominator of which is the combined adjusted gross income on the joint return. However, if 85 percent or more of the combined adjusted gross income is attributable to only one of the taxpayers on the joint return, then all of the deductions are considered allowable to that taxpayer.

Although a taxpayer is required to compute his or her separate income and deductions in the two types of situations described above, his or her base-period income may not be less than the largest of the amounts determined under the following three methods:

(1) His or her separate income and deductions;

(2) If a separate return is filed in the computation year, 50 percent of the base period income resulting after adjusting the sum of his or her separate income and deductions and the separate income and deductions of his or her computation year spouse; or

(3) 50 percent of the base-period income resulting after adjusting the sum of his or her separate income and deductions and the separate income and deductions of his or her base-period year spouse.

Special rules apply in determining an individual's separate income and deductions where community-earned income is involved. In determining base-period income, the amount of personal-service income subject to community property laws that a taxpayer must take into account cannot be less than the amount he or she would have taken into account if such amount were not community income. Similarly, in determining his or her taxable income for the computation year, the amount taken into account cannot exceed the amount which would be taken into account if such amount were not community income.

Another income averaging adjustment that is based on a taxpayer's marital or filing status is that taxable income for each pre-1977 base-period year must be increased by $3,200 for a married couple filing a joint return, $2,200 for a single person, or $1,600 for a married person filing a separate return.

Definition of marital status for separated individuals

Another area of inconsistency in the income tax is the treatment of married individuals who are not living with their spouses. For purposes of determining a taxpayer's marital status, and thus the rate schedule (and various other provisions) which determines his or her tax liability, the Code provides that in two specific situations legally married individuals may be treated as unmarried. First, an individual who is legally separated from his spouse under a decree of separate maintenance is not considered to be married for tax purposes. Second, an individual is considered unmarried for tax purposes if the individual furnishes more than half the expenses of maintaining a household for himself and a dependent child and the individual's spouse does not live with him during the entire taxable year. Thus, legally married individuals in either of these two situations may claim a filing status—head of household or unmarried, whichever is applicable—more advantageous than filing separately.

Thus, married individuals who neither maintain a household for a dependent child nor are legally separated are treated as married, even if they live apart from their spouses during the entire taxable year. These individuals must file returns using married-filing-separately status if they are unable to file a joint return with their spouses. At the same time, for purposes of several provisions enacted during the 1970's, married individuals living apart from their spouses are treated as unmarried rather than married. The disability income exclusion is generally allowed to married individuals only if they file a joint return, but this restriction does not apply for individuals who have lived apart from their spouses at all times during the taxable year. The credit for the elderly is generally allowed to married individuals only if they file a joint return, but this restriction also does not apply for individuals who have lived apart from their spouses at all times during the taxable year. However, such individuals are generally allowed a lower credit than individuals whose filing status is unmarried. A portion of unemployment compensation is generally includible in the gross income of married individuals filing separately. However, such individuals who live apart from their spouses during the entire taxable year are treated in the same manner as unmarried individuals, so that a portion of unemployment compensation is includible in gross income only if the sum of unemployment compensation plus other gross income exceeds $20,000. Thus, these three provisions treat certain married individuals who live apart from their spouses during an entire year more favorably than they are treated under the definitions which determine the applicable rate schedule.

Finally, the credit for child and dependent care expenses generally is allowed to married individuals only if they file a joint return, but this restriction does not apply to an individual who maintains a household for a "qualifying individual" (who may be a disabled dependent who is not a child of the taxpayer) and whose spouse is not a member of the household during the last six months of the taxable year. Again, this special rule allows the credit to some married individuals who file a separate return.

Conclusion

This description of present law shows that Congress has not been consistent in its treatment of married couples and single persons. In some provisions, a married couple is treated twice as well as one single person; in others, it is treated like two single persons; in still others, it is treated like one single person; and in still others, it is treated part-way in between one and two single persons. The definition of marriage, for tax purposes, is not consistent throughout the Code. The only consistent principle is the policy not to encourage separate filing but even that has exceptions.

III. HISTORY OF THE INCOME TAX TREATMENT OF THE FAMILY

Tax rate schedules and filing status

1913–1947

Unlike present law, the income tax law enacted in 1913 required married individuals to file separate returns if each had income. The Revenue Act of 1918 gave married couples the option of filing a joint return, but generally there was no advantage to doing so because the same progressive tax rates applied to both separate and joint returns. In fact, a married couple would minimize its total tax burden if it could divide its net income equally between husband and wife and file separately. For example, a couple with $20,000 of income would pay less tax if the husband and wife each reported $10,000 because, in a progressive tax system, each $10,000 increment would be subject to less than half the tax imposed on one income of $20,000.

Consequently, married couples living in community property States [1] had an advantage over married couples living in common law States. Generally, under community property law, one-half of the earnings of either spouse belongs to the other, and property acquired during the marriage is owned in equal shares.[2] Under "common law," which is followed in most States, the earnings of a spouse are generally the property of that spouse.

Prior to 1920, increasing numbers of married couples in community property States were filing separate returns, each of which reported one-half the couple's community income. As a result, couples in community property States paid less income tax than identical couples in common law States, except in the then-unusual case of a husband and wife with equal income.

Courts disagreed on whether the splitting of income by married residents of community property States was effective for Federal income tax purposes. In 1920, the Attorney General of the United States issued to the Secretary of the Treasury an opinion that concluded the community property laws of Texas were fully effective for federal income tax purposes.[3] Specifically, a husband and wife could each

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[1] Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington had community property laws. California's community property laws were not always effective to split a couple's community income for federal income tax purposes. See notes 6 and 9, *infra*.

[2] Each State's community property laws are different. In general, "community income" is owned equally by husband and wife. Personal service income (for example, wages or salary) is usually considered community income. Income from separate property (for example, property acquired by inheritance or before the marriage) is considered community income in some community property States and separate income in other community property States.

[3] 32 Op. Att'y Gen. 298 (1920).

report, for federal income tax purposes, one-half of the income deemed "community income" under State law. In the following year, the Attorney General issued an opinion [4] that reached the same conclusion with respect to all other community property States,[5] except California.[6] The Attorney General's opinions were published in 1920 and 1921 in Treasury Decisions.[7] The Treasury Regulations under the Revenue Act of 1924,[8] permitted spouses in all community property States, except California, to split income that was community property.

The validation by the Treasury Department of the different tax treatment of married couples in community property States and those in common law States prompted Congressional efforts to enact a uniform federal rule in the Revenue Act of 1921. The bill that passed the House provided that income received by any married couple in a community property State was includable in the gross income of the spouse having the management and control of community property. This provision was reported by the Senate Finance Committee, but was deleted on the Senate floor and dropped in conference. In 1924, the Secretary of the Treasury recommended a similar provision to the Ways and Means Committee, but it was not enacted.

In 1925, a taxpayer challenged in federal district court the Attorney General's and the Treasury Department's position that husbands and wives living in California could not split community income for federal income tax purposes.[9] The district court ruled that a husband and wife could each report one-half the income from community property and the husband's earnings. The decision in favor of the taxpayer was reversed by the United States Supreme Court on the grounds that California law, as interpreted by the Supreme Court of California, gave the wife a mere expectancy in the community property during the husband's life.

Soon after the Supreme Court's decision in favor of the government, the Secretary of the Treasury asked the Attorney General to reconsider the earlier opinions on community property law and federal income tax liability. The Acting Attorney General responded to the Secretary in 1927 by withdrawing the earlier opinions on the income tax effect of community property laws [10] and thereby leaving the Secretary of the Treasury free to litigate the issue in court.[11]

Three years later, test cases involving the community property laws of Washington, Arizona, Louisiana, and Texas reached the United States Supreme Court. The Supreme Court held that, unlike the California community property laws at issue in 1926, the laws of

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[4] 32 Op. Att'y Gen. 435 (1921).

[5] Arizona, Idaho, Louisiana, Nevada, New Mexico, and Washington.

[6] The Attorney General concluded that the community property laws of California did not give a wife a vested interest in one-half of the community property.

[7] T.D. 3071, 22 Treas. Dec. Int. Rev. 456 (1920); T.D. 3138, 23 Treas. Dec. Int. Rev. 288 (1921).

[8] Treas. Reg. 65, § 213, art. 31 (1924).

[9] *Robbins* v. *United States*, 5 F. 2d 690 (N.D. Ca. 1925), *rev'd*, 269 U.S. 315 (1926).

[10] See notes 3 and 4, *supra*.

[11] 35 Op. Att'y. Gen. 265 (1927).

Washington,[12] Arizona,[13] Louisiana,[14] and Texas[15] were effective to split community income between husband and wife for federal income tax purposes. The Court also reached the same conclusion with respect to the recently amended community property laws of California.[16]

In reaching this result in the lead case of *Poe* v. *Seaborn*, the Court first determined:

These sections [of the Revenue Act of 1926] lay a tax upon the net income of every individual. The Act goes no farther, and furnishes no other standard or definition of what constitutes an individual's income. *The use of the word 'of' denotes ownership.* It would be a strained construction, which, in the absence of further definition by Congress, should impute a broader significance to that phrase.[17]

The Court then concluded that the property laws of Washington vested ownership of community income and property equally in the husband and wife. Thus, a husband and wife living in Washington could file separate returns, each reporting one-half the community income.[18]

In the same year the Court decided *Poe* v. *Seaborn*, it ruled in *Lucas* v. *Earl* that a valid contract to divide earned income equally between a husband and wife was ineffective for federal income tax purposes.[19] The Supreme Court's decision in *Lucas* v. *Earl* meant that earned income could not be shifted among family members by private agreement, although it could in effect be shifted by the operation of State law in community property States.

After *Lucas* v. *Earl* and *Poe* v. *Seaborn* were decided, Congress and the Department of the Treasury made several attempts to change the taxation of married couples. The provisions considered and rejected during the 1930s and early 1940s included (1) mandatory joint returns for all married couples; (2) the taxation of community income to the spouse exercising management and control of such income; and (3) mandatory joint returns with a special allowance for the earned income of the husband or wife.

Through 1947, community property spouses continued to benefit from the splitting of income on separate returns. In the early years, however, this advantage over common law spouses was minimized by the relatively low tax rates. For those subject to tax during the years

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[12] *Poe* v. *Seaborn*, 282 U.S. 101 (1930).

[13] *Goodell* v. *Koch*, 282 U.S. 118 (1930).

[14] *Bender* v. *Pfaff*, 282 U.S. 127 (1930).

[15] *Hopkins* v. *Bacon*, 282 U.S. 122 (1930).

[16] *United States* v. *Malcolm*, 282 U.S. 792 (1930).

[17] 282 U.S. at 109 (emphasis added, footnote omitted).

[18] In dicta, the Supreme Court addressed the issue of uniform treatment of all married persons, "[T]he constitutional requirement of uniformity is not intrinsic, but geographic. [citations omitted] And differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity." *Id.* at 117–18.

[19] The terms of the contract covered more than earned income. At issue, however, was the proper allocation of "salary and attorney's fees earned by" the husband. *Lucas* v. *Earl*, 281 U.S. 111, 113 (1930).

1913 to 1915, the lowest tax rate was one percent, and it applied to the first $20,000 of taxable income. From 1919 until 1939, the lowest rate ranged from 1.5 to 4 percent and was applicable to the first $4,000 of income. In addition, only a small portion of the population was required to file tax returns because of the relatively high levels of exempt income.[20]

As the tax rates increased, particularly during World War II, the income tax advantage enjoyed by community property spouses increased. Not surprisingly, common law States began to adopt community property laws so that the benefits of income-splitting could be realized by their married residents.[21]

1948–1969

The debate on the taxation of married persons culminated with the enactment of the Revenue Act of 1948. Under the 1948 Act, married couples who filed jointly were in effect taxed as two single persons each reporting one-half the couple's aggregate income. This was achieved by taking half of the taxable income shown on the joint return, determining the tax thereon, and multiplying the result by two. The splitting of all taxable income between a husband and wife was available for all married persons filing jointly. In effect, all married couples were given the benefit which previously had been restricted to community property States.

The Finance Committee Report summarized the intended effects of the income-splitting provisions as follows:[22]

> Adoption of these income-splitting provisions will produce substantial geographical equalization in the impact of the tax on individual incomes. The impetuous enactment of community property legislation by States that have long used the common-law will be forestalled. The incentive for married couples in common law States to attempt the reduction of their taxes by the division of their income through such devices as trusts, joint tenancies, and family partnerships will be reduced materially. Administrative difficulties stemming from the use of such devices will be diminished, and there will be less need for meticulous legislation on the income-tax treatment of trusts and family partnerships. In effect, these amendments represent the adoption of a new national system

[20] The pre-World War II portion of the civilian labor force filing Federal income tax returns was as follows:

Year:	*Total Federal income tax returns as percentage of civilian labor force*
1915	0.9
1920	17.6
1925	9.2
1930	7.9
1935	8.9
1940	26.4

Source: *1941 Statistics of Income*, Table 14, p. 208; *Historical Statistics of the U.S.*, Series D 1–10, p. 126.

[21] By 1948, Oregon, Nebraska, Michigan, and Oklahoma had adopted community property laws. Pennsylvania's attempt to adopt community property laws was held unconstitutional by that State's highest court.

[22] S. Rep. No. 1013, 80th Cong., 2d Sess. 25 (1948).

for ascertaining Federal income tax liability. The adoption of these amendments will extend substantial benefits to residents of both community-property and common-law States.

The 1948 Act was successful in stopping the adoption of community property laws by the common law States. In fact, Nebraska, Michigan, Oklahoma, and Oregon repealed their recently adopted community property laws. To this day, however, community property laws are in effect in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

The 1948 Act in effect created two rates of income taxation, one applicable to married couples filing jointly and one applicable to all other individual taxpayers. As a result of income-splitting, one-earner married couples paid a much smaller tax than a single taxpayer with the same amount of taxable income.

In 1951, a third set of tax rates was enacted for "heads of households," single taxpayers who maintain households for certain relatives. The new rates applicable to heads of households were calculated to give heads of households approximately one-half of the benefits of income-splitting accorded married couples.

The head of household provisions were extended in the Internal Revenue Code of 1954 to include taxpayers who met certain support requirements with respect to their mother or father, even though the parents did not live in the taxpayer's house. The 1954 Code also extended the full income-splitting benefits enjoyed by married couples to a surviving spouse for 2 years after the death of the other spouse.[28]

1969–present

The last major revision in the comparative income tax treatment of married and single individuals occurred in 1969. Since the enactment of income splitting for married couples in 1948, single persons generally had paid significantly higher taxes than married couples at the same income levels. For example, in 1969, at some income levels a single person's income tax liability was as much as 42.1 percent higher than the income tax liability of a married couple filing a joint return with the same amount of taxable income. In 1969, Congress concluded that, while some difference between the rate of tax paid by single persons and married couples filing jointly was appropriate to reflect the additional living expenses of married taxpayers, the then current differential of as much as 42 percent could not be justified on that basis.

Accordingly, the Tax Reform Act of 1969 included a new rate schedule for single persons effective in 1971. The new rate schedule was designed to impose on middle-income single persons tax liabilities no more than 20 percent above those for married couples.

Another new rate schedule, halfway between the new rate schedule for single persons and the rate schedule for married couples, was en-

[28] A "surviving spouse" was defined as a taxpayer whose spouse died during either of the two taxable years preceding the year for which the return was filed and who maintained as his or her home a household constituting the principal place of abode of a dependent who was a child or stepchild of the taxpayer and with respect to whom the taxpayer was entitled to a dependency exemption. Under the 1954 Code, the taxpayer was not a surviving spouse if he or she had remarried before the close of the taxable year.

acted in 1969 for heads-of-households. The former rate schedule for single persons was retained for married persons filing separate returns because, if each spouse were permitted to use the new tax rate schedule for single persons, many couples, especially those in community property States, could arrange their affairs and income in such a way that their combined tax would be less than that on a joint return.

With the new rate schedule for single persons, many married couples filing a joint return paid more tax than two single persons with the same total income. This was a necessary result of changing the income-splitting relationship between single and joint returns. At the time, the marriage penalty was justified on the grounds that, although a married couple has greater living expenses than a single person and hence should pay less tax, the couple's living expenses are likely to be less than those of two single persons and, therefore, the couple's tax should be higher than that of two single persons.

In recent years, the marriage penalty has led some happily married couples to divorce at the end of the taxable year, file separate returns, and remarry. If the couple intends to remarry at the time of the divorce, the Internal Revenue Service will not recognize the divorce for income tax purposes because it is a "sham transaction." [24] Two taxpayers have challenged the Internal Revenue Service's position in cases currently before the United States Tax Court.[25]

Personal exemption

Prior to 1948, married couples were allowed only one personal exemption, even though they filed separate returns, and they were required to divide this exemption between them. Between 1913 and 1917, the exemption for a married couple was less than twice that of a single person, and between 1921 and 1941 it was more than twice the single person's exemption. In these years, the exemption led to a marriage tax penalty or bonus even though married persons did not generally file joint returns. An exemption for dependents was first allowed in 1917.

Standard deduction

The standard deduction, as first enacted in 1944, equaled 10 percent of a taxpayer's adjusted gross income, but the maximum deduction allowable was $500. In 1948, the maximum deduction was increased to $1,000 for all taxpayers, except married persons filing separately. The minimum standard deduction (low income allowance), introduced in 1964, equaled $200 plus $100 for each exemption claimed, up to a maximum of $500 for married persons filing separately and $1,000 for all other taxpayers.

The Tax Reform Act of 1969 amended both the minimum and maximum standard deduction provisions. The new low income allowance was set at $1,000. The regular standard deduction was fixed at 15 percent of adjusted gross income, not to exceed a maximum deduction of $2,000. As in the past, married persons filing separately were entitled to one-half the normal minimum and maximum amounts. The

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[24] *E.g.*, Rev. Rul. 76-255, 1976-2 C.B. 40.

[25] *David Boyter* v. *Commissioner*, No. 11445-77 (T.C., filed Nov. 16, 1977); *Angela Boyter* v. *Commissioner*, No. 11446-77 (T.C., filed Nov. 16, 1977).

use of the same minimum and maximum standard deductions for single and joint returns gave rise to its own marriage penalty. Marriage could, for example, reduce the allowable standard deduction by as much as $2,000.

In the Tax Reduction Act of 1975, Congress increased the standard deduction to 16 percent of income. Also, for the first time it enacted different minimum and maximum standard deductions for single and joint returns. For single returns, the minimum was increased to $1,600 and the maximum to $2,300; and those amounts were set $300 higher for joint returns. (The minimum and maximum standard deductions for separate returns were set at one-half the levels for joint returns.) This differentiation was intended specifically to reduce the marriage penalty, which otherwise would have been increased by the increase in the minimum or maximum standard deduction. In the Revenue Adjustment Act of 1975, effective for 1976, the minimum and maximum standard deductions were increased by $100 for single returns and $200 for joint returns.

In the Tax Reduction and Simplification Act of 1977, the Congress replaced the standard deduction with a flat amount referred to as the "zero bracket amount." The zero bracket amount is both a tax bracket with a zero rate and a floor under allowable itemized deductions. With a few exceptions, it has the same impact as the standard deduction. In 1977, the "ZEBRA" was set at $2,200 for single persons and heads of households and $3,200 for married couples filing jointly. Congress concluded that this reduction in the maximum standard deduction for single persons from $2,400 to $2,200 was justified by the need to reduce the marriage penalty. The Revenue Act of 1978 increased the zero bracket amount by $100 for single persons and $200 for married couples filing jointly to its present level of $2,300 for single returns and $3,400 for joint returns.

Child care deduction and credit

A deduction for child care expenses was first allowed under the 1954 Code. The new deduction was limited to expenses, up to $600, paid by women or widowers for the purpose of permitting the taxpayer to be gainfully employed. To obtain the deduction, a married woman had to file a joint return and not use the standard deduction. Also, if a couple's adjusted gross income exceeded $4,500, the $600 limitation was reduced by the amount of their adjusted gross income in excess of $4,500.

The child care deduction was modified in 1964, 1971, and 1975. The 1971 amendments included an extension of the provision to household expenses.

In 1976, the itemized deduction was replaced with a nonrefundable tax credit equal to 20 percent of the expenses incurred (up to a maximum of $2,000 for one dependent and $4,000 for two or more dependents) for the care of a child under age 15 or for an incapacitated dependent or spouse, in order to enable the taxpayer to work. The income limit, beyond which the deduction was phased out, was eliminated.

IV. ISSUES

Marriage neutrality versus equal taxation of couples with equal incomes

Any system of taxing married couples requires making a choice among three different ideas of tax equity. One principle is that the tax system should be "marriage neutral"; that is, the tax burden of a married couple should be exactly equal to the combined tax burden of two single persons one of whom has the same income as the husband and the other of whom has the same income as the wife. A second principle of equity is that, because married couples frequently consume as a unit, couples with the same income should pay the same amount of tax regardless of how the income is divided between them. (This second concept of equity could apply equally well to other tax units which may consume jointly, such as the extended family or the household, defined as all people living together under one roof.) A third concept of equity is that the tax should be progressive; that is, as income rises, the tax burden should rise as a percentage of income.

Unhappily, these three concepts of equity are mutually inconsistent. A tax system can generally have any two of them, but not all three.[1] The current tax system specifies the married couple as the tax unit so that couples with the same income pay the same tax, but it thereby foregoes marriage neutrality. A system of mandatory separate filing for married couples would sacrifice the concept of "equal taxation of couples with equal incomes" for the principle of "marriage neutrality" unless it were to forego progressivity. It should be noted, however, that there is an exception to this rule if refundable credits are permissible. A system with a flat tax rate and a per taxpayer refundable credit

[1] The logical inconsistency can be shown mathematically as follows: Consider four individuals, A, B, C and D. Assume that A and B have equal incomes, C has an income equal to the combined incomes of A and B, and D has no income. Let T(A), T(B), and T(C) be the tax burdens of the three individuals with income. If the tax system is not proportional,

$$T(C) \neq T(A)+T(B). \quad (1)$$

Now assume A and B marry each other, as do C and D, and let T(AB) and T(CD) be the tax burdens of the married couples. The principle that families with the same income should pay the same tax requires that

$$T(AB)=T(CD), \quad (2)$$

and marriage neutrality requires both that

$$T(A)+T(B)=T(AB) \quad (3)$$

and that

$$T(CD)=T(C). \quad (4)$$

Substituting (3) and (4) into (2) yields

$$T(A)+T(B)=T(C)$$

This, however, contradicts equation (1), indicating that equations (2) and (3) can only both be true in a proportional tax system.

would have marriage neutrality, equal taxation of couples with equal incomes and some limited progressively.

There is no right or wrong answer to the question of whether "equal taxation of couples with equal incomes" is a better principle than "marriage neutrality." (This discussion assumes that the dilemma cannot be resolved by moving to a proportional or flat-rate tax system.)

Those who hold "marriage neutrality" to be more important argue that tax policy discourages marriage and encourages "living in sin," lowering society's standard of morality. Also, they argue that it is simply unfair to impose a "marriage tax" even if the tax does not actually deter anyone from marrying.

Those who favor the principle of equal taxation of couples with equal incomes argue that, as long as most couples pool their income and consume as a unit, two couples with $20,000 of income are equally well off regardless of whether their income is divided $10,000–$10,000 or $15,000–$5,000. Thus, it is argued, they should pay the same tax, as they do under present law. A marriage-neutral system with progressive rates would involve a larger combined tax on the couple with the unequal income division.

An advocate of marriage neutrality could respond that the relevant comparison is not between a two-earner couple where the spouses have equal incomes and a two-earner couple with an unequal income division, but rather between a two-earner couple and a one-earner couple with the same total income. Here, the case for equal taxation of the two couples may be weaker, because the non-earner in the one-earner couple benefits from more time which may be used for leisure, unpaid work inside the home, child care, and other activities. It could, of course, be argued in response that the "leisure" of the non-earner may in fact consist of necessary jobhunting or child care, in which case the one-earner couple may not have more ability to pay income tax than the two-earner couple with the same income.

The attractiveness of the principle of equal taxation of couples with equal incomes depends on the extent to which married couples actually pool their incomes and single persons do not. In a society where many marriages last no longer than the typical single person's romance, or where married couples frequently live apart and single persons frequently live together, marriage neutrality would clearly be the better principle. However, as long as differences in lifestyle between married couples and single persons are pronounced, the issue is less clear.

Census data show that 1.3 million households in 1979 were shared by two unrelated adults of the opposite sex.[2] Three-fourths of these "unmarried couples" had no children. Half had never been married before, nearly a third had been divorced, and the remainder were either widowed or married to someone else. The number of "unmarried couples" has grown 157 percent since 1970. The Census report, however, concludes:

> Despite the spectacular nature of the recent increase in this unmarried-couple living arrangement, the 2.7 million "partners"

[2] Bureau of the Census, *Current Population Reports*, Series p–20, No. 349, February 1980. No count was taken of households shared by two unrelated adults of the same sex.

in these 1.3 million households represent a very small portion of all persons in "couple" situations. In 1979, there were an estimated 96.5 million men and women who were married and living with a spouse. Thus, the partners in unmarried couples represented only about 3 percent of all persons among couples living together in 1979.

The continuing predominance of marriage among couples suggests that "equal taxation of married couples with equal incomes" is still an important concept for many people.

The actual size of the marriage bonus or penalty depends on the combined effect of all the provisions of the tax law which treat the married couple as something other than two distinct individuals. However, the most important factors are the tax rate schedules and the zero bracket amount. Table 1 shows the size of the marriage bonus or penalty created by these provisions for couples with various incomes and income splits between spouses under the 1979 tax law. For a couple with income of $30,000 per year, there is a marriage bonus of $1,929 when one spouse receives all the income and a marriage penalty of $903 when the income is split 50–50. Generally, there is a marriage bonus when income is split less evenly than 80–20 and a marriage penalty for more even income splits.

Table 2 shows the size of the marriage bonus or penalty as a percentage of after-tax income for the same income levels and income splits as table 1. This is a better measure of how the lack of marriage neutrality affects relative living standards. At a maximum, the marriage penalty is 7.4 percent of after-tax income. The largest marriage bonus is 9.2 percent. The region of the table in which the marriage penalty exceeds 5 percent of after-tax income is relatively small: couples with $40,000 and income division more even than 60–40, couples with $50,000 and income division more even than 65–35, and couples with $100,000 and income division more even than 75–25. A small, but rapidly growing, fraction of taxpayers is in those categories, although it tends to be an especially vocal group.

The head-of-household rate schedule for single persons with dependents causes a "divorce bonus" for couples with children which is greater than the marriage penalties shown in tables 1 and 2. Table 3 shows the divorce bonus for a couple with one child when one of the persons is able to file as a head of household after the divorce. The divorce bonus for a family of three with income of $30,000 split 50–50 between the spouses is $932 or 3.8 percent of their after-tax income. The maximum divorce bonus is 8.8 percent. (For a couple with two dependents, the divorce bonus is potentially larger because each spouse can maintain a household for one of the children, and both could qualify as heads of households.)

The Census report shows that the number of households maintained by divorced men and women with children under 18 has grown by 33 percent for men and by 41 percent for women since 1970. In 1979 men headed 1.0 million such households and women 10.5 million.

TABLE 1.—EFFECT OF MARRIAGE ON TAX LIABILITY AT SELECTED INCOME LEVELS AND EARNINGS SPLITS BETWEEN HUSBAND AND WIFE [1]

Total family income	Share of lesser-earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
$7,000	−378	−315	−252	−189	−126	−66	−10	46	98	147	168
$10,000	−475	−370	−275	−180	−85	10	100	162	182	200	202
$15,000	−710	−515	−328	−148	32	132	183	220	236	243	251
$20,000	−1,092	−760	−460	−160	42	150	238	300	355	381	391
$25,000	−1,505	−1,055	−630	−268	−30	160	310	447	535	594	611
$30,000	−1,929	−1,334	−749	−334	−26	214	439	644	785	875	903
$40,000	−2,801	−1,821	−939	−338	177	667	1,031	1,329	1,564	1,644	1,692
$50,000	−3,344	−2,094	−1,094	−286	454	1,133	1,731	2,121	2,439	2,574	2,674
$100,000	−3,464	−1,214	359	1,691	2,699	3,474	4,014	4,314	4,369	4,394	4,394

[1] Assumes that taxpayers have no dependents and do not itemize deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

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TABLE 2.—EFFECT OF MARRIAGE ON TAX LIABILITY AS A PERCENTAGE OF AFTER-TAX-INCOME AT SELECTED INCOME LEVELS AND EARNINGS SPLITS BETWEEN HUSBAND AND WIFE BEFORE MARRIAGE [1]

	Share of lesser-earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−5.0	−4.2	−3.4	−2.7	−2.0	−1.3	−0.6	0.0	0.0	0.0	0.0
$7,000	−5.6	−4.6	−3.7	−2.8	−1.8	−1.0	−0.1	0.7	1.4	2.2	2.5
$10,000	−5.1	−4.0	−3.0	−1.9	−0.9	0.1	1.1	1.7	2.0	2.2	2.2
$15,000	−5.3	−3.8	−2.4	−1.1	0.2	1.0	1.4	1.6	1.8	1.8	1.9
$20,000	−6.3	−4.4	−2.7	−0.9	0.2	0.9	1.4	1.7	2.0	2.2	2.3
$25,000	−7.2	−5.0	−3.0	−1.3	−0.1	0.8	1.5	2.1	2.6	2.8	2.9
$30,000	−7.9	−5.5	−3.1	−1.4	−0.1	0.9	1.8	2.6	3.2	3.6	3.7
$40,000	−9.1	−5.9	−3.1	−1.1	0.6	2.2	3.4	4.3	5.1	5.4	5.5
$50,000	−9.2	−5.8	−3.0	−0.8	1.2	3.1	4.8	5.8	6.7	7.1	7.4
$100,000	−5.6	−2.0	0.6	2.8	4.4	5.7	6.5	7.0	7.1	7.2	7.2

[1] Assumes no itemized deductions and no dependents. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

TABLE 3.—EFFECT OF DIVORCE ON TAX LIABILITY AT SELECTED INCOME LEVELS AND EARNINGS SPLITS BETWEEN HUSBAND AND WIFE [1]

Total family income	Share of lesser-earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−210	−170	−133	−98	−263	−28	0	0	0	0
$7,000	−518	−455	−392	−329	−266	−106	−150	−94	−42	7	56
$10,000	−643	−538	−443	−348	−253	−58	−68	22	112	174	186
$15,000	−920	−725	−538	−358	−178	−15	115	167	210	240	763
$20,000	−1,332	−1,000	−700	−400	−100	62	182	272	352	398	428
$25,000	−1,785	−1,335	−910	−485	−158	74	252	422	532	607	632
$30,000	−2,249	−1,654	−1,069	−512	−162	116	376	616	756	876	932
$40,000	−3,231	−2,251	−1,271	−584	−16	514	892	1,228	1,503	1,683	1,843
$50,000	−3,834	−2,584	−1,432	−554	241	944	1,590	2,080	2,530	2,750	2,950
$100,000	−3,964	−1,562	136	1,540	2,780	3,740	4,465	4,913	5,157	5,357	5,425

[1] Assumes one dependent claimed by the spouse with the smaller amount of earnings and assumes no itemized deductions. Divorce bonuses would be smaller, and divorce penalties larger, for itemizers. Divorce penalties are positive, divorce bonuses are negative. The divorce bonus is the difference between the tax liability on one joint return and the combined tax liability on one single return and one head-of-household return.

Distribution of tax burden by type of tax unit

A second issue of tax equity is how much of the tax burden should be borne by the different types of tax units: single persons without dependents, single heads of households, one-earner married couples and two-earner married couples. Each of the different proposals for taxing married couples and single persons has an impact on this distribution.

As discussed above in the section on present law, the actual relationship between the tax burden of a single person, a head of household and a married couple with the same income depends on the interaction of many provisions of the law, which embody widely varying ideas of how the various types of tax units ought to be treated. The provisions which are most responsible for distinctions between different types of tax units at a given income level are the tax rate schedules and the zero bracket amount.

Table 4 compares the tax paid by a typical married couple with no dependents to that of a single person at various income levels, along with the percentage difference in the two tax burdens. Table 4 also shows the percentage difference in after-tax income between a single person and a married couple at each income level. At a given level of before-tax income, the married couple retains between 5 and 10 percent more after-tax income than a single person. Whether these differences are more or less than enough to compensate for the fact that two cannot live as cheaply as one is a subjective matter.

TABLE 4.—COMPARISON OF INCOME TAX LIABILITY OF A MARRIED COUPLE AND A SINGLE PERSON

[Assumes no itemized deductions]

Income	Married couple, no dependents (joint return) (1)	Single person (2)	Excess tax of single over joint return: Amount (3)	Percent of joint return's tax (4)	Percent of joint return's after-tax income (5)
$5,000	$0	$250	$250	---	5.0
$7,500	294	692	398	135	5.5
$10,000	702	1,177	475	68	5.1
$12,500	1,152	1,723	571	50	5.0
$15,000	1,635	2,345	710	43	5.3
$17,500	2,160	3,055	895	41	5.8
$20,000	2,745	3,837	1,092	40	6.3
$25,000	4,057	5,562	1,505	37	7.2
$30,000	5,593	7,522	1,929	34	7.9
$40,000	9,366	12,167	2,801	30	9.1
$50,000	13,798	17,517	3,719	27	10.3
$100,000	[1] 38,678	[1] 42,142	3,464	9	5.6

[1] Reflects the 50-percent maximum tax.

Table 5 makes the same comparisons between a single head of household with one dependent and a single person without dependents. These tax differences range from 2.7 to 5.5 percent of after-tax income, which raises the question of whether these differences are large enough to warrant the complexity of the head-of-household rate schedule. (If that rate schedule were abolished, some tax difference between a head of household and a single person would persist because the head of household would still generally be eligible for additional personal exemptions for dependents.)

TABLE 5.—COMPARISON OF INCOME TAX LIABILITY OF A HEAD OF HOUSEHOLD WITH 1 DEPENDENT AND A SINGLE PERSON

[Assumes no itemized deductions]

Income	Head of household with 1 dependent (1)	Single person (2)	Excess tax of single person over head of household: Amount (3)	Percent of head of household's tax (4)	Percent of head of household's after-tax income (5)
$5,000	$98	$250	$152	155	3.2
$7,500	470	692	222	47	3.2
$10,000	900	1,177	277	31	3.0
$12,500	1,422	1,723	301	21	2.7
$15,000	1,996	2,345	349	17	2.7
$17,500	2,606	3,055	449	17	3.0
$20,000	3,256	3,837	581	18	3.5
$25,000	4,796	5,562	766	16	3.8
$30,000	6,571	7,522	951	14	4.1
$40,000	10,879	12,167	1,288	12	4.4
$50,000	15,611	17,517	1,906	12	5.5
$100,000	[1] 40,611	[1] 42,142	1,531	4	2.6

[1] Reflects the 50-percent maximum tax.

Table 6 shows how the overall income tax burden (including the negative tax liability resulting from the earned income credit) is distributed between single persons, single heads of households, one-earner married couples and two-earner couples. These estimates come from the Treasury Tax Model, extrapolated to 1979 income levels. Single persons pay 21.6 percent of the total income tax burden. Married couples pay 75 percent, divided almost equally between one- and two-earner couples. Heads of households pay 3.4 percent.

Proposals for mandatory or optional separate filing by married couples using the current single person's rate schedule would provide tax cuts of $7 to $9 billion, largely to two-earner couples. This would

TABLE 6.—PRESENT LAW FEDERAL INDIVIDUAL INCOME TAX LIABILITY—1979 INCOME LEVELS

[Dollars in millions]

Expanded income class (thousands)	Single	Joint 1 earner	Joint 2 earners	Head of household	Total
Below $5	$484	−$220	−$186	−$327	−$249
$5 to $10	6,171	117	127	355	6,770
$10 to $15	9,753	2,847	3,283	1,512	17,395
$15 to $20	9,081	5,128	8,254	1,771	24,234
$20 to $30	10,041	13,401	27,286	1,835	52,562
$30 to $50	4,502	20,241	25,280	901	50,923
$50 to $100	2,637	18,339	9,589	435	31,001
$100 to $200	1,250	9,169	3,548	272	14,240
$200 and over	2,041	10,331	2,890	401	15,663
Total	$45,960	$79,353	$80,070	$7,155	$212,539
Percent of total	21.6	37.3	37.7	3.4	100.0

be approximately a 10-percent reduction in their tax burden. Proposals for deductions or credits for two-earner couples, discussed below, would reduce taxes of two-earner couples by anywhere from $3½ to $12 billion, or by anywhere from 5 to 15 percent. Mandatory separate filing would also involve tax increases of between $22 and $25 billion, most of which would fall on one-earner couples. This would be a significant increase in the tax burden on that group.

Effect on work incentives

From the standpoint of economic efficiency, it generally is preferable to impose relatively low tax rates on people or activities for which economic decisions are relatively sensitive to the tax rate. Such a policy tends to minimize the distortions caused by the tax system. The relevant tax rate is not the *average* tax rate, the overall tax burden as a percentage of income, but rather the *marginal* tax rate, the rate applicable to the next dollar of income.

The tax treatment of the family has a significant impact on the marginal tax rates which are applied to earned income. The present system taxes the married couple as one unit, thereby stacking one spouse's income on top of the other's. Thus, for a couple in which the husband already earns $20,000 per year and the wife is deciding whether to take a $20,000 job, the relevant tax rates which affect the wife's decision are not the rates applying to the first $20,000 of income, but rather the rates applying to income between $20,001 and $40,000. With progressive tax rates, of course, the rates applying between $20,001 and $40,000 will be higher than those applying below $20,000. Similarly, if both spouses earn $20,000 and one is considering earning $5,000 by working overtime, the relevant tax rates would be those applying to income between $40,001 and $45,000, not the lower rates applying to income between $20,001 and $25,000.

Table 7 shows some illustrative marginal tax rates which apply under present law, including both the individual income tax and the employee's share of the social security tax (6.13 percent of the first $25,900 of earnings). These marginal rates are the rates applicable to the next dollar of income, assuming that the specified amount of earnings has already been received either by one spouse (in the one-earner couple) or by each spouse (in the two-earner couple). Furthermore, any effect on work incentives resulting from State and local income taxes would have to be added to give a complete picture of tax disincentives, along with sales taxes on consumer goods purchased with the additional wages which are to be earned and the employer's part of the social security tax to the extent it is passed through as lower real wages.

TABLE 7.—COMBINED MARGINAL INCOME AND SOCIAL SECURITY TAX RATES

[In percent]

	Earnings per working spouse (in thousands)				
	$10	$15	$20	$30	$40
Present law:					
Single person	27	32	40	44	49
1-earner couple	24	27	30	32	43
2-earner couple	30	38	49	49	[1] 50
Proposals for 2-earner couples:					
5-percent credit for second earner	25	33	44	44	[1] 45
10-percent deduction for second earner	28	35	45	44	[1] 45

[1] Reflects the 50-percent maximum tax on earned income. The marginal tax rates are the combined income and payroll tax burden on a taxpayer assuming that a certain amount of income has already been earned during the taxable year. For example, in the case where each earner earns $10,000, this means the tax rate applicable to the $10,001st dollar of income for a single person, for a married person whose spouse has no earnings and for a married person whose spouse earns $10,000. The table does not take account of additional deductions or tax credits which may result from use of additional earned income.

For two-earner couples, marginal income and payroll tax rates reach quite high levels at moderate levels of earnings: 38 percent when each spouse earns $15,000 and 49 percent when each spouse earns $20,000.

Taxing married couples as two single individuals would give everyone the marginal tax rates applicable to single persons. This would mean a reduction in marginal tax rates for two-earner couples but, unless there were a sizable income tax cut, it would mean an increase in marginal tax rates for one-earner couples. Optional separate filing as two single persons would leave one-earner couples where they are today and would give two-earner couples the marginal tax rates applying to single persons. A credit of 5 percent of the earnings of the lesser-earning spouse would reduce the marginal tax rate for the second-earner by 5 percentage points. A deduction of 10 percent of the earnings of the lesser-earning spouse would reduce the marginal tax rate for the second earner by 10 percent of the applicable income tax rate. The marginal rates which would result from these proposals are shown in table 7. Of course, to the extent that any change in the tax treatment of the family gained or lost revenue, there might have to be compensatory tax changes that would themselves affect marginal tax rates.

Statistical studies are virtually unanimous in the conclusion that the work decisions of married women are far more sensitive to tax considerations than are those of single persons or married men.[1] If this is correct, reducing the marginal tax rates applicable to working wives would increase overall labor supply even if it were necessary to increase taxes on everyone else to make up lost revenue.[2]

An analysis of the response of various demographic groups to changes in tax rates was conducted by Dr. Michael K. Evans under a grant from the Senate Finance Committee. Evans concluded that a change in tax rates on earned income which increased after-tax earnings by 10 percent would increase hours worked by 0.3 percent for men age 25–54 and by 2 percent for women age 25–54. These results confirm the expectations that the work effort of married women is more responsive to tax reductions than that of married men. (Evans' study, however, is based on data for all men and all women, not just married persons.)

Any reduction in tax-induced economic distortions generally is considered desirable. Moreover, there appears to be increasing concern over distortions created by the tax system on the supply side of the economy. If someone is discouraged from additional work by the applicable marginal tax rate on earned income, there is an efficiency loss to the whole economy. (The efficiency loss, however, does not equal the foregone salary; rather it equals the difference between the foregone salary and the value the person puts on his or her leisure time.) Because of complex interactions between the supply of and demand for labor, it is difficult to determine who in the economy will bear this loss.

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[1] See, for example, H. S. Rosen, "Taxes in a Labor Supply Model with Joint Wage-Hours Determinations," *Econometrica*, July 1976. Rosen found that a 10-percent increase in after-tax earnings will increase the hours worked by married women by 16 percent, which is a much stronger response than is likely to occur for single persons and married men.

[2] There are limits, however, to the extent to which such a shift in tax burdens to one-earner couples and single persons from two-earner couples can continue to increase efficiency. The inefficiency caused by a tax will not tend to increase proportionately with the tax rate but rather in proportion to the square of the tax rate. Thus, as long as single persons and primary earners are somewhat responsive to changes in tax rates, there will be a point after which further tax increases on them will create a larger inefficiency than would equivalent tax increases on more tax-sensitive second earners.

In the case of two-earner couples, however, there may be countervailing considerations. If it is the case that society as a whole benefits more from having unpaid services performed by persons not in the labor force—care of children, elderly or infirm individuals, volunteer and civil activities, performance of domestic and household services, and pursuit of cultural, religious and other activities—than from having a high proportion of married persons involved in the work force, some or all of the efficiency gains from reducing the tax disincentives to work outside the home will be offset by efficiency costs to society in terms of these other alternative activities. Little, if any, conclusive empirical evidence exists to measure these tradeoffs.

Head-of-household rates

Special tax rates, which are approximately midway between the rate schedules applicable to single persons and to married couples filing jointly, apply to individuals who are heads of households. In order to qualify for these rates, an individual must be unmarried and generally must maintain a household for himself or herself and one or more children or dependent relatives. (The requirements are discussed in more detail under "Present law.") The head-of-household rate schedule was established because of Congress' concern that unmarried taxpayers who are required to maintain a household for other individuals have financial responsibilities similar to those of married couples.

The existence of the head-of-household rate schedule, however, adds to tax complexity and leads to some anomalies in the effect that a single person's acquisition of a first dependent has on tax liability compared to the effect of other dependents. As is shown in table 5, the head of household rate schedule and the additional dependency exemption together cause relatively small percentage increases in the after-tax income of a head of household.

For a single person, the acquisition of a dependent for whom the taxpayer maintains a household makes him or her eligible for the head-of-household rate schedule and for an additional $1,000 personal exemption. For a married couple, however, the acquisition of a dependent leads only to an additional $1,000 exemption. (In addition, the acquisition of a dependent may qualify a low-income married couple or single person for the earned income credit.) Thus, a single person generally receives a much larger tax reduction for acquiring the first dependent than does a married couple, and the first dependent of a single person is worth considerably more than subsequent dependents. As a percent of income, the tax benefit for a single person's first dependent rises with income, while that for a married couple's dependents and a single person's subsequent dependents declines with income.

These anomalies could be corrected by eliminating the head-of-household rate schedule and replacing it with a larger personal exemption, perhaps one that increases with income. Under this system, a dependent would give the same tax benefit to both married couples and single persons, and (except for the earned income credit) the first dependent would not be more valuable to a single taxpayer than subsequent dependents.

For married couples with children, who subsequently get divorced, use of the head-of-household rates can result in a divorce bonus.

Consider, for example, a couple with two children and a combined adjusted gross income of $40,000. If that couple filed a joint return (and had no itemized deductions), it would pay a tax of $8,506. If the couple got divorced, each had $20,000 of adjusted gross income, and each kept custody of one child, each individual would pay $3,256 as a single head of household, a combined tax of $6,512. Thus, divorce would cause a total tax saving of $1,994 and an increase in after-tax income of approximately 6 percent.

The complexity of the head-of-household rate schedule is mostly a result of taxpayers' having to decide whether they are eligible for it. The definition of a dependent that makes a taxpayer eligible for head-of-household status is different from the definition of a dependent that makes one eligible for the dependency exemption, and it is hard to determine exactly what is meant by "maintaining a household." Apparently some single persons without dependents who own their own homes mistakenly claim head-of-household status on their returns.

The head-of-household rate schedule was originally enacted in response to concern over the burdens on single persons with dependents, a concern which is no less valid now than in 1951. Presumably, then, repeal of the head-of-household rate schedule would have to be accompanied by some other response to this problem, such as a larger personal exemption for dependents or an expanded earned income credit.

Technical issues related to separate filing

Under present law, married persons may file separate returns. In almost all cases, however, a married couple will pay less tax, in total, if the husband and wife file a joint return. Consequently, few controversies have arisen over the proper allocation of income, deductions, exemptions, and credits between a husband and wife. For the same reason, there has been little controversy over the policy of denying some tax benefits to married persons who file separate returns. If the comparative income tax treatment of married and single taxpayers were modified in a way that encouraged the filing of separate returns by married persons, many issues dormant since 1948 would assume new significance. This section identifies some of the technical issues that would arise more frequently if married couples are encouraged to file separately.

Income issues

The primary technical issue, which led to the enactment of the income splitting provision in the 1948 Act, is the allocation of income between a husband and wife. There are at least three ways personal service or earned income (for example, wages and salary) could be allocated for income tax purposes between a husband and wife. First, a couple's combined earned income could be split in equal shares (as is presently the law for spouses in States with community property laws that consider earned income to be community property). Second, earned income could be allocated to the spouse who performed the services that produced the income (as is presently the law in common law States). The third alternative is present law, which applies the first alternative in community property States and the second alternative in common law States. Many proposals to encourage or mandate separate filing adopt the second alternative and disregard community property laws in order to avoid the problems experienced before 1948.

Income from assets (for example, dividends on stock and rents from real property) also would have to be allocated between a husband and wife. There are two basic approaches: an exact rule which treats the couple as two single individuals or a rule that arbitrarily allocates income. Exact rules could include allocation of investment income to the person whose name appears on the deed or other certificate of ownership, to the owner of the asset determined under State property law, or to the owner of the income determined under State property law. Present law generally taxes income to the owner of an asset, and ownership is usually determined under State law. Arbitrary allocation rules could include allocation of investment income in equal shares to the husband and wife, allocation entirely to the husband or wife (perhaps to the spouse with the greater amount of earned income) or allocation in proportion to the earned income of the husband and wife.

The application of the present ownership rule is often difficult because title to property may be held by more than one person (for example, joint tenants), and State law may create ownership interests (for example, a spouse's vested interest under community property laws) in certain property and income. These complexities, encountered today by a minority of married taxpayers, would be faced by married taxpayers and the Internal Revenue Service with increasing frequency if more married persons filed separately.

Any of the arbitrary rules would mean that one spouse would be reporting and paying tax on income actually owned by the other spouse. This could give rise to the marriage bonuses or penalties the abolition of which is the main justification for separate filing. For example, consider two single persons with equal earnings but with one person having investment income. If they married and if the law required separate filing with most of the arbitrary allocation rules discussed above, the couple would pay less tax than two equivalent single persons because the allocation rule would give the couple partial or complete income splitting on the investment income.

An exact rule allocating investment income to the spouse who owns the property or the income would give married couples the opportunity to achieve some or all of the benefit of income splitting by transferring property to the spouse with the lesser amount of earned income, although it could be argued that this opportunity is now available to any taxpayer who is willing to transfer property to someone other than his or her spouse. (There may be similar opportunities for shifting earned income as a result of one spouse "hiring" another to split their earned income.)

It would be necessary to override State community property laws to some degree to prevent a recurrence of the pre-1948 situation in which community property States provided income-splitting to their citizens while common law States did not. Also, if community property laws are recognized for tax purposes, an estranged spouse may be forced to report income on a separate return which that spouse never receives, a problem which exists under present law and to which H.R.

6247 (sponsored by Rep. Gibbons) is addressed. That bill provides that most types of community income are to be allocated between spouses without regard to community property laws if spouses live apart throughout the year, file separate returns, and do not share income. For earned income, these problems could be solved by allocating the income to the earner even in community property States. However, this would cause an estranged spouse to pay tax on earnings half of which were owned by his or her spouse.

For investment income, the case for overriding community property laws is weaker than for earned income because married residents of common law States can achieve an equal division of investment income by transferring ownership of property between spouses, although these transfers could be subject to gift tax.

Once income is allocated, it is necessary to allocate expenses incurred in the production of that income. Under present law for separate filers, deductions for trade or business expenses are allowable only to the spouse who pays the expenses and only if the expenses are incurred in that spouse's trade or business. For example, neither spouse would be allowed a deduction on a separate return if one spouse pays the salaries of the other spouse's employees. Similarly, expenses incurred in the production of investment income are deductible by the spouse who pays the expense only if that spouse receives the income to which the expense relates. An alternative, more lenient rule, which might be more appropriate in a system that did not try to discourage separate filing, would be to allocate these expenses to the spouse reporting the income to which the expenses relate without regard to which spouse actually paid the expenses.

Personal and dependency exemptions

Under present law for separate returns, each working spouse is entitled to one personal exemption for himself or herself plus additional exemptions, if any, for age or blindness. In addition, each spouse can claim an exemption for each dependent with respect to whom that spouse satisfies the statutory requirements. If neither spouse alone meets the support test, but if both together do, a spouse who provides more than 10 percent of the support can claim the exemption if there is a multiple support agreement. A simpler approach would be to allocate the value of the exemptions 50–50 or in proportion to income.

Itemized deductions

Under present law, taxpayers are entitled to deduct certain expenditures from adjusted gross income in arriving at taxable income. These deductions ("itemized deductions") may be taken by a taxpayer only to the extent that they exceed the taxpayer's applicable zero bracket amount. In general, itemized deductions are allowed for medical and dental expenses, taxes, interest, charitable contributions, casualty and theft losses, and certain miscellaneous expenses. As with income allocation rules, it is possible to have more or less exact allocations or to have arbitrary allocation rules.

Medical expenses

In general, individuals may deduct unreimbursed medical and dental expenses in excess of 3 percent of adjusted gross income, plus one-half of medical insurance premiums (up to $150) without regard to the 3-percent floor. This deduction is allowable with respect to expenses which constitute medical care for the taxpayer, his or her spouse, and dependents.

Determining an individual's medical expense deduction involves a three-step calculation. First, the taxpayer deducts one-half of any medical insurance cost up to a maximum of $150, without regard to the amount of adjusted gross income. Second, the taxpayer must determine the amount of all medicine and drug expenses not compensated for by insurance and determine the amount by which those expenses exceed one percent of adjusted gross income. Third, the taxpayer then must determine the sum of the excess medicine and drug expenses, the remainder of any medical insurance cost not deductible under the first step, and the other medical expenses (such as, physicians' fees and hospital bills) not compensated for by insurance. The allowable medical deduction then is the excess of the total amount of the expenses over 3 percent of adjusted gross income, plus the medical insurance deduction computed under the first step.

Because a percentage of adjusted gross income is a floor under the medical expense deduction, a two-earner couple (where one spouse has unusually large medical expenses) may receive an additional benefit under present law through filing separate returns instead of a joint return. Taking each spouse's income separately would produce a lower floor under deductible medical expenses than would combining the couple's adjusted gross income on a joint return.

When spouses file separate returns under present law, each spouse takes into account the medical expenses paid for by himself or herself for purposes of computing the deduction regardless of the identity of the spouse for whom the expenses were incurred. This same rule could be followed if spouses were allowed to file separately under more beneficial tax rates. There would be a tracing problem arising from having to determine which spouse actually paid or incurred the expense. While this problem already exists where spouses file separate returns under present law, the administrative tracing burden would increase if the enactment of more beneficial tax rates for separate filing by two-earner couples caused more of these couples to file separately. Under present law, single persons cannot deduct medical expenses incurred on behalf of someone else who is not a dependent. Therefore, this rule would not provide complete marriage neutrality.

State and local taxes

State or local income taxes, real property taxes, personal property taxes, and general sales taxes are deductible. Separate filing by spouses would create a burden of determining which spouse made the deductible payments.

State and local income taxes are now deductible by the individual who is charged with and pays those taxes. The manner in which married couples deduct those taxes currently depends upon how the spouses file their State and Federal income tax returns:

(1) If an individual and his or her spouse file separate State and separate Federal returns, then each spouse may deduct on each separate Federal return the amount of State income tax paid by that spouse.

(2) If each spouse files separate State returns but the couple files a joint Federal income tax return, they may deduct on the joint return the sum of the State income taxes paid by each.

(3) If an individual and his or her spouse file a joint State return but file separate Federal returns, then each spouse may deduct part of the State income taxes on his or her separate Federal return. In this situation, the amount deducted by each spouse must be in the same proportion that each spouse's gross income bears to the combined gross income of both spouses. However, in no event may either spouse deduct more than the actual amount of State income taxes paid by each spouse during the year. If an individual and his or her spouse are jointly and individually liable for the full amount of State income tax, each spouse may deduct the actual amount paid by each on his or her own separate Federal return.

It would seem that rules similar to those described above could be followed for the deduction of State and local income taxes in a separate filing system. However, if these rules are thought to be too complex, some arbitrary system could be devised for allocating these deductions.

Real property taxes currently are deductible only by the property owner. If real property taxes are paid by the spouse who owns the property, then they may be deducted on that spouse's separate return or on a joint return. If the spouse who does not own the property pays the tax, the tax is deductible on a joint return but not on a separate return. A system of more widespread separate filing could follow the same rules. Alternatively, rules could be adopted which would not require matching of ownership and payment of tax but would allow the deduction to whichever spouse makes the payment. This could be simpler and more consistent with a policy to encourage separate filing.

Personal property taxes raise the same technical issues as real property taxes, since the allowability of the deduction depends upon who is the property owner.

General sales taxes raise different issues since they are based upon consumption rather than ownership. In a system of separate filing, each spouse could be required to keep records of his or her separate purchases and take separate deductions on that basis (deductible sales taxes on joint purchases could be split evenly). This, however, could prove to be quite burdensome to taxpayers. Instead, each spouse could be permitted to take deductions, as under present law, pursuant to sales tax tables, with the amount of the deduction depending upon each spouse's separate adjusted gross income.

Interest deductions

Interest deductions present problems similar to those with respect to deductions for real property taxes and personal property taxes since, in order for a taxpayer to deduct interest on a debt under present law, the taxpayer must be legally liable for the debt. (That is, a taxpayer cannot take a deduction for interest paid on a debt for which some other person is solely liable.) Either this rule could be retained, or the more lenient rule suggested above for property taxes could be adopted.

The interest deduction is limited in the case of certain "investment interest." (Investment interest generally is interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.) In general, this limitation is $10,000 per year, plus the taxpayer's net investment income. In the case of married couples filing separate returns, the $10,000 limitation is halved. Under a proposal to treat two married persons the same as two single persons, it would be necessary to provide each spouse with a separate limitation equal to $10,000 plus that spouse's separate investment income.

Charitable contributions

Within certain limitations, individuals are entitled to deduct contributions of cash or property to qualified charities. In general, contributions to most charities may not exceed 50 percent of adjusted gross income; contributions of certain capital-gains property may not exceed 30 percent of adjusted gross income; and contributions to certain types of private foundations may not exceed 20 percent of adjusted gross income.

Because the charitable contributions deduction has an adjusted gross income ceiling, working spouses who make large contributions gain under current law by joint filing. This is due to the fact that by combining their incomes by joint filing they are entitled to a higher ceiling for contributions than would be the case if they filed separately. On a joint return, it is not necessary to trace contributions from a particular spouse because total contributions, as well as total income, are combined.

In a separate filing system, it would be necessary for each spouse to keep track of his or her own particular contributions and to deduct no more than that amount against his or her own particular income. This probably would not be too great a problem where each spouse makes contributions out of his or her own income and keeps good records of the contributions. However, in situations where spouses commingle their earnings, or the spouses do not keep adequate records of which spouse made a particular contribution, the administrative problems under present law could be compounded. Moreover, the carryover provisions could cause additional complexities especially during the transition period between joint and separate filing. (In general, charitable contributions which exceed the applicable adjusted gross income limitation may be carried forward for five succeeding taxable years.)

Casualty and theft losses

Individuals are entitled to deduct losses resulting from certain casualties to, or thefts of, property. However, individuals may deduct these losses only to the extent that they are not reimbursed by insurance or otherwise and to the extent that the loss exceeds $100 for each casualty or theft.

Under present law, if two or more individuals who are not spouses suffer losses from the same casualty or theft, the $100 limitation is applied separately to each individual. In the case of a husband and wife who file a joint return, if each suffers a loss from the same casualty or theft, they are treated as one individual in applying the $100 limitation without regard to whether the damaged or stolen property was owned jointly or separately. On the other hand, if they file separate returns, each is subject to a separate $100 limitation. In the case of a husband and wife who own property jointly and who sustain a casualty loss with respect to that property, each is entitled to claim one-half of the loss on a separate return; but, in no event, may either spouse claim the entire loss deduction on a separate return. These rules could be adopted in a system of more widespread separate filing.

Miscellaneous deductions

In addition to the itemized deductions discussed above, taxpayers may be entitled to additional itemized deductions for certain employee expenses (such as, expenses for certain work clothes, employment-related education, union dues, and professional society dues) and for certain expenses incurred in connection with producing income (such as, certain legal and accounting fees and safe deposit box rentals).

In a system of separate filing, these miscellaneous deductions would present the same issues as the business expense deductions discussed above.

Arbitrary allocation rules

Any exact method of allocating itemized deductions between spouses in a way that attempts to treat them as two single persons would be more complex than existing law for joint returns. Furthermore, married persons could use whatever rules are provided to achieve their own income splitting; for example, by having the spouse with the greater amount of adjusted gross income make all of the couple's charitable contributions.

An alternative would be some kind of arbitrary allocation rule for some or all itemized deductions, such as allocating all itemized deductions to the spouse with the lesser adjusted gross income or allocating them in proportion to adjusted gross income. These rules, however, violate the spirit of separate filing and create their own marriage bonuses or penalties because they are different from the rules applicable to single persons. Therefore, they would probably not be considered entirely fair.

Provisions containing income phaseouts

Several provisions of the tax law require that certain benefits be phased out as a taxpayer's income rises above specified levels. Among the provisions in this category are the credit for the elderly, the earned income credit, and the disability income exclusion.

Credit for the elderly

In general, the credit for the elderly is reduced by one-half of adjusted gross income in excess of certain limitations. The phaseout begins at an adjusted gross income level of $7,500 for single individuals, $10,000 for married couples filing joint returns, and $5,000 for married individuals filing separate returns. However, married individuals may claim the credit on a separate return only if they live apart at all times during the taxable year.

One alternative for a system of widespread separate filing would be to allow the credit for separate returns but to base the phaseout on the spouses' combined income. No credit would be allowed unless the taxpayer could substantiate his or her spouse's income. However, this would continue the marriage penalty because the phaseout would be higher for two single persons than for a married couple. A second alternative would be to continue present law for married persons filing separately but to repeal the requirement that they live apart; that is, the phaseout for each spouse would be based on that spouse's income and the phaseout range would be one-half of what it now is for spouses filing jointly. This however, also creates a marriage penalty. A third alternative would set the phaseout level for each spouse at the level which currently applies to each single individual (i.e., $7,500). This would eliminate the marriage penalty. Both the second and third alternatives would make the credit available to many spouses in high-income families where the income is unequally divided, a group Congress did not intend to help when it enacted the credit.

Earned income credit

The earned income credit phases out at a rate of 12.5 cents for each dollar of income above $6,000. Thus, the credit does not apply to taxpayers who have $10,000 or more of income.

The earned income credit raises essentially the same problems as the elderly credit under a system of separate filing. Either the phaseout must be set in a way that creates a marriage penalty or the credit must be greatly expanded to low-income spouses in high-income families for whom it was not intended.

Because the earned income credit is only available to persons who maintain a household for certain dependents, in a system of separate filing the credit would be available to whichever spouse maintains the household. Rules could be established to allow the credit when neither spouse alone meets the requirements for maintaining a household, but both meet them together. Presumably if two spouses lived apart and each maintained a household for a dependent, both spouses could receive the earned income credit.

Disability income exclusion

Under present law, a disability income exclusion of up to $5,200 annually is available to certain disabled, retired taxpayers under the age of 65. This exclusion phases out on a dollar-for-dollar basis as adjusted gross income exceeds $15,000. Thus, no exclusion is available for a taxpayer with $20,200 or more of adjusted gross income. The disability income exclusion raises similar issues as the elderly credit and the earned income credit. However, some might contend that the disability income exclusion (unlike the credits) is personal with respect to the taxpayer who receives disability income and that, therefore, each spouse should be entitled separately to claim the disability income exclusion.

Taxation of unemployment compensation

As part of the Revenue Act of 1978, Congress decided to tax unemployment compensation to a limited extent. The reason for this was Congress' belief that unemployment compensation benefits are, in substance, a substitute for taxable wages. Congress also believed that prior law's total exclusion of unemployment compensation benefits tended to create a work disincentive. This disincentive was especially serious for two-earner couples where, because of the high marginal tax rate, tax-exempt unemployment benefits were often worth more than taxable wages. However, rather than taxing unemployment compensation in full, Congress decided generally to tax unemployment compensation received by relatively high-income taxpayers.

The amount of unemployment compensation that must be included in a taxpayer's gross income (and, thus, subject to tax) depends upon the amount of unemployment compensation received by the taxpayer, the amount of the taxpayer's other income, and the filing status of the taxpayer. For a single taxpayer, the amount of unemployment compensation to be included in income generally is limited to one-half of the excess of adjusted gross income plus unemployment compensation over $20,000. (For married taxpayers filing jointly the requisite amount is $25,000). A married taxpayer who files separately must include unemployment compensation in income to the extent of one-half of the unemployment compensation plus other income with no income phaseout. For example, a single taxpayer who has adjusted gross income of $20,000 plus unemployment compensation of $4,000 would include $2,000 of unemployment compensation in income; a married taxpayer in similar circumstances would include none of the unemployment compensation in gross income if the couple filed a joint return but would be required to include all of the unemployment compensation in gross income if a separate return were filed. As with other provisions with income phaseouts, separate filers are denied benefits under present law to prevent their using separate returns to avoid the income phaseout.

In a system that encourages or mandates separate filing, there would be a number of options concerning the treatment of unemployment compensation. A married couple could be required to pool their income in order to determine how much of each, or both, spouse's unemployment compensation should be taxed. Alternatively, the couple could be treated as two single individuals; that is, each could be taxed only to the extent that each had unemployment compensation and other income in excess of $20,000. The couple could be treated midway between the present law treatment applicable to single persons and married persons filing separately (for example, each spouse could be taxed on unemployment compensation to the extent that each spouse's unemployment compensation plus other income exceeds $10,000). Finally, the law could be changed to simply make all unemployment compensation taxabe for everyone.

It shoud be noted that mandatory and optional separate filing would reduce the work disincentives provided by tax-exempt unemployment compensation by reducing the marginal tax rates on secondary earners.

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V. ANALYSIS OF SPECIFIC PROPOSALS

Specific proposals to change the current tax treatment of the family include (1) mandatory separate filing by married couples using the same rate schedule as single persons, (2) optional separate filing using the same rate schedule as single persons, (3) a deduction for two-earner couples, (4) a credit for two-earner couples, (5) allowing single persons to use the joint return rate schedule and (6) uattening out the tax rate schedule.

Mandatory separate filing

Requiring married couples to file as two single persons would mean returning to a system similar to the one in effect between 1913 and 1948. There would have to be a new solution to the problem that toppled the pre-1948 system, the different tax burdens in community-property and common-law States. This might be accomplished by overriding community property laws, at least for earned income, and by allocating earned income to the earner. Investment income could be reported by the spouse who owns the property. Alternatively, investment income could be allocated arbitrarily in proportion to earned income, entirely to the spouse with the greater earnings, or 50–50 between spouses, with the same rules applying in all States. There also might have to be changes in the present rules for allocating deductions between spouses.

Mandatory separate filing would eliminate the marriage penalty and marriage bonus now inherent in the tax rate schedules. However, the allocation rules for investment income and deductions could create new marriage bonuses or penalties if the rules for married persons were different than those pertaining to single persons. If the allocation rules for investment income and deductions attempted to duplicate what would happen were the couple not married, there would be opportunities to create marriage bonuses by careful tax planning (for example, by shifting investment income to the spouse with the lower amount of earned income and deductions to the spouse with the greater amount of adjusted gross income).

Some vestiges of joint filing would probably have to be retained. Otherwise, the provisions of the tax law which give benefits that phase out based on income would not work as intended because they would give benefits to low-income taxpayers with high-income spouses. To prevent this, the phaseouts would have to be based on joint income, which would reintroduce a marriage penalty.

Thus, complete marriage neutrality is likely to prove to be an elusive goal. The closer a system of separate filing attempts to duplicate what would happen if the married couple were unmarried, the more complex it would be.

The technical issues raised by separate filing exist under the present law for married couples who file separately. However, this group is only 1.3 percent of all married couples. Furthermore, because the present policy is to discourage separate filing, it is possible to resolve issues simply by penalizing separate filers, a solution which would be unacceptable if the policy were to encourage separate filing.

The revenue effect and distribution by income class of mandatory separate filing depend on just how investment income and itemized deductions are allocated. Tables 8 and 9 show the impact of two possible allocations.

In table 8, both investment income and deductions are split in proportion to earned income. The net tax increase, at 1979 income levels, is $18.1 billion, which consists of tax cuts for 14.7 million returns totaling $7.0 billion offset by tax increases for 25.4 million returns totaling $25.1 million. This proposal would finance a 7.8 percent across-the-board tax cut.

Table 9 shows the revenue and distributional effects of mandatory separate filing under the assumption that investment income is allocated 50–50 and deductions are allocated proportionately to earned income. The overall tax increase would be $12.4 billion. There would be tax increases for 23.7 million returns totaling $21.1 billion and tax cuts for 16.1 million returns totaling $8.7 billion. This proposal would finance a 5.5-percent across-the-board income tax cut.

No estimates are provided for exact allocations of investment income and deductions because data to make such estimates are not available.

H.R. 108 (sponsored by Rep. Annunzio) and H.R. 2553 (sponsored by Rep. McDonald) embody the concept of separate filing using the current joint return rate schedule.

TABLE 8.—REVENUE EFFECT OF REQUIRING MARRIED COUPLES TO FILE AS SINGLE PERSONS AT 1979 INCOME LEVELS [1]

[Returns in thousands, dollars in millions]

Expanded income (thousands)	Tax decrease		Tax increase		Net tax change	Percent of total tax increase
	Returns	Amount	Returns	Amount		
Below $5	0	0	479	$61	$61	0.3
$5 to $10	542	−$73	4,015	1,138	1,065	5.9
$10 to $15	1,855	−404	4,181	1,781	1,377	7.6
$15 to $20	3,011	−847	3,857	2,278	1,431	7.9
$20 to $30	6,220	−2,257	6,398	5,769	3,512	19.4
$30 to $50	2,658	−2,305	4,621	7,115	4,810	26.6
$50 to $100	345	−824	1,478	4,850	4,026	22.3
$100 to $200	41	−204	266	1,518	1,314	7.3
$200 and above	13	−129	66	620	490	2.7
Total	**14,686**	**−$7,045**	**25,361**	**$25,130**	**$18,085**	**100.0**

[1] Assumes investment income and deductions are allocated in the same proportion as earned income, which is allocated to the earner. Investment income is defined as interest and dividend income plus capital gains. The table does not include any revenue impact from whatever changes to the head-of-household rate schedule would be made in connection with this proposal.

TABLE 9.—REVENUE EFFECT OF REQUIRING MARRIED COUPLES TO FILE AS SINGLE PERSONS AT 1979 INCOME LEVELS [1]

[Returns in thousands, dollars in millions]

Expanded income (thousands)	Tax decrease		Tax increase		Net tax change	Percent of total tax increased
	Returns	Amount	Returns	Amount		
Below $5	0	0	420	$134	$134	1.1
$5 to $10	642	−$83	3,722	984	902	7.3
$10 to $15	2,085	−443	3,938	1,582	1,139	9.2
$15 to $20	3,176	−905	3,701	2,101	1,196	9.6
$20 to $30	6,473	−2,369	6,145	5,284	2,914	23.5
$30 to $50	2,931	−2,564	4,351	6,056	3,492	28.2
$50 to $100	573	−1,333	1,251	3,271	1,938	15.6
$100 to $200	135	−591	173	778	188	1.5
$200 and above	52	−401	28	894	492	4.0
Total	16,067	−$8,689	23,729	$21,085	$12,396	100.0

[1] Assumes investment income is allocated 50–50 and that deductions are allocated in the same proportion as earned income, which is allocated to the earner. The table does not include any revenue impact from whatever changes to the head-of-household rate schedule would be made in connection with this proposal.

Optional separate filing

The second alternative would be to give married couples the option of filing as two single individuals (as opposed to the present system in which separate filing is optional, but almost always disadvantageous). This proposal involves essentially the same technical issues as mandatory separate filing, although there could be more flexibility in resolving them because separate filing would not be mandatory. It involves the additional complexity that many taxpayers would compute their tax both separately and jointly to make sure they minimized their tax liability. Optional separate filing has the further problem that it does not conclusively resolve the question of what is the proper tax unit. It would, however, eliminate the marriage penalty inherent in the tax rate schedules.

The revenue and distributional effects of optional separate filing can be obtained from looking at the parts of tables 8 and 9, which show the taxpayers who would have tax decreases under mandatory separate filing, because these would be the ones who would elect to file separately under optional separate filing. If income and deductions were allocated proportionately to earned income the revenue loss for optional separate filing would be $7.0 billion. This could be financed by a 3.4 percent increase in individual income tax rates. If investment income were allocated 50–50 between spouses and deductions allocated proportionately, the revenue loss would be $8.7 billion, which could be financed by a 4.3 percent tax increase.

The concept of optional separates filing at current single person tax rates is embodied in H.R. 3609 (sponsored by Rep. Fenwick), H.R. 5012 (sponsored by Rep. Moore), and S. 336 (sponsored by Sen. Mathias).

Deduction for two-earner couples

The third proposal would maintain the existing system of joint returns, in which separate filing is almost always disadvantageous, but would provide some relief to two-earner married couples through a deduction equal to a percentage of the earned income of the spouse with the lesser amount of earnings. The deduction would be allowable whether or not a taxpayer itemized other deductions. Earned income would be determined without regard to community property laws.

The deduction for two-earner couples is the simplest way of reducing the marriage penalty and marginal tax rates on second earners. The reductions in the marriage penalty would not be uniform for all couples; however, the reduction in marginal tax rates would be uniform unless there were a cap on the deduction. This proposal would avoid most of the complexities of either optional or mandatory separate filing.

Tables 10 and 11 show the revenue effects of various deductions for second earners. A 10-percent deduction would have a revenue loss of $3.7 billion. One way to reduce this revenue loss would be to put a cap on the amount of earnings eligible for the deduction. For example, a $10,000 cap would reduce the revenue loss to $3.2 billion, and a $20,000 cap would reduce it to $3.6 billion. A cap would reduce the benefit from the deduction to high-income families; however, these are precisely the families for whom the marriage penalty is largest, both absolutely

TABLE 10.—TAX REDUCTION FROM GRANTING JOINT RETURNS A DEDUCTION BASED UPON THE EARNED INCOME OF THE LESSER EARNING SPOUSE AT 1979 INCOME LEVELS

[Returns in thousands; dollars in millions]

Expanded income (thousands)	Returns	10 percent, up to $10,000	10 percent, up to $20,000	20 percent, up to $20,000	10 percent, no cap
Below $5	0	−0	−0	−0	0
$5 to $10	1, 114	−$32	−$32	−$61	−$32
$10 to $15	3, 085	−178	−178	−351	−178
$15 to $20	4, 442	−449	−451	−890	−451
$20 to $30	8, 147	−1, 388	−1, 470	−2, 892	−1, 471
$30 to $50	3, 572	−925	−1, 194	−2, 349	−1, 203
$50 to $100	505	−162	−231	−459	−256
$100 to $200	73	−28	−43	−86	−61
$200 and above	16	−6	−10	−20	−22
Total	**20, 953**	**−3, 167**	**−3, 610**	**−7, 107**	**−3, 674**

TABLE 11.—TAX REDUCTION FROM GRANTING JOINT RETURNS A 10-PERCENT DEDUCTION ON THE FIRST $20,000 OF THE EARNED INCOME OF THE LESSER EARNING SPOUSE ONLY FOR COUPLES WITH AT LEAST AN 80–20 EARNINGS SPLIT; AT 1979 INCOME LEVELS

[Returns in thousands; dollars in millions]

Expanded income (thousands)	Returns	Tax reduction
Below $5	0	0
$5 to $10	700	−$27
$10 to $15	1, 968	−155
$15 to $20	3, 104	−400
$20 to $30	5, 959	−1, 336
$30 to $50	2, 449	−1, 057
$50 to $100	241	−167
$100 to $200	23	−21
$200 and above	5	−4
Total	**14, 449**	**−3, 167**

and as a percentage of after-tax income. Also, a cap means that there would be no reduction in the marginal tax rate on a second earner whose earnings exceeded the cap (i.e., a second earner who already is earning $20,000 would have no additional incentive to earn more).

Another way to reduce the revenue loss would be to limit the deduction to couples with relatively equal earnings divisions. Limiting the deduction to couples where each spouse contributes at least 20 percent of the couple's earnings would reduce the revenue loss from a 10 percent deduction with a $20,000 cap to $3.2 billion, as shown in table 11. A problem with this approach, however, is that it creates an odd pattern of marginal tax rates for married persons whose earnings division is close to 80–20. For example, for a couple whose earnings division is 81–19, there would be a large tax advantage for the lesser-earning spouse to raise his or her contribution to 20 percent, and there would be an equally large tax incentive for the greater-earning spouse to reduce his or her contribution to 80 percent.

Tables 12 through 16 show how these proposals would affect the marriage bonus or penalty.

H.R. 6203 (sponsored by Rep. Fisher) contains a 10-percent deduction with a $10,000 cap. S. 1247 (sponsored by Sen. Gravel) contains a 10-percent deduction with a $20,000 cap. S. 1877 (sponsored by Sen. Sasser) has a 20-percent deduction with a $20,000 cap. H.R. 6822 (sponsored by Rep. Conable) has a 10-percent deduction with a $20,000 cap, limited to couples where each spouse contributes at least 20 percent of the couple's combined earnings.

TABLE 12.—EFFECT OF MARRIAGE ON TAX LIABILITY WITH A DEDUCTION OF 10-PERCENT OF UP TO $10,000 OF THE LESSER EARNING SPOUSE'S EARNED INCOME [1]

	Share of lesser earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
$7,000	−378	−320	−262	−204	−146	−91	−39	12	59	103	119
$10,000	−475	−379	−293	−207	−121	−35	46	99	110	120	114
$15,000	−710	−531	−359	−195	−31	54	89	110	110	102	94
$20,000	−1,092	−784	−508	−232	−54	30	94	132	163	165	151
$25,000	−1,505	−1,090	−700	−373	−170	−15	100	203	255	314	331
$30,000	−1,929	−1,382	−845	−478	−218	−26	151	324	465	555	583
$40,000	−2,801	−1,907	−1,111	−596	−167	237	601	899	1,134	1,214	1,262
$50,000	−3,344	−2,217	−1,339	−654	−36	643	1,241	1,631	1,949	2,084	2,184
$100,000	−3,464	−1,464	−141	1,191	2,199	2,974	3,514	3,814	3,869	3,894	3,894

[1] Assumes no itemized deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

TABLE 13.—EFFECT OF MARRIAGE ON TAX LIABILITY WITH A DEDUCTION OF 10-PERCENT OF UP TO $20,000 OF THE LESSER EARNING SPOUSE'S EARNED INCOME [1]

	Share of lesser earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
$7,000	−378	−320	−262	−204	−146	−91	−39	12	59	103	119
$10,000	−475	−379	−293	−207	−121	−35	46	99	110	120	114
$15,000	−710	−531	−359	−195	−31	54	89	110	110	102	94
$20,000	−1,092	−784	−508	−232	−54	30	94	132	163	165	151
$25,000	−1,505	−1,090	−700	−373	−170	−15	100	203	255	280	261
$30,000	−1,929	−1,382	−845	−478	−218	−26	151	308	401	443	423
$40,000	−2,801	−1,907	−1,111	−596	−167	237	515	727	876	870	832
$50,000	−3,344	−2,217	−1,339	−654	−36	521	996	1,264	1,459	1,594	1,694
$100,000	−3,464	−1,464	−141	941	1,699	2,474	3,014	3,314	3,369	3,394	3,394

[1] Assumes no itemized deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

TABLE 14.—EFFECT OF MARRIAGE ON TAX LIABILITY WITH A DEDUCTION OF 20-PERCENT OF UP TO $20,000 OF THE LESSER EARNING SPOUSE'S EARNED INCOME [1]

	Share of lesser earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
$7,000	−378	−325	−272	−218	−165	−115	−69	−23	20	59	70
$10,000	−475	−388	−311	−234	−157	−78	−4	42	46	48	4
$15,000	−710	−547	−391	−242	−94	−25	−6	0	−13	−32	−52
$20,000	−1,092	−808	−556	−304	−150	−90	−50	−36	−29	−51	−89
$25,000	−1,505	−1,125	−770	−478	−310	−190	−110	−42	−25	−35	−89
$30,000	−1,929	−1,430	−941	−622	−410	−266	−137	−28	17	11	−57
$40,000	−2,801	−1,993	−1,283	−854	−511	−193	−1	125	212	144	44
$50,000	−3,344	−2,339	−1,584	−1,021	−526	−74	309	484	587	722	822
$100,000	−3,464	−1,714	−641	191	699	1,474	2,014	2,314	2,369	2,394	2,394

[1] Assumes no itemized deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

TABLE 15.—EFFECT OF MARRIAGE ON TAX LIABILITY WITH A DEDUCTION OF 10-PERCENT OF THE LESSER EARNING SPOUSE'S EARNED INCOME WITH NO CAP [1]

	Share of lesser earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
$7000	−378	−320	−262	−204	−146	−91	−39	12	59	103	119
$10,000	−475	−379	−293	−207	−121	−35	46	99	110	120	114
$15,000	−710	−531	−359	−195	−31	54	89	110	110	102	94
$20,000	−1, 092	−784	−508	−232	−54	30	94	132	163	165	151
$25,000	−1, 505	−1, 090	−700	−373	−170	−15	100	203	255	280	261
$30,000	−1, 929	−1, 382	−845	−478	−218	−26	151	308	401	443	423
$40,000	−2, 801	−1, 907	−1, 111	−596	−167	237	515	727	876	870	832
$50,000	−3, 344	−2, 217	−1, 339	−654	−36	521	996	1, 264	1, 459	1, 475	1, 467
$100,000	−3, 464	−1, 464	−141	941	1, 699	2, 224	2, 514	2, 564	2, 369	2, 144	1, 894

[1] Assumes no itemized deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

TABLE 16.—EFFECT OF MARRIAGE ON TAX LIABILITY WITH A DEDUCTION OF 10-PERCENT OF UP TO $20,000 OF THE LESSER EARNING SPOUSE'S EARNED INCOME ONLY WHERE EACH SPOUSE CONTRIBUTES 20 PERCENT OR MORE OF COMBINED EARNINGS [1]

	Share of lesser earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
$7,000	−378	−315	−252	−189	−146	−91	−39	12	59	103	119
$10,000	−475	−370	−275	−180	−121	−35	46	99	110	120	114
$15,000	−710	−515	−328	−148	−31	54	89	110	110	102	94
$20,000	−1,092	−760	−460	−160	−54	30	94	132	163	165	151
$25,000	−1,505	−1,055	−630	−268	−170	−15	100	203	255	280	261
$30,000	−1,929	−1,334	−749	−334	−218	−26	151	308	401	443	423
$40,000	−2,801	−1,821	−939	−338	−167	237	515	727	876	870	832
$50,000	−3,344	−2,094	−1,094	−36	−36	521	996	1,264	1,459	1,594	1,694
$100,000	−3,464	−1,214	359	1,691	1,699	2,474	3,014	3,314	3,369	3,394	3,394

[1] Assumes no itemized deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

Credit for two-earner couples

Another alternative would be a tax credit equal to a percentage of the earnings of the spouse with the lesser amount of earnings. This would be as simple as and more progressive than a deduction. However, it would not be as effective as a deduction, per dollar of revenue loss, in reducing marginal tax rates in the high income brackets, where high marginal rates present the most serious problems.

Table 17 shows the revenue and distributional effects of a 10 percent credit on up to $10,000 of earnings. The revenue loss would be $11.7 billion at 1979 income levels, which could be financed by a 5.8 percent across the board tax increase. The effect of the tax credit on the marriage penalty is shown in table 18. Per dollar of revenue loss, a credit would be less effective than a deduction in reducing the marriage penalty in those income brackets where the marriage penalty is more significant.

A credit of 10 percent of up to $10,000 of earnings of the lesser-earning spouse is embodied in H.R. 6798 (sponsored by Rep. Patten). Under this bill, the maximum credit would be $500, and the credit would be phased out as the couple's earnings split widens from 70–30 to 80–20.

Taxing single people at joint return tax rates

A fifth proposal, which was prominently mentioned when Congress was more concerned about alleged discrimination against single persons but has not been mentioned as prominently in recent years, would allow single persons to use the joint return rate schedule. Table 19 shows the revenue and distributional effects of this proposal. The revenue loss would be $11.4 billion at 1979 income levels, which could be financed by a 5.7 percent tax increase.

TABLE 17.—TAX REDUCTION FROM GRANTING JOINT RETURNS A 10-PERCENT CREDIT ON THE FIRST $10,000 OF EARNED INCOME OF THE LESSER EARNING SPOUSE—AT 1979 INCOME LEVELS

[Returns in thousands; dollars in millions]

Expanded income (thousands)	Returns	Tax reduction
Below $5	0	0
$5 to $10	1,118	$160
$10 to $15	3,085	958
$15 to $20	4,442	2,129
$20 to $30	8,146	5,362
$30 to $50	3,566	2,670
$50 to $100	493	337
$100 to $200	69	49
$200 and above	13	10
Total	**20,933**	**$11,674**

TABLE 18.—EFFECT OF MARRIAGE ON TAX LIABILITY WITH A TAX CREDIT OF 10-PERCENT OF THE FIRST $10,000 OF THE LESSER EARNING SPOUSE'S EARNED INCOME [1]

	Share of lesser earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−250	−235	−220	−208	−198	−188	−178	−175	−200	−225	−250
$7,000	−378	−350	−322	−294	−266	−241	−220	−199	−182	−168	−182
$10,000	−475	−420	−375	−330	−285	−240	−200	−188	−218	−250	−298
$15,000	−710	−590	−478	−373	−268	−243	−267	−305	−364	−431	−499
$20,000	−1,092	−860	−660	−460	−358	−350	−362	−400	−445	−519	−609
$25,000	−1,505	−1,180	−880	−643	−530	−465	−440	−428	−465	−406	−389
$30,000	−1,929	−1,484	−1,049	−784	−626	−536	−461	−356	−215	−125	−97
$40,000	−2,801	−2,021	−1,339	−938	−623	−333	31	329	564	644	692
$50,000	−3,344	−2,344	−1,594	−1,036	−546	133	731	1,121	1,439	1,574	1,674
$100,000	−3,464	−1,714	−641	691	1,699	2,474	3,014	3,314	3,369	3,394	3,394

[1] Assumes no itemized deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

Further reducing the tax rates applicable to single persons would exacerbate the marriage penalty. To reduce the marriage penalty, this proposal could be combined with proposals for a deduction for second earners. Also, to provide tax relief for larger families, it could be combined with an enlarged personal exemption for dependents. The combined effect of all of these changes would be to increase the tax burden on small, one-earner families.

Taxing single persons under the joint return rate schedule is embodied in H.R. 872 (sponsored by Rep. Yates).

TABLE 19.—TAX REDUCTION FROM ALLOWING SINGLES AND HEADS OF HOUSEHOLDS TO BE TAXED AT JOINT RETURN RATES AT 1979 INCOME LEVELS

[Returns in thousands; dollars in millions]

Expanded income (thousands)	Returns	Amount
Below $5	4, 568	−$443
$5 to $10	11, 809	−2, 543
$10 to $15	7, 205	−2, 462
$15 to $20	4, 110	−2, 074
$20 to $30	2, 774	−2, 226
$30 to $50	676	−929
$50 to $100	160	−463
$100 to $200	33	−172
$200 and above	9	−83
Total	**31, 345**	**−$11, 395**

Flattening out the rate schedule

Another approach to reduce the marriage penalty is to flatten the rate schedules for all categories of taxpayers.

This approach in its simplest form can best be explained by using an example. Suppose that tax liability were simply equal to 33.3 percent of taxable income, minus a nonrefundable taxpayer credit of $1,000 for unmarried individuals and $2,000 for a married couple filing a joint return. In this situation, if two single individuals each had taxable income of, for example, $10,000, each would have tax liability of $2,333. If they married and filed a joint return, they would have a tax liability of $4,666 (20,000×.33−2,000). Thus, this system is "marriage neutral" with respect to these two individuals. In fact, with respect to any two individuals each with taxable income of at least $3,000 (so that they both can take full advantage of the nonrefundable credit), this tax system would be completely "marriage neutral" and would have "equal taxation of couples with equal incomes" regardless of each spouse's share of the couple's combined earnings.

Changing the rate schedule in such a fashion would, of course, cause a large shift in the progressivity of the income tax. However, a less radical "flattening-out" in rates could make the tax system nearly marriage neutral with respect to the majority of individuals in the United States.

For example, suppose that rate schedules were as follows: (1) married filing jointly—24 percent of the first $35,200 of taxable income, 45 percent of taxable income between $35,200 and $45,800, with current law rates thereafter, and (2) single taxpayers—24 percent of the first $23,500 of taxable income, 44 percent of taxable income between $23,500 and $34,100, with current law rates thereafter. Suppose also that single and joint returns were entitled to a new nonrefundable credit of $800 and $1,600, respectively. Then, leaving aside the complications of head-of-household status, the marriage penalty would be virtually eliminated for couples with less than $35,200 of taxable income and would be substantially reduced for all others. Leaving head-of-household rates unchanged and the floors under itemized deductions at their current levels ($2,300 for single taxpayers and $3,400 for married couples filing joint returns), such a change would have a net revenue cost of $10.9 billion relative to current law. (Some single taxpayers would have tax increases under this example.) A wide variety of such rate schedules and credits could be constructed, each of which would substantially reduce the marriage penalty, in order to achieve desired distributions of the tax burden among income classes and filing status categories.

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APPENDIX

Trends in Labor Force Participation

Since World War II, there has been an extraordinary increase in the number of women who work outside the home. In 1950, only 33.9 percent of all women were in the labor force (that is, either had jobs or were looking for jobs). By 1979, this had increased to 51.0 percent. These statistics are shown in Table A-1. For women in their principal child-bearing years (25-34), the increase in labor force participation has been even more dramatic—from 34.0 percent in 1950 to 63.8 percent in 1979. These increasing labor force participation rates for women are in contrast to the slight declines in the labor force participation rates for men, which are also shown in Table A-1.

Table A-2 shows the increase in the number of two-earner families during the 1970's. In 1979, both the husband and wife worked in more than half of all husband-wife families. The traditional one-earner family, in which the husband is the only earner, accounted for only 25.6 percent of all families in 1979. This is a sharp decline even from the situation prevailing in 1970, when 34.1 percent of all husband-wife families had only the husband as an earner.

Table A-3 compares the labor force participation rates and unemployment rates for men and women with different marital status. It shows that almost half of all married women were in the labor force in 1979.

Table A-4 shows the labor force status of women with children. More than half of all married women who live with their husbands and have children under 18 are in the labor force, including over 43 percent of such women with children under 6.

Table A-5 shows the wife's contribution to family earnings broken down by income class. Wives contribute a median of 26.1 percent of family earnings. This percentage stays relatively constant up to about $35,000 of income, after which it declines.

TABLE A-1.—CIVILIAN LABOR FORCE PARTICIPATION RATES BY SEX FOR SELECTED YEARS AND AGES

[Numbers in thousands]

	1950		1960		1970		1979	
	Labor force	Part. rate	Labor force	Part. rate	Labor force	Part. rate	Labor force	Part. rate
Males 16 and over, total	43,819	86.4	46,388	83.3	51,195	79.7	59,517	77.9
20 to 24	4,632	87.9	4,123	88.1	5,709	83.3	8,239	86.6
25 to 34	10,527	96.0	10,252	97.5	11,311	96.4	15,792	95.4
35 to 44	9,793	97.6	10,967	97.7	10,464	96.9	11,337	95.8
45 to 54	8,117	95.8	9,574	95.7	10,417	94.2	10,051	91.4
55 to 64	5,794	86.9	6,400	86.8	7,124	83.0	7,140	73.0
Females 16 and over, total	18,389	33.9	23,240	37.7	31,520	43.3	43,391	51.0
20 to 24	2,675	46.0	2,580	46.1	4,874	57.7	7,029	69.1
25 to 34	4,092	34.0	4,131	36.0	5,698	45.0	11,167	63.8
35 to 44	4,161	39.1	5,303	43.4	5,967	51.1	8,130	63.6
45 to 54	3,327	37.9	5,278	49.8	6,531	54.4	6,860	58.4
55 to 64	1,839	27.0	2,986	37.2	4,153	43.0	4,579	41.9

Source: Bureau of Labor Statistics.

TABLE A-2.—NUMBER OF EARNERS IN HUSBAND-WIFE FAMILIES BY TYPE OF FAMILY IN 1970 AND 1979

[Numbers in thousands]

	1970		1979	
	Number	Percent	Number	Percent
Total families	51,237		57,804	
Husband-wife, total	44,436	100.0	47,692	100.0
No earner	3,022	6.8	5,101	10.7
1 earner	16,268	36.6	14,173	29.7
Husband only	15,133	34.1	12,194	25.6
Wife only	797	1.8	1,477	3.1
Other relative	339	.8	502	1.1
2 or more earners	25,145	56.6	28,418	59.6
Husband and wife	20,327	45.7	24,253	50.9
Husband and other	4,517	10.2	3,583	7.5
Husband not earner	302	.7	582	1.2

Source: Bureau of Labor Statistics.

TABLE A-3.—EMPLOYMENT STATUS OF PERSONS 16 YEARS AND OVER BY MARITAL STATUS AND SEX IN 1979

[Numbers in thousands]

Marital status and sex	Population	Civilian labor force: Number	Civilian labor force: Labor force participation rate	Civilian labor force: Employed	Unemployed: Number	Unemployed: Percent of labor force	Armed Forces [1]
Both sexes, total [2]	161, 580	101, 579	63. 2	95, 387	6, 193	6. 1	824
Men	76, 894	58, 608	77. 0	55, 237	3, 372	5. 8	824
Never married	21, 105	14, 895	70. 9	13, 108	1, 787	12. 0	111
Married, wife present	48, 255	38, 756	81. 4	37, 514	1, 243	3. 2	663
Other ever married	7, 534	4, 957	66. 2	4, 615	343	6. 9	50
Married, wife absent	2, 117	1, 599	76. 5	1, 470	129	8. 1	27
Widowed	1, 945	570	29. 3	547	23	4. 0	
Divorced	3, 472	2, 789	80. 9	2, 598	191	6. 8	23
Women	84, 686	42, 971	50. 7	40, 150	2, 821	6. 6	
Never married	17, 564	11, 006	62. 7	9, 940	1, 066	9. 7	
Married, husband present	48, 239	23, 832	49. 4	22, 620	1, 212	5. 1	
Other ever married	18, 884	8, 133	43. 1	7, 590	543	6. 7	
Married, husband absent	3, 075	1, 808	58. 8	1, 631	177	9. 8	
Widowed	10, 450	2, 358	22. 6	2, 235	123	5. 2	
Divorced	5, 359	3, 967	74. 0	3, 723	243	6. 1	

[1] Includes only male members of the Armed Forces living off post or with their families on post.

[2] Due to rounding, sums of individual items may not equal totals.

Source: Bureau of Labor Statistics.

TABLE A-4.—LABOR FORCE STATUS OF WOMEN 16 YEARS AND OVER, BY MARITAL STATUS AND PRESENCE, OF CHILDREN 1979

[Numbers in thousands]

	Total	No children under 18	With children under 18		
			Total	6 to 17	under 6
Women, total	84, 686	54, 204	30, 482	17, 164	13, 367
In labor force	42, 971	26, 355	16, 616	10, 570	6, 041
Participation rate	50. 7	48. 6	54. 5	61. 6	45. 4
Never married	17, 564	16, 651	913	300	613
In labor force	11, 006	10, 513	493	190	303
Participation rate	62. 7	63. 1	54. 0	63. 4	49. 4
Married, husband present	48, 239	23, 474	24, 765	13, 655	11, 110
In labor force	23, 832	10, 974	12, 858	8, 064	4, 795
Participation rate	49. 4	46. 7	51. 9	59. 1	43. 2

Source: Bureau of Labor Statistics.

TABLE A-5.—NUMBER OF FAMILIES CLASSIFIED BY CONTRIBUTION OF WIFE'S EARNINGS TO FAMILY INCOME IN 1977

[Numbers of families in thousands]

Family income	Total	Percent earned by wife								Median percent
		Less than 5	5 to 9.9	10 to 19.9	20 to 29.9	30 to 39.9	40 to 49.9	50 to 74.9	75 or more	
Total	24, 839	3, 203	2, 285	4, 223	4, 456	4, 406	3, 330	2, 361	574	26. 1
Under $3,000	166	46	4	11	18	15	12	22	37	31. 9
$3,000 to $4,999	303	37	36	48	37	26	27	44	47	28. 1
$5,000 to $6,999	718	117	89	133	82	70	60	86	81	22. 5
$7,000 to $9,999	1, 678	247	194	245	236	202	192	257	104	26. 5
$10,000 to $12,999	2, 435	363	253	416	362	299	305	319	117	25. 1
$13,000 to $14,999	1, 842	241	204	290	313	269	226	235	63	25. 9
$15,000 to $19,999	5, 241	734	455	912	878	889	715	576	82	25. 9
$20,000 to $24,999	4, 654	548	363	712	897	975	754	389	18	27. 9
$25,000 to $34,999	5, 088	510	382	836	1, 081	1, 167	773	322	16	27. 5
$35,000 to $49,999	2, 040	218	201	456	441	405	230	89	1	23. 3
$50,000 and over	673	141	105	164	110	89	36	22	8	15. 6
Median family income (dollars)	20, 039	18, 741	18, 986	20, 399	21, 674	22, 216	20, 848	16, 887	10, 478	

Source: Bureau of Labor Statistics.

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SUMMARY OF SENATE BILLS

RELATING TO THE

TAXATION OF MARRIED PERSONS

SCHEDULED FOR A HEARING

BY THE

SUBCOMMITTEE ON TAXATION AND

DEBT MANAGEMENT GENERALLY

OF THE

SENATE FINANCE COMMITTEE

ON AUGUST 5, 1980

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON TAXATION

AUGUST 4, 1980

JCX-25-80

CONTENTS

I. PRESENT LAW

The income tax law generally treats a married couple as one tax unit, which must pay tax on its total taxable income. While couples may elect to file separate returns, the tax law is carefully structured so that filing separate returns leads to a tax increase for almost all couples compared to filing a joint return. Different tax rate schedules apply to single persons and to single heads of households (persons who maintain households for certain relatives). Along with other provisions of the law, these rate schedules give rise to a "marriage penalty" or a "divorce bonus" when persons with relatively equal incomes marry or divorce each other.

Except for the policy of discouraging separate filing by married couples, there is little consistency in the way the tax law treats married couples relative to single persons. In some provisions, such as the social security payroll tax and some pension provisions of the income tax, a married couple is treated as two distinct individuals. In some provisions, such as the personal exemption, a couple is given exactly twice the benefit given to a single person. However, in other provisions, such as the $3,000 limit on the deductibility of capital losses against ordinary income, a married couple is given the same benefit as a single person. Still other provisions, such as the zero bracket amount (formerly the standard deduction), give the married couple more than a single person but less than twice as much.

The overall relationship between the tax burdens of married couples and single persons with the same income, and the actual marriage and divorce bonuses or penalties in particular cases, are the result of the combined effect of these varying approaches.

II. HISTORY

Under the initial version of the modern individual income tax, enacted in 1913, married couples were taxed as separate individuals. In 1930, the Supreme Court ruled that State community property laws were to be given effect for income tax purposes, which meant that, in the States with such laws, married couples could equally divide income considered community property, the split which minimizes a couple's combined tax burden in a progressive tax system. After the large increase in tax rates enacted to finance World War II, many States enacted community property laws in order to give their citizens the tax benefit of this income splitting.

To stop this community property epidemic, in 1948 Congress provided that all married couples could enjoy the benefits of income splitting by filing joint returns. Separate filing by married persons was allowed, but the loss of income splitting meant that this almost always led to a tax increase. Single persons were required to use the same rate schedules as married couples and received no special treatment to offset the married couples' benefit from income splitting; therefore, marriage almost always resulted in a tax reduction for married couples and divorce in a tax increase.

In 1951, Congress enacted the head-of-household rate schedule for single persons who maintain households for certain relatives. This provided a "divorce bonus" to married couples with children if they had relatively equal incomes.

In 1969, Congress enacted a special rate schedule for single persons to give them about one-half the benefit of income splitting and adjusted the head-of-household rate schedule to give these taxpayers about three-fourths of the benefit of income splitting. These changes increased the divorce bonus provided by the head-of-household rate schedule and created a "marriage penalty" when single persons with relatively equal incomes married each other.

III. ISSUES

The proper tax treatment of married couples and single persons involves judgments about equity, economic efficiency and complexity.

Equity

The first question is what should be the tax unit, the group whose income and deductions are pooled in determining tax liability. Many people believe that the tax system should be "marriage neutral"; that is, a married couple should have the same tax burden as two single persons, each of whom has the same income as one of the spouses. Many people, however, also believe that, because most married couples pool their income and spend as a unit, fairness requires that the tax burden of a married couple not depend on how their combined income is distributed between them. A third widely held proposition is that the tax system should be progressive; that is, as income rises, tax burdens should increase as a percentage of income. Many Americans, if asked, would express agreement with all three of these principles of tax equity: marriage neutrality, equal taxation of couples with equal incomes, and progressivity.

One problem with devising a satisfactory method of taxing married couples is that these three principles of tax equity are logically inconsistent. A tax system generally can have any two of them, but not all three. A progressive tax system that treats the individual, not the couple, as a tax unit preserves marriage neutrality but sacrifices equal taxation of couples with equal incomes because couples with unequal incomes would pay a larger combined tax than couples with relatively equal incomes. The present income tax sacrifices marriage neutrality, but maintains equal taxation of couples with equal incomes and progressivity. A proportional income tax could have both marriage neutrality and equal taxation of couples with equal incomes, but it would sacrifice progressivity (although some limited progressivity could be introduced through refundable per capita tax credits without violating the other two principles). Which of these three principles ought to be sacrificed is a subjective question.

A second equity issue is how the overall tax burden should be distributed between single persons, single heads of households, one-earner married couples and two-earner married couples. This too is essentially a subjective judgment. The enactment of income splitting in 1948 shifted the tax burden away from one-earner married couples and other couples with relatively unequal incomes. The special rate schedules for heads of households and for single persons shifted the burden away from these classes of taxpayers. Recent proposals to reduce the marriage penalty involve shifting the burden away from two-earner couples. Any proposal that shifts the tax burden away from one of these groups means increasing the relative burden on the others.

Efficiency

Considerations of economic efficiency dictate that tax rates be lowest on persons whose work effort would be most responsive to lower taxes. Virtually all statistical studies of the issue conclude that a wife's work effort is more responsive to reduced taxes than her husband's. Therefore, the present system of taxing both spouses' earnings at the same marginal tax rate is economically inefficient compared to a system with lower tax rates on the wife's earnings. (The marginal tax rate is the rate applicable to the next dollar of income.) However, the present system may have countervailing benefits to the extent society gains from uncompensated work performed by wives.

Complexity

Joint returns for married couples are simpler than separate returns. With separate returns, it is necessary to apportion unearned income and deductions between spouses, and there is no entirely satisfactory way of doing this. Attempting to allocate deductions and unearned income in a way that corresponds to how the couple would be taxed as two single persons would be complex and would invite manipulation of unearned income and deductions to achieve *de facto* income splitting and marriage bonuses. However, any arbitrary method of making these allocations could be considered unfair and would create its own marriage bonuses or penalties.

IV. ALTERNATIVE PROPOSALS

Optional separate filing

Under this proposal, separate filing by married couples using the single person's rate schedule would be optional. This concept is embodied in S. 336 sponsored by Senators Mathias, Baucus, Bradley, and others.

Any system in which separate filing is advantageous for many married couples would raise questions of how income (both earned income and investment income) and itemized deductions should be allocated between spouses. While these issues exist under present law, they are relevant only to the small number of married persons who file separately and are often resolved by penalizing the separate filers. There is no entirely satisfactory way of making these allocations in a system that encourages or mandates separate filing. Whatever method is adopted, however, will greatly affect the revenue impact. Some vestiges of joint filing would probably have to be maintained in provisions with phaseouts based on income; otherwise, low-income taxpayers with high-income spouses would receive tax benefits, such as the earned income credit, which were originally intended only for low income families. An additional complexity would result under a system of optional separate filing from any tendency of married persons to compute their tax both separately and jointly to make sure they were minimizing their total tax burden.

Optional separate filing using the present single person's rate schedule would involve a tax cut of $10.1 to $12.5 billion in calendar year 1981 and $1.2 to $1.5 billion in fiscal year 1981, depending on how investment income and deductions were allocated between spouses. It would reduce marginal tax rates for second earners for those couples who elect separate filing, but not for others. It would shift the tax burden away from two-earner couples.

This proposal does not conclusively resolve the equity question. Optional separate filing would be characterized neither by marriage neutrality nor by equal taxation of couples with equal incomes. It would, however, eliminate marriage penalties to the extent income and deductions were allocated between the spouses as if they were unmarried.

Deduction for two-earner couples

This proposal would maintain the existing system of joint returns, in which separate filing is almost always disadvantageous, but would provide some relief to two-earner married couples through a deduction equal to a percentage of the earned income of the spouse with the lesser amount of earnings. A deduction of 10 percent of the first $20,000 of earnings is provided by S. 1247 sponsored by Senators Gravel and Packwood and S. 2940 sponsored by Senator Chafee. A deduction of 20 percent of the first $20,000 of earnings would be allowed under S. 1877 sponsored by Senator Sasser. The deduction would be allowable whether or not a taxpayer itemized other deductions. Earned income would be determimed without regard to community property laws.

The deduction for two-earner couples is one of the simplest ways of reducing the marriage penalty and marginal tax rates on second earners. The reductions in the marriage penalty would not be uniform for all couples; however, the reduction in marginal tax rates would be uniform unless there were a cap on the deduction. This proposal would avoid most of the complexities of optional separate filing. If a deduction were adopted, the system would be characterized neither by marriage neutrality nor by equal taxation of couples with equal incomes.

A 10-percent deduction with no cap would have a revenue loss of $5.4 billion in calendar year 1981 and $.7 billion in fiscal year 1981. A 20-percent deduction with no cap would have a revenue loss of $10.7 billion in calendar year 1981 and $1.3 billion in fiscal year 1981. One way to reduce this revenue loss would be to put a cap on the amount of earnings eligible for the deduction. For example, a $10,000 cap would reduce the revenue loss from a 10-percent deduction to $4.4 billion in calendar year 1981 and $.5 billion in fiscal year 1981, and a $20,000 cap would reduce it to $5.2 billion in calendar year 1981 and $.6 billion in fiscal year 1981. A 20-percent deduction with a $20,000 cap would have a revenue loss of $10.3 billion in calendar year 1981 and $1.2 billion in fiscal year 1981. A cap would reduce the benefit from the deduction for high-income families; however, these are precisely the families for whom the marriage penalty is largest, both absolutely and as a percentage of after-tax income. Also, a cap means that there would be no reduction in the marginal tax rate on a second earner whose earnings exceeded the cap (i.e., a second earner who already is earning $20,000 would have no additional incentive to earn more).

Credit for two-earner couples

A third proposal would allow two-earner married couples a credit against their tax liability. The credit, which would be nonrefundable, could be determined from a table similar to Table 1, which shows the marriage penalty for certain hypothetical married couples. In Table 1, marriage penalties under current law are estimated under the assumptions that all income is earned, that there are no dependency exemptions, and that the couple does not itemize its deductions. For the earnings splits for which Table 1 shows a marriage penalty, couples could be given a tax credit equal to part or all of the marriage penalty shown in the table.

Senator Moynihan plans to introduce a bill this week that would provide a credit for two-earner couples equal to the marriage penatly imposed on a couple's earned income, taking into account the zero bracket amount (formerly the standard deduction) and personal exemptions. The staff is preparing a revenue estimate of Senator Moynihan's proposal and expects the revenue loss to be significantly greater than the revenue loss from a 10 percent deduction with a $20,000 cap, but slightly less than the revenue loss from optional separate filing.

A credit of this type would be more difficult to compute than a deduction based on the earned income of the second earner, but simpler than a system of optional separate filing. This type of credit would be less exact in reducing the marriage penalty than a system of optional separate filing, i.e., it would overcompensate in some cases and undercompensate in others, but this type of credit would be more exact than a deduction in most cases.

Other proposals

Other proposals for resolving the married-single tax issue have been discussed in previous years, but have not been mentioned as prominently in the current debate. One suggestion is to return to the pre-1969 system by repealing the single person's rate schedule and requiring single persons to use the same rate schedule as married persons filing separate returns. This would eliminate the marriage penalty inherent in the rate schedules. However, it would shift the tax burden from both one- and two-earner married couples to single persons. The opposite proposal also has been discussed; that is, allowing single persons and heads of households to use the joint return rate schedule to reduce alleged discrimination against single persons. This proposal often is accompanied by suggestions for larger dependency exemptions and a deduction or credit for second earners.

Another possibility, which has received little attention, would be to reduce the marriage penalty by flattening out the tax rate schedule for single and joint returns. By itself, this would reduce progressivity, but there could be a tax credit equal to a flat amount per taxpayer (i.e., twice as much for a joint return as for a single return) to restore much of the progressivity lost by changing the rate schedule. For example, the existing brackets for incomes below $30,000 could be replaced with one flat rate. However, with a credit sufficiently large to avoid having anyone experience a tax increase, this example would require a tax cut of approximately $25 billion in calendar year 1981.

V. ESTIMATED EFFECT OF MARRIAGE ON TAX LIABILITY UNDER PRESENT LAW

Table 1.—Effect of Marriage on Tax Liability at Selected Income Levels and Earnings Splits Between Husband and Wife [1]

Total family income	Share of lesser-earning spouse: 0	5	10	15	20	25	30	35	40	45	50
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
5,000	−250	−210	−170	−133	−98	−63	−28	0	0	0	0
7,000	−378	−315	−252	−189	−126	−66	−10	46	98	147	168
10,000	−475	−370	−275	−180	−85	10	100	162	182	200	202
15,000	−710	−515	−328	−148	32	132	183	220	236	243	251
20,000	−1, 092	−760	−460	−160	42	150	238	300	355	381	391
25,000	−1, 505	−1, 055	−630	−268	−30	160	310	447	535	594	611
30,000	−1, 929	−1, 334	−749	−334	−26	214	439	644	785	875	903
40,000	−2, 801	−1, 821	−939	−338	177	667	1, 031	1, 329	1, 564	1, 644	1, 692
50,000	−3, 344	−2, 094	−1. 094	−286	454	1, 133	1, 731	2, 121	2, 439	2, 574	2, 674
100,000	−3, 464	−1. 214	359	1, 691	2, 699	3, 474	4, 014	4, 314	4, 369	4, 394	4, 394

[1] Assumes that taxpayers have no dependents and do not itemize deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

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TABLE 2.—EFFECT OF MARRIAGE ON TAX LIABILITY AS A PERCENTAGE OF AFTER-TAX-INCOME AT SELECTED INCOME LEVELS AND EARNINGS SPLITS BETWEEN HUSBAND AND WIFE BEFORE MARRIAGE [1]

	Share of lesser-earning spouse										
	0	5	10	15	20	25	30	35	40	45	50
Total family income	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
$5,000	−5.0	−4.2	−3.4	−2.7	−2.0	−1.3	−0.6	0.0	0.0	0.0	0.0
$7,000	−5.6	−4.6	−3.7	−2.8	−1.8	−1.0	−0.1	0.7	1.4	2.2	2.5
$10,000	−5.1	−4.0	−3.0	−1.9	−0.9	0.1	1.1	1.7	2.0	2.2	2.2
$15,000	−5.3	−3.8	−2.4	−1.1	0.2	1.0	1.4	1.6	1.8	1.8	1.9
$20,000	−6.3	−4.4	−2.7	−0.9	0.2	0.9	1.4	1.7	2.0	2.2	2.3
$25,000	−7.2	−5.0	−3.0	−1.3	−0.1	0.8	1.5	2.1	2.6	2.8	2.9
$30,000	−7.9	−5.5	−3.1	−1.4	−0.1	0.9	1.8	2.6	3.2	3.6	3.7
$40,000	−9.1	−5.9	−3.1	−1.1	0.6	2.2	3.4	4.3	5.1	5.4	5.5
$50,000	−9.2	−5.8	−3.0	−0.8	1.2	3.1	4.8	5.8	6.7	7.1	7.4
$100,000	−5.6	−2.0	0.6	2.8	4.4	5.7	6.5	7.0	7.1	7.2	7.2

[1] Assumes no itemized deductions and no dependents. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive in the table, marriage bonuses are negative.

ADDENDUM TO SUMMARY OF SENATE BILLS RELATING TO THE TAXATION OF MARRIED PERSONS

The revenue estimate of Senator Moynihan's proposal described on page 5 is $9.5 billion for calendar year 1981 and $1.1 billion for fiscal year 1981.

Senator BYRD. The hour of 9 o'clock having arrived, the subcommittee will come to order.

As of May 1980, 41 percent of working Americans were members of families in which both spouses worked. This is 40 million people in a total work force of 96 million people. More and more Americans are finding it necessary for both spouses to work.

The growth in the number of two-worker families and the likely continuing growth of two-worker families creates a difficult problem of tax policy. Decisions must be made over the proper unit of taxation for individuals of families, and how to recognize the different situation of families with one earner, families with two earners, and single persons.

In the past, decisions were relatively easy since in most families only one spouse worked. Today, the two-worker families are becoming the rule rather than the exception. Clearly it is difficult to explain to these families why a heavier tax should be placed upon a couple who is married than would be the tax if the couple remained single.

Identifying the problem is easier than coming to a solution.

One approach which has been followed in Senator Mathias's bill, S. 336, would permit a married couple to file a joint return or have the option of filing under the single rate schedule. While this may be attractive for the two-worker family, it does create inequalities between the tax of this family and a single person earning the same amount of income, or a married couple in which only one spouse works.

Another approach would require that all taxpayers, married and single, file separately. This would mean that two-worker families would have a lesser tax than a one-worker family with an equivalent amount of income.

Another approach would be to permit two-worker families to deduct a portion of the income of the spouse earning the lesser income. Senator Gravel's bill, S. 1247, and Senator Sasser's bill, S. 1877, adopt this approach, using a different level of deduction.

The hearings today seek to examine this difficult and perplexing problem. As the Congress considers tax reductions, the "marriage penalty" tax should be given close attention. The subcommittee looks for guidance from the Department of the Treasury, and from other witnesses.

The first witness today will be the distinguished senior Senator from Maryland, Senator Mathias. Senator Mathias has had a keen interest in this matter for quite a while. He and I have discussed it on a number of occasions. I know how anxious the Senator from Maryland is that something be worked out on this very important problem. I share that same concern.

As more and more women become active in the professions, and in the work force, it emphasizes the importance of appropriate consideration of this matter, and specifically of the proposal advocated by the Senator from Maryland.

Before calling on Senator Mathias, I yield to the Senator from Oregon, Mr. Packwood.

Senator PACKWOOD. There is a popular song written about a decade or so ago that had the phrase in it, "Where have you gone, Joe DiMaggio." I think the bill and the tax system that we are now considering could be paraphrased as "Where have you gone, Mrs. Richard Jones, Mary Jones, housewife, two children, staying at home, making sure she was there with milk and cookies for the children after school."

This is no longer the typical American family. We may like it, or we may not like it. We can wish that it was 1935, at least from a family standpoint, certainly not economically, but it isn't.

So the question becomes, if we are going to face the situation that is in this country, what can we do about it in this Congress? It is not enough to pass political platforms wishing we could turn back. We can't. It is not enough to pretend that the situation does not exist. It does.

Senator Mathias has a proposal. I have one. Senator Gravel has one. They are all addressed to the same fact, Mrs. Richard Jones no longer exists.

Senator BYRD. Senator Moynihan, do you have a statement?

Senator MOYNIHAN. I would like to say a few kind words.

This is a matter that this committee has got to take up, and is taking up thanks to your leadership. There is a range of possibilities. This has the virtue, at least, of a problem which can be defined, and can be resolved. There are always going to be some difficulties involved with the prospect of two persons, each with an income, and a progressive tax structure. But it can be resolved.

I have a measure which simply proposes to give a tax credit for what would be the difference between tax paid on individual income and the joint income that produces the "marriage penalty." Senator Mathias has a proposal that is equally attractive. It is something that we can and ought to do this year.

I thank you, Mr. Chairman, for holding these hearings.

Senator BYRD. Senator Mathias, you may proceed with your testimony. We are glad to have you.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., U.S. SENATOR, STATE OF MARYLAND

Senator MATHIAS. Thank you, Mr. Chairman. I appreciate your welcome this morning, and the opportunity to testify at these hearings on the "marriage tax penalty." It is an important issue, and your timing really could not be better.

Mr. Chairman, I have a statement which is not long, but perhaps longer than the committee has time to hear in detail. So perhaps I might suggest putting the statement in the record.

Senator BYRD. Why don't you put the entire statement in the record, and the committee will be glad to receive it, and then you proceed to summarize it.

Senator MATHIAS. As Senator Packwood has suggested, in the last 20 years the country has undergone great changes. We have put men on the moon. We have learned to wait in gas lines. We have watched miniskirts and wide ties come and go. Along with these noteworthy events, American society has seen an important evolution in family style.

This year—this is why I say the timing of the committee is important—for the first time, over 50 percent of all American women are working outside the home. A majority are working outside the home at jobs that in many cases were never before held by women, and at salaries that are increasingly in line with the work that they are doing.

It is estimated that in the next 20 years the number of women working outside the home will continue to increase, reaching 70 percent within 10 years. So, clearly, women wage earners are now an integral part of American society.

Yet, in the face of this change, our tax system has stood still. Twenty-two years ago, we devised a system to allow married people to combine all family income and to file their tax returns jointly. For a traditional family, with one wage earner, this is a good system. It recognizes the expenses of raising a family, and taxes married people at an appropriately lower rate, as long as there is only one wage earner.

As long as the majority of married couples were traditional couples, this system fell within our guidelines of being "fair and equitable to the majority of American citizens," which is what the committee has attempted to do and to be through the years.

But the lifestyles have changed. The typical American family is no longer the traditional one. Over half of all married couples—that comes to some 40 million taxpayers in absolute figures—have two wage earners, but the tax system refuses to recognize this.

The majority of American couples are forced to pay extra taxes based upon an antiquated system that is now "fair and equitable" only to a minority of people—not to a majority. This is what we call the "marriage tax penalty."

It taxes wage earners more if they are married than if they are not because when two incomes are combined, and they file jointly, the second income moves into a higher bracket. This penalty affects all income levels, but it hurts the middle-income couple most. It can, in the maximum case, increase that couple's tax bill by as much as 63 percent.

You pay 63 percent more tax because you are married, and because you are filing jointly. Our tax system has turned what the poets have called the tender trap into kind of a booby trap.

Clearly, this quirk in the Tax Code encourages people to save money by divorcing and simply living together, or to never marry at all. I don't want to go into too many specific examples, but the committee might be interested in a minister who lives in Maryland, and who writes me that tax advisers with whom he is acquainted are advising people to live together rather than marry. He says this:

> It is interesting that the very things you said in your address to Congress, especially concerning the advice of tax advisers to older couples contemplating marriage, is the same advice I had to give most reluctantly, and certainly with moral twinges of conscience. Yet, I know my parishioners could make ends meet easier as single persons than as married couples. There is no way that I, as a pastor, could advise them to become man and wife under the present tax structure.

I got this cry from the heart of a distressed and distraught father. He wrote me:

A few weeks ago, my daughter, a working girl in her early twenties, told me that she hoped to have children in the future, but would not necessarily get married. I tried, without sounding too preachy, to explain that a child deserved to grow up in a stable environment with both a father and a mother. But what chance have I got against a government that actually charges you money for getting married?

Then, we have a couple in Maryland, whom the committee will be meeting shortly, Mr. and Mrs. Boyter. For 3 years running they have got a divorce and remarried after January 1, which allowed them to file separate tax returns. This is the kind of ridiculous expedient that people are being forced into in order to avoid inequitable taxation.

The interdepartmental task force on women has concluded a major study on the marriage tax penalty, and I would like to submit a copy of that for the record, Mr. Chairman.

Senator BYRD. Without objection, it will be included in the record.

[Document to be furnished follows:]

REPORT OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY TO THE TAX SUBCOMMITTEE OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

The Action Group on the Marriage Tax Penalty--Janet Hart (chairperson), Judith Bartnoff, Sydney Key, and Sam Sanchez--met at the Task Force office on May 22, 1979 and had a number of informal consultations thereafter.

This report consists of two parts: first, an explanation of the marriage tax penalty on two-earner couples; and second, the Action Group's recommended solution to the problem.

I. The Marriage Tax Penalty

The basic structure of our present federal income tax laws provides a substantial subsidy to married one-earner couples at the expense of both single individuals and married two-earner couples. Thus the common view that the marriage tax penalty represents a conflict between married taxpayers and single taxpayers is incorrect. The marriage tax penalty affects only two-earner married couples, that is, couples in which both husband and wife work. Such couples, which used to be the exception, have become the norm; at the present time, two-earner couples outnumber one-earner couples. The tax laws, however, still reflect the traditional view of the American family where the husband worked and the wife stayed at home. As a result, according to the most recent estimates, approximately 19 million two-earner couples--38 million individuals--pay a marriage tax to the U.S. government.

1/ Some of the material in this report was contained in "Let's Stop the Tax on Marriage," by Sydney J. Key, The Washington Post (Outlook), January 29, 1978, in Dr. Key's testimony "The Marriage Tax on Two-Earner Couples" before the House Ways and Means Committee on April 5, 1978, and in "The Marriage Tax" by Sam Sanchez, which appears in the Interim Report to the President by the Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice.

Under the present tax system married one-earner couples get the most favorable tax treatment, singles are in the middle, and, in general, married two-earner couples fare the worst. As a result, if a single working person marries someone with no income, marriage will lower the tax bill; this is a comparison frequently made by single taxpayers. But, if two single workers marry (and continue to work), their taxes will usually be higher as a result of their marriage. The difference between the tax bill of two married workers and the total tax bill of the same two workers if they were single constitutes the marriage tax penalty.

The amount of the marriage tax penalty for a two-earner couple can vary greatly. As can be seen from Table 1, in general the dollar amount of the marriage tax tends to increase both with the couple's total income and with the similarity of the two incomes. However, the incomes of the two spouses do not have to be equal for the couple to pay the marriage tax. A very rough rule-of-thumb is that two-earner couples pay a marriage tax when the spouse with the lower income earns one-fifth or more of the couple's total income. When the dissimilarity in the spouses' incomes is greater than this, the couple begins to resemble a one-earner couple and may enjoy the traditional tax benefits from marriage.

It is important to realize that, contrary to popular belief, the marriage tax penalty does not affect only the so-called "two lawyer" couple, that is, it does not affect only couples in high income brackets. According to a study by Peter Sailer, an Internal Revenue Service statistician, at least 13 million two-earner couples paid the marriage tax in 1974. Of these 13 million couples, 20 percent had

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2/ According to Mr. Sailer's calculations, 5 million two-earner couples enjoyed the traditional tax benefits from marriage and a joint return. For these latter couples, the spouses' contributions to family income were so dissimilar that the benefits from income splitting outweighed the factors causing the marriage tax. See Peter J. Sailer "Using Tax Returns to Study Wage and Taxpaying Patterns, 1969 and 1974," 1976 American Statistical Association Proceedings, Social Statistics Section, pp. 34-40.

Table 1

1979 TAX COST OF MARRIAGE*

For couples who have no dependents and no excess itemized deductions

Wife's Adjusted Gross Income

	5,000	10,000	15,000	20,000	25,000
5,000	202	208	150	-30	-219
10,000	208	391	535	579	609
15,000	150	535	903	1,166	1,459
20,000	-30	579	1,166	1,692	2,117
25,000	-219	609	1,459	2,117	2,674

*The shaded diagonal represents different income combinations amounting to a total income of $30,000. When each spouse earns half of this amount, that is, $15,000, the marriage tax penalty is $903. A couple with the same total income of $30,000 but where one spouse earns $20,000 and the other $10,000 would pay a lower marriage tax of $579. The marriage tax for a total income of $30,000 disappears entirely when one spouse earns about $6,000 and the other earns about $24,000. When the spouses' incomes are more divergent, as in the $5,000 and $25,000 example shown in the table, there is an actual tax benefit from marriage (represented by a negative number), in this case -$219.

combined incomes under $10,000; 54 percent had combined incomes in the $10,000 to $20,000 range; and 25 percent had combined incomes between $20,000 and $50,000. Considerably less than one percent of the couples paying the marriage tax had combined incomes of more than $50,000.

Mr. Sailer's study also showed that the vast majority of two-earner couples in lower income brackets paid the marriage tax, that is, they did not enjoy the traditional tax benefits from marriage and a joint return. For example, 83 percent of all two-earner couples with combined incomes under $10,000 paid the marriage tax in 1974; 70 percent of all two-earner couples with combined incomes between $10,000 and $20,000 paid the marriage tax; and 66 percent of all two-earner couples with combined incomes in the $20,000 to $50,000 range paid the marriage tax. By contrast, of those two-earner couples with combined incomes of $50,000 or more, 48 percent paid the marriage tax.

Moreover, while the dollar amount of the marriage tax may seem relatively small in lower income brackets, it may still represent an enormous increase in a couple's tax bill. For example, a couple earning $5,000 each, as shown in Table 1, would pay a marriage tax of $202; this amount represents a 40 percent increase over the couple's tax bill as two singles. For a couple earning $10,000 each, the increase is 17 percent; the increase is 24 percent for a couple earning $25,000 each.

The major factor causing the marriage tax is the use of tax rate schedules with both rates and zero bracket amounts that differ according to marital status. The tax rate schedules are used to compute one's tax bill on the basis of taxable income, that is, adjusted gross income minus personal exemptions and minus excess

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3/ Under 1979 tax law the amount of the personal exemption is $1,000 per person.

itemized deductions, if any. (The tax tables are mathematically derived from the tax rate schedules for the convenience of the taxpayer.) There are four different tax rate schedules. The highest rates are those in the schedule for marrieds-filing-separately; the next highest rates are in the singles' schedule; third, there is the unmarried heads-of-households schedule; and finally, there is the lowest rate schedule, the schedule for marrieds-filing-jointly. The singles' schedule was

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4/ Itemized deductions may be subtracted from adjusted gross income (AGI) only to the extent that they exceed the "floor" on itemized deductions, that is, only excess itemized deductions may be subtracted. The floors on itemized deductions are, at the present time, equal to the zero bracket amounts: $3,400 for a married couple and $2,300 for a single person, which amounts to a combined floor of $4,600 for two singles. The effect of the difference in floors on the marriage tax penalty depends on the amount of itemized deductions and their division between spouses. At one extreme, two married taxpayers could subtact $1,200 more of their itemized deductions from their AGI than if they were single; their marriage tax penalty would be reduced somewhat but by no means eliminated. At the other extreme, which occurs when only one spouse has deductible expenses, the effect of the different floors is to increase the marriage tax penalty. See Walter Stromquist "Federal Income Tax Treatment of Married and Single Taxpayers," Tax Notes, June 11, 1979, p. 735.

5/ The married-filing-jointly schedule incorporates the idea of income splitting, the source of the tax subsidy for one-earner couples. A married couple filing jointly with a total taxable income of $13,000 (which corresponds to an AGI of $15,000 with no excess itemized deductions) is taxed as if they were using the married-filing-separately schedule to compute taxes on two taxable incomes of $6,500 each, regardless of how the income is in fact divided between husband and wife. This can result in a considerable tax savings, because the United States has a progressive federal income tax. In other words, since the rate of tax increases as income increases, the tax on the second $6,500 of a total taxable income of $13,000 is greater than the tax on the first $6,500. When a married one-earner couple with a taxable income of $13,000 implicitly splits their income by using the married-filing-jointly schedule, both halves of their income are taxed at the low rate applicable to the first $6,500. (Rather than going to the trouble of calculating the taxes on the two $6,500 halves and then adding them up, taxpayers can simply look up the tax for a taxable income of $13,000 on the schedule for marrieds-filing-jointly, which has the income splitting calculation built in.) For a one-earner couple with a taxable income of $13,000, the tax savings from income splitting is about $840. On the other hand, a husband and wife with identical incomes gain no benefit from income splitting, since their incomes are in fact divided equally; thus the tax for their total taxable income on the schedule for marrieds-filing-jointly is the same as the sum of their taxes on each individual income on the schedule for marrieds-filing-separately.

created by the Tax Reform Act of 1969 in order to reduce somewhat the taxes paid by a single person relative to a one-earner couple with the same income. Until this schedule went into effect, singles had to use the high rates of the schedule for marrieds-filing-separately. Married two-earner couples, however, still must use either the high rates of the schedule for marrieds-filing-separately or aggregate their incomes and use the schedule for marrieds-filing-jointly. Since the U.S. has a progressive tax system, that is, the rate of tax increases as income increases, aggregating the two incomes results in the second income being taxed at higher rates than the first.

In addition to the rates *per se*, the zero bracket amounts, that is, the amounts of income subject to a zero rate of tax, differ according to marital status. These amounts are $3,400 for a married couple and $2,300 for each single person. Thus even when both spouses work, a married couple has a zero bracket amount of $3,400, which is $1,200 less than the total zero bracket income for two single wage earners, $4,600.

The dependence of a person's actual tax bill on his or her marital status and, if married, on whether his or her spouse works, can be illustrated by the four possible tax bills a person earning $15,000 [6/] might have to pay:

1) $1,635 if married to a non-working spouse;

2) $2,236 if an unmarried head-of-household;[7/]

3) $2,345 if single; or,

6/ The calculations assume that there are no dependents and no excess itemized deductions and that each spouse pays taxes in proportion to his or her share of total earnings.

7/ Most people using the heads-of-households schedule would have at least one dependent; this calculation, based on the assumption of no dependents, is hypothetical only. Introducing dependents into all of the calculations would not, however, change the relative tax bills of the different categories of taxpayers.

4) $2,796.50 if married to a working spouse with the same income.

The marriage tax of a two-earner couple each earning $15,000 that was shown in Table I can, of course, be derived from these figures. It is simply the difference between their actual tax bill (2 x $2,796.50 or $5,593) and their tax bill as two singles (2 x $2,345, or $4,690), which amounts to $903. Clearly the present tax laws provide an incentive for two wage earners not to marry, and for two married wage earners to divorce and continue living together; it is, however, impossible to measure the effects of this incentive.

Another question raised by the heavy tax burden on two-earner couples is the incentive provided for a non-working wife to remain at home rather than enter the active labor force. The amounts involved can be illustrated by examining the change in the couple's overall financial status as a result of the wife's new income. The entrance of a married women into the active labor force (assuming her husband is also employed) results in a dramatic increase in taxes. From the calculations above it can be seen that when the couple lives on the husband's $15,000 salary, he will pay $1,635 in taxes each year. If, however, the wife begins to work at a salary of $15,000, their taxes will increase to $5,593. (The wife's additional salary of $15,000 results in an additional tax of $3,958.) Thus doubling the couple's income multiplies their tax bill by a factor of 3.4. This result occurs because of aggregation of the spouses' incomes, which means that the first dollar of the wife's income is taxed at her husband's marginal rate of tax, that is, at the tax rate on her husband's highest dollar of income. If the husband earned $10,000 and the wife took a job also earning $10,000, once again doubling their income, the impact on

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8/ If incomes are equal between spouses, it generally makes no difference whether the rate schedule for marrieds-filing-separately or the schedule for marrieds-filing-jointly is used. If incomes are unequal, it is almost always advantageous to use the rate schedule for marrieds-filing-jointly.

the couple's total tax bill would be even greater--the tax bill would quadruple, increasing from $702 to $2,745. It is, of course, extremely difficult to ascertain to what extent the tax system keeps non-working wives out of the labor force, but it certainly provides an incentive for them to stay at home.

II. Recommended Solution

There is an important constraint on removing the marriage tax penalty on two-earner couples; specifically, the taxes on singles relative to one-earner couples with the same income (a difference that was reduced but not eliminated by the Tax Reform Act of 1969) must not be increased. Under the progressive U.S. tax system, there is only one way this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples.

At present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. The incomes of the spouses are simply aggregated. In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same total dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services in the home. And it might be noted that, compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The Action Group has concluded that there is no compelling reason for one-earner and two-earner married couples with the same dollar income to pay the same tax, and believes that this principle of spousal aggregation of dollar income should not be taken as a given in the tax system of the United States. Without it, it is possible to have a progressive tax system that is neutral with respect to marriage. In other words, it is possible to have a progressive tax system that has both no penalty for marriage (no difference between the taxes paid by two married wage-earners and two single taxpayers with same individual incomes) and no penalty for remaining single (no difference between the taxes paid by a single wage earner and a wage earner with the same income married to a non-working spouse).

Once this idea is accepted, there are several policy options for removing the marriage tax penalty on two-earner couples.

The Action Group has concluded that the best solution would be to tax every individual's own income on the same rate schedule (same tax rates, same zero bracket amounts) regardless of marital status. This solution would be similar to the situation that existed under pre-1948 tax law in the United States, but with the critical difference that, unlike pre-1948, an individual's own income would, for Federal income tax purposes, be determined without regard to State community

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9/ The history of the Federal income tax as it relates to these principles is discussed in detail in Stromquist, supra note 4, pp. 731-734.

10/ It is assumed that, as at present, the floor on itemized deductions would equal the zero bracket amount and thus be the same for every individual taxpayer. If the floor on itemized deductions should in future be "cut loose" from the zero bracket amount, the Action Group would recommend that the new floor on itemized deductions be the same for every individual taxpayer, that is, it should not be dependent on marital status.

property laws.[11/] It is generally agreed that Congress has the authority to legislate such a provision. Under the proposed system of one tax rate schedule applicable to every individual's own income, family responsibilities could be accomodated through the use of extra dependency deductions.

Under any system involving individual taxation of each spouse's own income, there would have to be some means for allocating income other than personal service income between spouses, and also for dividing deductions between spouses. The Action Group recommends that title should be the determining factor for allocating income and deductible expenses arising from the ownership of property. If property is jointly owned or deductible expenses are incurred jointly, there should be a presumption that the income or expense is split 50/50; however, it should be possible for the taxpayers to demonstrate that a different allocation should be allowed. For example, if contributions to the purchase of a piece of income producing property were split 75/25, the income and associated deductions could be allocated accordingly. For deductible expenses that do not arise from the ownership of property, the Action Group recommends that expenses attributable to one specific person (e.g., state income taxes, direct medical costs) be deducted by that spouse and that other deductible expenses either be split evenly or be allocated in proportion to income.[12/]

11/ A major problem in the pre-1948 system and, indeed, a major reason for the change to joint taxation with income splitting, was the decision of the U.S. Supreme Court in Poe v. Seaborn, 282 U.S. 101 (1930), which held that married residents of community property states could split their incomes for federal tax purposes. (Under community property rules, half of any married person's income belongs, in effect, to the spouse.) The Court's decision obviously gave married one-earner couples in community property states a great advantage over those in common law states, with the result that a number of states began adopting community property laws solely to give their citizens this benefit on their federal income tax returns. After passage of the Income Tax Act of 1948, which extended the benefits of income splitting to married couples everywhere, these states returned to their former common law status. The Seaborn decision was, however, based on the legislatively enacted Internal Revenue Code and not on the Constitution, which means that Congress could change the federal income tax law so that each individual would be taxed on his or her own income for federal purposes, without regard to the property laws of the state in which he or she resides. In Fernandez v. Wiener, 326 U.S. 340 (1945), the Supreme Court held that the federal tax definition of property could supersede the state definition for federal tax purp[illegible].

12/ A similar p[illegible] .ould be followed for exemptions for dependents.

The Action Group recognizes that this suggested scheme for property allocation might give couples some leeway for tax planning. However, the Group considers this scheme to be far superior to the current system, under which many couples enjoy the benefits of income-splitting without being required to pay the concomitant costs of transferring title from one spouse to another. This system has, in practice, operated to allow men to retain title to property while, at the same time, "splitting" the income from such property with their wives for tax purposes; this was one of the clear disadvantages to women of the introduction of joint returns and income splitting into the tax system.

Taxation of each spouse's "own" income as an individual does not mean that every married couple would have to file two physically separate returns. The Action Group recommends that for administrative convenience and cost savings both to the Internal Revenue Service and to the taxpayer, married individuals use the same return (hereinafter a "combined individual return"13/) even though the spouses would not aggregate their incomes. The tax would be computed separately on each income without reference to the income of the other. (A similar procedure is used in the District of Columbia, where married persons calculate their taxable incomes and tax bills separately in separate columns on the same return.14/)

The solution of taxing every individual's own income on the same rate schedule does entail problems of revenue loss and political feasibility. In effect, this proposal collapses the present four tax rate schedules into one tax rate schedule to be used by every individual regardless of marital status. If this new tax rate schedule were to be the present schedule for marrieds-filing-jointly, the lowest of the four existing tax rate schedules (as repeatedly proposed, to no avail, by former

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13/ The term "joint return" should be avoided, since it has become associated with concepts of spousal aggregation of income and income splitting.

14/ The standard deduction in the District of Columbia does, however, depend on marital status. See p.6 above regarding zero bracket amounts.

Representative Edward Koch, now mayor of New York), the resulting loss of tax revenues would be substantial; $25 billion has been suggested as a rough order-of-magnitude estimate. In general terms, this proposal would not change taxes for one-earner couples but would lower taxes for everyone else --unmarried heads-of-households, singles and two-earner couples. If, however, tax revenues were to be preserved by using a new schedule with rates higher than those of the present schedule for marrieds-filing-jointly (for example, the present schedule for heads-of-households or the present schedule for singles), tax rates for one-earner couples would be raised, a political impossibility.

The Action Group believes the most realistic and politically feasible method of achieving the goal of individual taxation would be a two-stage approach. The first stage would consist of allowing married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for singles (same zero bracket amount and same tax rate as a single person). As described above, the spouses would file a "combined individual return" with the tax on each spouse's own income computed using the singles' tax rate schedule. This first stage proposal is, in fact, contained in bills now pending in the House (H.R. 3609, introduced by Representative Fenwick and 158 co-sponsors) and in the Senate (S.336, introduced by Senator Mathias and 4 co-sponsors). It should be emphasized that this proposal does not take away any of the benefits gained by singles compared with one-earner

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15/ In such a first stage approach, allowing two-earner couples to file as singles should be at the option of the couple; at this first stage there is no reason to remove the tax benefit from marriage for two-earner couples where spouses have widely divergent incomes. It would be relatively easy to have the tax form instructions contain a table showing, for various total income ranges, the income splits at which a two-earner couple would benefit from exercising the option of being taxed as singles. Couples with large excess itemized deductions and/or couples with income splits near the borderline would probably want to calculate their tax bills both ways; the potential tax savings would clearly be worth the extra calculations involved.

couples in the Tax Reform Act of 1969. Moreover, if this first stage proposal were adopted, since two-earner couples would always have the option of being taxed as single individuals on each spouse's own income, the interests of single and two-earner couples would be identical in effecting the second stage of the transition to individual taxation. The first stage proposal, that is, the Fenwick and Mathias bills, in effect reduces the number of tax rate schedules from four to three by collapsing the schedule for marrieds-filing-separately into the schedule for single individuals. Revenue estimates for the first stage proposal range from $5 to $9 billion, considerably less than the revenue loss from a complete switch to one tax rate schedule using the present schedule for marrieds-filing-jointly. In any event, it is important to keep in mind that the revenue estimates also indicate the seriousness of the problem: the U.S. government is collecting $5 to $9 billion in extra taxes from about 19 million two-earner couples -- 38 million individuals -- simply because they are married rather than living together without being legally married. Thus the Fenwick-Mathias proposal is a critical first step toward the eventual goal of individual taxation with one rate schedule regardless of marital status.

The second stage in achieving the final goal would be to reduce the three remaining tax rate schedules to one tax rate schedule. If, at that time, policy-makers were to choose to make any additional adjustment for one-earner couples or for heads-of-households, the means of doing so should be the personal exemption, not tax rate schedules based on marital status or spousal aggregation of income. As a practical matter, the one tax rate schedule would be the same as the present schedule for marrieds-filing-jointly, that is, the lowest of the existing tax rate schedules. This would mean a substantial additional revenue loss, which suggests that the two remaining higher rate schedules should be lowered steadily according to a fixed timetable. The gradual alteration of the rate schedules could be carried out as part of the tax reductions Congress enacts almost every year.

Finally, the Action Group would like to indicate why it has ignored the all-too-frequently mentioned policy option of a deduction or credit for the second wage earner. Such credits or deductions are usually equal to a fixed percent of the earnings of the spouse with the lower income, subject to a specified maximum dollar amount. (One example of this approach is contained a bill introduced by Senator Gravel, S. 1247.) The Action Group has rejected the idea of a deduction or credit for the second wage earner as unfair and arbitrary. It bears no relationship to, and indeed perpetuates, the differences in tax rate schedules according to marital status that cause the marriage tax penalty in the first place.

16/ It would, of course, be mathematically possible to devise a credit based on each spouse's own income and deductions that would equal the exact amount of the marriage tax for each two-earner couple. Such a credit would produce the same result as the first stage proposal discussed on pp. 12-13 above. However, such a credit would be an unnecessarily complicated way to eliminate the marriage tax penalty. By contrast, the first stage proposal, that is, giving married two-earner couples the option of being taxed as singles on each spouses own income, is much simpler; moreover, not only would it eliminate the marriage tax penalty but also it would reduce the number of tax rate schedules from four to three.

Senator MATHIAS. It strongly supports my bill, S. 336 as the simplest way to permanently eliminate the marriage tax penalty. My bill has 25 cosponsors in the Senate. The companion bill in the House, which is sponsored by that remarkable and distinguished lady from New York, Mrs. Fenwick, now has over 230 cosponsors, more than a majority of the House of Representatives; so, clearly, the concept of optional separate filing is one which is taking hold with people.

There have been other encouraging signs over the past few weeks. First, we learned that the distinguished chairman had scheduled these hearings. Then, shortly thereafter, the Secretary of the Treasury Miller had some kind words of support. I will not quote them directly because the Treasury is to be heard from. But his views are clearly sympathetic.

This is not a problem that is going to go away if we continue to ignore it because every time another woman enters the work force, the marriage penalty grows as does the windfall profit to the Treasury, and I think we have to note this fact, because this is an extra source of revenue, and that, of course, is one obstacle to my proposal to eliminate the marriage tax penalty—the revenue loss. It has been estimated by the Joint Taxation Committee at $7 billion. But, I think, looked at fairly this makes the case for the bill more compelling because it highlights the magnitude of the inequity.

The amount of tax involved will become larger, the longer we neglect the problem, and it will become more difficult to deal with in the years ahead. The longer we wait to act, the harder it is going to be to wean the budget from this extra tax bite.

Mr. Chairman, June, the month of brides, has passed. I suppose it is hard to speculate the number of brides who did not go to the altar this June because of the fact that their tax bill would have been significantly higher if they had. But the mere fact that such a speculation arises, I think, is a blot on the statute books.

Blackstone said that "the law should be the highest expression of the ethics of a nation," and the way the Tax Code is operating today with respect to the marriage penalty tax is, I think, not an accurate reflection of the ethics of the American people, and their aspirations for the family life.

Thank you, Mr. Chairman.

Senator BYRD. Thank you, Senator Mathias. Yours is an excellent statement. It sets the matter in focus.

I think that it might be well to point out that until 1971 the tax burden on a single taxpayer remained up to 41 percent higher than for a married couple with the same taxable income. The committee and the Congress felt that that was highly undesirable and unfair.

So under the new schedule, which became effective in 1971, a single person's tax on a given taxable income was reduced from being 40 percent higher than a married couple to roughly 20 percent higher. But in doing that, the Congress created the situation that we now have. Namely, in reducing the penalty on single persons, it created the marriage penalty.

Now the Congress has got to grapple with this changed situation. I think our testimony is excellent, and focuses the attention on a problem that needs to be corrected.

Senator Packwood.

Senator PACKWOOD. Mac, Harry put his finger on it. If I understand your bill, a man and wife who both work making $10,000 apiece; $20,000 combined. They would file two returns as if they made $10,000 each. Similarly, husband and wife, with only one spouse working making $20,000, can file as if they were each single, so that there is no penalty for one wage earner. Is that right?

Senator MATHIAS. My bill would simply allow all married couples the option of filing as if they were single. The spouse earning the income files a return for that income using the rate scheduled for single people.

Senator PACKWOOD. What can we do about discrimination against the single taxpayer, or doesn't your bill address that? A discrimination that we have tried to eliminate over the last five or six tax-reform bills.

Senator MATHIAS. As Senator Moynihan pointed out, it is going to be very difficult to avoid some kind of situation in which someone may not be able to say, Well, I am not getting mathematical equity in this situation. But it seems to me that what we have to strive for, as we do in all general legislation, is to look for laws that are going to treat the majority of the people in the most equitable way possible.

Then, the cases that don't fit in, you have to do the best you can with. You cannot have 220 million different tax codes, one for each citizen. You have to have general laws.

I think the point of this is not that it is going to cure every case, not that it is going to produce an arithmetical equality in tax for each taxpayer. But the point is that the majority of people have moved from the category that Senator Byrd described as being the problem area 10 years ago.

People have now moved into the category where this is the problem, where a majority of the women work separately from their husband, have a separate paycheck from their husband. The projections are that not just a majority, but 70 percent will be in that position within 10 years.

The law has to address itself to where the majority of the people are. I don't offer this as a panacea that is going to solve all problems, but it will be more equitable to most of the people.

Senator PACKWOOD. Let me ask you a question about the worst discrimination of all, against the head of household. The majority are women usually divorced, sometime widowed, who are the sole support of their children. They are taxed more than a married couple without children making the same amount of money. How do we remedy that?

Senator MATHIAS. This bill will not address that problem. That is a separate problem. I think that that is one that the committee ought to address its attention to, as in many areas of discrimination. But I think if we can solve this problem, then we can move on to that one.

Senator PACKWOOD. I have no other questions, Mr. Chairman.

Senator BYRD. Senator Moynihan.

Senator MOYNIHAN. First, let me thank Senator Mathias. But let me say to Senator Packwood that this is one of those situations which come up frequently where it is not mathematically possible to resolve every situation.

There is going to be some inequity in some parts of the system, and our object, I suppose, is to make the smallest inequity possible, and seek what the economists certainly would call "pareto optimality," and get as close as you can.

We did get close in our legislation three decades back when we responded to the fact that a married couple, certainly with children, one wage earner, had a heavier demand on that one income than did the single person. We worked out a way to do it.

Then we came into a period where the biggest event was education, and a changed labor market, which meant that families had more likely two incomes.

This is the year, you say, in which the majority of married women are working. Last year was a year of some consequence also, it was the year in which the majority of persons entering college were female. There were more females entering college last year than males.

Senator MATHIAS. I think those figures, Senator Moynihan, are important to this committee. In the first place, they indicate that the committee is not at fault, or that the Congress is not at fault. What has happened is that the American public has shifted the base under the Congress. It is simply a fact that the world has changed. What we have to do in Congress is to reflect that change.

Senator MOYNIHAN. We have a good kind of problem here. Something good has happened, and how do you respond?

Senator MATHIAS. It is a good kind of problem, but it is a problem that is going to change very rapidly. Let me just go very briefly over the revenue losses with you. The Treasury calls it a revenue loss, but the married couples who are paying it might call it something else. It is a form of gross inequity to them, and it is really taking money out of the sugar bowl on the kitchen shelf.

This year, as I indicated, the Joint Tax Committee estimates that the loss would be $7 billion. Not more than $9 billion in any case, but $7 billion, they think. The Treasury says that it is going to be $12.9 billion. This is for 1979. In 1980, it is $8 billion according to the Tax Committee, $8 to $10 billion. The Treasury says it is going to be $15.2 billion. This reflects these extra women going into the work force every year that are going to bring it up to 70 percent by the end of the decade.

For 1981, it is $9 to $11 billion according to the Tax Committee, and $17.9 billion according to the Treasury. The Tax Committee does not make projections after that year, but the Treasury attempts to project it for 1982 at $21.1 billion, and in 1983 at $24.5 billion. This is how fast this problem is growing.

It seems to me that if it is addressed now, while it is still within manageable proportions, we can obtain equity for the taxpayers without creating a kind of traumatic change which will cause real problems on the revenue side for the Treasury Department. The longer you put it off, the more painful this decision is going to be.

Senator BYRD. Two thoughts come to my mind about those figures that you cited from the Treasury on the loss of revenue, that suggests to me that the Treasury is opposed to this legislation. Whenever the Treasury is opposed to something, the revenue loss is tremendous. Whenever the Treasury favors something, the revenue loss is very slight.

The other thing that comes to mind is that I would like to see a reduction in expenditures. I am convinced that there can be a reduction in expenditures to equal the estimated revenue loss.

Senator Dole.

Senator DOLE. I want to thank my colleague, and to indicate, not in a partisan sense, that party platforms are soon forgotten, but in the Republican platform adopted in Detroit there is a commitment to end the marriage penalty. I would hope that it can be done this year, but there are always days ahead.

I agree with Senator Byrd, that the Treasury always has one view, that loss of revenue will be substantial. But I think there is a misconception that there is a conflict here, on the one hand, between married people where both are wage earners, in which case they are penalized, and on the other hand where one is working and one is not working. You can look at it from their standpoint also.

I would guess that when there are 51 Senators whose spouses are working, where they have the marriage penalty, then this will be addressed probably very quickly. I am one of those, so I can start it, and find 50 others. It would increase the interest in this legislation.

I do believe that it is a problem that can be addressed, and I do appreciate your leadership. It would seem to me that there should be some way, at least, to start easing the burden, or easing the penalty.

I would ask that my statement in support of the concept be made a part of the record.

Senator BYRD. Without objection, so ordered.

[The prepared statements of Senators Dole and Gravel follow:]

STATEMENT OF SENATOR DOLE

Mr. Chairman, once again I have to thank you for scheduling a hearing on an issue of tax policy that is of great concern to many taxpayers. Despite the press of business at this point in the legislative session, the marriage tax penalty is an issue that deserves our attention and ought to be carefully considered.

The problem is simply stated: while Congress has, on several occasions, attempted to make the income tax "marriage neutral," its efforts have shifted the relative tax burden to different groups. Since 1969, when Congress adopted adjusted rate schedules for single taxpayers, married taxpayers have been relatively worse off. The problem lies in the treatment of married couples with relatively equal incomes, as opposed to unmarried couples in a similar situation. The unmarried couple has the advantage of the adjusted rate schedules for single taxpayers: the married couple does not, and income splitting is not an advantage where both incomes are relatively equal.

Mr. Chairman, the problem of the marriage tax penalty is not necessarily an easy one to solve, and I hope we will give careful consideration to the proposals made by Senator Mathias, Senator Chafee, Senator Gravel, Senator Sasser, and others. But I believe it is a problem that must be solved. It is not good tax policy—or good social policy—to build into the tax code a disincentive to marriage. There is no reason from the standpoint of equity, or of good sense, to provide more favorable treatment to unmarried couples than to married couples in a comparable situation.

We should recognize, however, that this issue is to a great degree a matter of judgment as to appropriate social policy: any reduction in the marriage penalty will increase the relative tax burden on other groups, such as single-earner families. In addition, reducing the marriage penalty tends to reduce the overall progressivity of the income tax. These are problems we should keep in mind as we proceed.

I believe the marriage tax penalty is receiving prominent attention in this Congress because, in recent years, the two-earner couple—particularly the couple with two significant wage-earners—has become much more important in our society than it once was. This development is partly a consequence of the increasing role of women in professional fields, and in the labor market as a whole. But it is also in part a necessity of the times. With rocketing inflation and sluggish economic growth, and an ever-rising tax burden that reduces the significance of each extra dollar of income, more families need to rely on two wage-earners in order to make ends meet. It is this group—the two wage-earner family—that is particularly in need of our support. General tax reduction for all wage-earners should be our primary goal. But we would be doing working couples a disservice to ignore the special burden imposed on these two-earner families, as compared with unmarried couples.

Mr. Chairman, the Republican Platform adopted at the Detroit convention made a commitment to eliminating the marriage tax penalty. I believe firmly in that commitment, because it is in the interest of the present generation of working couples and because it will help future generations by aiding families that must rely on two incomes to provide for the upbringing of their children. But I do not suggest that this is in any sense a partisan issue. The bills before us today are sponsored by a number of Republicans and Democrats who are concerned by the distorted incentives that are sometimes worked by our tax code. I share their concerns and support their efforts, and I look forward to hearing the testimony of the witnesses today.

STATEMENT OF SENATOR MIKE GRAVEL

I am very pleased that the Finance Committee has scheduled hearings on the division of tax burden among singles, one-earner married couples and two-earner married couples. While there are numerous factors, both social and economic, that influence our decisions about federal tax policy, I do not recall a more glaring inequity from all perspectives than the tax treatment of two-earner married couples.

The development of federal tax policy has been evolutionary, but several principles have guided efforts to assure equity and balance. The most important of these are undoubtedly that taxation should be progressive and that individuals with like incomes should pay similar tax.

Another important principle has been that marriage should not be penalized nor rewarded by our tax law.

It's been impossible to adhere to all three principles simultaneously, and therefore, we have concentrated on assuring fair distribution of the tax burden. To be sure this task has not been easy since it must take into consideration not only economic factors but changing social patterns.

At the inception of the Internal Revenue Code, all earners regardless of family status were treated the same for tax purposes. However, in some States, community property laws enabled married couples to be "more equal" than others by splitting their income and filing individual returns, thereby reducing their tax liability significantly. To stem a burgeoning State movement to convert their laws to community property rules and to eliminate a rising tide of IRS litigation on family income issues, Congress in 1948 changed the tax code to extend income splitting to all married couples.

By the mid-1960's many members of the growing single population became convinced that income splitting was a "tax shelter" for one-earner couples, resulting in an unfairly high tax burden on singles who did not have the advantage of income splitting. Agreeing that the tax differential between singles and couples was unreasonable, Congress in 1969 created new lower tax rates for singles. However, in addressing the problem of singles, another problem was created for the two-earner couple.

As the law stands, two single persons each earning $10,000 pay $1,177 each in taxes, a total of $2,354. If they decide to marry, their total tax bill will increase $568. The increased tax due to wedlock is the present "marriage penalty." As joint income increases the penalty becomes more severe. For example, singles earning $20,000 pay $3,837 each in taxes annually; if you aggregate their incomes, as married couples must, their joint tax liability is $9,366, or an increase of $1,692.

I do not think any principle of equity is achieved by imposing significant tax increases on couples simply because they are married and working. Indeed, if you investigate current tax law affecting married persons with the same total income you find that one-earner couples realize a tax *reduction* when they marry. Indeed even some two-earner couples, if the split in their earnings is extreme, realize a tax reduction when they marry whereas all other two-earner couples at the same income level experience a tax increase. This reflects neither adherence to the principle of marriage neutrality nor the principle of like incomes paying similar tax.

There are two causes of the marriage penalty. First, when individuals marry they lose part of the advantage of their two single standard deductions (now called the zero bracket amount ZEBRA) since the zero bracket amount for married couples is $3,400 rather than double the single bracket amount of $2,300.

In addition, the first dollar of the second income is subject to tax rates beginning at the marginal tax rate of the first income. The loss of the single standard deduction (ZEBRA) particularly affects low income families, while the higher marginal tax rate primarily causes the marriage penalty for families with incomes over $30,000.

Another quirk of the marriage penalty is its dependence on the income split within the family. As I pointed out above, the penalty is more severe when husband and wife earn similar salaries.

While the marriage penalty is capricious and inequitable on its face, the negative effects of the marriage penalty extend beyond the imbalance of the tax burden. The marriage penalty tax is particularly onerous because it poses a significant obstacle to the full participation of women in the labor force. Notwithstanding all the federal programs and policies encouraging women to enter the labor force and participate equally with men, women in most cases have not yet achieved equal salaries and equal status. Therefore, it is usually the woman who will be the secondary earner and who will catapult the family into the marriage penalty situation. While the tax technically is paid by the couple, it is her income that is taxed at the higher rate. From a tax standpoint, it is cheaper for her to remain single or, if she marries, to stay home.

There are several possible approaches to the elimination of the marriage penalty. I think the most effective solution in terms of significantly reducing the penalty without providing inequitable tax relief is a tax deduction on the lesser earner's income. The legislation I introduced last year, S. 1247, would allow a deduction of 10 percent of the first $20,000 of the lesser earner's salary.

The deduction would be available to couples who do not itemize as well as those who do. In the case of couples who itemize, the deduction would not affect their eligibility for other deductions or credits. The cost is estimated to be $3.6 billion the first year.

I think it is a mistake to perceive the marriage penalty as a simple problem searching for a simple solution. While there is overwhelming agreement about its inequity and adverse effect on social and economic policy, there is not a consensus regarding the solution. In addition to technical problems that complicate the implementation of many of the proposals, there is concern about the cost of correcting the marriage penalty. While I agree that a permanent solution to the marriage penalty will require careful, long-term planning, including discussions of the relevance of our current taxable units, I believe that two-earner couples need relief from this inequitable tax now.

Therefore, I urge the committee to seriously consider ways to alleviate the marriage penalty and not to postpone action on this insupportable tax policy that penalizes marriage and working wives.

Senator PACKWOOD. I have not read the Treasury's statement yet, but I will bet you that they are opposed to this legislation. If you recall, they were also opposed to the legislation that tried to ease the burden on singles. Now we are trying to reverse what we did, and I will bet you that they still oppose it.

Senator BYRD. We will soon find out.

Thank you, Senator Mathias.

Senator MATHIAS. The late great Frank R. Kent, who used to write a distinguished political column for the Baltimore Sun, once observed that the only thing that separated Maryland from the solid South was the Potomac River. Whenever I appear in your committee, I find that the Potomac River is not very wide. You make it very easy to build bridges. It is a very great pleasure to be here.

Senator BYRD. It is a very narrow piece of water so far as you and I are concerned.

[The prepared statement of Senator Mathias follows:]

STATEMENT BY SENATOR CHARLES McC. MATHIAS, Jr.

Mr. Chairman, I want to thank you for this opportunity to testify at these hearings on the marriage tax penalty. This is an important issue, and your timing couldn't be better.

In the last 20 years, our country has undergone great changes. We have put men on the moon, learned to wait in gas lines, and watched mini-skirts and wide ties come and go. Along with these noteworthy events, American society has seen an important evolution in family lifestyle. This year, for the first time, more than fifty percent of all American women are working outside the home—at jobs never before held by women, and at salaries more and more in line with the work they do. It is estimated that in the next 20 years, the number of women working outside the home will continue to increase, reaching 70 percent by 1990. Clearly, women wage-earners are now an integral part of American society.

Yet, in the face of this change, our tax system has stood still. 25 years ago, we devised a system to allow married people to combine all family income and file their returns jointly. For a traditional family, with one wage-earner, this is a good system. It recognizes the expenses of raising a family, and taxes married people at an appropriately lower rate. As long as the majority of married couples were "traditional" couples, this system fell within our guidelines of being "fair and equitable to the majority of American citizens." However, lifestyles have now changed. The typical American family is no longer the "traditional" one. Over half of all married couples—40 million taxpayers—have two wage-earners. Our tax system refuses to recognize this, and the majority of American couples are forced to pay extra taxes based upon an antiquated system that is not "fair and equitable" only to a minority of people.

This inequity is called the "marriage tax penalty." It taxes wage-earners more if they are married than if they are not, because when two incomes are combined and filed jointly, both incomes are thrown into a higher tax bracket. This penalty affects all income levels, but hurts the middle income couple the most, increasing that couple's tax bill by as much as 63 percent. In short, our tax system has turned the so-called "tender trap" into a booby trap.

Clearly, this quirk in our tax code encourages people to save money by divorcing and simply living together, or to never marry at all.

Just listen to these letters I have received:

A Maryland Minister writes that tax advisors are now advising people to live together rather than marry:

"It is interesting that the very things you said in your address to Congress, especially concerning the advice of tax advisors to older couples, contemplating marriage, is the same advice I had to give most reluctantly, and certainly with moral twinges of conscience. Yet, I know (my parishioners) could make ends meet easier as single persons than as married couples. There was no way I, as a pastor, could advise them to become man and wife under the present tax structure."

A sociologist from the University of California at San Francisco writes:

"As a sociologist I am acutely concerned over disincentives to women working and to laws and regulations which undermine the family . . . Bills such as (S. 336) are sorely needed to bring about the structural changes in our society which will allow women to realize their potential and have equal access to opportunities."

And listen to this cry from the heart from a distraught father:

"A few weeks ago . . . (my) daughter, a working girl in her early twenties, told me that she hoped to have children in the future, but would not necessarily get married . . . I tried, without sounding too preachy, to explain that a child deserved to grow up in a stable environment with both a father and a mother. But what chance have I got against a government that actually charges you money for getting married?"

And, then there are examples like Mr. and Mrs. Boyter, from my own State of Maryland. I'm pleased to note that Mrs. Boyter will be testifying later. For three years running, she and her husband have divorced at the end of the year, and remarried a few days later, after taking a vacation on the money they saved by filing as single people. Today they are in court fighting for their right to divorce for tax purposes. I do not know how they will fare, but I think our tax system should not force a couple to this extreme.

The answer does not lie in court battles. It is our job, as legislators, to resolve this problem. As you know, Representative Fenwick and I have introduced bills that would allow all married couples the option of filing their taxes as if they were single, using the rate schedules for single people. This proposal would simply allow all married couples to choose between two systems of filing, preventing them from paying higher taxes simply because they are married.

The Interdepartmental Task Force on Women concluded a major study on the marriage tax penalty, a copy of which I would like to submit for the Record, which strongly supports my proposal as the "simplest way to permanently eliminate the 'marriage tax penalty.'" Our proposal is, in fact, not only the simplest, but I think the best way to eliminate the marriage tax penalty. A tax credit or deduction against the second spouse's income may be less expensive, but the reduction in the marriage tax would not be uniform for all couples. Such a proposal would result in over-compensation for a few for the penalty they previously paid, and under-compensation for the vast majority of taxpayers affected by this inequity.

In the Senate, my bill has 25 cosponsors, and Mrs. Fenwick's bill in the House has over 230. The American Bar Association, among other groups, has passed a resolution favoring by bill. Clearly, the support for optional separate filing is widespread and continuing to grow.

I must say that we've gotten some encouraging signs over the past few weeks. First, we learned that the distinguished Chairman had scheduled hearings. Then the Secretary of the Treasury, William Miller, suggested that the proposed 1981 tax cut package include the elimination of the marriage tax penalty.

This penalty is not a problem that is going to diappear if we ignore it. Every time a woman enters the work force, the marriage penalty grows, as do the Treasury's windfall revenues. An obstacle to our proposal is the revenue loss. But this figure itself—estimated by the Joint Taxation Committee at $7 billion—makes the case for our bills more compelling. It spotlights the magnitude of the inequity, and the amount of tax money involved will only become larger and more difficult to deal with in the years ahead. The longer we wait to act, the harder it will be to wean the budget from this extra tax bite.

Mr. Chairman, the month of June is now behind us. We must ask ourselves how many June brides did not make it to the altar this year because of our tax on marriage. The time has come for us to get rid of this obstacle to marriage, so that in 1981, the wedding bells will ring out loud and clear across America.

Senator BYRD. Mr. Sunley, Deputy Assistant Secretary for Tax Analysis.

Welcome, Mr. Sunley.

STATEMENT OF EMIL M. SUNLEY, DEPUTY ASSISTANT SECRETARY FOR TAX ANALYSIS, DEPARTMENT OF THE TREASURY

Mr. SUNLEY. Mr. Chairman, and members of this subcommittee: Is the individual or the family the appropriate unit of taxation?

Should the different circumstances of the family with one earner, and the family with two-earners be recognized?

Do the special circumstances of a single person who maintains a household for children or other persons be recognized?

These are basic issues affecting the tax treatment of married persons and single individuals. As it stands today, the tax law gives rise to tax increases and tax decreases when a marriage takes place, and when a marriage is dissolved by reasons of divorce or death.

These tax consequences add to public concern about the fairness of the tax system. They also create concerns about the tax system's economic efficiency. For example, second earners among married couples and single persons are faced with greater work disincentives than are primary earners among married couples.

Tax policy has been guided by four important and widely accepted goals in the tax treatment of the family and single individuals.

First, the income tax should be a progressive tax based on ability to pay.

Second, married couples with equal combined income should pay the same tax. That is, no distinction should be made among married couples on the basis of how much their combined income is earned by each spouse.

Third, a tax penalty should not be imposed on marriage. That is, two single individuals should not pay a higher tax as a result of marriage.

Fourth, a tax penalty should not be imposed on becoming or staying single. A single person should not pay more tax than another individual with equal income who is married to a spouse who has no earnings or income.

While each of these goals is accepted as sound and fair, they conflict with one another. Any tax system will violate any one of these goals.

In the next portion of my prepared statement, I summarize the historical development of the current law, but I would like to skip that and continue with present law treatment, and then summarize my statement to the end, if I may.

The current tax treatment reflects the progressive tax principle and generally taxes the combined income of husband and wife without distinction between one-earner and two-earner families, except for the child care credit. Both marriage penalties and single penalties exist in present law.

The marriage penalty is illustrated in table 2 of my testimony. For example, if we look at the fourth row in that table, we find that if two single people, each with taxable incomes of $20,000, marry, and they have a combined taxable income of $40,000, their combined tax increases from $8,354 to $10,226 for a marriage penalty of $1,872.

The marriage penalty is greatest when the income of the two spouses are about equal. But we find that if the incomes are even split 30/70 there is usually a penalty. When you get a split in income of something like 20/80 usually the tax system ends up with a combined tax that is about the same whether you are married or single. But if one spouse has no income, then we have often substantial single penalties, and this is illustrated in table 3 in my testimony.

Again, if we look at row four in that table, we find that if a married couple with one earner, and with taxable income of $20,000 divorces, and the earner continues to have taxable income of $20,000, the earner's tax increases from $3,225 to $4,177 for a single penalty of $952.

So under current law, as I said, we have both a marriage penalty and a single penalty. According to the most recent tax return data, there is a marriage penalty realized by a substantial number of couples filing joint returns.

For tax year 1979, approximately 16 million couples were affected by a marriage penalty totaling $8.3 billion, while 24 million couples experienced a marriage bonus. By filing a joint return, they will pay lower taxes than if they filed single tax returns. The marriage bonus was about $19 billion. These figures are outlined in table 4.

The compromise between reducing the marriage penalty and the single penalty is an uneasy one. The marriage penalty in particular has become one of the most widely criticized aspects of our income tax. But as long as the first two goals, progressivity and taxing the combined income are adhered to, the marriage penalty cannot be reduced without the situation for single taxpayers becoming even worse.

If progressivity remains unchanged, any approach which alleviates the marriage penalty and the single penalty must violate the combined income goal. That is, there must be some differential in the tax law between one- and two-earner married couples with the same combined income.

The remaining portion of my testimony outlines five different options for approaching the marriage penalty.

The first two options violate the combined income goal. The first option would abandon joint returns, and require separate returns by all married persons. This approach would also abandon the head of household and the surviving spouse statuses, and abandon differential rate schedules for single persons and separate returns of married couples. It would eliminate both the marriage penalty and the single penalty.

This option, however, has the potential for creating serious taxpayer compliance difficulties. The switch from joint return to separate returns would effectively end the pooling of income and deductible expenses for married couples.

Pooling of income and expenses has long served as a major simplification device. Under the option, complexities would be introduced. Each spouse would be taxed according to his or her own income and expenses. Each spouse would have to determine annually his or her portion of ownership in jointly held income-producing property.

Assignment of income according to actual ownership could also create a real incentive to reduce tax by shifting ownership to the spouse with the least income. Some might view this as desirable on social policy grounds. Others would not.

The potential for arbitrary allocation of exemptions and deductions would also exist. One possibility would be to prorate the total amount of exemptions and deductions in accordance with the distribution of total income between the spouses.

I want to assure you that I believe it is possible, if we went either to the first option, mandatory separate returns or the second option, optional separate returns which is advocated by Senator Mathias, to solve the technical problems of allocating property income and earned income in closely held corporations, and of allocating itemized deductions and personal exemptions. You could develop rules to solve them. But they would involve some additional complexity which has not always been fully taken into account.

To minimize the number of taxpayers under the option of mandatory separate returns who have a tax increase, all taxpayers could be allowed the use of the most beneficial tax rate schedule in current law, that is the one for joint returns.

Although the $8 billion marriage penalty would be eliminated, the marriage bonus would be increased by $9.7 billion, and single persons and heads of households would receive tax cuts of $11.4 billion. Thus the revenue cost of mandatory separate returns, using the current joint return rate schedule for all taxpayers, would be $29.5 billion at 1979 income levels.

This high revenue cost of mandatory separate returns, I think we recognize, is a serious drawback of this option which then turns me to the second approach, optional separate returns.

Under optional separate returns, married couples who currently file jointly would be permitted to file as single individuals. Heads of households and surviving spouses would continue to use their present rate schedules. The Mathias bill, S. 336, essentially follows this approach.

Although this option effectively eliminates the marriage penalty, it would not eliminate or reduce the marriage bonus or the single penalty. Under this approach, those benefiting from the marriage bonus, one-earner couples and two-earner couples with a low earner, would not be made worse off except in a relative sense. They would generally continue to file joint returns to take advantage of the marriage bonus.

Optional separate return has some of the same difficulties as noted with respect to mandatory separate returns, namely, in the assignment of income and the allocation of deductions. In addition, optional separate returns could seriously complicate taxpayer compliance since many couples would have to compute their taxes two ways to determine which way minimizes taxes.

The revenue costs of optional separate returns treated as single persons would be $8.3 billion at 1979 income levels.

A third option is to return to full income splitting, which was effective between 1948 and 1969. Under this approach, the joint rate schedule would have the same marginal tax rate as the single rate schedule in current law, but the bracket width would be twice as wide. The zero bracket amounts for joint returns, separate returns, and single returns would remain as under present law.

This option is philosophically a direct opposite of mandatory and optional separate return options discussed earlier. It retains the family as the basic unit of taxation rather than the individual. Each couple would continue to pool income and deductible expenses, and would continue to divide their income equally for tax purposes irrespective of actual division of income, but would use the single person's rates.

This option would eliminate the marriage penalty due to the tax rates, but not differing zero bracket amounts. It would recreate a sizable single penalty, up to 42 percent compared to the 20 percent under present law.

The revenue cost of income splitting on the present single rate schedule would be $14.8 billion. It would provide a substantial tax cut for married couples. Although it would not actually create a tax increase for singles, it would increase the relative tax between singles and marrieds.

Recognizing that a single penalty of 42 percent is notably too high, it would be possible to reduce the progressivity of the marginal rate schedules, have full income splitting, and hold the single penalty to no more than 25 percent.

That is to say, if you look at the four goals that I outlined at the beginning, you ease up a little bit on progressivity compared to present law, retain combined income reporting, hold the single penalty to no more than 25 percent, a little higher than under current law, and eliminate the marriage penalty. That strikes a further compromise between the four goals.

If you take an option along these lines, the cost will be something like $23.3 billion in 1979 income levels, and even with such substantial tax reductions, lower income single individuals would receive no tax reduction.

A fourth alternative that your committee may want to consider is partial income splitting by increasing the zero bracket amount for joint returns to twice the amount for single persons. Separate returns of married persons would have the same zero bracket amount as that for single persons.

This option would reduce the marriage penalty by $2.1 billion, and mostly for the lower income couples who do not itemize. It recognizes that under current law the marriage penalty essentially flows from two features in the tax law, the rate schedule and the zero bracket amount. This option would eliminate the marriage penalty with respect to the zero bracket amount by providing that the zero bracket amount for married couples is twice the amount for single individuals. If two people marry, their combined zero bracket amount would not be decreased.

Of course, when two people marry, and only one of whom has income, the option would provide a substantial marriage bonus. Again, this reflects the conflict between the marriage penalty and the single penalty, and trying to strike the proper compromise. The revenue cost would be $5.4 billion.

A fifth option is to provide a special deduction, or exclusion for the second earner on a joint return. If your committee should find too many complexities in the Mathias approach of optional separate returns, or in mandatory separate returns, which require that allocation of property income, earned income of closely held businesses and farms, personal exemptions and deductions, then an alternative, sort of a rough justice kind of approach to reducing the marriage penalty problem, is to provide a special deduction or credit based on the earnings of the second earner.

It would be a simpler option in terms of compliance and administration than the optional separate return. A deduction from adjusted gross income of some portion of the lower earning spouse's income would be allowed. For example, the Gravel bill, S. 1247, would provide a 20-percent deduction up to $20,000 of the spouse's earnings, and the Sasser bill, S. 1877, would provide a 20-percent reduction up to $20,000 earnings.

Depending on the deduction levels, this scheme would partially alleviate the marriage penalty. It would only give relief among two-earner couples. It would not alleviate any marriage penalty among two-earner couples resulting from investment income.

The drawback of this option is that some couples would receive tax relief in excesss of their marriage penalty under present law. Therefore, an evaluation of this approach should include examination of how the total revenue loss should be allocated between the reduction of the marriage penalty and increase the marriage bonus or single penalty.

Consider, for illustrative purposes, a deduction equal to 10 percent of the first $20,000 of income of the lower earning spouse, essentially Senator Gravel's bill. The revenue cost would be $3.5 billion at 1979 income levels. About 79 percent of the total cost would be allocated to reducing the marriage penalty, and about 21 percent would be allocated to increasing the marriage bonus. The 10-percent deduction would eliminate about 34 percent of the marriage penalty under present law.

Mr. Chairman, I do not believe at this time that it is possible to commend one of these five approaches as clearly being superior to all the others. I believe that careful consideration should be given at the time a tax cut bill is adopted to these various approaches to reducing the marriage penalty, but I am sure that you have found in the tax cut hearings that your full committee has been holding, and that the House Committee on Ways and Means has been holding, there are a number of tax policy options that deserve very serious and very careful consideration. Choices must be made. Thank you.

Senator BYRD. Mr. Sunley, couldn't you give the committee some guidance as to which is the better approach. Is it the Mathias approach? Is it the Sasser approach? Is it the Gravel approach? Or, the other approaches? Can't you give us some guidance as to direction?

Mr. SUNLEY. I think that a good case can be made for both the Mathias approach, or the Gravel approach. I think it depends on some tradeoffs between how much complexity you want to add to the tax law, and how completely you want to solve the marriage penalty.

At this time, I am not prepared to recommend one approach as being superior to all the other approaches.

Senator BYRD. Do you favor the Mathias proposal?

Mr. SUNLEY. I am not today prepared to endorse nor is the administration prepared to endorse any single approach.

Senator BYRD. Do you favor the Sasser approach?

Mr. SUNLEY. The same response.

Senator BYRD. Do you favor the Gravel approach?

Mr. SUNLEY. The same response.

Senator BYRD. Do you favor any approach to curing the marriage penalty?

Mr. SUNLEY. As I indicated, Senator Byrd, it is important that when Congress enacts a tax cut that careful consideration be given to this issue. But at this particular juncture, I am not prepared to recommend one approach.

Senator BYRD. You are not prepared to recommend any approach.

Mr. SUNLEY. That is correct.

I have tried to outline in my testimony essentially what the hard choices are that have to be made in choosing among the alternatives. Senator Mathias outlined his option for you, and I think he well recognizes that in this very difficult area a choice involves compromising among goals which conflict with each other. You need to strike a balance between these various goals.

It is a very judgmental issue. Your committee by holding these hearings, and gaging the views of interested groups, can move the debate along toward a solution to this problem.

In having met with large numbers of taxpayers, and having long considered this issue, we have found that there is no general consensus. I have been involved in this debate since 1969 when the previous administration recommended cutting the tax rates for single individuals to reduce the so-called single penalty.

Senator BYRD. This is a very difficult problem to solve.

Mr. SUNLEY. Yes, it is.

Senator BYRD. It is like punching in a balloon, you might punch it in here, but it comes out somewhere else. You don't get that hump out of it without getting a hump somewhere else. It is a very difficult situation. You have just said, you have been working on this since 1969, and that is 11 years. So it seems to me that if there is any reasonable solution, or reasonable approach, in that 11-year period you would have some suggestions to make to us as to the best way to proceed.

Mr. SUNLEY. Mr. Chairman, I tried in my testimony to outline some of the issues surrounding the choices.

Senator BYRD. We know the issues.

Mr. SUNLEY. I think that in making a decision, you have to decide first, should the family be the basic unit of taxation, or should the individual be the basic unit.

Senator BYRD. Which do you think should be the basic unit?

Mr. SUNLEY. I personally think that a tax system with the family as the basic unit of taxation is superior. But it involves retaining some marriage penalty. There is a lot of complexity in changing to the individual as the basic unit of taxation.

Many of the witnesses that you will hear today are going to suggest that the two-earner family deserves a special tax break, and they have a very strong case. But I can tell you that I have often had a very difficult time trying to explain to a one-earner couple why the couple next door, which has the advantage of two incomes, should also get what will appear to be a special tax treatment.

We can argue, on equity grounds, that the current law often creates a penalty in getting married, and that there is also an efficiency case to be made in view of the impact of the law on two-earner couples and labor force participation rates. Nonetheless, it is just very hard to explain to the woman who stays at home and takes care of the children, why the woman who lives next door, who brings in a second income to the family, should get a special deduction or a lower tax rate than what they get.

Senator BYRD. You are quite right. I guess what you are really saying is that there is no good solution to it.

Mr. SUNLEY. That is right, and sometimes some solutions tend to be worse than others.

Senator BYRD. So it is what is the least bad solution.

Mr. SUNLEY. That is right.

Senator BYRD. It reminds me of Vietnam. There was no good solution there, and it was what was the least bad solution.

Senator Packwood.

Senator PACKWOOD. It seems to me that the only answer you have, if you want to eliminate all the humps, is to get rid of the progressivity.

Mr. SUNLEY. That is true, actually, Senator Packwood.

Senator PACKWOOD. Let everybody pay the lowest possible tax, no matter what their status, married or single.

Mr. SUNLEY. A flat rate tax goes a long way toward solving the marriage penalty and the single penalty. But I think progressivity is a goal that is widely shared in our political system.

I did try to outline that by sacrificing that goal some, you can retain combined joint returns and solve the marriage penalty and keep the single penalty under control. That is one kind of approach to go, but it would require sacrificing something on the progressivity side.

That again, as you well know, is a very strong value judgment. I think there is general agreement on all sides of the political spectrum that the tax system ought to be progressive. The issue really is, how progressive. On that, I am afraid, there is very little agreement.

Senator PACKWOOD. Let me congratulate you on a good statement. I think you are probably wise not to offer any suggestions on it. It is a legitimate, genuine, political question, and Congress should address it. I think I know which way we would tilt, but you are right, no matter which way you tilt somebody else is going to be slightly more or less discriminated against than they are now. I am not sure that there is going to be an equitable solution that will satisfy everybody.

I have no further questions, Mr. Chairman.

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Senator BYRD. Senator Dole.

Senator DOLE. On page 22, Mr. Sunley, you indicate, "In the process of developing a tax cut proposal, the administration will give serious consideration to the marriage penalty issue." Can I assume that you are in the process of developing a tax cut proposal now?

Mr. SUNLEY. Senator Dole, the Treasury has been in the process of developing a tax cut proposal since you completed action on the 1978 Revenue Act. I don't think that it is any secret that the Treasury always has on the shelf a number of proposals in that area.

Careful consideration was given last fall to including tax reductions in the budget that was produced last January. The economic circumstances suggested that that would be an unwise course of action. Needless to say, we had some ideas ready to show to the policymakers, and we have more ideas ready today than we had last fall.

Senator DOLE. Do you have any that we are not aware of?

Mr. SUNLEY. I don't believe so. I think that most of the areas that we have been working in, or thinking about—marriage penalty, depreciation—you are well aware of.

Senator DOLE. So this is not a shift in administration policy, and you are not saying that we should have a tax cut enacted this year effective next year.

Mr. SUNLEY. The administration position, as stated by Secretary Miller, is that we should not enact a tax cut before the election.

Senator DOLE. That was a couple of weeks ago.

Mr. SUNLEY. That is still the position. [Laughter.]

Senator DOLE. In that process, you are considering the marriage penalty, and also the single penalty, and all the other insoluble problems that you have discussed in your statement.

Mr. SUNLEY. Yes. In the testimony that Secretary Miller gave before your full committee about 2 weeks ago, he mentioned the marriage penalty as one of the items to be given consideration. He also discussed various alternatives of offsetting the social security tax increase, and the depreciation changes.

Senator DOLE. I appreciate your statement. I know it is a very difficult area. I don't have any further questions.

Senator BYRD. Just one question, Mr. Sunley. I think in your statement you state that the penalty for single individuals now is roughly 20 percent. What is the so-called marriage penalty now percentagewise?

Mr. SUNLEY. That always depends a little bit on how you are measuring it. Ignoring the zero-bracket effect, and just looking to the rate schedule, it is around a range of 20 percent. You may be able to construct more extreme examples, but just considering the rate schedules, it is about 20 percent.

Senator BYRD. Roughly the same as the single penalty.

Mr. SUNLEY. We do hear, and I am sure you do, too, from taxpayers who are single, who write each year as they file their tax return, if they were married their taxes would go down and they are discriminated against. We get about an equal amount of mail from two-earner families who say that if they had remained single their taxes would go down.

The only group that is happy, if they are happy at all, is the one-earner family.

Senator BYRD. I am not sure that they are particularly happy with the rate of the taxation today.

Mr. SUNLEY. They are not particularly happy, but at least they can't improve their tax situation by becoming single.

Senator BYRD. In the mail that you receive, you have one advantage over us, and that is that you don't have to face the electorate.

Mr. SUNLEY. I personally don't have to face it, but there are those in the executive branch who do.

Senator BYRD. Senator Dole.

Senator DOLE. I think there was an article in the Wall Street Journal a while back, "Living in Sin Pays." It said a lot of people get married at the end of the year for the bonus; and, on the other hand, a lot get divorced at the end of the year and remarry. Is that widespread, or is that just a good story?

Mr. SUNLEY. I don't believe that getting married and getting divorced each year for tax purposes is widespread, although you are going to hear from one couple who has engaged in this practice.

Nesting arrangements in this country have become a little less formal than they may have been some years ago, and this is due to probably a number of factors of which tax may be not the most important, though tax may be playing a role in some special cases. Though it is a legitimate concern, I don't think that if you eliminate the marriage penalty that you are going to eliminate some of these informal arrangements that exist.

Senator DOLE. You don't have any records on how widespread either might be? Some people have a penalty for having brothers. Other people have a penalty for merely being married.

Mr. SUNLEY. Senator Dole, let me put something in the record. I have seen data on sort of the number of households of unmarried individuals, and how that has grown in the recent census. There is some indication that the less formal relationships are more frequent today than they were some years ago. I am sure that some of those who appear here will have that in their testimony.

Senator BYRD. Thank you, Mr. Sunley.

If you have any further thoughts, the committee will be very glad to have any additional information, suggestions, and recommendations that you might have.

[The prepared statement of Mr. Sunley follows:]

FOR RELEASE UPON DELIVERY
AUGUST 5, 1980 9:00 A.M. EST

STATEMENT OF EMIL M. SUNLEY
DEPUTY ASSISTANT SECRETARY OF THE TREASURY (TAX POLICY)
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
SENATE FINANCE COMMITTEE
ON THE
TAX TREATMENT OF MARRIED AND SINGLE TAXPAYERS

Mr. Chairman, and Members of this Subcommittee:

The Treasury welcomes the opportunity to testify on the tax treatment of married couples and single individuals. This subject raises some of the most important issues in income tax policy and some of the most difficult to resolve. The Congress and the Executive Branch have wrestled with these issues since the establishment of the Federal income tax in 1913. The issues involve basic questions: Is the individual or the family the appropriate unit of taxation? Should the different circumstances of a family with one earner and a family with two earners be recognized? Should the special circumstance of a single person who maintains a household for children or other persons be recognized?

As it stands today, the tax law gives rise to tax increases and tax decreases when a marriage takes place and when a marriage is dissolved by reason of divorce or death. These tax consequences add to public concern about the fairness of the tax system. They also create concerns about the tax system's economic efficiency. For example, second earners among married couples and single persons are faced with greater work disincentives than are primary earners among married couples.

M-621

Equity Considerations

Tax policy has been guided by four important and widely-accepted goals in the tax treatment of the family and single individuals.

First, the income tax should be a progressive tax based on ability-to-pay. The average tax rate should rise as income rises. A single individual with the same income as two individuals should pay more tax because that individual has more ability-to-pay. For example, more tax should be collected from a single person earning $20,000 than should be collected from two single persons earning $10,000 each.

Second, married couples with equal combined income should pay the same tax. No distinction should be made among married couples on the basis of how much of their combined income is earned by each spouse. For example, all married couples with total incomes of $20,000 should pay the same tax, regardless of whether one spouse earns all of the income or each spouse earns half or differing portions.

Third, a tax penalty should not be imposed on marriage. Two single individuals should not pay a higher tax as a result of marriage. For example, a man and woman earning $10,000 each should both pay the same tax whether they are married or single.

Fourth, a tax penalty should not be imposed on becoming or staying single. A single person should not pay more tax than another individual with equal income who is married to a spouse who has no earnings or income. Conversely, a couple should not pay higher taxes as a result of divorce. For example, a married couple with both spouses earning $10,000 each should pay the same tax as two single persons both earning $10,000.

While each of these goals is accepted as sound and fair, they conflict with one another. Any tax system will violate one or more of these goals. For example, if the second, third, and fourth goals are achieved in a tax system the tax cannot be progressive.

1. Historical Development of Current Law

The history of the tax treatment of the family and single persons provides ample evidence of this conflict. The conflict is at the root of the issues under examination in present tax law.

a. Rates. Between 1913 and 1948, the tax law recognized the individual as the unit of taxation. The tax system thus conformed with all the goals except the second, which requires the taxing of the combined incomes of the married couple. Consequently, couples with the same combined income had different tax liabilities.

Different treatment of couples with the same combined income was exacerbated by legal reallocation of property and income in "community property" States and by the ability of couples in other States to minimize taxes by reallocating property income. In 1948, the law was changed to allow the combining of incomes and "income splitting", that is, each spouse was presumed to have an equal amount of income whether or not that was the actual case. However, as a consequence of that decision, single taxpayers were required to pay more tax than most married couples with the same income. Looked at another way, a marriage bonus was introduced into the tax system in 1948.

The single penalty introduced in 1948 was most conspicuous in the case of single taxpayers with children -- typically a widowed or divorced parent. In 1951, therefore, a special category of head of household was introduced. Tax rates for heads of household were set halfway between those of single persons and married couples. This was a compromise between the single individual's tax and the married couple's tax.

After 1948, there was a substantial tax increase for many earners who were made single due to the death of a spouse; for these taxpayers, the benefit of income splitting was immediately lost. Therefore, the law was changed in 1954 to allow a surviving spouse who maintains a household for a dependent child to continue to obtain the benefits of income splitting for two years after the year of death of the spouse. After that period, the surviving spouse followed normal rules to determine whether he or she would file as a "head of household" or a single person.

A continuing concern about the single penalty (or the marriage bonus) led to enactment of lower rates for single persons effective in 1971. Since the rates for married couples were not changed, the benefit of income splitting was effectively eliminated at most income levels. A substantial marriage penalty was introduced; many two-earner families could pay lower taxes if they were single. To prevent two-earner married couples from taking advantage of the new single person rates, married couples were required to use the pre-1971 rate schedule for single persons if they filed separate returns.

The concern about the substantial marriage penalty introduced by the 1971 legislation led to a small reduction of the marriage penalty in 1979 when new rate schedules were introduced.

These actions since 1913 reflect decisions on the unit of taxation and the applicable tax rate schedules. The issue is even more complicated because of actions with respect to other Code provisions, such as the standard deduction, the low-income allowance, the zero bracket amount, and the child care deduction and credit.

b. Other Code Provisions. Prior to the Tax Reduction Act of 1975, two single persons could claim two standard deductions or low-income allowances. If they married, however, they could claim only one. In the 1975 legislation, the low-income allowance and the maximum standard deduction allowed married taxpayers was made higher for married couples filing jointly than for single individuals. This reduced the marriage penalty but it also increased the single penalty. A single individual who married another individual with no income claimed a larger standard deduction than the amount claimed as a single individual.

In 1977, legislation repealed the standard deduction and introduced the zero bracket amount in all rate schedules. It provided that a certain amount of taxable income is subject to a tax rate of zero percent. The enactment of the zero bracket amount represented a compromise between reducing the marriage penalty and reducing the single penalty. The zero bracket amount currently is $2,300 for a single person (and head of household) and $3,400 for a married couple (and a surviving spouse). To the extent that a married two-earner couple has a smaller zero bracket ($3,400) amount than twice the single earners' amount ($4,600) there is a marriage penalty. To the extent that a married one-earner couple has a larger zero bracket amount ($3,400) than that of a single person ($2,300), there is a single penalty.

In all of these actions -- defining the tax unit, prescribing appropriate rate schedules, providing zero bracket amounts -- tax policy (since 1948) has accepted the first two goals -- progressivity and the taxation of combined incomes of married couples -- and has attempted to compromise the inconsistency between the marriage penalty and the single penalty.

As a result of these actions the Internal Revenue Code contains four different rate schedules for the individual income tax. Schedule X is used by almost 40 million single persons. Schedule Y (Part 1) is used by almost 46 million married couples filing joint returns (and surviving spouses). Schedule Y (Part 2) is used by 1.4 million married persons filing separate returns. Schedule Z is used by 6.3 million single persons who qualify as heads of households. Each schedule contains a "zero bracket" and positive rates ranging from 14 to 70 percent. (See Table 1.)

Some limited recognition has also been given in past legislation to certain additional costs of earning income in the case of two-earners (and also a single person) who have children. In the 1954 legislation, a limited child care deduction was made available to married couples and single persons with incomes less than $6,000. The deduction was expanded in both the 1971 and 1975 legisltation, and in the 1976 legislation, the deduction was replaced with a credit equal to 20 percent of the first $2,000 of child care expenses for one child and the first $4,000 of such expenses for two children. The income limit also was removed. The child care credit can be viewed as a possible offset for the marriage penalty in the case of two-earner families with children. This is particularly true since the credit is not strictly limited to child care. The housekeeper often cleans the house and does the laundry. For a two-earner family without children these same costs may be incurred in order for the second earner to enter the labor force, but the costs receive no special tax benefit under present law.

That is briefly the legislative history on attempts to resolve the issues. Let's look more specifically at present law and at the dimensions of the problem.

2. <u>Present Law</u>

The current tax treatment reflects the progressive tax and generally taxes the combined income of husband and wife without distinction between one-earner and two-earner families, except for the child care credit. Both marriage penalties and single penalties exist in present law. Two wage earners who are married often pay more tax than they would if they were single. A single person often pays more

Table 1

Summary of the 1979 Rate Schedules

Schedule in Form 1040 Instructions	Taxpayers Covered	Number of Returns Using Schedule in 1979 1/	Amount of Zero Bracket in 1979
Schedule X	Single persons other than heads of households	39.6 million	$2,300
Schedule Y (part 1)	Joint returns of married couples, and certain surviving spouses	45.7 million	$3,400
Schedule Y (part 2)	Separate returns of married persons	1.4 million	$1,700
Schedule Z	Unmarried heads of households	6.3 million	$2,300

Office of the Secretary of the Treasury
Office of Tax Analysis

August 5, 1980

1/ Total Individual Returns, 93.0 million.

tax than a married couple with the same income. The two-earner couple pays the same tax as the one-earner couple having the same total income. Except for the child care credit, the law ignores the additional costs incurred in earning income in the two-earner case.

a. Marriage Penalty. If two persons with independent incomes marry, they often have to pay a higher tax. For example, assume two persons each have taxable incomes of $15,000 (after subtracting their exemptions) and assume they do not itemize their deductions. If they file as single individuals, they each must pay $2,605 in tax. Their combined tax is therefore $5,210. If they marry and file a joint return, their taxable income is $30,000, and their tax (from schedule Y) is $6,238. In this case, their marriage penalty is $1,028. (See Table 2 for examples of marriage penalties for selected levels of taxable income.)

However, it is not necessary that the two individual incomes be equal in order for a marriage penalty to arise. Suppose that the two persons have taxable incomes of $22,000 and $8,000, adding up to the same combined taxable income of $30,000. Filing as single persons, their respective taxes are $4,857 and $977, for a total tax of $5,834. If they marry and file jointly, their tax is $6,238, for a marriage penalty of $404. If the income is divided more unevenly, the marriage penalty will be smaller, or the couple may even save tax by marriage. Roughly speaking, the marriage penalty affects couples where the spouse with the lower earnings contributes at least 20 percent of the combined income.

Married persons may file separately if they wish, but they must use the highest of the four rate shedules, and other special provisions occur throughout the Code to prevent them from saving tax in this way. As a consequence, the option for a married couple to file separate returns is not a defense against the marriage penalty.

b. Single Penalty. A single taxpayer often pays more tax than a married couple with the same income. For example, a single person with a taxable income of $15,000 pays $2,605 tax. But if a married couple has the same taxable income, even if it is all earned by one spouse, their tax is $2,055. In this case, the single person pays 27 percent more tax. (See Table 3 for examples of single penalties at selected levels of taxable income.)

Table 2

Married Penalties in Current Law

If two single people, each with: taxable incomes of...	...marry, and have a combined taxable income of...	... their combined tax increases from...	..to..	...for a marriage penalty of...
$ 5,000	$10,000	$ 844	$ 1,062	$ 218
10,000	20,000	2,774	3,225	451
15,000	30,000	5,210	6,238	1,028
20,000	40,000	8,354	10,226	1,872
30,000	60,000	15,924	19,678	3,754

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"Taxable income" is total income minus exemptions of $1,000 per person.

Table 3

Single Penalties in Current Law

If married couple with one earner and with taxable income of...	...divorces and the earner continues to have taxable income of...	...the earner's tax increases from...	....to....	...for a single penalty of...
$ 5,000	$ 5,000	$ 224	$ 422	$ 198
10,000	10,000	1,062	1,387	325
15,000	15,000	2,055	2,605	550
20,000	20,000	3,225	4,177	952
30,000	30,000	6,238	7,962	1,724

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"Taxable income" is total income minus exemptions of $1000 per person.

These examples of the marriage and single penalties only take account of the differing rate schedules and zero bracket amounts. There are a large number of other provisions that impact on the tax treatment of married and single people. In some cases, single individuals and married couples filing jointly are subject to the same dollar limitations. Examples are the $3,000 capital loss limitation and the maximum expenditures qualifying for the residential energy credit. In other cases, such as the interest and dividend exclusion, the limitation for married couples filing jointly is twice that of single individuals. There are also cases where the limitation for married couples filing jointly are higher than that for single individuals but not twice as high. Examples include the maximum base and the beginning of the income phase out for the credit for the elderly. Also, in order to claim the earned income credit, the credit for the elderly, and the disability income exclusion, married couples generally are required to file jointly. These credits are phased out based on combined income.

Economic Considerations

The current tax treatment of the second earners (or secondary investors) among married couples tends to distort decisions about labor market entry choices, about choices among occupations, about investment in education and training, and about investment in risk capital. This follows from the fact that second earners under the present system of combined income on joint returns face higher marginal tax rates than the rates faced by their spouses who are the primary earners or the rates faced by single persons. The argument can be made that the marginal tax rates of secondary earners -- typically women -- should be lower not higher than that of single women and married men. It is generally agreed that married women have substantial discretion over their labor market activity, that is, they have a substantially higher elasticity of supply of labor than do single persons or married men. Thus, economic efficiency would be served if the marginal tax rates of secondary earners were lower than present rates. Economic efficiency in this sense means a reduction in the economic loss to society created by this distortion in labor force activity of married women.

Dimensions of the Problem

The marriage penalty and single penalty have become more serious issues as a result of increasing rates of divorce and cohabitation of unmarried couples, and the two-earner married couple problem also has become a more serious issue as a result of increasing labor force participation by wives.

The most recent tax return data indicate that a marriage penalty is realized by a substantial number of couples filing joint tax returns. For tax year 1979, approximately 16 million will be affected by a marriage penalty totalling $8.3 billion, while 24 million will experience a marriage bonus of $19 billion.1/ (See Table 4.)

Labor force participation rates of wives of married couples since 1940 demonstrate the substantial growth of two-earner families. (See Table 5.) The participation rate by wives increased more than 300 percent since 1940. The one-earner couple is no longer the predominant case. According to Census data, in 1940 the one-earner couple accounted for almost two-thirds of all households. In 1978, the one-earner couple accounted for only about one-third.

Basic Options

The compromise between reducing the marriage penalty and the single penalty is always an uneasy one. The marriage penalty, in particular, has become one of the most widely criticized aspects of our income tax. But as long as the first two goals -- progressivity and taxing combined income -- are adhered to, the marriage penalty cannot be reduced without making the situation for single taxpayers even worse. If progressivity remains unchanged, any approach which alleviates both the marriage penalty and the single penalty must violate the combined income goal, that is, there must be some differential in the tax law between one-earner and two-earner married couples.

1/ In making these estimates, it is assumed that exemptions and deductible expenses are allocated in proportion to each spouse's income. However, one spouse may itemize while the other spouse may use the "zero bracket amount" but the latter's deductible expenses are not assumed to be shifted to the itemizing spouse. Had it been assumed that each couple engages in tax minimization by allocating deductions, the number with a marriage penalty will be an estimated 18 million and the penalty will amount to an estimated $13 billion at 1979 income levels.

Table 4

Distribution of Marriage Penalty and Marriage Bonus
by Income Class under Present Law 1/

(1979 Law, 1979 Income Levels)

Expanded income class	Marriage Penalty			Marriage Bonus		
	Number of returns	Amount	Average marriage penalty	Number of returns	Amount	Average marriage penalty
($000)	(thousands)	($ millions)	(dollars)	(thousands)	($ millions)	(dollars)
Less than 10	655	$ 83	$ 124	4,120	$ 1,063	$ 258
10 - 15	2,058	437	212	3,940	1,439	365
15 - 20	3,207	908	283	3,650	1,809	496
20 - 30	6,416	2,350	366	6,196	4,632	748
30 - 50	2,867	2,465	860	4,412	5,755	1,304
50 - 100	527	1,179	2,235	1,297	3,303	2,548
100 - 200	123	494	4,018	185	764	4,127
200 and over	54	424	7,909	26	395	15,207
Total	15,906	$8,340	$ 524	23,827	$19,160	$ 804

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Note: Details may not produce totals due to rounding.

1/ Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

Table 5

Labor Force Participation Rates of Wives
of Married Couples
1940 - 1978

Date	Participation Rates (Percent)
1940	14.7%
1950	23.8
1960	30.5
1970	40.8
1971	40.8
1972	41.5
1973	42.2
1974	43.0
1975	44.4
1976	45.0
1977	46.6
1978	47.6

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Source: U.S. Bureau of Labor Statistics.

Critics of the combined income goal argue that an economic difference justifies such a distinction: one-earner couples have the benefit of a full-time homemaker. Although the homemaker's services in the home are not measured in dollars, they do increase a couple's economic well-being and ability-to-pay. Two-earner couples do not have that advantage, and, arguably, this should result in a lower tax liability. According to a recent OECD survey, every industrialized nation with an income tax, except the United States, distinguishes between one-earner and two-earner couples, and even in the United States, the child care credit may be viewed as a distinction between one-earner couples without children and two-earner couples with children. It is one thing, of course, to support such a distinction and quite another to agree on what form it should take.

1. <u>Abandon Joint Returns; Require Separate Returns by Married Persons</u>

One option is to abandon joint returns and income splitting and to require separate returns by married persons. This approach would also abandon head of household and surviving spouse statuses and abandon differential rate schedules for single persons and separate returns of married couples. Incidentally, most experts agree that Congress can require that each married person pay tax on his or her own income, determined without regard to State community property laws.

This option would eliminate both the marriage penalty and the single penalty. Only the combined income goal would be violated, as was the case in the pre-1948 income tax. The administrative convenience of joint returns could be retained by allowing married couples to file their "separate" returns on two parts of the same standard form, as is now done in some State income tax systems.

The option, however, has the potential for creating serious taxpayer compliance difficulties. The switch from joint returns to separate returns would effectively end the pooling of income and deductible expenses by married couples. Pooling of income and expenses has long served as a major simplification device. Under the options, each spouse would be taxed according to his or her own income and expenses. Each spouse would have to determine annually his and her proportion of ownership in jointly held income producing property. Determining the share of ownership often would not be a one time determination because spousal shares of ownership change as for example in the process of annual mortgage amortization, if one or the other spouse makes the payment. Special rules would be needed for trusts where one spouse receives the income from a property and the other spouse retains a reversionary interest in the property.

Assignment of income according to actual ownership could also create a real incentive to reduce tax by shifting ownership to spouse with the least income. It is noteworthy that some might view this as desirable on social policy grounds.

An alternative to assigning property income on the basis of ownership would be to use an arbitrary rule. One possibility would be the assign property income to the spouse with the most income. This might be considered unfair because property income would be taxed at higher marginal tax rates. There are, of course, many other possibilities for assignment of property income. Property income could be split on a 50/50 basis, even though this rule would treat property income more favorably than earned income.

As for assignment of earnings, it appears best to assign such income on the basis of actual earnings of the spouses, even though families engaged in closely-held businesses and farms, could allocate earnings to a lower earning spouse rather arbitrarily.

The potential for arbitrary allocation of exemptions and deductions would also exist. One possibility would be to prorate the total amount of exemptions and deductions in accordance with the distribution of total income between the spouses.1/

Another drawback of the mandatory option is its impact on tax burdens. Although the marriage and single penalties now created by differential rate schedules would be eliminated, tax burdens of individual taxpayers in terms of

1/ It should be noted that the revenue estimates for this option and others which follow assume, where necessary, the 50/50 assignment rule for property income, the actual earnings rule for earned income, and the prorated allocation of exemptions and deductions according to total income.

tax increases or tax decreases would depend on the rate schedule chosen. For example, if mandatory separate returns were required to use the current single person's rate schedule (and if heads of households and surviving spouses were also required to do so), almost all one-earner couples now receiving marriage bonuses, heads of households, and surviving spouses would have tax increases and some two-earner couples would have tax increases also. On the other hand, many two-earner families would have tax reductions. The tax increases in this approach would probably be unacceptable and other alternatives need to be considered.

To minimize the number of taxpayers who would have a tax increase, all taxpayers could be allowed the use of the most beneficial tax rate schedule in the law -- that is the one for joint returns. Although the $8.3 billion marriage penalty would be eliminated, the marriage bonus would be increased by $9.7 billion. Single persons and heads of household would receive tax cuts of $11.4 billion. The revenue cost of mandatory separate returns using the current joint return rate schedule would be $29.5 billion at 1979 income levels. (See Table 6.) The high revenue cost of mandatory separate returns is a serious drawback of this option.

2. Optional Separate Returns

A less costly alternative to mandatory separate returns would be to provide couples an option of filing jointly, as under present law, or filing separate returns as single persons. Heads of households and surviving spouses would continue to use their present rate schedules. The Mathias bill, S. 336, essentially follows this approach.

Although this option affectively eliminates the marriage penalty, it would not eliminate or reduce the marriage bonus (or single penalty). Under this approach, those benefitting from the marriage bonus (one-earner couples and two-earner couples with a low earner) would not be made worse off, except in a relative sense. They would generally continue to file joint returns to take advantage of the marriage bonus.

Optional separate returns has some of the same difficulties just noted with respect to mandatory separate returns, namely in the assignment of income and allocation of deductions. In addition, optional separate returns could

Table 6

Revenue Effects of Alternatives Reducing Marriage Penalty
and Reduction in Marriage Penalty 1/

(1979 Law, 1979 Levels)

(billions)

Item	Mandatory Separate returns; joint return rates for all taxpayers	Optional Separate returns; single person rates (Mathias)	Two-earner couples: Deduction 10 % of first $20,000 earnings of lowest earning spouse (Gravel)	Return to full income splitting using present single persons rates	Increase zero bracket amount for joint returns to $4,600 for separate returns to $2,300
Current law marriage penalty	8.3	8.3	8.3	8.3	8.3
Cost of alternative:					
Married couples:					
Reduction in marriage penalty	8.3	8.3	2.8	4.4	2.1
Increase in marriage bonus	9.7	--	0.7	10.4	3.2
Heads-of households	1.2	--	--	--	--
Single individuals	10.2	--	--	--	--
Total cost of alternative ...	29.5	8.3	3.5	14.8	5.4
Remaining marriage penalty	0.0	0.0	5.6	4.0	6.2
Percentage reduction in marriage penalty	100.0%	100.0%	34.0%	52.4%	25.7%

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Note: Details may not add to totals due to rounding.

1/ Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

seriously complicate taxpayer compliance since many couples would have to compute taxes two ways to determine which way minimizes taxes.

The revenue cost of optional separate returns treated as single persons would be $8.3 billion at 1979 income levels. (See Table 6.)

3. Return to Full Income Splitting

Another option is to return to full income splitting, which was effective between 1948 and 1969. Under this approach, the joint rate schedule would have the same marginal tax rates as the single rate schedule in current law, but the bracket widths would be twice as wide. The zero bracket amounts for joint returns, separate returns, and single returns would remain as under present law.

This option is philosophically the direct opposite of the mandatory or optional separate returns options discussed earlier. It retains the family as the basic unit of taxation rather than the individual. Each couple would continue to pool income and deductible expenses, would continue to divide their income equally for tax purposes irrespective of actual division of income, but would use single person's rates.

This option would eliminate the marriage penalty due to tax rates but not differing zero bracket amounts. It would recreate a sizable single penalty -- up to 42 percent, compared to up to 20 percent under present law. The single penalty was extremely controversial in the pre-1969 era until reduced to 20 percent by the 1969 Tax Act. The option would also ignore the one earner, two earner couple issue; all pooled income would continue to be taxed the same, irrespective of the actual division among spouses.

Although the option would reduce the $8.3 billion marriage penalty by $4.4 billion, it would substantially increase the single penalty (marriage bonus) by $10.4 billion. The revenue cost of income splitting (based on present single rate schedule) would be $14.8 billion at 1979 income levels. It would provide a substantial tax cut for marrieds. Although it would not actually create a tax increase for singles, it would increase relative tax between singles and married.

Recognizing that a single penalty of 42 percent is notably too high, it would be possible to reduce the progressivity of the marginal rate schedules (See Table 7), have full income splitting and hold the single penalty to no more than 25 percent. An option along these lines, however, would cost $23.3 billion at 1979 income levels, and even with such substantial tax reductions lower income single individuals would receive no tax reduction.

4. Partial Income Splitting: Zero Bracket amount for Joint Returns Twice That of Single Person's

Another option would be to provide partial income splitting by increasing the $3,400 zero bracket amount for joint returns to $4,600, which would make it twice the amount now allowed single persons. Separate returns of married couples would have the same zero bracket amount, $2,300, as that for single persons.

The effect of this approach would be in the same direction as option 3 but considerably more modest. The option would reduce the marriage penalty by $2.1 billion mostly for lower-income couples who do not itemize. (See Table 8.) It would increase the single penalty (marriage bonus) by $3.2 billion. The revenue cost would be $5.4 billion. (See Table 6).

5. Special Deduction or Exclusion on Joint Returns

If joint returns in their present form are preferred, it would still be possible to distinguish between one-earner and two earner couples, by allowing a special deduction (or credit) based on the earnings of the second earner. It would be a simpler option in terms of compliance and administration than optional separate returns. A deduction from adjusted gross income of some portion of the lower earning spouse's income would be allowed. For example, the Gravel bill, S. 1247, would provide a 10 percent deduction up to $20,000 of the spouse's earnings and the Sasser bill S. 1877, would provide a 20 percent deduction up to $20,000 earnings. Depending on the deduction levels, this scheme would partially alleviate the marriage penalty. It would only give relief among two-earner couples. It would not alleviate any marriage penalty among two-earner couples resulting from investment income.

The drawback of this option is that some couples would receive tax relief in excess of their marriage penalty under

Table 7

Marginal Tax Rate Schedules for Joint Returns Under
Present Law and Options to Reduce the Marriage Penalty

Taxable income bracket	Marginal tax rate on income in bracket		
	Present law	Tax rates designed to remove the marriage penalty 1/	
		With no reduction in single penalty 2/	With reduction in single penalty 3/
0 - 3,400	0	0	0
3,400 - 5,500	14%	14%	14%
5,500 - 5,600	16	14	14
5,600 - 7,600	16	16	16
7,600 - 11,800	18	18	18
11,800 - 11,900	18	19	19
11,900 - 15,800	21	19	19
15,800 - 16,000	21	21	21
16,000 - 20,200	24	21	21
20,200 - 20,400	28	21	21
20,400 - 24,600	28	24	24
24,600 - 28,800	32	26	26
28,800 - 29,900	32	30	28
29,900 - 35,200	37	30	28
35,200 - 45,800	43	34	30
45,800 - 56,400	49	39	33
56,400 - 60,000	49	44	35
60,000 - 67,000	54	44	35
67,000 - 81,800	54	49	37
81,800 - 85,600	54	55	40
85,600 - 109,400	59	55	40
109,400 - 162,400	64	63	45
167,400 - 215,400	68	68	51
215,400 and over	70	70	56

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1/ Joint return schedule bracket widths double those of present law single return schedule for income taxed at positive rates.
2/ Present law single return rates used for joint and single returns results in a single penalty up to 42 percent.
3/ Reduced rates for joint and single returns results in a single penalty up to 25 percent.

Table 8

Marriage penalty of two earner couples (with equal earnings) under present law and under alternative options by income levels

Two-earner couple each with taxable income of –	Present law combined singles tax	Present law joint tax	Marriage penalty	Percentage reduction in marriage penalty				
				Mandatory separate returns using present joint rates	Optional separate returns using present single persons rate (Mathias)	Deduction of 10 percent of lesser earnings up to $20,000 (Gravel)	Return to full income splitting using present single person rates	Increase zero bracket amount for joint returns to $4,600; for separate returns to $2,300
$ 5,000	$ 844	$ 1,062	$ 218	100.0%	100.0%	49.5%	0.9 %	99.1%
10,000	2,774	3,225	451	100.0	100.0	58.5	44.1	63.9
15,000	5,210	6,238	1,028	100.0	100.0	50.3	65.0	37.8
20,000	8,354	10,226	1,872	100.0	100.0	45.9	78.2	27.6
50,000	15,924	19,678	3,754	100.0	100.0	26.1	85.9	15.7

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present law. Therefore, an evaluation of this approach should include examination of how the total revenue loss should be allocated between reduction of the marriage penalty and increase of marriage bonus or single penalty.

Consider for illustrative purposes a deduction equal to 10 percent of the first $20,000 of the lower earner's income. The revenue cost would be $3.5 billion. (See Table 6.) About 79 percent of the total cost would be allocated to reducing the marriage penalty and about 21 percent would be allocated to increasing the marriage bonus. The 10 percent deduction would eliminate about 34 percent of the marriage penalty under present law. It is noteworthy that the bulk of the lower earning spouses' incomes falls well below the assumed $20,000 ceiling. Consequently, a higher ceiling above $20,000 would have little effect either on the option's cost or on the reduction in the marriage penalty.

The number of returns experiencing a marriage penalty and the penalty amount would decline at each income level under this approach. (See Table 9). Since the cost would also include tax relief in excess of the marriage penalty, it may be more equitable and less costly to target the tax relief more specifically at two-earner couples with a marriage penalty.

Conclusion

In the process of developing a tax cut proposal, the Administration will give serious consideration to the marriage penalty issue. The Administration, however, is not making a recommendation at this time. A case can be made for each of the approaches. Some involve basic structural changes. Others are more simple corrective actions. The choice among them, of course, will depend on revenue considerations, acceptance of fundamental changes such as taxing the individual rather than the family, and tax simplification. These hearings provide an opportunity to gauge the views of interested groups.

Table 9

Distribution of Marriage Penalty Under Present Law
and Under Two-Earner Option to Deduct 10 Percent
of the First $20,000 Earned by Lowest Earning
Spouse by Income Class 1/

(1979 Law, 1979 Income Levels)

Expanded income class	Marriage penalty under present law			Marriage penalty remaining under the option		
	Number of returns	Amount	Average marriage penalty	Number of returns	Amount	Average marriage penalty
($000)	(thousands)	($ millions)	(dollars)	(thousands)	($ millions)	(dollars)
Less than 10	655	$ 83	$ 124	$ 561	$ 65	$116
10 - 15	2,058	437	212	1,831	312	170
15 - 20	3,207	908	283	2,584	589	228
20 - 30	6,416	2,350	366	4,025	1,233	306
30 - 50	2,867	2,465	860	2,034	1,489	732
50 - 100	527	1,179	2,235	485	996	2,053
100 - 200	123	494	4,018	120	461	3,839
200 and over	54	424	7,909	53	415	7,728
Total	15,906	$8,340	$ 524	11,692	$5,560	$476

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Note: Details may not produce totals due to rounding.

1/ Dependent exemptions and deductible expenses are allocated to each spouse in proportion to each spouse's income and not in accordance with tax minimizing behavior.

[The Treasury Department submitted the following statement for the record:]

Treasury has no information on the extent to which unmarried couples living together are doing so because of tax benefits. Although the Census Bureau indicates that there has been a rather large increase in unmarried couple living arrangements since 1970, such couples represented only about 3 percent of all couples living together in 1979.

In its publication "Marital Status and Living Arrangements: March 1979" issued in February 1980, the Census Bureau presented the following analysis and data on pages 3-5:

Unmarried couples. In 1979, there were 1.3 million households shared by two unrelated adults of the opposite sex (referred to here as "unmarried-couple" households), representing more than twice the one-half million (523,000) recorded in 1970. Three-fourths of these households in 1979 consisted of two adults only, and the remaining one-fourth consisted of two adults and one or more children under 14 years old (table E).

Data on the marital status of unrelated men cross-classified by the marital status of the unrelated women with whom they were sharing living quarters are shown in table F. In 1979, about one-half of the men and one-half of the women living in unmarried-couple households had never been married, 28 percent of the women and 32 percent of the men were divorced, 11 percent of the women and 5 percent of the men were widowed, 7 percent of the women and 10 percent of the men were separated, and the remaining 2 percent of either sex were married but not living with their spouse.

A comparison of the marital status of each partner shows that the most frequent combinations were a never-married man living with a never-married woman (36 percent) and a divorced man living with a divorced woman (15 percent).

Despite the spectacular nature of the recent increase in this unmarried-couple living arrangement, the 2.7 million "partners" in these 1.3 million households represent a very small portion of all persons in "couple" situations. In 1979, there were an estimated 96.5 million men and women who were married and living with a spouse. Thus, the partners in unmarried couples represented only about 3 percent of all persons among couples living together in 1979.

Table E. Unmarried Couples, by Sex and Age of Householder and Presence of Children Under 14 Years Old: 1979, 1977, and 1970

(Numbers in thousands)

Subject	1979		1977		1970		Ratio: 1979 to—	
	Number	Percent	Number	Percent	Number	Percent	1977	1970
All unmarried couples	1,345	100.0	957	100.0	523	100.0	1.41	2.57
Householder:								
Man	855	63.5	606	63.3	266	50.9	1.41	3.21
Woman	491	36.5	351	36.7	257	49.1	1.40	1.91
No children present	985	73.2	754	78.8	327	62.5	1.31	3.01
Householder:								
Man	644	47.8	489	51.1	174	33.3	1.32	3.70
Woman	341	25.3	265	27.7	153	29.3	1.29	2.23
Age of householder:								
Under 45 years	741	55.1	500	52.2	89	17.0	1.48	8.33
Under 25 years	274	20.4	198	20.7	29	5.5	1.38	9.45
25 to 34 years	370	27.5	234	24.5	60	11.5	1.58	7.78
35 to 44 years	97	7.2	68	7.1			1.43	
45 years and over	244	18.1	251	26.2	238	45.5	0.97	1.03
45 to 54 years	53	3.9	75	7.8	123	23.5	0.71	1.07
55 to 64 years	78	5.8	69	7.2			1.13	
65 years and over	113	8.4	107	11.2	115	22.0	1.06	0.98
Children present	360	26.7	204	21.3	196	37.5	1.76	1.84
Householder:								
Man	211	15.7	117	12.2	92	17.6	1.80	2.29
Woman	150	11.1	86	9.0	104	19.9	1.74	1.44

Table F. Proportion of Unmarried-Couple Households, by Marital Status of Partners: March 1979

Marital status of male partner	All unmarried couples	Marital status of female partner				
		Never married	Divorced	Widowed	Married, husband absent: Separated	Married, husband absent: Other
All unmarried-couple households	100.0	52.3	27.7	11.4	7.0	1.6
Never married	50.2	35.5	9.2	2.9	2.5	0.1
Divorced	32.3	12.0	14.6	4.1	1.0	0.6
Widowed	5.2	0.4	0.8	2.9	0.7	0.2
Married, wife absent:						
Separated	10.3	3.5	2.8	1.4	2.5	0.1
Other	1.9	0.7	0.3	0.1	0.2	0.5

Senator BYRD. Next will be a panel consisting of John L. Carr, Jr., Executive Director, White House Conference on Families; and Dr. Sydney J. Key, Chair, Action Group on the Marriage Tax Penalty, Interdepartmental Task Force on Women.

STATEMENT OF JOHN L. CARR, JR., EXECUTIVE DIRECTOR, WHITE HOUSE CONFERENCE ON FAMILIES

Mr. CARR. Mr. Chairman, and members of the committee, my name is John Carr, and I am the Executive Director of the White House Conference on Families. I want to thank you for this opportunity to report to you on the results of the recent White House Conference on Families held this summer in Baltimore, Minneapolis, and Los Angeles.

Two weeks from today, our 117-member national task force meets to help pull together our final report but there is no doubt what that report will say on the marriage tax. I want to emphasize that our testimony this morning is a look at the results of the conference in advance of the official report, and not a statement of administration policy, or endorsement of any specific proposal.

I also wish to emphasize that I do not bring to this hearing specific expertise on the Tax Code or economics of taxation. Rather, I come with a different expertise. I have had over the past year an opportunity to listen to literally thousands of American families who are convinced that our major institutions, especially government, are often ignoring and sometimes undermining families. There is no better symbol of this insensitivity to families than the subject of your hearings today—the marriage tax penalty.

The White House Conference on Families was called by President Carter to examine the current state of American families, the difficulties they face and the ways in which major public and private policies affect American families. Unlike previous conferences, it was not a single event here in Washington. Instead, the President directed us to reach out and listen to American families.

We held 14 days of hearings in places like Hartford, Seattle, Nashville, and Lindsborg, Kans. Virtually every State conducted their own conferences to select issues and delegates. A national survey on families was conducted. Three White House conferences were held.

More than 125,000 Americans participated and on the question of the marriage penalty they spoke with virtually one voice. In the hearings, State activities, and the White House conferences themselves, they called for prompt action to remove the unfair and antifamily consequences of our tax laws.

In our hearings, we heard from individuals who had postponed or avoided marriage because of the financial consequences. We heard from one couple who were divorced year after year, and are now in the Tax Court fighting this situation.

We also heard from people whose disbelief had turned to anger at the realization that they pay more taxes than the couple down the street because they were married to the person they live with. Nineteen of the State family conferences held between November and April called for the elimination of the marriage tax penalty.

At the three White House conferences themselves, no issue drew more support than the proposal to eliminate the marriage tax. By a margin of 17 to 1 the 2,000 delegates in Baltimore, Minneapolis, and Los Angeles called for changes in tax laws and policies which penalize marriage.

The specific language of each of the six proposals is attached, as are the votes on each. This issue cut across regional, economic, ideological, and political differences among delegates.

This virtual consensus is also reflected in the survey conducted for the White House Conference on Families by the Gallup organization. The survey found massive support for changes in tax policies to eliminate the marriage penalty. Eighty-three percent of the respondents supported this change and only 12 percent opposed it. Significantly, three out of four single persons surveyed supported a change.

What is at stake here is more than principles of aggregation or the numbers on the charts we review this morning. Sixteen million real families pay the taxes we picture on our graphs. Those are dollars that can pay for child care, shoes, college tuition, dental bills, or even a long overdue vacation.

Our tax code probably reflects our values more accurately than our rhetoric on Mother's Day or the Fourth of July. The media, national organizations, and elected officials are rediscovering the importance of families. We can only hope that this renewed interest and concern will lead to real action to strengthen and support families. I can think of no better place to begin than the revision of the tax laws and policies which effectively penalize marriage.

I am not an expert on the Tax Code or the various proposals to eliminate what I believe to be an unintended but very real bias against families in our Tax Code. This committee, the House Ways and Means Committee, as well as the specialists at the IRS and Treasury are far better equipped than I to devise an effective and fiscally prudent remedy for the unfair and unjust consequences of our current laws.

Senators Mathias, Packwood, Gravel, Laxalt, and others have been working on the problem long before the White House Conference on Families. You and your colleagues will evaluate how to begin to respond to the growing demands for equity in the treatment of marriage and family. But I can tell you that failure to act on this issue could intensify an already growing feeling that, political rhetoric aside, government and public policy too often undermine and ignore American families.

Thank you.

Senator BYRD. Thank you, sir.

Dr. Keys, if you will proceed.

STATEMENT OF SYDNEY J. KEY, Ph. D., ON BEHALF OF THE ACTION GROUP ON THE MARRIAGE TAX PENALTY OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

Ms. KEY. Mr. Chairman, and members of the subcommittee.

I am testifying on behalf of the Interdepartmental Task Force on Women. The views I will present here today represent those of the task force only, and not the administration.

To save time, I will summarize my statement, but I would like to request that it be printed in the record in full.

Senator BYRD. Without objection, it will be printed in the record.

Ms. Key. Thank you.

There seems to be widespread agreement that the marriage tax penalty is a serious weakness in our income tax. The major cause of this penalty is the use of tax rate schedules that differ according to marital status. Married taxpayers are not allowed to use the tax rate schedule for single individuals. Instead, they must either use the much higher rates of the schedule for marrieds filing separately, or aggregate their incomes and use the schedule for marrieds filing jointly. Since the United States has a progressive tax system, aggregating the two incomes means that the second income is taxed at higher rates than the first. For most two-earner couples the effect of aggregation more than outweighs the fact that the schedule for marrieds filing jointly has the lowest tax rates.

The task force believes that there is an important constraint on removing the marriage tax on two-earner couples. Specifically, the taxes paid by a single person compared with a one-earner couple with the same income must not be increased. Under the progressive U.S. tax system there is only one way that this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples. At the present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned.

In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services. It might be noted that compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The task force has concluded that there is no compelling reason for one-earner and two-earner couples with the same dollar income to pay the same tax and believes that this principle should be eliminated from our tax system. Without this principle, it is possible to have a progressive tax system that is neutral with respect to marriage. Moreover, it is the task force's view that discarding this principle does not amount to what Mr. Sunley referred to earlier as giving a tax break to two-earner couples.

There are several policy options for reducing or eliminating the marriage tax penalty on two-earner couples. It is important to note that all of these options require making a distinction between one- and two-earner couples with the same dollar income. One policy option is a deduction for the second wage earner. For example, Senator Gravel has proposed a deduction equal to 10 percent of earned income of the spouse with the lower income, subject to a maximum of $2,000.

The task force urges the subcommittee to reject the deduction approach. It is unfair and arbitrary, and it bears no relationship to the differences in the tax rate schedules that cause the marriage penalty in the first place.

Senator Byrd. Dr. Key, I am sorry to interrupt you, but the Senate is now voting, and the 5-minute bell has just rung. So, it will be necessary to temporarily recess the committee. There will be two votes in the Senate. As soon as the Senate concludes voting, the committee will resume operation.

Again, I regret the need to interrupt your testimony, but we will be right back.

[Recess.]

Senator BYRD. The committee will come to order.

Dr. Key, will you proceed.

Ms. KEY. Before the recess, I had been discussing the proposed deduction for the second wage earner as a policy option to deal with the marriage tax penalty. I had indicated that the task force urged the subcommittee to reject this approach because it bears no relationship to the differences in the tax rate schedules that cause the marriage penalty in the first place. Also, I wanted to point out that the proposed deduction would not eliminate the marriage penalty for most two-earner couples.

Another policy option is to tax every individual's own income on the same rate schedule, regardless of marital status. Although the task force has concluded that this is the most comprehensive solution to the whole problem of taxes and marital status, we recognize that this is too sweeping a change for Congress to consider at this time.

As a result, we recommend that the subcommittee eliminate the marriage tax by allowing married two-earner couples the option of being taxed as single individuals on each spouse's own income. This proposal for optional individual taxation is contained in bills introduced by Senator Mathias and Representative Fenwick. These bills reduce the number of tax rate schedules from four to three by collapsing the schedule for married persons filing separately into the schedule for single individuals. It is a simple and straightforward way to eliminate the marriage tax penalty. If desired, the married-filing-separately schedule could be phased out gradually over a period of several years. I want to emphasize that the marriage tax is not a marrieds versus singles issue and that the proposal for optional individual taxation does not take away the benefits gained by singles compared with one-earner couples in the Tax Reform Act of 1969.

The allocation between spouses of deductible expenses and investment income under a system of optional individual taxation does not present an unsurmountable problem, since rules can be established that would provide a reasonable and relatively simple basis for allocation. Furthermore, individual taxation does not require that married two-earner couples file separate returns. The spouses could use separate columns on the same form without aggregating their incomes, a system that is used in a number of States.

In sum, the task force urges the subcommittee to stop subjecting more than 16 million married two-earner couples, more than 32 million individuals, to an irrational tax penalty. We urge the subcommittee to give married two-earner couples the option of being taxed as single individuals. This is the best solution to the problem of marriage tax penalty, and it is a first step toward the eventual goal of individual taxation.

Senator BYRD. Thank you, Dr. Key.

Mr. Carr, I note that you are the Executive Director of the White House Conference on Families. What impressions do you have as to the attitude of the White House on this matter?

Mr. CARR. The President spoke at the Baltimore conference, and Patricia Harris, the Secretary of Health and Human Services, spoke at the Los Angeles conference, and Ann Wexler, assistant to the President, spoke at the Minneapolis conference. My impression is that they are deeply interested and committed to find new ways to make our laws and policies more sensitive to American families. They are currently studying a whole range of possibilities.

As the representative of the Treasury spoke this morning, they are considering several options on the marriage penalty. Secretary Miller, in his testimony before the Finance Committee, and the Ways and Means Committee, urged the Congress to look seriously at the marriage tax penalty specifically in considering any tax cut proposal for next year.

Senator BYRD. He urged the Congress to do that, and then his representative here today was testifying against it.

Mr. CARR. Our report will be going to the President shortly, as I explained in our testimony. This is kind of an advance look at the recommendation. We expect that the President and the administration, once they have received the report, will be looking into all the various recommendations.

We hope that by the time this is all over, and there is a tax cut proposal it will include some measure to eliminate the marriage tax.

Senator BYRD. Are you satisfied with the present attitude of the administration in regard to the marriage tax?

Mr. CARR. I am satisfied that this administration is the first to ask thousands of American families their views on this matter. What we are here today to explain to you, and will be explaining in a formal fashion to the President and the administration is that they feel there are many policies that are insensitive to families, and among the most important is the marriage tax penalty. Their response will be, I am sure, forwarded to you as well as the White House Conference.

Senator BYRD. Dr. Key, are you satisfied with the attitude of the administration on this matter?

Ms. KEY. The mandate of the task force is to examine policy issues that affect women, and to advocate positions on these issues within the administration. My statement makes it clear what the task force is advocating for the marriage tax penalty solution. We obviously hope that our position will be adopted by tax policymakers.

Senator BYRD. Thank you.

Senator Packwood.

Senator PACKWOOD. I have no questions, Mr. Chairman. Thank you.

Senator BYRD. Thank you both.

[The prepared statements of the preceding panel follow:]

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White House Conference on FAMILIES

TESTIMONY OF

JOHN L. CARR

EXECUTIVE DIRECTOR

WHITE HOUSE CONFERENCE ON FAMILIES

BEFORE THE

SENATE FINANCE COMMITTEE

AUGUST 5, 1980

330 Independence Avenue, S.W. • Washington, D.C. 20201 • (202) 245-6073

Summary of Testimony

- Report on results of White House Conference on Families process involving more than 125,000 Americans.
  - --14 days of hearings revealed concern and anger on marriage tax penalty.
  - --19 state conferences made recommendations opposing marriage tax.
  - --Three White House Conferences this summer involving 2,000 delegates called for elimination of marriage tax by 17-1 margin.
- Not a statement of Administration policy or endorsement of specific proposal.
- Gallup Survey on American Families conducted for the White House Conference on Families revealed broad support for changes in laws and policies penalizing marriage (83%-12%).
- Tax code reflects values more accurately than political rhetoric. Failure to act could intensify feeling that public policy too often undermines and ignores families.

I want to thank you for this opportunity to report to you on the results of the recent White House Conference on Families held this summer in Baltimore, Minneapolis and Los Angeles. Two weeks from today our 117 member National Task Force meets to help pull together our final report but there is no doubt what that report will say on the marriage tax. I want to emphasize that our report this morning is a look at the results of the Conferences in advance of the official report, and not a statement of Administration policy or an endorsement of any specific proposal.

I also want to emphasize that I am not an expert on the tax code or economics of taxation. Rather, I come before you after having listened to thousands of Americans who are convinced that our major institutions, especially government, are often ignoring and sometimes undermining families. There is no better symbol of this insensitivity to families than the subject of your hearings today -- the marriage tax penalty.

The White House Conference on Families was called by President Carter to examine the current state of American families, the difficulties they face and the ways in which major public and private policies affect American families. Unlike previous Conferences it was not a single event here in Washington. Instead, the President directed us to reach out and listen to American families. We held 14 days of hearings in places like Hartford, Seattle, Nashville and Linsborg, Kansas. Virtually every state conducted their own conferences to select issues and delegates. A national survey on families was conducted. And three White House Conferences were held. More than 125,000 Americans participated and on the question of the marriage tax penalty, they spoke with virtually one voice. In the hearings, state activities, and the White House Conferences themselves, they called for prompt action to remove the unfair and anti-family consequences of our tax laws.

In our hearings, we heard from individuals who had postponed or avoided marriage because of the financial consequences. We heard from one couple who were divorced year after year and are now in the Tax Court fighting this situation. We also heard from people whose disbelief had turned to anger at the realization that they pay more taxes than the couple down the street because they were married to the person they live with. Nineteen of the state family conferences held between November and April called for the elimination of the marriage tax penalty.

At the three White House Conferences, no issue drew more support than the proposal to eliminate the marriage tax. By a margin of 17-1 the 2,000 delegates in Baltimore, Minneapolis and Los Angeles called for changes in tax laws and policies which penalize marriage. The specific language of each of the six proposals is attached, as are the votes on each. (See Appendix A.) This issue cut across regional, economic, ideological and political differences among delegates.

This virtual consensus is also reflected in the survey conducted for the White House Conference on Families by the Gallup Organization. The survey found massive support for changes in tax policies to eliminate the marriage penalty. Eighty-three percent of the respondents supported this change and only 12% opposed it. Significantly, 3 out of 4 single persons surveyed supported a change. (See Appendix B.)

What is at stake here is more than principles of aggregation or the numbers on the charts we review this morning. Sixteen million real families pay the taxes we picture on our graphs. Those are dollars that can pay for child care, shoes, college tuition, dental bills, or even a long overdue vacation. Our tax code probably reflects our values more accurately than our rhetoric on Mother's Day or the Fourth of July. The media, national organizations, and elected officials are rediscovering the importance of families. We can only hope that this renewed interest and concern will lead to real action to strengthen and support families. I can think of no better place to begin than the revision of the tax laws and policies which effectively penalize marriage.

I am not an expert on the tax code or the various proposals to eliminate what I believe to be an unintended but very real bias against families in our tax code. This Committee, the House Ways and Means Committee, as well as the specialists at the IRS and Treasury are far better equipped than I to devise an effective and fiscally prudent remedy for the unfair and unjust consequences of our current laws. Senators Mathias, Packwood, Gravel, Laxalt and others have been working on the problem long before the White House Conference on Families. You and your colleagues will evaluate how to begin to respond to the growing demands for equity in the treatment of marriage and family. But I can tell you that failure to act on this issue could intensify an already growing feeling that, political rhetoric aside, government and public policy too often undermine and ignore American families.

Attachments:

A. Comparison of WHCF Recommendations dealing with marriage tax.

B. Results of Gallup Survey question on marriage tax.

C. WHCF Issue Brief on Tax Issues and State Recommendations.

ISSUE: Tax Policies

Category: Marriage Penalty

BALTIMORE	MINNEAPOLIS	LOS ANGELES
Tax - 8 Adopted: 560-24 (95%) Rank: 4	Tax - 7 Adopted: 431-15 (96%) Rank: 15	Tax - 8 Adopted: 483-36 (93%) Rank: 9
President propose and/or Congress enanct legislation: • to provide for equitable taxation of two-worker married couples • the elimination of the marriage penalty • permitting married individuals the option of using the tax rate for single individuals.	President propose and/or Congress enact legislation: • to eliminate the marriage penalty for 2 worker married couples. • The aggregate tax paid by a married couple with dual incomes should be no greater than the aggregate tax paid by two single individuals with similar adjusted gross incomes and deductions. • the present aggregation principle for one wage-earner married couples be maintained intact.	In order to preserve the financial stability of the family: • the marriage penalty tax should be eliminated • by allowing married couples to elect to file income taxes either jointly or separately.
	Home - 15 Adopted: 395-21 (95%) Rank: 25	Tax 9 Adopted: 435-48 (90%) Rank: 10
	Revised IRS laws to provide: removal of the marriage penalty for the two earner married couples.	Revise tax code to encourage procedures strengthening the American families: allowing married couples to choose to file jointly or separately without penalty.
		Home - 13 Adopted: 424-49 (87%) Rank: 16
		Tax code reform to eliminate discrimination against the family.... • The removal of tax penalties on two earner couples

White House
Conference on FAMILIES

MARRIAGE TAX PENALTY

The following question was asked as part of the survey conducted for the White House Conference on Families by the Gallup Organization and released in June 1980.

"Under the present laws, if a married couple and an unmarried couple who are living together earn the same amount of money, the married couple has to pay more income tax. Do you feel the laws should or should not be changed so that both couples would pay the same amount of taxes?" (q.26)

	Yes	No	No Opinion
NATIONAL	83	12	5
SEX			
Men	84	12	4
Women	82	13	5
RACE			
White	83	12	5
Non-white	79	18	3
EDUCATION			
College	81	16	3
High School	84	11	5
Grade School	83	9	8
REGION			
East	83	12	5
Midwest	84	11	5
South	81	14	5
West	83	13	4
AGE			
18-34 years	82	16	2
35-49 years	85	9	6
50 & older	82	12	6
INCOME			
$15,000 & over	82	13	5
Under $15,000	83	12	5

	Yes	No	No Opinion
NATIONAL	83	12	5
OCCUPATION/CWE			
White Collar	81	16	3
Blue Collar	84	11	5
CITY SIZE			
Central City	83	12	5
Suburbs	79	15	6
Non-metro	84	12	4
MARITAL STATUS			
Married	85	11	4
Single	77	19	4
Widowed	77	14	9
Divorced/Separated	87	11	2
FAMILY LIFE			
Satisfied With	83	12	5
Dissatisfied With	77	20	3
EFFECT FAMILY-LAWS	86	12	2

White House Conference on FAMILIES

FAMILIES AND ECONOMIC WELL-BEING

Issue Brief: Tax Policies

I. INTRODUCTION

Participants in White House Conference on Families activities were concerned about taxes, their impact on families, their fairness, and their treatment of marriage, children, and family expenses.

Taxes take a major proportion of the average worker's pay check, and the added factor of inflation has made the tax pinch even more painful. When the dollar bought more, workers were less concerned about the portion of their wage dollar that went to taxes; but today, taxpayer groups are growing and citizens are questioning the amount of taxes they must pay and how tax dollars are being spent.

Many policy analysts and citizen groups advocate increased tax credits for the average worker to defray employment related costs such as education and training, child care expenses, and the like. They are asking such basic questions as:

- Does the tax code discriminate against marriage?
- How do tax deductions and tax credits affect families?
- How can tax provisions assist families?

II. BACKGROUND ON MAJOR ISSUES

Since establishment the income tax in 1913, there has been controversy over whether individuals or families are the proper unit of taxation and over recognizing different family situations, such as families with one wage earner, families with two earners, and single persons.

The controversy revolves around four principles of taxation, each of which is widely accepted in the United States:

- o Progressivity. The higher the individual income, the higher should be the rate of tax.
- o Aggregation. A married couple's income should be aggregated for computing their tax, and no distinctions should be made among married couples according to amount of income earned by each spouse.
- o No penalty for marriage. Two people who marry should not pay a higher tax as a result.
- o No penalty for remaining single. A single person should not pay more tax than she or he would pay if married to a person with no income.

The problem in developing an equitable, uniform tax policy is that these principles are sometimes in conflict. Except for the first, each of the principles listed above has been violated at one time or another in the history of the Federal income tax.

Balancing the Penalties on Married and Single Persons

The Marriage Penalty

If two persons with independent incomes marry, they usually have to pay higher total income tax. The marriage penalty has been one of the most widely recognized weaknesses in our income tax system and may even become a threat to the institution of marriage as some couples, across all age groupings, are deciding either not to marry or to seek divorces and continue to cohabitate to avoid large tax penalties. This is especially attractive to two-wage-earner couples with incomes of $40,000 and above, a bracket where the tax penalty on marriage is often enormously high.

For example, assume two persons each have taxable incomes of $15,000 (after subtracting their exemptions) and assume they do not itemize their deductions. If they file as single individuals, each must pay $2,605 in tax; their combined tax is therefore $5,210. If they marry and file a joint return, their taxable income is $30,000 and their tax (from Schedule Y) is $6,238; --- a marriage penalty of $1,028.

The Internal Revenue Service has estimated that as many as one quarter of the nation's taxpayers may be victims of this tax on marriage.

Married persons may file separately if they wish, but they must use the highest of the four rate schedules. And, other special provisions throughout the Tax Code prevent them from saving on their taxes in this way.

The Single Penalty

A single taxpayer often pays more tax than a married couple with the same income because of personal deductions. For example, a single person with a taxable income of $15,000 pays $2,605 tax. But if a married couple has the same taxable income, even if it is all earned by one spouse, their total tax is $2,055. In this case the single person pays 27 percent more tax.

As long as the first two principles -- progressivity and aggregation -- are adhered to, the marriage penalty cannot be reduced without making the situation for single taxpayers even worse.

Tax policy reform, with the goals of marital stability, must challenge these first two principles. It is unlikely that progressivity will be abandoned. Therefore, any proposal which alleviates both the marriage penalty and the single penalty must violate the aggregation principle: that is, there must be some distinction in the tax law between one-earner and two-earner married couples.

Among respondents to a recent Organization for Economic Cooperation and Development (OECD) survey, every major democratic nation with an income tax, except the United States, distinguishes between one-earner and two-earner couples.

Opponents of the aggregation principle argue that one-earner couples have the benefit of a full-time homemaker. Because the homemaker's services in the home are not measured in dollars, they do increase a couple's economic well-being and ability to pay. Two-earner couples have no such advantage, and, it is argued, should have a lower tax liability.

It is ironic that the marriage tax was created in 1969, when the Congress attempted to remove the tax advantage that married couples then had over single persons.

Tax Credit for Child Care and Household Services

The Tax Reform Act of 1976 allows a credit of 20 percent of expenses for dependent care, provided the expenses are actually paid during the taxable year and are incurred to enable the taxpayer to be gainfully employed. The maximum allowed for such expenses is $2,000 (a $400 credit for the care of one dependent) and $4,000 (an $800 credit for the care of two or more qualifying dependents). The $800 credit is the maximum which can be claimed regardless of the number of dependents. The credit is a direct dollar deduction from taxable income up to 20 percent of the actual amount paid to someone to care for a dependent.

The credit limitation is primarily at issue. Families which must pay for child care for more than two children find this limitation discriminatory and insensitive to the actual costs of quality child care. In addition, the cost of child care is increasing and the 20 percent credit of $2,000 a year per child is seen merely as a "drop in the bucket" by many taxpayers with dependent children. In addition, female-headed households where the family head is also the wage earner find the child-care credit a very minimal allowance for actual child-care costs. The low tax credit allowance, coupled with high costs of quality care, have been identified by some child-care advocacy groups as major contributors to the perpetuation and expansion of custodial and unlicensed child care.

National child-care advocacy groups have made a variety of proposals for improving the tax credit provision, ranging from 100 percent tax credit on actual child-care expenses to universal day care which would provide day care free for low-income families and at a reduced rate for middle and upper-income families.

Another issue related to the child-care tax credit is the "grandparent penalty." IRS policy with respect to child-care services by relatives such as grandparents is that such services performed in the taxpayer's home or in the grandparent's home generally do not qualify as eligible expenses for the child-care tax credit.

This means that the traditional practice of extended families through which the grandparents as primary members care for the children is jeopardized. Many grandparents are able and willing to care for younger children in the family home. But, parents cannot claim tax credits for such care and may seek child-care services from nonrelatives, often in arrangements outside the home taking young children out of their homes during their parent's work day which often extends to 10 hours.

Exemptions for Dependents

Over the years there has been a steady increase in the amount of the exemption for dependents. However, most taxpayer interest groups argue that the exemption is consistently too low. For example, during this period of high inflation, the dependent exemption is said to have no significant relationship to actual costs of caring for dependents.

Several leading family policy analysts say the lack of child-care incentive allowances or higher dependent exemptions have been direct factors in decisions by young American families to limit the number of children or to remain childless.

Current United States Income Tax Policies

The Federal income tax system was established in 1913. Until 1948, people were taxed as individuals, and there was only one rate schedule for both married and single persons. A married couple could file a joint return if they wished, but if both spouses had income, they could reduce their tax by filing separate returns. Because the rate schedule was progressive, the combined tax on two incomes of, say, $10,000 was less than the tax on one $20,000 income. Since one-earner couples could not benefit from separate returns, couples with the same total income paid different amounts of tax.

The difference in tax depended not only on the share of income earned by each spouse, but also on the states in which the couples lived because some states had community property laws. In 1930, the Supreme Court ruled that in states with community property laws, a husband and wife could file separate returns with half of the combined income on each return, regardless of which spouse had actually earned the income. However, this automatic "income splitting" was unavailable in other states.

1948; Income Splitting

In 1948, the law was revised to embrace the income splitting principle for married taxpayers in all states. This meant that a couple -- even a one-earner couple -- paid the same tax as two single persons, each with half the combined income.

This represented no change for spouses who lived in community property states or whose income actually were evenly divided; they simply received the same benefit on their joint returns as was already theirs if they filed separately. But for other couples, the automatic income splitting resulted in substantial savings. For example, consider a couple in which the husband's taxable income was $32,000 and the wife had no income. If they filed a joint return their tax was $8,660. But if the husband had paid tax as a single person on the same taxable income, his tax would have been $12,210. In this case, income splitting saved $3,550.

This was the state of the income tax for the period 1948-1970. The aggregation principle was completely satisfied, since a couple paid the same tax whether both spouses or only one spouse had income. However, in order to make the tax law conform to this principle, one of the other principles had to be sacrificed. The 1948 tax reforms compromised the principle of "No penalty for remaining single". After the 1948 Act, a single taxpayer generally paid substantially more tax than a married couple with the same income. If a single taxpayer had the same taxable income as the couple in the above example, he paid $3,550 or 41 percent more tax than the couple.

1951-1954: Special Cases

This "single penalty" was especially conspicuous in the case of single taxpayers with children--typically, widowed or divorced parents. Such taxpayers are hard to classify fairly as single individuals or as married couples. The Congress recognized the special status of this group in 1951 by classifying them as "unmarried heads of households" and allowing them half of the benefits of income splitting. A special rate schedule is provided which puts the tax for a qualifying taxpayer about halfway between the amounts paid by a single person and a married couple with the same taxable income.

Persons made single by the death of a spouse suffered. Even if the widow (or widower) was able to maintain the income previously received by the couple he or she lost the benefit of income splitting and thus paid a higher tax.

In 1954, the Congress provided that a surviving spouse who maintains a household for a dependent child may continue to use the joint rate schedule for two years after being widowed. This provision is still in effect; it is the only circumstance in which an unmarried taxpayer may use the joint rates.

As of 1977 there were many more "heads of households" (5.8 million) than "certain surviving spouses" (147,000). Both groups were small, compared with the total of over 86 million returns filed.

1971: New Single Rates and the End of Income Splitting

In spite of the special provisions for these small groups, most single taxpayers still faced a large tax penalty. Until 1971, the tax burden for a single taxpayer without dependents remained up to 41 percent higher than for a married couple with the same taxable income. Because the Congress considered the disparities to be too large, it enacted a new, lower rate schedule for single taxpayers as part of the Tax Reform Act of 1969. Under the new schedule, which became effective in 1971, a single person's tax on a given taxable income could be no more than 20 percent higher than a married couple's tax on the same taxable income. For example, in 1971 a single person's tax on a taxable income of $32,000 was reduced from $12,210 to $10,290, which was 18.8 percent more than a married couple would pay on the same taxable income.

However, the Tax Reform Act of 1969 prevented two-earner married couples from taking advantage of the new single rates. They were required to use the pre-1971 schedule if they filed separate returns.

Although the rate schedule for joint returns was not changed in 1971, it could no longer be described as an "income splitting" schedule. A married couple paid a smaller tax than a single taxpayer with the same taxable income. However, the couple's tax was not as small as it would be if they could split their income equally and use the new single schedule.

Reducing the single penalty was an improvement according to one of the four principles, but it could not be obtained without a price in terms of one of the other principles. The 1969 Act sacrificed the "no penalty for marriage" principle by actually introducing a substantial marriage penalty into the tax law.

Since the 1969 Act, the Congress has attempted to strike a balance between the single penalty and the marriage penalty. As long as the first two principles are honored--as long as the tax remains progressive and no distinction is made between one-earner and two-earner couples--it is mathematically impossible to abolish both penalties. Instead, the tax law has sought a compromise between them.

1970-1979: Striking a Balance

In this decade the compromise has found expression in several other tax provisions, as well as in the rate schedules. The most important of these was the standard deduction, which was a feature of the tax law until 1977. Any taxpayer could elect to give up most of his or her personal deductions, such as medical expenses or charitable contributions, and claim the standard deduction instead. Most low- and middle-income taxpayers did so because the standard deduction was limited to a fairly narrow range by minimum and maximum amounts.

The minimum standard deduction was greatly increased by the Tax Reform Act of 1969, in order to remove tax burdens from most persons below the poverty line. At that time, the minimum was the same for single and joint returns. This added to the marriage penalty, since two single persons could claim two minimum standard deductions, but if they married, they could claim only one. Increases in the standard deduction after 1974, however, were twice as large for married couples as for single persons, so that these increases in themselves did not add to the marriage penalty.

A temporary contributor to the marriage penalty in 1976-78 was the general tax credit. Based on income and family size, the credit was limited to $180 for most tax returns, single or joint. Single persons could each qualify for a $180 credit; a married couple had to share one.

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In 1977 the Congress repealed the standard deduction. When the standard deduction was repealed, a "floor" was imposed on itemized deductions. This means that a taxpayer may not subtract all deductible expenses from income, but only the excess of these expenses over the "floor." The amount of the floor is $2,300 for single persons or $3,400 for those filing joint returns. The floor has nearly the same effect as the standard deduction and has generally been regarded as a mere change in form.

In all of these actions, the continuing problem before the Congress has been to strike a balance between the marriage penalty and the single penalty.

The Income Tax in 1979

In 1979, the tax is progressive, and no distinction is made between one-earner and two-earner married couples. The last two principles are violated, however. A single person generally pays more tax than a married couple with the same income, and two wage earners who are married usually pay more tax than they would if they were single.

The Internal Revenue Code contains four different rate schedules applicable to individuals: single persons; married couples filing joint returns; married persons filing separate returns; and single persons with dependents who qualify as heads of households.

1976 - Child-Care Tax Credit

The Tax Reform Act of 1976 allows a credit of 20 percent of expenses for dependent care. This is a credit taxpayers can take if they paid someone to care for their child or dependents so that they could work or seek employment. Taxpayers can also take the credit if they paid someone to care for their spouse. Child and dependent care expenses are the amounts paid for household services and care of the qualifying person. Household services are services performed by a cook, housekeeper, governess, maid, cleaning person, baby sitter, etc. The services must have been needed to care for the qualifying person as well as run the home.

Care for the purposes of this credit includes cost of services for the well-being and protection of the child or dependent. Care does not include expenses for food and clothes. However, if the costs of care includes these items and cannot be separated a taxpayer can claim the total payment. For example, a working mother pays a day-care center to care for her child and the center gives the child lunch. Since she cannot separate the cost of lunch from the cost of the care, she can claim the entire amount paid to the center.

The expenses must be for services in the taxpayer's home, except that the credit may be taken for out-of-home care for dependent children under age 15. The Act extended the credit to all eligible taxpayers regardless of the gross income of the family, whether or not deductions are itemized, and regardless of which tax form is filed. The credit is available to married couples if either or both spouses work full or part-time, to single working parents, and to full-time students with working spouses. However, to claim the credit, married couples must file a joint return. In the case of part-time workers, the amount of qualified expenses (those on which the 20 percent credit is figured) is limited to the earnings of the spouse with the lower income. The earned income limit is equally applicable to unmarried taxpayers.

III. POSSIBLE DIRECTIONS FOR FUTURE ACTION

Marriage Penality Tax

- One approach would be to abandon joint returns, requiring separate returns from married persons with no income splitting. Most experts agree that the Congress can require that each married person pay tax on his or her own income, determined without regard to state community property laws. Such legislation would eliminate both the marriage penalty and the single penalty. Only the aggregation principle would be violated, as was the case before 1930. The administrative convenience of joint returns could be retained by allowing married couples to file their "separate" returns on two parts of the same standard form, as is now done in some state income tax systems.

- A second approach would be to allow couples the option of filing jointly under present law, or filing separate returns as single persons. This is the simplest and most straightforward way to eliminate the marriage penalty, but it would not affect the single penalty. In any system in which married couples are encouraged to file separately, there is a significant technical problem of deciding how a husband and wife will be allowed to divide their deductions and nonwage income (such as interest or business profits). However, this very option is currently before the Senate in a bill that would allow married persons to file separate returns and compute their tax at the same rate as single persons. Several similar bills have been introduced in the House. Hearings on the bills have been held in both Houses of Congress.

- Another alternative would be to consider joining returns in their present form, but distinguish between one-earner and two-earner couples by allowing a special deduction or credit based on the wages of the second earner.

SUMMARY OF STATE RECOMMENDATION: TAX POLICY

Thirty states made recommendations regarding tax policies, which would provide for more equitable treatment for all families including married couples, single parent heads of households, extended families, farm families, and families where a dependent member is being cared for in the home.

TAXES AND FAMILIES

- o Nineteen states recommend elimination of the marriage penalty.
- o Nineteen states called for tax incentives such as tax credits to care for an elderly or handicapped family member or a dependent child.
- o Eight states called for "indexing" the income tax for inflation.
- o Seven states called for greater equity and tax reform.
- o Six states recommended tax changes to aid middle and working class families.
- o Six states recommended that there be no inheritance tax between spouses.
- o Many other individual recommendations were made.

TAXES AND EMPLOYERS

- o Ten states urged tax incentives to employers to provide child care services for employees.
- o Five states emphasized tax credits for employers to provide services and employment opportunities through job training programs, developing alternative work patterns, hiring the handicapped and locating in areas of high unemployment.

Marriage Penalty

Alaska urged:
Repeal the "marriage tax"

North Carolina proposed:
Amend the tax rates in the tax tables for the Internal Revenue Code so that a married couple with dual incomes will pay federal income tax in an aggregate sum no greater than the aggregate sum which two single individuals with corresponding adjusted gross incomes and deductions will pay.

Similar recommendations were made by Arkansas, California, Connecticit, District of Columbia, Hawaii, Illinois, Iowa, Kansas, Maine, Minnesota, Missouri, Nebraska, New Hampshire, Oregon, South Dakota, Texas and Wisconsin.

TESTIMONY OF

DR. SYDNEY J. KEY, ECONOMIST

ON BEHALF OF THE
ACTION GROUP ON THE MARRIAGE TAX PENALTY
OF THE INTERDEPARTMENTAL TASK FORCE ON WOMEN

BEFORE THE SENATE FINANCE COMMITTEE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

AUGUST 5, 1980

INCOME TAX TREATMENT OF MARRIED TWO-EARNER COUPLES

Mr. Chairman and Members of the Subcommittee:

I am testifying on behalf of the Action Group on the Marriage Tax Penalty of the Interdepartmental Task Force on Women. The views I will present here today represent those of the Action Group and do not reflect the Administration's position. The Interdepartmental Task Force on Women was created in 1978 by President Carter to examine policy issues that particularly affect women. The September 1979 report of the Action Group is being submitted as an attachment to my testimony. I want to emphasize that the Interdepartmental Task Force is not taking a position as to whether or when a tax cut would be appropriate for reasons of overall economic policy. Rather, the Task Force's position is that whenever Congress does deem a tax reduction appropriate, the marriage tax penalty should be removed as a matter of tax equity.

There seems to be widespread agreement that the marriage tax penalty on two-earner couples is a serious weakness in our income tax. Yet this penalty remains an integral part of the tax system. According to estimates by the staff of the Joint Committee of Taxation, 16 million two-earner couples -- 32 million individuals -- pay a marriage tax to the U.S. government. If the marriage tax penalty is not eliminated from our tax system, these numbers will continue to increase substantially, and the financial penalty of marriage for working couples will become increasingly onerous.

The marriage tax penalty is sometimes presented as a conflict between married taxpayers and single taxpayers. This view is incorrect because it does not distinguish between two very different types of married taxpayers. What is known as the marriage tax affects only two-earner married couples, that is, couples in which both husband and wife work. By contrast, the basic structure of our present tax laws provides a substantial subsidy to married one-earner couples at the expense of both single individuals and two-earner couples.

As a result, if a single working person marries someone with no income, marriage will lower the tax bill; this is a comparison frequently made by single taxpayers. But, if two single workers marry (and continue to work), their taxes will usually be higher as a result of their marriage. The difference between the total tax bill of two married workers and the total tax bill of the same two workers if they were single constitutes the marriage tax penalty.

The amount of the marriage tax penalty for a two-earner couple can vary greatly. As can be seen from the attached table, in general the dollar amount of the marriage tax penalty tends to increase both with the couple's total income and with the similarity of the two incomes. However, the incomes of the two spouses do not have to be equal for the couple to pay the marriage tax. A very rough rule-of-thumb is that two-earner couples pay a marriage tax when the spouse with the lower income earns one-fifth or more of the couple's total income. When the dissimilarity in the spouses' incomes is greater than this, the couple begins to resemble a one-earner couple and may enjoy the traditional tax benefits from marriage.

The major factor causing the marriage tax penalty is the use of tax rate schedules with both rates and zero bracket amounts that differ according to marital status. At present, there are four different tax rate schedules. From highest to lowest, they are the schedule for married persons filing separately, the schedule for single individuals, the schedule for unmarried heads-of-households, and the schedule for married couples filing jointly. Married two-earner couples must either use the high rates of the schedule for married persons filing separately or aggregate their incomes and use the schedule for married couples filing jointly. Since the United States has a progressive tax system (that is, the rate of tax increases as income increases), aggregating the two incomes means that the second income is taxed at higher rates than the first. For most two-earner couples the effect of aggregation more than outweighs the fact that the married-filing-jointly schedule has lower tax rates than the singles' schedule.

The Action Group believes that there is an important constraint on removing the marriage tax penalty on two-earner couples; specifically, the taxes on single individuals relative to one-earner couples with the same income (a difference that was reduced but not eliminated by the Tax Reform Act of 1969) must not be increased. Under the progressive U.S. tax system, there is only one way this can be accomplished; namely, by making a distinction between one-earner and two-earner married couples.

At present, married couples with the same total income pay the same tax regardless of by whom or in what proportions the income is earned. The incomes of the spouses are simply aggregated. In economic terms, however, there is a distinction between a one-earner couple and a two-earner couple with the same dollar income. The most important reason is that the dollar income of the one-earner couple does not include the quite considerable value of the homemaker's services in the home. And it might be noted that, compared with other industrial countries, the United States is almost alone in adhering to the principle that only the total income, and not who earns it, matters.

The Action Group has concluded that there is no compelling reason for one-earner and two-earner married couples with the same dollar income to pay the same tax, and believes that the principle of spousal aggregation of dollar incomes should be eliminated from the tax system of the United States. Without it, it is possible to have a progressive tax system that is neutral with respect to marriage.

Once this idea is accepted, there are several policy options for reducing or eliminating the marriage tax penalty on two earner couples. It is important to note that all of these options require making a distinction between one- and two-earner couples with the same dollar income.

One policy option is a deduction or credit for the second wage earner. For example, S.1247, introduced by Senator Gravel, provides for a deduction equal to 10 percent of the earned income of the spouse with the lower income, subject to a maximum deduction of $2,000. The Action Group urges the Subcommittee to reject the approach embodied in this bill because it is unfair and arbitrary; it bears no relationship to, and indeed perpetuates, the differences in the tax rate schedules that cause the marriage penalty in the first place. Moreover, the proposed deduction would not eliminate the marriage tax penalty for most two-earner couples.

Another policy option is to tax every individual's own income on the same rate schedule regardless of marital status (the pre-1948 situation) but (unlike pre-1948) without regard to whether there are community property laws in the individual's state of residence. The Action Group has concluded that this is the most comprehensive solution to the whole problem in taxes and marital status. The Action Group recognizes, however, that this is too sweeping a change for the Congress to consider at this time.

As a result, the Action Group recommends a two-stage approach to the problem of taxes and marital status. The first stage would consist of eliminating the marriage tax penalty by allowing married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for single individuals (same zero bracket amount and same tax rates as a single person). This proposal for optional individual taxation, which is contained in S.336, introduced by Senator Mathias, and in H.R. 3609, introduced by Representative Fenwick, reduces the number of tax rate schedules from four to three by collapsing the schedule for married persons filing separately into the schedule for single individuals. If Congress wished to do so, the tax rate schedule for married persons filing separately could be phased out gradually over a period of several years. A complete transition to individual taxation, an eventual second stage, would involve collapsing the three remaining tax rate schedules into one rate schedule. It should be emphasized that the first stage proposal for optional individual taxation for two-earner married couples does not take away any of the benefits gained by singles compared with one-earner couples in the Tax Reform Act of 1969.

The Action Group has concluded that the allocation between spouses of deductible expenses and investment income under a system of optional individual taxation does not present an insurmountable problem. As discussed in the attached report, rules can be established that would provide a reasonable and relatively simple basis for allocation. Furthermore, individual taxation does not require that married two-earner couples file two physically separate returns. The Action Group recommends that for administrative convenience and cost savings to both the Internal Revenue Service and the taxpayer, a two-earner married couple could file a "combined individual return," that-is, the spouses could use separate columns on the same form without aggregating their incomes. A similar system is used in a number of states and in the District of Columbia.

In sum, the Action Group urges the Subcommittee to stop subjecting more than 16 million married two-earner couples -- more than 32 million individuals -- to an irrational tax penalty. We urge the Subcommittee to give married two-earner couples the option of being taxed on each spouse's own income on the tax rate schedule for single individuals — both as the best solution to the problem of the marriage tax penalty and as the first step toward the eventual goal of individual taxation.

1980 TAX COST OF MARRIAGE*

For couples who have no dependents and no excess itemized deductions

Wife's Adjusted Gross Income

Husband's Adjusted Gross Income	5,000	10,000	15,000	20,000	25,000
5,000	202	208	150	-30	-219
10,000	208	391	535	579	609
15,000	150	535	903	1,166	1,459
20,000	-30	579	1,166	1,692	2,117
25,000	-219	609	1,459	2,117	2,674

* The shaded diagonal represents different income combinations amounting to a total income of $30,000. When each spouse earns half of this amount, that is, $15,000, the marriage tax penalty is $903. A couple with the same total income of $30,000 but where one spouse earns $20,000 and the other $10,000 would pay a lower marriage tax of $579. The marriage tax for a total income of $30,000 disappears entirely when one spouse earns about $6,000 and the other earns about $24,000. When the spouses' incomes are more divergent, as in the $5,000 and $25,000 example shown in the table, there is an actual tax benefit from marriage (represented by a negative number), in this case -$219.

Senator BYRD. Next we will hear from David Boyter and Angela Boyter.

STATEMENT OF DAVID BOYTER AND ANGELA BOYTER, BOYTER VERSUS COMMISSIONER OF INTERNAL REVENUE SERVICE

Mr. BOYTER. Mr. Chairman, and Senator Packwood.

Thank you for giving us the opportunity to appear here today.

We have already taken our tax cut, so in a way we have a disinterest in this hearing. But we would like to urge you not to force people to use our method.

When we were first married in 1966, we thought that it would be until "death us did part." The Tax Reform Act of 1969 changed all that, and in December of 1975, after paying a marriage penalty for 5 years, we divorced in order to file as single taxpayers. We wanted to be married, however, so in January of 1979 we remarried.

We divorced again late in 1976 and remarried again early in 1977. In the spring of 1977, the IRS termed our divorces a "sham" and said we owed $3,100 in back taxes. The IRS said, however, that divorcing was fine with them as long we lived together without remarrying. So in 1977 we divorced for a third time and have been living together ever since.

We are waiting now for our first two things. The first is a decision from Tax Court on the validity of our first two divorces. The second is action from Congress that will enable us to feel free to marry again.

We took our somewhat drastic action to bring to your attention a tax policy that amounts to interference with the individual's right to choose a basic personal relationship. Over the past 5 years, we have saved almost $15,000 in taxes by not being married. If we both work until age 65 at our current salaries, our lifetime marriage penalty would exceed $130,000. I am afraid that I believe that such a price is too high to pay for legal marital bliss. And many other citizens agree.

More than one person has called long distance from as far away as California to wish us well. Most people in this country perceive the marriage tax as bad law, perhaps an immoral law. Like us, they believe that marriage and the family still have a place in American life. A couple from Maryland scrawled on the back of a postcard:

"Here, at ages 67 and 65, with 45 years of fine marriage, we note with interest your crusade. Know, please, of our respect and admiration for your valiant stand."

A minister from Illinois wrote: "I think your activities are God-pleasing, and I thank you for them. Peace."

Just last night I was called by a reporter from the Los Angeles Times who said that there is a group of ministers in California who are prepared to give church ceremonies without the civil part for those who simply wish to become married in the church and not in the State.

But many people go beyond letters of support. We have sent over 400 letters to people who have asked how to obtain a foreign divorce, and a number have told us about obtaining "tax divorces" on their own. People are divorcing, or simply not getting married, to avoid the marriage penalty, and neither we nor the IRS has any idea how many, because most of these people are prudently just not talking. But we have an idea that such action is far more common than most people think.

We went to Haiti for our first divorce in 1975, before the marriage penalty had received any widespread publicity, we met a Midwest couple who were staying at the same hotel and had also come to Haiti for a tax divorce.

A young woman from Maryland called to tell us that when she and her fiance realized how much their taxes would increase if they got married, they decided to skip the ceremony and told their friends they had eloped. Another couple from the more conservative South even changed the woman's last name to be the same as the man's.

These couples wanted to be married, but tax laws forced them to conclude that marriage was a luxury they simply could not afford.

Moral considerations aside, what will be the effect on people of living together? First, in many States, it is illegal. Second, such couples forego many legal rights afforded married couples, such as property rights and estate tax deductions. Third, the formal commitment of marriage provides an important feeling of security and stability.

Many people have told us that they would be afraid to obtain a tax divorce for fear their spouse would leave. In an increasingly uncertain world, today's tax policy is denying many people even the small comfort of a legal marriage.

My former spouse and I have taken fairly extreme measures to convince you and the public that the marriage penalty exists and that it is unfair. We think we have been successful in that, and now we must convince you that the marriage penalty must be eliminated, and I stress the word "eliminated."

Ms. BOYTER. There are several proposals such as Senate 1247, Senator Gravel's bill, that would allow a tax credit or a deduction for a certain percentage of the lower income spouse's wages up to a certain maximum. What is wrong with this approach?

First, it is too complicated.

Second, the proposals are a slap in the face of women. Placing an upper limit of $10,000, or even $20,000 on deductible income says loud and clear that it is OK for a wife to work, as long as she is not too successful.

Third, the approach does not eliminate the marriage penalty. Instead, it provides an arbitrary tax reduction that bears no relation to the marriage penalty. It may reduce a given couple's penalty a little, substantially, completely, or even overcompensate. Most versions allow the credit or deduction to be taken by any two-earner couple, even those whose incomes are so disparate that they do not pay the marriage penalty. The amount of marriage penalty is based on a couple's total income and the proportion of that income earned by each. The credit or deduction is based only on the amount of income earned by the lower wage earner and is not, therefore, responsive to the problem.

Fourth, while not eliminating the marriage penalty for any income level, such a bill would provide a greater measure of relief for lower than higher income taxpayers. Our tax system is already progressive, but under such a bill, two earner couples would not only be the highest taxed group in the country, we would also be subject to a steeper progression.

The Constitution guarantees equal protection for all, not just those below the poverty line, and I believe that all taxpayers should be free to marry or not or to work outside the home or not, free from Government interference. Allowing deduction or credit for two-earner families does put Congress somewhat in the position of supporting marriage. Putting a cap on the deduction says that the Congress supports marriage only for the lower income groups.

If you can't do better than the tax credit or deduction approach, we would prefer you did nothing because you still would not make it practical for us to marry. Our marriage penalty would still exceed $3,000.

As we understand it, the main objection to eliminating the marriage penalty totally is that it would cost too much. At the same time, you are discussing tax cuts. We believe your first priority for any tax cuts should be eliminating the inequities, such as the glaring inequity of the marriage tax. The time for legislative remedy is long overdue.

S. 633, the Mathias-Fenwick bill, is a good solution, since it totally eliminates the marriage penalty without raising taxes for either singles or one-earner families. The principal objection we have heard to it is that it would be too complicated for the family to allocate its income and deductions. But a large number of States provide for a combined/separate status in which two-earner families file separately on one form.

Taxpayers in those States already allocate these items. In any case, suppose a couple who each earned $10,000 per year spent 2 extra hours filling out their tax return, and I doubt that it would take that long, their effective pay would be $200 per hour.

We would like to make two further arguments in favor of legislative action now. We have done close to 100 radio interviews, appeared on TV in eight cities as well as national TV, and have been written up in every newspaper from the Wall Street Journal to the National Enquirer. Yet, we have never sought any publicity. All of the interviewers made the initial approach themselves, and they are sympathetic. We have never had what we consider a hostile interview.

The media and the American people are shocked that you should have allowed a marriage penalty to exist at all, and they always want to know, "When will it be corrected?" Their interest should concern you, but there is a second side to the public's interest that should concern you even more.

We receive considerable encouragement from people who do not pay the marriage penalty and have no vested interest in our issues. In America today, the fastest ways to become a national hero are to hit a home run in the World Series, or to fight the IRS. As one woman wrote, "I just complain. You stand up and fight."

Our tax system is based on voluntary compliance, but growing numbers of citizens are coming to feel that the system is both too complicated and unfair. In 1948, you convinced the single taxpayers that the system is unfair. In 1969, you added the two-earner families. If you continue adding complexities and favored groups to the Tax Code, eventually you will convince the majority of the system's unfairness, and they will feel justified in making adjustments of their own. Needless to say, at that point we will no longer have voluntary tax compliance.

You may think this is an extreme statement, but I do not believe I am exaggerating. Since we have become well-known "tax activists," an astounding number and variety of people have confided to us their own methods of avoiding or evading part or all of their taxes.

Passage of S. 633 will go a long way to convince a substantial segment of our society that you are trying to make taxation as fair as possible. We urge you to report S. 633 favorably to the full Senate, where we are confident it will be passed.

Senator PACKWOOD. Were you in the audience when Mr. Sunley, from the Treasury Department, testified?

Ms. BOYTER. Yes, we were.

Senator PACKWOOD. He went through the history of attempting from 1969 onward to tilt the Tax Code toward singles, or to make the discrimination against singles less, and by virtue of doing that making the discrimination against marrieds more, assuming that they are both earning an income.

How do you solve the problem he poses of which equity you are going to have, and keep progressivity. If you want to get rid of the progressive tax you can do it, but I have not heard of anyone suggesting that.

You, in terms of priorities, would eliminate the marriage penalty first, which would skewe it adversely toward singles. Granted it would not increase their tax, but it would make the disparity greater.

Ms. BOYTER. You cannot create a perfect system, but you are presently penalizing over half the married people. When you talk about the discrimination against single people, and I admit that it seems rather unfair, you are comparing one wage earner with two wage earners. It takes us 80 hours to earn that income that the single person is earning in 40, assuming that they only have one job. We have two commuting expenses, and so forth.

You say that the single person has the expense of keeping up a home, but according to some figures that I got from a Congressman's office, only 25 percent of the single people live alone. The rest of them live with family, friends, or roommates.

Senator PACKWOOD. What would you do with the heads of households, who do indeed have one of the toughest burdens of all?

Ms. BOYTER. You are talking about heads of households, and these are people who have——

Senator PACKWOOD. Usually women, usually divorced, sometimes widowed, dependents, one income, and yet they are taxed more discriminatorily than either the singles or marrieds.

Ms. BOYTER. Perhaps what you ought to do there, and I have not done any study of it, is look at your dependency and personal exemptions. That might be a better way to attack it.

Senator PACKWOOD. You mean simply increasing it for everybody. It does not change your problem on the discrimination against heads of households if you say that the marrieds get increases in deductions, and the heads of households get increases in deductions. They already suffer discrimination with the standard deduction.

Ms. BOYTER. Yes, they do.

Senator PACKWOOD. What you are simply saying, and I understand your position exactly, you cannot make it equitable for everybody unless you want to get rid of the progressive tax system, in which case a great group of people say that it will not be equitable either.

Mr. BOYTER. I noticed your interest in that. It is kind of surprising, since we have become tax activists, everybody tells us their tax theories. It is the first thing they say. I have heard from a surprising number of people who think that a flat rate system would be advantageous. We do give out the benefits progressively.

One of the suggestions I have heard, I think, has a great deal of merit, and it would be to build in the progressivity all at once, and simply say that we don't tax poor people. Once you pass out of that poverty level, then the middle class and the upper class are essentially taxed at the same rate.

I don't know how this would affect revenues, but I would assume that we could just adjust the tables to make that work. I wouldn't be surprised if a lot of high-income people did not pay more tax under that system.

Senator PACKWOOD. Thank you.

I am going to go vote. If I don't get back before Virginia Martin starts to testify, would you put my statement in the record just prior to her testimony.

Senator DOLE. Has Senator Byrd asked questions?

I did not have a chance to hear your testimony, but I understand that you have tried to avoid the penalty a different way. Is that right?

Mr. BOYTER. That is correct. Essentially, we don't have the problem any more. We have already adjusted the rates by getting divorced and staying that way. I think that is an important consideration because married couples do have the option of becoming single to avoid the marriage penalty. Unfortunately, economic pressure is much more important than any kind of rhetoric thing in favor of the family. I think that a lot of people are doing that.

Senator DOLE. You are divorced now?

Mr. BOYTER. We are divorced now, and have been for several years.

Senator DOLE. You live together, though?

Mr. BOYTER. That is right. The IRS told us that that was preferable to getting remarried every year and divorced.

Ms. BOYTER. My mother did not think so, but the IRS did.

Senator DOLE. You save how much a year?

Mr. BOYTER. We have saved about $15,000 so far. One of the things we say in our testimony is that if we continue this and nothing else changes, we will save $130,000 between now and retirement.

Senator DOLE. Do you have any children?

Mr. BOYTER. No, we do not. I think that if we did, we would not be here today. I think that is why you don't hear from people like us with children. It is not that they are not affected, but because they don't want to go public. You don't want to expose your children to that. You do get a couple of nasty remarks from time to time, and you don't want to expose your children to that.

Senator DOLE. When were you married?

Ms. BOYTER. In 1966.

Senator DOLE. You had one divorce?

Ms. BOYTER. Three.

Mr. BOYTER. Three marriages, and three divorces.

Ms. BOYTER. We were getting divorced and remarried every year, but that is the reason that the IRS took us to court. They said that our divorce was a sham. Since we are still waiting for a decision, we have minimized our potential total liability by staying divorced. If we should lose, we would only owe $3,100 which is for the tax years 1975 and 1976.

Senator DOLE. When were you last divorced?

Ms. BOYTER. In 1977.

Senator DOLE. You have saved on attorney fees, too.

Ms. BOYTER. That is true. We have saved the fees of divorces, but of course we have to pay attorney fees to go to Tax Court.

Mr. BOYTER. As a matter of fact, I guess we really should say that right now whether we are married or divorced is in some doubt since it is the Government position that we never were divorced for those 2 years. So maybe we are not now either. The Tax Court will enlighten us on that, we hope, sometime this year.

Ms. BOYTER. But we do plan to be remarried as soon as you change the law. [Laughter.]

Senator DOLE. That will be four times.

Mr. BOYTER. Yes; it is still not a record, I understand.

Senator DOLE. It may be to the same person.

Mr. BOYTER. Somebody mentioned that we ought to try to get into the Guinness Book of Records, but we found out that there is a couple who had gotten married in every State in the Union, so we have a long way to go to catch up. We hope that it will not take quite that long.

Senator DOLE. Do you have a club? Surely there must be some group. Are there a number of folks like yourselves?

Mr. BOYTER. We think that there probably are. We have deliberately kept away from any group or anything to maintain our amateur status, and everything.

Senator DOLE. Amateur status?

Mr. BOYTER. I guess that is what you would call it.

We have sent out about 400 letters to people who have inquired of us exactly how to do it, and we have heard from a good many others who did it without our help. I understand there is a divorce service in Connecticut that is getting started to help people get tax divorces. So I think that it is getting fairly widespread.

Senator DOLE. The other times, when did you divorce, in December?

Mr. BOYTER. Yes, and then we would get married soon after Christmas.

Senator DOLE. In January?

Mr. BOYTER. We thought that it was kind of a nice way of doing it both ways. We ran afoul of the law when we did that.

Senator DOLE. During the holidays as a holiday special.

Mr. BOYTER. Yes.

Senator DOLE. It is confusing, but that is not unusual around here. Do you have any advice for happy couples?

Mr. BOYTER. We try not to advise anybody to do what we are doing. Anybody who is interested, we always tell them what we did, and they can reach their own conclusion.

We really think that the majority of people really favor marriage, and we do also. It is an institution that has been built up over a lot of years, and it does give a lot of protection and things to people, and we think that they should be allowed to have those. If they choose not to take these for personal reasons, that is one thing, but we think that revenue reasons or taxes is not a reason to decide to get married or not to get married.

Ms. BOYTER. We feel that the Tax Code has done enough to interfere with people's choices of marriage or nonmarriage, so we are not going to get involved in it. We let people make their own decisions.

Senator DOLE. As far as you are concerned, your marriage was the victim of the tax system.

Mr. BOYTER. That is clear. It is the only reason.

Senator DOLE. You have saved about $15,000 so far?

Mr. BOYTER. That is correct.

Ms. BOYTER. In 5 years.

Senator DOLE. You are still both working?

Mr. BOYTER. We are both employed, and we earn approximately the same amount, and we always have. We have always paid taxes, even before the change. We thought that the single people were getting a break, and we probably would, too. We were very surprised to discover that we didn't. Somebody made an obvious error.

Senator DOLE. But the IRS is contending that you are married.

Mr. BOYTER. That is one of their contentions, yes, that we never really got divorced and those years are in contention. I don't know what they say about the one since then. They have not really said anything.

Ms. BOYTER. They have a ruling, I think it is 76-256, that says that couples who divorce to save on taxes but don't remarry they will leave alone. If you divorce and remarry, they consider it a sham. That is what we are testing in Tax Court.

Mr. BOYTER. The Court of Claims had a nice statement in one of their decisions that said, "We expect any prudent young couple of more than average intelligence," as they felt the people before them were, "to take into account all of the consequences of their decisions. Therefore, if they wish to save money on their taxes, they should simply live together." The Court of Claims agrees with IRS, I guess, that living together is OK.

Senator DOLE. Did you listen to Mr. Sunley this morning and his five options. Would any of those be helpful to you?

Mr. BOYTER. We think that the Mathias-Fenwick bill is the easiest approach you can take. There are things that would do a great deal more for the system, but I think that you would get a lot more letters from other people who felt that they had been put in an unfavorable position.

It doesn't change anybody else's taxes except perhaps in a relative way. The one-earner families would still have the best system.

The singles would be penalized but no worse than we are because we would be paying the same rates as they are.

Ms. BOYTER. We are both Federal employees.

Senator DOLE. Do you live in Maryland or Virginia?

Mr. BOYTER. We live in Maryland. Senator Mathias started this all on his own at just about the same time we did. We did not suggest it to him, or anything.

Senator DOLE. Do you work for the IRS either one of you?

Mr. BOYTER. If we had, I suspect that we would not be now.

Senator DOLE. What branch of the Government do you work for?

Mr. BOYTER. The Defense Department.

Senator DOLE. Are you both in the Defense Department?

Mr. BOYTER. That is right. We think that Federal employees are probably a large constituent of the marriage penalty because one of the Government policies has been to treat women equally. The consequence of that is that many of them have been quite successful, therefore, they are much more likely to be in this group. I suspect that even at the IRS there are a lot of people there who secretly hope that we will win.

Ms. BOYTER. We want to emphasize that we are speaking privately, and not as Federal employees, or as representatives of the Department of Defense.

Mr. BOYTER. Lest anyone be confused. Occasionally they are, and send our Director letters complaining about us. We try to avoid that.

Senator DOLE. The whole thing is confusing, but I think that you have added a lot of confusion. [Laughter.]

Senator BYRD. You say that the IRS regards your divorce as a sham. On what do they base that?

Mr. BOYTER. Because we got married again shortly thereafter. We did not have pure intentions, I guess. I think they think that the last one took, but I am not quite sure. They have not raised that.

Senator BYRD. It seems to me that the IRS is going pretty far afield when it attempts to tell people they should or should not be married, or should or should not get married.

Mr. BOYTER. We are waiting for the judge to so instruct them, but he has been taking since November, and he has not gotten around to it yet.

Senator BYRD. It occurs to me that persons are either married or not married.

Ms. BOYTER. They are talking about the quality of our relationship. But it seems to me that if they are going to go that far, they are going to have to start looking at the quality of the relationship of people who are living together without ever getting married. I think that they have really intruded too far into people's private lives.

Senator BYRD. I think they need to look at the quality of the relationship of people who are married in some cases.

Mr. BOYTER. That has occurred to us; yes.

Senator BYRD. Thank you.

Senator DOLE. Are you on a lot of talk shows, and things like that?

Mr. BOYTER. Yes; we have. We have been on almost all of them. As we said, you take on the IRS and you become a national hero.

Senator DOLE. I see great potential there.

Mr. BOYTER. I don't know how good it is for getting votes, though.

Senator DOLE. It would be marginal. [Laughter.]

Senator BYRD. The next witness is Mr. Stanley Canfield, president of Cricket Publishing Co.

Mr. Canfield, you have 5 minutes.

STATEMENT OF STANLEY E. CANFIELD, PRESIDENT, CRICKET PUBLISHING CO.

Mr. CANFIELD. Mr. Chairman, and members of this committee.

It certainly is an honor as a citizen to be able to testify on behalf of myself, and my company. I have customers in all 50 States of the Union, and started writing the Congress and the Senate about 2 years ago about this marriage tax penalty because I could see it coming, and I could see it happening.

I have submitted to this committee a complete brief, and I would like it to be submitted for the record.

Senator BYRD. It will be made a part of the record.

Mr. CANFIELD. The filing materials, in my estimation, bring out the very things that the people have pointed out this morning. There has been a gross error that is costing the Nation many billions of dollars of annual wages unaccounted for because of the zero bracket floor on deductions.

My approach to this will be a little different, but it is in the same vein of thinking. I believe that the wool is being pulled over our eyes by the IRS, with the help of Congress, and it is putting every American taxpayer in the same mold by the continuance or the enlargement of this zero bracket floor on deductions. Giving singles and marrieds these types of writeoffs is the main problem.

They are saying that only the wealthy can take advantage of the tax brackets. That is not true. The tax rates will show you, and the reports that come through the professional magazines will show you that the people who itemize their deductions the most are the people in the $4,000 to $6,000 range. They owe more. They have more interest. They have more responsibilities. On the average 72 percent of these people have itemized deductions.

People in the average class, let us say, $12,000 to $14,000, 33 percent of them itemize their deductions, and in the more wealthy only 19 percent of them have the same privilege. They don't have the same types of expenses.

I believe that the zero bracket floor on deductions is the thing that really is our problem.

I think that many women go to work because they are bored. If there are tax incentives to create responsibilities within their own communities, I believe that they would stay there and be a part of the community rather than go into the work force.

If there are tax incentives to work with meals-on-wheels, or work for the Red Cross, if there are tax incentives to do things in your own neighborhood that create a neighborhood atmosphere, I believe that it is really the thing that needs to be looked at. I think we are looking at the wrong thing.

In the next year or so the Federal Government will destroy the future of the American system, and this destruction can be accomplished silently and invisibly in the name of tax reform. There are even those who say that simplifying the Tax Code will eliminate and could eliminate deductions entirely. I am, of course, opposed to this because I don't think that we are all pickles. I think that there are some apples and some oranges.

The records show that because of the floor on deductions, charitable contributions have suffered greatly. Not only family has suffered, but charitable contributions have suffered greatly.

To play around with this Tax Code like we are doing, and the bills are being introduced, to file as singles and to file as marrieds, and to file this way and to file that way, I think is the wrong approach. I think that the approach is to look at IRS and their deliberate move to eliminate itemized deductions, and that is by continuing to raise the zero bracket, and subtracting it from the itemized deductions.

It has been called the "marriage tax," but I think that it is a smokescreen. I really believe that the problem lies with this simplistic thinking of eliminating itemized deductions. I have seen it happen in my own business in the production and manufacture of tax forms, and tax related schedule A's.

Sales have fallen off drastically in this area. We have also seen a decrease in the deterioration of the community projects, symphonies, the stress that United Fund has to go through to get moneys. People don't give because they already get without any accountability, without any records.

The IRS keeps raising the floor, and that is their intent, to simplify the Tax Code. They say that they can save $50 million in a year of paperwork and such by simplifying that and raising the floor on itemized deductions. But I contend that in saving $50 million, they leave $400 billions without any accountability at all.

The zero bracket tax credit says that we are all the same. The records prove differently. Why should people give when they already get. There is much to be said, and I know that you have heard it.

I ask that you not rework the zero bracket, such as allowing married couples to select to file as singles, and such, but I suggest that you take the tax tables, and that you make them equitable for all people, and that you treat heads of households fairly and marrieds, allow 100 percent of all proven deductions, raise the standard deduction on individuals. All this can be proven 100 percent, and we will give credit where credit is due.

It will cost billions of dollars in revenue if those bills are enacted, but I believe that accountability and credibility will return to the local neighborhoods that is needed to return, and then this marriage tax will not be so evident. I believe that really IRS goofed in giving this $3,400 and this $2,300, and they meant to do that.

Senator BYRD. Thank you, Mr. Canfield.

Senator Dole.

Senator DOLE. I have no questions. I have read the statement.

Senator BYRD. Senator Bradley.

Senator BRADLEY. Mr. Chairman, I have no statements or questions for the witnesses. I would like to compliment you on holding this hearing because this is certainly an approach to this year's tax cut that we should carefully consider. Today's witnesses, based on what I have heard, have studied this marriage tax issue very thoroughly.

There are many ways to approach the marriage tax issue, as I am sure you are aware, and this committee will deliberate over the different tax options. Each of these options deserves our attention because I think that we should give serious consideration to putting a marriage tax reduction in this year's tax bill.

I compliment you for holding the hearing and giving us the benefit of these witnesses.

Senator BYRD. Thank you very much, Senator Bradley. I think that this is a subject that should be addressed at the earliest possible opportunity.

Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman. I would like to join in congratulating you for holding these hearings because this is a very, very important matter. I have submitted legislation which incorporates this. Regardless of where it comes from, I would hope that in the bill that we handle this year, and hopefully we will handle a bill, that this will be included within it to kind of solve this particular problem that you are addressing here today.

Senator BYRD. Thank you, Senator Chafee.

Thank you, Mr. Canfield.

[The prepared statement of Mr. Canfield follows:]

CRICKET PUBLISHING CO.,
Battle Creek, Mich., August 5, 1980.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: The following material is for the records of the Committee on Finance dealing with the most current hearings on tax cuts and more specifically the "Marriage Tax".

It will also endeavor to show how the Committee can equitably correct a gross error that is costing the Nation many Billions of Annual Wages unaccounted for because of the 'Zero Bracket-Floor on Deductions' applied to all Individual 1040 Tax Forms.

The wool is being pulled over our eyes! The I.R.S., with the help of Congress, is putting every American taxpayer in the same mold by the continuance and enlargement of the Zero Bracket.

"Charity and the Nations are victims of this kind of planning! Taking away deductions is taking away our freedom of choice and accountability. There is every indication that failure to maintain a tax incentive for Charitable donations of money will have the added effect of undermining donations of time and work, since there is a strong correlation of individuals participating in those activities to which they contribute funds." Mr. Chester H. Schwartz, United Way Update to United Way Board Members.

Taking the Zero Bracket and making it the floor on itemized deductions has taken away the incentive from the lower and middle income taxpayers, who make more than half of the charitable contributions of the Nation.

The next step will be to abolish all deductions over the 'Zero Bracket Floor', "on the grounds it benefits an elite group of taxpayers". This will throw the responsibility into the lap of an already over-burdened Federal bureaucracy that will destroy the traditional voluntary giving that is so essential to the preservation of the non-profit, non-government sector of our society.

John W. Gardner, the founding chairman of Common Cause and Formerly Secretary of Health, Education and Welfare, sees danger in certain proposals that have come forth from various tax reformers to eliminate or reduce the charitable contributions that Americans can deduct from taxable income. He stated his case at the United Way conference in a speech on "Threat to an American Tradition".

"These Americans are a peculiar people. If, in a local community, a citizen becomes aware of a human need which is not being met, he thereupon discusses the situation with his neighbors. Suddenly a committee comes into existence. The committee thereupon begins to operate on behalf of the need and a new community function is established. It is like watching a miracle, because these citizens perform this act without a single reference to any bureaucracy, or any official agency."

Justly so. 150 years ago, Tocqueville described a unique feature of the American system. It is the spontaneous working of a creative public spirit. Out of this fundamental national trait have come such vitally important institutions such as libraries, museums, civic organizations, great universities, the United Way, the Little Leagues, the Salvation Army, symphony orchestras, garden clubs, historical societies, adoption services, hospitals, religious organizations, Alcoholics Anonymous and the 4-H clubs. Indeed, this American tradition—that of private giving for public purposes—the volunteer, has released incredible human energy and commitment in behalf of the community all over the country.

Yet, in the next two or three years, the Federal Government may destroy this feature of the American system. The destruction could be accomplished silently and invisibly—in the name of tax reform. The threat lies in proposals that would reduce, directly and indirectly, the charitable contributions Americans itemize as deductions from taxable income. And there are even those who, with the intent of simplifying the tax code, would eliminate such deductions entirely. With due respect to the reformers, the alarm should be shouted: Our tradition of private giving for public purposes is endangered by some of their good intentions.

Up till now, Government tax policy has deliberately fostered that tradition. The deductibility of charitable gifts is based on the idea that it is good for a great many people, independently, privately, to contribute to charitable, religious, scientific and educational activities of their choice. Such giving supports the American pluralism that allows all kinds of people to take the initiative in all kinds of activities. In reality, the tradition that has produced the innumerable institutions that are sometimes called the nonprofit sector lies at the very heart of our intellectual and spiritual strivings. The deductibility of charitable donations has been only an expression of that larger philosophy.

Now there is a new school of thought with a very different view. It holds that a deductible dollar donated, say, to a school for blind children, would have found its way into the federal treasury—if it had not been deductible. That dollar is therefore to be regarded as Government money—and labeled a "tax expenditure." This new doctrine began innocently enough with a concern about the multiplicity of existing tax loopholes. It made sense to calculate the amount of benefits granted by the Government through allowable deductions, as, say, certain industrial tax credit. So the term "tax expenditure" was invented as a convenient way to describe such an amount. Some tax-simplification theorists just have not given much thought to the implications of applying that term to voluntary charitable donations. But there is another type of theorist we have to cope with: the Government-knows-best type, who positively resents the freedom of the tax-deductible gift. His argument is to eliminate the deductibility of that dollar given to the school for the blind, take the money into the treasury and, if the school needs money, let Congress and the federal agencies appropriate it.

Such a doctrine makes the head ache. The American people have been remarkably resourceful in launching activities to serve their communities. They freely give $30 Billion a year and contribute God knows how many Billion more in nonmonetary services. Now Americans are told that Congress and the Government bureaucracies could do a better job.

Somehow, the available evidence on Government efficiency (Mr. Gardner speaking with the respect of one who served two tours of duty in Government) does not drive one toward that conclusion. But apart from the question of efficiency, if Government pre-empted "charitable" functions, what outlet would be left for personal caring and concern? Can anyone believe that a manual of regulations from Washington would unlock the miraculous energy which has been so impressive since the days of Tocqueville?

The truth is that the present charitable deduction is not adequate to bring out the best of which Americans are capable. Even recent increases in the Zero bracket—(six in the last ten years)—decreased the number of taxpayers itemizing deductions from almost 50 percent in 1970 to less than 25 percent in 1977. (It is now less than 16 percent in 1979, a staggering drop in just two years.)

The damage to the voluntary sector is obvious. Contributions to public charities decreased, with losses recently estimated at $5 Billion. In 1977 alone, greater use of the standard deduction cost voluntary American institutions some $1.3 Billion. It is estimated that only 16 percent of taxpayers will itemize deductions (and thus have an added incentive to make charitable donations) if the Zero Bracket—Floor on deductions is continued.

What would result if the new antideduction doctrine ever were in force is not pleasant to contemplate. As it is, the trend is already running against voluntarism. The only way to reverse this trend is to amend the tax code to allow all taxpayers to deduct charitable gifts whether they itemize or not. This change alone would eliminate a twofold danger: first, that denying most Americans any encouragement to give will bring more Government into their lives: Second, that charitable giving will become the province of only the wealthy.

The Government will best contribute to the health of the society if it actively furthers the vitality of the private, voluntary sector. We must wake up to the fact that the government of a gigantic, tumultuous society cannot be administered entirely by a conventional, centralized, top-down governmental hierarchy. Local levels of government and local private institutions are going to have to figure out how they can collaborate to make things work in the community. The old American trait of voluntary activity and giving is indispensable to that end.

Finally, it is not easy to make a blanket defense of private giving: after all, it consists of so many unrelated, unofficial, unclassifiable activities. Yet that diversity is one of the qualities that make it beautiful. It is an area in which freedom survives and flourishes. Let's keep it that way. End of the essay, "Threat to an American Tradition".

The Treasury Department, I.R.S., and the administration have done their best to limit, and even do away with, itemized income-tax deductions in an effort to "simplify the nation's tax system" and to convince Congress and the Senate that by doing so they would help save time and jobs. What they have not looked at, is the loss of accountability of four hundred billion dollars ($400,000,000,000) of annual wages by this simplistic thinking.

No care is given in this repeal of deductions for the individual who would like to be different, who would like to share what they have with discretion and a personal knowledge of need and worth. Instead, we have a deadening of the community's sense of accountability towards its educational, welfare, and religious needs.

It's (we hear), "Tax reform to help the Poor!" The poor don't pay any taxes! This makes good news, but "reformers" are dishonest when they talk about ending deductions that let the rich avoid taxes. According to I.R.S. data, itemized deductions benefit the middle income earners more than the rich and the poor need no deductions, they are the one's that benefit from deductions. I ask you *not* to look to re-working the Zero bracket, such as allowing Married couples to select to file as Singles or Head of Household and thereby receive more. The many Bills that have been introduced would continue to allow too many loop holes and Tax court decisions to alter the intent of Congress.

Drop the zero bracket—alter the tax tables to treat fairly the singles, head of household, and married—allow 100 percent of all proven deductions—make accountable the now unaccountable annual wage loss of over $400 billion—raise the individual credit for each dependent. All of this can be proven 100 percent and will give "credit where credit is due". It will not cost millions in lost revenue as most bills would, it will bring back accountability for billions of annual wages.

The problem is not, as has been coined the "Marriage Tax", it just happens to work that way—the problem is the Zero Bracket-Floor on Deductions. We must not allow this Zero bracket to continue to erode our society as it is now doing. A U.S. Census Bureau report indicates more couples are living together as singles than ever before and from 1970 to 1978 the number of unmarried couples doubled.

I am not suggesting that this choice be taken away—to marry, to divorce or remain single is each persons inalienable right—but I am saying there should be more incentive to live together in a Husband-Wife family relationship. The stability of the nation is ultimately found in the stability of its foundational components—the family.

Bills to allow heads of households to have a higher Zero bracket could be an incentive for divorce. The rationale being that a couple with two children would divorce so that each parent could take one child, qualfying each parent for the full deduction now available only to a married couple and it is unrealistic for any Congressman or Congresswoman to think differently. The Tax Court has already gone on record that it shouldn't be required "to delve into intimate questions of whether husband and wife are in fact living apart while residing in the same house", and so ruled that a deduction for support isn't automatically barred if a separated couple live under the same roof.

Prentice Hall, tax publisher, writes: Divorce, it seems is a haven for loving couples who hate taxes. The tax tables don't favor married couples if both partners work. They would pay less if they weren't married. A married couple with $40,000 of combined taxable income—$20,000 from each spouse—pays the I.R.S. $10,700 whether filing separate returns or a joint one. But two single people with like incomes have a total tax bill of $8,884, $1,816 less than the married couple. In effect "IRS says okay to divorce to cut taxes". In Rev. Rul. 76-255, IRS held that a married couple can't save on their income tax by getting a year-end divorce in order to file as single individuals and then remarry early the following year. However, in a private letter ruling, IRS gave its approval to a couple getting a divorce who intend to stay divorced and not remarry, even though they "will be living together much of the time after the divorce".

For income tax purposes, marital status depends on the facts and circumstances at the close of the year. If a couple ". . . obtains a divorce that is not declared invalid by a court of competent jurisdiction and there are no factors present to indicate that the couple should not be considered as unmarried individuals, the Internal Revenue Service will recognize the divorce." (Letter Ruling 7835076)

According to an extensive new study, (Brown 1980) children from broken homes cause a strikingly disproportionate share of discipline problems in schools and fare far worse academically than their peers from two-parent homes. This study-conducted by Dr. Frank Brown of Melbourne, Florida, for the Charles F. Kettering Foundation of Dayton, Ohio, and the National Association of Elementary School Principals—examines the behavior and achievements of 18,244 children, grades one through 12, from all economic and social levels.

For every two-parent child disciplined, the study says, teachers took to task three one-parent children. Comparing children from broken homes to those with both parents, the ratio for dropouts was 9-5; for expulsions, 8-1. With the national divorce rate still sharply rising, the problems seem certain to worsen.

Only 18 percent of the children studied come from families with one parent—the bulk of them from homes broken by divorce. Yet they account for 23 percent of the disciplinary actions, 25 percent of the dropouts, 26 percent of suspensions and 27 percent of expulsions. For all children in the study who have had disciplinary contact with juvenile authorities, 36 percent come from one-parent homes, 31 percent from two-parent families, and the rest live in foster homes, with relatives, or on their own.

In the inner city, the figures are worse . . . "of 200 delinqent children in Washington, D.C., 175 came from single-parent homes," Brown said. And according to the U.S. Census Bureau, the rising divorce rate means that 48 percent of school children during the next decade will come from one-parent homes.

Zero bracket—Floor on deductions was not designed to be a "marriage tax"; *it just happened that way.* If the IRS, in its desire to eliminate deductions, would have hid this Zero bracket in some other part of the Tax Code, it would never have surfaced as it has now, and there would have been no "Threat to an American Tradition"—It would have been destroyed.

"I would prefer to see your tax structure reformed so that one's marital status does not affect one's taxes. The decision to marry or not is a personal one. Tax consequences do not belong in that process", Senator S. I. Hayakawa writes. I am in total agreement with Mr. Hayakawa. This can be done by dropping the Zero bracket—Floor on Deductions, allowing 100 percent of all Itemized deductions that can be proven and, if need be, raising the Individual Credit for each dependent and making the Rate Schedules so they are equitable for all.

Sad to say, the continued effort of a few to destroy the incentive of millions of citizens to be a part of their community and its needs is working, as the Internal Revenue Service's latest data on 1978 personal returns show, Itemized deductions are falling while inflation is taking its toll on all nonprofit, nongovernment, and Charitable Organizations of our society.

The Congress and Senate of this great nation must wipe out the "negative attitude toward giving and return accountability and responsibility to the people".

This Nation will forever stand the test, *if* the Government of *the People* will let its *People*, out of Love and a Free Will, do for other people what they can not do for themselves.

Respectfully submitted.

STANLEY E. CANFIELD,
President.

Senator BYRD. The last witness is Virginia Martin, executive director, Parents Without Partners.

Senator DOLE. Mr. Chairman, on the way up I have been asked by Senator Packwood to place a statement for him in the record.

Senator BYRD. Yes, it will be put in the record.

[The statement of Senator Packwood follows:]

STATEMENT OF SENATOR BOB PACKWOOD

I am delighted that our witness list includes Ms. Virginia Martin, Executive Director of Parents Without Partners. Parents Without Partners is a non-profit educational organization consisting of 188,000 members made up solely of single parents. This organization is well familiar with the financial burdens of single parents. Ms. Martin will be speaking today about the discrimination in the tax code against single parent headed families.

Heads of households are unmarried persons who provide a home and a majority of support for a child or elderly parent. They are usually divorced or widowed women caring for minor children. This type of family unit is on the rise due to the high rates of divorce. Over 5 million women are the sole support for themselves and their families.

Heads of households are treated unfairly in the tax code. We give them a smaller zero bracket amount and we tax them at a higher rate than married couples. Yet, heads of households have the same financial responsibilities as married couples but usually less money to meet these responsibilities with than married couples.

The Senate has twice passed this bill eliminating discrimination against heads of households. It was added to the Revenue Act of 1978, and to the Tax Reduction and Simplification Act of 1977. Unfortunately, it was dropped in Conference with the House of Representatives both years.

It is time we end the unequal tax treatment of heads of households and stop the discrimination against them that occurs in our tax laws.

STATEMENT OF VIRGINIA MARTIN, EXECUTIVE DIRECTOR, PARENTS WITHOUT PARTNERS, INC.

Ms. MARTIN. My name is Virginia Martin. I am executive director of Parents Without Partners. I appreciate the opportunity to address this subcommittee hearing on the marriage penalty tax. I believe that a discussion of the heads of household tax status is an appropriate topic to be included in this hearing.

Parents Without Partners is a nonprofit educational organization of 188,000 members, all of whom are single parents. Founded in 1957, it has provided a support system to approximately 1 million single parents over the years. Those are divorced, widowed, separate, and never married.

We have really extensive first-hand knowledge of the struggle, and it is both financial and emotional, that single parents face. Currently, we have approximately 15 million single parents.

In addition to the sensitivity of PWP with regard to issues confronting single parents, we have recently polled our membership for the issues of most concern to them. Our survey indicates that single parents are deeply concerned with the tax inequities they experience as single parents. These inequities drain their already limited financial resources.

Targeted by PWP as an area needing reform is current tax policy affecting heads of households.

Prior to the tax reduction of 1975, heads of households could use standard deductions used by married couples. Beginning with the act, however, heads of households were given a smaller standard deduction than married couples. In 1975, the standard deduction for heads of households was $300 smaller than for married couples, $2,300 as opposed to $2,600.

In 1976, the standard deduction for heads of households was $400 less than for married couples, $2,400 as opposed to $2,800. With the Tax Reduction and Simplification Act of 1977, the standard deduction for heads of households was set at $1,000 less than for married couples.

The Revenue Act of 1978, which increased the zero bracket for all filing statuses, increased the standard deduction for married people to $3,400 and the deduction for single persons and heads of households increased to $2,300, for a difference of $1,100.

The type of tax structure places a substantial financial burden on the growing number of single parent households. The divorce rate, which increased from 47 divorces per 1,000 married people in 1970, to 91 divorces per 1,000 married people in 1979, illustrates how sharply the number has increased.

Those people who file as heads of households must, by definition, be supporting one or more dependents, either minor children, elderly, or handicapped people. The assumption that these households do not incur the same type of expenses as the two-parent household, therefore, is obviously false.

Historically, the nuclear family, with the father as the sole wage earner was considered the "norm," and was the standard upon which much of our current legislation was based. However, the American family is so diverse in structure that a universally accepted definition of the "normal" family is no longer possible.

In 1978, there were 5,744,000 households in the United States headed by one parent. Of that number, 5,206,000 were headed by women. Only one-third of the families with children in the United States had both parents present. Yet, the average income of the two-parent family in 1978 was $21,804, while the average income of the female-headed household was $10,689.

The need to respond to the special problems of the changing American family is a pressing one. It is no longer reasonable to assume that a tax structure should give favor to a two-parent nuclear family, perpetuating the myth that it is an incentive to marriage when a preponderance of evidence indicates that the needs of families have changed.

The disparity in income and earning power between one- and two-parent households compounds the already existing problems facing single parents. Given the fact that families today must cope with inflation and rising taxes, it would seem grossly unfair to penalize those households surviving on one income from a single parent, with the additional burden of the "single's tax."

Working with Senator Packwood in 1978, Parents Without Partners testified in support of S. 1644 to give the then 5 million heads of households the same standard deduction available to married persons. The bill passed the Senate as an amendment to the Revenue Act of 1978. However, it was killed in the House. The heads of households bill has been reintroduced in January of this year as S. 2226.

While changes in the tax system occur on a regular basis, in few instances do they address the inequities in the system effectively. The existing structure places single people and heads of households in the same filing status, despite the fact that their financial burdens and responsibilities are vastly different.

The fallacy of using tax incentives to promote marriage or reward the traditional two-parent family continues to the detriment of other family lifestyles, notably the single parent family. Before any tax legislation is introduced an impact analysis of the effect of this legislation on families should be done.

The White House Conference on Families' delegate workbook warned: "Single parent families will probably constitute the most severe and widespread problem on income maintenance and security in the next decade."

We ask, and we urge that you consider single parents and their families in any discussion of tax reform.

Thank you.

Senator BYRD. Thank you, Ms. Martin.

Senator Dole.

Senator DOLE. I have no questions. I am a cosponsor of that latest effort of Senator Packwood, so I recognize the problem that we have. I think that the wrap-up paragraph should be considered when we consider tax legislation, and we will do that.

Senator BYRD. Senator Bradley.

Senator BRADLEY. I would like to ask you if you draw a distinction among the various approaches to the marriage tax.

One approach is where you have mandatory single filing. Everyone files as if they were single.

The next one, which is embodied in the Mathias bill, is optional single filing.

The third is simply a tax credit for a spouse who works.

I am curious, do you draw a distinction among those three as to which you find most acceptable, or least onerous?

Ms. MARTIN. I do not have expertise in the tax structure, but I would and did recommend in this material that there be an impact statement done. I think that too often people make snap judgments and say that one system is preferable over another, and there are philosophical differences involved.

We have worked, our organization together with the coalition, over the last 3½ years toward the White House Conference on Families, and we think that this has brought out more clearly than anything that has taken place that there is great diversity.

No impact analysis is done on much legislation that affects families. And I think that the prime target at this point is an an impact analysis of the results of this legislation, or the intent of the proposed legislation—what the bottom line effect would be on families, regardless of the structure of the family.

What you are attempting to do is really allow everyone to function in as reasonable and as orderly a fashion as they can, regardless of their lifestyle, to provide adequate housing, to provide adequate food. You have to look at basics more than dollars and cents.

Senator BRADLEY. Thank you, Mr. Chairman.

Senator BYRD. Senator Chafee.

Senator CHAFEE. Ms. Martin, I think the facts you give here are extraordinarily interesting, the number of children that come from families where there is only one parent. I think you indicated that one-third of the families with children in the United States have both parents. Can that be right?

Ms. MARTIN. Yes.

Senator CHAFEE. Only one-third of the families in the United States have both parents.

Ms. MARTIN. You have families consisting of two adults where the children are grown. Here you are considering children as 18 and under.

Senator CHAFEE. Let's take a child being somebody under 18, you are saying that only one-third of the families in the United States with children have both parents present?

Ms. MARTIN. That is right.

Senator CHAFEE. In other words, two-thirds have one parent.

Ms. MARTIN. Yes, or are living in an extended family situation, which could consist of parent, grandparent, aunt, uncle. Yes.

Senator CHAFEE. It sounds impossible. If you had said one-third of the families have one parent present, but you are doing it the other way. You say that only one-third have both parents.

Ms. MARTIN. That is right.

Senator CHAFEE. Where did you get those statistics?

Ms. MARTIN. We have gotten these from the census. We must consider that there are many families with no children. There are many families with grown children. That would be the balance of the two-thirds. They have had children, but these children are now beyond the age of minority.

Senator CHAFEE. In your definition, you say that it is restricted to families with children. In other words, if you take all the families with children in the United States, who have children and the definition of a child is under 18——

Ms. MARTIN. Yes.

Senator CHAFEE. You have eliminated those children who have grown.

Ms. MARTIN. Right. You also have the children who are living in what is considered a reconstituted marriage, a step parent. Those are excluded from that. We are talking about the two natural parents.

Senator CHAFEE. I see.

Ms. MARTIN. I don't have the figures with me on remarriage, but that would also be excluded from this figure. This is the two natural parents.

Senator CHAFEE. I am not quarreling with your figures because you have done some research, but these are astonishing statistics in the United States.

I think the point you make here, that when we consider legislation we should consider that the typical situation in the United States is not apparently the one couple who has lived together and raised their children and are married.

Ms. MARTIN. Right.

Senator CHAFEE. That may be a typical situation.

Ms. MARTIN. I think that much of the legislation has been based on the understanding of family many years back, and it has not really adjusted to what "family" is now.

Our organization members would argue tooth and nail that they are families, whether they are single-parent families or not. They are families.

Senator CHAFEE. True.

We appreciate your coming here and giving us this testimony. It is very helpful. Thank you.

Thank you, Mr. Chairman.

Senator BYRD. Thank you, Ms. Martin.

As you indicate lifestyles are changing, and I guess will continue to change.

What your testimony suggests to me is that the committee needs to be careful in making a change from the present law in regard to taxes that it does not impact adversely on the single parent who is raising children alone.

Ms. MARTIN. Who essentially has the same expenses as the two-parent household has in being responsible for children, or dependents.

Senator BYRD. Thank you very much.

[The prepared statement of Ms. Martin follows:]

PARENTS WITHOUT PARTNERS, INC.

PRINCIPAL POINTS

Parents Without Partners, Inc., an organization representing 188,000 single parents has extensive knowledge of the financial problems facing single parents.

The inequities in the present tax system with regard to heads of households.

Statistics indicate financial burden on heads of households, the majority of whom are women:

90 percent of single parents heads of households are women. There are over 5.2 million female-headed families compared to 579,000 single parent families headed by men. In 1978, the poverty rate for female-headed families was 31 percent compared to 9 percent for all families.

Average family income for mother-headed households with children is $10,689 compared to family income in married couple households which is $18,646.

The decline in numbers of traditional families by definition and the emergence of diversified family lifestyle.

The insensitivity of the current tax system to the reality of the financial burden of a discriminating tax system on single parent families.

Request to evaluate the impact of proposed tax legislation and its effect on families including single parent families.

STATEMENT OF VIRGINIA L. MARTIN, EXECUTIVE DIRECTOR, PARENTS WITHOUT PARTNERS, INC.

My name is Virginia Martin. I am Executive Director of Parents Without Partners. I appreciate the opportunity to address this Subcommittee hearing on the "Marriage Penalty Tax". I believe that a discussion of the Heads of Household tax status is an appropriate topic to be included in this hearing.

Parents Without Partners is a non-profit educational organization of 188,000 members, all of whom are single parents. Founded in 1957, PWP has provided a support system to nearly 1 million parents—divorced, widowed, separated and never married. Therefore, we have extensive first-hand knowledge of the struggle, both financial and emotional, that over 15 million single parents currently face.

In addition to the sensitivity of PWP with regard to issues confronting single parents, we have recently polled our membership for the issues of most concern to them. Our survey indicates that single parents are deeply concerned with the tax inequities they experience as single parents. These inequities drain their already limited financial resources.

Targeted by PWP as an area needing reform is the current tax policy affecting heads of households.

Prior to the Tax Reduction Act of 1975, heads of households could use the standard deduction used by married couples. Beginning with the Act, however, heads of households were given a smaller standard deduction than married couples. In 1975, the standard deduction for heads of households was $300 smaller than for married couples (maximum of $2,300 v. $2,600). In 1976, the standard deduction for heads of households was $400 less than for married couples (maximum of $2,400 v. $2,800). With the Tax Reduction and Simplification Act of 1977, the standard deduction for heads of households was set at $1,000 less than for married couples. The Revenue Act of 1978, which increased the zero bracket for all filing statuses, increased the standard deduction for married people to $3,400 and the deduction for single persons and heads of households increased to $2,300, for a difference of $1,000.

This type of tax structure places a substantial financial burden on the growing number of single parent households. The divorce rate, which increased from 47 divorces per 1,000 married people in 1970, to 92 divorces per 1,000 married people in 1979, illustrates how sharply the number has increased. Those people who file as heads of households must, by definition, be supporting one or more dependents, either minor children, elderly or handicapped people. The assumption that these households do not incur the same type of expenses as the two-parent household, therefore, is obviously false.

Historically, the nuclear family, with the father as the sole wage earner was considered the "norm", and was the standard upon which must of our current legislation was based. However, the American Family is so diverse in structure, that a universally accepted definition of the "normal" family is no longer possible.

In 1978, there was 5,744,000 households in the United States headed by one parent. Of that number, 5,206,000 were headed by women. Only one third of the families with children in the United States has both parents present. The average income of the typical two-parent family in 1978 was $21,804, while the average income of the female-headed household was $10,689. The need to respond to the special problems of the changing American Family is a pressing one. It is no longer reasonable to assume that a tax structure should give favor to a two-parent nuclear family, perpetuating the myth that it is an incentive to marriage when a preponderance of evidence indicates that the needs of families have changed. The disparity in income and earning power between one and two-parent households compounds the already existing problems facing single parents. Given the fact that families today must cope with inflation and rising taxes, it would seem grossly unfair to penalize those households surviving on one income from a single parent, with the additional burden of the "single's tax".

Working with Senator Bob Packwood (R-OR), Parents Without Partners testified in 1978 in support of S 1644, to give the then 5 million heads of households the same standard deduction available to married persons. The bill passed the Senate as an amendment to the Revenue Act of 1978, however, it was killed by the House. The Heads of households Bill has been reintroduced (January 25, 1980) as S 2226.

While changes in the tax system occur on a regular basis, in few instances do they address the inequities in the system effectively. The existing structure places single people and heads of households in the same filing status, despite the fact that their financial burdens and responsibilities are vastly different. The fallacy of using tax incentives to promote marriage or reward the traditional two-parent family continues to the detriment of other family lifestyles, notably the single parent family. Before any tax legislation is introduced an impact analysis of the effect of this legislation on families should be done. The White House Conference on Families' delegate workbook warned: "Singe Parent families will probably constitute the most severe and widespread problem on income maintenance and security in the next decade".

We ask you to consider single parents and their families in any discussion of tax reform.

All figures quoted are from the U.S. Bureau of Statistics.

Senator BYRD. The committee will stand in recess.

[Whereupon, at 11:20 a.m., the subcommittee recessed, to reconvene at the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT OF SENATOR JIM SASSER

Mr. Chairman, my bill addresses the injustice suffered by married couples as a result of the "marriage tax penalty". This issue is of grave importance to 38 million Americans who pay an income tax penalty just because they are married and to countless others who may be avoiding marriage because they cannot afford it.

In the United States we have several widely accepted principles for taxation: progressivity, aggregation, neutrality and equitability. Our present tax policy clearly violates the third and fourth principles by imposing higher taxes on a married couple earning the same income as two single persons.

In 1948 our Federal Income Tax system conformed to all the principles of taxation with the exception of aggregation. There was only one rate for both married and single persons and each person was considered an individual taxable unit. Using this method married couples could file separate returns thus reducing their tax liability. Problems soon arose over states with community property laws. To correct this condition, the Supreme Court in 1930 ruled that a husband and wife living in a state with community property laws could file separate returns with half of their combined income in each return. In 1948 the income splitting concept was extended to all states to avoid transitional problems occurring in states adopting the community property laws. Along with this revision came the new joint return schedule and married couples were encouraged to file joint returns.

It was soon evident that the 1948 revisions had given the married couples an unfair advantage over the single taxpayer. Until the 1969 Tax Reform Act, single taxpayers paid up to 41 percent higher taxes than a married couple with the same taxable income. The 1969 reform adjusted the rate schedules so that a single person would not be required to pay more than 20 percent in excess of the tax liability paid to a married couple in their joint return for the same income. This revision was heralded by the single taxpayer but as a result, the marriage tax penalty was created.

Under the present tax law a married couple with a taxable income of $10,000 each would have a tax liability of $2,745 on their combined income of $20,000. If the same couple were not married, they would have a tax liability of only $2,354. This difference of $391 is referred to as the "marriage penalty". In many cases a couple finds their tax liability to be greater than the salary earned by one spouse. This is a great injustice and must be corrected.

The bill I have proposed works toward fairness to all taxpayers and will alleviate the discrimination against married couples. It is imperative that we correct the adverse effects this penalty has on the American family. With our present rate of inflation, families have had to lower their standard of living to survive financially. This proposal would result in relief for the inflation-burdened family by granting some measure of tax equitability.

As you well know, it is so very difficult in the area of tax legislation to please all people all of the time. But at least we can attempt to reach a desirable medium between the married couple and the single individual. My bill would reduce the marriage penalty by allowing a 20 percent reduction on the gross income of the spouse earning the lower salary with a maximum deduction of $4,000 being allowed. This deduction would be allowed without requiring itemization of deductions. The deduction also would not affect their eligibility for other deduction or credits.

The general approach to the marriage penalty that I offer is especially desirable in these times of budget control because the amount of the deduction can be altered to the desired revenue loss level without changing the substance of the legislation. S. 1877 is an achievable solution for reducing the marriage penalty that strives for fairness to all taxpayers.

I find it alarming, Mr. Chairman, that our Federal tax code actually discourages marriage by making it economically desirable for couples to live together. It is my feeling that this Congress should make every effort to promote the continued existence of the American family.

The United States is the only industrialized nation of the world that does not recognize a difference, for tax purposes, between the one- and two-earner family. This legislation would change the present income tax law to acknowledge this difference.

I think this approach is fair to all taxpayers and would ease the discrimination against married couples. I urge my colleagues on the Finance Committee to give this bill every consideration.

Testimony of Congressman Joseph L. Fisher on the Marriage Penalty Tax

Mr. Chairman:

I would like to thank you and the members of the Committee for offering me this opportunity to express my thoughts on the marriage penalty tax. It seems to me that the time is ripe for making a serious start in eliminating this current inequity in the tax code. The President's economic package announced yesterday, the bill reported out of the Finance Committee earlier this month, and a major tax bill which I recently introduced, H.R. 7989, all include in them provisions for reducing the marriage penalty tax, with the goal of eventually abolishing it entirely.

I agree in principle that the removal of tax inequities is a worthy goal and must be pursued vigorously. However, depending on the formula used, the immediate solution of the marriage penalty tax problem could involve a revenue loss of at least 9 billion dollars and possibly much more. Although it is unrealistic, given the most recent economic data, to think that the budget can be balanced in Fiscal Year 1981, I believe that we should work to try to restrain the deficit. Part of this effort involves limiting the reduction of anticipated revenues. This, in turn, would argue for phasing in some tax changes, such as eliminating the marriage penalty tax, instead of enacting them totally and immediately.

I, therefore, have chosen a moderate approach which will represent significant progress over past attempts by the Congress to lessen the marriage penalty tax, but which will not be so drastic as to involve unacceptably large revenue losses. It will provide a base upon which the Congress can build in the future so that eventually the tax code will be blind to marital status.

My proposal is not complex. It would allow for a deduction from the married couple's gross income of 10 percent of the income of the lesser earning spouse with a limit on the deduction of $1,000. If both spouses make exactly the same income, then the deduction can be based on either spouse's income.

The Joint Committee on Taxation has estimated that in calendar year 1981 this proposal would involve a revenue loss of about $3.5 billion. This is a substantial amount, but I believe that it is manageable, and legislation embodying it stands a reasonable chance of being enacted into law.

On an individual basis, this legislation would significantly reduce the marriage penalty tax as the following table indicates:

	Income	Single's tax liability	Married couple's tax liability	Marriage penalty	Tax savings under the Fisher bill	Percentage of penalty reduced
Individual	$10,000	$1,172				
Individual	10,000	1,172				
Total	20,000	2,344	$2,739	$395	$240	61
Individual	10,000	1,172				
Individual	15,000	2,339				
Total	25,000	3,511	4,050	539	280	52

	Income	Single's tax liability	Married couple's tax liability	Marriage penalty	Tax savings under the Fisher bill	Percentage of penalty reduced
Individual	10,000	1,172				
Individual	20,000	3,839				
Total	30,000	5,011	5,601	584	336	58
Individual	20,000	3,829				
Individual	20,000	3,829				
Total	40,000	7,658	9,355	1,697	408	24

All of this reminds me of something which Lawrence O'Brian once wrote in reflecting on his work as legislative liaison for President Kennedy:

> "There are no final victories on Capitol Hill. Only steps forward and steps backward, one step at a time."

So, as a practical step forward, I urge the Committee to continue its efforts for legislation along these lines. The Congress and the Nation can no longer countenance a tax system which offers such a financial advantage to a couple living together without being married as compared to a married couple.

STATEMENT OF THE HONORABLE MILLICENT FENWICK
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY
TO THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY
COMMITTEE ON FINANCE
UNITED STATES SENATE
AUGUST 5, 1980

Mr. Chairman, Members of the Committee: I very much appreciate the opportunity to present this statement to the Subcommittee, and I would like to commend the Chairman for scheduling these hearings on what I believe is a very serious inequity in our tax code, the "marriage tax." I have introduced a bill in each Congress since I was elected in 1974 to address this glaring problem.

As you know, under our current system, when two working people decide to marry, they usually pay more tax than they would as two single workers. This discourages marriage. The chart which I have attached to my statement shows the amount of extra tax paid by two-earner couples with equal salaries at various income levels. As you can see, low and middle income groups suffer the most, in terms of the percentage increase in their taxes. In addition, the aggregation of spouses' incomes for tax purposes results in such a high marginal rate of taxation on the second earner that many women who would otherwise work are induced to stay home.

For some time, we have been putting off action to correct this marriage penalty problem, which, according to the distinguished Ranking Member of House Ways and Means Committee, was actually created inadvertently in the first place. The longer we wait, however, the more pronounced the marriage tax becomes.

Before 1948, all taxpayers paid according to the same rate schedule. The problem arose because, in community property states, husbands were able to split their incomes with their wives. Because so many women did not work, this gave taxpayers in community property states an advantage over those in non-community property states, and some states even began passing community property laws to please their residents. As a result, Congress passed legislation which allowed married taxpayers in all states to income-split. Thus, in 1948, the unit of taxation was first changed from the individual to the family. At that time, however, only 17% of the married women in the country were working.

Between 1948 and 1969, married couples in which only one spouse worked enjoyed an advantage over single taxpayers, because they could divide their income equally between them and still pay on the same rate schedule as singles, who had no such option. The result was that a single person had to pay up to 42% more than a married couple with the same total income. So, in 1969, Congress responded to the cries of single people and reduced the rates for them so that a single person never had to pay more than 20% more than a married couple with the same total income. In doing so, Congress still required married couples who elected to file separately to pay the old higher rate, and thereby created the "marriage penalty." The problem was that Congress set out to resolve the great difference in tax liability between a single person and a married single-earner couple; and it did not fully realize the extent to which it was penalizing married two-earner couples, which were still the exception rather than the rule.

Now, however, more than half of all the married women in the country are working. The marriage tax therefore affects as many as 38 million people, and their complaints have been heard by every Member of this Congress.

Those who object to the revenue cost of eliminating the marriage tax should remember that it will get worse in the years to come, as more and more women enter the work force. The demographic experts who testified at Ways and Means' April hearings stated that by the end of the 1980s, at least two-thirds of all the married women in the country will be working.

The current estimate by the Department of the Treasury is that total elimination of the tax on marriage will cost $8.3 billion. As I said at the beginning of my statement, I am concerned about the high deficit we face. Therefore, I would like to suggest to the Committee a possible means of implementing my proposal which would reduce the initial revenue impact in the crucial near term. Eliminating the marriage tax penalty merely involves the reduction of the tax rate schedule for marrieds who file separately so that it equals the rate schedule for singles. This difference could be phased out gradually. For example, we could reduce the difference between these two schedules by 20% annually for five years beginning next year. The revenue impact of doing this would be under $2 billion for 1981, but, within 5 years, the marriage penalty would be completely eliminated. The essential fact would be that the legislative vehicle would be in place. We would show the beleagured taxpayer that we are doing something to eliminate this grossly unfair feature of the code.

The advantage to passing legislation which would eliminate the marriage tax is that in doing so, we would be targeting our income tax cut to the sector of society which faces the highest marginal tax rate — the two earner family. Many of my Republican colleagues have stated their belief that tax rates are so high right now that they actually have the effect of discouraging people from going to work. I will give you an example of how this applies to the potential second earner of a married couple: a man married to a non-working wife, earning $10,000 (assuming he does not itemize deductions), pays $702 in Federal income tax. If the wife goes to work for an equal salary of $10,000, the family income is doubled, but the tax bill quadruples to a whopping $2,745. In other words, the effective tax on her $10,000 is $2,143. The United States is the only major industrialized country in the free world in which the tax cost of the second earner's entry into the work force is higher than that of the first.

This disincentive effect is especially strong for those income groups in which the labor supply is elastic with respect to the rate of taxation — the very poor, who have the option of staying home and receiving public assistance, and the very rich, who can afford to stay home.

Unfortunately, the middle class has no option. As I said earlier, the majority of married couples in this country are now two-paycheck couples. Most of them have no choice — they need two paychecks simply to make ends meet. The figures relased by the Joint Committee on Taxation in April of this year show that of all the couples who paid the marriage tax in 1979, fully 79% of them had total incomes of under $30,000 when both spouse's salaries were combined. 97% had combined incomes under $50,000. As Treasury Secretary Miller stated recently, any tax cut that the Congress enacts should be progressive -- it should be designed to help those who need it most. I would simply like to emphasize that elimination of the marriage tax would benefit low and middle income families — the ones hardest hit by inflation — most. Under the current system, two people who earn only $3,750 each face a tax increase of 133% when they decide to marry. For a couple earning $20,000 each, the tax increase is 22% — $1,692.

This question goes beyond economics, however. The marriage tax is one of the most unfair, unwise, and certainly the most unpopular feature of the code. Simple justice demands that we eliminate it. I, for one, do not believe that it is a wise social policy to discourage marriage. It confuses and frustrates the taxpayer who does not object to paying his or her fair share, but who cannot understand this policy. It also results in some unnecessary dysfunctions. You have all heard the story of the couple from Maryland who has gotten three year-end divorces in the Carribean to avoid the marriage penalty -- and who has saved a considerable amount of money and enjoyed free winter vacations in the process. The Census Bureau tells us that the divorce rate has increased by 96% in the last decade. Meanwhile, the number of unmarried couples living together has increased by 149%.

If there is to be a tax cut, we clearly must eliminate this marriage penalty. My proposal of optional individual taxation could be easily implemented. Two columns could appear on the Federal tax form, as they do now on several State income tax forms, to allow each spouse to be taxed individually on his or her own income. The adoption of such a "combined-separate" tax form, similar to the type of forms used in Maryland, Virginia, New York, and D.C., would eliminate the added administrative costs that would otherwise be incurred by the Internal Revenue Service if it had to process millions of additional forms from those who would opt to file separately. In addition, it would allow the I.R.S. to check each spouse's return against the other's at a glance, thus eliminating the possibility of any double-claiming of deductions of exemptions.

H.R. 3609, which would allow married couples the option of being taxed as if they were single, is a very simple bill. Unlike the proposals put forward by other Members which would allow a deduction on the second earner's income, it attacks the structural root of the problem. If our goal is to completely eliminate the marriage tax, then this is our answer, not proposals which merely add another twist to our already hopelessly complicated code.

First and most importantly, these proposals do not completely eliminate the penalty. Under the deduction approach a couple earning only $3,750 each still pays 50% more tax if they are married than if they are single. A couple earning $25,000 each still pays a "marriage tax" of $1,694 each year. There would still be a significant number of couples lobbying for elimination of the tax. There would still be couples getting divorced or deferring marriage in order to save on taxes. There would still be couples, like those testifying here before you today, who would fly to the Carribean for year end divorces or set up "tax divorce" services. We must put an end to these dislocations by eliminating the "marriage tax" completely.

In addition, deductions and credits for the second earner would make the tax code more, rather than less complicated. Some couples would surely be confused to learn that they can claim a deduction even when they are not itemizing deductions. Eliminating the penalty altogether would allow the I.R.S. to reduce the number of schedules, while enactment of a deduction or credit would simply increase the number of provisions in the code.

In some cases, providing a 10% deduction on the second earner's income would grant relief to couples who do not currently face a penalty. As you know, two-earner couples are only penalized for marriage when the income of one spouse is approximately 20% or more of the couple's total income. If a flat 10% deduction were to be provided to the second earner, the marriage bonus would be increased for couples with vastly different incomes.

Finally, Mr. Chairman, limited deductions and credits for the second earner are troubling because they penalize wives for achieving what their husbands have achieved. On the one hand, we have said that a social goal in this country is to have equal salaries for men and women, and on the other we would be penalizing the wife who makes an equal salary. In effect, we would be providing a bonus only for those wives who "stay in their place."

The chief argument in favor of these alternative proposals is that their revenue costs are more palatable. Using the phased-in approach which I outlined earlier, however, my bill could be made to yield the same revenue loss in the first year or any other year. And it would put the legislative vehicle in place for moving toward a complete solution of the problem. My friend and colleague from Virginia, Mr. Fisher, who is the sponsor of the bill in the House which would provide a 10% deduction on the income of the lesser earning spouse, recently wrote that he hopes that "eventually the tax code will be blind with regard to marital status." If this is our goal, then it would seem that enactment of H.R. 3609 is the appropriate first step.

H.R. 3609 is also a moderate proposal. Many Members of Congress have proposed to make the Code completely neutral with respect to marriage by allowing all taxpayers to pay according to a single rate schedule. If this is to be achieved without raising taxes for any group, the Treasury would stand to lose about $30 billion in annual revenue. H.R. 3609 would only cost $8 billion, even less at first if it is phased in, and yet it would satisfy most advocates of mandatory individual filing as a sensible first step.

With respect to the revenue question, I would like to make two additional

H.R. 3609 is also a moderate proposal. Many Members of both the House and the Senate have proposed to make the Code completely neutral with respect to marriage by allowing all taxpayers to pay according to a single rate schedule. If this is to be achieved without rasing taxes for any group, the Treasury would stand to lose about $30 billion in annual revenue. H.R. 3609 would only cost about $8 billion, even less at first if phased in, and yet it would satisfy most advocates of mandatory individual filing as a sensible first step.

With respect to the revenue question, I would like to make two additional observations. First, when Congress passed the so-called "windfall profits" tax bill, it directed that 60% of the projected $227 billion in revenues resulting from the imposition of the tax be used to finance a tax cut. These funds could cover the cost of eliminating the marriage tax. Secondly, according to the Administration's figures, the Federal government will reap an additional $15 billion in revenues this year because inflation pushes taxpayers into higher brackets. Again, the revenue from this "bracket creep" alone is enough to cover the cost of eliminating the marriage penalty.

Finally, H.R. 3609, and its Senate companion, S.336, are very popular bills. 237 Members of the House, more than half of its Members, have cosponsored my bill. 26 Senators have cosponsored the bill introduced by the Senator from Maryland, Mr. Mathias. As you will learn today, a recent Gallup poll commissioned by the White House Conference on Families showed that 83% of the respondents favored eliminating the marriage tax. Signinficantly, 77% of the singles surveyed favored elimination of the marriage penalty. All three sessions of the White House Conference on Families passed strong resolutions calling for elimination of this inequity, and the National Taxpayers' Union, the Southern Baptist Convention, the Women's Equity

Action League, the President's Interdepartmental Task Force on Women, and a host of other organizations of all political persuasions have passed similar resolutions. Hundreds of editorials in newspapers across the country have called for an end to the marriage penalty. Clearly, we have achieved a consensus which favors complete elimination of the tax on marriage.

If there is a tax cut, I hope that it will include the sensible, moderate, and necessary proposal that Senator Mathias and I have put forward.

Thank you very much.

The Cost of Marriage for Two-Earner Couples:

The following chart compares the tax liability of a couple with equal incomes at various income levels when the couple files as two single individuals (column C) and when it files as a married couple filing jointly (column B). It illustrates how two working individuals will be penalized by our tax system when they marry.

A Combined income:	B Total tax liability on "married filing jointly" schedule:	C Total tax liability as two singles with equal incomes:	D "Marriage penalty":	E Percentage increase in taxes due to marriage"
$7,500	$294	$126 ($63 each)	$168	133%
$10,000	$702	$500 (250)	$202	40%
15,000	1,635	1,384 (692)	251	18
20,000	2,745	2,354 (1,177)	391	17
25,000	4,057	3,446 (1,726)	611	18
30,000	5,593	4,690 (2,345)	903	19
40,000	9,366	7,674 (3,837)	1,692	22
50,000	13,798	11,124 (5,562)	2,674	24
80,000	28,678	24,334 (12,167)	4,344	18
100,000	38,678	34,284 (17,142)	4,394	13

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THE VARIOUS COMPONENTS OF THE MARRIAGE PENALTY TAX

by

Professor Stuart J. Filler*

INTRODUCTION

A current imperfection in our federal income tax structure is the marriage penalty tax (hereinafter referred to as MPT) which is borne by families where both husband and wife each have separate incomes.[1] The MPT is the increased amount of tax liability levied on a couple filing a joint return or married filing separate returns over the amount that would be levied on two unmarried persons having similar incomes and living together but filing individually as single taxpayers. Where one spouse alone is the income earner, there is no MPT; in fact, generally, there is a federal income tax saving to being married. Where both spouses have income, however, the amount of the MPT is proportional to the degree of parity between both spouses' income.

There are two aspects of the tax structure where the tax costs of marriage are most evident. The first involves many of the tax provisions providing for inclusions and exclusions from gross income, deductions, credits and the tax rate structure. The second concerns the joint and several liability imposed on the joint return and the allocation of income between spouses in community property states. This article begins with a brief discussion of the first aspect of the MPT referring the reader to other more detailed references to the issue. The article concentrates on the additional tax imposed on one spouse as a result of the joint and several liability resulting from the filing of a joint return and the additional tax imposed on one spouse, often occurring during a period of separation but prior to divorce, as a result of allocation of income in community property states. Both components of this second aspect are another form of penalty imposed on the institution of marriage.

A BRIEF HISTORY

The Revenue Act of 1913[2] provided for only one tax rate schedule. The individual was the sole taxable entity and each taxpayer was taxed on his or her own earned and unearned income. Because the rate schedule was progressive, taxpayers with large incomes attempted to shift their income to other family members, enabling each family member to report income on an individual tax return. This device enabled the family not only to split income but also to increase deductions, thereby subjecting total family income to lower federal income taxes than it would have been subjected to if only one individual tax return were filed with the entire family income and more limited deductions.[3]

In most states, ownership of property or the income derived therefrom is determined by the role each spouse had in acquiring it. Community property states,[4] however, give each spouse a one-half share of any property or income acquired by either spouse during the marriage.[5]

Taxpayers in noncommunity property states attempted to take advantage of community property income splitting through contractual arrangements. These machinations were disapproved of by the United States Supreme Court in 1930 in Lucas v. Earl.[6] However, later that same year income splitting was permitted by the Court in community property states in the landmark decision of Poe v. Seaborn,[7] which permitted married couples to split not only their investment income but also their earned income.[8] Later decisions affirmed the holding of Seaborn.[9]

The result of the Seaborn decision was that state legislatures rushed to introduce community property legislation. To avoid a mass exodus from common-law property principles, Congress enacted the Revenue Act of 1948,[10] which permitted nationwide income splitting. Its effect was to allow every married couple to aggregate their income and deductions, file a joint return, and pay double the amount of a single individual's tax on one-half of the income.[11]

The introduction of nationwide income splitting adversely affected single taxpayers.[12] Congress attempted to mitigate this harsh result by establishing a "head of household" category.[13] This tax rate gave tax reductions to widows, widowers and other single persons who maintained a home both for themselves and dependents. While under the new rate the widow or widower with children[14] or other dependents[15] received half the benefits of income splitting, the denial of the other half turned out to be a substantial tax increase, in some cases, compared to the couple's tax while both were alive.[16] The head of household category was expanded in 1954 to permit single persons who maintained a parent or parents in a separate abode to take advantage of the reduced rates.[17] In addition, a "surviving spouse"[18] category was added to permit certain surviving spouses to continue to use joint return rates for two years after the death of his or her spouse.

Additional pressure was brought to bear upon Congress for relief for single taxpayers in the ensuing years. Congress responded in the Tax Reform Act of 1969.[19] Single Taxpayers were provided a rate schedule which limited the tax paid to no more than 120 percent of the tax paid by married taxpayers at the same taxable income level.[20] Aware that this new tax rate schedule would provide substantial tax benefits to married couples where both spouses were earning roughly equal incomes, Congress left the old, higher single tax rate schedule for use by married taxpayers filing separate returns.[21]

THE COMPONENTS OF THE MARRIAGE PENALTY TAX

For most purposes the Code treats husbands and wives as if they were one person instead of two, but imposes on their combined income a tax rate which may be twenty percent lower than that which would be imposed on the same amount of income earned by an unmarried taxpayer.[22] Further savings can be achieved through the ability to use one spouse's deductions against the other spouse's income.[23]

On the other hand, many married taxpayers find that these rates are not sufficiently lower than the rates imposed on single taxpayers to compensate for the fact that they must aggregate their incomes to take advantage of them. Furthermore, other provisions work to their disadvantage resulting in a higher tax liability.[24]

The provisions that differentiate according to marital status and that are detrimental to married taxpayers can be divided roughly into three categories:[25]

1. Those that alter the tax consequences of a particular transaction because it occurs between spouses, other family relationships, or between one spouse and an economic entity such as a corporation in which the other spouse has a substantial interest;

2. Those that provide different tax rates; and

3. Those that deny or limit exclusions, deductions and credits.

A. Transactions Between Certain Related Taxpayers

The first category of provisions is the most easily justified because most of the provisions do not single out the marital relationship. For the most part, they apply equally to transactions that take place between the taxpayer and other members of his family such as his or her children or parents. The purpose of these provisions is to deny tax benefits to transfers between these related taxpayers based on the presumption that there has not been any change in control of the assets transferred. For example, section 267 of the Code disallows a loss deduction for sales between a taxpayer and his or her spouse and for sales between a taxpayer and his or her brothers, sisters, parents and children.[26] This section also disallows the deduction of unpaid interest and expenses if the person to be paid is a member of the taxpayer's family.[27]

The provisions within the other two categories, however, apply only to spouses and are difficult if not impossible to justify.

B. <u>The Tax Rates Components</u>

1. <u>The Tax Rates</u>

Tables I and II[28] show the MPT by comparing the tax due on a joint return with tax due on single returns filed by unmarried taxpayers living together with the same combined income. Whatever the income, if ninety percent or more of it is attributable to one married partner, the couple saves taxes by being married. On the other hand, if one partner has more than twenty-five percent of the couple's income, in all income brackets except the lowest, the couple would pay less federal income tax if unmarried. Even where one partner has as little as twenty percent of the couple's total income, at most tax brackets, being married costs more federal income tax than not being married.

TABLE I

Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal exemptions)	Tax when couple is married and files joint return	Tax when couple not married to each other or anyone else and each is taxed on rate table applicable to unmarried individuals (other than surviving spouses and heads of households), and share of income earned by lower-earning cohabitant is: 0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
$ 5,000	$ 0	$ 250	$ 209	$ 169	$ 132	$ 97	$ 62	$ 27	$ 0	$ 0	$ 0	$ 0
10,000	702	1,176	1,071	976	881	786	602	601	539	519	501	600
15,000	1,635	2,344	2,149	1,962	1,782	1,602	[illegible]	1,451	1,411	[illegible]	1,391	1,384
20,000	2,745	3,836	3,604	3,204	2,904	2,702	[illegible]	[illegible]	2,444	[illegible]	2,363	2,353
25,000	4,057	5,562	5,111	4,686	4,324	4,086	[illegible]	3,716	3,609	[illegible]	3,462	3,416
30,000	5,593	7,621	6,926	6,341	5,926	5,618	[illegible]	5,153	4,918	[illegible]	4,716	4,669
35,000	7,348	9,721	8,951	8,209	7,704	7,333	[illegible]	6,818	6,434	[illegible]	6,131	6,110
40,000	9,366	12,167	11,186	10,304	9,703	9,184	[illegible]	8,334	8,036	[illegible]	7,721	7,673
45,000	11,516	14,642	13,516	12,581	11,866	11,183	10,611	10,144	9,769	[illegible]	9,380	9,378
50,000	13,798	17,142	15,891	14,891	14,083	[illegible]	[illegible]	12,066	11,676	[illegible]	11,223	11,128
55,000	16,248	19,642	18,266	17,223	16,351	16,528	14,802	14,186	[illegible]	[illegible]	13,093	13,074
60,000	18,698	22,142	20,641	19,563	18,618	17,744	16,086	16,351	15,653	[illegible]	15,183	15,048
65,000	21,178	24,642	23,016	21,903	20,891	19,901	19,107	18,558	18,041	[illegible]	17,303	17,243
70,000	23,678	27,142	25,419	24,243	23,173	22,226	21,447	20,518	20,258	19,679	19,613	19,443
75,000	26,178	29,642	27,829	26,583	25,456	21,486	23,697	23,078	22,566	22,163	21,951	21,884
80,000	28,678	32,142	30,239	28,928	27,744	26,746	[illegible]	25,338	24,673	24,613	24,348	24,334
85,000	31,178	34,642	32,649	31,273	30,019	29,016	[illegible]	27,648	27,181	26,923	26,826	26,784
90,000	33,678	37,142	35,061	33,618	32,364	31,310	30,678	29,083	29,673	29,349	29,303	29,284
95,000	36,178	39,642	37,476	35,963	34,666	33,646	32,878	32,318	31,968	31,629	31,784	31,784
100,000	38,678	42,142	39,891	38,318	36,986	35,078	35,204	34,663	34,303	34,309	34,289	34,289

Tax is computed on basis of 1979 rates. The taxable income in column 1 is before deductions for personal exemptions. For computation of tax on joint return (column 2), taxable income is reduced by $2,000 for two personal exemptions. For all other columns, each taxpayer's share of the total taxable income is reduced by $1,000 for one personal exemption. The 50% max-tax on personal service income is used where applicable.

TABLE II

Tax Cost of Marriage (Shaded Area) and Nonmarriage

Couple's total taxable income (before personal exemptions)	Dollar amount of marriage penalty tax: comparison of joint return tax and tax when couple not married to each other or anyone else and each is taxed as unmarried individual, and share of income earned by lower-earning cohabitant is: 0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
$ 5,000	$ −250	$ −209	$ −169	$ −132	$ −97	$ −62	$ −27	$ 0	$ 0	$ 0	$ 0
10,000	−474	−369	−274	−179	−84	+9	+100	+102	+183	+200	+201
15,000	−709	−514	−327	−147	+32	+133	+183	+220	[illegible]	+213	+250
20,000	−1,091	−759	−459	−159	+13	+161	+239	+301	[illegible]	+342	+392
25,000	−1,506	−1,054	−629	−267	−29	+160	+310	+447	[illegible]	+594	+610
30,000	−1,928	−1,333	−748	−333	−25	+215	[illegible]	+615	[illegible]	+875	+904
35,000	−2,373	−1,603	−861	−356	+14	+364	+600	+913	[illegible]	+1,226	+1,237
40,000	−2,801	−1,820	−938	−337	+177	+667	+1,031	+1,329	[illegible]	+1,644	+1,693
45,000	−3,126	−2,000	−1,065	−350	+332	+901	+1,371	+1,758	[illegible]	+2,129	+2,113
50,000	−3,344	−2,093	−1,093	−285	+456	+1,133	+1,737	+2,122	[illegible]	+2,575	+2,674
55,000	−3,394	−2,018	−975	−103	+720	+1,446	+2,062	+2,562	+2,890	+3,152	+3,174
60,000	−3,444	−1,943	−865	+80	+951	+1,712	+2,347	+2,845	+3,295	+3,515	+3,655
65,000	−3,464	−1,838	−725	+247	+1,151	+1,981	+2,620	+3,137	+3,549	+3,875	+3,935
70,000	−3,464	−1,741	−565	+505	+1,452	+2,231	+2,860	+3,420	+3,799	+4,065	+4,235
75,000	−3,464	−1,651	−405	+722	+1,692	+2,481	+3,100	+3,612	+4,015	+4,227	+4,29[illegible]
80,000	−3,464	−1,561	−260	+934	+1,932	+2,700	+3,340	+3,805	+4,135	+4,330	+4,344
85,000	−3,464	−1,471	−95	+1,129	+2,152	+2,900	+3,530	+3,997	+4,265	+4,352	+4,394
90,000	−3,464	−1,383	+100	+1,324	+2,332	+3,100	+3,695	+4,105	+4,329	+4,375	+4,394
95,000	−3,464	−1,298	+215	+1,512	+2,532	+3,300	+3,860	+4,210	+4,319	+4,394	+4,394
100,000	−3,464	−1,213	+360	+1,692	+2,700	+3,474	+4,015	+4,315	+4,369	+4,395	+4,395

Plus (+) figures show additional tax imposed if couple married, i.e., the amount of tax saved if couple not married. Minus (−) figures show tax cost of not being married.

2. The Fifty Percent Max-Tax

Built into these Tables is an effective stop on the upper limit of the MPT. This stop is provided by the fifty percent maximum tax[29] ceiling rate, applicable to personal service or "earned" income.[30]

If the taxable income on a joint return is $60,000 or more and if it is all earned income, the total tax will be equal to fifty percent of the total taxable income, less a flat $10,322. A single person with at least $41,500 of taxable income from earnings pays a tax of fifty percent of his taxable income, less a constant $7,358. Thus, the maximum adverse tax effect of marriage on two such single persons is determined by the difference between the total of the two $7,358 offsets they have as single persons ($14,716) and the $10,322 offset they would get as a married couple filing jointly. This difference is $4,394 (Table II), which is the most marriage can cost if both spouses have worked up to the fifty percent bracket and have no unearned income.[31]

Married taxpayers who file separate returns are not permitted to use the fifty percent max-tax.[32] Therefore, when the personal service or earned income of such a taxpayer exceeds $30,000, his or her next dollar of such income will be taxed at fifty-four percent, until the rate jumps to fifty-nine percent for income over $42,800. In this case the marriage penalty tax results not only from the higher rate schedule applicable to married taxpayers filing separate returns but also to the failure of the fifty percent max-tax to put a brake on the progressivity of the rates.

3. The Additional Tax on Tax Preference Items

Congress has enacted an additional fifteen percent minimum tax[33] to be imposed on certain tax preference items.[34] In computing this minimum tax for an individual, the total of tax preference items is reduced by an exemption of the greater of $10,000 or one-half of the regular income tax for the year.[35] This $10,000 exemption is reduced to $5,000 for a married person filing separately.[36]

In addition to this minimum tax of fifteen percent, Congress has also provided for an alternative minimum tax in graduated rates of ten, twenty, twenty-five percent on an individual taxpayer's alternative minimum taxable income.[37] This tax is assessed only if it exceeds the regular tax. A married taxpayer who files a separate return is required to compute this alternative minimum tax by doubling his alternative minimum taxable income and then dividing the resulting alternative minimum tax in half.[38] The effect of this requirement is to impose a more steeply progressive rate for the computation of the alternative minimum tax on the taxpayer than would be imposed if he or she were single.

C. The Exclusions, Deductions and Credits Components

Some exclusions, deductions and credits are allowed to a married taxpayer only if he or she files a joint return or, for some provisions, lives apart from his or her spouse for the full year. Examples of this are the earned income credit,[39] the child and dependent care credit,[40] the exclusion of unemployment compensation[41] and the exclusion for certain disability payments.[42]

Other exclusions, deductions and credits have dollar ceilings.[43] Although two single taxpayers have between them two separate ceiling amounts for a particular exclusion, deduction, or credit, once they marry only one ceiling is allowed. In some cases, the ceiling for the deduction allowed is less than twice the ceiling for the deduction available to a single taxpayer. Examples of these two types of Code provisions are the zero bracket amount[44] (hereinafter referred to as the ZBA), the deduction for excess interest or investment indebtedness,[45] the deduction for moving expenses,[46] the deduction for capital losses[47] and the exclusion of gain from the sale of a residence.[48]

Several exclusions, deductions, or credits are limited by the taxpayers' income and are therefore decreased in amount or denied entirely for married taxpayers who file a joint return when their income is aggregated. On two single returns, each or at least one might qualify because he or she is below the income limit. Examples include the exclusions for unemployment compensation[49] and for disability payments,[50] the deduction for medical expenses[51] and the child and dependent care credit.[52]

1. Zero Bracket Amount

The ZBA is built into each of the four tax tables. An unmarried taxpayer has a ZBA of $2,300.[53] Two taxpayers cohabitating have two ZBA's of $2,300 apiece or $4,600. If they marry and file a joint return, their ZBA drops to $3,400.[54]

A taxpayer who qualifies as a surviving spouse is allowed a ZBA of $3,400.[55] If a married couple files separate returns, each is permitted a ZBA of only $1,700.[56]

2. The Earned Income Credit

The earned income credit may be claimed by married or surviving spouse taxpayers with a dependent child who lives with the taxpayer(s),[57] or by a head of household[58] with a child or descendant who is unmarried or a dependent, who lives with the taxpayer.[59] The credit is equal to ten percent of the earned income up to $5,000 or a maximum credit of $500.[60] This credit is phased out above $6,000 of income by a reduction of twelve and one-half percent of adjusted gross income, or, if greater, earned income over $6,000.[61] A taxpayer with an adjusted gross income or earned income of $10,000 or more is not entitled to the credit.[62]

The earned income credit cannot be claimed by married taxpayers unless they file a joint return.[63] If both spouses are otherwise ineligible for the credit and if each has $6,000 of earned income (which would give each a $500 credit), they cannot claim their credits on married filing separate returns. If they file a joint return, their income totals $12,000 so they are not entitled to the $1,000 worth of refundable credit and, in addition, will be required to pay federal income tax.[64]

3. Child and Dependent Care Credit

Married taxpayers must file a joint return in order to be able to claim the child and dependent care credit.[65]

which can reduce their federal income tax liability by as much as $800.[66] This credit is twenty percent of certain household services and child and dependent care expenses,[67] up to a maximum of $2,000 of expenses[68] if there is one qualifying child,[69] or other dependent or taxpayer's spouse who is physically or mentally handicapped,[70] and up to a maximum of $4,000 if there are two or more such dependents.[71]

The household and dependent care expenses cannot exceed the amount of the taxpayer's earned income.[72] If the taxpayer is married, the expenses which produce the credit cannot exceed the earned income of the lesser earner spouse;[73] unless he or she is a full-time student or physically or mentally handicapped.[74] If single, the income of the lesser earner would not lower the credit to the higher earner. In fact if single, one of the individuals would not even be required to have earnings.

4. <u>One-Time Exclusion of Gain from Sale of Home</u>

A taxpayer who is fifty-five years of age or older can exclude from gross income up to $100,000 of gain realized on the sale of a residence if it has been his or her home for three years or more during the five-year period ending on the date of sale.[75] If the taxpayer and spouse own the property jointly, only one of them need satisfy the age and home requirement.[76] A taxpayer who is married but filing separately is only entitled to a $50,000 exclusion.[77]

This is a once in a lifetime exclusion.[78] If the taxpayer has elected the exclusion either before marriage or jointly with his or her spouse, the spouse is foreclosed from electing the exclusion, even if the marriage is terminated by death[79] or divorce.[80] If single, each taxpayer would be entitled to a full $100,000 exclusion.

JOINT AND SEVERAL LIABILITY

Along with the privilege or detriment of filing a joint return, Section 6013 of the Code provides joint and several liability for the Federal income tax liability of married taxpayers filing jointly.[81] Where a return is filed by a married couple and one spouse does not pay the tax or fails to report all of his or her income, the other spouse is fully liable for the deficiency.

For many years courts were forced to apply this rule in the harshest fashion even though they realized its inequities.[82] Congress attempted to alleviate this situation in 1971 by enacting Section 6013(e) of the Code,[83] known as the "innocent spouse" provision.[84] Generally, this rule eliminates the tax liability for those individuals who signed a joint return and had no knowledge of the omission of income from or excessive deductions taken on the return.

Congress set forth several objective criteria to consider whether a person should be deemed to be an innocent spouse. Some of these criteria have caused results as harsh as the pre-1971 rules.

First, the innocent spouse rule provides that a joint return must be filed on which the omission of income attributable to one spouse is in excess of twenty-five percent of the amount reported as gross income.[85] Second, the spouse seeking relief must establish that he or she neither knew nor had any reason to know of the omission.[86] Third, the innocent spouse must prove that he or she did not significantly benefit, either directly or indirectly, from the omission of income and, therefore, that it would be inequitable to hold him or her liable for the deficiency.[87]

The legislative history of Section 6013(e) indicates that it was designed to bring tax collection practices into accord with the basic principles of equity and fairness.[88] Unfortunately, practice and principle are still poles apart. Many truly innocent spouses are denied relief and the additional taxes due are another form of an MPT.

Many of these problems arise from judicial construction of specific terms. What, for example, is an "omission"? When will it be "inequitable" to hold an innocent spouse liable? The answers are far from clear.

A. Knowledge on the Part of the Innocent Spouse

In order to be relieved from liability, the innocent spouse must establish that he or she had no actual or constructive knowledge of the omission from gross income. Where the spouse claiming innocence can be shown to have actual knowledge of this omission, such as knowing that income is being unreported, relief from liability will be properly denied.[89] But what happens when there is no actual knowledge?

Courts have gone out of their way to prove that the spouse claiming innocence had constructive knowledge; that is, should have known of the omission. But they are not very consistent in their approach. Facts in a case that are determined by one court to rule out constructive knowlege will be viewed by another court as sufficient to establish constructive knowledge.[90]

Constructive knowledge is as tangible as a will-o'-the wisp. Take the case of Ann J. Anderson[91] who argued that the innocent spouse rule shielded her from tax liability for the years 1969 and 1970. The Tax Court ruled that in 1969, she had neither knowledge nor reason to know of her husband's illegal activities. However, she was found to have such knowledge in 1970.

For several years Mr. Anderson had been embezzling money from his employer. None of the embezzled funds were put into an account over which Mrs. Anderson had any control; they were kept in his business checking account. Despite the embezzled funds, their standard of living had not improved in either year. From these facts, the court concluded that Mrs. Anderson had no knowledge of her husband's activities in 1969.[92]

In November of 1970, however, Mr. Anderson was indicted for embezzlement and pleaded *nolo contendere* in February, 1971. The plea of *nolo contendere* is not an admission of guilt and, because Mr. Anderson received a suspended sentence from a jail term, it seems clearly to have been a reasonable plea bargain on Mr. Anderson's part. The court placed great weight on the fact that Mrs. Anderson knew of her husband's activities upon his conviction, which did not occur until February, 1971. Therefore, the court reasoned, she had knowledge of the unreported income in 1970.[93]

Does an indictment alone give a spouse reason to know of omitted income? What if he or she can prove that no benefit was received? At first blush, a conviction would seem a solid indicator of reason to know of an omission of income. But what if the plea was bargained as <u>nolo contendere</u> to prevent a term in jail? The accused has not admitted any guilt. There are many reasons why an innocent person may plead no contest, not the least of which is to avoid the expense of future litigation.

The United States Court of Appeals for the Fifth Circuit added a new factor to consider in <u>Sanders v. United States</u>.[94] Even discounting unreported income of $30,000, the Sanders enjoyed a high standard of living. With the unreported income added to the reported income, however, they bought a new home, new cars, traveled to Las Vegas and bought a new condominium in the Bahamas.

The court stated that "one person's luxury can be another's necessity and the lavishness of an expense must be measured from each family's relative level of ordinary support".[95] Mrs. Sanders argued that she had no constructive notice of the unreported income because their standard of living had not changed; they would have made the purchases notwithstanding and had been living in that lifestyle for some time. The court agreed, holding her not liable for the deficiencies.

It appears that the person whose spouse might earn $15,000 a year, does not report an equivalent amount of income, and upgrades the couple's lifestyle will be charged with constructive knowledge of an omission of income. On the other hand, the person whose spouse might earn $50,000 a year, does not report $15,000, and does not increase the couple's standard of living will not be charged with constructive knowledge of an omission of income.[96]

The more difficult it is for the Internal Revenue Service to identify the true nature of a transaction leading to omitted income, the more willing courts should be to grant relief to an innocent spouse.[97] In <u>Robert L. McCoy</u>,[98] Mr. McCoy incorporated a business that had been operated as a partnership. The partnership's liabilities exceeded the basis of its assets, which under the federal income tax law results in income to the extent of such excess.[99] Mrs. McCoy knew of the existence of the business but did not actively participate in the business. She claimed that she was unaware of the tax consequences of incorporating a deficit partnership and, since the transaction did not realize a cash gain, has no reason to know of any income omitted from their joint return.[100]

Common sense would indicate that because the transaction was a complex one Mrs. McCoy would have no reason to know of the omitted income. But the Tax Court ruled otherwise: <u>"mere ignorance" of the tax consequences did not relieve her from</u>

liability.[101] This decision is completely at odds with other rulings which have held "a spouse can have knowledge of some of the facts related to the unreported income without being charged with knowledge of the income itself".[102] Many lawyers and corporate executives would not understand the tax consequences of such a transfer as took place in the McCoy case. How is a nonbusiness person spouse supposed to?

B. Omissions--The Twenty-Five Percent Rule

1. Omissions

In order for the innocent spouse to be relieved of liability, there must be omitted from gross income an "amount properly includable therein".[103] Thus, a finding of no omission prohibits any inquiry into the equities of a particular case. If there is any reference in the joint return to the income in question, there can be no omission. For example, a common argument made by taxpayers is that denial of a claim for a deduction should qualify as an omission. Courts have almost uniformly held that since the deduction is on the return, it cannot be said that the spouse claiming innocence was unaware of the omission or the invalidity of the deduction.[104]

Similarly, there are examples of omissions of income that are carried out to their extreme. In the case of Estate of Klein v. Commissioner,[105] Mr. Klein was a partner in a business with a net partnership income of approximately $90,845. This amount was listed in the partnership return because only the net income from the partnership is included on a taxpayer's income tax return. Technically, however, the gross income of the partnership is included in the partner's gross income, and if this larger number rather than the reportable net income is used, the omission would not amount to twenty-five percent of gross income.

In signing the joint income tax return, Mrs. Klein had no knowledge of the partnership business, had not reviewed the partnership return, had signed a return where partnership income was included as required at the net income figure of $90,845 (not actual gross income attributable to Mr. Klein of $1,106,896). Incredibly, the Tax Court[106] and the United States Second Circuit Court of Appeals[107] held her liable in spite of her lack of knowledge of this technicality in the reporting requirements. Read carefully the following statement of stipulated facts that the Second Circuit accepted in deciding the case:

> The parties stipulated that (Mrs. Klein) had met the further equitable requirements, namely, that <u>she did not know of, and had no reason to know of omission of income</u> . . ., and that, taking into account all of the other facts and circumstances, including whether or not she had benefited either directly or indirectly from the omission, <u>it would be inequitable to hold her</u>

> liable for the deficiency
> attributable to it . . ..
> (Emphasis supplied.)[108]

2. The Twenty-Five Percent Rule

Even if the amount in question is determined to be an omission, it must be in excess of twenty-five percent of the gross income reported on the joint return to exonerate the spouse.[109] Working with this fixed figure, courts have been forced to make mechanical and clearly ridiculous applications of the law.

In Wissing v. Commissioner,[110] Betty Wissing (formerly Mrs. Huelsman) was married to a man who had embezzled more than $100,000 over a three-year period from his employer. The Internal Revenue Service determined a deficiency in their 1963 joint income tax return of approximately $7,291, $2,027 in their 1964 return and $1,587 in their 1965 return. The United States Court of Appeals for the Sixth Circuit found the amounts omitted in 1963 and 1965 exceeded 25 percent of their gross income, but not in 1964. Therefore, Betty was liable for the 1964 deficiency, but not the 1963 and 1965 deficiencies.[111]

The court admitted that Betty had no knowledge of her husband's activities and did not derive any benefit from the embezzled funds.[112] But because she signed the joint return, she became jointly and severally liable for the federal income tax due on any omission less than twenty-five percent of their gross income.

C. The Significant Benefit Test

In order to determine whether or not it would be equitable to hold the claimant spouse innocent, courts look to see if he or she significantly benefited, whether directly or indirectly, from the omission.[113] For the most part, courts have been liberal in granting relief under this test. For example, the Tax Court in Patricia E. Mysse[114] held that a spouse did not receive a significant benefit from over $100,000 in unreported income which her husband had embezzled over a four-year period. The unreported income was used to pay the college education of two sons, to purchase five cars, a diamond ring and furniture and to make mortgage payments. The court found that any benefit she received from the funds constituted no more than ordinary support.[115] As ordinary support is not a significant benefit,[116] the petitioner was not liable for the unreported income.

However, in Edward J. Jedinak,[117] Mr. Jedinak was involved in a numbers game which netted him substantial amounts of income that he did not report on a joint return. Although Mrs. Jedinak knew of this activity, she had no knowledge of whether the income was reported or not. The court acknowledged that the amount in question exceeded the twenty-five percent test and that she did not know, nor had any reason to know, of the omission.[118]

Nevertheless, the court found her liable for the tax deficiency. It appears that the Jedinaks jointly purchased stocks with some of this unreported income. This was found to constitute a significant benefit to Mrs. Jedinak, even though the court conceded that the benefit may not be actually realized for years.[119] A similar result was reached in Martin S. Schneider,[120] where a home was jointly purchased by husband and wife, even though the wife had no knowledge that the home was bought with unreported income.

The inconsistency of the decisions in these cases is enormous. A woman who drives new cars and wears diamond rings is found to have received no significant benefit, but women who are joint owners in property where benefits may not actually be realized for many years are deemed to have benefited significantly. This does not appear to be what Congress had intended in enacting the innocent spouse rule.[121]

ALLOCATION OF INCOME IN COMMUNITY PROPERTY STATES

As previously explained, a taxpayer claiming to be an innocent spouse must have filed a joint return; but what happens in community property states when married couples file separate returns? In these jurisdictions, one-half of the income attributable to one spouse is includable in the income of the other spouse, even if separate returns are filed.[122] The Code states that "the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws . . . ."[123]

This section of the Code leads to interesting and frequently inequitable results. Consider the case of Mildred L. Fehland[124] (formerly Mrs. Vandiver). In 1967, her husband earned approximately $10,000 while Mildred earned approximately $3,300. Because of marital difficulties, they filed separate returns that year although residing together during the year. The Commissioner determined that since the Vandivers lived in Texas, a community property state, Mildred was liable for the tax on one-half of their adjusted gross community income, or approximately $6,800.

Mrs. Vandiver argued that because she had no control over her husband's income, she should not be liable. Furthermore, she filed a separate return and therefore was not liable for the tax on her husband's income.

The Tax Court rejected both arguments. In a community property jurisdiction, it noted, each spouse is liable for the tax on one-half of their combined income.[125] At the same time, she could not rely on the innocent spouse rule because she had not signed a joint return.[126] However, even the court had to admit: "(W)e realize that, given equal income interests vested in each spouse under the community property laws, certain inequitable situations that Section 6013(e) was designed to eliminate may very well arise if the spouses elect to file separately in community property states".[127] (Emphasis supplied.)

It can at least be argued that because the Vandivers were living together they were knowledgeable about each other's financial situation. But what about a situation where the spouses are living apart from one another?

In Bettie Jayne Coffman,[128] Mrs. Coffman was separated from her husband during the tax year in question. Except for the fact that she had filed a separate return, all other requirements of the innocent spouse test were met. Again, the Commissioner determined that she was liable for the tax on one-half of her husband's income. The Tax Court reluctantly agreed, holding that she could not invoke Section 6013(e) because separate returns were filed, yet was liable because Texas (their domicile) was a community property state. Again, another type of MPT is imposed on such taxpayers.

There is an old saying that everybody talks about taxes, but nobody does anything to improve them.[129] The extent of the problem is illustrated by the fact that the United States Court of Appeals for the Fifth Circuit was forced to adopt a rule contrary to all previous precedents to find an equitable way to solve problems similar to those just presented. The case of Bagur v. Commissioner[130] was a consolidation of two Tax Court cases: Aimee D. Bagur[131] and Barbara M. Hansen.[132] Both women were married and resided in Louisiana. The Fifth Circuit stated:

> The IRS asserts that an income tax is due by a wife on one-half of her husband's unreported earnings--although she may have been living separate and apart from her husband, had no control

> over his income, and no knowledge of what it was or where it went. The plaintiffs are <u>impoverished</u> victims of their husbands' profligacy. <u>The IRS has stripped clean one of the wives. The other is about to be stripped clean</u>. This horrendous result flows from Louisiana law, not federal tax law.[133] (Emphasis supplied.)

The facts are relatively simple. In <u>Bagur</u>, Mr. Bagur suffered extreme financial reverses in 1960. The court continued:

> Mrs. Bagur knew there were financial problems but she did not know their nature or severity; Mr. Bagur never discussed his income or expenditures with his wife. Mrs. Bagur testified that there was no communication between them, even in 1960 and 1961 when they shared a house. After 1962 they rarely saw each other. She had no checking accounts or credit cards and did not own an automobile. All household bills were sent to her husband's office.
>
> In 1962 the Bagurs' financial condition

worsened. They received still another notice to vacate the house. Electricity, telephone, and gas were shut off. From 1962 until 1968, when Mrs. Bagur obtained a divorce, the taxpayer and her husband maintained separate domiciles in Louisiana. Mrs. Bagur lived in grinding poverty, often with the utilities cut off, sometimes with not enough to eat. Her three school-age children gave her a little financial assistance from time to time. Mrs. Bagur's health was poor; she was arthritic, anemic, and undernourished. Ground down but attempting to keep her head up, she worked sporadically in 1962, 1963, 1965, and 1966. Mrs. Bagur estimated that during the seven tax years in question her husband paid about $10,000 for food, rent, and other necessities . . ..

The Commissioner reconstructed Mr. Bagur's net profit during 1960 through 1966 and assessed tax deficiencies against Mrs. Bagur based on one-half of her husband's taxable income. The Commissioner also determined that Mrs. Bagur was liable for the taxes on wages she received

> during 1962, 1963, 1965, and 1966. Because Mrs. Bagur earned these wages while living separately from her husband, they were separate property under Louisiana Law. La. Civ. Code Art. 2334. She was taxed, therefore, on the entire amount earned. The Commissioner also assessed penalties against Mrs. Bagur for failure to file income tax returns without reasonable cause, I.R.C. §6651(a); for negligent failure to pay income tax for the years 1960 through 1962, I.R.C. §6653(a); and for underpayment of estimated tax for 1962, 1963, and 1966, I.R.C. §6654. The total amount owing is $3,860.27. The Tax Court held Mrs. Bagur liable for all the taxes and penalties assessed against her.[134]

In <u>Hansen</u>, Barbara and Donald were married for twenty-eight years. In 1971, Donald Hansen received commissions of $34,500. The court continued:

> It was a windfall. What happened to the money is a mystery. The Internal Revenue Service was unable to collect the deficiency. At the hearing before

the Tax Court Ms. Hansen represented herself. Counsel for the IRS informed the court that Mr. Hansen had been in dire straits. Ms. Hansen added that her husband suffered from severe depression. We were informed during oral argument that Mr. Hansen had committed suicide.

Mr. Hansen was in charge of the household bills, many of which apparently went unpaid. He doled out cash to his wife to buy food and gasoline. She made "everything the (three) girls wore". (Tr. 10). As the daughters and two sons grew older they contributed small amounts to their support. In Lafayette Ms. Hansen had no credit cards. She gave up her checking account when her checks were returned for lack of sufficient funds. She signed her last tax return in 1963 when Mr. Hansen was salaried in Florida and she had a small job. When from time to time she questioned her husband about income tax returns, he used to say to her, "Don't worry about it. It's all taken care of." (Tr. 8). Ms. Hansen estimated that she and the children received about $3,400 from her husband in the form of payments on their house, food, gas, and automobile upkeep.

For the children's sake, Ms. Hansen put up with her husband until 1972, when her youngest child was in high school. Ms. Hansen then instituted separation proceedings. She left the marriage with only a few household goods--no cash, no securities, no automobile. The mortgagee foreclosed the mortgage on the home. Ms. Hansen now works for the local telephone company.

The Commissioner determined that Ms. Hansen owed taxes on one-half of the income, $34,500, her husband received in 1971. The Commissioner determined that Mr. Hansen incurred business expenses of $5,000 and decreased Ms. Hansen's share of the community income by $2,500. The tax deficiency assessed against her amounted to $3,064. The Commissioner also assessed various penalties for Ms. Hansen's failure to file returns and pay taxes. Before the Tax Court, however, the Commissioner conceded that the penalties were not applicable. In the Tax Court hearing, Judge Sterrett showed signs of reluctance to hold against Ms. Hansen. Nevertheless, in 1977 the Tax Court sustained the Commissioner's determination that Ms. Hansen owed taxes on one-half of her husband's earning in 1971. On March 6, 1978, the IRS notified Ms. Hansen that her wages were subject to a tax lien and would be seized to satisfy the deficiency.[135]

The decision by the Court of Appeals to remand the case back down to the lower courts represented a victory to the taxpayers. An intent to deprive a wife permanently of her share of community income, the court held, may be inferred from a husband's wanton appropriation of her community assets in pursuit of his own pleasure or needs.[136] The issue, the court stresses, is not whether the husband should be punished as a thief (which he could not under state law) but whether the wives should be allowed a tax loss as a victim of a theft under the federal tax laws.[137] All previous precedent required that you look to local criminal statutes or case law to define "theft" for federal income tax theft-loss purposes. Never has a court created a federal law of theft, something the Fifth Circuit found it had to do to prevent the injustices to the taxpayers before it.

The court ruled that it was for the lower courts to decide if the husbands had appropriated their earnings for their own purposes in such a way as to be equivalent to a theft of the wives' one-half of the earnings. If this were so, the wives would be able to deduct as a theft loss this amount, thereby reducing their one-half of the joint income to zero and incurring no tax liability.[138] Interestingly, to claim a theft loss, you must itemize your deductions. Wouldn't it be interesting to find a tax imposed because the taxpayer had insufficient itemized deductions?

In one motion the court established a method for community property taxpayers to escape liability for one-half of the community income. It took remarkable legal reasoning to reach a result that the overwhelming majority of people would consider an equitable result. How long must such machinations continue? It is certainly time for a legislative solution to avoid the problem faced by the Fifth Circuit,[139] which created a solution insupportable in precedent, possibly creating an even more dangerous precedent for other theft loss purposes.

CONCLUSION

It appears to this author that no one can be accused of crying "wolf" as a result of a request for an immediate legislative remedy to all aspects of the marriage penalty tax. The House Ways and Means Committee has held hearings on all these problems, and the Department of Treasury and Joint Committee on Internal Revenue Taxation have been working on solution. In the past few years, members of Congress have introduced many bills with alternative solutions to the problem.[140] It seems that the only thing to do is to urge the Department of Treasury and Congress to come to agreement on the most politically feasible of the alternative remedies.

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1. For an extended discussion on this subject see generally, Gerzog, The Marriage Penalty: The Working Couple's Dilemma, 47 Fordham L. Rev. 27 (1978); Bittker, Federal Income Taxation and the Family, 27 Stan. L. Rev. 1389 (1975); Blumberg, Sexism In The Code: A Comparative Study of Income Taxation Of Working Wives and Mothers, 21 Buffalo L. Rev. 49 (1971); Cooper, Working Wives And The Tax Law, 25 Rutgers L. Rev. 67 (1970).

2. Revenue Act of 1913, ch. 16, 38 Stat. 114.

3. Note, Federal Income Tax Discrimination Between Married And Single Taxpayers, 7 U. Mich. J. L. Ref. 667, 671 (1974) (hereinafter cited as Federal Income Tax Discrimination).

4. Present community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

5. Federal Income Tax Discrimination, supra note 3 at 672.

6. 281 U.S. 111 (1930).

7. 282 U.S. 101 (1930).

8. Surrey, Federal Income Taxation of the Family - The Revenue Act of 1948, 61 Harv. L. Rev. 1097, 1105-06 (1948).

9. Hopkins v. Bacon, 282 U.S. 122 (1930) (Texas); Bender v. Pfaff, 282 U.S. 127 (1930) (Louisiana); Goodel v. Koch, 282 U.S. 118 (1930) (Arizona); and United States v. Malcolm, 282 U.S. 792 (1931) (California).

10. Revenue Act of 1948, ch. 168, 62 Stat. 110.

11. Gerzog, supra note 1 at 29.

12. Id. at 30. But see, H. Groves, "Federal Tax Treatment of the Family" (1963). Professor Groves states that "based on 1960 figures, 63% of the joint returns with taxable income benefit from income splitting to the extent of $40.00 or less . . .. Only 17% of all returns received significantly more than $40.00 in benefits - those with a joint income above $9,000."

13. Revenue Act of 1951, ch. 521, Sec. 30(a), 53 Stat. 6 (codified at Internal Revenue Code of 1954, Sec. 2(b)). (All subsequent references are to the Internal Revenue Code of 1954, hereinafter referred to as the Code).

14. Children are defined as a son, daughter, stepson or stepdaughter. Code Sec. 2(b)(1)(A)(i); Treas. Reg. Sec. 1.2-2(b)(3)(i).

15. Other dependents are defined at Code Sec. 2(b)(1)(A)(ii); Treas. Reg. Sec. 1.2-2(b)(3)(ii).

16. Legislative Proposals Relating to the Comparative Income Tax Treatment of Married Couples, Single Persons and Heads of Households: Hearings Before The House Ways and Means Committee, 96th Cong., 2d Sess. (1980) (Statement of Mary Moers Wenig) (Hereinafter referred to as 1980 Hearings).

17. Federal Income Tax Discrimination, supra note 3 at 667. See, Code Sec. 2(b)(1)(B).

18. Code Secs. 1(a) and 2(a).

19. Tax Reform Act of 1969, Pub. L. No. 9-172, Sec. 803, 83 Stat. 487 (codified at Code Sec. 1(c)).

20. 1980 Hearings, supra note 16 at 4.

21. Code Sec. 1(d). See Bittker, supra note 1 at 1429.

22. 1980 Hearings, supra note 16. The material in this section is taken from Professor Wenig's statement before the House Ways and Means Committee. It is used with her permission. See also, Wenig, Marital Status and Taxes, ch. 5 of Douthwaite, "Unmarried Couples and the Law", Allen Smith Company (1979).

23. See, Treas. Reg. Sec. 1.6013-1(a)(1).

24. This higher tax rate has been held constitutional, there being neither a violation of due process nor an impermissible burden on the fundamental right to marry. Johnson v. United States, 422 F. Supp. 958 (D.C. Ind. 1976), aff'd sub nom. Barter v. United States, 550 F.2d 1239 (7th Cir. 1977), cert. den. 434 U.S. 1012 (1977). The same effect, Mapes v. United States, 576 F.2d 896 (Ct. Cl. 1978), cert. den. 439 U.S. 1046 (1979).

25. See also, Richards, Discrimination Against Married Couples Under Present Income Tax Laws, 49 Taxes 526 (1971). Richards divides these provisions into four categories: 1) imposition of higher tax rates; 2) denial of equal deductions, credits, or exemptions; 3) substitution of one spouse in place of another; and 4) penalty on inter-spousal relationships.

26. Code Sec. 267(a)(1), (b)(1) and (c)(4).

27. Richards, supra note 25 at 530. See, Code Sec. 267(a)(2).

28. The Tables in this article are taken from Wenig, supra note 16.

29. Code Sec. 1348.

30. Code Sec. 1348(b); Treas. Reg. Sec. 1.1348-3.

31. See, Hall, The Working Woman and the Federal Income Tax, 61 A.B.A.J. 716 (1975). It seems unlikely, however, that a couple who each earn $41,500 of income would have no unearned income to increase the MPT.

32. Code Sec. 1348(c).

33. Code Sec. 56.

34. These items include adjusted itemized deductions, accelerated depreciation on real property, accelerated depreciation on leased personal property, amortization of certified pollution control facilities, amortization of railroad rolling stock, stock options, reserves for losses on bad debts of financial institutions, depletion, capital gains, amortization of child care facilities, and intangible drilling costs. See Code Sec. 58.

35. Code Sec. 56(a).

36. Code Sec. 58(a).

37. Code Sec. 55.

38. Code Sec. 55(a). Alternative minimum taxable income is defined at Code Sec. 55(b).

39. Code Sec. 43.

40. Code Sec. 44A.

41. Code Sec. 85.

42. Code Sec. 105(d).

43. See also, Richards, supra note 25 at 527-28.

44. Code Sec. 63(d).

45. Code Sec. 163(d).

46. Code Sec. 217.

47. Code Sec. 1211(b).

48. Code Sec. 121.

49. Code Sec. 85.

50. Code Sec. 105(d).

51. Code Sec. 213.

52. Code Sec. 44A.

53. Code Sec. 63(d)(2).

54. Code Sec. 63(d)(1)(A). Two single taxpayers living together with no children and each earning $10,000 would have an aggregate tax liability of $2,364. If the same two taxpayers were married and filed a joint return, their tax liability would be $2,759.

55. Code Sec. 63(d)(1)(B).

56. Code Sec. 63(d)(3). If two single taxpayers are cohabitating, one can itemize his or her deductions while the other uses the ZBA. This option is not available if the taxpayers are married and filing jointly.

57. Code Secs. 43(c)(1)(A)(i) and (ii); Treas. Reg. Secs. 1.43-2 (c)(1)(i)(A) and (B).

58. Code Sec. 43(c)(1)(A)(iii); Treas. Reg. Sec. 1.43-2(c)(1)(i) (C).

59. Treas. Reg. Sec. 1.43-2(c)(1)(i)(C).

60. Code Sec. 43(a).

61. Code Sec. 43(b)(2).

62. Treas. Reg. Sec. 1.43-2(b)(1).

63. Code Sec. 43(d); Treas. Reg. Sec. 1.43-2(2). Cf., Brooks v. Commissioner, 42 AFTR2d 78-6022, ——— F. Supp. ———.

64. Assume taxpayers A and B are unmarried, each have one dependent child and each has an adjusted gross income of $6,000. It is possible that each qualifies as a head of household. Certainly, one would be able to qualify. Assuming both quality, the 1979 tax liability for A is $235, against which is allowed the $500 earned income credit, producing a refund for A of $265. The figures are the same for B. If they marry, they would receive no credit and would owe an annual tax of $698. Their annual tax cost of marriage amounts to $1,228, more than ten percent of their combined incomes.

65. Code Sec. 44A(f)(2); Treas. Reg. Sec. 1.44A-3(a).

66. See, e.g., Garfield, Available Techniques to Help a Married Couple Save Income and Estate Taxes When Both Work, 7 Taxation for Lawyers 186 (1978).

67. Code Sec. 44A(a). Household services are defined in Treas. Reg. Sec. 1.44A-1(c)(2).

68. Code Sec. 44A(d)(1).

69. Code Sec. 44A(c)(1)(A).

70. Code Secs. 44A(c)(1)(B) and (C). Physical and mental incapacity is defined in Treas. Reg. Sec. 1.44A-1(b)(4).

71. Code Sec. 44A(d)(2).

72. Code Sec. 44A(e)(1)(A).

73. Code Sec. 44A(e)(1)(B).

74. Code Sec. 44A(e)(2).

75. Code Secs. 121(a) and (b).

76. Code Sec. 121(d)(1).

77. Code Sec. 121(b)(1).

78. Code Sec. 121(b)(2).

79. However, if the surviving spouse has remarried at the time of the sale or exchange, or if the election made by the deceased spouse is in effect with respect to any other sale or exchange, the surviving spouse may make the election. Treas. Reg. Sec. 1.121-5(b)(1).

80. Treas. Reg. Secs. 1.121-2(b)(1)(ii) and (b)(2) Example (1).

81. Code Sec. 6013(d)(3).

82. In Scudder v. Commissioner, 48 TC 36 (1967), rev'd on other grounds 405 F.2d 222 (6th Cir. 1968), the court stated:

> Although we have much sympathy for petitioner's unhappy situation and are appalled at the harshness of this result in the instant case, the inflexible statute leaves no room for amelioration. It would seem that only remedial legislation can soften the impact

> of the rule of strict individual liability for income taxes on the married women who are unknowingly subjected to its provisions by filing joint returns. 48 TC at 41.

The court in Huelsman v. Commissioner, 416 F.2d 477, 481 (6th Cir. 1969) added:

> On the subject of remedial legislation, it may be assumed, we think, that Congress does not desire that the tax laws, as presently written, be interpreted so as to inflict an appallingly harsh result on an innocent person.

83. Code Sec. 6013(e). Spouse Relieved of Liability in Certain Cases ——

> (1) In general. ——Under regulations prescribed by the Secretary or his delegate, if——
>
> > (A) a joint return has been made under this section for a taxable year and on such return there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return,
> >
> > (B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such ommission, and
> >
> > (C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission,
>
> then the other spouse shall be relieved from liability for tax (including the interest, penalties, and other amounts) for such taxable year to the extent that such liability is

attributable to such omission from gross income.

(2) Special rules.—For purposes of paragraph (1)—

(A) the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws, and

(B) the amount omitted from gross income shall be determined in the manner provided by section 6501(e)(1)(A).

84. The innocent spouse rule is a favorite topic of both law reviews and tax journals. See, e.g., Panny and Faust, The Innocent Spouse Provisions of the Internal Revenue Code: In Search of Equity, 32 U. Miami L. Rev. 137 (1977) (hereinafter referred to as Innocent Spouse Provisions); Note, The Innocent Spouse Rule, 12 Willamette L. J. 591 (1976); Goldstein, When Can One Spouse Avoid Responsibility for the Tax Liability of the Other Spouse? 5 Taxation for Lawyers 300 (1977).

85. Code Sec. 6013(e)(1)(A).

86. Code Sec. 6013(e)(1)(B).

87. Code Sec. 6013(e)(1)(C).

88. United States v. Dioguardi, 350 F. Supp. 1177 (E.D.N.Y. 1972).

89. Altman v. Commissioner, 475 F.2d 876 (2d Cir. 1973); Raymond H. Adams, 60 TC 300 (1973); Herbert I. Joss, 56 TC 378 (1971); Theresa Mantone, 37 TCM (CCH) 1047 (1978); and Philomena C. Dosek, 30 TCM (CCH) 688 (1971).

90. Compare, Gladys B. Teplitz, 37 TCM (CCH) 229 (1978) (wife liable for omissions from gross income. She should have known about husband embezzling funds when he purchased home, houseboat and car) with Sanders v. United States, infra note 94 (wife not liable for unreported funds embezzled by husband even though he bought a home, condominium and cars) and Frederic Enterline, T.C. Memo 1980-200, Doc. No. 80-4088 (similar). See also, Ann E. Bonhag, 40 TCM (CCH) 250 (1980) and Leonard Jackson, 72 TC 356 (1979).

91. 34 TCM (CCH) 508 (1975).

92. Id. at 513.

93. Id. at 515. But see, Anthony Grosso, T.C.M. 1980-186, Doc. No. 80-3503.

94. 509 F.2d 162 (5th Cir. 1975).

95. 509 F.2d at 168.

96. See, Patricia E. Mysse, 57 TC 680 (1972).

97. Cf., Innocent Spouse Provisions, supra note 84 at 150-51.

98. 57 TC 732 (1972). Compare, George H. Carter, Jr., 36 TCM (CCH) 1295 (1977).

99. Code Secs. 375(b) and (c).

100. Innocent Spouse Provisions, supra note 84 at 154.

101. 57 TC at 734.

102. Innocent Spouse Provisions, supra note 84 at 154, citing Patricia S. Hayes, 34 TCM (CCH) 976 (1978) and Patricia E. Mysse, supra note 96.

103. Code Sec. 6013(e)(1)(A). See, Rodman v. Commissioner, 542 F.2d 845 (2d Cir. 1976) and Ann B. Resnik, 63 TC 524 (1975).

104. Innocent Spouse Provisions, supra note 84 at 155, citing Gordon J. Hyde, 64 TC 300 (1975); William J. Jacobs, Jr., 33 TCM (CCH) 379 (1974); and Georgiana Spaulder, 31 TCM (CCH) 723 (1972). See also, Howard B. Quinn, 62 TC 223 (1974).

105. 537 F.2d 701 (2d Cir. 1976). But see, Jennie Allen, 35 TCM (CCH) 1626 (1976).

106. 63 TC 585 (1975).

107. 537 F.2d 701 (2d Cir. 1976).

108. 537 F.2d at 702. See, Klayman v. Commissioner, 39 TCM (CCH) 277 (1979).

109. Code Sec. 6013(e)(1)(A).

110. 441 F.2d 533 (6th Cir. 1971).

111. Id. at 535.

112. Id. at 534. See also, Sam Shapolsky, 31 TCM (CCH) 260 (1972).

113. Code Sec. 6013(e)(1)(C). See, Dakil v. Commissioner, 496 F.2d 431 (10th Cir. 1974); Joseph D. Kwong, 65 TC 959 (1976); Blaine S. Fox, 61 TC 704 (1974); and Herbert C. McManus, 31 TCM (CCH) 999 (1972).

114. 57 TC 680 (1972).

115. Id. at 699.

116. Treas. Reg. Sec. 1.6013-5(b).

117. 37 TCM (CCH) 965 (1978).

118. Id. at 967.

119. Id. at 973. See also, Raymond H. Adams, supra note 89.

120. 36 TCM (CCH) 751 (1977).

121. But see, S. Rept. No. 91-1537 (1970), 1971-1 C.B. 606, 608 (inherited property received which is traced to items omitted from gross income is a significant benefit).

122. Innocent Spouse Provisions, supra note 84 at 140. See, Mary Lou Galliher, 62 TC 760 (1974) and Jessie R. Williams, 35 TCM (CCH) 1591 (1976).

123. Code Sec. 6013(e)(2)(A).

124. 34 TCM (CCH) 1312 (1975).

125. Id. at 1313.

126. Id. at 1314-15.

127. Id. at 1315.

128. 33 TCM (CCH) 1416 (1974). See also, Kathleen M. Williams, 38 TCM (CCH) 718 (1979).

129. See, United States v. Mitchell, 403 U.S. 190 (1971).

130. Bagur v. Commissioner, 603 F.2d 491 (5th Cir. 1979). A large portion of the facts of the case are quoted to provide the reader with the potential travesty that might have occurred to two destitute women.

131. 66 TC 817 (1976).

132. 36 TCM (CCH) 684 (1977).

133. 603 F.2d at 494.

134. Id. at 495-96.

135. Id. at 496-97.

136. Id. at 502-03.

137. Id. at 502.

138. Id. at 503.

139. See, Potgieter-Hoff, Why Tax a Separated Spouse on Community Income Which She Does Not Receive?, 7 Community Property Journal 61 (1980). (A discussion involving the proposed Code section 66 which would make earned income taxable to the spouse who earned it).

140. Between 1975 and 1977, nineteen bills were introduced in Congress in response to the complaints generated by the MPT. Gerzog, supra note 1 at 40, n. 89. See also, Potgieter-Hoff, supra note 139.

August 1, 1980

Mr. Michael Stern
Staff Director
Committee of Finance
Room 2227
Dirksen Senate Office Building
Washington, D. C. 20510

Dear Sir:

We are in support of the proposed legislation which will allow married couples to have an option to file their income tax returns as a single person.

We believe that the law as structured at the present time is unfair to married people. Please do all that you can to rectify this situation.

Very truly yours,

Mr. & Mrs. [illegible]

Denver L. Hicks

Charles L McNairy

Mr. & Mrs. Allen K. Mease

Mr. & Mrs. Bert Wells

Patrick D. Hogan

Mr. and Mrs. Michael D. Thompson

Mr & Mrs. Kevin Jay Snyder

Mr & Mrs Edward J. Sauer

Mr. & Mrs. Joseph J Robbi[illegible]

EXAMINATION OF THE LEGISLATIVE PROPOSALS RELATING TO THE COMPARATIVE INCOME TAX TREATMENT OF MARRIED COUPLES AND SINGLE PERSONS

Lynda Sands Moerschbaecher

I. The Problem

Since 1969 millions of married taxpayers have been penalized by an unintended consequence of other tax reform. Presently, 38 million taxpayers are penalized by reason of aggregation of their wage with that of their spouse, which when taxed at our progressive rates causes them to pay more than twice the amount each would have paid separately on his or her own earnings. This figure of 38 million does not include the married taxpayers suffering the "marriage penalty" by reason of reduced or halved deductions, credits and exclusions or by reason of filing as "married filing separately," or 15 million single taxpayers who may pay the "singles tax."

The present law is not neutral in its effect on taxpayers' decisions. The marriage penalty resulting from the 1969 reform has served as a disincentive to marriage and an incentive to cohabitation, an incentive to divorce, and a disincentive to reentry of the second spouse into the job market. There is no reason for a tax provision to affect such personal and fundamental decisions as marriage, divorce, and employment. These decisions are affected by a tax provision which is not only arbitrary, but unconsidered and unintended.

The present law is not fair. It is in fact burdensome and unreasonably harsh to a large segment of society which pays an estimated $11 billion for the "privilege" of being married with both spouses working. And although it reduced the singles tax by limiting the amount of tax a single could pay to 120% of the tax of his counterpart married earner, a 20% additional tax burden on the single cannot be called fair.

In 1969 we moved from two rate schedules to four with troublesome definitions attached to some and inexact lines distinguishing all.

The cause of this state of affairs is taxation based on marital status, and in particular, the concept of joint filing. The present law favors highly the "traditional" American family where the husband works and the wife does not. However, this segment of our population has decreased to about 25.6% of American families. Sixty percent of American families had two or more wage earners in the fourth quarter of 1979, according to a report recently published by the Bureau of Labor Statistics, U.S. Department of Labor. The average two-income married couple earned $509 per week, or $26,468 per year. The marriage penalty tax for this average couple representing 60% of American families ranges from about $300 to $676.

Mandatory joint filing should be eliminated for several reasons (no alternative presently exists when married filing separately rates are so much higher and deductions, credits and exemptions are halved or reduced).

(1) It causes an "inefficient" tax to be placed on the second earner of a married couple. An "efficient" tax should not be so burdensome as to affect and distort a taxpayer's other decisions. Aggregation of income of two earners at progressive rates has the following effect:

If only one spouse works and earns $15,000 the tax liability is $1,635. If the other spouse begins to work at a salary of $15,000, their total tax increases to $5,593. The second earner is taxed $3,958 on his or her $15,000 as compared to the tax of $1,635 imposed upon the first.

Is this the intention of Congress? It is unduly burdensome and harsh. It is obvious that the tax burden on individuals changes arbitrarily with a wedding ceremony.

(2) It does not recognize the socioeconomic reality that 57% of all women 20 years and older are in the work force and that a group representing only 25.6% of families are singled out for preferential treatment.

(3) The joint return liability has caused spouses undue hardship time and time again. The relief provisions are very restrictive.

(4) From the point of view of the singles tax no valid tax policy or reason exists for allowing a hypothetical income split with a spouse, usually a wife, where no real split of income or control of assets has occurred. The single earner with $25,000 income is disadvantaged as compared to the married earner with $25,000 income whose spouse earns nothing. Additional family responsibility is best recognized through deductions, exemptions or credits. The effect is then to help the individual without causing a widespread penalty to many others.

(5) Most important, Congress did not legislate a marriage penalty or a single penalty through mandatory joint filing. These are the unforeseen results of other reform.

Some commentators defend the status quo, and in particular the joint return for marrieds, by citing the "principle" in the tax law of aggregation--or that the couple is the appropriate taxing unit, in disregard of the individuals. Therefore, couples with equal income, disregarding who earned it or in what proportion, should be taxed equally. For example, if a husband earns $25,000 and his wife earns zero, they should pay the same amount of tax as the husband who earns $15,000 whose wife earns $10,000.

The underlying question one must ask before accepting this "principle" is "who is the proper taxpayer--the individual or the couple?" Those in favor of joint filing argue that the married couple is the entity to be taxed because they in fact pool their income. They enjoy it in common, spend it or save it in common. Thus, the joint filing rule makes the user of income the taxpaying entity. As one commentator has stated, "No one can be convinced by, or even understand, the arguments for joint filing unless he or she is willing to at least discuss the possibility of taxing individuals on the basis of income they enjoy, rather than on the income they earn." (Emphasis added).

The theory of the taxation of use of income, or a consumption tax, is indeed a valid economic concept. However, since 1913 the Internal Revenue Code Subtitle A, Income Taxes, has been premised on the taxation of the entity earning the income. With the exception of the eleven years from the time that I.R.C. §1(a) was enacted in 1969 (joint filing based on aggregated income) to present, the scheme of income taxation has been consistent--the earning entity is taxed, whether it is a corporation, the partners of a partnership, a trust, a single individual, even married persons filing jointly until 1969 (income was not aggregated as it is today), heads of households, surviving spouses and marrieds filing separately.

The concept of sharing of income and using it in common is an economic theory. It is not invalid or wrong; it is simply not the theory on which our entire tax system is based. Our income tax system historically and consistently has taxed income to the earner and not to the user. Joint filing for married couples, then, based on an aggregation of income, is an anomaly in our system.

If comprehensive tax reform changed our system to one of taxation of users of income, or a consumption tax, and all categories of taxpayers were taxed on the basis of their pooling of resources and their beneficial enjoyment of income, then the aggregation concept for married couples may be acceptable. In that case, however, the adult child supporting the elderly parent, the cohabitators sharing income and expenses (even roommates), the wealthy head-of-household supporting a wealthy child, perhaps even partners to some degree, and any other persons with pooling arrangements would be required to aggregate their income.

Economic theory does not always make good tax law.

II. Goals of Tax Reform

In the summer of 1969, the Arkansas Law Review published an article by the then Chairman of the Committee on Ways and Means, U.S. House of Representatives, Wilbur D. Mills, entitled "Some Dimensions of Tax Reform." In that article Wilbur D. Mills outlines some of the standards that the Committee on Ways and Means intended to apply to the many recommendations for tax reform received by the Committee that year. His standards are equally applicable today. He outlined them as follows:

1. The reason for having a tax system.

   In the long run, it is simply to raise the necessary revenue to pay for the services of the federal government.

2. The smaller the tax base, the higher the rates.

   A broad base is essential because only by spreading the tax load as widely and fairly as possible can we obtain the necessary revenue without seriously undermining incentives to work and to invest.

3. Neutrality.

Our tax system should be as nearly neutral as possible in its effect on decisions made by taxpayers, which should be made based upon the economics of the marketplace rather than on some arbitrary provision written into the tax structure. Certain overriding considerations may bring out limited exceptions to this rule, such as maintaining and encouraging investment.

4. Fairness.

Tax reform cuts both ways. Whereas inequities have developed in relation to the government in the form of so-called "loopholes," we must also bear in mind that inequities inevitably develop in relation to fairness from the standpoint of the taxpayer in the form of burdensome and unreasonably harsh provisions.

5. Simplicity.

In trying to achieve fairness with regard to particular problems, or in trying to alleviate hardships which have developed, we often end up with a very extensive and complex sounding provision which adds to the total length of the Internal Revenue Code.

Again we are at a point when the public interest in tax reform is intensified. The goals of reform as enunciated by Mills should be applied to the current legislative proposals for tax reform as relating to the comparative treatment of marrieds and singles.

III. Current Legislative Proposals

The bulk of the current proposals before the House of Representatives provide the following solutions to the disparate treatment of marrieds and singles: (1) a deduction to alleviate the marriage penalty (Fisher, H.R. 6203 and Conable, H.R. 6822); (2) a credit to alleviate the marriage penalty (Patten, H.R. 6798 and Ullman, H.R. 7015; (3) elective filing as unmarrieds for married persons (Fenwick, H.R. 3609, Quillen, H.R. 1095, Robinson, H.R. 684, Roe, H.R. 3085, McDonald, H.R. 2553, Quayle, H.R. 3386, Hagedorn, H.R. 4696, and Kemp, H.R. 5815); (4) the use of the unmarrieds' schedule for marrieds filing separately (Hyde, H.R. 4884 and Symms, H.R. 6028, Act Sec. 402); and (5) use of one rate schedule for all individuals (Annunzio, H.R. 108, LaFalce, H.R. 6209, Green, H.R. 1295, Roe, H.R. 3077, Collins, H.R. 207, Hammerschmidt, H.R. 1390, Fary, H.R. 1936, Addabbo, H.R. 2268, Bouquard, H.R. 2916, Minish, H.R. 3256, McDade, H.R. 4467, and Hagedorn, H.R. 4695).

(1) Deduction

A deduction is proposed in a specific amount to offset the marriage penalty tax, a percentage of the lower wage-earner's income, allowed up to a specific ceiling. For example, a deduction of 10% of the lower wage up to a maximum of $2,000.

One advantage of this proposal is the recognition that a problem exists. Another advantage is that a deduction is easily understood by taxpayers.

The disadvantages, however, strongly outweigh the minimal advantage of this proposal.

It does not eliminate the cause of the problem--filing based upon marital status. It does not help achieve marriage neutrality in any way and, therefore, still causes the distortion of taxpayers' decisions as described in Mills' standard of neutrality.

In terms of dollar relief, it does little to correct the marriage penalty tax. The amount of relief chosen is arbitrary and varies from taxpayer to taxpayer. Please refer to Table 1 for the amount of uncorrected penalty remaining at various income levels.

In the case of the average couple with two earners (Bureau of Labor Statistics) where the lower income is 30%, the amount of correction is 40% of the penalty. The same couple whose incomes are distributed 60% to one earner and 40% to the other enjoys a correction of only 30%, as does the couple whose incomes are evenly split. A quick examination of the "% of Correction" column shows corrections ranging from 14% to 40%. The variation in relief has no apparent rational basis and does not even correct the problem halfway in any case.

It perpetuates an aggregation of income at progressive rates. In addition, it is "unfair" by the Mills' standards because it does nothing to help the singles predicament while still favoring married one-earner families and giving some slight relief to marrieds with two earners.

(2) Credit

A credit of 10% of the lower wage up to a $500 maximum is proposed. The proposal requires coordination of this credit with other existing credits.

The advantage to the credit proposal is that, in addition to recognizing a problem, it extends greater relief to a larger number of taxpayers.

However, the credit proposal bears many of the same flaws as the deduction proposal--no effect on the root cause of the marriage and single penalties, and arbitrary amounts. Although a credit is generally seen as "fairer" than a deduction because of the dollar for dollar offset, at some levels it creates a "marriage bonus" because it overcompensates. In the other cases, it does not correct enough to offset the penalty. (Where a "marriage bonus" occurs, it serves only to aggravate the remaining singles tax problem and it is unfair to all other taxpayers to favor a small group of marrieds.) Please refer to Table 2.

An examination of the "% of Correction" column shows a range of correction from 10% to 246%. Certain configurations of combined income of up to $30,000 (although not all) enjoy the "marriage bonus." The average two-earner couple (Bureau of Labor Statistics) enjoys relief ranging from 74% where income is split evenly to the marriage bonus position of 150% where the income is split 70%-30%.

(3) Elective Filing as Unmarried for Married Taxpayers

The proposal to permit married couples to elect the unmarried rate schedule if they file separate returns has gained considerable support within Congress. The advantage to this proposal is that it recognizes the root cause of the problem of the marriage penalty tax--the aggregation of income and the taxation of marrieds based on their marital status. It recognizes by the election provided that in some cases joint filing is advantageous and in others it is disastrous. It does not hold sacred the very new and inconsistent concept of aggregation of married persons' income (or, in other terms, the time-worn and sociologically effete concept of loss of individual identity when one marries).

Thus, if two wage earners decided to marry and continue working, they could elect to file as if single and not face the extra cost of marriage now present in the tax law. On the other hand, if the same couple decided to marry and the wife decided to stay home to raise a family, they could elect to file jointly for the benefits appurtenant thereto. Thus, the tax law would not operate to distort a taxpayer's other decisions.

However, a disadvantage is that the single earner with an income equal to that of the husband whose wife decides to stay home is as penalized as he was before--solely because he has chosen to remain single (perhaps he had no choice in the matter).

Another so-called disadvantage is that married couples will have to calculate their tax both ways to determine the better mode of filing. (The savings of hundreds or thousands of dollars seems worth the extra time spent.)

The Report of the Action Group on the Marriage Tax Penalty to the Tax Subcommittee of the Interdepartmental Task Force on Women views elective single filing as a viable first step toward eventual individual filing.

See the discussion under (5), infra, for points of concern regarding the allocation of income, deductions, credits, etc.

(4) Use of unmarrieds filing schedule for marrieds filing separately.

This proposal is basically the same as the marrieds' elective filing as single, except that no election need be made. The married filing separately schedule is simply eliminated and the heading to §1(c) is rewritten to include unmarrieds and marrieds filing separately.

(5) Individual filing with one rate schedule.

The proposal to return to "pre-1948" individual filing is a simple, direct approach to achieve equity among taxpayers while providing a consistent underlying theory and rationale--that income is taxed to the one who earns it. All but one rate schedule in §1 would be repealed (except for the schedule for trusts and estates which is not at question here). All taxpayers then would file a return based on the income he or she has earned or received and would be taxed at the same rate.

Family responsibility would be handled by deductions, exemptions, or credits, not a proliferation of rate schedules. As we have witnessed over the years since 1948, whenever another group disadvantaged by the tax laws is identified, there is much pressure put to members of Congress for a change in their favor. So far the changes have been accomplished by adding new rate schedules. In turn the new rate schedules have created another disadvantaged group. It is time to recognize that additional rate schedules are not the proper means of differentiating family responsibility or need.

The objections to the proposal are as follows:

(a) It is said the proposal ignores the principle of aggregation or the concept of sharing of income. As discussed above, this view reflects an economic benefit theory foreign to the remainder of our tax laws. The "principle" did not emerge in tax commentaries until sometime after the fact of aggregation was discovered. Therefore, it is not sacred. And when unfair and harsh, it must be removed from tax policy. The couple is not a proper entity or tax unit; the individuals earning the income are proper tax units. No compelling reason exists to force one wage earner and two wage earners to pay the exact same tax simply because what they have in common is having said "I do."

(b) The taxpayers in community property states will have an advantage. With respect to community property laws in eight states, proposals for single filing or elective single filing disregard the automatic income-splitting of the state law. In 1930, Poe v. Seaborn, 282 U.S. 101, gave effect to community property laws for federal tax purposes. However, in 1945 in

Fernandez v. Wiener, 326 U.S. 340, the Supreme Court held that a federal definition of property could supersede the state definition for federal tax purposes. The federal tax laws can also adopt a federal definition of income and, in fact, have done so in other sections of the Code where community property is disregarded (ERISA, FICA, certain innocent spouse rules).

Ideally the tax law would recognize the income-splitting of community property and permit it where the state's community property laws bear economic substance and reality by granting actual ownership and control to both spouses (as does California law since 1975, and others). Thus in states of actual joint ownership and control, the concept of taxing the income to the one who earns it or the income from the property to the one who owns it is not violated by the 50-50 community property split.

(c) The possibility of "bedchamber transactions," or a shift of investment income to the lower bracket spouse is handled quite simply either in the elective single filing or required single filing proposals. Income from property is taxed to the title holder of the property. A presumption could also be made of a 50-50 split if that were desirable. Expenses attributable to the property would be handled in the same manner as the income.

(d) The necessity of "intraspousal booking" to allocate the various deductions, credits and exemptions is cited as an objection. It is simply not true. For either the elective or required single filing, deductions not attributable to property can be split 50-50, or pro rata based on earned income, or even as the couple sees fit.

(e) The administration of this system is termed difficult. However, the matching of incomes, deductions, credits, etc. can easily be done on a combined individual return as now used in New York, Wisconsin, Virginia and the District of Columbia. Spouses report on the same form, but separately in individual columns.

(f) It is said that a return to single filing is not politically feasible. The revenue loss is the main reason given. The present proposals all call for a move to the lowest rates, the joint return rate. However, as Professor Boris Bittker, Yale University School of Law, has pointed out, a gap may be narrowed from either end. This does not necessarily mean a raise in tax liability for married earners whose spouses have no income. Adjustments for family responsibility should be made through deductions, credits, or exemptions.

The proposal is not "radical." It is in fact simple and direct and cleans up a mess of code sections that now turn on marital status, which has many definitions in the tax law.

Although it is the only proposal that entirely meets Wilbur Mills' standards of neutrality in affecting taxpayers' decisions, fairness and simplicity, some commentators feel we should not adopt it because, after all, taxpayers are accustomed to the present system. When familiarity with complexities prevents a return to fairness and simplicity, all hope for tax reform is lost.

Conclusion

As a summary I quote a thought of Professor Boris Bittker:

"During a 1963 discussion at the Brookings Institution of a forthcoming book on federal taxation of the family, a participant commented: 'I don't think that 27 economists should have been assembled to address themselves to problems which are really partly anthropological, partly sociological, partly anything except what we have competence in....'

If my extended essay has a unifying theme, it is that theoreticians, whatever their backgrounds, cannot 'solve' the problem of taxing family income. They can identify the issues that must be resolved, point out conflicts among objectives to be served, propose alternative approaches, and predict the outcome of picking one route rather than another. Having performed these functions, the expert must give way to the citizen, whose judgments in the end can rest on nothing more precise or permanent than collective social preferences."

TABLE 1-DEDUCTION PROPOSAL

PRIMARY EARNER INCOME	SECONDARY EARNER INCOME	LOWER WAGE % OF COMBINED INCOME	MARRIAGE TAX PENALTY[1]	DEDUCTION ALLOWABLE UNDER 10%—$2,000 PROPOSAL	EFFECTIVE TAX RATE	TAX SAVING DUE TO DEDUCTION	UNCORRECTED TAX PENALTY	% OF CORRECTION
$10,000	$ 4,285	30%	$ 174	$ 428	10.4%	$ 45	$ 129	26%
$10,000	$ 6,666	40%	$ 271	$ 666	11.9%	$ 79	$ 192	29%
$10,000	$10,000	50%	$ 395	$1,000	13.7%	$137	$ 258	35%
$18,528[2]	$ 7,940	30%	$ 334	$ 794	16.9%	$134	$ 200	40%
$15,881	$10,587	40%	$ 599	$1,058	16.9%	$178	$ 421	30%
$13,234	$13,234	50%	$ 676	$1,323	16.9%	$224	$ 452	33%
$20,000	$ 8,570	30%	$ 412	$ 857	17.98%	$154	$ 258	37%
$20,000	$13,333	40%	$ 978	$1,333	20.2%	$269	$ 709	28%
$20,000	$20,000	50%	$1,697	$2,000	23.4%	$468	$1,229	28%
$30,000	$12,860	30%	$1,261	$1,286	24.7%	$318	$ 943	27%
$30,000	$20,000	40%	$2,741	$2,000	28.2%	$564	$2,177	21%
$30,000	$30,000	50%	$3,654	$2,000	31.2%	$624	$3,030	17%
$40,000	$17,145	30%	$2,189	$1,714	30.3%	$519	$1,670	24%
$40,000	$26,666	40%	$3,819	$2,000	33.3%	$666	$3,153	17%
$40,000	$40,000	50%	$5,064	$2,000	36.7%	$734	$4,330	14%

(1) Excess tax paid due to filing a joint return rather than filing as unmarried individuals.

(2) This category represents the average two-income married couple as reported by the Bureau of Labor Statistics for the fourth quarter of 1979. Almost 60% of American families had two or more wages. The average two-earner couple earned $509 per week, or $26,468 per year.

TABLE 2 — CREDIT PROPOSAL

PRIMARY EARNER INCOME	SECONDARY EARNER INCOME	LOWER WAGE % OF COMBINED INCOME	TAX LIABILITY JOINT RETURN	MARRIAGE[1] TAX PENALTY	CREDIT ALLOWABLE UNDER 10% — $500 PROPOSAL	UNCORRECTED TAX PENALTY	% OF CORRECTION
$10,000	$ 4,285	30%	$ 1,483	$ 174	$428	$ (254 bonus)	246%
10,000	6,666	40	1,987	271	500	(229 bonus)	185
10,000	10,000	50	2,739	395	500	(105 bonus)	127
$18,528[2]	$ 7,940	30%	$ 4,470	$ 334	$500	$ (166 bonus)	150%
15,881	10,587	40	4,470	599	500	99	83
13,234	13,234	50	4,470	676	500	176	74
$20,000	$ 8,570	30%	$ 5,137	$ 412	$500	$ (88 bonus)	121%
20,000	13,333	40	6,728	978	500	478	51
20,000	20,000	50	9,355	1,697	500	1,197	29
$30,000	$12,860	30%	$10,596	$1,261	$500	$ 761	40%
30,000	20,000	40	14,092	2,741	500	2,241	18
30,000	30,000	50	18,698	3,654	500	3,154	14
$40,000	$17,145	30%	$17,299	$2,189	$500	$1,689	23%
40,000	26,666	40	22,198[3]	3,819	500	3,319	13
40,000	40,000	50	29,398[3]	5,064	500	4,567	10

(1) Excess tax paid due to filing a joint return rather than filing as unmarried individuals.

(2) This category represents the average two-income married couple as reported by the Bureau of Labor Statistics for the fourth quarter of 1979. Almost 60% of American families had two or more wages. The average two-earner couple earned $509 per week, or $26,468.

(3) These amounts do not take into consideration the maximum tax on earned income.

August 5, 1980

Michael Stern
Staff Director
Committee on Finance
Room 2227 Dirkson Senate Office Building
Washington, D. C. 20510

Dear Sir:

In regards to your hearing on the "marriage penalty tax", I would like to add a piece of evidence that to me, at least, is not hypothetical.

Per our 1979 income tax return, my wife and I paid $5,025 of Federal income tax. If we had been single, our tax burden would have been only $4,752. If one or the other of us could have qualified for unmarried head of household rates (which I could have), the combined tax would have been $4,528. As you can see, the minimum marriage penalty tax on my wife and me is $273. If we were unmarried at December 31, 1979, I would have been able to file unmarried head of household and then the cost becomes $500. This "additional penalty" ranges from .9% to 1.6% of our adjusted gross income, or to phrase it differently, a 5.7% or a 11% addition to tax (depending on filing status) simply because we were "married" in the legal sense of the word at December 31, 1979.

Is this "additional tax" a result of two being able to live cheaper than one? Hardly, since a couple living together but not married share the reduced household expenses, but also get to share the reduced tax burden.

I hope that during your hearing and afterwards, that you are able to gather enough evidence to convince your fellow associates, that something needs to be done about these tax rates.

Sincerely,

Jack L. Bottoms

Jack L. Bottoms
Certified Public Accountant

JB/pm

August 7, 1980

Michael Stern
Staff Director
Committee on Finance
Room 2227 Dirkson Senate Office Building
Washington, D. C. 20510

Dear Sir:

In regard to your hearing on the "marriage penalty tax", I submit the following evidence of the inequity involved when two taxpayers are married rather than living together.

Per our 1979 income tax return, my wife and I (no children) paid $3,384 of federal income tax. If we had been single, our combined tax burden would have been only $3,146, a difference of $238. This represents a 7.6% addition to tax simply because we were "married" on December 31, 1979.

This additional tax represents our government's encourgement for people to live together and not to get married. I feel that this contributes (even if in a small way) to the declining moral values of the american public and is affecting not only the institution of marriage but also the family unit.

I hope that during your hearing and afterwards, you are able to gather enough evidence to convince your fellow associates that something should be done about this situation.

Sincerely,

Joe Sanford

JS/pm

DANIEL R. KUNITZER
CERTIFIED PUBLIC ACCOUNTANT
207 CAPITAL AVENUE, N. E.
BATTLE CREEK, MICHIGAN 49017
TELEPHONE (616) 962-4524

MEMBER
MICHIGAN ASSOCIATION
OF CERTIFIED PUBLIC ACCOUNTANTS
NATIONAL ASSOCIATION
OF ACCOUNTANTS

August 7, 1980

Mr. Michael Stern, Staff Director
Committee on Finance
Room 2227 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Stern:

I would like to strongly endorse the elimination of the "marriage penalty tax". It is a great injustice that two (2) unmarried individuals residing together should receive preferential tax treatment over a married couple where each spouse is working and contributing to the household income.

I again urge that Congress consider removal of this unfair tax.

Very truly yours,

Daniel R. Kunitzer

Daniel R. Kunitzer, CPA

DRK/ca

cc: Congressman Howard Wolpe

R. Jay Mitchell
415 Cambria Drive
Coppell, TX 75019

August 8, 1980

Michael Stern, Staff Director
Committee on Finance
Room 2227 Dirksen Senate Office Bldg.
Washington, DC 20510

Re: "Marriage Penalty Tax"

Dear Sir:

As a concerned citizen, tax payer, and active accountant, I am familiar with the so called "Marriage Penalty Tax." It encourages couples to simply live together out of wedlock rather than get married.

Our country was founded on Christian principles and our very coinage expounds our faith in God. I must then officially protest the "Marriage Penalty Tax" and do request the elimination of rules, regulations, or laws that encourage citizens to live together out of wedlock.

By logic, I also must state that a family needs all the net after tax income it can get. To penalize those who establish families and married households, in favor of single individuals, is an undermining of our country.

The family is the backbone and strength of our nation. Too many other forces are already at work to destroy the family unit in America. Do not let our tax laws be another such destructive force.

Very Sincerely Yours,

R Jay Mitchell

2754 Ewing
Evanston, Illinois 60201
July 25, 1980

Mr. Michael Stern
Staff Director
Committee on Finance
Room 2227
Dirksen Senate Office Building
Washington, D.C. 20510

Re: August 5, 1980 hearing on
"marriage penalty" tax

To the Honorable Members of the Committee:

In 1979, our joint incomes (exclusive of deductions) were subjected to a tax higher, by about $2,500, than we would have been required to pay had we been single.

Unfortunately for us, we married in ignorance of the tax consequences. Had we known better we would not have married. Now that we are married, we find ourselves having to choose between marriage and other goods and services we want or need. The economic choices are unpleasant, but not yet painful; it seems inevitable that a time will come when marriage will be a luxury we will be unable to continue to afford.

It is perplexing that the tax laws have turned marriage into a marketplace decision, with a disincentive to marriage, and with divorce regarded as a tax-saving device.

We offer you no information you do not already have. We are certain that you are aware of the number of, and increases in, two-worker couples. We request that you do what we believe ought to be done about this problem, namely, permit married persons to elect to file as single.

Very Truly Yours,

Jonathan L. Mills

(Mr. and Mrs.) Jonathan L. Mills

cc: Congressman John E. Porter

Newton, Iowa
August 5, 1980

Michael Stern, Staff Director
Committee on Finance
Room 2227 Dirksen Senate Office Building
Washington D. C. 20510

Dear Sir:

I am writing to voice my objection to the fact that a working married couple is often faced with a substantially higher income tax than would apply to two single persons with the same amounts of income.

Please submit my written statement containing this objection to the Committee. I hope further action will be forthcoming to rectify this situation.

Thanking you, I am

Very truly yours,

Gilbert R. Caldwell III

Gilbert R. Caldwell III
815 S. Commerce Street
Monroe, Iowa 50170

P. S. I am in this situation because our combined incomes make our tax much higher than for two single persons.

Newton, Iowa
August 5, 1980

Michael Stern, Staff Director
Committee on Finance
Room 2227 Dirksen Senate Office Building
Washington D. C. 20510

Dear Sir:

I am writing to voice my objection to the fact that a working married couple is often faced with a substantially higher income tax than would apply to two single persons with the same amounts of income.

Please submit my written statement containing this objection to the Committee. I hope further action will be forthcoming to rectify this situation.

Thanking you, I am

Very truly yours,

Randal B. Caldwell

Randal B. Caldwell
404 East 20th Street South
Newton, Iowa 50208

(Written Statement - to be submitted by August 29, 1980)

Comments: Re: "Marriage Penalty Tax" Hearing 8/5/80

A working married couple may often be faced with a substantially higher income tax bill than would apply to two single persons with the same amounts of income.....

however, having been a "single taxpayer, with no dependents" for the past ten years, I would point out that the single, female taxpayer frequently earns much less than the single male taxpayer -- or the married male taxpayer --

and has expenses that are on a par with the single male taxpayer, as far as basic expenses are concerned, and very close to what two working, married taxpayers would incur. Housing/ or rent, basic charges for utilities -- phone, gas, electric, water -- the single female must pay for all of these, plus transportation, medical, clothing, etc. I think "basic" expenses for the married couple are not substantially higher than for the single person, insofar as housing, utilities and food. Food costs for two are not "double" those for the single person (this I have experienced from having been both married and single -- and from having reared three daughters in past married life).

Unless something is done about "indexing" with regard to income taxes, when my salary exceeds $20,000 (including the very little interest one earns on savings, from which IRS takes its toll) I can no longer use the short form for tax reporting -- and I have no deductibles to help me on the longform report so I'm anticipating being heavily penalized at that time. I rent my apartment, have no sizeable interest payments, medical expenses, etc. therefore will pay through the nose so to speak.

I think some thought needs to be given to the plight of the single female -- who incurs all of the expenses of maintaining a household, alone. There is not even an incentive to save, when you fall in a 25 to 30% income tax bracket and even $100 in interest earned on a tiny savings account can cost you an unreasonable additional tax. I'm 51 years old and attempting to save something toward the day when I must retire -- and to be quite frank, it's difficult to save anything -- certainly unrewarding when approximately 1/3 of savings may go to pay the taxes on the measly return. Living on social security after retirement is a prospect that does not fill me with delight -- and trying to do something toward supplementing it is frustrating. H E L P !!

Probably the foregoing statement is badly worded. I ran across the article concerning the marriage penalty tax hearing on the way to work -- and have taken the first fifteen minutes of my morning to compose my statement.

I should have given it more tho't and probably could have come up with more and better arguments in favor of MY case. It's time some consideration is given -- or a study is made -- and some kind of break given the single, lower salaried, female.... (or male, if his salary qualifies him).

and I don't mean just a "tax" break. I more favor being able to earn several hundred dollars interest on savings, or investments, before having to pay a tax on the excess --

being able to put "personal monies" from my salary into my employer's profit sharing plan (at least up to the maximum permitted for an individual retirement account - $1,500) with tax on same deferred until retirement. Why is the maximum for an individual retirement account so much lower than for a Keogh plan?? Since both are individuals, trying to defer taxes on a dollar, toward having some sort of retirement cache -- how does our government explain the disparity?

Is everyone connected with our government -- Internal Revenue Service -- any of the people who decide how we are to be penalized based on our various incomes and lifestyles -- so very wealthy that they can have no knowledge or understanding of the problems facing the average citizen in trying to build up a fund on which to survive when he/she can no longer work?

I, for one, work for an employer maintaining a profit sharing plan -- which disqualifies me for investing in an individual retirement account -- which also has vested in my name only ** $2,400 over a 7-year period... and that amount includes my portion of the "earnings on investments" from same. At that rate, being 51 years of age at this date, I need to do an awfully lot on my own to insure my support at some distant date -- and the projected inflation rate charts indicate what I save now isn't going to go very far when that date arrives.

I'm much concerned about it. I can work - but elderly females aren't in great demand on the current employment market, and likely won't be on the future employment market.

It's not likely my "bandstanding" will accomplish anything -- but, if you've read this far, thank you for that anyway.

** confidential statement

Lin Skelly

The foregoing endorsed by the following persons in similar situations;

Paula Hewes Jordan

[illegible]

Aug 25 11

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

DOUGLAS A. FRASER, PRESIDENT   RAY MAJERUS, SECRETARY-TREASURER

VICE-PRESIDENTS

OWEN BIEBER • DON EPHLIN • MARTIN GERBER • ODESSA KOMER • MARC STEPP • ROBERT WHITE • STEPHEN YOKICH

IN REPLY REFER TO
1757 N STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE: (202) 828-8500

August 18, 1980

Honorable Harry F. Byrd, Jr.
Chairman
Subcommittee on Taxation and
Debt Management
Committee on Finance
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to transmit to you for the hearing record of your Subcommittee the UAW views on the income tax treatment of married couples and single persons.

This issue is of great interest to us; more than 40 percent of our members are in two-earner families. As a result, they suffer from a "marriage penalty" as taxpayers. We are therefore in support of changes in the law which will eliminate or alleviate this disadvantage.

We are aware that it is not easy to propose changes which will do that without hurting another set of taxpayers, albeit in a relative fashion. The loss of revenue should also be kept in mind especially at a time when countless programs serving human needs are being starved for federal funds.

Keeping these constraints in mind, we lean towards a proposal that would provide for a certain percent deduction of the earned income of the spouse earning the lesser amount of income. That percentage could be set at 15 percent, with a limit of $2,500. Although we are unable to calculate the distribution of the burden resulting from this alternative, it is clear that it would protect low and middle income households more than upper income households, thus increasing the progressivity of our tax code.

Permit me to add that a proposal such as S. 336, which would permit married persons to file single returns and pay tax at the same rate as single persons, is too complex to merit our support. We strongly favor a simpler set of tax laws: complex laws ultimately benefit those with the sophistication to take advantage of them, or the ability to engage outside counsel. Invariably, these taxpayers are at the higher end of the income distribution.

Yours truly,

Dick Warden

Dick Warden
Legislative Director

DW: cw
opeiu494
cc: Finance Committee Members

Public Citizen

Statement of
ROBERT S. McINTYRE, Director
Public Citizen's Tax Reform Research Group
on
The Income Tax Treatment of Married
and Single Taxpayers
Before the
Subcommittee on Taxation and Debt Management
of the Senate Committee on Finance

Submitted August 20, 1980

In the late 1960s, Congress enacted two important new tax levies: A 10% add-on to the corporate and personal income taxes was passed in 1968 to help pay for the Vietnam War, and in 1969 a variable rate "tax on marriage" was instituted to fund tax relief for higher income single people. The Vietnam surcharge was soon repealed, but the "tax on marriage" remains in the law today.

The "tax on marriage" is frequently thought of as a problem only for couples with two earners, and in fact the two-earner situation is what attracted attention to the "penalty" initially. Many just-married couples noticed that their taxes had gone up substantially over what the partners had paid as two single workers. About half the two-job couples, or 22 million people, are paying the marriage penalty in this narrow sense. But using a broader and more accurate definition, the "tax on marriage" can be seen to apply to *all* 80 million married individuals now paying income taxes. That is, *every* taxable married couple could cut its tax liability significantly by obtaining a divorce with a separation agreement to split evenly the ex-partners' earnings.

Looked at as a separate federal levy, the "tax on marriage" is quite a substantial fundraiser for the federal Treasury. Its burden on families is more than quadruple that of the seemingly more justifiable estate tax. It raises over nine times the excise taxes on tobacco, four times the taxes on alcohol, three times the highway use taxes—actually more than all the federal excise taxes combined. In fact, the "tax on marriage" collects more than all the major fundraising items in the budget except the big three, the individual and corporate income taxes and social security taxes.

SOURCE OF 1979 BUDGET RECEIPTS
(billions of dollars)

Individual Income Taxes*	$195.0
Social Insurance Taxes	141.6
Corporate Income Taxes	65.7
"Tax on Marriage"	22.9
Total Excise Taxes	18.7
Miscellaneous Receipts	9.2
Customs Duties	7.4
Estate and Gift Taxes	5.4
Total	$465.9

* Not including the "tax on marriage."

Although the "tax on marriage" is almost universally deplored, there is substantial disagreement over both whether it can be eliminated, and, if so, how to go about it. The Treasury Department maintains that intractable problems in balancing the interests of married and unmarried individuals prohibit a universally fair resolution of the competing interests, and that the best we can do is to adopt some gimmick involving special deductions or credits for two-job couples. Others think the "solution" is to abandon the tax equity goal of treating couples with the same total income alike.

In fact, however, there is one approach which could completely wipe out the marriage penalty: Simply undo what was done in 1969 and return to the pre-'69 system of "income splitting" for married couples. This approach combines several compelling advantages: (1) It is the only system which completely eliminates the tax on marriage; (2) unlike any of the other proposals, it preserves the important principle that couples with equivalent incomes should pay the same amount in

Approximate Cost of Eliminating the Tax on Marriage by Going to Income Splitting (1979 levels)

Expanded Income Class ($—000)	Cost of Complete Splitting (millions)	Cost of Splitting on Rates Only (millions)
Less than $5	$ 0	$ 0
$5–10	100	0
$10–15	1,790	0
$15–20	1,910	290
$20–30	4,190	2,930
$30–50	5,600	5,600
$50 and over	9,260	9,260
TOTALS	$22,860	$18,090

ADDENDUM:

Cost of eliminating tax on marriage just for incomes under $50,000. . . . .$13.6 billion

Cost of eliminating tax on marriage caused solely by rate schedules just for incomes under $50,000. . . . .$8.8 billion

taxes; (3) it is by far the easiest system to administer; and (4) most important, it has the firmest underpinning in tax policy principles, combining respect for married and unmarried persons as individuals with conformance to the most commonly recognized pattern of marital income-sharing.

Technically, the "tax on marriage" stems primarily from two sources: For couples with below-median incomes, the cause is almost exclusively the fact that the zero bracket amount—or standard deduction—for a couple is $1,200 less than the ZBA for two unmarried individuals. For higher income couples who typically itemize, the cause is mainly the differing rate schedules for singles and marrieds, which can impose higher taxes on a married person's share of the family income than would apply if the couple were living without the benefit of legal matrimony.

For example, if Jean and Terry each earn $7,500, they will pay taxes on $9,600 of their income if they are married, but only $4,200 each or $8,400 if they choose to divorce (or not to marry in the first place). The marriage penalty caused by this increase in income subject to tax is $251. If Pat and Lee each earn $20,000, their income subject to tax would probably not change by marriage, but they would be paying at higher tax rates, leading to a marriage penalty of $906.

The flip side of the tax on marriage might be called the "tax on remaining unmarried." This can be an issue, typically, for unmarried couples with only one breadwinner. Such a situation might arise, for example, when one partner works and the other attends school. (It could also occur if one partner remains at home doing domestic chores or caring for children, but this pattern for unmarried couples is probably quite unusual.) As with the tax on marriage, the problem (insofar as it exists) is due to the effects of the standard deduction in the middle and lower brackets and to rate differences for higher income couples. For example, an unmarried couple in which one partner earns $10,000, and the other nothing, would have $5,700 of the income subject to tax. If they married this would be reduced to $4,600, saving $198 in taxes. If the working partner earned $40,000, the *income* subject to tax would probably not change from marriage, but lower rates would reduce the tax bill by almost $1,500.

The "tax on remaining unmarried" is probably not a significant problem. It arises only for unmarried couples in which one member earns over 80% of the family income, and it is a reasonable guess that the vast majority of such couples are married. It should be remembered, however, that it is the "tax on remaining unmarried" and not the alleged "tax on remaining single" discussed below, which is the converse of the tax on marriage.

The "tax on marriage" could be eliminated simply by taxing married couples as if each spouse were a single person earning one-half the family income. This "income-splitting" approach would not be a radical step—it was in effect in the U.S. from 1948 to 1969. Income splitting makes the reasonable assumption that married partners share the total family income equally, and that each individual spouse therefore has about the same ability to pay taxes as a single person with half the family income.

THE DIVORCE BONUS

Tax reduction for couples at different income levels from divorcing with an alimony agreement to divide income equally.

Joint	Childless Couples		Families of Four**	
Income	Average*	Non-Itemizers	Average*	Non-Itemizers
$10,000	$ 202	$ 202	$ 178	$178
$15,000	251	251	302	302
$20,000	247	391	339	465
$30,000	435	903	513	961
$40,000	906	1,692	1,128	1,994
$50,000	1,590	2,674	2,050	3,226

Change as a percent of pre-divorce tax:

Joint	Childless Couples		Families of Four**	
Income	Average*	Non-Itemizers	Average*	Non-Itemizers
$10,000	28.8%	−28.8%	−47.6%	−47.6%
$15,000	−15.3%	−15.3%	−24.3%	−24.3%
$20,000	− 9.5%	−14.2%	−15.8%	−20.5%
$30,000	− 9.2%	−17.4%	−12.3%	−19.4%
$40,000	−12.0%	−20.4%	−16.7%	−23.4%
$50,000	−14.7%	−22.4%	−20.6%	−25.2%

Change as a percent of income (change in effective tax rate):

Joint	Childless Couples		Families of Four**	
Income	Average*	Non-Itemizers	Average*	Non-Itemizers
$10,000	−2.0%	−2.0%	−1.8%	−1.8%
$15,000	−1.7%	−1.7%	−2.0%	−2.0%
$20,000	−1.2%	−2.0%	−1.7%	−2.3%
$30,000	−1.5%	−3.0%	−1.7%	−3.2%
$40,000	−2.3%	−4.2%	−2.8%	−5.0%
$50,000	−3.2%	−5.3%	−4.1%	−6.5%

* Assumes itemized deductions of 20% of income, where this exceeds the zero bracket amount.

** Assumes head of household rates for each former spouse after divorce.

Current law, on the other hand, effectively assumes an income split of about 80—20, an assumption which seems hard to defend on any logical or empirical basis.

Besides eliminating the tax on marriage, income splitting has the additional very important advantages of:

o Treating all married couples with similar incomes the same, no matter what the types of income or the nominal earnings division between the spouses;
o maintaining a progressive rate structure; and
o easy administrability.

There is *no* other approach to the problem which satisfies these three objectives.

Given all these advantages, what stands in the way of returning to income splitting? Certainly, distributional issues are not the concern; the incomes enjoyed by single and married individuals and those of two-job and one-job couples are distributed with a similarity which is remarkable. The most significant problems, actually, are not theoretical, but political. They relate to the opposition such a step would generate from the Treasury and from advocates for giving preferred status to single persons. In addition, some economists mistakenly maintain that the tax on marriage, at least as it applies to one-earner couples, is justified by so-called "imputed income" theories. And finally, there are reasonable arguments to be made in support of retaining the tax on marriage created by the zero bracket amount.

The Treasury's problem with income splitting is largely due to the institutional angle from which its tax policy experts approach history. When the income tax was established, the framers did not confront issues like the tax treatment of the family. The Revenue Act of 1916 simply applied to "the entire net income . . . received by every individual," offering no suggestion as to how "income" should be apportioned among family members with potential claims to it. The issue was soon confronted in the courts, however, and the IRS succeeded in having its position, designed to maximize the revenue but without any basis in considered tax policy, adopted. So the rules developed that wage income was taxable to the person who performed the services, and property income to the person owning (or having the best claim to) the property. Within these constraints, taxpayers worked on schemes, involving trusts, family partnerships, and the like, to have income attributed to other family members. Some of these attempts were successful, all of them were attacked as "loopholes" by the Treasury and the IRS.

The biggest such "loophole" in the Treasury's viewpoint stemmed from the fact that the courts, carried by the logic of their "property interest" rule, felt compelled to allow full marital income splitting in community property states, where, it could not be gainsaid, the income of either spouse was, legally and without the use of any tax avoidance device, attributable equally to each member of the couple.

Thus, as a quite nonsensical consequence of the property interest rule, taxes on married couples tended to be higher in the common law jurisdictions. When tax rates shot up to finance World War II and stayed up ever after, the income tax changed from a class tax on the relatively wealthy to a mass tax on almost everyone. And numerous states began to move toward adopting community property laws to protect their married citizens from part of the increased federal exactions. In response, Congress voted in 1948 to allow income splitting for all married couples, wherever they happened to reside. Although Ways and Means Democrats (for example) congratulated themselves on convincing the majority to make the change, based on "considerations of equity and the elimination of discriminations in the tax system," Treasury saw the congressional action as a capitulation to the income-splitting "loophole." And its opposition to the concept of income splitting has remained, even in the face of rather compelling arguments that such an approach is actually theoretically correct.

As noted, the tax on marriage was created in 1969 when Congress created a new tax schedule to provide a rate advantage to higher income single persons. Prior to that time, there had been basically only *one* rate schedule in the Internal Revenue Code, applicable to "the taxable income of *every* individual." In determining the taxable income of married individuals, the code had provided since 1948 that each partner in a couple was to be treated as enjoying half the joint income. Once this allocation was made, married people were taxed on their individual incomes using the same rate table employed by single persons.

The singles rates were adopted in 1969 in response to protests that the system of allocating income between spouses discriminated against singles. The basis for the claim of discrimination grew out of a comparison between the tax paid by a married couple and the tax on a single person with the same income. Since the tax on the single person was higher than the sum of the taxes on the two married persons, the tax system was said to impose a "tax on remaining single."

This complaint must be distinguished from the "tax on remaining unmarried" discussed above, where the comparison was between a married couple and *two* unmarried persons.

The alleged "tax on remaining single" is, of course, the normal consequence of a progressive income tax system. With progressive tax rates, a person with $20,000 of income should pay more in tax than two persons each with $10,000. Under income splitting, a husband and wife with family income of $20,000 are treated as each taxable on their share of the income pool, in this case, on $10,000 each. The total tax on the couple is therefore less than the tax on a single person with an income of $20,000.

Those complaining about a "tax on remaining single" apparently considered a married couple as one taxpayer instead of two, presumably treating one spouse as the *real* taxpayer and the other as the "tax shelter." The mindset which produced this offensive categorization was, unfortunately, rather common even in supposed "enlightened" circles until very recently. Thus, in 1964, liberal tax reformer Phillip Stern, in his best-selling and influential *The Great Treasury Raid*, could refer without a twinge of embarrassment to the worth of "the little woman" as an "asset" of great benefit to "the husband, in making out *his* tax return." Such an approach may be encouraged by the rather unwise phraseology of Form 1040, which has persons filing a joint return list one marital partner as the taxpayer and the other as the spouse. In reality, of course, both are taxpayers (and both are spouses), even if one of the partners provides the source of the entire family income. To ignore the existence of one of the marital partners is to pretend that *two* persons with a given total income are, by the fact of marriage, in the same economic position as *one* person with the same total income—a quite nonsensical assumption. Whether this outlook is ultimately based on outrageous sexism, unabashed self-interest, or mere logical error is unclear. But it is clear that the philosophical position which formed the basis for the 1969 attack on income splitting was bankrupt both then and now, and Congress ought to admit to its mistake.

Less militant singles advocates are willing to admit that two cannot live as cheaply as one, but they still maintain that economies of scale typically enjoyed by married persons make them better able to pay taxes than are singles. Thus, a married couple needs only one bed, one refrigerator, and one house. Meals for two are cheaper to prepare per person than meals for one. And so on. Of course, this argument presumes that single people live alone, which means that the preferential singles rates should not be available to unmarried couples or singles with roommates —a large percentage, perhaps a majority, of single people.

Ultimately, the economies of scale argument fails because it proves too much. We simply do not want a tax system—or an Internal Revenue Service—which inquires so deeply into how we structure our personal affairs. Rather, a system which taxes our measured economic incomes, leaving to individuals the decision as to how to spend their money and structure their living arrangements, is far preferable.

One additional argument frequently put forward in an attempt to justify preferential tax treatment for singles and/or two-job couples as opposed to one-earner couples—involves the concept of "imputed income." One of the unfortunate failures of our income tax system, some economists are fond of lamenting, is its inability to take account of the value of self-performed services or leisure. But, it is argued, we can mitigate this pernicious deficiency by taxing those classes of people likely to have excess shares of such "imputed income" more heavily than those likely to have less of it.

The concept of "imputed income" is elastic enough to include virtually everything people do for themselves, from reading a book to fixing the car, from washing the dishes to raising one's children, from chewing food to enjoying the sunset. Attempts to limit the scope of the idea in a principled fashion to activities relevant for tax purposes have not had great logical success. Focusing exclusively on items that can be purchased in the marketplace might cut out sleeping and chewing, but would still leave shaving, grooming, and gardening. *De minimis* rules still retain items frequently performed—a year's worth of shaves would cost upwards of $700 if purchased.

Somewhat suspiciously, the proponents for making tax adjustments for assumed levels of "imputed income" have chosen to focus particularly on activities thought to be performed by stay-at-home spouses, primarily wives. As one paper in this field put it, "Because the housework and leisure of a nonworking spouse is excluded from taxable income, the taxable income of one-earner couples is understated relative to that of two-earner couples . . . [and] single persons."

One must marvel at the elegant way in which this statement finesses one critical problem: the lack of evidence about "housework" levels as between one job couples on the one hand, and two-earner couples and singles on the other. Even if—as may well be true—many, or most, two-job couples and singles are just as neat as their one-job neighbors, even if many, or most two-job couples and singles are at least as handy with cars, electrical work, and gourmet cooking as their "traditional family" counterparts, nevertheless the one-job couples clearly have more *time* to engage in such activities. And if they waste this opportunity by watching TV or smelling the daffodils, why, so much the worse for them. We can still tax their extra leisure—or their *potential* imputed income.

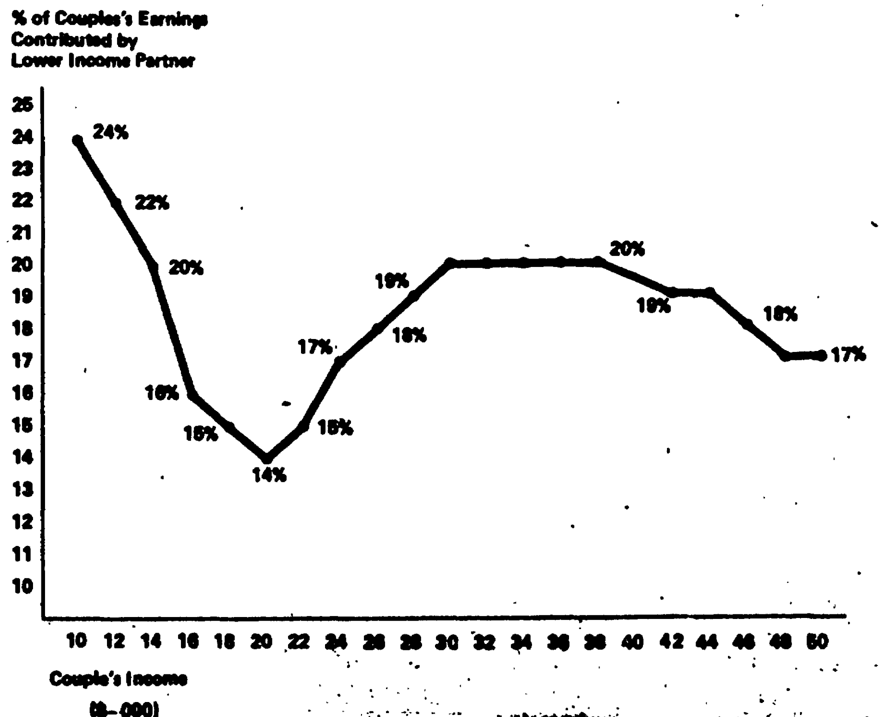
Now this raises some serious questions on its own—treating leisure as taxable would place a heavy burden on small children, retired persons, students, and the unemployed. And the federal income tax has never been considered as a levy on "potential income," although many economists might wish it were so.

When one actually confronts the "practical" approaches advocated for taxing "imputed income," one's fears that this frightening concept might have some relevance to tax policy are mercifully laid to rest. If anything, the schemes seem even more ludicrous in application.

"BREAK-EVEN" INCOME RATIOS

(No "Tax on Marriage," No "Tax on Remaining Unmarried")

Or, "How Current Law Implicitly Splits Couples' Joint Incomes"



One proposal, for example, is to provide a special deduction or credit for two-job couples (why singles are excluded is not completely clear), based upon a percentage of the earnings of the lower-income spouse. This plan assumes that dollar earnings are a reasonable proxy for leisure time foregone (leisure time, it must be remembered, being a reasonable proxy for "potential imputed income"), a proposition which minimum wage workers might question in light of, for example, hourly attorney fees.

Another approach is to provide a deduction (or credit) for purchases of certain kinds of services which, it is assumed, one-job couples provide for themselves. One of these suggestions which Congress has actually adopted is the credit for child care. But assuming that the purpose of the credit is to make an allowance for the failure of the tax system to tax the "imputed income" from taking care of one's own children, the credit is exceedingly unfair to those without

Average Adjusted Gross Incomes, Taxes, and Effective Tax Rates for Single and Married Taxpayers* By Income Classes (1979 levels)

Single taxpayers:

Income Class Per Taxpayer ($—000)	Number (%) (000)	Average AGI	Average Taxes	Average Tax Rate
Less than $5	4,405 (16%)	$ 4,120	$ 110	2.7%
$5–10	9,998 (37%)	7,380	617	8.4%
$10–15	6,081 (23%)	12,367	1,604	13.0%
Over $15	6,296 (24%)	23,056	4,694	20.4%
TOTALS (averages)	26,779 (100%)	$11,662	$1,716	14.7%

Married taxpayers*:

Income Class Per Taxpayer ($—000)	Number (%) (000)	Average AGI	Average Taxes	Average Tax Rate
Less than $5	6,114 (8%)	$ 4,025	$—162	**
$5–10	29,014 (36%)	7,724	673	8.8%
$10–15	25,824 (32%)	12,333	1,576	12.8%
Over $15	19,100 (24%)	23,703	5,204	22.0%
TOTALS (averages)	80,054 (100%)	$12,705	$1,991	15.7%

* NOTE: "Taxpayer" is not the same as "return" in the case of couples, since joint returns represent two taxpayers. In this table, for example, a joint return with $10,000 in AGI is treated as representing $5,000 in AGI per taxpayer.

** Negative effective tax rate.

children (who therefore perform *no* child care services, and have no "imputed income" therefrom). If self-performed child care services are to be treated as "income," the fairest system would seem to be to provide a large deduction for taxpayers without children, and a somewhat smaller one for those with children who purchase child care services (and presumably perform some such services themselves as well). (The child care credit has also been defended as making an allowance for a necessary business expense of working parents. If this justification made sense, of course, the provision should be a deduction rather than a credit. In fact, the child care credit is really a tax expenditure in search of a logical rationale.)

Similar analyses can be made of other "imputed income" tax proposals, including differential rates. The point is that the "imputed income" argument for higher taxes on one-job couples is so arbitrary in its choices of what to tax and so illogical in its application, that it should not be seriously considered in writing the tax laws.

As noted above, differences in the zero bracket amount are the primary cause of the tax on marriage for average and lower income couples. This discrepancy could be eliminated by making the married ZBA exactly twice that for singles, but such a step would conflict with one of the stated rationales for the standard deduction—to assure that the poor pay no income tax. The poverty level is a welfare term and is officially defined in terms of marital status. The current ZBA, in conjunction with the personal exemptions, results in a no-tax level of about 15% above the 1980 poverty level for a childless couple, and about 10% below the poverty level for a single person. If a marriage neutral ZBA—say $2,000 per person—were established, this would reduce the no-tax level to only 83% of the poverty line for singles, while increasing it to 130% for childless married couples.

Whether this would necessarily be a bad result is debatable. The assumption that married persons have a monopoly on cost-saving arrangements is clearly not true, since single persons can also arrange to pool their resources and share costs. And, in any case, it may be more important for the tax system to achieve neutrality than to foster welfare goals. Nevertheless, it does not seem likely that Congress would be willing to abandon the poverty-related aspect of the standard deduction. It explicitly confronted the problem in the 1977 Tax Act and decided that the tax on marriage created by the standard deduction was a necessary evil. This conclusion is certainly a reasonable one. But it certainly has no relevance to the more significant tax on marriage created by the preferential tax *rates* for singles.

Average Adjusted Gross Incomes in Income Classes and Percentage of Returns in Each Class for One- and Two-Earner Couples (1979 Taxable Returns)

Expanded Income Class ($—000)	One-Earner Couples Average Income	One-Earner Couples Percent in Class	Two-Earner Couples Average Income	Two-Earner Couples Percent in Class
Less than $10	$ 7,868	9.9%	$ 8,270	6.0%
$10–15	12,531	19.0%	12,675	15.7%
$15–20	15,580	17.3%	17,615	20.5%
$20–30	24,685	25.5%	24,658	37.1%
$30–50	36,851	19.4%	36,632	17.5%
$50–100	63,962	7.1%	62,174	2.8%
$100–200	125,009	1.3%	116,730	0.4%
$200 and over	361,968	0.4%	343,632	0.1%
TOTALS (Averages)	$27,192	100.0%	$24,116	100.0%
Approximate Medians:	$21,650		$22,700	

On Capitol Hill, the marriage tax "solution" which currently appears to have the most support is "voluntary separate filing." Introduced by Representative Millicent Fenwick (R—N.J.) and Senator Charles Mathias (R—Md.), this bill would give married people the option of ignoring their marriage contract and filing as singles when this produces a tax advantage.

If, as has been already pointed out, Treasury's judgment about possible solutions to the marriage tax may be somewhat overwhelmed by its historical perspective, supporters of the Fenwick-Mathias proposal have no such problem. Instead they seem intent on returning the tax system to the pre-1948 regime, apparently in blissful ignorance of the multitudinous problems which existed in these "good ol' days." Beneath the surface appeal of their voluntary separate filing approach lurk administrative nightmares and clear and gross unfairnesses, as ought to be apparent to anyone who analyzes our pre-1948 experience.

Fenwick-Mathias supporters are willing to jettison the principle, now well-established, that couples with equivalent incomes ought to pay the same tax bills. Thus, under their optional separate filing rule, a couple with an 80—20 earnings split would pay 40% more in taxes than a 50—50 couple at the $10,000 income level, 14% more at the $15,000 level, 10% more at the $30,000 level, 15% more at the $40,000 and $50,000 levels, and so on. Furthermore, couples with substantial shares of their incomes from property (such as interest and dividends) could use all the devices perfected in the pre-'48 era (and all the new ones which sharp tax lawyers could easily create) to maximize their tax savings at the expense of wage income couples. And finally, the "tax on marriage" would still remain

Taxes for Couples With Varying Income Splits and Income Ratios Under Fenwick-Mathias Bill (Assuming No Offsetting Tax Increase)

Income & Ratio of Earnings	Dollars	Effective Rate (%)
$10,000		
50:50	$ 500	5.0
60:40	520	5.2
75:25	692	6.9
80:20	702	7.0
100:0*	702	7.0
$15,000		
50:50	$ 1,384	9.2
60:40	1,399	9.3
75:25	1,503	10.0
80:20	1,579	10.5
100:0*	1,635	10.9
$20,000		
50:50	$ 2,354	11.8
60:40	2,366	11.8
75:25	2,413	12.1
80:20	2,469	12.3
100:0*	2,601	13.0
$30,000		
50:50	$ 4,326	14.4
60:40	4,394	14.6
75:25	4,631	15.4
80:20	4,761	15.9
100:0*	4,761	15.9
$40,000		
50:50	$ 6,590	16.5
60:40	6,718	16.8
75:25	7,246	18.1
80:20	7,480	18.7
100:0*	7,496	18.7
$50,000		
50:50	$ 9,238	18.5
60:40	9,364	18.7
75:25	10,209	20.4
80:20	10,591	21.2
100:0*	10,828	21.7

*Tax under current law without regard to income split.

for most couples: It would still pay to obtain a divorce with an alimony agreement to split income. It is hard to conceive of a worse approach to the marriage penalty problem than the Fenwick-Mathias proposal.

The revenue significance of the "tax on marriage" underscores the fact that it is not to be trifled with. It should be noted, however, that the $28 billion which would be "lost" to the Treasury from eliminating the marriage tax would, of course, have to be made up by increasing other revenues, probably individual income taxes generally. Since married people represent three-quarters of the individual taxpayers, they would pay most of the tax *increases* needed to offset elimination of the tax on marriage. The bottom line is that adopting income splitting for couples with no federal revenue loss would mean an average tax cut of only $72 per married taxpayer and an average tax increase of $215 for single individuals. Furthermore, if the marriage penalty were eliminated as part of a program of real tax reform, the shift in burden would be even less, since tax preferences tend to benefit married people more than singles.

Significant tax reductions can be expected in upcoming years to offset inflation and to distribute some of the revenues generated by the windfall profits tax. These tax cuts should provide an ideal opportunity for Congress to eliminate the unnecessary marriage tax inequity from our tax laws.

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