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Table of Contents

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TAXATION OF THE FAMILY IN A COMPREHENSIVE AND SIMPLIFIED INCOME TAX

*Michael J. McIntyre** and *Oliver Oldman***

A considerable amount of controversy surrounds the treatment of the family in the federal income tax. In this Article, Professors McIntyre and Oldman develop a normative model for the taxation of the family based on the ideal of a comprehensive tax base. From this ideal they derive the principle that family income should be taxed to the individuals who actually benefit from it, and using this principle they propose solutions to three major problems in this area: the proper allocation of tax burdens between married and single individuals, the appropriate tax treatment of dependents, and the relation for tax purposes between one- and two-job couples.

TAX theorists have so far been unsuccessful in developing an ideal on which to base a program of reform in the taxation of the family.[1] In the absence of a normative model, the existing [*1574]

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This Article is a revised and expanded version of a paper prepared for the Brookings Conference on Comprehensive Income Taxation, Washington, D.C. (Dec. 10-11, 1976). A forthcoming publication of the Brookings Institution entitled *Comprehensive Income Taxation* will contain edited versions of the papers submitted at the Conference and considerable data on the distributive impact of the proposals made in this Article.

The authors are grateful to Richard D. Pomp, Associate Professor of Law, University of Connecticut School of Law, for his thoughtful comments on a draft of this Article.

[1] The wide range of issues which are grouped under this heading was the topic of a Brookings Conference in 1963. *See* H. GROVES, FEDERAL TAX TREAT- MENT OF THE FAMILY (1963) (background paper for Brookings Institution Conference). A nice summary of the issues without the rhetorical baggage which has accompanied most recent literature is contained in Rothblum, *Tax Equity for Marrieds and Singles: A Permanent Dilemma?,* Tax Notes, Aug. 23, 1976, at 3; Rothblum, *Tax Equity Between the Married and Single: Solutions Cause Problems,* Tax Notes, Sept. 6, 1976, at 12. For a major recent work with extensive references, see Bittker, *Federal Income Taxation and the Family,* 27 STAN. L. REV. 1389 (1975). The conclusion of the Bittker article is that "any tax reforms spawned by today's social trends will be as particularistic and transitory as the laws they supplant." *Id.* at 1392. National summaries of the tax treatment of the family are available in XXVIe CONGRÈS INTERNATIONAL DE DROIT FINANCIER ET FISCAL, THE INCOME, FORTUNE AND ESTATE TAX TREATMENT OF HOUSEHOLD UNITS (Cahiers de droit fiscal international Vol. LVIIa, 1972). Much of the recent literature on the taxation of the family has been in response to the changing social position of women. For a comparative study growing

rules for relating tax burdens to family circumstances, with all their internal conflicts, petty distinctions, and historical abnormalities, remain the sole frame of reference for tax reform debate. Consequently, that debate has been rancorous. Under current law, family relationships, marital status, and domestic obligations have a major impact on an individual's tax burden. Arguments for a reduction or increase in the relative importance of one or more of these factors are perceived as an attack on or an insensitivity to whatever group would be disadvantaged by the change. No one is in a position to argue convincingly that a proposed change would improve the fairness of the tax system, since no one has been able to advance a consistent set of fairness criteria.[2]

The search for a normative model for the tax treatment of the family has been handicapped by the almost total lack of scholarly concern for the policy choices implicit in the rules for attributing income to particular individuals. Attribution rules are one of the essential building blocks of every income tax. In the assessment of income tax liabilities, it is necessary to specify the taxable unit—individuals, married couples, or other household groups—and to provide a definition of income. An income tax system would be equally unable to function, however, without a detailed set of rules for relating particular items of income to particular taxpayers. Most tax theorists, nevertheless, have either ignored the issue of attribution rules or treated them as a trivial concern. As a result, the attribution rules under the federal income tax have evolved through administrative practice and court decrees without coordination with the other elements of the system. Because of their low visibility, the attribution rules have become a fixed point in the tax system to which all the other elements adjust. Indeed, much of the apparent illogic of the present pattern of adjusting tax burdens for family circumstances can be best understood as the fruit of ad hoc changes [*1575] in the tax base or the taxable unit rules in order to correct for unfairness caused by defects in the attribution rules.

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out of the United Nations' concern for the status of women, see Oldman & Temple, *Comparative Analysis of the Taxation of Married Persons,* 12 Stan. L. Rev. 585 (1960).

[2] One attempt has been a set of criteria widely used in recent Canadian studies and elaborated earlier by Oldman and Temple: (a) an unmarried person should pay a greater tax than a one-job married couple of equal income; (b) a one-job married couple should pay a greater tax than a two-job couple; and (c) a two- job couple should pay more than two single persons with the same income. These criteria were based on commonly accepted notions of fairness founded on the relative economic well-being of persons in each category, notions found inadequate in the present Article. *See* J. London, Tax and the Family 16-20 (1975) (unpublished research paper prepared for the Law Reform Comm'n of Canada on file at the Harvard Law School Library); Oldman & Temple, *supra* note 1, at 586, 605.

The centerpiece of the analysis in this Article is the presentation and defense of a normative rule for attributing income to particular taxpayers in a comprehensive and simplified income tax. Under our rule, income should be attributed to the person who uses or benefits from the income. Acceptance of this deceptively simple and intuitively appealing rule would mandate important changes in the tax treatment of the family. At the same time, it would legitimize a number of popular features of current law which have heretofore been difficult to justify on theoretical grounds. Most importantly, it would provide the theoretical underpinning for a consistent resolution of the major controversies in the debate over the fair treatment of family circumstances in the assessment of tax liabilities.[3]

I. Relevance of the CTB Ideal to Taxation of the Family

Tax reform discussion over the past thirty years has been dominated by the ideal of the comprehensive tax base (CTB).[4] For most theorists, the starting point in elaborating that ideal is the Haig-Simons definition of personal income. According to Simons, personal income should be the market value of consumption enjoyed during the tax year plus the net change in savings.[5] The [*1576] most

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[3] Insofar as this Article is concerned with proposing an ideal to govern the taxation of the family, we are not attempting to promote a general normative model of the income tax. In particular, we are not concerned with specific applications of the CTB ideal to determine what is to be included in the tax base. *See generally* Andrews, *Personal Deductions in an Ideal Income Tax,* 86 Harv. L. Rev. 309 (1972).

[4] For a collection of articles on the CTB debate published in the *Harvard Law Review* in 1967-1968, see B. Bittker, C. Galvin, B. Musgrave & J. Pechman, A Comprehensive Income Tax Base? A Debate (1968). For a discussion of the relation of the CTB ideal to the tax expenditure concept, see S. Surrey, Pathways to Tax Reform: The Concept of Tax Expenditures 15-24 (1973)

[5] Haig defined income as "the increase or accretion in one's power to satisfy his wants in a given period in so far as that power consists of (a) money itself, or, (b) anything susceptible of valuation in terms of money." Haig, *The Concept of Income,* in The Federal Income Tax 7 (R. Haig ed. 1921), *reprinted in* American Economics Ass'n, Readings in the Economics of Taxation 54 (R. Musgrave & C Shoup eds. 1959). This formulation suggests, however, that the person with the power over income is the appropriate taxpayer. *Cf.* Corliss v. Bowers, 281 U.S. 376, 378 (1930) (Holmes, J.) ("[T]axation is not so much concerned with the refinements of title as it is with actual command over the property taxed . . . .") This in turn might be interpreted as embracing the property interest rule which we reject in the family context. *See* p. 1593 *infra.* The Simons formulation builds upon Haig and makes explicit the view, which we adopt, that it is the actual consumption or savings which is the proper object of taxation:

> Personal income may be defined as the algebraic sum of (1) the market value of rights exercised in consumption and (2) the change in the value of the store of property rights between the beginning and end of the period in question.

H. Simons, Personal Income Taxation 50 (1938); *see* Andrews, *supra* note 3, at 320-21 (comparing the Haig and Simons definitions).

important policy conclusion to be drawn from this definition is that distinctions in the tax treatment of income based on the source of the income should be eliminated. This conclusion is explicit in the Simons formulation, which defines income in terms of its uses rather than its sources.

The CTB ideal has heretofore played only a minor role in the debate over the taxation of the family. Many commentators have concluded that the CTB ideal is essentially neutral as to the problem of the extent to which marriage bonds or family responsibilities should affect tax burdens.[6] The most interesting problems involved in the taxation of the family concern the rates at which admitted items of income should be taxed. Since the rates depend on who is taxed and not on what is taxed, it is understandable that the prevailing view is that the ideal of a comprehensive tax is unrelated to the rules for the taxation of the family.

We believe, nevertheless, that the Haig-Simons formulation of the income concept can and should play a central role in the development of a normative model for the taxation of the family. In an ideal income tax, a uniform rule should be developed for linking individual taxpayers with particular items of income. In the family context, the special problem of determining the appropriate taxpayer is basically a problem of attributing an available pool of taxable income among family members. Although Simons in maintaining that people should be taxed on their uses of income was concerned with what items of economic gain should be taxed,[7] the use rule can also provide a standard for attributing income among family members. In our view, the attribution rule most in harmony with the Haig-Simons definition is that each family member should be taxed on the items he actually consumes or accumulates, regardless of source.

As a standard for the determination of relative tax burdens of family members, the use rule is preferable to that based on [*1577] sources of income because of the special way in which income is distributed within the family. If family income is taxed on the basis of

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[6] *See, e.g.,* Bittker, *A "Comprehensive Tax Base" as a Goal of Income Tax Reform,* 80 HARV. L. REV. 925, 974 (1967) ("I find nothing in the CTB concept . . . that tells us anything about the extent to which tax rates should take account of marriage bonds or family responsibilities."). *But see* Musgrave, *In Defense of an Income Concept,* 81 HARV. L. REV. 44, 60-61 (1967).

[7] Simons' main argument was that source distinctions are irrelevant to determining what is to be included within taxable income; among his proposals were the elimination of tax preferences for such items as capital gains and municipal bond interest. *See* H. SIMONS, *supra* note 5, at 148-84.

sources, then only the income earner would be taxed, despite the fact that his personal use of that income might be minimal. Taxing the income to those who actually consume or accumulate it regardless of source seems intuitively more equitable and provides a basic principle to govern how the tax system should take domestic sharing arrangements into account.

In proposing that an individual should be taxed on whatever he consumes, however, we are obliged to modify, or at least clarify, the concept of consumption in the Haig-Simons formulation. The concept of consumption has often been used by CTB theorists to refer to the actual market transactions by which an individual cashes in on his claim to society's goods and services.[8] So viewed, the use rule becomes ambiguous when applied as a test for attribution within the family. If a parent buys food for the family, he is the consumer in the market sense, since he purchased the goods; however, the family members are the consumers in the everyday sense of the word. In our view, it is the actual beneficiary of the income, not the person who makes the purchase, who is the appropriate taxpayer under the use rule. Our focus on the one who benefits is based on the perception that the actual standard of living of each family member is enhanced by the purchase; ultimately, then, the focus on the beneficiary is designed to serve the ideal that relative tax burdens fall in at least rough accordance with economic well-being.[9] To make explicit our interpretation of the CTB ideal, we will refer to the principle of taxing the person who has the beneficial enjoyment of income as the benefit rule.

Our discussion of the benefit rule as a normative model for taxation of the family will center on three issues which have [*1578] emerged as dominant concerns: First, how should the tax burden on

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[8] Simons himself defined personal income in terms of the "market value of rights exercised in consumption." *Id.* at 50. Professor Andrews defined consumption as the participation in the distribution of goods and services as measured by money expenditures. *See* Andrews, *supra* note 3, at 324. Outside the family context this view poses no problem for us.

[9] Professor Andrews has written:

> [T]he purpose for which personal consumption is used in specifying a personal tax base is not simply to account for the distribution of the national product; it is rather to provide an index of relative material well-being on the basis of which to distribute tax burdens.

Andrews, *supra* note 3, at 335. *See also* Musgrave, *supra* note 6, at 45-47. We are aware, of course, that "material well-being" is a concept in need of definition if it is to be used as the ultimate factor in fixing relative tax burdens. Since we are only incidentally engaged in an analysis of problems of the tax base, however, it is enough for our purposes to rely on the popular understanding of the phrase single persons compare with the burden on married persons?[10] Second, how should the costs of supporting children or other dependents be taken into account in assessing tax burdens?[11] And third, how should the tax burden on one-job married couples compare with the burden on two-job couples with the same aggregate income? [12]

As will be developed in detail below, the first of these issues involves the basic question of who the taxpayer is. In answering that question, current law looks principally at property rules. Our analysis suggests that in a normative tax system based on the CTB ideal, the appropriate taxpayer is the person benefitting from the income, whether married or single. Although a single person is likely to be the beneficiary of the income he earns, we believe that married couples should be assumed to share their income equally. Consequently, we propose that the total income earned by both the husband and wife be treated as taxable in equal shares to each and that the tax imposed on each share be the same as that imposed on a single person with the same amount of income. To implement such a scheme, we suggest that the income-splitting approach which formally characterized our law from 1949 to 1969 is preferable to the procedure of current law of taxing a married couple as a unit under a specially adapted rate schedule. This preference for income splitting is a choice between techniques rather than competing theories, since the distribution of tax burdens achieved through the two approaches can be made the same. The advantage of the income-splitting approach is that it makes more explicit the policy choices being made as to the proper treatment of married individuals relative to single persons.

The second major topic in this Article, the tax treatment of the costs of raising children, requires further consideration of the meaning of "consumption" in the CTB definition of income. Under the Internal Revenue Code, family allowances in a variety of forms are given to exempt low income families on an amount approximating the subsistence level,[13] as determined by official government poverty statistics, and to provide "relief" to middle and high income families with children or other dependents.[14] Although one would at least initially assume that the expenses of subsistence and the support of children constitute "consumption" and therefore should be

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[10] *See* pp. 1579-99 *infra.*

[11] *See* pp. 1599-607 *infra*

[12] *See* pp. 1607-24 *infra.*

[13] *See, e.g.,* I.R.C. § 151 (deduction for personal exemptions).

[14] "See, *e.g.,* I.R.C. § 44A (child care credit); I.R.C. § 151(e) (additional exemptions for dependents).

included in taxable income under the [*1579] CTB ideal, many tax theorists have strained to define consumption so as to exclude minimum child support costs. However, we believe that the dependency deduction is more readily understood as a device for attributing income to those who truly consume it than as a refinement of the tax base. The benefit rule which we adopt for attributing income to particular taxpayers makes income consumed by the children taxable to the children. We therefore conclude that some form of income splitting between parents and their children is required by the CTB ideal. For reasons of practical administration, we suggest that it be implemented through a system of deductions or through a special rate schedule for families. We have tentatively opted in favor of the deduction approach.

The third topic of this Article, the treatment of two-job couples, involves us in an analysis of the imputed income concept. A necessary consequence of our conclusion that married couples should be treated as splitting their consolidated income is that equal-income couples should pay equal tax. The view is persistently put forth, however, that two-job couples with the same pecuniary income as one-job couples typically enjoy less imputed income from self-performed services and should, as a result, pay less tax. After examining the imputed income concept and the proposals for indirectly taking imputed income into account, we conclude that no special adjustments in the burdens on two-job couples are justified on grounds of fairness. We leave open the question whether a tax expenditure provision is justified on efficiency grounds. We readily admit that the economic position of two-job couples is sometimes quite different from the position of one-job couples with the same pecuniary income. An income tax, however, cannot take into account all differences in economic well-being. We think that an income tax which attempted to treat as income, even indirectly, the value of self-performed services would be less fair, on balance, than one which did not.

II. Application of the CTB Ideal in Determining the Relative Burdens of Singles and Married Couples

This Part explores what we consider the most important, difficult, and emotional issue in the taxation of the family—the proper relationship between the tax burdens on single persons and on married couples. How one deals with this issue determines in large measure one's response to most of the other issues in the taxation of the family. Most tax theorists fall into one of two camps. The first camp maintains that marital status should be irrelevant to taxation and that everyone should be taxed on his [*1580] own income under a single rate schedule.[15] The second camp argues that, since husbands and wives typically pool their incomes, the income of either spouse is a poor index of the economic situation of the married couple.[16] These theorists suggest that a husband and wife be treated as a taxable unit. By that they mean that the tax should be assessed against the consolidated income for the spouses according to a different rate schedule from that used by single persons.[17]

In Section A, we trace the history of the treatment of married couples under the tax laws of the United States.[18] We then outline the major complaints against current law and the difficulties in finding a satisfactory solution. In Section B, we present our own proposal for relating the tax burdens of married and single people. Our proposal is based on the goal of taxing each individual to the extent he benefits from income from whatever source derived.[19] We maintain, however, that in gauging the amount of benefits the individual derives from income, the tax system must take into account the real changes in economic circumstances which typically accompany marriage.[20]

In determining how the tax system should take account of the economic changes produced by marriage, we focus on the rules for attributing income to particular taxpayers. We conclude that in applying the benefit rule to the pool of income available for use by the married couple, income splitting between husband and wife on a 50/50 basis is the most realistic and administratively reasonable rule

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[15] Such theorists argue that the state should neither encourage nor discourage marriage through a tax penalty and that marriage involves a personal decision to spend one's income in a particular way, and hence should be seen as consumption. *See generally* Bittker, *supra* note 1, at 1421. For some CTB advocates the income-splitting joint return represents a preference or "leakage" in the tax structure. *See* Pechman, *Erosion of the Individual Income Tax,* 10 NAT'L TAX J. 1, 21 (1957).

[16] For a consideration of these arguments, see Bittker, *supra* note 1, at 1420-21; J. London, *supra* note 2, at 128-29.

[17] This is generally the structure of the present system. *See* p. 1584 *infra*.

[18] For a comparison of the treatment of married taxpayers in the OECD countries, see *How Direct Taxes Affect Individuals and Couples: Old Values and New,* OECD OBSERVER, March 1977, at 28. The article summarizes a detailed comparison contained in a recent OECD report, THE TREATMENT OF FAMILY UNITS IN OECD MEMBER COUNTRIES UNDER TAX AND TRANSFER SYSTEMS (1977).

[19] The derivation of the benefit rule from the CTB concept and its applicability to the problems of the family have been discussed previously. *See* pp. 1576-77 *supra.*

[20] *See generally* H. GROVES, *supra* note 1, at 69-71.

of attribution. We suggest that taxing each spouse on his share of total income at the same rate as is applied to unmarried individuals is preferable as an administrative technique to readjustment of the current system of multiple [*1581] rates because it makes more explicit the policy of taxing the people who benefit from income.[21]

A. Relative Burden on Singles and Married Couples Under Current Law

1. Who Is the Taxpayer? A Historical Perspective.—"Who is the taxpayer?" is a two-part question. On the one hand, it is a question about the appropriate taxable unit. Is the tax to be assessed only on individuals, each on his "own" income? Or are certain groups of individuals—married couples, families, or households—to be taken collectively as taxable units and assessed on their consolidated income? On the other hand, "Who is the taxpayer?" is also a question about the rules for attributing income items to particular individuals or other taxable entities. This part of the question is more important than the first and must be considered before a meaningful decision can be made as to the appropriate unit to be taxed. As will be demonstrated,[22] the choice between the individual or the married couple as the appropriate taxable unit is ultimately a matter of techniques. The key issue is how most fairly to attribute to individuals income items shared by members of a family.

For a single individual who earns income and spends it on himself or puts it away for his own future use, the choice of attribution rules is an uninteresting question, since under almost any reasonable attribution rule that individual will be treated as the appropriate taxpayer. In the family situation, however, the fashioning of attribution rules quickly becomes a complex and critically important policy issue. A few illustrations make this point. Suppose a wife makes $1,000 and spends $700 on herself and $300 on her husband. Who is taxable on the $300—the husband, the wife, or both? Suppose a company provides a free house to Mr. and Mrs. *X*. Who is taxable on the value of the house? Is it relevant whether Mr. *X* or Mrs. *X* or both are employees of the company? Finally, suppose a married couple with two children has some money in a joint savings account. The interest from the account is undoubtedly an income

[21] To simplify our analysis, our discussion in this Part looks only at single persons and married couples and ignores the special tax problems of couples with children. Tax treatment of children is deferred until Part III, pp. 1599-607 *infra.*

[22] *See* pp. 1584-85 *infra.*

item, but with whom do we associate the income? The husband? The wife? Both? The family? The person who put the money in the bank? The one who initially earned the money? Does it make any difference whether the principal came from wages or by bequest? Is [*1582] it relevant who has the power to use the interest or who ultimately benefits from the interest?

These complex problems were not addressed by the early revenue acts. The Revenue Act of 1916, which taxed "the entire net income received ... by every individual,"[23] suggested that the tax was to be assessed on an individual rather than on a group basis. However, that language gave no clue as to how the tax should be assessed among a variety of claimants to the income. The issue of attribution of income within the family—who should be treated as the taxpayer on income from the labor or property of individual family members when that income is enjoyed by the entire family—was left for the courts to decide.

The rules formulated to deal with the problem of attribution were ostensibly simple, but without support in any normative model of the income tax.[24] For earned income, the appropriate taxpayer was the person who performed the services which generated the income.[25] For property income, the taxpayer was the person who held legal title to the underlying property.[26] An exception to these rules was made to deal with the differences in ownership law in the eight community property states of the Southwest and Pacific.[27] The community property exception treated the earned and property income of either spouse as income of the marriage partnership, attributable in equal shares to each member of the partnership.[28] Other exceptions were

[23] Ch. 463, § 1(a), 39 Stat. 756 (1916).

[24] *See generally* H. GROVES, *supra* note 1, at 59-66.

[25] This doctrine was firmly established by the Supreme Court in Lucas v. Earl, 281 U.S. 111 (1930), which involved an attempt by a husband to divide his earnings with his wife by contract. Justice Holmes' opinion was based on construction of § 213(a) of the Revenue Act of 1918, now I.R.C. § 61(a), as taxing salaries only to those who earned them. For a critique of the opinion as ignoring the tax policy of imposing equal taxes on equal-income married couples, see Bittker, *supra* note 1, at 1400-04.

[26] *See, e.g.,* Helvering v. Horst, 311 U.S. 112 (1940) (holding the donor taxable on the income received on the redemption of an interest coupon given to his son, since he retained possession of the underlying property which generated the income).

[27] The effectiveness of community property law in dividing income between spouses for tax purposes was affirmed by the Supreme Court in Poe v. Seaborn, 282 U.S. 101 (1930). The community property states are Arizona, California, Louisiana, Idaho, Nevada, New Mexico, Texas, and Washington.

[28] Because of the division of income between marriage partners, the tax burden for equal-income married couples was equal, in contrast to the result of the Court's decision in Lucas v. Earl, 281 U.S. 111 (1930). *See* Bittker, supra note 1, at 1408.

created to deal with property arrangements, usually involving trusts, where legal title to income-producing property was shifted but [*1583] control over the property remained with the original owner.[29] In all of these cases, the underlying rule of attribution was to tax the person who had the most important property interest in the income.

The differing treatment of married couples in community property and common law states resulted in generally lower tax burdens on the former despite equal total income and comparable economic situation: each community property spouse paid the same tax as an individual with half the total family income. This income splitting, which grew out of property rules peculiar to the community property system, was extended by statute to couples in common law states in 1948.[30] Although income splitting had originated as a rule for allocating rights to property received during marriage, its adoption for tax purposes for all married couples was justified as a means of equalizing treatment of equalincome marital units.[31] The tax savings for common law couples which resulted from income splitting were widely viewed as a benefit for families, although income splitting was equally available to childless couples. This perception created discontent among one-parent families, who were unable to use the splitting rule, leading to the enactment by Congress of a special rate schedule which gave one-parent families one-half of the maximum advantage of income splitting.[32]

The only taxpayers not reached by these tax reductions were single persons without children. Their day came in 1969, when

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[29] *See, e.g.,* Blair v. Commissioner, 300 U.S. 5 (1937); Helvering v. Clifford, 309 U.S. 331 (1940). *See also* I.R.C. §§ 671-678.

[30] The Revenue Act of 1948, ch. 168, 62 Stat, 110, which permitted married couples to aggregate their income and pay a tax equal to twice what a single person would pay on half the total income, was passed after a number of states had tried to obtain the advantages of income splitting for their citizens by switching to a community property system. *See* Commissioner v. Harmon, 323 U.S. 44 (1944) (an unsuccessful attempt to obtain income splitting through an elective community property system). *See generally* Bittker, *supra* note 1, at 1411-12. After Poe v. Seaborn, 282 U.S. 101 (1930), the Treasury Department proposed to equalize the tax on equal-income couples by making joint returns mandatory, hence imposing the same tax on a married couple's consolidated income as on a single person with like income. Given the progressive rates, enactment of this proposal would have raised taxes for most married couples; the proposal was attacked as a "tax on morality." *See* Bittker, *supra* note 1, at 1409 & n.56.

[31] *See* S. Rep. No. 1013, 80th Cong., 2d Sess. 25 (1948) ("Adoption of these income-splitting provisions will produce substantial geographical equalization in the impact of the tax on individual incomes.").

[32] Revenue Act of 1951, ch. 521, § 301, 65 Stat. 452 (now I.R.C. § 1(b)); *see* [1951] U.S. Code Cong. & Ad. News 1788-91; Bittker, *supra* note 1, at 1417-18. In 1954, the full benefits of income splitting were granted to recent widows and widowers with minor children. I.R.C. §§ 1(a)(2), 2(a).

Congress added a special schedule reducing burdens for single [*1584] persons.[33] Congress retained the pre-1969 singles rate for married persons filing separate returns;[34]in addition, it formally enacted a special rate schedule for married couples filing joint returns, leaving their tax burdens unchanged.[35] The tax differential between singles and married couples was thereby reduced to a maximum of twenty percent of the tax on married couples, from a pre-1969 high of forty-two percent.[36] Parallel changes were made in the schedule for heads of households.

A generally unnoticed effect of the 1969 changes was to move the United States from an individual system to a marital unit system for the taxation of the family.[37] Previously, income attributable to the marital unit under state property laws was attributed by formula to the spouses, without regard for state-created property interests of each spouse in that total. With the 1969 changes, spouses were no longer taxable separately on income attributed to them by formula, but were rather taxable as members of a separate taxable entity. Congress in effect created two separate but parallel tax systems, one for unmarried persons, and one for married couples, each with its own rate schedule. A specific value judgment was made that a single person should pay more tax than a married couple with the same total income, but the additional tax should not exceed twenty percent of the married couple's tax.[38] This arbitrary rule provided the link between the two systems.

The effect of the change in legal structure was to reduce the burdens on single persons in relation to the burdens on married couples. However, the same change in relative burdens could have been achieved under the legal structure of the 1948 system by substituting a 75/25 income-splitting formula for the old 50/50 formula.[39] That rough equivalence is illustrated in Appendix I.[40] A more elaborate splitting formula could duplicate exactly the results of

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[33] I.R.C. § 1(c).

[34] I.R.C. § 1(d).

[35] I.R.C. § 1(a)(1). As early as 1955, for administrative purposes the IRS had developed and placed in official tax instructions a special rate table for married couples which gave the same result as splitting but required each married couple to view itself as a taxable entity.

[36] *See* R. GOODE, THE INDIVIDUAL INCOME TAX 229 & table 9-4 (rev. ed. 1976).

[37] *See id.* at 228-31; H. GROVES, *supra* note 1, at 69-71.

[38] *See* R. GOODE, *supra* note 36, at 229-30.

[39] The adoption of a 75/25 splitting formula, unless made mandatory for all married couples, would reintroduce geographical inequities, since couples in community property states would file separate returns and use a 50/50 splitting formula.

[40] Appendixes I-V can be found at pp. 1627-30 *infra*.

separate rate schedules for singles and for married couples. Whether to use separate rates or a new splitting formula [*1585]in 1969 was therefore merely a matter of technique. The more fundamental policy choice facing Congress was the relative treatment of married couples and other taxpayers, a question which involves decisions as to how income benefitting the entire family is to be treated for tax purposes. This in turn involves a determination of the proper attribution of income within a family context.[41] The decision to tax discrete units using different rate schedules tended to obscure this issue as Congress debated the choice of formulas for relating the two rate schedules. This relationship ultimately should depend on the proper formula for attributing income between spouses within the marital unit.[42]

2. Impact of Marriage on a Person's Tax Rate Under Current Law.—As stated above, personal income taxes are imposed under current law according to four different schedules. These are, in order of increasing relative burdens: (1) the Joint Return rates; (2) the Heads of Households rates; (3) the Singles rates; and (4) the Separate Return rates.[43] Although all of the rate schedules begin at 14%[44] and have a top marginal rate of 70%, the width of the tax brackets differs under each of the rate schedules, resulting, after the first bracket, in different tax burdens under each schedule for equivalent taxable incomes. The Joint Return schedule has the widest brackets and thus yields the lowest relative tax.

The majority of taxpayers are married and file joint returns.[45] The few married couples filing separate returns are either hopelessly estranged or seeking an unusual tax advantage.[46] Yet the requirement

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[41] *See* p. 1581 *supra.*

[42] This discussion leaves aside for the moment the rate schedule for heads of households and the special splitting rules for recent widows and widowers. The tax advantages granted to these groups are best analyzed in terms of the tax implications of child support costs and therefore are taken up in Part III, pp. 1599-607 *infra.*

[43] I.R.C. § 1(a)-(d).

[44] The incorporation of the standard deduction into the rate structure by the Tax Reduction and Simplification Act of 1977, Pub. L. No. 95-30, 45 U.S.L.W. 173 (June 7, 1977), creates a new "zero tax bracket" for most taxpayers, but leaves unchanged the relationships among the rate schedules.

[45] *See* U.S. Dep't of the Treasury, Statistics of Income—1973, Individual Income Tax Returns 2, table 1B (1976).

[46] For example, since neither party to a joint return can be claimed as a dependent by a third taxpayer, I.R.C. § 151(e)(2), separate returns may be preferable if one or both spouses qualify as a dependent. In addition, filing separately may permit the deduction of a greater amount of medical expense. See I.R.C. § 213(a)(1) (limiting deduction to amounts which exceed 3% of adjusted gross income).

that married couples using the Joint Return schedule consolidate their individual incomes in some instances may make that schedule less desirable, although it gives the lowest [*1586] available rates for equivalent taxable incomes. For married couples with only one income earner, consolidation is a nullity and full advantage is obtained from the lower rates. For two-income couples, however, consolidation means that the couples can use the low marginal rates at the beginning of the rate schedule only once. As the incomes of the individual spouses become more equal, the advantage of the wider rate brackets is offset by consolidation until at some point the couple would find a tax advantage in filing as two single persons.

(a) *The "Tax on Marriage" Problem.*—In popular language, married couples who pay more in tax than they would if they had not married are said to pay a "tax on marriage."[47] A variety of features of our tax law can result in a "tax on marriage" for husbands and wives who each have their own sources of income, although for other married couples these same features can give a tax benefit from marriage. We are concerned principally with the tax detriment resulting from the fact that some two-job couples pay tax at a higher rate than they would have if they had remained single. This is because as married couples they are not allowed to use the Singles rate schedule if they elect to file separate returns.[48]

The extent to which the separate rate schedules impose a "tax on marriage" depends on the amount of income contributed to the family by each of the spouses. Figure 1, computed from the data in

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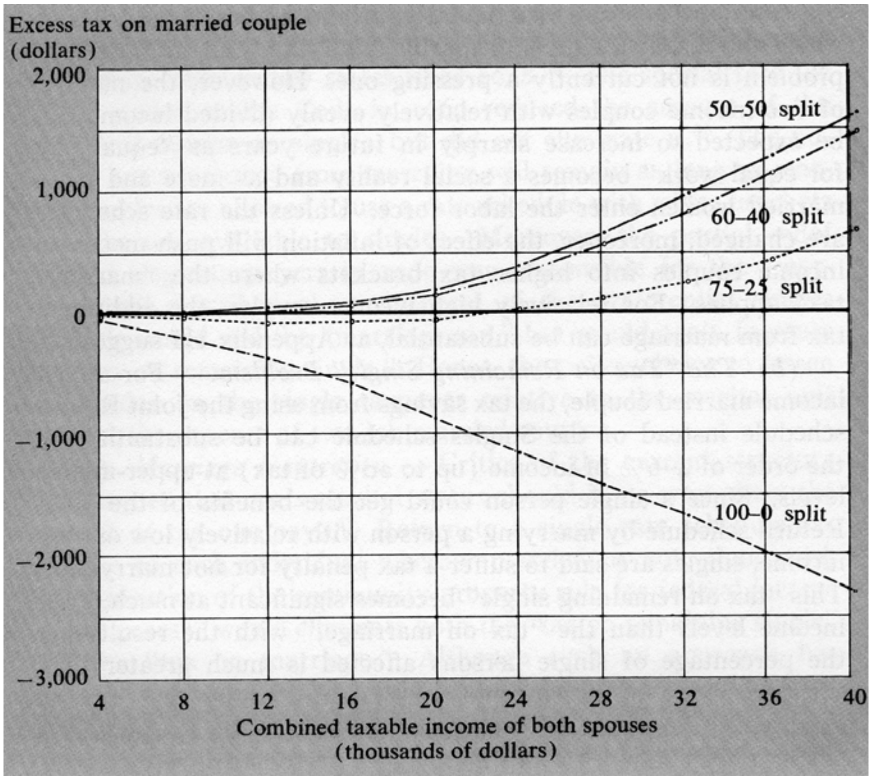
[47] The "tax on marriage" is seldom defended as a theoretically desirable result, although it has been argued that the economies of scale of joint living give two-income married couples a greater capacity to pay tax, *see* Oldman & Temple, *supra* note 1, at 598-602; Bittker, *supra* note 1, at 1422-25. *But see* note 80 *infra.* This "marriage tax" would have been the consequence of the enactment of the Treasury's proposal in 1941 to tax all married couples on their combined income at a uniform rate with single individuals; this proposal was condemned as a deterrent to marriage. *See* Bittker, *supra* note 1, at 1409. However, this policy argument against a tax on marriage as discouraging or encouraging particular forms of behavior is distinct from the debate on whether the tax system should be marriage-neutral in light of the policy goals of the tax system itself. Hence we regret the pejorative implications of the "tax on" terminology, which is used to describe the effect, not the intent, of the provisions of the law. As we shall argue later, the "tax on remaining single," although vulnerable to the same criticism that in effect it puts a premium on a particular form of behavior, may be defended as consistent with the intrinsic policy of the tax laws regarding attribution of income for the purposes of imposing income tax. *See* pp. 1596-97 *infra.*

[48] This particular tax on marriage is then the result of the two special rate schedules adopted in 1969; more specifically, it is the consequence of the benefits given single taxpayers through new, lower rates. For other marriage penalties in the tax laws which antedate the 1969 alterations, see, e.g., Bittker, *supra* note 1, at 1414-16; Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers,* 21 BUFFALO L. REV. 49, 50-58 (1971).



Appendix II,[49] compares the tax paid by married couples [*1587] with different income splits with the tax they would pay if each were permitted to use the Singles rate schedule for computing the tax on his or her percentage of the income. The graph shows that the more evenly taxable income is divided between the spouses at any level of income, the more severe the "marriage tax" becomes. The effects are not felt by couples with total taxable incomes of less than $12,000, regardless of the income split. While at higher income levels the "marriage tax" emerges as a significant issue, the disadvantage is still not substantial unless the earnings or income contributions of the two spouses are as even as sixty percent to forty percent.[50]

Since the percentage of couples with relatively equal income [*1588] contributions is small, particularly at the higher income

[49] *See* p. 1628 *infra.* Figure 1 shows only the "tax on marriage" resulting from separate rate schedules. It does not show the effects of marriage on either the definition of taxable income or the availability of tax credits.

[50] Under 1976 rates, a couple each earning $10,000 paid $200 more in taxes than two similarly situated individuals, resulting in a "marriage tax" of 1%. If one spouse's income increased to $30,000, so that family income totaled $40,000, the "tax on marriage" would be about $600, or 2.2% additional tax. However, if a second couple had $40,000 of earnings evenly split between husband and wife, the additional tax on this couple would be $1680, or a 4.2% "marriage tax." *See* Appendix II, p. 1628 *infra.*

levels where the disadvantage is primarily felt,[51] the "tax on marriage" problem is not currently a pressing one. However, the number of two-income couples with relatively evenly divided income can be expected to increase sharply in future years as "equal pay for equal work" becomes a social reality and as more and more married women enter the labor force. Unless the rate schedules are changed, moreover, the effect of inflation will push moderate income couples into higher tax brackets where the "marriage tax" applies. For relatively high income couples, the additional tax from marriage can be substantial, as Appendix III suggests.[52]

(b) *The "Tax on Remaining Single" Problem.*—For a one-income married couple, the tax savings from using the Joint Return schedule instead of the Singles schedule can be substantial, on the order of 4-6% of income (up to 20% of tax) at upper-middle levels. Since a single person could get the benefits of the Joint Return schedule by marrying a person with relatively low or zero income, singles are said to suffer a tax penalty for not marrying.[53] This "tax on remaining single" becomes significant at much lower income levels than the "tax on marriage," with the result that the percentage of single persons affected is much greater than the percentage of two-income couples affected by the "tax on marriage." Appendix IV[54] suggests the size of the tax penalty a single person suffers for not marrying a person with zero income. [*1589]

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[51] As of 1969, fewer than 10% of married couples had income relatively evenly divided between spouses. Among those, over 70% had combined taxable incomes of less than $12,000. Hence, the group suffering the "marriage tax" amounted to fewer than 3% of all married couples. *See Tax Treatment of Single Persons and Married Persons Where Both Spouses Are Working, Hearings Before the House Comm. on Ways and Means,* 92d Cong., 2d Sess. 73—95 (1972) (testimony of Edwin S. Cohen, Ass't Secretary of the Treasury for Tax Policy) [hereinafter cited as *Tax Treatment Hearings*]. Although income patterns may have changed somewhat since the above data were collected, the number of married couples disadvantaged by consolidation is still unlikely to be as high as 4%.

[52] *See* p. 1629 *infra.*

[53] The "tax on remaining single" which results from the tax benefits given married couples prior to 1969 by formal income splitting and presently by the lower rate of tax imposed on the combined income of the marital unit has been criticized as providing a subsidy for getting married and as an unjustified departure from the theory of the income tax laws to tax individuals on their own income. *See, e.g.,* Pechman, *supra* note 15, at 21. However, it has also been argued that the legal burdens on one's income resulting from marriage, such as the obligation of support, justify recognition of a difference in the rights of a married and a single person in the income received. *See* Bittker, *supra* note 6, at 975-76 (suggesting that a husband's income is not his to the extent that he is legally required to use it to support his wife or children; in this respect he may be more properly treated as a "conduit pro tanto," with the income taxable to the beneficiaries). These problems are discussed at pp. 1592-98 *infra.*

[54] *See* p. 1629 *infra.*

The "tax on remaining single" has been a feature of the law in community property states since the beginning of the income tax and in common law states since 1948.[55] The special rate for singles added to the Code in 1969 reduced the amount of the additional burden on singles, but did not eliminate it.[56] The potential tax advantage from marrying will remain as long as married couples are allowed to use a rate schedule with wider brackets than the one available to singles. Moreover, the partial relief granted single taxpayers in 1969 was responsible for the "marriage tax" described above. Repeal of the preferential singles schedule would end the "marriage tax," but would again increase the "tax on remaining single." Hence, the policy choice to lessen the burden on the single taxpayer relative to the marital unit came at the expense of two-job married couples.

(c) *Marriage Neutrality.*—Critics of the current structure have argued that one's marital status should in no way affect the amount of tax one pays.[57] Return to a single rate schedule applicable to each individual whether married or not, along with the abrogation of the community property rule for federal income tax purposes,[58] would eliminate both the "tax on remaining single" and the "tax on marriage." Although such an approach has recently generated considerable support both inside and outside Congress,[59] it would abandon a well-established feature of our tax structure since 1948, that couples with equal income should be taxed equally.[60] Depending on the way income is distributed between spouses, the tax liability of couples with the same consolidated income would vary widely with the heaviest burden falling on the one-job married couple.[61] [*1590]

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[55] *See* p. 1583 *supra.*

[56] See p. 1584 *supra.* Although Congress took the view that the gap between married couples and individuals was too wide, it did not go so far as to abandon the advantages of income-splitting given to the marital unit. *See* Bittker, *supra* note 1, at 1428.

[57] *See generally* Bittker, *supra* note 1, at 1395-96 & n.10, 1437-39 & n.136.

[58] This would prevent the reinstatement of pre-1948 advantages in living in a community property state, while otherwise restoring the pre-1948 system. See pp. 1582-83 *supra.*

[59] A recent legislative proposal to establish a single rate schedule for all taxpayers, each spouse filing a separate return reporting his individual income, was well supported in both houses of Congress. *See* Bittker, *supra* note 1, at 1438 & n.136. This is the system which has long existed in Canada, but which has been criticized in Canadian studies of the tax treatment of the family. *See* J. London, *supra* note 2, at 231-51, 308-09.

[60] This principle was implicit in the movement to equalize the taxes of equalincome couples in common law and community property states which resulted in the Revenue Act of 1948, ch. 168, 62 Stat. no. See p. 1583 & note 30 *supra.*

[61] See Bittker, *supra* note 1, at 1439. Professor Bittker calculates the aggregate tax liability of couples with the same total income but with different income ratios using the Joint Return rate schedule as his only rate schedule. The results are the opposite of those inherent in the "tax on marriage." *See* pp. 1586-88 *supra.* The larger the disparity between the husband's and wife's

We believe that in a tax system based on the CTB ideal, equal-income couples should pay equal taxes,[62] since each member of the couple will benefit more or less equally from the total available income without regard to the source distribution. Moreover, apart from our theoretical objections to separate taxation for all individuals, we fear that insofar as this approach would apply to property income, it would precipitate attempts to reshuffle property interests which were common before 1948[63] and which were eliminated by the income-splitting provisions.[64] The burden of the tax would be a function of property shifts which have little effect on the overall economic position of the spouses.[65]

The two objectives of a marriage-neutral tax and equal tax burdens on equal-income couples thus appear to be antithetical. More broadly, the view is now widely held that no pattern of taxation of the family can be devised without sacrificing one of the following four objectives of our personal income tax: (1) a progressive rate structure; (2) equal-income couples paying the same amount of tax, without regard to types of income or division between the spouses; (3) no "tax on marriage"—two single [*1591] persons paying no more tax if they marry; and (4) no "tax on remaining single"—a single person saving no tax by marrying someone who has no income. The

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contributions to the income pool, the greater the resulting tax, given a progressive rate structure. Leaving aside the arguments as to the desirability of treating differently the one- and two-job family, *see* Part IV, pp. 1607-24 *infra,* the justification for imposing greater liability on the family in which one spouse earns considerably lower wages is unclear.

[62] *See* pp. 1592-98 *infra.*

[63] *See, e.g.,* Helvering v. Clifford, 309 U.S. 331 (1940) (short-term trust with grantor's wife as beneficiary); Corliss v. Bowers, 281 U.S. 376 (1930) (revocable trust with grantor's wife and children as beneficiaries). A tax rule which allowed tax burdens to turn on which spouse held title to property would in effect impose a "tax on the higher income earner holding income-producing property."

[64] *See* Bittker, *supra* note 1, at 1440-41. Professor Bittker also notes that separate return legislation would revive problems as to the allocation of deductions between husband and wife. *Id.* at 1441-42. The only workable solution to the problem of allocating deductions is to allocate them on the basis of the relative income of the spouses. This solution, however, is somewhat at odds with the ideal of marriage neutrality, for it requires that the individual's tax liability be dependent on the spouse's income.

[65] Our prediction of the consequences of an end to the consolidation requirement is based on the unhappy U.S. experience with the individual system prior to 1948 and the parallel experiences of a number of foreign countries. Most countries now require the consolidation of at least property income. *See, e.g.,* XXVIe CONGRÈS INTERNATIONAL DE DROIT FINANCIER ET FISCAL, *supra* note 1, at 269, 287; TAX BUREAU, MINISTRY OF FINANCE, [1974] OUTLINE OF JAPANESE TAXES 52-53. The Canadian tax system does not require consolidation and is faced with serious income-shifting problems. *See* E. MOCKLER & J. SMITH, TAXATION OF THE FAMILY 3-42 (Studies of the Royal Comm'n on Taxation No. 10, 1964).

incompatibility of these objectives is illustrated by the following example:[66]

> *Case a.* S_1 has income of $20,000 and is single.
>
> *Case b.* S_2 and S_3 each have income of $10,000 and are single.
>
> *Case c.* H_1 has income of $20,000 and W_2 has income of zero; H_1 and W_1 are married to each other.
>
> *Case d.* H_2 and W_2 each have income of $10,000 and are married to each other..

For objective (2) above to be realized, the tax paid in *Case c* must equal the tax paid in *Case d.* For objective (3) to hold, the taxes paid in *Case b* must be equal to or greater than the taxes paid in *Case d.* For objective (4) to be realized, the tax paid in *Case a* must not be greater than the tax paid in *Case c.* With a little high school algebra, it is easily shown that if these three objectives are satisfied, then the tax paid in *Case b* must be equal to or greater than the tax paid in *Case a.* If so, we violate objective (1), since S_s has double the income of either S_2 or S_3, yet does not pay more than twice the tax each pays, as is required by the progressive rate structure.[67]

Current law copes with the dilemma of the conflicting objectives by preserving objectives (1) and (2) and compromising objectives (3) and (4). To return to a single rate schedule applied to each individual would abandon objective (2). However, these tradeoffs between objectives are not inevitable. Decisions as to the objectives to be served must be seen in terms of the underlying policy as to who is the appropriate taxpayer within the family context. In devising a consistent and fair rule of attribution of family income, we have adopted the rule derived from the CTB ideal that the appropriate taxpayer is the person benefitting from the income. On the basis of this rule, we will develop a system that accords with the fundamental principle of horizontal equity—that equally situated people should

[66] This example is based on the illuminating testimony of Edwin S. Cohen, Ass't Secretary of the Treasury for Tax Policy. *See Tax Treatment Hearings, supra* note 51, at 78-79. *See also* Bittker, *supra* note 1, at 1395-97.

[67] The proof is as follows. Let a = the amount of tax paid by S_1; b = the total amount of tax paid by S_1 and S_2; c = total amount of tax paid by H_1 and W_1; d = total amount of tax paid by H_2 and W_2. Then from objective (2), c = d; from objective (3), b≥d; from objective (4), a≤c. But if b≥d, a≤c, and c = d, then b≥a. If b≥a, we violate objective (1).

pay equal tax—that informs objectives (2), (3), and (4), while, at [*1592] the same time, preserving the policy of vertical equity implicit in the progressive rate structure.[68]

B. Relative Burdens of Singles and Married Couples in an Ideal Income Tax

As stated above, the determination f the relative tax burdens to be imposed on single and married taxpayers requires a decision as to who is the appropriate taxpayer on a particular item of income. Before 1948, case law developed the property interest rule to allocate income among family members as well as strangers.[69] After 1948, when the property division of the community property states was made the formula for the distribution of tax burdens between spouses, the property interest rule remained as a method of attributing income between units, either individuals or married couples. Later attempts to alter the perceived inequities in tax treatment of singles and married couples were formulated without consideration of the basic problem of what rules of attribution were to be applied to family income so as to insure equitable taxation of the economic gain of married and single persons.

We reject the property interest rule as the appropriate rule for attribution of family income. The problems raised by that rule[70] led to its partial abandonment in 1948. In addition, it is particularly inappropriate in the family context, where, because of social and legal obligations of support and family ties, the income earner may neither himself enjoy the income nor be the person most capable of paying tax on that income.[71]

In contrast, the view of income consistent with the CTB ideal, that income is the sum of personal consumption properly understood[72] plus net change in savings, provides a far more appropriate guide to developing a rule of attributing family income. The real issue

[68] The use of the terms "horizontal equity" and "vertical equity" is traditional, but their use in a tax system with different types of marital units is confusing since the terminology assumes a homogeneity of taxable units to be meaningful. It is in part for this reason that we describe current law as having two parallel but distinct systems.

Actually, our benefit rule does reflect notions of horizontal equity, since the tax we would impose on each family member would be roughly equal to the amount imposed on a single person with the same actual consumption and accumulation.

[69] *See* pp. 1582-83 *supra.*

[70] *See* p. 1590 *supra.*

[71] *See* Bittker, *supra* note 1, at 1420-22.

[72] *See* p. 1577 & notes 8-9 *supra.*

involved in determining the appropriate balance between the tax burdens of married couples and singles is the extent to which the sharing of marital income justifies different [*1593] tax treatment; this problem involves not the source of the income which flows to the marital unit, but the benefits which each spouse derives from that income. The appropriate rule of attribution between spouses thus rests not on the property rights in the income, which may be irrelevant within the marriage partnership, but on the beneficial interests of each spouse in the pool of income available for consumption or saving.

Although we reject the property interest rule as the theoretically correct answer to the question, "Who is the taxpayer?" we consider it an essential tool in the practical administration of a tax on consumption plus change in net savings. Whatever refinements are used in developing an ideal definition of income, it is not *uses* of income but *sources* of income which provide the practical basis for identifying the tax base and computing and collecting the tax.[73] The benefit rule we advocate would be impossible for a tax administrator to apply to family income, since data as to how income is enjoyed by various family members is unavailable. Data as to the sources of income can be used to apply the benefit rule indirectly where the recipient of the income at its source is likely to enjoy it beneficially.[74] For a single person outside a family group, we assume that the benefit rule and the property interest rule give nearly identical results, since the income flowing to that individual is available for his personal consumption.[75] For the same reason, we also assume that the property

[73] *See* Andrews, *supra* note 3, at 327-30. Professor Andrews concludes that the longrun equivalence between money income and money expenditures for consumption and accumulation justifies using income sources as a proxy for uses in developing a strategy of taxation. Although a tax base linked to consumption plus accumulation is the ideal, a money income base is a practical necessity for computation purposes. Professor Andrews insists, of course, that a variety of adjustments be made in money income to move taxable income closer to the ideal. See *id.*

[74] The source-based income tax can then be rationalized as an indirectly measured tax on beneficial enjoyments. See *id.* at 329.

[75] Refinements of this concept of income available for beneficial use are beyond the scope of this paper. For a discussion of the medical expense and charitable contribution deductions in this context, see *id.* at 331-75. Professor Andrews argues that in judging the merits of a deduction from money income for certain personal expenses, it is important to realize that the income tax is ultimately directed at general consumption and accumulation. We extend this proposition and argue that in deciding who should be taxed on money income, it is necessary to consider who is enjoying the consumption or accumulation. See p. 1577 *supra.* While our analysis as to the proper taxpayer draws on that of Professor Andrews, it is not tied to his specific conclusions about the ideal definition of income.

interest rule gives an accurate index of the total resources available to various family groups.

However, the property interest rule is not a good tax index for attribution of income within the family, since the person who [*1594] is the source of the income and the ultimate beneficiary of the income cannot as readily be assumed to be the same. Children without income sources are supported by their parents. Husbands or wives without income are supported by their spouses. The extent to which married couples operate as spending units without regard for sources is unknown, but common experience suggests that at least partial pooling of sources to finance community consumption is almost universal.[76]

Since the property interest rule and the benefit rule may produce substantially different results as rules for attributing income to various family members, alternative techniques must be devised to apply the benefit rule. Three approaches are possible:

(1) We could attempt to measure the actual consumption and change in net savings of each family member. Who ate the big piece of pie? How many miles does each member drive the family car? We reject that approach as administratively unfeasible.

(2) We could treat the family as a taxable unit.[77] The family unit approach necessitates a system of multiple rate schedules, one for each class of taxable units: single individuals, married couples, and families. There is no theoretically correct number of classes. In addition, rules must be established for fixing the relative burdens under the different rate schedules. No criteria have yet been devel-

[76] The empirical base for conclusions on pooling is discussed in Thorson, *An Analysis of the Sources of Continued Controversy over the Tax Treatment of Family Income,* 18 NAT'L TAX J. 113 (1965). Prof. Thorson concludes: "There does appear to be a consensus on two points. First, spouses, in the normal cases, pool and share their income, with the most frequent exceptions occurring at upper income levels. Second, pooling and sharing also occur with minor children, but not to the same degree." *Id.* at 116 (footnotes omitted). As emphasized in a recent study, "[d]ecision-making and division of labor within the family tend to follow a joint rather than a segregated role pattern." Glendon, *Power and Authority in the Family: New Legal Patterns as Reflections of Changing Ideologies,* 23 AM. J. COMP. L. 1, 2 (1975). Views on pooling in a number of countries are discussed in a recent OECD report on the taxation of the family, *see* note 18 *supra.*

[77] The typical argument for the taxable unit approach is that consumption is largely a household function rather than an individual function, *see* Andrews, *supra* note 3, at 349, a point of view with which we agree but of which we have taken account in using formulas for attributing family income to individual family members. Our practical solution to the attribution problem, however, does tend to obscure the conceptual difficulties in attributing shared consumption items, such as the family house, among several beneficiaries.

oped in the tax literature for deciding what formulas to use in relating the rate schedules so as to allocate tax burdens in relation to the economic well-being of the different units.

(3) Income could be attributed by formula to the various [*1595] members of the family group who would then be taxed individually under a single rate schedule applicable to all individuals, single or married.[78] The problem is then to find an acceptable formula to attribute items of income to those family members who benefit from them.

The choice between approaches (2) and (3) does not necessarily involve fundamental policy issues, since, as explained above, the identical distribution of burdens can be achieved in most instances under either method.[79] However, we strongly prefer the income-splitting approach outlined in option (3), since it makes it explicit that tax is being imposed on individuals to the extent that they are thought to use or benefit from income. To attribute income to individuals is theoretically compatible with the policy represented by the CTB concept; in contrast, a system of different rate schedules obscures the implicit questions of attribution which must be answered in order to determine the relative rates of tax according to the benefit rule. In our view, much of the unhappiness of the taxpaying public with current law stems from the fact that the present twenty percent formula for relating the Single and Joint Return rate schedules has no support whatsoever in any theory of an ideal income tax but is simply an ad hoc compromise. We see no way that a taxable unit system can have a place in an ideal income tax unless the formulas for relating the multiple rate schedules can be linked to some policy objectives of the income tax. So far, at least, apologists for the taxable unit approach have not even attempted to provide a linkage.[80] [*1596]

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[78] Our argument for fixing tax burdens on a splitting formula does not necessarily imply separate assessment or separate legal liability for the tax. Joint legal liability seems preferable, since it would facilitate withholding of tax and eliminate the disputes which would arise if the spouse with legal title to the marital income refused to provide the funds for the taxes on both spouses.

[79] *See* pp. 1584-85 *supra.*

[80] The multiple rate structure of current law has been defended on the grounds that a single person should pay more than a married couple with the same aggregate income because of the extra burdens on the marital income, but that two single persons should pay less than a married couple with the same aggregate income because of presumed economies of scale. *See* Oldman & Temple, *supra* note 1, at 603-04. The economies of scale argument, however, is particularly relevant for dealing with taxpayers at the low end of the income scale. Since the subsistence requirements of low income taxpayers were not being dealt with before the introduction of the low income allowance, the rate adjustments were a useful expedient for granting tax relief for

For married couples, we propose attributing one-half the total income to each spouse as was required by the pre-1969 income-splitting rule.[81] Such a fifty-fifty division is based on the realistic assumption that married couples do pool their income, each obtaining more or less equal benefit.[82] In addition, in the absence of accurate means of measuring the actual uses to which income is put, income splitting is an administratively feasible formula for implementing the benefit rule. A formula based on relative incomes is unacceptable, since it would be a back-door exchange of the benefit rule for the property interest rule.

A return to income splitting and taxation of each individual at a single rate would remove any "tax on marriage" but increase the "tax on remaining single," since a single person with $20,000 of income would pay less tax after marrying a person with no income or less than $20,000 of income.[83] Although our solution would seem to abandon the fourth objective described above,[84] that objective is desirable only if it comports with the aim of taxing people equally to the extent they benefit from income. It is apparent that an individual who marries a person at a lower income level than his own will be able to consume or accumulate less after marriage because of his

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the poor. The theoretical justification for adjusting the rates rather than the tax base, however, is weak. The great variety of living arrangements which now characterize our society undermines the economies of scale argument for persons above the subsistence level. Generalities about economies of scale are no longer useful; in any case, the justification for taking account of the savings in expenditures brought about by lifestyle choices for those above the poverty level is absent. Even if the economies of scale argument were accepted, it would still give no specific guidance, aside from rank order, for linking the rate schedules.

[81] For discussion of the question of attribution to dependents, see Part III, pp. 1599-607 *infra.*

[82] *See* J. Pechman, Federal Tax Policy 93-94 (3d ed. 1977); note 76 *supra.* The assumption that couples split their income is more likely to be true for consumption than for savings, so that, particularly at higher income levels, our formula may not properly attribute savings according to benefit and a rule linked to ownership rights may be more accurate. *See* Andrews, *supra* note 3, at 349 n.69 (suggesting that accumulation is more an individual function and less a household function than consumption). For purposes of simplicity, however, we propose attributing income to family members uniformly, without any differentiation for disparities in the way income is actually used. The inexactness of our method can create problems of fairness at the time a family unit is dissolved and property must be divided. These problems, however, are not taken up in this Article.

[83] The relative tax burdens on married couples and single individuals which were imposed from 1948 to 1969 need not be restored by a return to income splitting, since the relative burdens depend in part on the construction of the rate schedule. A reduction in the degree of progressivity or the rate at which high marginal rates are reached would alter the relative burdens on single people. *See* p. 1625 *infra.*

[84] *See* p. 1591 *supra.*

social and legal obligations to share his income with his spouse.[85] Thus, the lower tax after marriage [*1597] is equitable under the benefits rule: if people are to be taxed to the extent of the real benefits they derive from income, then income splitting gives rise to no real "tax on remaining single."[86]

Under the benefit rule, persons should be taxed on income which they enjoy, without regard for their property interests in that income. Unmarried persons who pool their income should therefore theoretically be entitled to use some form of income splitting for tax purposes. These persons will be disadvantaged if income splitting is limited to the marital unit, and such a limitation is inconsistent with the ideal to tax each person on the real benefits he derives from income. For administrative reasons, however, we assume that the old property interest rules will continue to be applied to all persons except married couples and their dependents. For example, the extension of income splitting to persons living together without a legally binding marriage contract would pose formidable problems for IRS. Any attempt to investigate the personal living arrangements of couples to determine whether they in fact shared their income would require a serious invasion of privacy.[87] However, if income pooling among single persons becomes a common feature of our society, and there are signs that it is so becoming,[88] then an income

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[85] A tax system utilizing the benefit rule may serve to induce marriages which are legal in form but which do not involve economic sharing. This inducement is the converse of the inducement under present tax laws for two-income couples to remain unmarried, although they may in fact share their incomes. *See* pp. 1586-88 *supra.* However, these possible social consequences do not affect our choice of tax policy. *See* note 47 *supra.*

[86] The increased tax burden our proposal would impose upon single people, especially at higher levels of income, is objectionable under the standards of equity presented in this Article only if couples do not in fact split income on a 50/50 basis. In the case of upper income couples, who devote a smaller percentage of their total income to consumption than lower income couples do, this even split may be less accurate as a general rule: one spouse's savings may inure entirely to his benefit, or to the later benefit of a dependent. *See* note 82 *supra.* At upper income levels, therefore, a less generous splitting formula may be appropriate for married couples. The only practical method of implementing a variable splitting formula is through separate rate schedules for singles and married couples, a route we have sought to avoid in the interest of administrative simplicity. Multiple rate schedules constructed on the basis of empirical data on income-splitting patterns are, of course, entirely consistent with the benefit rule.

[87] *See* Bittker, *supra* note 1, at 1398-99. Similar problems of proof, as well as problems of line drawing, would attend the extension of income splitting to other living arrangements in which people do in fact "share" income. Professor Bittker therefore suggests that the group whose income is to be consolidated should be defined by objective boundary lines such as marital status, obligation to support, or right to inherit, which can be "crisply defined and readily verified." *Id.* at 1399.

[88] See Glendon, *Marriage and the State: The Withering Away of Marriage,* 62 VA. L. REV. 663, 686 (1976). A recent Census Bureau report states that 1.3 million unmarried Americans are living with someone of the opposite sex, double the number of seven years ago. See Dullea, *A*

tax based on the CTB ideal may eventually have to face up to the issue of income pooling among single persons. We may have to develop a fiscal definition of marriage which includes de facto, informal, [*1598] marriage-type relationships existing for longer than, say, two years.[89] The problems involved in extending income splitting to single persons are sufficiently complex, however, to put detailed consideration of them beyond the scope of this Article.[90]

One of the most common forms of intrafamilial "income splitting" under the present system is the creation of trusts.[91] In transferring property to a trust, the taxpayer is assumed to be giving up the enjoyment of the income except to the extent that he retains enough control to be treated as the technical owner of the corpus; arguably, under the benefit rule he should not be taxed on the full income. However, we urge that the trust no longer be taxed on any portion of the income. Since a trust cannot enjoy the benefits of income in any

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Legal Guide to Cohabitation, N.Y. Times, June 8, 1977, at 21, col. 2.

[89] A lawsuit brought against movie actor Lee Marvin in California by his household companion of seven years for one-half of the consolidated income of the couple was based on the theory that single persons can contract, by oral agreement or implicit promises, to pool income in a de facto marriage relationship. The plaintiff prevailed in the California Supreme Court. Marvin v. Marvin, 18 Cal. 3d 660, 557 P.2d 106, 134 Cal. Rptr. 815 (1976), *noted in* Case Comment, *Property Rights upon Termination of Unmarried Cohabitation:* Marvin v. Marvin, 90 HARV. L. REV. 1708 (1977). *See also* N.Y. Times, May 30, 1977, at 16, col. 4 (HUD making public housing available to unmarried couples if they can show a "stable family relationship"). Is this a step toward de facto marriage for tax purposes as well ? We suggest that an oral contract should be insufficient for tax purposes. Any movement toward allowing single couples to be taxed on a pooling basis should require a written contract which determines the rights of each party upon dissolution. This line of thought might lead one to consider conditioning income splitting for married couples on the existence of a pooling contract. Shades of *Lucas v. Earl*! See Bittker, *supra* note 1, at 1402 ("In retrospect, ... it is not fanciful to suggest that the taxpayers in *Lucas v. Earl* might well have been praised for an agreement embodying a sound principle of marital partnership that, had it been upheld, would have furthered an equally sound principle of tax law . . . .") *See also* Glendon, *supra* note 88, at 706-11.

[90] This discussion of the benefit rule has not dealt with the problem of intrafamily transfers and gifts. Although the treatment of gifts is an important issue in the debate over the CTB, *see* H. SIMONS, *supra* note 5, at 125-47; Andrews, *supra* note 3, at 348-54, intrafamily transfers do not present a problem under our proposal, which in effect assumes the presence of transfers of sufficient value to equalize the incomes of each spouse and thus ignores actual gifts. We are not concerned in this Article with gifts outside the family, but we do acknowledge that the logic of the benefit rule suggests that the beneficiary should be taxed, in contrast to present law, *see* I.R.C. § 102. Although some theorists argue that the donor actually receives a psychic benefit equal to the amount of the gift, we reject such an esoteric concept of benefit. As a practical matter, however, we concur with those proponents of a CTB who contend that for the sake of administrative convenience gifts should be left out of computation of the donee's income.*See* Andrews, *supra* note 3, at 348.

[91] Ordinary trusts are governed by I.R.C. §§ 641-667. Trust income may be taxable in part to the trust and in part to the beneficiaries. However, if the grantor maintains too much control over the corpus of the trust, the Code provides for taxation of all the income to the donor. I.R.C. §§ 671-677.

real sense—it cannot eat, have fun, [*1599] save for its retirement, or save in case of its premature death—it is a strange candidate to be the taxpayer under a benefit rule. We suggest that the trust no longer be treated as a member of the family but as a mere conduit, with the income attributable to it under the property interest rule allocated for tax purposes either to the grantor or to the beneficiary. We acknowledge that the rules for eliminating the trust as a taxpayer and attributing the income to individuals will need to be rather detailed and intricate, because of the complex ways that people can split up their interests in property. For example, rules would have to be developed for attributing the income of an accumulation trust during the period of accumulation. Our proposals for the treatment of dependents[92] somewhat reduce that complexity. Despite the difficulties in designing rules for attributing trust income to individual taxpayers, we see the demise of the trust as a taxpayer as a major contribution to the fairness of the federal income tax.[93]

III. Application of the CTB Ideal in Differentiating Tax Burdens on Account of Family Responsibility

United States income tax policy traditionally has taken into account at least some of the costs of raising children in the distribution of tax burdens. In Part II, we looked at the appropriate burden on single persons and married couples on the simplifying assumption that the marital unit did not include children or other dependents. In this Part, we expand our analysis to take into account the entire family. Although much of our discussion is applicable to dependents other than children, we do not explicitly address ourselves to any category of dependent other than minor children and do not focus on the morass of problems relating to the proper definition of a dependent child.[94]

The main arguments presented in this Part will build upon the case made in Part II for use of the benefit rule in determining the appropriate taxable person. Since children are the beneficiaries of some fraction of the income received by their parents, the benefit

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[92] *See* pp. 1599-607 *infra.*

[93] It may be necessary to continue the trust as a taxpayer for some time to come because of trust agreements which contain unidentifiable beneficiaries during any given tax year or a grantor who is deceased. We therefore suggest applying a flat rate of 50% to the retained income of such trusts. The similarity to the present separate tax on corporations should be clear and is intentional.

[94] *See* I.R.C. § 152 (definition of dependent).

rule suggests that the children, rather than the parents, are the appropriate taxpayers on a portion of the family income. Although for assessment purposes it is preferable that the parents [*1600] remain the taxpayers, the burden to be imposed on the total family income should be determined in accordance with this splitting approach. The practical effects of splitting can be achieved directly through a formula, or indirectly through either a system of family allowances or a special rate structure for families. The choice of techniques depends in large measure on how refined we wish to be in devising splitting formulas. The use of a special rate structure is by far the most flexible device, for it allows for complicated adjustments without involving the taxpaying public in difficult arithmetical computations. The use of deductions or other allowances, however, involves minimum changes from current law, and for that reason may be the most acceptable politically. Before presenting these proposals, we first summarize the current system of family allowances.

A. Family Allowances Under Current Law

For the purposes of this Article, family allowances are tax deductions, credits, or other relief measures given on account of family responsibilities but without regard to actual cash expenditures by particular taxpayers. The major allowances—the personal exemptions, the personal tax credits, and the special rate schedules for heads of households and surviving spouses—are described briefly below.

1. *Dependency Deductions and Tax Credits.*—Exemptions for dependents first became part of the income tax law in 1917, when a deduction of $200 for each dependent child was granted.[95] Compared to the exemptions for single persons and married couples,[96] the dependency exemptions were relatively small from 1917 until 1944, when the per capita system of exemptions found in current law was adopted. The amount of the exemption is now $750.[97]

The dependency exemption is available with respect to a variety of persons who are related to the taxpayer by blood, marriage, or adoption or who reside with him as a member of his household.[98] The overwhelming majority of dependency deductions are taken with

[95] Act of Oct. 13, 1017, ch. 63, § 1203(1), 40 Stat. 300.

[96] The Revenue Act of 1913 had granted every taxpayer a personal exemption of $3000, plus an additional $1000 if married.

[97] I.R.C. § 151(e).

[98] I.R.C. § 152.

respect to minor children living at home.[99] In 1972, dependency exemptions were claimed on forty-four percent of returns filed. Married couples claimed ninety percent of the exemptions, with family groups including four or more dependents responsible for one-third of the total dependency [*1601] exemptions claimed. Family groups with only one child took about fifteen percent of total dependency exemptions.[100]

In addition to dependency exemptions, taxpayers are currently entitled to a tax credit of either $35 per dependent or two percent of taxable income up to a ceiling of $180, whichever is greater.[101] The dependency credit is of primary benefit to low and moderate income taxpayers with many dependents. However, the percentage alternative largely offsets the effects of the dependency credit in differentiating among the tax liabilities of families of different sizes.

2. Use of the Rate Schedules to Provide Family Allowances.— Overlooked in most discussions of family allowances are the tax breaks granted to one-parent families through the rate structure. A single person with children or other qualifying dependents generally pays tax under the Heads of Households schedule,[102] which produces a lower burden for equivalent taxable income than the Singles schedule. A recent widow or widower with minor children can use the even lower Joint Return schedule for the two years after the death of his or her spouse.[103]

The tax savings from the rate reductions for heads of one-parent families are a function of income, increasing absolutely as income rises. As a percentage of taxable income, the savings are most important for individuals at the mid-twenty-thousand income level.

Although now provided through a special rate schedule, these benefits to one-parent families could instead be provided through a system of family deductions with no real change in tax burdens. Although a system of deductions duplicating current benefits would necessitate a complex pattern of variable percentage deductions, the results could be approximated by using the current Singles rate schedule and allowing heads of households a deduction of five

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[99] *See* Bittker, *supra* note 1, at 1445.

[100] These figures were computed from tables 2E and 2F in U.S. DEP'T OF THE TREASURY, STATISTICS OF INCOME—1972, INDIVIDUAL INCOME TAX RETURNS 76 (1974).

[101] I.R.C. § 42(a).

[102] I.R.C. § 1(b). "Head of household" is defined in I.R.C. § 2(b).

[103] I.R.C. § 1 (a). A "surviving spouse" is defined in the Code as one whose spouse died during either of the two preceding tax years and who maintains a household for a qualifying dependent, typically a minor child. I.R.C. § 2(a).

percent of taxable income, and surviving spouses a deduction of eleven percent of taxable income.[104]

Historically, the rate relief for one-parent families was viewed as providing a qualifying taxpayer with a portion of the benefits which a one-income couple in a common law jurisdiction enjoyed [*1602] from income splitting.[105] It therefore may be instructive to consider the rate reductions for one-parent families as a form of income splitting, with one segment of the income taxed as if received by the parent and the other segment taxed as if received by a phantom spouse. The Head of Household schedule enacted in 1951 amounted in effect to an income split of 75% to the parent and 25% to the phantom spouse. After the 1969 changes, the new schedule is now roughly equivalent to a 90% to 10% split.

B. Family Allowances in an Ideal Income Tax

Advocates of the CTB ideal find themselves in substantial disagreement over the propriety of allowing a tax benefit to middle and upper income individuals on account of the costs of raising children. For some, money expended on the raising of children is a consumption item, reflecting a choice of lifestyle by the parents in which society, in individual cases, has no important interest. Having characterized child support as consumption, they go on to conclude that in a tax on consumption plus the net change in savings, amounts so expended should be taxable. At the most, they would support some form of tax credit, viewing the credit as an acceptable tax expenditure, in light of the fact that the raising of children provides societal as well as individual benefits.[106]

Other CTB supporters contend that at least some of the expenses of raising children should not be treated as the consumption of the parents. Some child support costs—the second teddy bear, the third minibike—may properly be treated as an indulgence of the parents,

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[104] *See* Appendix V, p. 1630 *infra.* The percentage deductions chosen are slightly lower than the largest percentage deduction which would be required at different levels to correspond to current benefits under the special rate system.

[105] Income splitting had come to be seen as an allowance for family responsibilities, which led to the call for similar treatment of unmarried persons with similar support obligations. The Head of Household rate schedule, however, provided only partial relief compared with the advantages of income splitting. *See* Bittker, *supra* note 1, at 1417.

[106] *See, e.g.,* H. SIMONS, *supra* note 5, at 140 ("[I]t would be hard to maintain that the raising of children is not a form of consumption on the part of parents . . . ."). Simons himself was willing to allow small fixed credits for dependents. *Id.* at 141. *See generally* Bittker, *supra* note 1, at 1445-47.

but at least the minimum costs of raising a child are for the benefit of the child or in response to the clear dictates of society and only incidentally for the benefit of the parents.[107]

Perhaps the most popular argument in the literature against the children-as-consumption concept is the assertion that only income available for discretionary use, or what some economists [*1603] label "clear income," is properly part of the tax base.[108] The notion of "clear income," unfortunately, is so subjective as to be impossible to delineate with the precision necessary for it to be useful in fashioning an operating tax system. For supporters of the CTB idea, moreover, the "clear income" notion removes the meaning of "consumption" from any moorings in common experience. If amounts spent for subsistence are not consumption expenses, then it is unclear what expenditures do fit that classification.

Neither side in the children-as-consumption debate reaches results which are satisfactory on both theoretical and practical grounds. To say that amounts spent by parents on their children are consumption by the parents presupposes that the parents are engaging in an exchange of some sort with their children—food and clothing in return for smiles and cuddles. On that theory, however, a CTB supporter should find that the exchange results in income to the child as well.[109] On the other hand, excluding child support from the definition of consumption is an equally unhappy result, for food, clothing, shelter, and other goods and services purchased on behalf of the child are at the very heart of the popular idea of market consumption.

The problem with these arguments is the implicit assumption of both sides that the parents are the proper taxpayers as to income they earn and spend on their children. Working under this assumption, some CTB supporters try to defend taxing the parents as a tax on consumption; others argue that the items do not constitute

[107] *See* Bittker, *supra* note 1, at 1448-49.

[108] See H. Groves, *supra* note 1, at 10, 23-24. The argument is that expenses for basic subsistence are analogous to a businessman's expenses of doing business or maintaining capital. Alternatively, expenses for subsistence are so fundamental as to merit different treatment from other expenditures for goods. In both cases, the expenses arguably do not increase the material wealth of the taxpayer, as ordinary consumption does, but bring the taxpayers up to a certain minimum level. *Cf.* Michelman, *The Supreme Court,* 1968 *Term—Foreword: On Protecting the Poor Through the Fourteenth Amendment,* 83 Harv. L. Rev. 1 (1969) (fourteenth amendment guarantees some minimum level of necessary services).

[109] See Bittker, *supra* note 1, at 1445-47.

consumption at all and therefore should not be part of the tax base.[110] The assumption is entirely appropriate to the property interest rule of the current law. However, under the benefit rule we have been advocating, income spent or saved by [*1604] the parents for the benefit of their children is properly taxable to the children.[111] Making the children taxable on some fraction of the family income is an extension of the income-splitting rule advocated for married couples.

Our use of the term "benefit" rather than "consumption" avoids the difficulties which arise in defining consumption where a parent is using the income to buy food, clothing, and other goods for the child. If consumption is equated with money expenditures, then the parent who does the purchasing is the consumer in a market sense. Under our rule, however, it is clear that the income is to be attributed to the ultimate beneficiary of the goods, regardless of who actually spends the money. Nevertheless, the practical problems of estimating the benefits received by individual family members are formidable, making income splitting among family members difficult to implement. It is hard to generalize as to sharing patterns between parents and dependents in order to derive an equitable splitting formula.

Often dependents have sources of income of their own and their earnings are not shared with other family members. Should such income be consolidated with the rest of the family's income and thus be subject to whatever income-splitting formula is to be used? Application of the benefit rule suggests that consolidation should be required only when the child's income is generally pooled for the benefit of the whole family. When such income is applied only to the child's benefit—earned spending money, for example—the child should be taxable on his own earnings plus some share of the income earned by his parents. If the child's income simply reduces the amount that would have been given to the child by his parents,

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[110] The dependency deductions are thus justified as a refinement of the concept of taxable income based on consumption and accumulation, since such expenses do not represent an increase in the material well-being of the taxpayer. *Cf.* Andrews, *supra* note 3 (medical expenses and charitable contribution deductions analyzed as refinements of the income concept). Although we agree that expenditures for support should not be taxed to the parent, we do not adopt this mode of analysis.

[111] Professor Bittker has suggested that income splitting might be desirable on a fractional basis between the wage earner and members of his family. However, his conclusion is based to a great extent on the argument that because of legal obligations of support, the income does not really belong to the wage earner. Hence, his analysis reflects the property interest approach. *See* Bittker, *supra* note 1, at 1422.

however, then the child should be treated as having pooled his income, despite his own perception to the contrary. We suspect that a variety of arrangements for utilizing a child's income are common, but we see no way for the IRS to determine the facts as to internal family dynamics in particular cases. Faced with this practical dilemma, we suggest a compromise. Whether or not to consolidate should be at the election of the family members, but whenever a family wishes to receive a tax advantage on account of children, consolidation of family income should be mandatory. This rule would have its major practical importance where property income, under the property [*1605] interest allocation rule, is ostensibly shifted to the children although the family is in fact pooling resources.

A further problem arises from the fact that once income is consolidated, it must be attributed to the proper family member. The selection of an appropriate splitting formula requires some practical judgments, not verifiable with any accuracy, about the way families share the benefits of income. For married couples, we assumed that the benefits were split on a per capita basis. The extension of the per capita rule to families, however, would produce unrealistic results. First, at high income levels, any per capita formula results in too high a presumptive sharing of income with children. We assume that children receive a decreasing percentage of family income as total family income increases. A per capita formula assumes a constant percentage. Second, we think that while the sharing of income is substantial, with the first child receiving, say, one-fifth of the family's income, the addition of a second child would not divert another fifth. Rather, the total shares of the two children would be more than one-fifth but considerably less than two-fifths of total family income. This is most likely to be true for families at upper-middle and high income levels.

A substantial departure from the per capita approach, however, becomes increasingly complex to administer and less understandable to the taxpaying public.[112] In our view, an acceptable formula would attribute a decreasing share of income to the children as the total income of the family increases. The share of income going to the children as a group would rise at a decreasing rate as the number of

[112] The French tax system has adopted a form of income splitting among family members using a modified per capita approach. The quotient system generally attributes one part of the family income to each spouse and one-half of a part to each dependent. In practice, the system is extremely complex and requires the tax administration to do the computation of tax liability for each taxpayer. *See* M. Norr & P. Kerlan, Taxation in France §§ 5/14, 12/14 (World Tax Series, International Tax Program, Harvard Law School, 1966).

children increases.[113] Table I illustrates the type of attribution formula we suggest. The particular numbers chosen are entirely arbitrary, but the pattern [*1606] reflects our sense of the way families share income. At any rate, the generalizations about the costs of supporting children implicit in the deduction system of current law (or any replacement credit system) are at least as arbitrary.

TABLE I

Simplified Formula for Attributing Income to Each Family Member at Three Income Levels

Income	Portion Attributed to Each Child	Portion Attributed to Each Parent
$4,000		
one-child family	1/4	3/8
two-child family	1/5	3/10
four-child family	1/8	1/4
$12,000		
one-child family	1/5	2/5
two-child family	1/6	1/3
four-child family	1/10	3/10
$48,000		
one-child family	1/10	9/20
two-child family	1/18	4/9
four-child family	1/30	13/30

Refinements in the formula of Table I could be made to reflect, for example, the perceived differences in patterns of sharing of one-

[113] Benefits to children could be valued at average cost to the family or marginal cost. In comparing taxpayers with families to single persons or married couples without children, a marginal approach gives a result more in line with the respective standards of living of the different units.

Guesses about the ultimate beneficiaries of family savings also affect the choice of formulas, although generalizations are not easily made. Pensions and the equity in the homestead should go to the parents, although the children typically share in the imputed income from a personal residence. For some families, a significant amount of savings goes for the education of the children and should be attributed accordingly.

and two-parent families. We have not attempted, however, to develop such refinements here. We fear that even a formula with as few variables as that of Table I is already too complex to be understandable to a sizable percentage of the taxpaying public. We feel compelled, therefore, to present alternative methods for implementing the pattern of taxation dictated by our income-splitting recommendations.

As noted above,[114] the benefits afforded through income splitting can be approximated through the use of deductions or through the use of a separate rate schedule. A similar conversion can be made for any splitting formula. If a refined income-splitting approach is desired, the most accurate method is to adopt one or more new rate schedules for families. For example, a rate schedule could be constructed for married couples with one child which gives results equivalent to the suggested income splits at different income levels shown in Table I. The refinements can be as detailed as desired without adding at all to taxpayer [*1607] compliance problems, for the necessary calculations will be done by the tax administration and embedded in the rate schedule. Additional rate schedules could be added for families of different composition.

A simpler and more practical approach would be to use a system of dependency deductions. The deduction approach in effect allocates a portion of the family income to the children and then taxes that income at a zero rate. The $750 deduction of current law achieves at least some of the effects of our splitting proposal. Like the benefits of income splitting, the benefits of a deduction increase as income increases. As a percentage of income, however, the benefits of a deduction decrease at higher levels of income. Nevertheless, the $750 deduction is too generous, in our view, to large families at lower-middle income levels. The differences in the burdens on single persons and large families resulting from a flat deduction are far greater than those resulting from even a per capita splitting rule.[115] A rough corrective for this defect would be to abandon the per capita approach and give only half of the dependency exemption for the

[114] *See* pp. 1584-85 *supra.*

[115] Consider a one-parent family with four dependents with taxable income, before dependency deductions, of $5000. Using the Heads of Households schedule, the tax on the family would be $300, for an average tax rate of 6%. Using the *same* rate schedule, a single person with no dependents would pay a tax of $850 on taxable income of $5000, for an average rate of 17%. A per capita split of the family income would give a tax to each family member of $140, for a total of $700, since the bottom rate is 14%.

second and subsequent dependents. At the same time, the exemption for the first child could be increased. Although the numbers are arbitrary, we propose a deduction of $1,000 for the first dependent and $500 for each additional dependent as a practical approximation of the tax effects of income splitting for a substantial portion of the taxpaying public. At the sacrifice of some simplicity, much more refined approximations can be achieved.

IV. Application of the CTB Ideal in Determining the Relative Burdens of One- and two-Income Married Couples

A direct corollary of our conclusion in Part II that one-half of the consolidated marital income of a couple should be attributed to each of the spouses is that equal-income couples should pay equal taxes. Our discussion there focused exclusively on the rules for attributing the pool of income available to the family without consideration of what should go into that pool. We made the simplifying assumption that only monetary income—income arising through market exchanges—would go into the pool, without direct or indirect adjustment for the imputed income arising [*1608] from services performed by family members for the benefit of themselves or other family members.[116]

In this Part, we reexamine the proposition that couples with equal monetary income should pay equal taxes in light of the arguments made for adjusting the burdens on one- and two-job couples on account of perceived differences in the imputed income typically available to each. If imputed income should be taxed under the CTB ideal, and if two-job couples have less imputed income than one-job couples, then our decision to tax equally couples with equal monetary income discriminates against two-job couples.[117] Hence, consideration of the issue of imputed income, although principally a

[116] *See* p. 1593 *supra.*

[117] Although the discussion is framed in terms of the possible disparity in treatment of one-job and two-job couples in the failure to tax imputed income, similar considerations have been raised as to the comparative treatment of single individuals and one-job couples. It is argued that a couple with only one working spouse obtains the benefits of self-performed household services which the working single person does not enjoy. *See* Bittker, *supra* note 1, at 1425-26. The issue of imputed income in fact raises a host of issues applicable generally in the income tax. We have attempted, however, to restrict our discussion as much as possible to the problems of one-job and two-job couples. Much of the analysis in Section A, pp. 1609-13 *infra,* however, raises fundamental questions about the tax base that have not yet been adequately explored by tax theorists.

problem of defining the appropriate tax base, has implications for the attribution of income within the family.

The case for including at least some self-performed services in income is illustrated by the following example: A_1 and B_1 are married and each has a forty-hour-a-week job with an annual salary of $10,000. At the end of a work day, A_1 and B_1 are seldom in the mood to cook; instead they either eat out at a restaurant or heat up in the oven a frozen convenience dinner purchased at the supermarket. They also hire a maid to clean the house and handle other domestic chores and they send their dirty clothes to the laundry. A_2 and B_2 are married. A_2 has a full-time job paying $20,000 a year and B_2 has no employment outside the home. B_2 spends a good bit of time, however, baking bread, cooking fancy meals, canning fruits and vegetables, cleaning the house, sewing, and doing laundry.

If the services performed by B_2 in the above example produce taxable income as a matter of definition under the CTB ideal, then the value of the services should in principle be included in the pool of income attributed to A_2 and B_2 under the scheme of taxation proposed in Part II. The fact that A_2 and B_2 enjoy a real economic benefit, from these services, however, does not necessarily mean that the value of the services should be taxable. Although the view is widely held by supporters of the CTB ideal [*1609] that imputed income from self-performed services is taxable income as a matter of definition, we present several arguments in Section A which challenge that proposition. We conclude, first of all, that the CTB definition of income by itself gives no clear answer as to the proper treatment of self-performed services. Secondly, we suggest that some of the considerations that led to the formulation of the CTB ideal also justify the exclusion of the value of self-performed services from taxable income. Finally, we argue that even if our theoretical objections to taxing imputed income from services are overcome, the case against equal treatment of couples with equal monetary income depends on the existence of a definite pattern to the distribution of imputed income from services that disadvantages two-job couples. In Section B, we attempt to determine how imputed income is distributed between one-job and two-job couples. We conclude that the pattern of distribution of imputed income from self-performed services is so complex that the failure to take imputed income into account in determining relative tax burdens leads to no particular disadvantage for two-job couples.

Although we do not feel that the generalization that one-job couples have more imputed income from services than two-job couples holds sufficiently true to justify special tax measures, we recognize that the opposing viewpoint is tenaciously held and cannot be entirely refuted. In Section C we look at specific proposals for indirectly taxing self-performed services. In our view, all of these proposals have major defects which are traceable to our theoretical objections to taking imputed income into account in devising an ideal tax system. Our major complaint is that no assumptions can be made about the distribution and comparative economic effects of self-performed services that are of sufficient generality to justify the sweeping proposals which have been made. We therefore believe that our tentative conclusion to tax couples with equal monetary income equally need not be altered because of concerns for imputed income from self-performed services.[118]

A. The Proper Treatment of the Benefits from Self-Performed Services Under the CTB Ideal

The benefits obtainable from self-performed services pose a dilemma for the designers of a tax system based on the CTB [*1610] ideal. On the one hand, there are practical and theoretical advantages in formulating the income concept in terms of the exercise or the accumulation of market rights, thereby omitting the benefits of self-performed services which are obtained outside the market. On the other hand, these benefits can be so similar to benefits purchased out of income earned in the market that they raise the issue of fairness between otherwise similarly situated taxpayers. An analysis of these benefits in terms of the definition of income does not resolve the dilemma. Simons' definition, for example, refers to the exercise or the accumulation of a market right, which would seem to exclude the benefits of self-performed services from taxable income.[119] Simons himself, however, suggested that income includes rights to which a market price could be imputed.[120] Beyond this, however, since

[118] We acknowledge that cases for narrowly tailored allowances for two-job couples have been advanced on grounds of efficiency or inequity because of the "tax on marriage" under the current system of multiple rate schedules. Our approach to efficiency, which we believe is outweighed by fairness in the family context, is set forth in note 127 *infra.* Our proposal for dealing with the "tax on marriage," *see* p. 1596 *supra,* eliminates that problem for all couples.

[119] H. SIMONS, *supra* note 5, at 50.

[120] "Personal income . . . has to do . . . with rights which command prices (or to which prices may be imputed)." *Id.* at 49. Simons did not propose the taxation of imputed income from self-performed services but did recommend the taxation of imputed income from home

income for tax purposes can be defined in whatever manner we wish, it follows that even if we could resolve the ambiguities in the traditional formulation of the income concept, we would be still left with the more basic question of whether or not that formulation is consistent with widely held views as to what is requisite to a satisfactory definition of income. According to Simons, the definition of income (1) should be objective rather than subjective; (2) should be quantitative and measurable; and (3) should have a minimum number of implicit arbitrary distinctions.[121] These three minimum tests for an acceptable definition of income provide a [*1611] convenient framework for an analysis of the case for taxing the imputed income from self-performed services.

The variety of self-performed services which in some sense constitute income range from the sublime to the ridiculous, from the priceless private poetry of an Emily Dickinson to the thumbsucking of a small child. Putting a handle on the self-performed service concept is something like defining a capital gain: we think we know what we mean, but if we articulate a definition, we end up with either nothing fitting the description or everything fitting it. For example, which if any of the following services should be taxable: Getting up in the morning? Doing exercises? Singing in the shower? Grooming oneself? Fixing breakfast? Chewing food? Processing it within the stomach? Walking to work? Baking bread? Growing roses? Fixing the car? Driving in the country? Watching T.V.? Reading a novel? Reading bedtime stories to one's children? Playing backgammon?

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ownership. *Id.* at 111-12. In our view, imputed income from real property raises many fewer problems, practical and theoretical, than imputed income from self-performed services. Imputed income from home ownership is more akin to income in kind received by an employee in exchange for services than it is to imputed income from self-performed services. The most compelling reason for ignoring imputed income from self-performed services in an income tax is the inappropriateness of the market model for most kinds of self-performed services. The concept of imputed income presupposes the appropriateness of imputing first an exchange and then a price. Since a home is purchased in the market for a price which reflects the value of living in it, it is not unrealistic to view home ownership in market terms. Similarly, when an individual exchanges services which he normally sells in the market for tangible goods or for the services of someone else, a market analysis of the exchange is almost unavoidable. When a person makes himself a sandwich, however, it is an artificial construct to say that an exchange has taken place and any value imputed to the gain from the exchange is an artificiality once removed.

[121] "Income must be conceived as something quantitative and objective. It must be measurable; indeed, definition must indicate or clearly imply an actual procedure of measuring. Moreover, the arbitrary distinctions implicit in one's definition must be reduced to a minimum." *Id.* at 42-43 (footnote omitted).

As these examples illustrate, almost every activity we undertake is in some sense a self-performed service, since the possibility of imposing a market model on nonmarket activity has no logical limits.[122] A general inclusion of all imputed income from personal services in the definition of taxable income would cause the definition to fail all three of Simons' tests, since it would present hopeless problems of subjectivity and measurement and would require entirely ad hoc decisionmaking.[123] At a minimum, therefore, some categories of imputed income ought to be excluded from the tax base.

The examples also show that a definition of income that excluded some but not all items of imputed income from self-performed services would have difficulty satisfying Simons' tests. A logical step in limiting the imputed income concept might be to exclude from consideration all items which cannot be bought [*1612] and sold on the market.[124] That distinction is far from clear-cut, however, since almost all items of imputed income have a market analog. Chewing and digesting food might appear to be bizarre examples of imputed income that are obviously outside the boundary of serious concern. Yet when bodily functions fail to operate, replacement machinery is increasingly available even if the market price is high. The argument behind taxing imputed income—the comparatively greater economic well-being of those who do not have to pay for the services—is clearly applicable to these and countless other items of imputed income not normally viewed in market terms. Thus, even if the line could be drawn clearly enough to overcome problems of specificity and even if a rule of measurement could be devised, the problem of arbitrary distinctions and exclusions could not be avoided.

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[122] The procedure for imposing a market model on a self-performed service is to view the individual as bifurcated into a person who benefits and a person who performs the service. An exchange between these two parts of the individual is then postulated. The logic of an imputed exchange is often not carried to the end. Both sides of a market exchange should have income to the extent that what they receive exceeds the tax cost of what they gave up. The person who benefits has a gain, but the person who performed the services must also have a gain, since he is postulated to have received something equal in value to the services he surrendered. The amount of the gains is also imputed. For services performed for the benefit of family members, the metaphysical problems of bifurcation of an individual are not present, but the double-or-nothing problem remains. This double-or-nothing aspect of an imputed exchange was noted at p. 1603 *supra* in relation to the argument for children-as-consumption.

[123] Simons considered the problems of benefits received in kind by an employee as "clearly hopeless," once the facts did not warrant an inference of a real exchange. H. SIMONS, *supra* note 5, at 53. Outside the context of employment, the question of whether or not to impose a market analysis is even more open-ended.

[124] The rationale would be that a problem of fairness arises only when one individual purchases a service in the market and another performs the service himself.

The examples also show the potential for catastrophic consequences for some taxpayers and intolerable windfalls for others from what appears to be an issue of little or no concern. Take an apparently minor item such as shaving. At the minimum market price of $2 per shave, imputed income from shaving would exceed $700 per year for a person who shaves daily. Similarly the imputed income from dressing oneself each day, measured by the market price for a valet, would be in the thousands of dollars. In fact, potential income from even a narrow definition of self-performed services would be likely to exceed salary income for a majority of taxpayers. Thus a series of de minimis rules would not be very helpful in meeting the requirements of Simons' tests.

Although drawing a line which excluded nonmarket services from the definition of taxable income may well be the fairest practical and theoretical result,[125] the case for defining taxable income in terms of market income cannot be conclusive, since market income is not the most fundamental test of an individual's material well-being which is at base the measure of tax equality.[126] If the supporters of some form of taxation of nonmarket income can identify clearly the items they would tax, the possibility remains that an argument could be constructed that would justify the taxation of those items. To have appeal on fairness grounds, [*1613] however, that argument must rest on the perception that a pattern of distribution of the benefits of certain items of imputed income discriminates against an identifiable group of taxpayers. The existence of a pattern is necessary for two reasons. First, problems of identifying the tax base and attaching values to particular services would make direct taxation of imputed income from self-performed services administratively impossible. The practical policy choice is between ignoring imputed income from self-per formed services entirely or employing some indirect method of taxation. All indirect methods require a discernible pattern, since they cannot operate unless there is some factor other than the imputed income item itself for identifying who is being disadvantaged. That factor would be used as a proxy for the presence or absence of the benefits of a particular type of self-performed service.

[125] To the extent that our analysis focuses on who benefits, rather than who consumes in the market sense, it might be thought more theoretically compatible with the notion of taxing consumption of personal rather then market goods, but since our rule looks to who benefits from available *income,* it presents the same problem of defining when benefits are to be recognized for tax purposes.

[126] *See* p. 1577 & note 9 *supra.*

Second, the theoretical justification for taking particular items of imputed income into account must be related to some systemic defect in market income as an index of an individual's material well-being. A defect of that nature cannot be identified unless patterns of discrimination show up.

A challenge to our tentative conclusion in Part II that couples with equal monetary income should pay equal tax is dependent, therefore, on a showing that the exclusion of certain items of imputed income from the tax base results in a definite pattern of discrimination against two-job couples. The problems in finding a pattern of discrimination are taken up in Section B.[127] [*1614]

B. Estimating the Patterns of Imputed Income from Self-Performed Services of One-Job and Two-Job Married Couples

Our analysis of imputed income was prompted by the concern that equal tax treatment of couples with equal monetary income might discriminate against two-job couples. As discussed above, a

[127] Whether or not a pattern of discrimination exists must be judged according to fairness criteria, not efficiency criteria. Much of the support for tax measures in favor of two-job couples nevertheless rests on considerations of efficiency. In analyzing the economic component of the choice between working in and working outside the market, economists find it useful to include income from self-performed services within the concept of income, since the optimum choice for efficiency purposes is the one which maximizes the total of market and nonmarket income. The failure to tax certain types of self-performed services probably creates a distortion in the labor market in favor, for example, of a woman working in the home rather than working at a job which pays a taxable salary. The utility of including self-performed services in the income concept for purposes of eliminating this distortion, however, has no bearing on the merits of including it in income for purposes of determining fairness. Arguments addressed to the social and economic consequences of a particular mode of taxing self-performed services have usually sidestepped the issue of fairness and instead have focused on considerations of efficiency or social engineering. Proposals for accomplishing these nontax goals should be subjected to a tax expenditure analysis and must be justified, if at all, under budget criteria, not tax criteria. A discussion of the merits of proposals for adjusting the burden of one-job and two-job couples on efficiency grounds is beyond the scope of this Article.

If we did reach the merits, we would begin by examining the implicit assumption of all efficiency arguments—that the maximization of economic goods is a desirable social goal. We would want to see what the arguments are for encouraging market activity at the expense of leisure and self-performed services. Our suspicion is that giving money rewards for some kinds of activities but not for others already distorts the choice among activities in favor of paying jobs. There are a number of possible gains in a tax system which counteract this distortion. We think, for example, that citizen participation in the political processes of the country is desirable and is inhibited by the economic incentives which pull people away from volunteer political work. On the other hand, we can appreciate arguments for encouraging market behavior in other situations. None of the efficiency literature we have seen addresses itself, however, to this fundamental point. For a discussion of efficiency arguments, see H. Rosen, Application of Optimal Tax Theory to Problems in Taxing Families and Individuals (U.S. Dep't of Treasury, OTA Paper 21, November 1976) (also referring to much of the literature on the subject).

claim of discrimination depends on the existence of identifiable patterns in the distribution of imputed income which disadvantage two-job couples. A stereotyped view of the activities of working and nonworking wives might suggest that a clear pattern exists. In this Section, we attempt to go behind the stereotype and undertake to determine whether patterns actually exist which can be related to the one-job/two-job classification.

To avoid some of the definitional ambiguities discussed above, we will be concerned exclusively with a limited group of selfperformed services which many taxpayers commonly purchase in the market—"household services," such as cooking, cleaning, sewing, and caring for children; and "handy-person services," such as shoveling snow, fixing the television, and repairing the roof. In examining the widely held perception that one-job couples have more imputed income from these services than two-job couples have, we are unable to refer to existing empirical studies. In any case, empirical verification of this perception may be impossible. Since we have no organized data, we must rely on intuition, experience, and observation in estimating the distributions of self-performed services among one-job and two-job married couples. We suggest that the pattern of the distribution of self-performed services is more complex than is generally supposed. Although one-job couples do have the advantage of extra hours available for nonemployment activity, there is no necessary relationship between the amount of leisure time and the performance of these services.

First, we can find no predictable difference between one and two-job couples in the consumption of self-performed child-care [*6115] services. Obviously, and most importantly, such services are rarely performed by couples without children, in which case disparity between one and two-job couples is nonexistent. In addition, when there are children a substantial amount of child-care services are performed by both two-job couples and one-job couples.[128] It is true that some one-job couples and even more two-job couples purchase child-care services in the market. Those who purchase probably have

[128] Some studies have been made on the patterns of child-care arrangements of working mothers with small children. The most common arrangement is for the child-care to be provided by either the father or another relative. According to a 1973 survey, 49% of working mothers paid nothing for child-care, and in a large number of other cases, the out-of-pocket expenses were "very small," because the services were provided by relatives. In 26% of white two-job families and 14% of black two-job families surveyed, the mother and father arranged working hours to that they could handle their child-care requirements themselves. Child-care in the home is also apparently preferred by the majority of two-job and one-parent families. *See* Woolsey, *Pied Piper Politics and the Child-Care Debate,* DAEDALUS, Spring 1977, at 127, 130-32.

less self-performed child-care services than those couples with children who do not purchase. But the ratio of purchased as opposed to self-performed child-care services may be more closely related to inclination than to whether both spouses work, especially if child-care services are defined more meaningfully than as one parent's mere physical presence for long stretches of time.

Second, certain self-performed services, such as carpentry and electrical work, sewing and gourmet cooking, require a definite inclination or skill. These services are distributed in indeterminate patterns among couples: persons who possess the skills perform the services and those without the skills do not. One-job couples may have more time for performing these services, but if the inclination or skill is there, the two-job couple will often arrange their affairs to provide the time. If the skill is possessed by a working spouse, it makes little difference whether or not the other spouse is employed. Most importantly, large numbers of both one-job and two-job couples will have very modest amounts of imputed income from these services.

Third, many self-performed services, such as entertaining and managing one's business affairs, relate much more to lifestyle and type of occupation than to the one-job and two-job categories. Although one-job couples may perform more of these services than two-job couples, it is extremely doubtful whether there is any reasonably close correlation at any given income level.

Of course, many day-to-day services, such as cleaning, maintenance, gardening, and basic cooking, are more likely to be self-performed by one-job than two-job couples. Many two-job couples, however, arrange their lives so as to perform as much [*1616] or more of these services than typical one-job couples. Other two-job couples simply allow certain tasks to remain undone, or adopt a living arrangement in which the tasks which must be done are modest—for example, by purchasing or renting space in an apartment building. Still other two-job couples directly purchase the services in the market. On the other hand, significant numbers of one-job couples purchase greater than average quantities of services in the market, and others arrange their lives so that the need for self-performed services is low. Hence, it is difficult to generalize as to the distribution of self-performed services between one-job and two-job couples even with regard to these basic needs.

We recognize that other persons might make estimates quite different from ours and that we would have no reason, beyond our intuition, to claim they were wrong. If, however, our guesses are correct at least within some generous margin of error, the generalization that one-job couples have more imputed income than most two-job couples at the same income level is problematic. Although in a large number of cases it may indeed be accurate, the correlation is too tenuous to justify differential tax treatment of one-job couples to account for the possibility of these additional benefits.

An alternative argument for the differential tax treatment of one- and two-job couples is based not on the nonmonetary income arising from specific self-performed services, but on the theory that in a stable marriage the benefits derived from the marriage contract are the same for each spouse. That theory postulates that in a one-job marriage, the spouse without a job contributes services or other benefits at least equal in value to the market income contributed by the working spouse. If this theory of equivalence of benefits is applied to the tax law, then the more unequal the spouses' contributions of monetary benefits are at any given income level, the more nonmonetary benefits that couple must have in order to match the money contribution. To base tax consequences on this theory, however, seems singularly inappropriate: it presumes a definition of nonmarket gain that goes far beyond that commonly contemplated for tax purposes. For example, the theory implies that the benefits given by a nonworking wife to a husband who earns $50,000 are five times more valuable than those contributed by a nonworking wife to a husband with a $10,000 salary. Such a relative notion of gain, although perhaps theoretically appropriate to a contractual model of marriage, has nothing to do with the economic well-being with which the tax system is concerned.[129] [*1617]

The one advantage which a one-job couple consistently has over a two-job couple is the extra time available for nonemployment activity. Although it cannot be assumed that this time is in fact used to perform services the couple would otherwise have to purchase in the market, some advocates of a tax allowance for two-job couples assert that leisure itself constitutes "consumption," and thus should

[129] The theory of equivalence of benefits in marriage requires a very broad definition of benefits and assumes that the benefits are being valued idiosyncratically by the marital partners rather than by the market. Spouses would take into account, for example, beauty, wit, and compatibility, as well as a host of other equally unmeasurable benefits. For a discussion of the theory and for references to the growing literature, see Sawhill, Economic Perspectives on the Family, Daedalus, Spring 1977, at 115.

be taxable.[130] Treating leisure as consumption for tax purposes raises most of the problems of treating self-performed services as income. First of all, what is the policy reason for wanting small children, retired persons, students, and the unemployed—those most likely to have substantial amounts of leisure "income"—to pay an increased share of the tax burden?[131] The leisure-as-consumption argument makes sense only if there is some perception that leisure is itself a gain in material well-being that is relevant for income tax purposes.[132] If a link between leisure and gain is made, however, by reference to the benefits obtained through the use of leisure, the leisure-as-consumption argument is a back-door assertion that leisure is a useful surrogate for imputed income from services, a proposition which we have already criticized. [*1618]

Second, the administrative problems in taxing leisure are even greater than those which would arise in attempting to tax self-performed services. It is neither possible to determine directly a market value for leisure, nor proper to assume that the value of leisure is equal to the opportunity cost of an extra hour of work, even if such cost information were available.[133]

Finally, although the two-job couple spends more hours in employment activity than the one-job couple, it is not clear that this

[130] Since self-performed services may be thought to involve a sacrifice of leisure, arguably they should be treated equally—or alternatively the leisure itself should be taxed, regardless of the use to which it is put. *Cf.* H. SIMONS, *supra* note 5, at 52 (leisure is a major item of consumption; however, leisure income may be neglected for tax purposes in order to offset the neglect of imputed income).

[131] To tax the housewife for doing her own housework yet not tax the housewife who hires a maid on her increased "consumption" of leisure would arguably penalize industry and subsidize leisure, which may be an undesirable outcome. *See id.* at 111. Although we may wish to encourage certain types of leisure activity such as education, it seems clear that taxing the leisure of the retired and unemployed is both inequitable and self-defeating. At any rate, these considerations are related more to efficiency than fairness.

[132] According to Henry Simons, "[t]he *sine qua non* of income is *gain . . . .*" *Id.* at 50. He states further, "[t]he essential connotation of income, to repeat, is *gain*—gain to someone during a specific period and measured according to objective market standards." *Id.* at 51. Even if leisure is viewed as consumption, it is difficult to see the failure to make productive use of one's time as gain. If leisure is to be treated seriously as consumption, then all available minutes of a tax period should perhaps be seen as a part of an individual's accumulation. Consumption of time in leisure thereby produces no gain, since the loss of time is reflected by a depletion of the accumulation account. The parallel to more serious items of consumption and accumulation is completed by noting that time has no tax cost, so its expenditure in earning income should give no deduction.

[133] A person's pay per hour is a form of return on his skills, and as such may be only incidentally related to the value of leisure if the latter is to be measured by the individual's inclination or disinclination to work. In any case we have data only on marginal cost, not on the average cost figures which would be required were leisure to be included even indirectly in the tax base.

actually decreases the opportunities of the two-job couple for obtaining imputed income. The analog of imputed income from services as consumption is imputed income from increases in human capital as accumulation. The distribution, between one- and two-job couples, of imputed accumulation arising from increases in an individual's earning capacity is as problematic as the distribution of imputed income from services. But just as the one-job couple typically has an extra forty hours a week of leisure, so also does the two-job couple have an extra forty hours a week for building up seniority rights and job experience, two of the most important components of human capital.[134]

C. Indirect Methods for Taxing Imputed Income from Self-Performed Services

Despite the preceding analysis, some may still feel that an ideal income tax somehow must take self-performed services into account. In this Section, we assume the validity of that perception and consider practical proposals for taking it into account. Since direct taxation of imputed income is universally acknowledged to be unfeasible, the objective is to find some indirect method of approximating the distribution of tax burdens which would result from direct taxation. We will discuss the merits of three possible indirect methods of taxing imputed income: a deduction for cash outlays for the purchase of personal services, an earned income allowance, and adjustments in the rate schedule. Given the conceptual problems with any definition of imputed income and the complex patterns of distribution of self-performed services among the groups of taxpayers, any indirect method of adjusting burdens will be crude indeed. The most that can be hoped for is a system which reduces the perceived disproportionate [*1619] burden arguably imposed currently on two-job couples without creating greater unfairness for other taxpayers. We conclude that none of these proposals achieves even that limited goal.

1. *Deductions for Purchases of Personal Services.*—Amounts spent on personal services—to hire a maid or gardener, for example—normally constitute consumption, and the income which finances the consumption is taxable. If many taxpayers receive these same benefits tax-free by performing the services themselves, a

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[134] For a critical discussion of increases in human capital as income, see Andrews, *A Consumption-Type or Cash Flow Personal Income Tax,* 87 HARV. L. REV. 1113, 1145-46 (1974).

deduction for cash outlays for services may be in some circumstances a satisfactory indirect method of taxing selfperformed services. The function of the deduction would be to equalize the tax treatment of purchased services and self-performed services by in effect making both kinds of services exempt from tax.[135]

A deduction for cash outlays for personal services is defensible in an ideal income tax only if the amount spent to purchase services is a good proxy for differences in the distribution of self-performed services. For example, if all taxpayers either mow their own lawn or hire someone to do it, and if the amount of mowing which must be done is about the same for all taxpayers, then a deduction for the costs of hiring someone else to mow has about the same effect on relative tax burdens as including imputed income from mowing in taxable income. On the other hand, if a significant number of taxpayers do not have a lawn to mow, or mow it very infrequently, then a deduction for the purchase of mowing services is not an acceptable indirect method for taxing self-performed mowing services. The higher tax rates necessitated by the deduction unfairly increase the tax burden on persons who do not mow.[136] [*1620]

This example illustrates that while a deduction for purchases of any type of services is fair as between persons who typically perform

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[135] As a "second best" adjustment for the failure to tax self-performed services, the child-care deduction originally provided in the Internal Revenue Code of 1954 was defective in that it offered no benefit to the bulk of taxpayers taking the standard deduction and limited the deduction to two-job couples and heads of one-parent families. *See* I.R.C. § 214(e) (repealed 1976). The Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, which changed the deduction to a nonrefundable credit, I.R.C. § 44A, extended the benefits to families in which one spouse works part-time or is a student. Theoretically the benefits should be available to all purchasers of child-care services and to all taxpayers without children. *See* p. 1620 *infra.* In this case eligibility rules for the benefits were due in part to the view of some supporters that child-care expenses are akin to ordinary business deductions. Most tax specialists would agree, however, that child-care expenses are essentially personal, not business expenses. For a statement of this viewpoint and an analysis of the current credit, see Mclntyre, *Evaluating the New Tax Credit for Child Care and Maid Service,* Tax Notes, May 23, 1977, at 7. *See also* Popkin, *Household Services and Child Care in the Income Tax and Social Security Laws,* 50 Ind. L.J. 238, 245 (1975).

[136] Assume a universe with only three taxpayers, *M, H,* and *N,* each with pecuniary income of 100. The required revenue yield of the tax system is 30.As-sume *M* mows his lawn, *H* hires someone to mow, and *N* has no lawn and never purchases lawn mowing services or performs them himself. If mowing for oneself should be taxable in an ideal income tax system, then *M* should pay more tax than *H* or *N,* and *H* and *N* should pay the same tax. If only *H* is allowed a deduction for mowing, then the tax on *M* and *N* will be increased to make up for the revenue loss. This is fair to *M,* who has more "income" than *H,* but unfair to *N,* who has the same income as *H.* The only fair solution is to give the deduction to both *H* and *N.* Assume further that *H* purchases some mowing services and also performs some for himself. The only way to approximate the "ideal" solution of taxing mowing services would be to give a big deduction to *N* (perhaps 30), a smaller deduction to *H* (say 10) and no deduction to *M.*

the services themselves and those who purchase, a deduction is unfair as between those who purchase and those who neither purchase nor perform the services themselves. A deduction for mowing is unfair to most renters; a deduction for shoveling snow is unfair to taxpayers in the South.

Of greater practical significance, a deduction for child-care expenditures is unfair to those without children, assuming that the purpose of the deduction is to make allowance for the failure of the tax system to tax imputed income from child-care services. If self-performed child-care services are to be treated as income, the proper adjustment is a large deduction for taxpayers without children, with a more modest deduction for those with children who purchase child-care services.

This analysis suggests that a minimum requirement for permitting a deduction for cash outlays for services must be that the service in question is one which virtually all taxpayers either perform themselves or purchase in the market. This requirement, although a necessary one, is not, however, a sufficient one to identify the purchases for which a deduction is an acceptable "second best" adjustment for the failure to tax self-performed services directly. Cooking may be the most pervasive example of a service which is either performed or purchased. A deduction for amounts spent at restaurants is, however, a poor index of the value of the self-performed services of those who eat at home. Amounts spent at restaurants vary considerably even among persons who frequently eat out; those who eat at expensive restaurants should not be allowed a tax benefit which is only vaguely related to the value of the self-performed cooking services of persons who eat at home. Cleaning house is another chore which is widely purchased or performed for oneself. The allowable deduction would have to be small, however, to avoid unfairness to people with small houses, people without children, and people with a high tolerance for untidiness.[137] [*1621]

[137] A maid service deduction, if regarded as an indirect method of taxing self-performed housecleaning services, should of course be available to all taxpayers, not simply those with a qualifying dependent for whom the expense is somehow job-related. *See* I.R.C. § 44A. We suspect, however, that a deduction for maid services, if divorced from the business expense rationale which in part explained the political acceptability of the present household services credit, would be perceived by the public as a subsidy to the rich, who are more likely to pay for the performance of housework than are poorer people regardless of whether both spouses work. The problem of an apparent lack of equivalence between self-performed and purchased services may be particularly blatant here even though theoretically the two groups are being treated alike. It is unclear how a system of deductions could deal with this problem.

2. Earned Income Allowance.—Unlike those whose income is derived from property, a person whose income is derived from personal services must sacrifice a certain amount of time otherwise available for leisure activities in order to obtain income. A two-job couple will typically sacrifice more leisure time, or time for self-performed services or volunteer work, than a one-job couple in obtaining the same consolidated income. This difference in available time is said to justify some form of earned income allowance—either a deduction or a credit. The most frequently proposed allowance would grant a tax deduction of twenty-five percent of the earnings of the lower income spouse, or a tax credit of ten percent of those earnings, subject to a ceiling of $1,000 in tax benefits.[138] Alternative mechanisms for granting an allowance have been suggested from time to time, but these alternatives are not different in principle from the percentage allowance and will not be analyzed here.

The notion that loss of leisure justifies a tax reduction is based on two distinct theories about what types of benefits should be taxable. The first theory is that "leisure" itself is a form of consumption. As such, it should be taxed, but since it cannot be taxed directly, a deduction for loss of leisure is an acceptable "second best" solution. The second theory is based on the premise that differences in the amounts of self-performed services can be assumed to relate to differences in the amounts of leisure time available. Under this approach, leisure itself is not considered to be income, but its loss is a reasonable proxy for imputed income from self-performed services. The conceptual difficulties inherent in these two rationales were discussed above, where we concluded that taxation of leisure directly or as proxy involved the same problems involved in taxing any other form of imputed income.[139] Leaving aside the conceptual difficulties, an earned income allowance for two-job couples suffers from its own collection of infirmities. [*1622]

We see two major difficulties in instituting an earned income allowance for two-job couples. First, there is no acceptable justification for limiting the allowance to two-job couples. If the allowance is an adjustment for leisure, it should also be available to single persons on the assumption that single persons have the same leisure available to them, on a per capita basis, as have two-job

[138] For a clear presentation of alternative earned income allowances and estimates of their distributional impact, see J. PECHMAN, *supra* note 82, at 98-103.

[139] *See* pp. 1617-18 & note 132 *supra.*

couples. Moreover, a case can even be made for giving some minimal allowance to one-job couples to make up for the greater amount of leisure enjoyed by couples and singles supported entirely by property income. In addition, persons who habitually work long overtime hours theoretically should receive a larger allowance than persons working a forty-hour week. Extending the earned income allowance to all deserving cases, however, would mean that the size of the allowance would have to be much smaller than is generally proposed. Since from eighty to ninety percent of total adjusted gross income reported for tax purposes is earned income, an allowance available to a substantial part of the population would either have to be very small or would cause a massive shift of tax burdens to property income.

The other difficulty with the earned income allowance arises from the practical problems of distinguishing part-time from full-time workers. In our discussion heretofore, we have assumed that each two-job couple was comprised of two full-time workers. In fact, however, it is common for one spouse in a two-job couple to work on a part-time basis. Since the rationale of the earned income allowance is based on loss of leisure, the allowance should be a function of hours worked and, hence, of leisure forgone. The standard proposal for an earned income allowance nevertheless makes the allowance a percentage of the earnings of the lower income spouse and does not look at all to actual hours worked. This approach is based on two simplifying assumptions. First, it is assumed that the dollar ceiling on the benefits can be pegged high enough so that most persons eligible for the maximum allowance will be full-time workers, and most persons denied the maximum will be part-time workers. The second assumption is that for persons not eligible for the maximum benefits, the amount of income earned is a good proxy for the number of hours worked.

Neither of these assumptions has much intuitive appeal. Our guess is that there are, first of all, a significant number of part-time workers who are highly compensated on a per hour basis. We think it also common for lower income spouses to take jobs which are essentially full-time but which pay close to the minimum wage. Since the tax consequences of being denied or [*1623] granted a deduction of twenty-five percent of earnings are substantial, we think the simplifying assumptions implicit in the proposal for a percentage allowance mask from view an unacceptable degree of unfairness, even assuming the merits of some form of earned income allowance.[140]

The alternative to a percentage allowance is to require IRS to collect data on the number of hours actually worked by taxpayers. Such data are not now available and would require a major change in current reporting requirements. The collection of the data, however, is certainly feasible, at least for hourly workers. Even crude data—enough to group taxpayers into full-time and part-time classifications—would be sufficient to devise an earned income allowance which was fairer than the percentage allowance proposal.

3. Rate Adjustments.—Two conceptually distinct proposals have been advanced for taking account of self-performed services through the rate schedules. The first proposal would allow the lower income spouse in a two-job couple to file a separate return, although the property income of the couple would be consolidated with the income of the higher income spouse.[141] The benefits to the two-job couple under this proposal are a function of their income, and bear no particular relationship to loss of leisure or loss of self-performed services. The proposal, in our view, is based almost exclusively on an attempt to avoid the inefficiency consequences of progressive rates.[142]

The second proposal calls for separate rate schedules for [*1624] different types of households, expanding the multiple rate system of current law to include rates for two-job couples and families. The relationships among the rate schedules would be a function, in part, of intuitions about differences in the amount of self-performed services enjoyed by different types of household units.

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[140] An allowance based on percentage of income, rather than hours worked, is appealing to those who support an earned income allowance on grounds of efficiency rather than of fairness. To the extent that the nontaxation of self-performed services induces potential secondary earners to stay at home, any form of earned income allowance improves the efficiency of the labor market. Relating the benefits to income earned, rather than hours worked, also reduces the inefficiency caused by progressive rates. That inefficiency exists for all taxpayers, but is apparently greater for secondary earners. A consistent application of the efficiency criterion would result in a complex pattern of family taxation which we suspect would have little or no political support. It would give the least benefits, for example, to two-job couples at the low end of the income spectrum who are forced to work by economic necessity.

[141] In countries such as the United Kingdom and Switzerland which typically consolidate marital income and assess tax under the same rate schedule used for singles, separate taxation of the earned income of the second working spouse undoubtedly increases the fairness of the tax systems. The tax on marriage under United States law is minor in comparison with that in a number of European countries, even when special allowances for working wives granted in these countries are taken into account. *See generally How Direct Taxes Affect Individuals and Couples: Old Values and New,* OECD OBSERVER, March 1977, at 28.

[142] Our objections to separate taxation of spouses on fairness grounds are presented in Part II, pp. 1589-92 *supra.*

None of the problems of deciding what tax consequences should flow from self-performed services is removed by the multiple rate approach. All that happens is that the critical choices are buried from public view. For example, should the rates for single persons be higher or lower than those for two-job married couples? If imputed income is a factor in that choice, we face the same issue which was raised by the earned income credit: are we willing to raise the rates on property income to cover the loss of revenue which would result if a rate reduction were given to single persons? Similarly, in asking whether or not the rates on two-job couples should be lower than the rates on one-job couples, we have to confront the problem that generalizations about the distribution of self-performed services between one-job and two-job couples are of little help in deciding what burdens individual taxpayers should bear.

A rate schedule for two-job couples would require us to decide whether a full-time working spouse and a part-time working spouse qualify as a two-job couple. That definitional problem was discussed in our analysis of the proposal for an earned income credit.[143] Rate schedules, however, are less flexible in this context than deductions or credits. Part-time workers must be treated as a part of either a one-job or a two-job couple. An intermediate position is possible only if we are prepared to proliferate the number of rate schedules—adding one, for example, for one-and-one-half-job couples.

As has been noted before,[144] many of the effects of special rate schedules can be duplicated through the use of deductions. Any proposal for the use of multiple rate schedules for handling the problem of self-performed services can be reduced, with some effort, to a question of whether or not a series of special deductions should be allowed. We have already discussed the problems in using deductions to take account of imputed income from self-performed services. We fail to see how these issues become less intractable when buried in a rate schedule.

V. Conclusion

We set out to develop a normative model derived from the CTB ideal with which to approach the problems surrounding current [*1625] tax treatment of the family. The central question in any

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[143] *See* pp. 1622-23 *supra.*

[144] See pp. 1584-85 *supra.*

consideration of taxation of the family is how income should be attributed among family members. Although the CTB ideal is not generally thought to be relevant to this question, we found its basic insights helpful in determining the most equitable solution to the problem of attribution, which is at base a question of what items out of the pool of family income should be included in the taxable income of each individual family member. Building upon the Haig-Simons definition of income derived from the CTB concept, we adopted as our rule of attribution that income should be taxed to the family member who benefits from it, irrespective of source.

Our emphasis on the benefit rule has enabled us to formulate new approaches to some of the most controversial features of the present tax treatment of the family. The general theme of our program for reform is that tax burdens should be distributed in accordance with practical estimates of the monetary income enjoyed by individual taxpayers.

Our recommendations reflect our assumption that reform of the tax treatment of the family would be made in the context of a broad reform of the tax base and the basic rate schedule. Our proposal that the allowances for children be based on an income-splitting analysis, for example, presupposed that appropriate allowances had already been granted for the poor. Similarly, our proposal that married couples be allowed to split their consolidated income and file on the same rate schedule as single individuals is made in the context of a broader reform. The current rate schedules provide for large differentials in rates at low and moderate income levels but very modest differentials at upper income levels. A reduction in the differentials at the bottom and an increase at the top are more in harmony with popular notions of fairness and would reduce the differences in the burdens on single individuals and married couples at the same income level. At the same time, movement toward a comprehensive tax base would generally take more tax preferences from married couples than from single individuals.[145] Thus other desirable reforms would mitigate or even eliminate the increase in relative burdens on most

[145] On the assumptions that the tax base would be greatly expanded and the rate schedule would have brackets of even width, 98% of single individuals would pay the same or less tax under our proposals than they pay under current law. At high income levels, however, the removal of the special rate schedule for single individuals would result in significantly higher taxes. Data illustrating this, as well as other effects of our proposals on various subpopulations, are contained in a forthcoming publication of the Brookings Institute, *see* note ** *supra.*

single individuals otherwise resulting from our proposed return to the income-splitting system. [*1626]

A program for the reform of the current tax system must be measured in part by its potential contribution to the simplification of the tax laws. We have assumed, therefore, that our proposals for the tax treatment of the family would be part of a more general reform package which makes simplification a major policy goal. One expected by-product of the development of normative rules for the tax treatment of the family would be the reduction in arbitrary distinctions in the law. Normative rules cannot eliminate all or even most ad hoc decisionmaking, but they at least provide a framework for the system that can be readily understood. We believe that our proposals for change in the taxation of the family will be simpler to understand and operate than either the current law, with its multitude of inconsistent features, or any other reform proposal we have seen.

The simplicity of our proposals is due in part to our rejection of alternative approaches which almost assuredly would further complicate the law. The consolidation of marital income, which we want to continue, results in enormous savings in time and energy from what would be required in policing a system of separate taxation. We rejected giving any tax allowance for imputed income in part because of the administrative impossibility of devising a tax technique that is both simple and fair. Some of our recommendations for change, however, should make a positive contribution to the goal of simplification. For example, our suggestion that income of children be consolidated with that of their parents in certain situations should prevent a variety of complex income-splitting techniques and should resolve the difficult problem of how to deal with intrafamily transfers. Our proposal for ending the trust as a taxpayer would eliminate the importance of some of the most complicated provisions of the Internal Revenue Code.

In addition, our changes generally fit into old patterns of taxation, even if the theory supporting them and the overall impact on tax burdens are radically altered. For example, income splitting for married couples is a familiar mechanism as is our proposed deduction system for dependent children. We anticipate, therefore, no significant administrative problems in implementing our proposals. [*1627]

Appendix I

Comparison of Tax Burdens on Family Income: Joint Return Rates on Total vs. Singles Rates on Each Portion of 75/25 Split

Taxable Family Income	Tax Under Joint Return Rates	Tax Under Singles Rates 75 / 25 Split[1]	Percentage Change[2]
$ 500	$ 70	$ 70	0 %
1,000	140	143	+2.1
1,500	215	218	+1.4
2,000	290	295	+1.7
4,000	620	645	+4.0
8,000	1,380	1,420	+2.9
12,000	2,260	2,340	+3.5
16,000	3,260	3,320	+1.8
20,000	4,380	4,420	+0.9
26,000	6,380	6,280	–1.6
38,000	11,240	10,680	–5.0
50,000	17,060	15,815	–7.3
80,000	33,340	31,620	–5.2
100,000	45,180	43,280	–4.2
180,000	97,180	94,780	–2.5
200,000	110,980	108,280	–2.4
500,000	320,980	316,180	–1.5

Source: Computed from 1976 income tax rate schedules, I.R.C. § 1(a), (c).

[1] Amounts represent total tax paid by two single individuals, one receiving 75% of income shown in column (1) and the other receiving the remaining 25% of that income.

[2] (Column (3) – column (2)) divided by column (2).

APPENDIX II

Increase or Decrease in Individual Income Tax Burdens from Marriage[1]

Taxable Family Income[2]	Income Split Between Husband and Wife: 100% to 0 % Amount	Percent[3]	75% to 25% Amount	Percent[3]	60% to 40% Amount	Percent[3]	50% to 50% Amount	Percent[3]
$ 4000	$ – 70	– 1.8 %	$– 25	– 0.6 %	$ – 8	– 0.2 %	$ 0	0%
8,000	– 210	– 2.6	– 40	– 0.5	– 16	– 0.2	0	0
12,000	– 370	– 3.1	– 80	– 0.7	4	0	40	0.3
16,000	– 570	– 3.6	– 60	– 0.4	64	0.4	80	0.5
20,000	– 850	– 4.2	– 40	– 0.2	160	0.8	200	1.0
24,000	– 1,130	– 4.7	40	0.2	336	1.4	400	1.7
28,000	– 1,390	– 5.0	140	0.5	584	2.1	680	2.4
32,000	– 1,630	– 5.1	280	0.9	856	2.7	1,000	3.1
36,000	– 1,950	– 5.4	460	3.0	1,168	3.2	1,320	3.7
40,000	– 2,250	– 5.6	660	1.6	1,520	3.8	1,680	4.2

Source: Computed from 1976 income tax rate schedules, I.R.C. §1(a), (c).

[1] Excess of the joint return tax over the tax on two single individuals with the same combined income. Negative figure indicates a decrease in burdens on account of marriage.

[2] Aggregate taxable income of couple. Table ignores possible differences in definition of taxable income on account of marriage

[3]Increase/decrease in tax over aggregate taxable family income (the "tax on marriage").

APPENDIX III

Maximum Additional Tax on Two-Income Couple Resulting from Multiple Rate System ("Tax on Marriage")

Taxable Family Income	Additional Tax[1]	Percentage Increase[2]
$ 24,000	$ 400	1.7 %
40,000	1,600	4.2
80,000	4,560	5.7
100,000	4,800	4.8
200,000	4,800	2.4

Source: Computed from 1976 income tax rate schedules, I.R.C. § 1(a), (c).

[1] Tax on taxable family income computed under joint return rates minus tax that two single people would pay, each receiving half of amount shown in column (1). As Figure 1, p. 1587 *supra*, indicates, this "tax on marriage" is greatest when the income split is 50/50,

[2] Column (2) divided by column (1).

APPENDIX IV

Maximum Additional Tax on Single Person Who Does Not Marry Resulting from Rate Structure ("Tax on Remaining Single")

Taxable Family Income	Additional Tax[1]	Percentage Increase[2]
$ 16,000	$ 570	3.6%
24,000	1,130	4.7
32,000	1,630	5.1
80,000	6,050	7.6
200,000	12,110	6.1

Source: Computed from 1976 income tax rate schedules, I.R.C. § 1(a), (c).

[1] Tax on taxable family income computed at the singles rate minus tax on same amount computed at joint return rate.

[2] Column (2) divided by column (1).

Appendix V

Size of Deductions Which Would Result in No Change in Tax Burdens If Taxpayers Now Qualifying for Head of Household or Joint Return Rate Schedules Were Required to File on Singles Rate Schedule

	Deduction Required to Convert Head of Household Rates		Deduction Required to Convert Head of Household Rates	
Income[1]	Amount	Percent of Income	Amount	Percent of Income
$ 500	$ 0	0 %	$ 0	0 %
1,000	33	3.3	33	3.3
1,500	31	2.1	63	4.2
2,000	58	2.9	118	5.9
4,000	157	3.9	368	9.2
8,000	458	5.7	875	10.9
12,000	704	5.9	1,370	11.4
16,000	935	5.8	1,839	11.5
20,000	1,194	6.0	2,382	11.9
26,000	1,525	5.9	3,025	11.6
38,000	2,100	5.5	4,100	10.8
50,000	2,583	5.2	5,217	10.4
80,000	4,530	5.7	9,167	11.5
100,000	5,754	5.8	11,485	11.5
180,000	8,529	4.7	17,014	9.5
200,000	8,529	4.3	17,300	8.7
500,000	8,529	1.7	17,300	3.5

Source: Computed from 1976 income tax rate schedule, I.R.C. § 1(a), (c)).

[1] Taxable family income without taking into account the deductions shown in column (2) or (4).