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Marriage Penalty: Matrimony, Tax & Inequality

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It has long been settled that the decision to marry is held as a fundamental right and an essentially private matter. However, as recent events such as *Windsor* and DOMA have shown, the decision to marry, while deeply fundamental, is also profoundly political and economic. From an economic standpoint, taxation is a substantial factor with regards to marriage. In the United States, the tax system plays a significant part in dictating the behaviors of taxpayers, married and single taxpayers alike. Section 7703(a)(1) of the Internal Revenue Code determines marital status for tax purposes.[1] Typically, marital status is determined on the last day of the year. [2]

The marriage penalty occurs when married taxpayers are subject to a larger tax liability than they would be if they were not married.[3] Typically, the marriage penalty results from disparities involving standard deductions, earned income tax credits, and the tax rate schedule applied to married taxpayers as opposed to single taxpayers. This results in the second earner's salary being taxed at a higher marginal rate once the taxpayers are married due to the combination of income.[4] Generally, the penalty occurs when each married taxpayer earns relatively equal amounts of income.[5] The marriage penalty produces a work disincentive. The work disincentive encourages second wage earners to remain home and refrain from entering the work force.

This paper discusses the marriage penalty and the factors that contribute to the tax on marriage as well as the consequences of the marriage penalty on taxpayers and the Act. By examining the discriminatory outcomes of the marriage penalty, this paper will provide recommendations for reform. The first section of this paper discusses the marriage penalty, its history, tax equity principles, and the factors that cause the marriage penalty. The second section of this paper examines the American Tax Relief Act of 2012 and its marriage relief provisions. The third section of this paper examines possible ways to resolve the marriage penalty. Finally, this paper concludes by tying all of the information together and expanding the discussion surrounding the marriage penalty. Evidence suggests that factors such as tax liabilities influence the decision to marry.[6] Thus, it is important to examine the circumstances under which tax liabilities can affect the decision to marry.

I. Marriage Penalty

The marriage penalty occurs when married taxpayers face a higher tax liability due to their marital status, rather they would have by remaining single and filing individual tax returns.[7] Married taxpayers pool their incomes when they file taxes jointly.[8] The marriage penalty is the difference between the total taxes applied to two similarly situated unmarried individuals and the taxes applied to the married couple because the couple's jointly filed income is taxed at a higher marginal rate than unmarried taxpayers for the same level of income.[9] Marriage penalties are the greatest where there are two wage earners that earn roughly equal incomes.[10]

The marriage penalty is an issue of fairness and may cause a disincentive to work among second-wage earners with regard to married taxpayers.[11] This creates economic inefficiencies because it distorts taxpayer behavior by influencing the decision to marry and the decision to work.[12] The marriage penalty is a result of three conflicting goals of the tax code, horizontal equity, marriage neutrality, and progressive taxation.[13] Horizontal equity holds that married couples with equal income should pay the same income taxes.[14] Under marriage neutrality, a married couple's tax liability should not be affected by their marital status.[15] Progressive taxation causes taxpayers with higher incomes to pay a larger percentage of their income in taxes.[16]

However, it is impossible to achieve all three concepts of tax equity because they are mutually inconsistent because the occurrence of one of these objectives requires sacrificing one or both of the other two objectives, and thus, produces marriage penalties.[17] We can only achieve two of the three principles. Thus, the United States current tax system achieves horizontal equity and progressivity at the cost of marriage neutrality. The marriage penalty is not the result of any one statute or tax provision. Instead, the penalty occurs as a result of various factors such as progressive tax rates, phase outs of deduction, different income thresholds, and disproportionate credits for single taxpayers. Causes of the marriage penalty can be viewed by examining the provisions of the tax code as marital status is considered in calculations dealing with: earned income tax credit; Social Security benefits taxation; capital loss limits; IRA deduction limitations; dependent care credit; child credit; and education tax incentives.[18]

Moreover, it is important to note that filing separate does not usually provide a resolution to the marriage penalty.[19] Typically, married taxpayers are worst off if they file separately because the tax rate schedule applied to married taxpayers filing separate is not the same as the tax rate schedule applied to single taxpayers. Generally, married taxpayers, when filing separate, lose a significant number of benefits such as the earned income tax credit, Hope education credit, and Lifetime learning Credit. However, in certain instances it can be beneficial for married taxpayers to file separately when additional deductions are available such as medical deductions. Additionally, it is important to note filing a joint tax return gives married taxpayers joint and several liability for any false or inaccurate information reported and any liability that results from this.[20]

A. **Tax Equity**

1. **Marriage Neutrality**

The principle of marriage neutrality requires that a couple's tax liability not depend on their marital status.[21] Advancing the objectives of progressivity and horizontal equity require sacrifices with regard to marriage neutrality that produces marriage penalties.[22] Thus, the current tax system affords equal treatment and progressive taxation, but not marriage neutrality.[23] Marriage neutrality eliminates tax incentives that distort the decision to marry.[24] Marriage neutrality embodies two fundamental goals of tax, equity and efficiency.[25] Therefore, a system of taxation that implements marriage neutral policies does not alter incentives to marry and enhances efficiency.[26] Additionally, marriage neutrality guarantees that the labor/leisure trade off is unaffected by marriage taxation.[27] Moreover, marriage neutrality supports the equitable principle that marriage should not affect tax liability.[28] Thus, marriage neutrality is desirable because the marriage penalty raises serious concerns regarding fairness and equity. [29]

After *Earl and Seaborn*, the taxation system was no longer marriage neutral.[30] *Seaborn* permitted a single-earner married couple in a community property state to divide income. *Earl* prevented married couples in common law states from income splitting.[31] Marriage neutrality eliminates both marriage penalties and marriage bonuses because both penalties and bonuses violate marriage neutrality.[32] Marriage neutrality challenges notions of the appropriate taxable unit for married taxpayers.[33] The 1948 Act demonstrated a preference for progressivity at the expense of marriage neutrality.[34] Maintaining the marital unit as an appropriate taxable unit, married taxpayers with the same aggregate income should have the same tax liability.[35]

When the size of a tax rate bracket for married couples filing jointly is less than twice the size of the same rate bracket for single taxpayers, then the married couples' tax liability will be higher when they have relatively equal earnings then if the two remained unmarried and file single tax return. This is also, true when the standard deduction for married couples filing joint returns is less than twice the standard deduction for single taxpayers. Nevertheless, under current law the marriage penalty does not exist with respect to the standard deduction since the deduction for married taxpayer's is twice that of single taxpayers. However, marriage penalties persist under the earned income tax credit, certain phase outs, and certain rate structures.[36]

2. **Horizontal Equity**

The principle of horizontal equity requires that taxpayers with the same amount of income bear the same amount of taxes.12[37] The principle of horizontal equity is seemingly uncontroversial, however, determining which taxpayers are similar can be challenging.[38] To obtain horizontal equity the standard of similarity must be clearly defined.[39] This can be practically impossible.[40]

Horizontal equity is violated when taxpayers with similar income are entitled to different tax benefits that lead to differing taxable income.[41] The income tax system promotes horizontal equity by levying the same tax rate to all taxpayers with the same amount of taxable income.[42] However, due to deductions and exemptions taxpayers with the same income, but differing behaviors may have a different tax liability.[43] Moreover, taxpayers with the same taxable income may have differing tax liability when one is eligible for a tax credit and the other is not.[44] Therefore, the income tax system is not purely horizontally equitable as various factors chip away at the principle of horizontal equity.[45] Thus, taxpayers are encouraged to alter behaviors to generate exemptions, deductions, and credits while discouraged from behaviors that generate fully taxable income.[46] Moreover, since the tax system only considers economic income, behaviors that generate non-economic income or imputed income, which is not taxable, are encouraged such as leisure, chores, and child rearing.[47] Horizontal equity is served when married taxpayers with the same aggregate income have the same tax liability.[48]

3. **Progressive Taxation**

The United States has a progressive tax system.[49] Different portions of a taxpayer's taxable income are taxed at different rates.[50] Individuals earn wage income, but this is not the amount that the government taxes because deductions are first applied.[51] Deductions are nominal amounts that reduce the dollar amount of income subject to taxation. This includes the standard deduction and personal exemption.[52] Taxpayers can use either the standard deduction or itemized deductions.[53] Itemized deductions reduce income because of certain expenses.[54] Taxable income is the result after applying the deductions.[55] Taxable income is the amount that the tax rates are applied to in order to determine the tax liability.[56] Since the United States has a progressive tax system, tax rates are on a graduated basis.[57] This produces a marginal tax rate, which is the "rate that applies to additional dollar of taxable income."[58] The average tax rate is the "total tax liability divided by income."[59] Thus, average rate "measure taxpayer's overall tax burden."[60]

B. **Factors**

Most marriage penalties result from the joint return system because of a unitary computation of tax liability based on the aggregate income of married taxpayers.[61] Many distinctions between single taxpayers and married taxpayers stem from the joint tax return system, including the progressive tax rates, the standard deduction, the personal exemption rules, social security benefits, and numerous deductions and credits with income-based phase outs.[62]

Typically, the marriage penalty is illustrated in several ways. First, in terms of the standard deduction that gives greater per capita deductions to single taxpayers than married taxpayers.[63] Second, the rate schedule imposes tax at higher rates on the per capita income of married taxpayers than single taxpayers.[64] Third, the phase out rules for earned income tax credit phase out tax benefits quicker for married taxpayers than for single taxpayers.[65] Other examples of this include the phase out rules for exemptions and itemized deductions.[66] These examples are discussed further in other sections of this paper.

1. **Standard Deduction**

The standard deduction is an important factor in determining tax liability and an important element of the joint taxation.[67] The standard deduction's scheme and function in the taxation of married taxpayers demonstrate the disparity with regards to how joint filing creates a marriage penalty.[68] After determining adjusted gross income taxpayers are allowed deductions in calculating taxable income, which is the basis for calculating tax liability.[69] Taxpayers can choose to claim either itemized deductions or the standard deduction.[70] Most taxpayers use the standard deduction.27[71]

Married taxpayers with dual earners who have relatively equal incomes usually incur marriage penalties.[72] The joint return requires married taxpayers to aggregate their incomes, accounting of the sum of the two and not the parts.[73] However, individual incomes within the marriage are ignored by the joint return system and marriage penalty is produced as a result.[74] The penalty is the result of the proportional relationship between the amount of the standard deduction for married taxpayers filing jointly and the amount of the standard deduction for unmarried taxpayers.[75] This relationship can be described as "being more-than-one, but less-than-two."[76] For the married taxpayers with dual earners, the penalty is caused by the "less-than-two" part of the relationship between the standard deduction for the joint return and that of unmarried taxpayers.[77] The married taxpayers' deduction is larger than the standard deduction of one unmarried individual, but smaller than the deductions of two unmarried taxpayers with the same incomes.[78]

2. **Earned Income Tax Credit**

A substantial portion of the marriage penalties incurred by low-income couples with children is caused by the earned income credit, Section 32.[79] The negative impact of the earned income tax credit results from the fact that the earned income tax credit diminishes as income increases.[80] Thus, pooling incomes on a joint tax return can lead to the total loss of the earned income tax credit.[81] Two factors of the earned income tax credit cause a marriage penalty.[82] First, although the American Tax Relief Act of 2012 expanded the phase out range for married taxpayers filing jointly, Section 32 still does not distinguish between the income of married taxpayers and the income of single taxpayers.[83] Second, the earned income tax credit is phased out over the same income range for both.[84] Two single taxpayers earning less than the threshold phase out amount will each be fully eligible for the earned income tax credit.[85] However, once married their incomes will be combined to compute eligibility for the credit, and the married taxpayers' aggregate income may cause them to be phased out.[86] Therefore, the eligibility for the credit maybe be reduced or eliminated.[87]

For low-income taxpayers, the marriage penalties associated with the earned income tax credit can be substantial.[88] The earned income tax credit is a refundable tax credit targeted at low-income taxpayers.[89] Taxpayers with incomes over a specified amount are not eligible for the earned income tax credit.[90] Married taxpayers are only entitled to the earned income tax credit when filing jointly.[91] This produces a disproportionate marriage penalty on the earners in lower brackets because the phase out will often eliminate the earned income tax credit when both spouses aggregate their income.[92] Thus, this result can impede the purpose of the earned income tax credit and the assistance intended for low-income taxpayers.

The earned income tax credit is phased out over the same income range for single taxpayers and married taxpayers.[93] The Congressional Budget Office recommended that earned income tax credit parameters for married taxpayers with two-earners be twice as large as that for single-earner taxpayers, which would reduce marriage penalties for low-income families.[94] According to the Congressional Budget Office, the largest cause of marriage penalties is the earned-income tax credit when measured in terms of dollar value.[95]

3. **Social Security**

Two wage earner couples subsidize single wage earner couples through the social security system.[96] Social security taxes represent a greater burden than the federal income tax on taxpayers, except the highest-earning taxpayers.[97] Social security taxes have behavioral effects. Married taxpayers are disaggregated for contributions to social security, but partially separated for receipt of social security benefits.[98] Each married taxpayer must pay as though he or she were unmarried, but the ultimate benefits the taxpayers receives turn on marital status, which is contrary to the interests of married taxpayers with one wage earner as well as second-earner wage earners.[99] Therefore, each taxpayer, whether married or single, pays a flat rate on wage earnings up to a ceiling.[100] Moreover, second wage earners in upper income brackets face higher marginal rates than do primary earners because the social security tax no longer applies to taxpayers earning over a certain amount.[101] The basic rule is that a married taxpayer "receives the greater of the benefit amount attributable to one-half of the other spouse's average indexed monthly earnings, or to her" own average indexed monthly earnings.[102] A widow can choose between one hundred percent of her late husband's average indexed monthly earnings or her own average indexed monthly earnings.[103] The amount a married second wage earner would have to earn has to be higher if the married second wage earner were an intermittent participant in the labor force.[104] Therefore, the second wage earner faces a disincentive to work.[105] The social security system puts women in a bind when they specialize in nonmarket production because women risk having minimum security in their old age if they divorce.[106] Alternatively, unless women earn a significant proportion of their husbands' salaries and remain persistently present in the labor market, their social security contributions only guard against divorce risk.[107] The social security system has behavioral effects and is in need of reform with regard to its benefit structure pertaining to the ceiling and contribution rules.[108]

4. **Imputed Income**

Imputed income is the value that is obtained from owner-supplied resources, goods, services or labor.[109] Imputed income is not taxed by the current taxation system in the United States, which is likely an administrative benefit due to the complexity of calculating the value of imputed income.[110] However, not taxing imputed income contributes to disincentivizes second wage earners participation in the work force.[111] Imputed income is very relevant in the context of married taxpayers.[112] In terms of married taxpayers, when one spouse chooses to tax home and refrain from participating in the work force, the services that the spouse provides equal an untaxed benefit in the form of imputed income.[113] Thus, this incentivizes married taxpayers with one wage earner by encouraging and providing tax benefits when on spouse stays home.[114] The tax benefit bestowed by imputed income is essentially similar to receiving a discount of the taxpayers marginal tax rate.[115] Economists have found gender-based patterns when examining the elasticity of nonmarket and market tax rates.[116] This examination, also, reveals the normative biases of the traditional alternatives to the labor-leisure trade off.[117] The effects are dependent on the taxpayers tax rate, but other factors include the amount of imputed income produced by the non-working spouse and cost of alternatives to imputed income.[118] Behavioral effects are caused by "the fact that the marginal-earner spouse must compare after-tax labor market income with before-tax imputed earnings."[119] The affect of imputed income favors married taxpayers with one wage earners.[120] This often leads to a division of labor based on gender.[121]

In the traditional single-earner household, the wife's imputed income effect will be measured relative to her husband's income.[122] Given that the wife is apt to have less market power, and perhaps be socialized into the role of care-provider, it becomes more likely that it will be she who takes advantage of the imputed income bonus.[123] Note the irony: The more the husband is taxed, the more we "pay" the wife to stay home and, perhaps, the more the man works to compensate for the loss due to taxes.[124]

5. **Work Disincentives**

Currently, a disincentive occurs because the marginal tax rate applicable to second wage earners depends on the marginal rate of the first wage earner with regard to married taxpayers.[125] There is a disincentive to work experienced by the second wage earners because of income splitting.[126] Under the assumption that women are more likely to be second wage earners, income splitting can discourage them from working because it subjects the second wage earner's income to tax at the first wage earners marginal rate.[127] Secondary wage earners are disproportionately women. Thus, the disincentive to work encourages women to stay home.[128] Studies illustrate that married women are disproportionally more sensitive to tax considerations in work decisions than married men.[129] Therefore, this tax policy encourages second wage earners, usually married women, to stay home because of the higher rate of taxation on the second wage earner's income.[130] Thus, "[t]he effect of the tax system reinforces other factors such as job discrimination and societal pressures, which make it difficult for women to achieve equality in the labor market."[131] This work disincentive can cause misallocation of resources and economic inefficiency due to the resulting behavioral changes.[132] According to efficiency theorists; taxpayer behavior is dependent on the tax system's treatment of the second wage earner's income.[133]

III. **AMERICAN TAX RELIEF ACT OF 2012**

The American Taxpayer Relief Act of 2012 (Act) was enacted in 2013.[134] The Senate passed the bill by a margin of 89–8.[135] The House passed the bill without amendments by a margin of 257–167.[136] Subsequently, President Obama signed the official copy of the bill.[137] The Act permanently extended many pervious tax cuts from 2001 and 2003.[138]

The Act addresses the expiration of certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003 by making permanent most of the tax cuts enacted between 2001 and 2010 while extending the sunset provisions of other legislative tax cuts.[139] The Act contains both tax and spending provisions, but for the purposes of this paper the discussion will be limited to the relevant tax provisions.

The American Taxpayer Relief Act extended the 10 percent bracket under the Economic Growth and Tax Relief Reconciliation Act of 2001 for 2013 taxable income to $17,850 for married taxpayers filing a joint return and $8,925 for single taxpayers.[140] The thresholds are indexed for inflation after 2013.[141] The America Tax Relief Act of 2012 extended the reduction in the 28, 31, and 36 percent tax rates to 25, 28, and 33 percent.[142] Additionally, the America Tax Relief Act of 2012 extended the reduction in the top tax rate from 39.6 percent to 35 percent, but only for taxable income to $450,000 for married taxpayers filing jointly and $400,000 for single taxpayers.[143] The rate for taxable income greater than those thresholds remains at 39.6 percent and is indexed for inflation after 2013.[144] The America Tax Relief Act of 2012 reinstated and made permanent both itemized and personal exemption phase outs but raised the adjusted gross income threshold at which they begin to take effect to $300,000 for married taxpayers filing a joint return and $250,000 for taxpayers, but the thresholds are indexed for inflation after 2013.[145] The America Tax Relief Act of 2012 set the standard deduction for married taxpayers at twice the size of that set for single taxpayers.[146] Additionally, the legislation set the width of the 15 percent bracket for married taxpayers at twice the width for single taxpayers. [147]

The American Recovery and Reinvestment Act of 2009 (ARRA) increased the $3,000 addition to the phase out range of the earned income tax credit for married taxpayers to $5,000, which is indexed for inflation after 2009.[148] Additionally, ARRA expanded the credit for families with three or more children by increasing the credit phase in rate to 45 percent.[149] The Tax Relief Act of 2010 extended these provisions through the end of 2012.[150] These provisions were extended by the American Tax Relief Act of 2012 until the end of 2017.[151] Therefore, the earned income tax credit began phasing out in 2013 at an earnings level of $22,690 for married taxpayers with children and $17,530 for unmarried taxpayers with children. [152]

The America Tax Relief Act of 2012 increases the alternative minimum tax exemption for 2012 to $78,750 for married taxpayers and $50,600 for single taxpayers.[153] The America Tax Relief Act of 2012 allows personal credits regardless of a taxpayer's tentative alternative minimum tax.[154] In 2013 and later, the alternative minimum tax exemption is indexed for inflation.[155] The alternative minimum tax exemption phases out at a 25-percent rate at taxable income of $150,000 for married taxpayers and $112,500 for single taxpayers. [156]

Although the 2012 Tax Relief Act attempts to provide relief to millions of taxpayers suffering marriage penalties, it fails to provide a lasting comprehensive solution. The Act's inability to eliminate marriage penalties is due to its structural limitations. The band-aid applied by the 2012 Tax Relief Act to the marriage penalty is far from a cure for married taxpayers burden by the consequences and liability that result form the marriage tax. The 2012 Tax Relief Act's provisions relating to earned income tax credit, tax rates, and tax brackets only provide partial relief due to the amounts at which certain provisions phase outs and phase ins as well as the ceilings and thresholds placed on certain income amounts.

IV. RECOMMENDATIONS

While the America Tax Relief Act of 2012 helps to alleviate some of the burden of the marriage penalty through the changes to the standard deduction and earned income tax credit as it pertains to married taxpayers, the marriage penalty continues to affect many married taxpayers with two wage earners. The marriage penalty occurs due to the presence of conflicting principles of progressivity, horizontal equity, and marriage neutrality within the tax system. Therefore, there are a variety of alternatives that would eliminate the marriage penalty such as: 1) eliminating joint filing and having all taxpayers file separately; 2) abolishing the progressive tax system; 3) designing the brackets for the standard deduction and rate brackets that are twice as wide for married taxpayers jointly filing as brackets for single taxpayers; 4) modifying the earned income tax credit; 5) adjusting the contribution requirements for social security; 6) reinstating the two wage earner deduction; and 7) taxing imputed income.

First, taxing all individuals regardless of martial status by basing tax liability solely on a taxpayer’s separate earnings. Requiring married couples to file separate returns using the single rate schedules would permit individuals to marry without altering their tax liabilities and eliminates the marriage penalty. This would achieve marriage neutrality so that important tax consequences would no longer turn on marital status. This would also eliminate the joint and several liability standard established by joint filing. Moreover, taxpayers would not lose their earned income tax credit, which can be substantial simply from choosing to marry.[157] Additionally, it would combat the disincentive with regards to the second wage earner. Since our system currently permits single filing the switch to a single filing only system would not be terribly drastic. Another persuasive reason to support the use of mandatory individual returns is that requiring all taxpayers to file individual returns would be of no additional cost to the government.[158] Nevertheless, this change could present an issue with regard to the treatment of taxable units with regard to married taxpayers and single taxpayers.

Second, is the elimination of the progressive tax system. However, abolishing the progressive tax system in the United States would be a severely drastic change because an entirely new tax system would need to be implemented. This would likely require substantially procedural changes as well as substantive changes to tax laws. Nevertheless, possible replacements could consistent of a flat tax system or a consumption tax system. A flat tax system levies a constant tax rate on all taxpayers. Under a flat tax system, married taxpayers would not be penalized with higher tax rates due to marital status. A consumption tax system levies taxes on spending, or put another way money spent on consumption. Consumption can be taxed indirectly through sales tax or value added tax, or directly through personal taxation. Under a consumption tax, married taxpayers would not be penalized with higher tax rates due to marital status, as taxation would be based on an individual's consumption rates.

Third, the marriage penalty would not occur if the brackets for the standard deduction and rate brackets were designed to be twice as wide for married taxpayers jointly filing as brackets for single taxpayers. Additionally, the phase outs would need to be twice as large for married taxpayers as oppose to single taxpayers as well. Equal per capita standard deductions to all taxpayers regardless of marital status reduces marriage penalties and supports the tax objectives of the standard deduction.63[159] However, this would create a penalty on single taxpayers because two unmarried taxpayers would pay more than a married couple with the same combined income. [160]

Fourth, is the possibility of modifying the earned income tax credit based on the number of adult earners. This would provide married couples with two wage earners an earned income tax credit that is double that of single wage earners. This would reduce penalties for low-income couples, but offer practically no relief to married taxpayers in middle and upper tax brackets.[161]

Fifth, modifying the social security structure could ease the marriage penalty. One solution is to eliminate the contribution of the second wage earner until the income reaches a level where a marginal benefit is gained, which alleviates the notion of a pure tax that subsidizes individuals who do not participate in the work force.[162] Another solution, aimed at the disincentive on the second wage earner, is "earnings sharing."63[163] Earnings sharing allocates half of both spouses' earnings during marriage to each spouse and allows the earnings credit to be transferrable.64[164]

The fifth and sixth solutions involve reinstating the two wage earner deduction or taxing imputed income. The two wage earner deduction could be reinstated to allow married taxpayers with two wage earners a deduction to reduce their gross income. The deduction could be structured similarly to two wage earner deduction implemented in 1982, which reduced the earned income of the lower earning spouse. Another option is to tax imputed income. Generally, imputed income is difficult to measure. Thus, taxing imputed income would likely be complicated, but could rely on the market value that would typically be associated with the goods or services imputed income produces. Nevertheless, this would likely be a costly process and administrative nuisance. Furthermore, taxing imputed income would be counterproductive to the goal of simplicity.

V. **CONCLUSIONS**

Taxation presents a dilemma, as an income tax cannot simultaneously maintain progressive tax rates, horizontal equity, and marriage neutrality. Leaving the marriage penalty in place intensifies disparities in the free market and furthers gender discrimination, as the marriage penalty most often influences women's decisions to remain home and refrain from seeking gainful employment outside of the home. The elimination of the marriage penalty assists in countering wage discrimination, gender discrimination, and inequality. There are class dimensions. Taxpayers in the lowest income brackets are disincentivized from marrying. Taxpayers in the middle income brackets there is an "all-or-nothing effect", which deters part-time labor.[165] Taxpayers in the higher income brackets experience a "bias towards specialized households".[166] Ultimately, the combination of gender and class bias cause married women to become marginal workers.

The right to marry is a fundamental right that should not be hindered by tax consequence. Marriage neutrality in the tax system is needed for many reasons. Unfortunately, horizontal equity, progressivity, and marriage neutrality cannot all operate instantaneously. Nevertheless, the consequences of the marriage penalty are still a reality for many married taxpayers with two wage earners. The consequences are not limited to taxpayers of a partially socio-economic class, race, nor religion. However, gender discrimination is prevalent within this context, as the second wage earners affected by the penalty disproportionally tend to be women. Nevertheless, inequities in taxation will always exist due to the conflicting nature of the three goals of taxation, equality, neutrality, and progressive taxation. Thus, while the progressivity tax system is in place it is likely that there will always be a marriage penalty. This means that two wage earner couples will always be required to reconsider their decision to marry in order to examine the potential benefits of cohabiting as oppose to marriage because the tax code considers cohabiting taxpayers single for tax purposes.

Therefore, the marriage penalty, also, helps to reinforce existing wage discrimination against women. Often, the consequences of the tax code are separated from the economic reality and societal conditions faced by taxpayers. The current scholars are unable to develop a solution because a change requires an inclusion of considerations outside of the realm of taxation. While the marriage penalty may be a creation of the tax code, neither its negative ramifications, nor its resolution can be restricted to the realm of taxation. If scholars are to resolve this unjust discriminatory tax consequence considerations must include not only the tax code, but public policy, feminism, civil rights, sociology, and normative theory. Thus, a methodological challenge in the conceptualization of taxation and marriage is necessary. The complexity of the issues must be examined with regards to the societal institutions and normative messages in addition to distributive and equitable principles of taxation.

Ultimately, I have presented a number of solutions to resolve the existence of the marriage penalty. However, the solutions examine the least bad alternatives to the marriage penalty. Each solution only partially alleviates the injustice because the resulting change either produces a penalty for single taxpayers, a bonus for certain married taxpayers, a disadvantage for single earner married taxpayers, or a partial elimination of the marriage penalty. This is due to the competing tax principles of progressivity, horizontal equity, and marriage neutrality as it is mathematically impossible to satisfy all three principles simultaneously. While the marriage penalty may be a consequence of the tax code and its many provisions and curve outs, the current tax code will not be enough to provide a truly equitable and just solution.

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[1] IRC Section 7703(a)(1).

[2] *See, e.g.,* Michael J. Graetz, Federal Income Taxation: Principles and Policies (7th ed. 2013).

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] James Alm & Leslie A. Whittington, *Marriage and the Marriage Tax*, in 1992 Nat'l Tax Ass'n Proc. 200 (1992).

[7] Dorothy A. Brown, *The Marriage Bonus/penalty in Black and White*, 65 U. CIN. L. REV. 787 (1997).

[8] Kevin M. Walsh, *The Marriage Penalty: How Income Stacking Affects the Secondary Earner's Decision to Work*, 39 Seton Hall Legis. J. 83,85-86 (2015).

[9] *Id*. *See also* I.R.C. § 1. *See* Edward J. McCaffery, *Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code*, 40 UCLA L. REV. 983,1025-26 (1993)

[10] *Id*.

[11] McCaffery, *supra* note 26.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] Cook, *supra* note 16, at 160-65.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] Cook, *supra* note 16, at 161.

[22] *Id*.

[23] *Id*.

[24] Yair Listokin, *Taxation and Marriage: A Reappraisal*, 67 TAX L. REV. 185,191 (2014).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] Nancy J. Knauer, *Heteronormativity and Federal Tax Policy*, 101 W. VA. L. REV. 129,198 (1998).

[30] James M. Puckett, *Rethinking Tax Priorities: Marriage Neutrality, Children, and Contemporary Families*, 78 U. CIN. L. REV. 1409,1414 (2010).

[31] *Id.*

[32] Listokin, *supra* note 73, at 195.

[33] *Id.*

[34] Bradshaw, *supra* note 38, at 718.

[35] *Id.*

[36] See, e.g., Graetz, *supra* note 2, at 452-55.

[37] Hayes Holderness, *Taxing Privacy*, 21 GEO. J. POV. L. & POL'Y 1,6 (2013).

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Erik Baines, *Filing Status and Today's Families*, 47 U. RICH. L. REV. 729, 734-35 (2013).

[49] Kevin M. Walsh, *The Marriage Penalty: How Income Stacking Affects the Secondary Earner's Decision to Work*, 39 Seton Hall Legis. J. 83, 85 (2015).

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] See, e.g., Graetz, *supra* note 2, at 88.

[58] See, e.g., *Id.*

[59] See, e.g., *Id.*

[60] See, e.g., *Id.*

[61] Bradshaw, *supra* note 38, at 7717-18.

[62] *Id.*

[63] McIntyre & McIntyre, *supra* note 7*, at* 915.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] Ann Thomas, *Marriage and the Income Tax Yesterday, Today, and Tomorrow: A Primer and Legislative Scorecard*, 16 N.Y.L. SCH. J. HUM. RTS. 1,14-17 (1999).

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] Bradshaw, *supra* note 38, at 712.

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] McIntyre & McIntyre, *supra* note 7*, at* 922.

[89] *Id.*

[90] *Id.*

[91] Bradshaw, *supra* note 38, at 717-18.

[92] *Id.*

[93] McIntyre & McIntyre, *supra* note 7*, at* 922.

[94] Cook, *supra* note 16, at 160-65.

[95] *Id.*

[96] McCaffery, *supra* note 26, at 1011.

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] See, e.g., Graetz, *supra* note 2, at 452-55.

[126] Jeannette Anderson Winn, *Till Death Do We Split: Married Couples and Single Persons Under the Individual Income Tax*, 34 S.C. L. REV. 829,858-60 (1983).

[127] *Id.*

[128] Listokin, *supra* note 73, at 202.

[129] Winn, *supra* note 175, at 858-60.

[130] *Id.*

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] Pub.L. 112–240, H.R. 8, 126 Stat. 2313.

[135] *Id.*

[136] *Id.*

[137] Michael Doran, *Tax Legislation in the Contemporary U.S. Congress*, 67 TAX L. REV. 555,567-68 (2014).

[138] *Id.*

102 See, e.g., David A. Fahrenthold, Obama Reelected As President, Wash. Post. (Nov. 7, 2012), http://www.washingtonpost.com/politics/decision2012/after-grueling-campaign-polls-open-for-election-day-2012/2012/11/06/d1c24c98-2802-11e2-b4e0-346287b7e56c_ story.html. 103-Pub. L. No. 112-240,126 Stat. 2313 (2013).

[139] *Id.*

[140] James Nunns and Jeffrey Rohaly, *Tax Provisions in the American Taxpayers Relief Act of 2012 (ATRA),* Urban-Brookings Tax Policy Center (2013).

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] *Id.*

[157] Bradshaw, *supra* note 38, at 7717-18.

[158] *Id.*

[159] McIntyre & McIntyre, *supra* note 7*, at* 939-40.

[160] See, e.g., Graetz, *supra* note 2, at 452-55.

[161] Cook, *supra* note 16, at 160-65.

[162] McCaffery, *supra* note 26, at 999-1001.

[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] *Id.*

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