



Marriage And Taxes - Whose Debt Is This?

September 14, 2022

Highlights



- **Marriage and taxes - intertwined**
- **Tax returns are an individual obligation**
- **Married taxpayers can elect to file joint**
- **Joint tax filing creates joint and several liability**
- **If joint filing IRS can pursue collection from either spouse - up to entire tax debt**

Example 1



- Larry - employee
- Martha - self employed
- Married in 2021
- 2020 each filed as Single
- Larry - refund
- Martha - owed but not paid
- Does 2021 marriage / filing status impact debt collection?
- No - IRS can only pursue Martha - her personal debt

Example 2



- They do elect to file joint return for 2021
- Larry has withholding - Martha pays no estimated tax
- Income and deductions are combined on the joint return
- Larry's withholding will be applied against total tax - if withholding less than tax a debt arises
- Joint and several liability for the debt
- IRS will pursue Martha for her 2020 debt and for 100% of the 2021 joint debt
- IRS will pursue Larry for 100% of the 2021 joint debt - even though his withholding covered his income

Example 3



- **At the end of 2022 they are divorced**
- **Their divorce agreement says Martha is responsible for any tax debt**
- **No impact on IRS - they were not a party to the agreement**
- **Larry may have an action against Martha if he pays but the IRS would not be involved**

Valid Joint Return?



- If not - no joint and several liability
- IRS considers many factors re: validity of joint tax return:
 - Were the individuals married
 - Were the tax returns signed by both - if not was there explicit or tacit authorization
 - Returns signed by both - did one sign under “duress”

Valid Joint Return (continued)



- Forged signature
- Did one spouse file a separate tax return for the same year
- Did both spouses have a tax return filing requirement
- Were joint returns filed in the past
- Did both spouses participate in the preparation of the tax return
- Was there a benefit in filing a joint return

Example 4



- **Martha prepared a joint return for 2021 and forged Larry's signature**
- **Can Larry argue that the return is not valid?**
- **Probably not - IRS will request his individual 2021 return - if he didn't file one he will have trouble arguing the joint return is invalid**

Conclusion



- **Joint return - not required**
- **Joint return can be made after filing as Married Filing Separately**
- **Once a joint return is filed no separate return can be filed**
- **Innocent Spouse relief may be available**