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Taxation - Joint Returns and the Revenue Act of 1948

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TAXATION—JOINT RETURNS AND THE REVENUE ACT OF 1948

Under the Revenue Act of 1948 the filing of a joint return has become a pre-requisite to the use of the income-splitting provisions for computing the income tax payable by a husband and wife.[1] The income-splitting method in the new law permits a husband and wife, regardless of the state in which they reside, or the type of income received, to report their combined income in a joint return. Only a husband and wife may file a joint return and the return may not include the earnings of the minor children. Only one spouse need have income or deductions.[2] The income is divided equally for the purpose of the tax computation and the tax payable is the sum of the taxes on the two halves of the income.[3] The purpose of the splitting provisions of the 1948 Act is to eliminate the discrimination in favor of community property states where couples have been able to divide their community income and report the divided income on separate returns.[4] Under the new Act taxpayers with fiscal years beginning in 1947 and ending in 1948 are allowed to use the splitting provisions for that part of the fiscal year falling in 1948 on a pro-rata basis.

Marital status is determined as of the last day of the taxable year, or in the event of the death of one spouse, at the date of such death. The parties may live apart without affecting their marital status, but the reason for their separation must be determined. Prior to January 1, 1944 in order to file a joint return it was necessary for the husband and wife to be living together as of the close of the taxable year. The Act of 1944 changed this to provide that the parties need not be cohabiting as long as they were legally husband and wife. This resulted in some confusion in states having divorce and separation laws that

[1] I.R.C. sec. 51 (b). This comment does not cover the joint return for gift tax purposes.

[2] One spouse's capital losses may be set off against the other's capital gains, but if combined capital transactions result in a net loss, the capital loss limitation is $1,000 for the joint return, whereas separate returns would allow up to $2,000. As to standard deductions, the new law allows, on a joint return, a standard deduction of $1,000 or 10% of the combined adjusted gross income, whichever is less. On a separate return the maximum is $1,000 or 10% of the adjusted gross income of the individual. However, on the separate return of a married individual having more than $5,000 adjusted gross income, the standard deduction is still a flat $500. Hence two single individuals each earning $9,000 a year get a standard deduction of $900 apiece. If they marry they would get a maximum of $500 each on separate returns or $1,000 on a joint return.

[3] The tax payable on a joint return under the 1948 Act is computed as follows: (a.) Take the sum of the incomes of the husband and wife; (b.) subtract the deductions of both; (c.) deduct the personal exemptions for both; (d.) divide the remainder by two; (e.) compute the tax on one-half; (f.) double the amount of the tax thus found. This is the total tax payable.

[4] Husband and wife may still obtain the split-income advantage in community property states by filing separate returns. They may weigh the other advantages of joint or separate returns without any danger of losing their basic tax advantage.

provided either for a limited divorce[5] or for a waiting period between the legal separation of the parties and the time they again became single individuals free to remarry. The Act of 1948 resolves any question that might remain in this regard, specifically providing that, ". . . an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married."[6] Once a decree of divorce or legal separation of any type has been entered the parties are no longer eligible to file a joint return, unless there is a reconciliation before the end of the taxable year.[7]

In general, in order to file a joint return, a husband and wife must have the same taxable years. In any case their tax years must begin on the same date.[8] They may end on different dates however if one spouse dies during the year. In previous years a joint return could not be filed by the surviving spouse since this would violate the rule requiring identical tax years for the filing of a joint return, section 47 (g) of the Code stating that the taxable year of a taxpayer closes as of the date of his death.[9] The Revenue Act of 1948 specifically provides an exception to the above rule declaring, ". . . that if such taxable years begin on the same day and end on different days because of the death of either or of both, then the joint return may be made with respect to the taxable year of each."[10] A joint return is not allowed, however, after the death of one of the spouses where parties had different taxable years, even though changed after the death. In case of the death of both spouses the executor or administrator of either may file a joint return for both.

Where either the husband or wife has died during the year, the survivor may by himself file a joint return providing the following conditions prescribed by the Code are met: (a.) No return has been made by the decedent for the taxable year in which the joint return is made; (b.) No executor or administrator has been appointed; (c.) No

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[5] Termed in Wisconsin a "Divorce From Bed and Board." In some states it is called an Interlocutory Decree. See: Dunn v. Comm'r., 3 T.C. 319 (1944); also, Corbett v. Corbett, 113 Cal. A. 595, 298 Pac. 819 (1931); Olson v. Superior Court of Merced County, 175 Cal. 250, 165 Pac. 706 (1917); In Re Dargie's Estate, 162 Cal. 51, 121 Pac. 320 (1912).

[6] *Supra,* note 1, sec. 51 (b) (5).

[7] Where there is a separation by agreement the parties may file a joint return. However any deduction for alimony or support payments is lost: I.R.C., sec. 22 (k).

[8] Thus, both spouses must use the calendar year or the same fiscal year. If the spouses have different taxable years application may be made to the Commissioner for permission to change the taxable year of one spouse to conform with that of the other. The benefit of the change would be prospective and not retroactive because previous taxable years started on different dates.

[9] For cases holding that where one spouse dies prior to the last day of the taxable year, the surviving spouse may not include income of the deceased in a joint return for such years, see: Bliss v. Comm'r., 76 Fed. (2d) 101 (1935); Tompson v. Comm'r., 30 B.T.A. 30 (1934).

[10] *Supra,* note 1, sec. 51 (b) (3).

executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.[11] These conditions apply to any year in which a joint return might be filed, *i.e.* where one spouse dies in January, 1949, the joint returns for 1948 and 1949 must each satisfy the above conditions. If an executor or administrator is appointed after the making of a joint return by the surviving spouse, such executor or administrator may disaffirm the joint return by making within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, remembering that the tax year of the decedent ended with his death.[12] This right of disaffirmance is necessary so that the estate of the deceased will not be burdened with the joint and several liability that goes with a joint return. The time allowed the executor or administrator to disaffirm the joint return by the making of a separate return is not intended to establish a new due date for the return of the deceased spouse. Accordingly, the provisions of sections 291 and 294 of the Code relating to delinquent returns and delinquency in payment of tax will be applicable to such return made by the executor in disaffirmance of the joint return.[13]

There are two important exceptions to the provisions permitting the filing of a joint return by the surviving spouse where one has died. The first exception is that if the surviving spouse remarries before the close of his taxable year, he may not file a joint return with the first spouse who died during the taxable year.[14] The second exception is that the surviving spouse may not make a joint return with the deceased if the taxable year of either is a fractional part of a year under section 47 (a) of the Code, relating to a change of the accounting periods. For example, if a husband and wife make their returns on a calendar year basis and the wife dies on April 1, 1948, and later that year the husband is permitted to change his accounting period to a fiscal year beginning July 1, 1948, no joint return may be made for the short taxable year ending June 30, 1948. Similarly, if a husband and wife who make their returns on a calendar year basis receive permission to change to a fiscal year beginning July 1, 1948, and the wife dies on June 1, 1948, no joint return may be made for the fractional year ending June 30, 1948. However, a husband and wife on a fiscal year begining in 1947 and ending in 1948 may use the income-splitting provisions for that part which falls in 1948 and may file a joint return under the 1948

[11] *Supra*, note 1, sec. 51 (b) (4).
[12] *Ibid.*
[13] Senate Report No. 1013, U.S.C. Congressional Service, Special Revenue Pamphlet, (Revenue Act of 1948); page 626.
[14] A joint return may be filed with the new spouse for the year of remarriage.

Act.[15] This may be done even though one spouse dies during this fiscal year.[16]

The right to file a joint return is not affected by the filing of separate or joint declarations of estimated tax. Where a joint declaration of estimated tax is made but separate returns are filed, payments made on account of the estimated tax may be treated as payments on account of the tax liability of either the husband or the wife, or may be divided between them in any proportion.[17] As under previous acts, no joint return may be filed if either the husband or the wife at any time during the taxable year is a non-resident alien.[18]

In a joint return the liability is joint and several.[19] This includes the liability for a delinquent return and full responsibility in case of a fraudulent return.[20] However the case of *Rosa E. Burkhart v. Commissioner*[21] held that where a collector, under section 3612 of the Code, made a return for a husband and wife, the wife who had no income was not liable for the tax.

In general, a joint return must be signed by both the husband and the wife.[22] However one may sign as the agent of the other provided the proper authorization accompany the return.[23] There have been cases where courts have granted exceptions to a strict requirement that

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[15] The steps in computing the tax are: (a.) A tax is computed on the fiscal year net income under the law applicable to the calendar year 1947. This is multiplied by a fraction composed of the number of days in the fiscal year prior to January 1, 1948 over the number of days in the entire fiscal year; (b.) A tax is computed on the fiscal year net income under the law applicable to the calendar year 1948. This is multiplied by a fraction composed of the number of days in the fiscal year after December 31, 1947 over the number of days in the entire fiscal year; (c.) The tax payable is the sum of the two products.

[16] *Supra,* note 13, House Report No. 1274, p. 695.

[17] *Supra,* note 1, sec. 58 (c).

[18] *Supra,* note 1, sec. 51 (b) (2).

[19] Originally the Board of Tax Appeals held that joint returns create joint and several liability: Cole v. Comm'r., 29 B.T.A. 602 (1933). This case was reversed in 81 Fed. (2d) 485 (1935). Other decisions that held that the liability was not joint and several: Darling v. Comm'r., 34 B.T.A. 1062 (1936); Flaherty v. Comm'r., 35 B.T.A. 1131 (1937); Hyman v. Comm'r., 36 B.T.A. 202 (1937); Sedar v. Comm'r., 38 B.T.A. 874 (1938); Downing v. Comm'r., 43 B.T.A. 1147 (1941). The above cases were all overruled and the doctrine of Cole v. Comm'r. as originally decided was reinstated in George W. Schoenhut v. Comm'r., 45 B.T.A. 812 (1941). In the case of Rock v. Comm'r., 5 T.C.M. 199 (1946), a widow was held liable after the death of her husband on a joint return.

[20] Myrna S. Howell v. Comm'r., 10 T.C. 859 (1948).

[21] 11 B.T.A. 275 (1928).

[22] Regulations 111 of the I.R.C., sec. 29.51-1 (b).

[23] Form number 936 is prescribed by the Commissioner for this authorization. However, it is not necessary that this precise form be used. In the bulletin "Your Federal Income Tax" issued by the Internal Revenue Bureau, it is stated: "In cases, however, where such authorization, or the signature of either the husband or the wife cannot be obtained because of absence or illness, and no power of attorney is available for the same reason, a return signed by one spouse and offered to the collector for filing as a joint return may be accepted as prima facie evidence that the taxpayers intended to file it as a joint return."

both sign the return either personally or through the other spouse as agent.[24]

Each year a husband and wife may elect, without the knowledge or consent of the Commissioner, to file either a joint return or separate returns. The election to file a joint return is made by making their return on the form prescribed by the Bureau as the form for a joint return.[25] Although the parties have filed separate returns for the taxable year they may change to a joint return by filing an amended return on a joint return form at anytime before the expiration of their filing time. A change by amended returns from joint to separate, or vice versa, may not be made after the expiration of the time for filing returns.[26] Where a husband and wife have filed a joint return and an extension of time has been granted to either of them, the benefit of the extension inures to both, and it is unnecessary for the other party to secure additional authority.

GEORGE S. GOODELL

[24] In the case of Walter E. Olsen v. Comm'r., T.C.M. June 11, 1948, a joint return on a W-2 form was not signed by the wife upon the advice of a Deputy Commissioner. The Court held that ". . . if the intention of the parties to file a joint return is clearly established—if the answers to the stated questions are consistent with the joint return—if the failure to sign be reasonably and convincingly explained . . . a return may be a joint return although not signed by one of the spouses." See also: Kellett et ux v. Comm'r., 5 T.C. 608 (1945). Though a husband filed joint returns without the express knowledge or consent of his wife, her assent is presumed; Carroro v. Comm'r., 29 B.T.A. 646 (1933).

[25] *Supra,* note 1, sec. 51 (f) (4).

[26] Rose v. Grant, 39 Fed. (2d) 340 (1930); Buttolph v. Comm'r., 29 Fed. (2d) 695 (1928); Einstein v. Comm'r., 10 B.T.A. 240 (1928); Anderson v. U.S., 48 Fed. (2d) 201 (1931); Thomas v. U.S., 22 Fed. (2d) 1000 (1927).