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THE EARNED INCOME DEDUCTION:
CONGRESS'S 1981 RESPONSE TO THE
"MARRIAGE PENALTY" TAX

Pamela B. Gann†

The effect of marital status on the allocation of income tax burdens has been a recurrent problem in our federal income tax system. National interest in this subject reached a historic apogee in 1948, when Congress abandoned treatment of the individual as the taxpayer unit and adopted the split-income plan of joint returns for married persons. Congress took this action to discourage common law states from adopting the community property system solely because of the federal tax treatment of married persons.1 Another less seismic climax occurred in 1980 with respect to the so-called marriage-penalty tax.2 This problem had attracted sufficient national attention that in 1980 the House Ways and Means Committee held hearings3 and the Joint Committee on Taxation published a staff report on the subject.4 The same year, the Tax Court decided Boyter v. Commissioner,5 in which it refused to recognize a sham divorce obtained at the end of a tax year. The Boyters, a Maryland couple, had divorced in Haiti in December, 1975 and immediately remarried in the beginning of the next tax year, in an ultimately unsuccessful effort to escape the marriage penalty. Such divorces had cap-

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1 Under community property laws, each spouse has a present one-half interest in the spouse’s entire earned income and in all unearned income derived from their community property. Husbands and wives therefore filed separate returns for their respective one-half shares of the community income. The lowest combined tax liability of married persons under the progressive tax-rate structure occurred when income was evenly divided. Consequently, the fact of marriage frequently lowered the tax liability of married persons in community property states. The Revenue Act of 1948 allowed married couples to report their combined income on a joint return and to calculate their tax liability by determining taxes owed on one-half of the total combined income and then multiplying that amount by two. Revenue Act of 1948, Pub. L. No. 471, ch. 168, §§ 301-305, 62 Stat. 110, 114-16 (codified as amended in scattered sections of 26 U.S.C.).

2 The “marriage penalty” refers to the higher tax liability of married two-worker couples, compared to their nonmarried counterparts. See infra text following note 18 and table 1.


4 See STAFF OF JOINT COMM. ON TAXATION, 96TH CONG., 2D SESS., THE INCOME TAX TREATMENT OF MARRIED COUPLES AND SINGLE PERSONS (Comm. Print 1980) [hereinafter cited as JOINT COMMITTEE REPORT].

5 74 T.C. 989 (1980).
tured the attention of the press, and the Boyters themselves testified at the 1980 congressional hearings on the marriage penalty. 6

Again, as in 1948, Congress could no longer ignore the issue of marital status and income taxes. Politically forced to respond, Congress included in the Economic Recovery Tax Act of 1981 (ERTA) a provision that allows an earned income deduction to married couples when both spouses work, thereby partially eliminating the marriage penalty. 7 This article examines the 1981 congressional response to the issue. Because this writer 8 and many others 9 previously have reviewed the history of marital status as a factor in our income tax system, this article assumes the reader’s familiarity with the genesis of the marriage penalty. It begins instead with a review of the nonneutrality of matrimonial status in allocating tax burdens as of 1979. Next, it discusses the provisions of ERTA that affect the relationship between marital status and income taxes. The primary provision is the earned income deduction for married couples, but the twenty-three percent reduction of tax rates also has a substantial impact. The article shows that the earned income deduction cannot be supported on an equity criterion of marriage neutrality, but that it does produce some efficiency gains. Finally, this article explains why the ERTA changes are palliative reactions by Congress and argues that a more nearly marriage-neutral income tax system, under which all individuals file separate returns under a single rate schedule, is a more satisfactory resolution.10

A. Marriage Nonneutrality as of 1979

In analyzing the equity objectives to be achieved by allocating income tax burdens on the basis of marital status, commentators typically apply one or more of the following criteria:11

1. The income tax should be progressive so that taxpayers with greater incomes will pay a larger percentage of their income in taxes than will taxpayers with lesser incomes.

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6 See Tax Treatment Hearings, supra note 3, at 163-68.
8 See Gann, Abandoning Marital Status As a Factor in Allocating Income Tax Burdens, 59 Tex. L. Rev. 1, 10-24 (1980).
10 See also Gann, supra note 8, at 32-51 (exploring superiority of marriage-neutral income tax system in terms of equity and efficiency).
11 See id. at 9; see also Bittker, supra note 9, at 1395-96 (discussing inevitable conflict between concept of marital-status neutrality and tax equality).
2. Equal-income married couples should pay equal taxes.
3. The income tax should be marriage neutral in that the sum of the individual tax liabilities of two persons should not change when they marry each other.

Our income tax system is based on the first two criteria. It is a progressive tax system, and married taxpayers typically consolidate their income on a joint tax return under a separate tax rate schedule so that married couples with equal incomes pay equal taxes. The third criterion, marriage neutrality, cannot simultaneously be achieved with the first two criteria, and since 1948, Congress has chosen to forego the third criterion in favor of the second. What are the various effects of this choice under equity analysis?

1. Comparison of One-Worker and Two-Worker Married Couples

Congress adopted the second criterion in 1948 by enacting the split-income plan for married persons, but in failing to define a broad statutory income tax base, it enacted a flawed implementation scheme. Consequently, Congress adopted the view that "married couples with equal statutory income should pay equal taxes," although their actual economic income and ability to pay taxes may be substantially dissimilar. Two simple examples illustrate this point. Married couples A and B each have $50,000 of income. Couple A has $50,000 of earned income and Couple B has $50,000 of tax-exempt interest earned on municipal bonds. These couples have the same economic income (assuming negligible expenses to earn that income), but couple A pays substantial federal taxes and couple B pays none. Alternatively, consider married couples C and D, each with $50,000 of earned income. In the case of couple C, the husband earns a $50,000 salary (incurring negligible expenses to earn that income), and the wife provides at least $15,000 of home production. In the case of couple D, the husband and wife both work outside the home and earn total salaries of $50,000. They produce only $5,000 of home production themselves, and pay a third person $10,000 a year to perform household services. Couple C has substantially more economic income than does couple D. They have the same statutory income, however, and pay the same federal taxes.

By 1980, the split-income system for married persons and the simultaneous exclusion of the value of home production from the income tax base had become a significant source of inequity in the allocation of income tax burdens. By failing to account for married couples’ allocations of labor between the marketplace and home, the system consistently overtaxed two-worker couples in comparison to one-worker

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12 See generally Bittker, supra note 9, at 1395-97; Gann, supra note 8, at 9 n.31 (demonstrating algebraically that goals of marriage neutrality and equal taxation for equal-income married couples will always conflict in progressive tax-rate system).
couples. This overtaxation was compounded by the nondeductibility of additional transportation, meal, and clothing expenses incurred by two-worker couples when the second worker entered the job market. The only allowance Congress made for such additional expenditures was the tax credit for child care expenditures that resulted from the second worker’s participation in the labor force. The inequities of the split-income system had increased since its enactment in 1948 because of the increasing participation of wives in the labor force. In 1948, only about twenty percent of wives worked outside the home, and because husbands earned most of the labor income, the split-income system of 1948 reduced the tax burdens of most married couples. Moreover, the omission of home production from the tax base probably did not cause substantial inequities between one-worker and two-worker couples. By 1980, however, over fifty percent of married women worked outside the home. Given this large number and the likely variances in allocation of time by these wives between market and home production, the failure to include home production in the tax base became increasingly inequitable.

Because of the increased participation of wives in the labor force, by 1980 two-worker couples had also become the most prevalent taxpayer group, measured by amount of taxes paid. In the 1979 tax year, two-worker married couples paid 37.7% of total individual income tax revenues, while one-worker married couples represented the next highest group at 37.3%. Also, by 1979, one-worker couples represented only 24.5% of all tax returns filed.

Congress’s adoption in 1948 of the criterion that “equal-income married couples should pay equal taxes,” reflected a tax system designed for a society largely composed of one-worker married couples. It represented a political solution to an equity problem that yielded a substantial tax reduction for most taxpayers. By 1980, however, two-earner married couples composed the single largest group of taxpayers in amount of revenues paid and one-earner married couples represented only 24.5% of all tax returns filed. Thus, by 1980, the 1948 solution benefited a substantially smaller number of taxpayers at the cost of increased inequitable allocation of tax burdens among one-worker and two-worker married couples because of the exclusion of home production from the tax base.

14 Tax Treatment Hearings, supra note 3, at 19; see also Gann, supra note 8, at 33 n.114 (table summarizing labor-force participation of wives since 1940).
15 See Gann, supra note 8, at 33 n.114 (table summarizing labor-force participation rates of wives since 1940).
16 See JOINT COMMITTEE REPORT, supra note 4, at 34.
17 See Gann, supra note 8, at 35 n.121.
2. Comparison of Single Persons and Married Persons

The 1948 split-income plan lowered taxes for single persons when they married, unless the spouses had equal, separate incomes before and after marriage. This decrease in tax liability upon marriage has been referred to as the "marriage bonus." Concomitantly, a single person with the same income as a married couple paid substantially higher taxes than the married couple. This higher tax liability has been referred to as the "single's penalty." In order to lessen this disparity, Congress enacted a separate tax rate schedule for single persons in 1969, which became effective in 1971.18 Under the separate schedule, the single person's 1971 tax liability, at a given income level, was never more than 120% of the tax liability of a married couple at the same level.

As a result of this new schedule for single taxpayers, some persons paid a higher tax on their combined incomes after they married than the sum of the separate taxes they paid when single. This increase in taxes paid after marriage is referred to as the "marriage penalty." Table 119 displays the marriage penalty and marriage bonus under the 1979 rate schedules at varying levels of total income and varying divisions of income between spouses. The penalty begins at approximately the point when income is divided between the two persons more evenly than eighty percent and twenty percent. The marriage penalty increases as income is more evenly divided, reaching its maximum when the spouses have equal incomes before and after marriage. Even when income is fairly unevenly divided between the spouses, a substantial marriage penalty can occur. Consider, for example, a married couple with a combined income of $40,000. They incur a marriage penalty of $1,031, even though the lesser-earning spouse contributes only thirty percent of the income. The penalty increases to $1,692 when the income is divided evenly.

As Table 1 also shows, the range of disparity between the tax liabilities of married couples and their unmarried counterparts at the same income levels is very substantial. When total family income is $40,000, the range of disparity is $4,493 (from a marriage bonus of −$2,801 to a marriage penalty of $1,692). At $50,000 the difference is as high as $6,018, and at $100,000 as high as $7,858.

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19 Table 1 is reprinted from JOINT COMMITTEE REPORT, supra note 4, at 29.
**TABLE 1**

**EFFECT OF MARRIAGE ON TAX LIABILITY AT SELECTED INCOME LEVELS AND EARNINGS SPLITS BETWEEN HUSBAND AND WIFE***

<table>
<thead>
<tr>
<th>Total family income</th>
<th>Share of lesser earning spouse</th>
</tr>
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<tr>
<td></td>
<td>0</td>
</tr>
<tr>
<td>$5,000</td>
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<tr>
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<td>-378</td>
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<td>-710</td>
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<tr>
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<td>-1,092</td>
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<td>-2,801</td>
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<tr>
<td>$50,000</td>
<td>-3,344</td>
</tr>
<tr>
<td>$100,000</td>
<td>-3,464</td>
</tr>
</tbody>
</table>

* Assumes that taxpayers have no dependents and do not itemize deductions. Marriage penalties would be smaller, and marriage bonuses larger, for itemizers. Marriage penalties are positive and marriage bonuses negative in the table.
The Treasury Department, in preparation for the 1980 congressional hearings, estimated the number of joint returns filed in 1979 with marriage bonuses or penalties. Economist David Feenberg later published another estimate of the distribution of bonuses and penalties in 1979. Table 2 summarizes their estimates of total returns filed with marriage bonuses or penalties and the amounts of such bonuses or penalties. Feenberg also estimates that 2.4 million joint returns in 1979 had neither a marriage bonus nor penalty.

### Table 2

<table>
<thead>
<tr>
<th>Penalty</th>
<th>Number of Returns</th>
<th>Total Amount</th>
<th>Average Per Return</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Treasury</td>
<td>15.9 million</td>
<td>$8.34 billion</td>
</tr>
<tr>
<td></td>
<td>Feenberg</td>
<td>18.7 million</td>
<td>9.0 billion</td>
</tr>
<tr>
<td>Bonus</td>
<td>Treasury</td>
<td>23.8 million</td>
<td>19.16 billion</td>
</tr>
<tr>
<td></td>
<td>Feenberg</td>
<td>20.3 million</td>
<td>14.5 billion</td>
</tr>
</tbody>
</table>

Marital status has clearly affected the allocation of tax burdens among single and married persons since 1948. The original split-income system created the single's penalty and the marriage bonus; the creation of a separate rate schedule in 1969 to lower the tax on single persons resulted in the marriage penalty. The allocation of tax burdens based on marital status as of 1979 can be summarized as follows:

1948: (1) Married couples with equal statutory income pay equal taxes (even though married couples with equal economic income may not pay equal taxes); and (2) the consolidation on a joint return of the income of two persons when they marry (where income is unevenly divided between them) lowers their tax liability (the marriage bonus).

1969: (1) Single persons do not pay more than 120% of the tax paid by a married couple with the same total income (the single's penalty); and (2) single persons who have income more evenly divided than an eighty percent-twenty percent division pay higher combined taxes when they marry (the marriage penalty).

In what way did ERTA in 1981 modify these legislative decisions concerning the relationship between marital status and the allocation of income tax burdens?

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20 See Tax Treatment Hearings, supra note 3, at 19, table 4.
22 See id.
By 1981, critics of the federal income tax system directed their primary assault at the Code's taxation of married persons. They made three substantial criticisms. First, the marriage penalty discouraged marriage and undermined respect for the family and for the tax system itself. Second, the system, in adopting the view that married couples with equal statutory income should pay equal taxes, failed to reflect in the tax base the diminished income and home production of two-worker couples compared to one-worker couples. Third, because the system taxed the secondary worker's income at a higher marginal tax rate as a result of consolidating income on the joint return, it discouraged the secondary worker from working outside the home.

These substantial concerns convinced Congress of the need for modification of the system to eliminate or reduce the marriage penalty on earned income. Code-reform advocates and various members of Congress actively discussed three options: (1) mandatory separate filing by all individuals; (2) optional separate filing by married persons under the single-persons rate schedule; and (3) an earned income deduction equal to a percentage of the earned income of the spouse with the lower earnings. Congress rejected the first two options to avoid the task of developing rules to allocate income and deductions between the spouses' separate returns and to preclude elimination of the marriage penalty with respect to all types of income, when Congress's greatest concern was the plight of the secondary worker.

For many years tax commentators had advocated the third option, the earned income deduction (EID), as a response to the inequities in the taxation of one-worker and two-worker couples due to the flaws in

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26 See Marriage Tax Penalty: Hearings Before the Subcomm. on Taxation and Debt Management Generally of the Senate Comm. on Finance, 96th Cong., 2d Sess. (1980) (discussing proposed bills to permit married persons to file single income tax returns, and to permit married couples to deduct percentage of lower wage-earner's income); see also Sunley, Summary of the Conference Discussion, in Comprehensive Income Taxation 261, 272 (J. Pechman ed. 1977) (discussing various options including EID and separate returns for married people); Bittker, supra note 9, at 1434-37 (EID), 1437-42 (separate returns); Gann, supra note 8, at 36-39 (discussing EID), 52-53 (discussing mandatory or optional separate filing of tax returns by married persons).

the statutory measurement of the tax base.28 The ideal solution to the problem would be inclusion in the income tax base of the value of goods and services produced in the home. Because of the supposedly insurmountable administrative problems in measuring the amounts and values of these goods and services, however, tax commentators suggest the EID as a proxy for the more ideal solution. Other commentators, however, have raised substantial and unanswered criticisms of this proxy.29 First, limiting the EID to two-worker couples leaves other new tax inequities between nonworker couples and one-worker couples and between single persons and one-worker couples with the same statutory income.30 The correct solution to these comparative inequities is to allow a deduction for all full-time workers, irrespective of marital status, scaled down for part-time workers. Granting a deduction to all taxpayers who work in the market place adjusts for the advantages associated with untaxed imputed income from leisure and household goods and services. Second, no economic studies exist to determine whether a particular deduction reflects the differences in amounts and values of imputed income of one-worker and two-worker couples. The EID is an acceptable equitable proxy for the value of household services only if evidence becomes available to determine the proper size and distribution of such a deduction.

Despite these convincing criticisms of the EID, Congress embraced it in 1981 as the political solution to the marriage penalty on earned income. ERTA added section 221 to the Code which, beginning with the 1982 tax year, allows two-worker married couples to deduct five percent of up to $30,000 of the lower of the spouses' earned incomes.31 This percentage increases to ten percent in 1983 and years thereafter. For example, if in 1983, both spouses have earned income and the lesser

28 See, e.g., Bittker, supra note 9, at 1434-36 (EID as percentage of second wage-earner's income more plausible than allowance for employment related expenses); Gann, supra note 8, at 36-37 (suggesting some form of EID as politically plausible solution to marriage penalty, in lieu of including value of household goods and services in income tax base); Sunley, supra note 26, at 272 (comparing EID and separate filing system).

29 See Gann, supra note 8, at 36-38.

30 When neither spouse of a wealthy married couple works outside the home because the couple can afford to live on income from property, the couple has property income plus the household goods and services and leisure of two spouses. The one-worker couple benefits from the household goods, services, and leisure of one spouse and, therefore, has a lower overall standard of living than the nonworking couple with an equal statutory income. Thus, Congress could appropriately give some allowance to the one-worker couple. But if this allowance were made, the two-worker couple should receive two allowances. Further, because the single-person household does not benefit from the household services and products of another person, Congress could also appropriately give an allowance to a single person compared to a one-worker married couple.

earned income of one spouse is $10,000, the EID will be $1,000. If the lesser earned income of one spouse is $30,000 or greater, the maximum EID of $3,000 will be allowed. What effects will this deduction have on the taxation of married persons?

Equity analysis reveals little merit in the EID, for it is too narrow a solution to the marriage penalty. The penalty occurs when couples have separate incomes, whether from property or services, and one spouse's income is at least twenty percent of the couple's total income. Because the EID is limited to a percentage of the earned income of two-worker couples, it does not eliminate the marriage penalty resulting from unearned income. Congress was, of course, aware of this effect, but chose to reduce the marriage penalty only for two-worker married couples.32

Moreover, the EID only partially alleviates the marriage penalty of two-worker couples. Two provisions of ERTA affect the amount of the marriage penalty. One provision is the EID. The other is the reduction of all tax schedule rates by twenty-three percent by 1984,33 and the simultaneous reduction of the highest marginal tax rate on unearned income from seventy percent to fifty percent as of January 1, 1982.34 Table 3 compares the marriage penalty paid by couples with evenly divided earned income under the rate schedules effective prior to ERTA, with the estimated marriage penalty to be paid by these couples in 1984 when the full twenty-three percent rate reduction is in effect.35 The table uses an even division of income because the maximum marriage penalty occurs at this division.36 In order to make a proper comparison, the 1980 income levels were increased by the percentage change in the Consumer Price Index from 1980 through 1984,37 on the assumption that the couples' earned income would also increase at this rate. The table reflects the 1984 tax rates as applied to the adjusted incomes to

33 See I.R.C. § 1(a) (as amended by ERTA, supra note 7, at § 101(a), 95 Stat. 176-82) (tables of reductions scheduled for 1981, 1982, and subsequent years).
34 See id.
35 The report of the Joint Committee on Taxation accompanying ERTA contains a table comparing the marriage penalty at various income levels and divisions of income under prior law and under ERTA applying the 1984 tax rates. Joint Comm. Report, supra note 31, at 35, table IV-6. The table does not distinguish the effect of ERTA's rate reductions from the effect of the EID. Moreover, the table does not state whether the various income levels were adjusted to reflect inflation since 1979. The omission suggests that the calculations probably did not incorporate an inflation index. Failure to increase the income levels to 1984 dollars will overstate the effect of ERTA's rate reduction and understate the effect of the EID on the amount of the marriage penalty in 1984.
36 See supra Table 1 and text following note 18.
37 The Consumer Price Index for 1980 was 247.0. Table 3 reflects annual percentage changes as follows: 1981—10.2%; 1982—8% (estimated); 1983—7% (estimated); 1984—7% (estimated). See 105 Monthly Lab. Rev. 73 (1982).
<table>
<thead>
<tr>
<th>Combined Gross Income</th>
<th>Tax on Joint Return</th>
<th>Tax on Single Return (Times 2)</th>
<th>Amount of Penalty</th>
<th>Tax on Joint Return Before EID</th>
<th>Tax on Joint Return After EID</th>
<th>Decrease in Amount of Penalty (Increase is negative)</th>
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<tbody>
<tr>
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<td></td>
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<td></td>
<td></td>
<td>Percent Due to Rate Reduction†*</td>
</tr>
<tr>
<td>$10,000</td>
<td>702</td>
<td>500</td>
<td>202</td>
<td>768</td>
<td>698</td>
<td>39%</td>
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<td>$20,000</td>
<td>2,745</td>
<td>2,354</td>
<td>391</td>
<td>2,662</td>
<td>2,428</td>
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<tr>
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<td>55,93</td>
<td>4,690</td>
<td>903</td>
<td>4,582</td>
<td>4,200</td>
<td>13</td>
</tr>
<tr>
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<td>7,674</td>
<td>1,692</td>
<td>9,039</td>
<td>8,279</td>
<td>-6</td>
</tr>
<tr>
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<tr>
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<td>23,678</td>
<td>19,444</td>
<td>4,234</td>
<td>21,587</td>
<td>20,596</td>
<td>18</td>
</tr>
</tbody>
</table>

* Taxable income is determined in every case by assuming no itemized deductions and using the zero bracket amount. Taxes owed for 1980 are determined by applying the tax rate schedules effective prior to ERTA, including the maximum tax on earned income. Gross income for 1984 is determined by increasing the 1980 income levels by the percentage changes in the CPI from 1980 through 1984, and taxes owed for 1984 are then determined by applying the 1984 rate schedule to the increased levels of income. These tax amounts are then discounted to 1980 dollars to estimate the amount of the penalty prior to and after ERTA.

† These percentages are determined as follows: (1980 Amount of Penalty - 1984 Amount of Penalty Before EID) / 1980 Amount of Penalty.

‡ These percentages are determined as follows: (1984 Amount of Penalty Before EID - 1984 Amount of Penalty After EID) / 1984 Amount of Penalty Before EID.
determine taxes owed for 1984. Finally, the taxes so determined were
discounted to 1980 dollars to quantify the marriage penalty before and
after the EID and to evaluate the percentage of the marriage penalty
alleviated by the ERTA provisions. These calculations ignore, however,
the likely labor supply responses of spouses to these provisions and as-
sume that couples will show no behavioral response.

The figures in Table 3 show that when a married couple’s income is
evenly divided, the rate reductions roughly offset the effects of inflation
at the middle-income levels, those from $20,000 to $50,000. The
amount of the marriage penalty, therefore, is not substantially reduced.
The rate reduction at the higher income levels of $60,000 and $70,000
moderately reduces the penalty by eighteen and twenty-three percent,
respectively. The EID does reduce the penalty that would be paid
under the 1984 rate schedule. The amount of the reduction decreases
from approximately fifty-six percent at lower income levels to thirty-one
percent at higher income levels. Although the EID reduces the maxi-
imum penalty paid by married couples with evenly divided income, it
still leaves a significant marriage penalty, particularly at income levels
of $40,000 and above.

Because the marriage penalty generally does not occur unless the
lesser-earning spouse’s income is at least twenty percent of the couple’s
total income, the EID should increase the marriage bonus for couples
whose secondary earner contributes less than twenty percent of the total
income. Table 4 compares the marriage bonus enjoyed by couples with
ninety percent-ten percent earned income contributions under the rate
schedules immediately prior to ERTA with the estimated marriage bo-
nus that these couples will enjoy in 1984. The comparative amounts of
marriage bonus for 1980 and 1984 are given in 1980 dollars, the same as
the marriage penalty in Table 3. The ERTA rate reductions did not counteract
totally the effects of inflation from 1980 through 1984, so that at income levels of $10,000 to $50,000, the bonus
actually declines. The allowance of the EID substantially offsets these
decreases. The combined effects of the rate reduction and the EID re-
duce marriage bonuses at income levels from $10,000 to $40,000 very
little, and substantially increase the marriage bonuses at income levels of
$60,000 and above.

Economist Daniel Feenberg has conducted a study that estimates
the distribution and magnitude of the marriage bonus and

38 See supra text accompanying note 37.
TABLE 4
ESTIMATED MARRIAGE BONUS FOR COUPLES WITH 90 PERCENT-10 PERCENT DIVISION OF INCOME FOR 1980 AND 1984* (1980 Dollars)

<table>
<thead>
<tr>
<th>Combined Gross Income</th>
<th>Tax on Joint Return</th>
<th>Tax on Single Return (Times 2)</th>
<th>Amount of Bonus</th>
<th>Tax on Joint Return Before EID</th>
<th>Tax on Joint Return After EID</th>
<th>Tax on Single Return (Times 2)</th>
<th>Amount of Bonus Before EID</th>
<th>Amount of Bonus After EID</th>
<th>Increase in Amount of Bonus</th>
<th>Percent Due to Rate Reduction†</th>
<th>Percent Due to EID‡</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 10,000</td>
<td>702</td>
<td>977</td>
<td>275</td>
<td>768</td>
<td>754</td>
<td>944</td>
<td>176</td>
<td>190</td>
<td>-36%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>$ 20,000</td>
<td>2,745</td>
<td>3,205</td>
<td>460</td>
<td>2,662</td>
<td>2,603</td>
<td>3,025</td>
<td>363</td>
<td>422</td>
<td>-21%</td>
<td>16%</td>
<td></td>
</tr>
<tr>
<td>$ 30,000</td>
<td>5,593</td>
<td>6,342</td>
<td>749</td>
<td>4,582</td>
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<td>5,113</td>
<td>531</td>
<td>607</td>
<td>-29%</td>
<td>14%</td>
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</tr>
<tr>
<td>$ 40,000</td>
<td>9,366</td>
<td>10,305</td>
<td>939</td>
<td>9,039</td>
<td>8,887</td>
<td>9,773</td>
<td>734</td>
<td>886</td>
<td>-22%</td>
<td>21%</td>
<td></td>
</tr>
<tr>
<td>$ 50,000</td>
<td>13,798</td>
<td>14,892</td>
<td>1,094</td>
<td>13,018</td>
<td>12,808</td>
<td>13,913</td>
<td>895</td>
<td>1,105</td>
<td>-18%</td>
<td>23%</td>
<td></td>
</tr>
<tr>
<td>$ 60,000</td>
<td>18,698</td>
<td>19,564</td>
<td>866</td>
<td>17,217</td>
<td>16,965</td>
<td>18,376</td>
<td>1,159</td>
<td>1,411</td>
<td>34%</td>
<td>22%</td>
<td></td>
</tr>
<tr>
<td>$ 70,000</td>
<td>23,678</td>
<td>24,194</td>
<td>516</td>
<td>21,587</td>
<td>21,272</td>
<td>22,891</td>
<td>1,304</td>
<td>1,619</td>
<td>153%</td>
<td>23%</td>
<td></td>
</tr>
</tbody>
</table>

* Taxable income is determined in every case by assuming no itemized deductions and using the zero bracket amount. Taxes owed for 1980 are determined by applying the tax rate schedules effective prior to ERTA, including the maximum tax on earned income. Gross income for 1984 is determined by increasing the 1980 income levels by the percentage changes in the CPI from 1980 through 1984, and taxes owed for 1984 are then determined by applying the 1984 rate schedule to the increased levels of income. These tax amounts are then discounted to 1980 dollars to estimate the amount of the penalty prior to and after ERTA.

† These percentages are determined as follows: (1980 Amount of Bonus − 1984 Amount of Bonus Before EID) + 1980 Amount of Bonus.

‡ These percentages are determined as follows: (1984 Amount of Bonus Before EID − 1984 Amount of Bonus After EID) + 1984 Amount of Bonus Before EID.
### TABLE 5
ESTIMATED DISTRIBUTION OF MARRIAGE PENALTY AND BONUS FOR ALL COUPLES IN 1983 (1979 Dollars)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percent of Returns</td>
<td>Cumulative Percent of Returns</td>
<td>Amount of Penalty or Bonus</td>
<td>Percent of Returns</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Billions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>greater than −4000</td>
<td>.4</td>
<td>.4</td>
<td>−.7</td>
<td>.1</td>
</tr>
<tr>
<td>−4000 to −3000</td>
<td>.9</td>
<td>1.3</td>
<td>−.9</td>
<td>.3</td>
</tr>
<tr>
<td>−3000 to −2000</td>
<td>2.5</td>
<td>3.8</td>
<td>−2.2</td>
<td>1.9</td>
</tr>
<tr>
<td>−2000 to −1000</td>
<td>8.2</td>
<td>12.0</td>
<td>−4.5</td>
<td>6.5</td>
</tr>
<tr>
<td>−1000 to −500</td>
<td>11.3</td>
<td>23.3</td>
<td>−3.4</td>
<td>12.8</td>
</tr>
<tr>
<td>−500 to 0</td>
<td>25.8</td>
<td>49.1</td>
<td>−2.8</td>
<td>26.5</td>
</tr>
<tr>
<td></td>
<td>−14.5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subtotal for bonus</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>5.8</td>
<td>54.9</td>
<td>0</td>
<td>5.9</td>
</tr>
<tr>
<td>0 to 500</td>
<td>30.6</td>
<td>85.5</td>
<td>3.3</td>
<td>31.0</td>
</tr>
<tr>
<td>500 to 1000</td>
<td>8.5</td>
<td>94.0</td>
<td>2.6</td>
<td>11.1</td>
</tr>
<tr>
<td>1000 to 2000</td>
<td>4.6</td>
<td>98.6</td>
<td>1.9</td>
<td>3.0</td>
</tr>
<tr>
<td>2000 to 3000</td>
<td>.9</td>
<td>99.5</td>
<td>.7</td>
<td>.5</td>
</tr>
<tr>
<td>3000 to 4000</td>
<td>.4</td>
<td>99.9</td>
<td>.3</td>
<td>.2</td>
</tr>
<tr>
<td>greater than 4000</td>
<td>.1</td>
<td>100.0</td>
<td>.3</td>
<td>2</td>
</tr>
<tr>
<td>Subtotal for penalty</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>9.0*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* The subtotal does not equal the sum of the individual amounts of bonus or penalty.
marriage penalty in 1979 and then in 1983 (with the rate reductions as of 1983) before and after the EID.\textsuperscript{39} Table 5 presents his conclusions.\textsuperscript{40}

Table 6 summarizes from Table 5 the estimated effect of the ERTA rate reductions and the EID on marriage neutrality in tax treatment between 1979 and 1983.

\textbf{Table 6}

\textit{Summary of Changes From 1979-1983 Toward Greater or Lesser Overall Marriage Neutrality by ERTA (In Billions of Dollars)}

<table>
<thead>
<tr>
<th>ERTA Rate Reductions (comparison of 1979 with 1983 before EID)</th>
<th>Marriage Bonus</th>
<th>Marriage Penalty</th>
<th>Net Improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Negative</td>
<td>Negative</td>
<td>Negative</td>
</tr>
<tr>
<td>ERTA Rate Reductions (comparison of 1979 with 1983 before EID)</td>
<td>$-1.5$</td>
<td>$ .3$</td>
<td>$-1.2$</td>
</tr>
<tr>
<td>Earned Income Deduction (comparison of 1983 before and after EID)</td>
<td>$1.7$</td>
<td>$-2.0$</td>
<td>$-.31$</td>
</tr>
<tr>
<td>Total</td>
<td>$ .2$</td>
<td>$-1.7$</td>
<td>$-1.5$</td>
</tr>
</tbody>
</table>

The ERTA rate reductions through 1983 decrease the total marriage bonus by $1.5 billion ($14.5 to $13 billion). Notwithstanding these rate reductions, the marriage penalty increases $.3 billion ($9 to $9.3 billion). Thus, the net overall movement toward marriage neutrality because of rate reductions is $1.2 billion. The EID produces the opposite effects. It increases the marriage bonus after the ERTA rate reductions by $1.7 billion ($13 to $14.7 billion), and decreases the marriage penalty by $2.0 billion ($9.3 to $7.3 billion). Thus, the net overall improvement toward marriage neutrality due to the EID is $.3 billion. In combination, the ERTA rate reductions substantially reduce the marriage bonus, and the EID substantially reduces the marriage penalty. The EID, however, also increases the marriage bonus and by an amount greater than the rate reduction’s decrease in the marriage bonus. Consequently, the overall net improvement toward marriage neutrality is $1.5 billion, and the

\textsuperscript{39} Feenberg, supra note 21, at 11-20.

\textsuperscript{40} See id. at 11, table II.2; id. at 20, table II.4. In determining the marriage bonuses and penalties, Feenberg assumes a nominal income growth of 1.49 from 1979 to 1983, and deductions and exemptions allocated in proportion to income. Id. at 7-8.
EARNED INCOME DEDUCTION

EID's contribution of $.3 billion toward that overall improvement is small relative to the ERTA rate reductions' $1.2 billion contribution.

The last column of Table 5 shows the following effects of the EID. First, it demonstrates that the EID increases the total marriage bonus for couples receiving a marriage bonus prior to the EID from $13 to $13.4 billion. Thus, although the total increase in the marriage bonus due to the EID is $1.7 billion, only $.4 billion goes to those married couples with a marriage bonus prior to the EID; the remaining $1.3 billion goes to additional couples whose taxes, prior to the EID, would reflect marriage neutrality or a marriage penalty. Correspondingly, the last column takes the set of married couples who would receive a total marriage penalty of $9.3 billion in 1983 prior to the EID, and demonstrates that the EID would reduce the marriage penalty to $6.1 billion. Part of this $3.2 billion tax savings, however, shifts some couples from the marriage penalty set of couples into the set of couples with marriage neutrality or marriage bonuses, so that the actual remaining total marriage penalty after the deduction is $7.3 billion. Thus, a substantial effect of the EID is to shift married couples from the set of couples who pay a marriage penalty to the set of couples who receive a marriage bonus.

The ERTA changes thus create a $1.5 billion overall improvement toward marriage neutrality. The ERTA rate reduction and the EID contribute $1.2 billion and $.3 billion, respectively. Table 7 summarizes from Table 5 the estimated percentage of joint tax returns that reflect marriage bonuses, penalties, or neither in 1979 and 1983.

<table>
<thead>
<tr>
<th></th>
<th>1979</th>
<th>1983 (Before EID)</th>
<th>1983 (After EID)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage Bonus</td>
<td>49.1%</td>
<td>48.1%</td>
<td>52.9%</td>
</tr>
<tr>
<td>Neither Bonus Nor Penalty</td>
<td>5.8</td>
<td>5.9</td>
<td>6.2</td>
</tr>
<tr>
<td>Marriage Penalty</td>
<td>45.1</td>
<td>46.0</td>
<td>40.9</td>
</tr>
<tr>
<td>Total</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

As a result of ERTA, the percentage of returns showing neither a marriage bonus nor a marriage penalty increases from 5.8% to 6.2%; the percentage with a marriage bonus increases from 49.1% to 52.9%; the percentage with a marriage penalty decreases from 45.1% to 40.9%. The EID shifts married couples from the set paying a marriage penalty to the set receiving a marriage bonus. Thus, the deduction contributes a small proportion of the overall movement toward marriage neutrality and has the more important effect of shifting couples from the penalty
to the bonus category. Meanwhile, as Tables 3 and 5 show, many couples continue to pay a substantial marriage penalty. The EID therefore cannot be explained as an effort to promote marriage neutrality. Does it serve the end of efficiency?

C. Marital Status under Efficiency Criteria

The joint return filing for married couples is inefficient.\footnote{For a more extensive discussion of this topic, see Gann, \textit{supra} note 8, at 39-46.} Our tax base excludes the value of goods and services produced in the home, thereby encouraging a greater production of such goods and services than would occur if the tax system were neutral between home and market production. Inefficiency is not limited to the joint return, but applies as well to all individual taxpayers. The joint return, however, adds to inefficiency because it aggregates the market income of two taxpayers on a single return under a graduated tax rate schedule. This causes the marginal tax rate on increased market production relative to the tax rate of zero on home production to be higher than if the market income were taxed on separate returns.

The exclusion of home production from the tax base and the aggregation of market income on the joint return are gender neutral on the surface. Using elasticities of supply of labor, however, economists have shown that these features of our tax system discourage wives from working outside the home. Statistical studies show that the labor supply elasticity of husbands is relatively low and that of wives is relatively high.\footnote{See, e.g., Boskin, \textit{The Economics of Labor Supply}, in \textit{INCOME MAINTENANCE AND LABOR SUPPLY} 163, 164 (E. Cain & H. Watts eds. 1973); Hall, \textit{Wages, Income and Hours of Work in the U.S. Labor Force}, in \textit{INCOME MAINTENANCE AND LABOR SUPPLY} 102, 124-29 (E. Cain & H. Watts eds. 1973).} Wives, therefore, tend to view themselves as the secondary worker and are more likely than their husbands to perform the couple’s home production.\footnote{See, e.g., H. Rosen, \textit{APPLICATIONS OF OPTIMAL TAX THEORY TO PROBLEMS IN TAXING FAMILIES AND INDIVIDUALS} 17-18 (Dept of Treas., Office of Tax Policy Analysis Paper No. 21, Nov. 1976); Rosen, \textit{Taxes in a Labor Supply Model with Joint-Wage-Hours Determinations}, 44 \textit{ECONOMETRICA} 485, 490-501 (1976).} If a married couple is considering whether to perform more market production and less home production, the couple will typically consider whether the wife should perform the additional work outside the home and hire a housekeeper for the home production. In making this decision, the married couple will compare the after-tax wage of the wife, taxed at their joint-return marginal rate minus the nondeductible costs for the housekeeper, against the nontaxed value of the wife’s home production that they will lose if she goes to work. Economists argue, therefore, that if the wife filed a separate tax return, she would be more likely to work outside the home, because the marginal tax rate on the income from market production would typically be lower than the mar-
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ginal tax rate applicable under the joint return. Economic studies showing that the labor-force participation rates of women increase with an increase in after-tax wages firmly support this argument. Because wives are more likely than husbands to be secondary earners, ERTA’s EID should have the effect of increasing the after-tax wages of wives and thereby increasing their labor-force participation rates. Economist Daniel Feenberg has estimated the effects of ERTA’s EID on such rates. His study concludes that the EID will have the relatively modest effect of increasing the labor-force participation of wives by an average of fifteen hours per year. Prior economic studies indicate that if Congress abolished joint returns and required all taxpayers to file separate returns, wives’ labor-force participation rates would be substantially greater than under the ERTA system of joint returns with the EID, and consequently, separate returns would be more efficient than joint returns.

Thus, the EID contributes little to marriage neutrality, but does contribute some gains under efficiency criteria. Apparently, Congress intended to extend the EID to those couples who enjoyed marriage bonuses prior to ERTA, thereby increasing their bonuses and decreasing marriage nonneutrality, in order to provide some efficiency gains to these couples.

D. A System of Separate Filing for all Individuals

This writer has argued before that marital status should have no bearing on income tax rates, and that the best solution to the problem is a marriage-neutral income tax under which all individuals file separate returns. The discussion in this article of the effects of the enactment of the EID confirms this position under both equity and efficiency criteria.

The chief equity argument in favor of the split-income, joint return filing system for married couples has been that married couples share

See Rosen, supra note 43, at 503.
See Feenberg, supra note 21.
See id. at 39.

See Gann, supra note 8, at 32-36, 67-69. The structural problems inherent in a separate filing system, such as income attribution and allocation of deductions between spouses, were also discussed at length. See id. at 42-67. Congress adopted in ERTA one of the structural modifications supported in that article. See I.R.C. § 2523(1) (as amended by ERTA, supra note 7, at § 403, 95 Stat. 301-05) (exempting interspousal transfers from estate and gift tax base).
their consolidated income equally. This argument is dubious, however, because it is unlikely that all couples at all income levels adopt this sharing pattern. Moreover, limiting the joint return system to married couples is too narrow because it ignores the substantial sharing between single persons. These shortcomings of the "sharing" argument, however, led Congress to lower substantially the tax rates of single people by establishing a separate single-person rate schedule in 1969. The resulting disparity between the two rate schedules caused both the marriage bonus and the marriage penalty, the distribution and magnitude of which cannot be independently justified under equity criteria as proper allocations of tax burdens based on marital status.

Political compromises like the EID result from Congress's steadfast determination to maintain the principle that "equal-income married couples pay equal taxes" as the central equity criterion of our tax system, notwithstanding the fact that one-worker married couples are a diminishing group of taxpayers. Congress apparently thought in 1981 that the EID would minimize complaints about both the failure to account for the value of household work when computing the tax base and the marriage penalty, while preserving the joint return. This 1981 response to both problems, however, is inadequate. As a proxy for the failure to tax home production, the EID has no statistical foundation to legitimize its size or distribution among married couples. Moreover, as a proxy it is too narrow because it should be extended to all taxpayers, whether married or single, who participate in the labor force. The EID may indeed modestly decrease the marriage penalty, but it will simultaneously increase the marriage bonus substantially.

A system of individual tax returns under a single tax rate schedule responds adequately to most of the complaints against the present system. A marriage-neutral system would eliminate all the various penalties and bonuses. Moreover, by rejecting the joint return, it would eliminate the disparate treatment of one-worker and two-worker couples. It also would eliminate the substantial efficiency loss under the joint return system. The individual tax return system by itself is no panacea; even greater equity and efficiency would be achieved by including the value of home production in the tax base. Elimination of the joint

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50 Some argue, however, that the sharing principle is fairly limited to married persons for the administrative reason that the status of marriage provides an easily administered and objective test of sharing. This argument is unconvincing. The administrative-ease argument loses its forcefulness as the results under that system appear increasingly arbitrary because of the decreasing social and legal importance of the status of marriage in our society.

France's tax system provides an interesting contrast to our joint return approach. Since 1982, France has imposed a wealth tax at a progressive rate from .5% to 1.5% on fiscal households whose taxable net worth exceeds 3 million francs. Fiscal households include unmarried cohabiting couples. Loi No. 81-1160, du 30 décembre 1981, art. 3, reprinted in 1982 D.S.L. 22 (Jan. 27, 1982).
return isolates this issue, however, so that Congress might address it without blending or confusing it with the marriage penalty. Congress could then more rationally focus on whether all taxpayers with earned income should obtain an EID to eliminate the federal tax system's bias in favor of unearned income and imputed income from home production.

By retaining the joint return and adding the EID in 1981, Congress again illustrated its tendency to temporize. Only by adopting a system of individual tax returns and eliminating marital status as a factor in the determination of tax rates will Congress provide an acceptable long-term resolution of the appropriate filing-unit issue.