

Rev. Rul. 74-611 (IRS RRU), 1974-2 C.B. 399, 1974 WL 34502

Internal Revenue Service (I.R.S.)

Revenue Ruling

JOINT RETURN; OVERPAYMENT CREDITED AGAINST SEPARATE TAX LIABILITY

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SECTION 6402.—AUTHORITY TO MAKE CREDITS OR REFUNDS, 26 CFR 301.6402-1: Authority to make credits or refunds.

(Also [Section 6013, 1.6013-1.](#))

***1 Joint return; overpayment credited against separate tax liability.** An overpayment on a joint return filed by a husband and wife for a tax liability paid entirely by the wife may not be credited against the separate tax liability of the husband for a prior year; [Rev. Ruls. 56-92](#) and [71-324](#) revoked.

Advice has been requested whether the Internal Revenue Service may credit an overpayment on a joint return against the separate tax liability of one spouse for another year under the provisions of [section 6402\(a\) of the Internal Revenue Code of 1954](#).

The husband and wife filed a joint return. The entire amount of the tax liability was paid by the wife. Subsequently it was determined that there was an overpayment. The overpayment was credited against the tax liability of the husband for a prior year.

[Section 6402\(a\)](#) of the Code gives the Secretary or his delegate authority to credit the amount of any overpayment against the liability of the person who made the overpayment, and requires a refund of the balance ‘to such person’.

[Section 6013](#) of the Code provides for the filing of a joint return by a husband and wife and imposes joint and several liability upon them for the tax computed on their aggregate income.

[Rev. Rul. 56-92, 1956-1 C.B. 564](#), concludes that both husband and wife ‘jointly and severally’ represent the person who made the overpayment within the meaning of [section 6402](#) of the Code, and that the entire overpayment ‘may be credited against the separate tax liability of either the husband or the wife for a prior year’.

[Rev. Rul. 71-324, 1971-2 C.B. 410](#), modifies [Rev. Rul. 56-92](#) by holding that an overpayment on a joint return filed by a husband and his current wife may not be credited against an outstanding tax liability on a joint return filed by the husband and his former wife, since a different joint ‘person’ is created by the husband’s remarriage.

Court decisions have consistently held that a husband and wife who file a joint return do not have a joint interest in an overpayment; each has a separate interest. See *Maragon v. United States*, 153 F.Supp. 365 (Ct. Cl. 1957). For example, if one spouse goes bankrupt, only his share of the refund goes to the trustee in bankruptcy. *In re Wetteroff*, 324 F.Supp. 1365 (E.D. Mo. 1971), *aff’d*, 453 F.2d 544 (8th Cir. 1972). If one spouse dies, his share of the refund goes to his estate, not to the surviving spouse. Section 20.2053-6(f) of the [Estate Tax Regulations](#); *McClure v. United States*, 288 F.2d 190 (Ct. Cl. 1961). The Tax Court has repeatedly held that the filing of a joint return does not have the effect of converting the income of one spouse into the income of the other. See *Marie A. Dolan*, 44 T.C. 420 (1965); *Robert A. Coerver*, 36 T.C. 252 (1961), *aff’d per curiam*, 297 F.2d 837 (3d Cir. 1962).

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*2 The same principle with respect to separate interest set forth in these cases applies when a taxpayer attempts to carry premarital or postmarital losses or credits to a year in which he was married. Since filing jointly does not give one spouse an interest in the income of the other, a premarital or postmarital loss or credit may be applied only against the income of the person who incurred the loss or credit. If the loss or credit is carried to a year in which the taxpayer filed a joint return with his spouse but had no income, no refund is allowable. See [Rev. Rul. 60-216, 1960-1 C.B. 126](#), and [Rev. Rul. 67-431, 1967-2 C.B. 411](#).

Thus, a joint income tax return does not create new property interests for the husband or the wife in each other's income tax overpayment.

In this case, the wife having paid the entire amount of the tax is entitled to the entire amount of the overpayment. Accordingly, the Service may not credit the overpayment on the joint return against the separate tax liability of the husband for a prior year.

[Rev. Rul. 56-92](#) and [Rev. Rul. 71-324](#) are hereby revoked.

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