

# The I.R.S.'s Shotgun Marriage

By Shari Motro

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**T**HIS tax season some 100 million married Americans will sign joint tax returns. Few understand the consequences.

In signing a joint return, each spouse becomes responsible for the taxes due on both spouses' earnings for the year. That means that if a husband who is his family's sole breadwinner underreports his income and then abandons his wife, the I.R.S. can, and often does, go after the wife. Thus, the "innocent spouse" may be liable for taxes, interest and penalties on income she never earned and never owned.

While spouses are theoretically free to file separate returns, in most cases doing so subjects them to higher taxes than they would owe filing together. Not surprisingly, the over-

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whelming majority — some 97 percent — of married Americans file jointly.

Recognizing that the joint liability rule is unfair, Congress has enacted provisions intended to alleviate the burden on innocent spouses. But these relief provisions still leave millions of spouses liable for taxes on income they have no rights to. Most of them are women.

One solution is to further improve innocent spouse relief. Along these lines, the national taxpayer advocate at the I.R.S. has issued a proposal that seeks to limit liability for lower-income spouses. But while such efforts are laudable and should be given serious consideration, they don't get at the heart of the problem: the tax code presumes economic unity between spouses, and that unity doesn't always exist.

The joint liability rule is often justified as the flip side of a significant benefit that results from joint filing. The current married-filing-jointly rate schedule creates a sizable "marriage bonus" for one-earner and unequal-earner couples. (Though the "marriage penalty" is

better known than the marriage bonus, it affects fewer taxpayers.)

The bonus results from the fact that joint filing approximates income splitting—that is, it essentially shifts some of the higher earning spouse's income into the lower earning spouse's tax bracket, thereby re-

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Joint returns are for couples who really do share everything.

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ducing the couple's overall tax liability.

The theory behind treating spouses as if they each earned half of the couple's combined income is that marriage is presumed to indicate economic unity between two people. It does not.

In 41 states, a married breadwinner is the sole owner of his or her income; a wage earner is obligated to

provide only minimal support to his or her spouse. Although spouses in the nine other states are automatically equal owners of any income earned by either spouse, this requirement can often be circumvented through prenuptial or other agreements.

Because marriage is a lousy proxy for economic unity, joint filing—with its income-splitting benefits and joint-liability burdens—shouldn't be available to couples who lead independent financial lives. Rather, only couples who are prepared to marry their wallets as well as their hearts by signing an income-sharing agreement should be permitted to file as one.

Basing joint filing on economic unity would exclude economically separate spouses from a benefit they don't deserve and ensure that before low- or non-earner spouses can be liable for taxes, they will at least own the income that generates the liability.

Finally, once we recognize that no necessary connection exists between marriage and economic unity, why

not leave marriage out of taxes altogether? Making economic unity, rather than marriage, the requirement for joint filing would provide a rare opportunity for moderate conservatives and liberals to agree on a reasonable approach to the reality of same-sex households while staying clear of the quagmire of gay marriage.

Tax law should stop perpetuating the fairy tale that husbands and wives are equal partners. Such partnership between spouses, while common, is essentially optional, and plenty of unmarried couples share everything they earn. A tax system that strives to treat all citizens fairly should reflect this reality. □

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