

ARIZONA INDIVIDUAL INCOME TAX RULING
ITR 93-26

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

ISSUE:

To what extent can the department levy on the property of a married couple to satisfy a premarital income tax liability of one spouse?

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 25-211 provides that all property acquired by either husband or wife during marriage is community property, except that which is acquired by gift or by inheritance.

A.R.S. § 25-213 provides that all property owned by each spouse before marriage, and that property acquired after marriage by gift or by inheritance, is the separate property of such spouse.

A.R.S. § 25-215 delineates the liability of community property and separate property for community and separate debts.

DISCUSSION:

The liability of a spouse with respect to his or her premarital tax obligations is a separate debt of that spouse. The liability of separate and community property for the separate debts and obligations of a spouse is governed by A.R.S. § 25-215.

Under A.R.S. § 25-215.A the separate property of a non-debtor spouse is not liable for the separate debts or obligations of the other (debtor) spouse.

Under A.R.S. § 25-215.B separate debts, incurred after September 1, 1973, can be satisfied out of community property, but only to the extent of the value of the debtor spouse's contribution to the community property which would have been the debtor spouse's separate property if single. For example, a creditor to whom a husband owes a separate debt can collect from the husband's wages because those wages would be the husband's separate property if he were unmarried. The creditor cannot, however, collect from the community an amount greater than the value of the husband's contribution of property which would have been his separate property if single.

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RULING:

The department may levy on the separate property of a debtor spouse to satisfy that spouse's premarital tax obligations.

The department may levy on community property, to satisfy one spouse's premarital tax obligations, but only to the extent of the value of the debtor spouse's contribution to the community property which would have been that spouse's separate property if single.

The department may not levy on the separate property of a non-debtor spouse to satisfy the other (debtor) spouse's premarital tax obligations.

Harold Scott, Director

Signed: December 6, 1993

Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.

**APPENDIX TO ARIZONA INDIVIDUAL INCOME TAX RULING - ITR 93-26
(Appendix Amended 4/15/2011)**

For more information concerning the application of Arizona's community property provisions to Arizona income taxation, see the following income tax rulings:

- ITR 93-18 Income Reporting Requirements for Married Arizona Residents Who File Separate Arizona Individual Income Tax Returns
- ITR 93-19 Deductions, Exemptions, and Credits for Married Taxpayers Who File Separate Arizona Individual Income Tax Returns
- ITR 93-20 Income Reporting Requirements of Resident and Nonresident Spouses Who File Separate Arizona Individual Income Tax Returns
- ITR 95-2 Filing a Joint Tax Return When a Resident Spouse is Married to a Part-Year Resident or Nonresident
- ITR 93-22 When Community Income May Be Treated as Separate Income
- ITR 93-23 Reporting Income, Deductions, Exemptions, and Withholding for Divorced Individuals for the Year of Divorce
- ITR 97-2 Joint and Several Income Tax Liability
- ITR 93-25 Tax Collection from a Divorced Individual for Tax Due on a Separate Return Filed by the Former Spouse