



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 58 | Number 3

Article 4

3-1-1980

Individual Filing in the Personal Income Tax: Prolegomena to Future Discussion

Michael J. McIntyre

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Michael J. McIntyre, *Individual Filing in the Personal Income Tax: Prolegomena to Future Discussion*, 58 N.C. L. REV. 469 (1980).

Available at: <http://scholarship.law.unc.edu/nclr/vol58/iss3/4>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

INDIVIDUAL FILING IN THE PERSONAL INCOME TAX: PROLEGOMENA TO FUTURE DISCUSSION

MICHAEL J. McINTYRE†

The joint filing rule of the personal income tax has recently come under increasing attack. Critics assail many alleged defects of the system, especially the so-called "tax on marriage," under which some married couples pay more tax than unmarried couples with equal income. In this Article, Professor McIntyre comes to the defense of the joint filing system and challenges the assertion that the present system should be replaced with an individual filing regime. Professor McIntyre argues that the joint filing rule is fundamentally sound on theoretical grounds because of the impact that the pooling of income has on the material well-being of married persons. Moreover, Professor McIntyre suggests that an individual filing system necessarily would create inequities, including its own version of the "tax on marriage," that could be avoided under a reformed system of joint filing.

Many married persons, probably most, pool some or all of their individual income sources with their spouses.¹ The exact sharing patterns of couples are unknown and probably unknowable, because sharing is often an unconscious act unaccompanied by careful record keeping.² If we consider the major items in a family budget, nevertheless, we can plausibly argue that extensive sharing is virtually unavoidable. In most marital partnerships, the distribution of benefits from

† Professor of Law, Wayne State University Law School. A.B. 1964, Providence; J.D. 1969, Harvard.

For a popular summary of many of the arguments made in this paper, see McIntyre, *Prolegomena to Future Arguments for Individual Filing in the Personal Income Tax*, TAX NOTES, June 18, 1979, at 763-67.

1. For a summary of the empirical basis for the widespread belief that married persons pool income, see Thorson, *An Analysis of the Sources of Continued Controversy over the Tax Treatment of Family Income*, 18 NAT'L TAX J. 113 (1965).

2. Suppose we observe two lovers in a soda parlor drinking through straws from a single ice cream soda. We understand easily enough that sharing is taking place, but we cannot determine how much soda each party is getting. Any attempt to measure the flows through the straws scientifically would require an intrusion into the scene that would undoubtedly bias the results. Questioning the lovers, moreover, is unlikely to yield reliable data, because the nature of the sharing virtually precludes detailed awareness of the amount of soda each party is consuming. Marital

expenditures for housing, utilities, furnishings, insurance, food, transportation, vacations, taxes, support of children and clothing are unlikely to favor one spouse over the other to a substantial degree. Even in marital partnerships in which the spouses make a determined effort to maintain spending authority over their individual income sources,³ the benefits of marital expenditures will tend to be shared; any other pattern would undermine communal living and ultimately destroy most marital bonds. Full sharing is especially likely in two-job marital partnerships, because financially independent spouses are unlikely to tolerate any other pattern.⁴

The reality, or perceived reality, of marital pooling is the economic underpinning for the joint filing rule that has been a feature of the personal income tax in the United States since 1948.⁵ Under the joint filing rule, husbands and wives are required (or induced by the promise of lower taxes) to aggregate their individual income sources as a step in the computation of their tax burden. Given the assumption of marital pooling, aggregation of marital income is essential if the tax system is to reflect systematically the real changes in an individual's personal consumption and net change in savings that are thought to accompany communal living. Because the sum of personal consumption and the net change in savings is a traditional index of material well-being under the income tax,⁶ the assumption of marital pooling supports a formidable *prima facie* case for joint filing.⁷

income sharing may be less romantic, but the problem of monitoring the sharing patterns of married couples parallels the problem of measuring the soda consumed by each lover in my example.

3. For equal income couples, whether each partner obtains half the community income by spending out of one pot or by keeping control over his or her income sources is irrelevant for tax policy purposes; the benefits enjoyed by each spouse are the same under both systems.

4. Some supporters of individual filing assert that an assumption of inequality between spouses is less realistic with the changing status of women in society and with the increase in the number of two-job couples. See, e.g., Munnell, *The Couple Versus the Individual Under the Federal Personal Income Tax*, in *ECONOMICS OF TAXATION* (M. Boskin & H. Aaron eds.) (to be published by the Brookings Institution); H. Brazer, *Income Tax Treatment of the Family* (March 15, 1979) (copy on file in office of the *North Carolina Law Review*). The basis for that assertion is unstated. Munnell feels that the increase in divorce also undermines the case for joint filing, apparently on the ground that income pooling requires stable marriages. See Munnell, *supra*, at 4. Assessing tax on an annual basis seems to take care of the marriage stability concern. In fact, the availability of divorce suggests that the number of women trapped in an unequal relationship probably has diminished in recent years.

5. For a thorough discussion of the history of family taxation in the United States, see Bitter, *Federal Income Taxation and the Family*, 27 *STAN. L. REV.* 1389 (1975).

6. For the classic statement of the income concept, see H. SIMONS, *PERSONAL INCOME TAXATION* 59-102 (1938).

7. For the presentation and a detailed analysis of this argument, see McIntyre & Oldman, *Taxation of the Family in a Comprehensive and Simplified Income Tax*, 90 *HARV. L. REV.* 1573

Promoters of the individual filing rule—the chief alternative to joint filing—generally have failed to confront this *prima facie* case for the joint filing rule.⁸ No serious effort has been made to challenge the assumption of widespread marital pooling or to dispute its relevancy in determining an individual's taxable capacity. Nor have the individual filing advocates developed an affirmative theoretical justification for their position. Instead, they have focused their attention on two asserted side effects of the joint filing rule. The first, analyzed in part I below, is the allegedly bizarre set of rewards and penalties produced by changes in marital status under a joint filing regime. The second, taken up in part II, is the alleged discrimination produced by the joint filing rule against secondary workers, the overwhelming majority of whom are presumed to be wives working in paid employment outside the home. These side effects, the argument goes, hopelessly discredit the joint filing rule, leaving individual filing as the only viable choice.

My objective in this Article is to demonstrate the weakness of the current case for the individual filing rule and to establish the essential elements of any future arguments for individual filing worthy of serious attention. I do not attempt to build a viable case for individual filing. In the context of current economic and social conditions in the United States, I doubt that a tenable case for individual filing is possible. What I hope to do is to convince the proponents of an individual filing rule that they must address seriously the tax policy implications of marital pooling if they are to join issue with their critics.

(1977). See also *Hearings on the Tax Treatment of Married Couples and Single Persons Before the House Comm. on Ways and Means*, 96th Cong., 2d Sess. (1980) (statement of Robert S. McIntyre, Public Citizen's Tax Reform Research Group, on "The 'Tax on Marriage' and Related Matters").

8. For recent articles championing an individual filing rule, see H. Brazer, *supra* note 4; Gerzog, *The Marriage Penalty: The Working Couples' Dilemma*, 47 *FORDHAM L. REV.* 27 (1978) (advocating voluntary individual filing for two-job couples); Munnell, *supra* note 4; Quester, *Women's Behavior and the Tax Code*, 59 *SOC. SCI. Q.* 665 (1979); Rosen, *Is It Time to Abandon Joint Filing*, 30 *NAT'L TAX J.* 423 (1977); Wenig, *Marital Status and Taxes*, in *UNMARRIED COUPLES AND THE LAW* 190-273 (G. Douthwaite ed. 1979).

In Canada, which has an individual filing rule, defenders of the *status quo* have challenged the reality and significance of family sharing patterns. For a lively debate, see *Taxation of the Family*, 1 *CANADIAN TAXATION* 4 (1979) (including London, *The Family as the Basic Tax Unit*, *id.* at 4; Dulude, *Joint Taxation of Spouses—A Feminist View*, *id.* at 8; McIntyre, *Economic Mutuality and the Need for Joint Filing*, *id.* at 13; Dulude, McIntyre, London, Woodman, Lakey & Wolfson, *A Panel Discussion*, *id.* at 16).

Some advocates of the community property system for marital property acknowledge, at least implicitly, the fairness arguments for the joint filing rule. They would deny income splitting in common law jurisdictions, however, in order to induce those jurisdictions to change their marital property laws. Issues relating to the reform of marital property regimes are tax issues only incidentally and are beyond the scope of this Article. For a discussion of these issues, see Bartke, *Marital Sharing—Why Not Do It By Contract*, 67 *GEO. L.J.* 1131, 1178 n. 323 (1979).

I. MARRIAGE NEUTRALITY AND INDIVIDUAL FILING

An income tax that employs a joint filing rule cannot be marriage neutral. The case for joint filing rests, first of all, on the premise that married couples typically pool income and, second, on the premise that the real changes in an individual's economic circumstances that are produced by marital pooling should be reflected in determining a married person's taxable capacity. A lack of marriage neutrality, therefore, is not an embarrassment to the supporters of a joint filing rule. To join issue with the advocates of joint filing, the supporters of an individual filing rule cannot assume without argument that a marriage neutral tax system is per se good. They must be prepared to challenge the proposition that married couples typically pool income, or show why that fact should be ignored in a tax system that attempts to distribute burdens in accordance with each individual's real income.

Joint filing advocates, of course, do not suggest that all types of marriage nonneutrality, or even all the nonneutralities of current United States law, are desirable. Few if any supporters of joint filing, for example, favor the "tax on marriage" produced by the system of multiple rate schedules under United States law. The "tax on marriage" found in the tax regimes of many European countries, which results from the combination of spousal income aggregation and only one rate schedule, also is not favored.⁹ The only nonneutralities that can be defended on principle are those that result from real or assumed changes in a person's taxable capacity as a result of marriage or, of course, divorce.

Two marriage nonneutralities of the income tax are commonly espoused by the advocates of a joint filing rule. The first is produced by implementing a policy that requires married couples with equal income to pay equal tax.¹⁰ For example, this policy would mandate that Terry and Lee, a married couple, each with individual income sources of \$10,000, pay the same total tax as Pat and Jean, another married couple who have respective net incomes of \$5,000 and \$15,000. This result, which flows directly from a joint filing rule, is impossible under an individual filing system. The rationale for the result is that, for couples pooling income sources, the taxable capacity of each partner is his or her share of the total marital income, independent of the source of the

9. For a summary of the tax regimes of many European countries, see ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *THE TREATMENT OF FAMILY UNITS IN OECD MEMBER COUNTRIES UNDER TAX AND TRANSFER SYSTEMS* (1977).

10. See McIntyre & Oldman, *supra* note 7, at 1589-92.

income. Even tax theorists favoring individual filing are comfortable with this result.¹¹ Moreover, the result has broad public support.

The second marriage nonneutrality favored by joint filing advocates is the treatment under current United States law of alimony payments. Under Internal Revenue Code sections 71 and 215, alimony is deductible by the payor and taxable to the recipient. This permits a form of income splitting between formerly married persons, paralleling the implicit income splitting afforded to married persons under the rate schedule for married couples.¹² The justification for this treatment is that the personal consumption and savings of the payor is reduced by the alimony payment, while the consumption and savings of the payee is concomitantly increased. This result also is a popular feature of the United States tax laws among tax specialists and the public. In fact, all the advocates of individual filing who have addressed this issue favor a continuation of the alimony deduction.¹³

Given the apparent acceptability of at least some marriage nonneutrality, the *per se* argument for a marriage neutral tax system is hopelessly undercut. No tax regime can be advanced on the basis of a principle that necessarily and systematically produces results that are acknowledged to be unfair. Therefore, a plausible argument for individual filing based on marriage neutrality considerations must be far less sweeping and more refined than the *per se* argument discredited above.

Two lines of argument are still open to those who would defend individual filing on marriage neutrality grounds. First of all, the two nonneutralities discussed above are not the only ones produced under the joint filing rule of current law. In addition, we have the infamous "tax on marriage" imposed on many two-income married couples and the frequently misunderstood "tax on remaining unmarried" imposed on cohabiting persons with substantially unequal incomes who are

11. See, e.g., Rosen, *supra* note 8, at 423. Some commentators, however, would favor unequal treatment of equal income spouses to offset the alleged benefits from household services of one-job couples. See note 29 *infra*.

12. See I.R.C. §§ 71, 215. Under current law, the rate schedule for married couples implicitly assumes an income split between the spouses of approximately 85/15 for middle income taxpayers. The rate schedule was constructed in accordance with a congressional mandate that the tax burden on a single person not exceed 120% of the tax burden on two married persons with the same aggregate income. For a fuller explanation of the implicit income splitting of current United States law, see McIntyre & Oldman, *supra* note 7, at 1584-85. For a detailed description of the implicit income splits at various income levels after the 1978 tax act, see Statement of Tax Reform Research Group, *supra* note 7.

13. For example, none of the advocates of individual filing referred to in note 8 *supra* argue against the alimony deduction.

sharing income but are not married. These nonneutralities, one might contend, are sufficiently important and unfair that they overcome the acknowledged virtues of the joint filing rule. The merits of this contention and its common variations are discussed in subsection B below.

The second line of argument is based on the contention that an individual's taxable capacity should be measured by the income he earns or, in the case of property income, the income he controls by ownership of an income-producing asset. Under this approach, marriage neutrality would be mandated unless marriage resulted in a change in ownership rights. Advocates of individual filing have asserted that this income attribution rule, which I call the property interest rule, is correct as a matter of principle but have never revealed the theoretical underpinning of the rule. In section A below, I articulate both the foundation and the inadequacies of this asserted principle.

A. The Unsound Case for Attributing Income to the Earner

An unstated principle underlying the prima facie case for joint filing set forth above is that the proper taxpayer on an item of income is the person who uses or benefits from that income. If income is defined as the sum of personal consumption and the net change in savings, this principle would tax consumption to the consumer and savings to the saver. More generally, the principle asserts that if income is used to measure an individual's material well-being for tax purposes, the proper taxpayer on an income item is the one whose material well-being is increased by that income item.¹⁴ This benefit rule is compatible with the property interest rule outside the family context because for unattached individuals the "owner" of income and the "beneficiary" of income are typically the same person. For married couples, however, the tax rules seem to be in conflict.¹⁵ A refutation of the benefit rule, therefore, appears to be a necessary precondition for developing a principled defense of the property interest rule. Supporters of the property interest rule have not attempted this refutation, nor are they likely to seriously challenge this fundamental and commonsensical principle of taxation.

The property interest rule formulated above, nevertheless, need not conflict with the benefit rule if we use a broad enough definition of

14. See McIntyre & Oldman, *supra* note 7, at 1592-99.

15. See *id.* at 1593.

income. If we assume, as some economists suggest, that an individual's income includes the value of all his or her human choices, measured by market criteria, the apparent conflict between the benefit rule and the property interest rule, at least within the family context, vanishes. Anyone who earns income or owns an asset that produces income obviously has exercised an economic choice when he or she shares that income with a spouse. That choice may be required under a marriage contract or, *a la* Mr. Earl in *Lucas v. Earl*,¹⁶ by a private contract. However we identify the choice, a market analysis of marital behavior suggests that a husband, for example, who shares his earnings with his wife reaps an economic benefit from that sharing.¹⁷ Under market criteria, the value of that choice is presumed to be the value of the money or other property relinquished. It is the value of this choice, not the actual market consumption or savings enjoyed by the donee spouse, that would be taxed to the donor spouse under the property interest rule. Because the donee spouse who actually spends or saves the income also exercises an economic choice, pooled income or gifts would end up being taxed to both the donor and the donee.¹⁸

What the above analysis suggests is that a principled defense of the property interest rule is possible, but only if a defense is also provided for taxing individuals on the value of their economic choices instead of

16. 281 U.S. 111 (1930).

17. A market analysis of family dealings has become commonplace. For a discussion of the theory and references to the literature, see Sawhill, *Economic Perspectives on the Family*, DAEDALUS, Spring 1977, at 115. The following statement by a prominent economist suggests an awakening of the economics profession to the dangers of inappropriately imposing an exchange model on family transactions:

Economic analysis is very useful and does provide a number of insights even about the behavior of marriage partners. I would only suggest that we may be beginning to push market analysis beyond its functional limits in trying to find price surrogates for all the activities of our waking hours, and in trying to explain everything in terms of economic values. This is not a new idea, for both Karl Marx and Adam Smith would have been horrified by the notion that the exchange process is the origin of all values. Moreover, this kind of reductionism is at variance with another tendency in economics—the effort to broaden its concepts of accounting to include such concerns as the quality of life and social responsibility of corporations. Besides, it may be a matter of great satisfaction not to engage in cost accounting and *quid pro quo* exchanges in our leisure time and in our close and informal relationships with other people.

Johnson, *The Limits of Economic Analysis: Should We Try to Price Everything?*, 4 J. INST. SOCIOECON. STUD. 30, 40 (1979).

18. The "double taxation" of gifts has been viewed by many tax specialists as an inescapable consequence of a comprehensive tax base. For an interesting discussion of recent developments, see Head, *The Simons-Carter Approach to Tax Policy: A Reappraisal*, in WIRTSCHAFTSWISSENSCHAFT ALS GRUNDLAGE STAATLICHEN HANDELNS 191, 200-01 (P. Bohley & G. Tolkemitt eds. 1979). In my view, the double tax problem is avoided by treating the beneficiary as the proper taxpayer and market consumption and savings as the proper object of taxation. See Dodge, *Beyond Estate and Gift Tax Reform: Including Gifts and Bequests in Income*, 91 HARV. L. REV. 1177, 1182-88 (1978); McIntyre & Oldman, *supra* note 7, at 1598 n.90.

on the income they actually receive. In effect, the defense of the property interest rule depends on first developing a justification for taxing individuals on potential income. A tax on potential income is a popular plaything of the economics profession. It appeals to those economists who purport to place primary emphasis on the achievement of efficiency in the design of an income tax.¹⁹ They find some merit, for example, in taxing people on the value of their leisure time on the theory that a failure to tax leisure provides a tax incentive to those who choose to do nothing in lieu of working in paid employment in the taxable sector of the community. Our existing income tax, however, in no way resembles a tax on potential income. Nor has any serious effort been made to specify the tax base of a potential income tax, to overcome the obvious obstacles to administering such a tax or to develop any arguments concerning the fairness of such a tax. In sum, a case for the property interest rule linked to the case for a tax on potential income is no case at all, at least for the present.

B. Tax on Marriage and Other Nonneutralities as the Basis for Individual Filing

Much of the criticism of the current program of family taxation in the United States is directed at the so-called "tax on marriage" that arises because two married persons, each with substantial individual income sources, generally would pay less tax if they got a divorce and filed as single persons. Although a variety of features of the tax code can produce this phenomenon, most have nothing to do, by everyone's admission, with the choice between joint and individual filing.²⁰ Of

19. The champions of the so-called optimal tax theory generally treat efficiency as the principal goal of the income tax. Their search for efficiency requires a quantification of all nonmarket choices, including leisure. For a statement of the efficiency goal and references to this expanding literature, see Rosen, *Application of Optimal Tax Theory to Problems in Taxing Families and Individuals*, in 1 COMPILATION OF OTA PAPERS (Office of Tax Analysis, U.S. Dep't of the Treasury, Paper 21, 1976).

The case for a tax on potential income has some similarities to the case made by some economists for a consumption tax. For a discussion of the common roots of the tax on consumption and the tax on potential income and a criticism of both, see McIntyre, Book Review, 26 WAYNE L. R. 1181 (1980).

20. The various marriage penalties of current United States law are summarized in H. Brazer, *supra* note 4.

The House Ways and Means Committee held hearings on the tax treatment of married and single persons on April 2-3, 1980. In anticipation of those hearings, the Staff of the Joint Committee on Taxation published a 68 page report, JOINT COMM. ON TAXATION, 96th CONG. 2D SESS., THE INCOME TAX TREATMENT OF MARRIED COUPLES AND SINGLE PERSONS (Comm. Print 1980) [hereinafter cited as JOINT COMMITTEE REPORT], that summarized some of the proposals for solving the "tax on marriage" problem. Curiously, the Report virtually omitted any reference to income splitting as a solution to that problem.

those relevant to the subject matter of this Article, the most talked about cause of the tax on marriage derives from the introduction of special rate schedules for single persons by the 1969 tax act. Proponents of individual filing claim that the fairest way to eliminate this tax on marriage would be for the United States to return to the pre-1948 system of individual filing with one rate schedule. In subsection 1 below, I analyze that claim and demonstrate its serious weaknesses. I then discuss, in subsection 2, the related claim that the joint filing rule is unfair to certain single persons by imposing on them a penalty for failing to marry.

1. Marriage Neutrality and the Married Person

Most tax theorists would agree that the tax on marriage is an unhappy feature of the United States system of family taxation. No convincing tax policy argument has been advanced for placing a higher tax burden on cohabiting couples who marry than on those who live together in a less formal relationship.²¹ Nor do social policy concerns support the tax on marriage. The joint filing rule need not be abandoned, however, in order to deal with the tax on marriage problem. A system of joint filing with full income splitting, as was adopted in the United States in 1948, completely eliminates the tax on marriage. Within the context of the current United States system of multiple rate schedules, the tax on marriage could be substantially eliminated for most two-income couples through the granting of a special marital allowance for the second earner.²² Therefore, the case for individual filing based on the tax on marriage problem requires a showing that the solution under an individual filing rule is superior to those available under the joint filing rule.

As its advocates assert, an individual filing rule could end the tax on marriage caused by the multiple rate schedules of current United States law. It would not produce, however, a marriage neutral rate

21. For a summary and criticism of the defenses of the tax on marriage, see Bittker, *supra* note 5, at 1419-28. See also Gerzog, *supra* note 8, at 31-36.

22. Several proposals for a special deduction are explained in McIntyre, *Taking Account of Marriage*, PEOPLE & TAXES, October 1977, at 3-6. A special credit is advocated in Z. Giraldo, Tax Policy and the Dual-Income Family: The "Marriage Tax" and Other Inequities, at 3-9 to 3-13 (Center for the Study of the Family and the State, Institute of Policy Sciences and Public Affairs, Duke University 1978). Giraldo concludes that income splitting and the problem of geographical nonneutrality make an individual filing election undesirable. She refutes the argument that these problems are less intractable now than they proved to be prior to 1948. *Id.* at 3-5 to 3-8. Rosen has suggested that the problems have been solved in Canada. See Rosen, *supra* note 8, at 428 n.10. For a pointed rebuttal, see Bird, *On the Importance of Tax Details: Joint vs. Individual Filing*, 31 NAT'L TAX J. 203 (1977).

structure unless the deduction permitted for alimony payments were eliminated as well. Under current United States law, and under any system of individual filing with an alimony deduction, two unmarried persons with substantially unequal individual income sources could reduce their total tax bill by marrying, getting a divorce and then equalizing their taxable incomes through alimony payments.²³ For example, if Pat, with income of \$15,000, married and then divorced Lee, with income of \$5,000, an alimony payment of \$5,000 paid by Pat to Lee would leave the couple with equal taxable incomes, the optimum position for unmarried couples who are being taxed individually under a progressive rate schedule.

The tax on marriage produced by the alimony deduction is the mirror image of the more famous tax on marriage produced by the multiple rate schedules of current United States law. The chief victims of the alimony tax on marriage are one-income couples and other couples with substantially unequal incomes. Equal income couples, who pay the maximum tax on marriage produced by the multiple rate schedules, suffer no tax on marriage from the alimony deduction.

As discussed above, the alimony deduction is a popular feature of our tax laws, which even the champions of a marriage neutral tax system seem unwilling to abandon. Assuming the permanence of the alimony deduction, those advocates of individual filing who have been most uncompromising in their call for an end to the tax on marriage have actually been touting a system they condemn—joint filing with full income splitting. Every other tax regime has to tolerate a tax on marriage, at least to some extent.

The analysis above debunks much of the tax on marriage rhetoric that has been marshalled for an individual filing rule. Two lines of argument, both unpromising, remain open to those who would pursue an individual filing solution to the marriage penalty. First, one might develop a principled basis for abandoning the alimony deduction. Without the alimony deduction to contend with, the supporters of individual filing at least could claim that their favored tax regime would end the tax on marriage problem. Because the alimony deduction is a necessary corollary of the benefit rule, a principled attack on the alimony deduction most likely would require a defense of the property interest rule for attributing income to individual taxpayers. The

23. For a full explanation of this alimony tax on marriage, including a table showing the amount of the penalty, see Wenig, *supra* note 8, at 257-59, 261.

argument for the property interest rule is discussed and rejected in section I A above.

The other line of argument involves a direct appeal to social policy goals independent of traditional tax policy concerns. In effect, the proponents of individual filing would concede, *arguendo*, that joint filing is the correct tax policy choice, but would contend, nevertheless, that the assumed cost in tax equity from the individual filing rule is more than offset by some social policy gains produced by individual filing. This argument is similar to those often made for tax incentives in that the special deduction, credit or other allowance that constitutes the incentive is said to produce economic or social benefits that outweigh the departure from accepted notions of tax fairness.²⁴ The crux of this social policy argument would be a comparison of the social consequences of an individual filing rule, including the cost in fairness and the social cost of the alimony tax on marriage, with the social consequences of the various alternative tax regimes that employ a joint filing rule.²⁵ The beginning of the argument would be a comparison of the social consequences of the alimony tax on marriage under individual filing with the consequences of the more famous tax on marriage under the various joint filing regimes. Because the consequences of both marriage penalties probably are modest, a quick victory for either approach on marriage neutrality grounds is unlikely. The argument, therefore, would have to be expanded to consider the panoply of social consequences of each of the many tax regimes possible under an individual filing rule and under a joint filing rule. Supporters of individual filing thus far have not even attempted to pursue this complex and exceedingly difficult undertaking.

2. Marriage Neutrality and the Single Person

An apparent defect of the joint filing rule is that it applies only to married persons, although the reason for the rule—the economic consequences of income pooling—would justify joint filing for some unmarried couples as well. As a result, one-income unmarried couples (and other unmarried couples with substantially unequal individual income sources) pay higher taxes under a tax regime employing a joint filing

24. For a discussion of the use of tax expenditure concepts to analyze social policy arguments made on behalf of tax rules, see McIntyre, *A Solution to the Problem of Defining a Tax Expenditure*, 14 U.C.D.L. Rev. 427 (1980).

25. The calculus should include the administrative costs of policing income-splitting arrangements and the social cost of a loss of geographical neutrality. For a discussion of these problems, see Z. Giraldo, *supra* note 22, at 3-5 to 3-7.

rule than the fairness criteria implicit in the joint filing rule would support. The reason for this result is obviously one of administration. Because the tax administration cannot be put in the position of verifying the actual sharing patterns of couples, marriage is used as the bright line test for pooling arrangements.²⁶

A compromise with a normative tax rule for administrative reasons need not discredit a tax rule; otherwise, no administratively feasible tax system could be justified. The case for abandoning joint filing because of the plight of certain unmarried couples requires a showing that an alternative tax regime employing an individual filing rule would be a better approximation of the assumed ideal than a joint filing regime that used marriage (or some alternative) as a prerequisite for income pooling. Because all sharing patterns are ignored systematically under an individual filing rule, however, it would be mere happenstance if an individual filing regime were a second best solution to the problem of accounting for the economic consequences of income pooling.

As a practical matter, individual filing would be a plausible second best response to the economic consequences of income pooling only if pooling were a way of life for most married and unmarried persons. To take the extreme, if everyone were pooling with someone, then ignoring all pooling arrangements would give a fairer result than using marriage as the prerequisite for pooling. Income pooling outside of marriage, however, is unlikely to become a way of life for significant numbers of individuals, requiring as it does the subordination of individual economic welfare to that of the household.

In estimating the extent of income pooling outside of marriage, we must not equate cost-sharing arrangements with income pooling. Cost sharing is indeed common; friends, lovers, relatives, even virtual strangers often agree to join a household and share common expenses. The crux of income pooling, however, is the equalization of benefits for

26. Bittker argues that the group whose income is to be consolidated should be delineated by boundary lines that can be "crisply defined and readily verified." Bittker, *supra* note 5, at 1399. Marriage, of course, satisfies these criteria.

According to recent census data, 1.3 million households in 1979 were shared by unrelated adults of the opposite sex; these households contained 2.7 million unmarried partners. For the same year, 96.5 million men and women were married and living with their spouses. Thus, the unmarried partners represented only about 3% of all persons living together as couples in 1979. The census data do not contain information on the number of unrelated adults of the same sex living together. Nor do they show the extent of pooling among unmarried couples. See BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, No. 349, at 20 (1980), *quoted in* JOINT COMMITTEE REPORT, *supra* note 20, at 27-28.

each member of the pool. Whether or not unmarried housemates typically agree to equalize unequal incomes has little to do with the phenomenon of cost sharing.

In addition to its alleged failure to account properly for the pooling of income by unmarried persons, some critics complain that the joint filing rule provides an irrational incentive to single persons who do not have a housemate to go find one and get married.²⁷ In their view, marriage gives a tax bonanza to unattached individuals who find and marry someone with little or no income. For example, if Adrian, an individual with wages of \$20,000, seeks out and marries Fran, who has no income sources, Adrian's taxes would go down under most tax regimes employing a joint filing rule. This tax savings is said to make the lower income spouse, typically the wife, a tax shelter for the husband.

This tax reduction by marriage is not a necessary consequence of joint filing. The mandatory joint return with only one rate schedule, a system once common in Europe and still operating in the Philippines, provides no rate advantage for persons who marry.²⁸ Any joint filing system that provides for full or partial income splitting, however,

27. See, e.g., Mess, *For Richer, For Poorer: Federal Taxation and Marriage*, 28 CATH. U.L. REV. 87, 90-91 (1978).

The alleged incentive may be viewed from two perspectives. Some commentators do not view a spouse who has no independent income sources as a legitimate taxpayer. P. STERN, *THE RAPE OF THE TAXPAYER* (1973), for example, speaks of "the little woman" as a valuable "asset" of the husband. A tax wise single person, according to this perspective, can "purchase" this asset and reap a tax bonanza. From another perspective, the unattached single person always has a phantom partner on the hook, ready to materialize whenever the single person wants to make the tax wise decision to marry. The single person always has a tax incentive to marry the phantom, since a hypothetical mate does not in fact reduce the single person's real consumption and savings (i.e. income). Michael Moss, for example, illustrates the "discrimination" against single persons by showing how much less tax a single person, X, would pay if X married another single person, Z. Moss, *supra* note 27, at 92 n.20. If Z were a real person sharing income with X prior to the marriage, we have the "tax on remaining unmarried" discussed above. As long as Z remains a figment of the imagination, however, Z does not represent any drain on X's resources. For a similar perspective, see *Hearings on the Tax Treatment of Married Couples and Single Persons Before the House Comm. on Ways and Means*, 96th Cong., 2d Sess. (1980) (statement of Emil Sunley, Deputy Assistant Secretary of the Treasury, on the tax treatment of married and single taxpayers), reprinted in *Treasury Dep't News*, April 2, 1980, at 8.

28. The mandatory joint return with only one rate schedule is, in my view, the least fair system of family taxation commonly discussed. In a society that strives for equality between the sexes, it is particularly inappropriate because it forces two married people to pay tax as if they were one individual. Full or partial income splitting, of course, recognizes the separate tax status of each spouse. Historically, the mandatory joint return with one rate schedule was a response to property rules giving management of marital income to the husband. In effect, that system is a form of individual filing, with all marital income attributed to the husband in accord with local property law.

always produces a tax savings when a high income person marries a lower income person.

The wife as tax shelter argument, nevertheless, is faulty because it misapprehends the relationship between the joint filing rule and a progressive rate structure. Under joint filing with income splitting, married persons are assumed to be sharing their incomes. In the example above, once Adrian and Fran married, their individual circumstances presumably would change. With full income splitting, half of Adrian's income of \$20,000 would go for the benefit of Fran. Under a progressive rate structure, the tax on two individuals, each with \$10,000 of income, is lower, by definition, than the tax on one individual with an income of \$20,000. If the tax regime assumed that splitting were less even than a 50/50 split, as is assumed implicitly by the United States system of multiple rate schedules, the tax savings from marriage would be reduced, but the rationale would be the same. Individuals whose income goes down, whether by marriage or otherwise, ought to pay less tax than they did at their higher income level.

II. THE ALLEGED DISCRIMINATION OF THE JOINT FILING RULE AGAINST WORKING WIVES

Much of the support for individual filing comes from those who see the joint filing rule as discouraging married women from working outside the home. In section *A* below, I examine that disincentive claim from the perspective of an individual contemplating entry into the labor market. In section *B*, I analyze that claim in light of the economic literature on the labor supply response of married women to taxes.²⁹

A. Some Commonsense Objections to the Discrimination Charge

At first blush, the claim that joint filing discriminates against wives working outside the home appears frivolous, even mischievous.³⁰ As discussed in part I above, the intent of joint filing is to tax married

29. I do not discuss in the text the economic literature that purports to show that the failure to tax imputed income from self-performed household services biases the tax system against women who want to work in paid employment outside the home. The issue of what nonmarket items to include in the tax base arises under both individual filing and joint filing regimes. For the case against taxing self-performed services, see McIntyre & Oldman, *supra* note 7, at 1607-24. The defects of individual filing as a second best response to the imputed income issue are addressed in *id.* at 1623-24.

30. In light of the sensitivity of men and women in the United States to real and perceived gender-based discrimination, a false claim of gender bias is indeed mischievous.

persons, male and female, on their material well-being, as measured by the income they actually enjoy, without regard for the source of the income or, incidentally, the sex of the beneficiary. In operation, joint filing necessarily applies in exactly the same way to husbands and wives; by definition, for every husband who files a joint tax return, there is a wife doing likewise. In operation and intent, therefore, the joint filing rule is gender neutral.

Fair-minded critics of joint filing concede, as they must, that the rule itself is gender neutral. They contend, nevertheless, that, under current social and economic conditions, joint filing acts as a disincentive for married women to work outside the home. Married persons, they assert, typically view the husband as the person primarily responsible for support of the household. Therefore, whatever work decision the wife may make, the husband will work anyway. Because of this perspective, many married women allegedly see any income they may earn as the marginal marital income. Consequently, under joint filing, they perceive themselves as taxed on the first dollar of income they earn at the rate applicable to the last dollar of their husband's earnings.³¹

This disincentive argument against joint filing must be refined substantially before it can provide any support for an individual filing rule. A fundamental weakness of the argument is illustrated by the following example. Assume we have a farmer, Mr. F, who grows wheat that he can sell for a profit of \$1,000 per bag. Assume that he has the capacity to produce 100 bags of wheat a year. Assume further that profits from

31. For alternative versions of this argument, see Boskin, *The Effects of Government Expenditures and Taxes on Female Labor*, AM. ECON. REV., May 1974, at 251, 254; Quester, *supra* note 8, at 670; Rosen, *Tax Illusion and the Labor Supply of Married Women*, 58 REV. ECON. & STAT. 167 (1976); P. Musgrave, *Women and Taxation* (paper presented to Congress of International Institute of Public Finance, September 1979). No evidence is offered to show that the wife is the marginal taxpayer. Rosen, for example, simply states that "in this paper we follow the reasoning of Bowen and Finegan: 'It seems reasonable to suppose that in most families the (potential) earnings of the wife are more "marginal" than the earnings of the husband and that the marginal tax rate to which the family is subject is therefore viewed as being particularly applicable to the wife's earnings.'" Rosen, *supra*, at 167 n.2 (quoting W. BOWEN & T. FINEGAN, *THE ECONOMICS OF LABOR FORCE PARTICIPATION* 136 (1969)) (emphasis added). For a more lengthy discussion, see Quester, *supra* note 8, at 670-71. Quester contends that "sex discrimination in earnings implies that the average couple will be better off if it is the husband, rather than the wife, who works full-time in the market . . ." *Id.* at 671. From this observation, she concludes that the husband is the primary earner and the wife pays the marginal tax. *Id.* Under Quester's thesis, the high marginal rate facing the wife could be avoided if the wife refused to file a joint return, and elected instead to use the individual schedule of I.R.C. § 1(d). This action, of course, is unlikely because it would reduce the net income of the couple and, therefore, the wife's net income. That wives almost universally elect to file the joint return rather than use the pre-1969 singles' rate schedule is solid evidence that the wife is not forced to pay the marginal tax.

the sale of the wheat are taxed for the first \$50,000 of income at 20% and at 50% for the remainder. Assume finally that Mr. F, for purposes of his own, puts his wheat in blue bags until he has 50 bags full and then puts the wheat in pink bags.

From the point of view of Mr. F, the progressive rate structure discourages the production of pink bags of wheat, for his after tax return on a pink bag is \$500, while his net return on a blue bag is \$800. That perspective, of course, is nonsensical. The tax system treats all wheat profits alike. It is Mr. F who, for idiosyncratic reasons, identifies pink bags as the bags at the margin.

The tax system, similarly, treats all marital income alike. If a married woman, because of a stereotyped view of marriage, views herself as the marginal worker, we might bemoan the social conventions that have encouraged that perspective, but we have no cause for complaint against the tax system. The assumption of joint filing is that married couples pool income. For marital partners who are pooling income, taxes reduce the resources of the marital community available for sharing. If splitting is on a 50/50 basis, the real burden of any tax on the couple is shared equally by the spouses. For married couples who are not pooling, the burden of the tax on the community will be a matter of negotiation. Given the option of divorce, few wives are likely to bargain so poorly as to end up paying tax at the top marginal rates applicable to the couple.

Another weakness in the disincentive argument against joint filing is the lack of data showing that most married women working outside the home perceive themselves, albeit incorrectly, as paying tax as the marginal worker. The plausibility of alternative perceptions is illustrated by the following example. Assume that H, the husband, and W, the wife, are married, that H has wage income of \$20,000, that W has wage income of \$10,000 and that H and W have income from a joint savings account of \$500. During the year, H and W are both subject to withholding at the source on their wages; because of his higher income level, H has substantially more withheld than W. Nothing is withheld, of course, on the interest income. When the joint return is filed in April, H and W get a tax refund of \$100. Under these conditions, is W likely to perceive herself as paying a substantial part of the taxes withheld from H's salary? Would the perception be likely to change if H and W had to make a tax payment in April of \$500?

The weaknesses in the disincentive argument against joint filing illustrated above appear to be fatal ones. If married couples pool in-

come, the real burden of the tax on either spouse necessarily is borne in fact by the community. Even if pooling is incomplete, the withholding of taxes at the source on wage income makes it improbable that the working wife will be forced to pay the taxes already withheld from the husband.

Whether wives *perceive* the joint filing rule as imposing a disincentive to work is difficult to resolve conclusively.³² Even if a substantial number of married women do suffer from this false perception, however, a repeal of the joint filing rule, unless justified on other grounds, is hardly an appropriate response. To call for a repeal of joint filing on that ground is in effect to call for a tax subsidy for husbands and wives with a stereotyped view of marriage.

B. Labor Supply Response of Married Women to Taxes as an Argument Against Joint Filing

Over the past decade, economists have attempted to estimate the work response of husbands and wives to changes in income and social security tax rates. Measuring the work response of married persons has turned out to be a complex endeavor. Economic theory would predict the following labor supply responses of married persons to increases in taxes: (1) hours worked would decrease because the reduction in the net return from paid labor would make other uses of time relatively more attractive (the "substitution" effect); (2) hours worked would increase because a married couple with fixed budget needs would have to work more hours to satisfy those needs (the "income" effect); and (3) hours worked by the husband would increase and hours worked by the wife would decrease, or vice versa (the "cross-substitution" and "cross-

32. Rosen has attempted to determine the labor response of married women and concludes, with some qualifications, that "[m]arried women do in fact seem to react to tax rates in the 'rational' manner of standard economic theory." Rosen, *supra* note 31, at 170. This study, however, does not test the working woman's perception of the effect of joint filing. Rosen "assumed for simplicity that the husband's work effort is fixed institutionally and there are no cross-substitution effects." *Id.* at 169. The tax rules used in his calculations are based on the assumption that "the wife is in effect taxed at the same marginal rate as the last dollar earned by the husband." *Id.* at 167. See also Rosen, *Taxes in a Labor Supply Model with Joint Wage-Hours Determination*, 44 *ECONOMETRICA* 485 (1976).

In the United Kingdom, the Inland Revenue Department recently announced a change in the treatment of married women under the tax department's withholding mechanism. Under the current practice, the full marital allowance is allocated to the husband, with the result that the entire wages of the wife are subject to withholding. Under the new procedure, the marital allowance will be allocated to the wife, unless it appears that the wife's earnings will exceed the husband's or the couple requests that the wife be treated as the marginal worker. This change does not affect the total tax burden imposed on the couple; it may, however, change perceptions about the distribution of the burden between spouses. INLAND REVENUE PRESS RELEASE, Dec. 4, 1979.

income" effects). Economic theory says nothing about the overall impact of these responses.³³

Empirical studies are likewise inconclusive. A number of studies indicate that wives respond to higher taxes by reducing their hours of work. Husbands tend to have an opposite but less pronounced reaction.³⁴ These reactions, however, may be cancelled out by the cross responses. One recent study found, for example, that the cross effects produce an overall increase in the labor supply as a result of an increase in taxes.³⁵ Earlier studies found the cross effects to be less substantial.³⁶ These earlier studies, however, assumed that the wife was the marginal taxpayer in the marital partnership, a perspective that was discredited in section *A* above.³⁷

Some supporters of individual filing contend, nevertheless, that the labor supply literature provides a basis for favoring an individual filing rule. Some commentators read the literature as showing that joint filing is inefficient in that it allegedly reduces the supply of economic goods and services that otherwise would be produced.³⁸ Others claim it shows that joint filing perpetuates traditional husband/wife role patterns because it encourages women who otherwise would choose to work outside the home to stay at home.³⁹ Neither of these readings of the literature is accurate.

First, the supporters of individual filing rely on studies of the labor supply response to family taxation that measure only the economic responses at the margin of women already in the labor force. None of these studies claims to measure the effect of taxes on the decision to

33. For a more technical description of these effects, see Rosen, *supra* note 19.

34. See, e.g., Hall, *Wages, Income, and Hours of Work in the U.S. Labor Force*, in *INCOME MAINTENANCE AND LABOR SUPPLY* 102 (G. Cain & H. Watts eds. 1973).

35. See Leuthold, *Taxes and the Two-Earner Family: Impact on the Work Decision*, 7 *PUB. FINANCE Q.* 147, 154-56 (1979).

36. See, e.g., Boskin, *The Economics of Labor Supply*, in *INCOME MAINTENANCE AND LABOR SUPPLY* 163 (G. Cain & H. Watts eds. 1973).

37. See text accompanying notes 30-32 *supra*.

38. See, e.g., Rosen, *supra* note 19, at 11. Rosen notes that individual filing also would be inefficient. The optimal result, from an efficiency perspective, would give a large tax benefit to high income working wives, a modest tax benefit to upper middle class working wives and no benefit to lower income persons.

39. See, e.g., Quester, *supra* note 8, at 673. See also P. Musgrave, *supra* note 31, at 2, 4. Musgrave suggests that the tax code produces a "doll house" effect by reflecting and reinforcing a dependent status for women. *Id.* at 1-2. In Henrik Ibsen's *A Doll's House*, we may recall that Nora ultimately was liberated through increased self-awareness, not through an amendment to the Norwegian tax code. Musgrave does not suggest that joint filing necessarily collides with the interests of women; her conclusion is that joint filing should be retained, with some special allowances for working wives. *Id.* at 10.

enter the labor market.⁴⁰ Since 1940, the percentage of married women in the labor force has increased from under seventeen percent to nearly fifty percent. Participation of unmarried women has also increased substantially during this period, but at a less rapid rate.⁴¹ These data provide some basis for believing that taxes are not a significant barrier to married women who desire to enter the labor market.⁴² These figures show nothing, however, about the effect of taxes at the margin on hours worked by married women.⁴³

Second, the consistent finding of the studies that women are more tax sensitive than men does not show that the joint filing rule is inefficient. Whether a tax provision is inefficient depends on the overall effects of the provision on the production of economic goods and services. The cross effects of the joint filing rule must be considered, therefore, in determining its efficiency. As stated above, one recent study found the overall job response of married couples to a marginal change in taxes to be positive—a marginal increase in taxes would increase the total hours worked, and a decrease in taxes would decrease hours worked.⁴⁴ Earlier studies have reached the opposite conclusion,

40. Measurement of the labor response of women is based on data collected by the Bureau of Labor Statistics from two sources: a sample survey of households using interview techniques and questionnaires submitted by employers. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT AND EARNINGS: JANUARY 1979, at 203 (1979). No data, obviously, is available on the value of self-performed services. For a description of the problem of defining self-performed services, see McIntyre & Oldman, *supra* note 7, at 1609-13. Attempts have been made to quantify the value of self-performed services, but the estimates necessarily are crude and reveal nothing about marginal values. See Rosen, *supra* note 31, at 169. Even if data were available, the decision to enter the labor force cannot be comprehended by comparing the marginal return from a job in the labor market to the marginal return from housework. The decision to enter the labor force is different in kind from the decision of someone in the labor market to work an additional hour.

41. See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 404 (table 655) (99th ed. 1978).

42. Needless to say, these figures do not demonstrate that taxes have had *no effect* on the decision of married women to enter the labor market; perhaps the growth in the participation rate would have been higher or lower under an alternative regime.

43. A finding that the United States tax system poses a significant barrier to women entering the labor market would have important political implications; a finding that taxes merely affect the number of hours worked by part-time female workers probably would have no political impact. An entrance barrier suggests the tax law is locking women in the home; an effect on hours worked means at most that the tax law is inducing women employees to go home a little early.

44. See Leuthold, *supra* note 35, at 158-59. The author states:

The results of this study are interesting in light of recent Administration proposals to amend federal income tax treatment of two-earner families to reduce the so-called marriage penalty in the tax code. As a result of the marriage penalty, two-earner families often find their tax liabilities higher than if they were to divorce and be taxed as two single taxpayers. To the extent that reforms to reduce the marriage penalty also lower the marginal rate of tax on two-earner families, the results of this study suggest that hours of work and the division of work between the husband and wife will be affected. According to the results of this study, a reduction in the marginal rate of income tax on

but those studies were tainted by the false assumption that the tax-sensitive wife pays at the highest marginal rates imposed on the marital partnership.⁴⁵

This discussion of the efficiency of joint filing has proceeded under the implicit assumption that efficiency is an appropriate standard for measuring the worth of a tax rule. That assumption, however, is unwarranted. Throughout the income tax history of the United States, fairness has been the primary value to be maximized.⁴⁶ In many contexts, fairness and efficiency are complementary, but when efficiency is a function of the tax sensitivity of groups of taxpayers, the two criteria are at war. A system that permits women to pay less tax than men, single persons less than married ones, blacks less than whites or old less than young⁴⁷ because of differences in their feelings about taxes seems monstrously unfair and, incidentally, an invitation to chaos in the tax laws. Such madness, however, is a logical consequence of building a personal income tax on efficiency principles.⁴⁸

III. CONCLUSION

The case for joint filing would be overwhelming if marriage were always a true partnership, with each spouse sharing equally in the

two-earner families can be expected to cause a realignment of work responsibilities within two-earner families with wives working a larger share and husbands a smaller share of total family labor time. At the same time, total family labor time can be expected to decrease for white families and remain unchanged for black families.

45. See text accompanying notes 33-39 *supra*.

46. The political support for the 16th amendment to the United States Constitution, for example, is explainable on fairness, rather than efficiency grounds. Historically, efficiency criteria have been important when fairness criteria provided no guidance or the efficiency effects were very substantial. For discussion of the historical preeminence of fairness criteria among followers of Henry Simons, see Head, *supra* note 18, at 193-95.

47. Leuthold found, for example, that "an increase in the marginal tax rate leads white families to work longer hours and black families to work shorter hours in total." Leuthold, *supra* note 35, at 156.

48. The statement in the text puts me at odds with those who would restructure the United States income tax according to so-called optimal tax theory criteria. The optimal tax theory literature has attempted to ascertain how the tax rules could be rewritten to minimize changes in behavior in response to the tax. If data were sufficient to carry out the enterprise and if a cost-free tax administration could be obtained, the optimal tax theorists would be able to construct a tax that was paid exclusively by those without the economic power to shift any portion of the tax. The tax so constructed would be an "optimal" tax system!

For a friendly lampoon of the optimal tax theory, see McIntyre (a.k.a. Walter T. McDuck), *Optimal Tax Act Passes: Income Tax Replaced by Lump Sum Levy*, TAX NOTES, April 2, 1980. That piece points out that an optimal tax payable in coin is nonneutral when applied to nonmarket income, since a person working in the nonmarket sector cannot pay the tax without shifting to the market sector, whatever his preference for nonmarket income. For example, the British once imposed a lump sum levy on blacks in the nonmarket agricultural sector in order to force them to take paying jobs in the South African diamond mines.

marital income by voluntary agreement, reinforced by community property law. In contrast, individual filing would be the obvious rule if married persons typically had no common economic interests and sharing was rare. In the United States and many other countries, marital relationships are characterized by widespread but not universal sharing, with limited reinforcement by local property law. This untidy situation is the root cause of the legitimate debate over the proper tax effect of family circumstances.

Most of those arguing in favor of individual filing, nevertheless, fail to address the issue of marital sharing or address it only tangentially. This Article demonstrates the inadequacy of that approach.

