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## ARIZONA INDIVIDUAL INCOME TAX RULING ITR 11-5

(Supersedes Arizona Individual Income Tax Ruling ITR 97-2)

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:**

When is the Arizona income tax liability of a husband and wife joint and several?

### **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. § 43-301 sets forth the individual filing requirements and provides for joint and several liability in the case of a husband and wife.

A.R.S. § 43-309 allows married individuals to file joint income tax returns.

A.R.S. § 43-562 also provides for joint and several liability in the case of a husband and wife.

Internal Revenue Code (I.R.C.) § 66 contains provisions under which, for federal income tax purposes, community property laws may be disregarded and community income treated as the income of the spouse earning the income.

### **DISCUSSION:**

A.R.S. § 43-562 provides that, in the case of a husband and wife, the spouse who controls the disposition of or who receives or spends community income, as well as the spouse who is taxable on such income, is liable for the payment of Arizona income taxes on that income. In addition, if a husband and wife file a joint income tax return, the liability for the tax on the aggregate income is joint and several. When the income tax liability is joint and

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several, the department may proceed separately against either spouse or both spouses for the entire liability. There are no restrictions with respect to when the department may proceed separately against only one spouse. It is not necessary to establish that the other spouse cannot be located or that the other spouse is unable to pay the tax.

Under Arizona's individual income tax filing provisions, married persons are given the option of filing either a joint return or separate returns. If a joint Arizona income tax return is filed, the tax liability on the aggregate income (community and separate income) is joint and several. It does not matter if only one of the spouses earns income. Generally, one spouse cannot avoid joint and several liability by disavowing a joint return after he or she learns of the other spouse's omissions from income or erroneous deductions.

If separate returns are filed, each spouse is separately liable for the income tax imposed on his or her separate income and for the tax imposed on his or her share of community income, and to the extent he or she controls, receives, or spends the other spouse's share of community income, for the tax imposed on the other spouse's share of community income.

The following examples will illustrate joint and several liability incurred when separate returns are filed.

#### Example 1:

Husband and wife are a married couple who live and work in Arizona. Both are wage earners, and wages are their only source of income. Both spouses receive, control, and spend the wage income.

Husband and wife file separate Arizona income tax returns for the tax year. Each spouse's Arizona income tax return properly reports one-half of husband's wages and one-half of wife's wages since all of the wages in this case are community income.

Husband is liable for the tax liability from his separate Arizona income tax return since husband is taxable on the income reported on that return. Husband is also jointly and severally liable for the tax liability from wife's separate return since he also receives, controls, and spends the income reported on wife's separate income tax return.

Wife is liable for the tax liability from her separate Arizona income tax return since wife is taxable on the income reported on that return. Wife is also jointly and severally liable for the tax liability from husband's separate return since she also receives, controls, and spends the income reported on husband's separate income tax return.

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In this example, both spouses are jointly and severally liable on the total tax liability from both separate returns.

#### **Example 2:**

Husband and wife are a married couple who live and work in Arizona. Husband and wife are wage earners, and wages are their only source of income. Wife sends all of her wages to her mother who lives in another country. Husband does not receive, control, or spend any of wife's wages. Both spouses receive, control, and spend husband's wages.

Husband and wife file separate Arizona income tax returns for the tax year. Each spouse's Arizona income tax return properly reports one-half of husband's wages and one-half of wife's wages since all of the wages in this case are community income.

Husband is liable for the tax liability from his separate Arizona income tax return since husband is taxable on the income reported on that return. Husband is also jointly and severally liable for the portion of his wife's tax liability that relates to his wife's share of community income earned by the husband, since husband shared in receiving, controlling, and spending those wages. However, husband is not liable for the portion of his wife's tax liability that relates to the wife's share of community income earned by wife since husband did not receive, control, or spend that income.

Wife is liable for the tax liability from her separate Arizona income tax return since wife is taxable on the income reported on that return. Wife is also jointly and severally liable for the tax liability from husband's separate return since she receives, controls, and spends the income reported on husband's separate income tax return.

In this example, wife is subject to joint and several liability on the total tax liability from both separate returns, and husband is jointly and severally liable for the total liability from his separate return and for the portion of his wife's tax liability that relates to his wife's share of community income earned by him.

#### **RULING:**

If a joint Arizona income tax return is filed, the entire income tax liability from the joint return is joint and several.

If separate Arizona income tax returns are filed, each spouse is liable for the tax imposed on his or her separate income, his or her share of community income, and his or her spouse's share of community income to the extent he or she receives, controls, or spends the other spouse's share of that community income.

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When the income tax liability is joint and several, the department may proceed separately against either spouse or both spouses for the entire liability, but the department will not collect it more than once.

#### **Cross References:**

A spouse may qualify for relief from joint and several liability under A.R.S. §§ 42-2074, 42-2201 or 42-2202 if the conditions in those statutes are met. For an explanation of these conditions and the procedure to apply for relief, see Arizona Individual Income Tax Procedure ITP 00-1 "Procedure for Requesting Relief from Joint and Several Liability."

For an explanation of the exceptions when community income is treated as separate income pursuant to Internal Revenue Code § 66, see Arizona Individual Income Tax Ruling ITR 93-22 "When Community Income May Be Treated as Seperate Income."

John A. Greene, Director

Signed: August 17, 2011

#### 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 that are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement that provides interpretation, detail, or supplementary information concerning 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 96-1 for more detailed information regarding documents issued by the Department of Revenue.