



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR KENNETH J. RUBIN, ASSISTANT DISTRICT COUNSEL
PENNSYLVANIA DISTRICT COUNSEL

Attention: David A. Breen

FROM: Lewis J. Fernandez by George Baker
Deputy Assistant Chief Counsel
CC:DOM:IT&A

SUBJECT: Significant Service Center Advice

This responds to your request for Significant Advice dated April 12, 2000, in connection with a question posed by the Customer Quality Review Site of the Philadelphia Service Center.

Issue

The first question you ask is if a married taxpayer who files as head of household itemizes his or her deductions, may the taxpayer's spouse claim the full standard deduction for married taxpayers filing separately? The second question is if the spouse who files as married filing separately elects to itemize deductions, may the spouse who files as head of household claim the standard deduction for head of household status?

Conclusion

First, if a married individual files a separate return with head of household status and elects to itemize deductions, and if the other spouse continues to file as a married individual filing a separate return, then that other spouse is not eligible for the full standard deduction. Second, if the other spouse who files as married filing separately elects to itemize deductions, then the spouse who files a separate return with head of household status may still use the full standard deduction available for head of household status.

The facts given are that two taxpayers are legally married at the end of the tax year. They do not elect to file a joint tax return. One taxpayer qualifies to file as unmarried head of household. The other taxpayer files as married filing separately.

Discussion

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These questions all have a common thread. They involve situations in which a legally married taxpayer may be considered to be unmarried for purposes of filing a tax return as an unmarried head of household or for claiming the standard deduction.

Several provisions of the Internal Revenue Code set forth circumstances in which an individual who is legally married may not be considered as married. The general rule in § 7703(a) provides that an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. Under § 7703(b) an individual who is married shall not be considered as married if (1) an individual maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child with respect to which such individual is entitled to a deduction for the taxable year, (2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and (3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household.

Sections 63(c)(6)(A) and 63(g) provide for another situation in which an individual who is married may be considered as not married. Those sections provide that the marital status of an individual is also determined under § 7703 when applying the limitation concerning the eligibility to take the full standard deduction when filing a separate return.

The principle of treating a married individual as unmarried in certain situations also applies to the tax tables set forth in § 1. In general, a married individual may file a joint return with his or her spouse under § 1(a) or file a separate return under § 1(d) and pay the tax imposed on taxable income in accordance with the tables set forth therein. However, a married individual may also have an additional choice of filing status under § 1(b) if that individual is a head of household as defined in §§ 2(b) and 2(c). Although § 2(b) specifically refers to an individual who is not married in order to be considered for head of household status, § 2(c) provides that an individual shall be treated as not married at the close of the taxable year if such individual is so treated under the provisions of § 7703(b). Thus, a legally married individual may also use the head of household filing status so long as the requirements of §§ 2(b) and 7703(b) are satisfied. If a legally married individual uses the head of household filing status, then under these facts, the status of the other spouse continues as a married individual who files a separate return under § 1(d).

Next we next consider the relationship of one spouse filing as head of household and the other spouse married filing separately with the eligibility of the spouses to use the standard deduction and the right to elect to itemize deductions. Section 63(e)(1) provides, in general, that unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowable for the taxable year. Section 63(b) provides, in part, that if an individual does not elect to itemize his

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deductions then adjusted gross income is instead reduced by the standard deduction. This right of a taxpayer to elect to itemize deductions or use the standard deduction is generally limited by § 63(c)(6)(A). This limitation provides that a married individual filing a separate return where either spouse itemizes deductions shall have a standard deduction of zero. So this limitation then applies to taxpayers who are married individuals filing separate returns under § 1(d), but does not apply to a spouse who qualifies for and files as head of household because the spouse with head of household status is not considered a married individual under § 7703(b). Therefore, the spouse who filed head of household may use the full standard deduction and is not limited under § 63(c)(6)(A) by the other spouse's election to itemize deductions. Also, if the head of household spouse elects to itemize deductions, then the general limitation of § 63(c)(6)(A) continues to apply to the other spouse because the other spouse is a married individual filing a separate return.

We also refer you to page 5 of Publication 501 entitled *Exemptions, Standard Deduction, and Filing Information* for a general discussion on spouses who elect to file as married filing separately and how one spouse may be able to file as head of household if the spouses live apart and meet certain tests. In that discussion, there is also a statement applicable to the second question you asked which provides that the head of household filing status allows a taxpayer to choose the standard deduction even if the taxpayer's spouse chooses to itemize deductions.

If you have any additional questions, please contact George Baker at (202) 622-4920.