

Rev. Rul. 80-7 (IRS RRU), 1980-1 I.R.B. 17, 1980-1 C.B. 296, 1980 WL 129579

Internal Revenue Service (I.R.S.)  
Revenue Ruling

JOINT RETURN; OVERPAYMENT; CREDIT AGAINST SEPARATE TAX LIABILITY

Published: January 7, 1980

**26 CFR 301.6402-1: Authority to make credits or refunds.**

\*1 Joint return; overpayment; credit against separate tax liability. The proper method is provided for computing the amount of an overpayment shown on a joint return that may be credited to one spouse's unpaid separate tax liability from a prior year; [Rev. Rul. 67-431](#) amplified.

ISSUE

If a taxpayer and spouse file a joint return in which an overpayment is reported, what is the proper method of determining the amount that may be credited to a spouse's separate liability?

FACTS

*A* and *B* are married and filed a joint 1977 Federal income tax return showing a liability of \$13,004. *A* reported \$20,000 of wages, from which \$6,000 was withheld, and \$10,000 of other income. *B* reported \$10,000 of wages, from which \$2,000 was withheld, and \$5,000 of other income. *A* and *B* filed a joint estimated tax declaration and paid \$8,000 in estimated tax payments. *A* has an unpaid separate liability of \$5,000 from a prior year.

LAW AND ANALYSIS

[Section 6402\(a\) of the Internal Revenue Code](#) provides that in the case of any overpayment, the Secretary may within the applicable period of limitations credit the amount of the overpayment including any interest allowed thereon, against any liability in respect of an Internal Revenue tax on the part of the person who made the overpayment and shall refund the balance to such person.

In [Rev. Rul. 74-611, 1974-2 C.B. 399](#), the Internal Revenue Service ruled that when a husband and wife file a joint return each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment.

Section 20.2053-6(f) of the Estate and Gift Tax Regulations provides the method for determining the estate tax deduction allowed for income taxes paid on a decedent's final income tax return. [Section 20.2053-6\(f\)](#) provides that if the decedent's final return is a joint return, then the decedent's liability will be determined according to the following formula:

decedent's separate tax/both separate taxes x joint tax shown on the return

[Section 1.6654-2\(e\) of the Income Tax Regulations](#), relating to declarations of estimated tax by individuals and the applicability of exceptions to an underpayment of estimated tax, contains the same separate tax formula for allocating the tax shown on

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the joint return for the preceding taxable year, and for allocating the tax computed on the basis of the facts shown on a joint return for the preceding taxable year but using current year's rates and exemptions, in the event joint returns were filed in the preceding year and separate returns are filed for the current taxable year. Therefore, if a husband and wife file a joint return, the Service, in order to be consistent with similar allocation provisions, will apply the separate tax formula in [section 20.2053-6\(f\) of the Estate Tax Regulations](#) and [section 1.6654-2\(e\) of the Income Tax Regulations](#) in order to determine each spouse's share of the joint tax liability.

\*2 [Section 20.2053-6\(f\) of the Estate Tax Regulations](#) also provides that if the decedent and his spouse are entitled to a refund, then, in the absence of a provision of local law providing to the contrary, the decedent's share of the refund shall be the amount by which the decedent's contribution toward the payment of the joint tax exceeds the decedent's liability determined in accordance with the separate tax formula. Again, in order to be consistent, the Service will also determine a spouse's individual refund in accordance with the method in [section 20.2053-6\(f\)](#). Therefore, a spouse's individual refund will be determined by subtracting the spouse's individual liability determined in accordance with the separate tax formula from the spouse's contribution toward that liability.

Section 20.2053-6(f) of the regulations does not provide a method for determining a spouse's contribution toward the payment of the joint liability. However, [sections 1.31-1 and 1.6015\(b\)-1\(b\) of Income Tax Regulations](#) provide a method for allocating payments made by a taxpayer in certain situations. Therefore, the Service will determine a spouse's contribution toward the payment of the joint liability by reference to [sections 1.31-1 and 1.6015\(b\)-1\(b\)](#).

[Section 1.31-1](#) of the regulations provides that the recipient of wages upon which a withholding tax was deducted shall be allowed a credit for the taxes withheld. In a community property state, each spouse is considered the recipient of one-half of the wages upon which taxes are withheld and thus is entitled to a credit for one-half of the taxes that the withheld. Since withholding tax credits can be attributed directly to the recipient of income, a spouse's contribution will include the withholding tax credits reported by the spouse with respect to the spouse's income. Therefore, if a husband and wife file a joint return and do not file an estimated declaration and/or make a payment with their joint return, then each spouse's contribution toward the joint liability will be equal to the withholding tax credits attributed to the spouse, plus any applicable [section 6401\(b\)](#) credits.

[Section 6401\(b\)](#) of the Code provides that any withholding tax credit under [section 31](#), earned income credit under [section 43](#), and gasoline credit under [section 39](#), in excess of tax imposed by subtitle A are to be treated as overpayments of tax. Consequently, in addition to the withholding tax credit, an attributable portion of both the earned income credit and the gasoline credit may comprise part of a spouse's contribution for purposes of determining an individual's share of a joint overpayment.

If a husband and wife file a joint return and file an estimated declaration of tax and/or make a payment with their return, then each spouse's contribution will be determined, in part, by an analogy to [section 20.2053-6\(f\) of the Estate Tax Regulations](#) and [section 1.6015\(b\)-1\(b\) of the Income Tax Regulations](#). [Section 1.6015\(b\)-1\(b\)](#) provides the method for allocating joint estimated tax payments between a husband and wife in the event they file separate income tax returns. It provides that in the event the spouses cannot agree on the allocation of the estimated tax payments, the estimated tax payments will be allocated according to the following formula:

\*3 separate tax liability/both separate tax liabilities x estimated tax payments

In [Rev. Rul. 76-140, 1976-1 C.B. 376](#), the Service stated that [section 1.6015\(b\)-1\(b\)](#) would also apply if a husband and wife filed a joint income tax return and elected under [section 301.6402-3\(b\)\(2\) of the Administrative and Procedural Regulations](#) to have their overpayment credited to their estimated tax liability for the subsequent year but failed to file a declaration of estimated tax for the subsequent year and filed separate returns in the subsequent year. Therefore, if neither spouse reports any

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income subject to withholding and the spouses file a joint declaration of estimated income tax and/or make a payment with their joint return, then in the absence of clear and convincing evidence to the contrary, each spouse's contribution will be determined in accordance with the formula in [section 1.6015\(b\)-1\(b\) of the Income Tax Regulations](#).

If the spouses have income subject to withholding and they file a joint declaration of estimated tax and/or make a payment with their joint return then each spouse's contribution should be determined by combining the two contribution methods. Each spouse's contribution will include the withholding tax credits reported by the spouse on the joint return. In addition, in the absence of clear and convincing evidence to the contrary, the formula in section 1.6015(b)-1(b) of the regulations shall be used to allocate to the spouses the estimated tax payments and/or payments with the joint return.

Applying the above principles to the spouses' joint liability of \$13,004, the total refund due the spouses is \$2,996 (\$16,000 - \$13,004). If the spouses filed separate returns, *A*'s liability would have been \$10,302 and *B*'s liability would have been \$3,334, if the tax is calculated in accordance with [section 1\(d\)](#) of the Code. Each spouse's contribution will be determined as follows:  
*A*'s deemed portion of the estimated tax payments.

$$\$10,302/\$10,302 + \$3,334 \times \$8,000 = \$6,044$$

*B*'s deemed portion of the estimated tax payments.

$$\$3,334/\$10,302 + \$3,334 \times \$8,000 = \$1,956$$

*A*'s total contribution is \$12,044 (\$6,000 + \$6,044).

*B*'s total contribution is \$3,956 (\$2,000 + \$1,956).

Having thus determined each spouse's contribution, each spouse's share of the joint overpayment will be the difference between each spouse's liability and each spouse's contribution as determined above. However, the overpayment credited to a spouse in the spouse's individual capacity can not exceed the joint overpayment. See [section 6013\(d\)](#) of the Code.

*A*'s share of the joint liability

$$\$10,302/\$10,302 + \$3,334 \times \$13,004 = \$9,825$$

*B*'s share of the joint liability

$$\$3,334/\$10,302 + \$3,334 \times \$13,004 = \$3,179$$

*A*'s individual credit or refund is \$2,219 (\$12,044 - \$9,825).

*B*'s individual credit or refund is \$777 (\$3,956 - \$3,179).

#### HOLDING

If the spouses file a joint return showing an overpayment then the amount that may be credited to one spouse's separate liability is computed by subtracting the spouse's share of the joint liability, determined in accordance with the separate tax formula, from the spouse's contribution toward the joint liability. The amount credited cannot exceed the amount of the joint overpayment.

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In this case, \$2,219 of the \$2,296 joint overpayment will be credited against A's outstanding separate liability. The balance of the joint overpayment will be refunded.

\*4 In [Rev. Rul. 67-431](#), [1967-2 C.B. 411](#), the Service stated that the taxpayer may carry back an investment tax credit attributable to investments made by the taxpayer that was reported on a joint return filed by the taxpayer and his second wife to that portion of the tax attributable to him on a joint return filed by the taxpayer and his first wife. The Service stated that the refund with respect to the joint return filed by the taxpayer and his first wife will be made to the taxpayer because the Service has no knowledge of circumstances indicating that taxes were paid by anyone other than the taxpayer.

[Rev. Rul. 67-431](#) is amplified.

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