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When Marriage Doesn't Pay:
Analysis and Options for Addressing Marriage and Second-Earner Penalties

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Key Findings

- In nearly two of every three households in America with dependents, more than one person works to make ends meet.
- In many cases, when two workers file jointly, they are penalized for having a second earner in the household. This is because the second-earner's wages are subject to a higher marginal tax rate.
- In a recent NBER report by David Altig et. al., researchers found that by earning an extra $1,000, one in four of the poorest households, regardless of age, gives half to two-thirds of their paycheck to the government in taxes due to marginal net tax rates above 70 percent on earned income.[1] This has significant implications for work incentives and tax credits eligibility if filers combine their incomes and continue working.
- The tax treatment of dual-income earners in a family comes from social and legal assumptions the tax code makes when evaluating the nature of taxable units.
- More discussion is needed to determine whether and how taxable income should be treated when filers choose to marry while working in a progressive income tax system.

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1 The authors write: "One in four low-wage workers face lifetime marginal net tax rates above 70 percent, effectively locking them into poverty. Over half face remaining lifetime marginal net tax rates above 45 percent." See David Altig, et. al. "Marginal Net Taxation of Americans' Labor Supply," National Bureau of Economics Research (NBER), NBER Working Paper No. 27164, 3, May 2020, https://www.nber.org/papers/w27164.

Introduction

America's workforce is facing serious structural challenges. The ongoing retirement of the baby-boom generation has reduced the growth of the working-age population to just about zero. Labor force participation—especially for men—has fallen to its lowest point since World War II.[2] Unlike that immediate post-war period, it is now more common for both partners in a married household to work. In fact, in almost two of every three households in America with dependents, both parents work to make ends meet.[3]

Combine this statistic with the reality that the tax code treats married couples who file jointly as a singular tax unit. In a progressive tax system, marginal tax rates increase. Welfare and tax credit eligibility generally decreases as income rises. In many cases, when two single workers combine their incomes and file jointly, the progressive tax system penalizes the secondary earner by subjecting their wages to a higher marginal tax rate.

This is known as the second-earner penalty, a by-product of a progressive tax system that has different filing statuses with different tax rates and benefits based on income thresholds. By maintaining progressivity, the code often indirectly penalizes certain filers simply because they marry (i.e., the marriage penalty) and both partners choose to work (second-earner penalty), even when the combined household income is the same as those (e.g., single or head of household filers) who are not married or have a single earner.

This paper will review second-earner penalties in the current tax system, providing brief supplementary background from the literature explaining the origin and causes of these penalties. Additionally, this paper outlines tax policy priorities for fixing second-earner penalties, including simplicity and neutrality; and reforms to mitigate second-earner penalties, such as increasing credit phaseout and income tax bracket thresholds, adding a new second-earner deduction, or removing the head of household filing status. This paper's objective is to lay out various options to address second-earner penalties within the tax code, without recommending a specific policy reform as the only solution to the debate.

Overview

"A persistent problem in the theory of income taxation," wrote tax law expert Boris Bittker in 1975, "is whether natural persons should be taxed as isolated individuals, or as social beings whose family ties to other taxpayers affect their taxpaying capacity."[4] Almost half a century later, tax scholars and policymakers continue to debate this question.

2 Even when excluding increased unemployment claims in response to the COVID-19 outbreak. See Federal Reserve Bank of St. Louis (FRED), "Labor Force Participation Rate, Men, Percent, Seasonally Adjusted," (January 1948-May 2020), https://fred.stlouisfed.org/series/LNS11300001; Cf. Id. "Labor Force Participation Rate, Women, Percent, Seasonally Adjusted," (July 1997–May 2020). https://fred.stlouisfed.org/series/LNS11300002.

3 Melissa S. Kearney and Lesley J. Turner, "Giving Secondary Earners a Tax Break: A Proposal to Help Low- and Middle-Income Families," Brookings Institute, Discussion Paper 2013-07, December 2013. https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_Kearney_DiscPaper_Final.pdf.

4 Boris I. Bittker, "Federal Income Taxation and the Family," *Stanford Law Review* 27:6 (July 1975), 1391.

In his study on family taxation, Bittker concluded that the ideal treatment of joint and single filers comes down to one's assumptions about how the code should acknowledge the role of marriage and the family as a recognizable social, financial, and legal entity.[5]

Avoiding the thornier questions of how the Internal Revenue Service (IRS) ought to evaluate marriage as a societal entity and parse income-earning members in a family,[6] if one accepts that married filers are simply two individuals with combined incomes who should maintain the same tax liability as when they were single—albeit now consolidated into one tax return—then neutral tax treatment of marriage becomes a laudable policy goal.

If equitable tax treatment between similarly-earning joint filers is also granted as preferable, then we may add the goal of couple's neutrality.[7] For example, a neutral tax code would tax a couple earning $100,000 the same whether both filers earned $50,000 or one filer earned $100,000.

Under a proportional tax system (e.g., a "flat" tax), horizontal equity (treating filers with similar income profiles the same) can be accomplished whether the couple marries or both partners remain single. Two concepts are at play here. First, the principle that "similarly situated individuals [should] face similar tax burdens."[8] Second, a proportional tax system subjects all income to the same relative liability (e.g., 10 percent) irrespective of filing status or income.

In a progressive tax system, however, these goals become difficult to reconcile, partially due to the effect of consolidated income being subject to increasing marginal tax rates on the next dollar of earned income under a progressive income tax.[9] In brief:

- A marriage penalty exists if the combined tax liability of a married couple is higher than their combined tax burden if they had remained single.[10]

- A couple's penalty arises when two taxpayers filing jointly face a higher marginal tax rate than other joint filers with identical incomes.[11] This could result from both filers working as opposed to a household where only one partner works.

- A second-earner penalty occurs when one filer faces a higher-effective marginal tax rate on their earned income than their partner due to increasing marginal tax rates on earned income.[12]

5 Id., 1392.

6 Questions analyzed in greater detail by Bittker (1975); see note 5 above.

7 David Elkins, "Horizontal Equity as a Principle of Tax Theory," *Yale Law & Policy Review* 24:1 (Winter 2006), 43-90, https://www.jstor.org/stable/40239652?read-now=1&seq=30#page_scan_tab_contents.

8 Id., 43.

9 Cf. Daniel Hemel, "Beyond the Marriage Tax Trilemma," *Wake Forest Law Review*, Forthcoming; University of Chicago Coase-Sandor Institute for Law & Economics Research Paper No. 889, University of Chicago, Public Law Working Paper No. 726 (Aug. 16, 2019), 107-112, https://ssrn.com/abstract=3438075.

10 See Kyle Pomerleau, "Understanding the Marriage Penalty and Marriage Bonus," Tax Foundation, Apr. 23, 2015, https://files.taxfoundation.org/legacy/docs/TaxFoundation_FF464.pdf.

11 For examples, see Id., 105-106.

12 Cf. definition of second-earner penalty in Melissa S. Kearney and Lesley J. Turner, "Giving Secondary Earners a Tax Break: A Proposal to Help-Low- and Middle-Income Families."

To see how a progressive system creates a trilemma for neutrality (and therefore penalties) across different situations, consider the following illustration:

Consider a hypothetical world where the tax code only included two rates, taxing single persons at the rate of 10 percent on their first $10,000 in taxable income and 25 percent on all taxable income over $10,000, applying to four individuals with the following taxable incomes and tax liabilities (Table 1):

TABLE 1.

Single Filers Often Face Lower Tax Liabilities Before Marrying

Taxpayer	Taxable Income	Tax Liability
Adam	$10,000	$1,000
Bailey	$10,000	$1,000
Colin	$16,000	$2,500
Diane	$4,000	$400

Source: Author's calculations.

Assume Adam marries Bailey and Colin marries Diane, giving each couple a combined taxable income of $20,000. Also suppose that this hypothetical tax code wants to remain neutral toward marriage, so that each person pays the same amount in taxes whether they remain single or marry. In order to preserve that goal, Adam and Bailey must pay a combined tax liability of $2,000 while Colin and Diane pay $2,900, the same as they did as individuals.

However, if the code maintains progressivity while striving to treat similarly-situated couples equally (couple's neutrality), so that both couples pay $3,500 in taxes ($1,000 on the first $10,000 and $2,500 on the second $10,000), marriage neutrality will be violated, since Adam and Bailey and Colin and Diane face a higher tax burden than they did when filing individually.

If the code tries to balance these competing goals by changing rates in order to ensure both couples are taxed the same, we come to the following conclusions. Marriage for both couples means that the tax burden will:

1. Decrease for both couples (relative to when they were single)

2. Decrease for one member of the couple while leaving the other's unchanged

3. Decrease for one member and increase the other's

4. Increase for one and leave the other's unchanged

5. Increase it for both, depending on the rate schedule (see above) for married couples.[13]

Distinguishing the couple's and second-earner penalties is an exercise in locating the tax burden.

13 Boris I. Bittker, "Federal Income Taxation and the Family."

The second-earner penalty is isolated to the effective marginal tax rate faced by one earner in a couple filing jointly. In other words, the second-earner penalty is based entirely on the *individual's* tax burden because they file jointly with another and are therefore subject to higher marginal tax rates. By contrast, the couple's penalty may occur whether one or both partners work and is due to the *combined* tax burden relative to other similarly-positioned couples, regardless of which individual's earnings contribute to the total income.

In practice, the second-earner penalty becomes evident when a non-working spouse considers the relative value of working an additional hour and the increased marginal tax rate or reduction in tax benefit their income would face. For example, the decision to enter the workforce and earn an income individually would face a lower marginal tax rate than the decision to enter the workforce as a second-earner whose income would be in addition to that of the first earner. This problem is inherent in a progressive tax system.

Take the case of a biomedical engineer, Mark, who earns $325,000 (taxable income) annually and is married to Casey, who does not work outside the home. Mark and Casey file jointly. In the current tax code, if Mark's wages constitute the sole income source, the highest statutory marginal income tax rate the couple faces is 24 percent. Once Mark's taxable income reaches $326,000, each dollar will be subject to a 32 percent statutory tax rate. In other words, of every dollar earned over $326,000, Mark and Casey remit 32 cents in taxes on their joint income tax return. The incentive to work an additional hour is greater on income earned under 326,000, since the couple will receive more after-tax income prior to reaching the next income tax bracket.

If Casey decides to enter the labor force, each dollar she earns after the first $1,000 in taxable income (which would then place the couple at a combined income of $326,000) will be subject to a 32 percent statutory tax rate. Thus, while Mark is already employed and unlikely to exit the labor force or dramatically reduce productivity due to the marginal effect on the next dollar of income earned above $326,000, Casey is partially discouraged from entering the labor force since she only receives 68 cents on each dollar she earns over the first $1,000.

Furthermore, these penalties do not exist in a vacuum or only at such high-income altitudes. Many filers receiving means-tested benefits through the tax code experience more than one type of penalty, making these burdens more acute.

American workers face these penalties more often as they combine their incomes while working additional hours. Because the tax code contains implicit work disincentives as credits phase out, the various penalties and disincentives interact and compound as income rises. A recent study concluded, "The U.S. has a plethora of federal and state tax and benefit programs, each with its own work incentives and disincentives.[14] These polices were 'adopted with apparently no regard to their collective impact.'"[15]

14 See David Altig, et. al. "Marginal Net Taxation of Americans' Labor Supply."

15 *The Wall St. Journal* Editorial Board, "Unrigging the Poverty Trap," June 3, 2020, https://www.wsj.com/articles/unrigging-the-poverty-trap-11591226815?mod=searchresults&page=1&pos=1.

The Wall Street Journal went on to summarize the impact of such policies:

> Making money one year can mean losing future aid from programs with asset limitations, including food stamps and Supplemental Security Income. For the richest 5%, the authors [of the study] say the one-year median marginal net tax rate is 43.7%, while the lifetime median is 53%.
>
> That's bad, but it's worse for many people at the bottom, where a quarter of the time the lifetime marginal net tax rate exceeds 70%. By earning an extra $1,000, "one in four of our poorest households, regardless of age, make between two and three times as much for the government than they make for themselves."[16]

Certain lower-income workers face diminishing returns for each additional hour worked partially because the tax code reduces their benefits as income rises. Take the income eligibility of the Earned Income Tax Credit (EITC) as an example of the work and marriage disincentives built into many government programs. Using this example, we can see that some couples who decide to marry while both partners work face a higher average effective marginal tax rate.

According to the Joint Committee on Taxation (JCT), joint filers with dependents see the maximum amount of their EITC begin to phase out once income reaches $25,220 for 2020.[17] For all other filers (e.g., head of household and single filers), the threshold is $19,330.[18]

Now, suppose that Michael earns $17,000 a year and files as a head of household with two dependents. Under current law, Michael faces an average effective tax rate of -29.5 percent (Table 2). Paula, who works a minimum wage job (approximately $15,000), claims one dependent and files as a head of household. Under current law, Paula's average effective tax rate is -16.3 percent (Table 2). If Michael and Paula marry, both see a tax increase as their average effective tax rate rises to -12.6 percent.

TABLE 2.

Michael and Paula Face Higher Average Effective Tax Rates if they Marry

Filing Status:	Single (Avg. Effective Tax Rate)	Married Filing Jointly: (Avg. Effective Tax Rate)
Michael	-29.52%	-12.62%
Paula	-16.29%	-12.62%

Source: Tax Foundation, "Tax Plan Calculator," tax year 2019, https://taxfoundation.org/tax-calculator/; author's calculations.

Simultaneously, if both continue working while being married and claiming their three total dependents, their new combined income ($32,000) would be above the phaseout threshold for joint filers with dependents in the EITC ($25,220), reducing their maximum credit benefit (Table 3) and their after-tax income relative to where it would have been if they remained unmarried (i.e., filing as single, or more likely, head of household).

16 Id.

17 Joint Committee on Taxation, Publication JCX-14-20, May 2020, 11.

18 Id.; Cf. study cited in note 14 above and Garrett Watson, "Marginal Tax Rates on Labor Income in the U.S. After the Tax Cuts and Jobs Act," Tax Foundation, Feb. 20, 2020, https://taxfoundation.org/marginal-tax-rates-on-labor-income-in-the-us-after-2017-tax-law/.

TABLE 3

Michael and Paula Get a Smaller EITC if they Marry and Keep Working

	Single or head of household/ maximum EITC	Married filing jointly/ maximum EITC	Married/actual eligible EITC for Michael and Paula
Michael	$5,920 (2 dependents)	$6,660 (3 dependents)	$5,044 (3 dependents)
Paula	$3,584 (1 dependent)		

Source: Joint Committee on Taxation, Publication JCX-14-20, May 2020, 11; author's calculations; Tax Foundation, "Tax Plan Calculator," tax year 2019, https://taxfoundation.org/tax-calculator/.

In this scenario, we see a prime example of a marriage penalty and a second-earner penalty. If Paula decides to quit her job, the couple can retain a higher maximum EITC credit and experience a lower marginal tax rate on the husband's income since it is not within the phaseout range of the credit (Tables 2 and 3).[19] In this case, the code retains a financial disincentive for the couple to marry and for both partners to work. Hence, from a tax perspective, both filers would be better off not marrying if maintaining the maximum EITC is a primary goal for both individuals (Table 3).

These examples show why some low-income couples refrain from working additional hours in order to keep their tax credits.[20] Similarly, it is intuitive to understand the reason why many partners in married-filing jointly relationships choose to work fewer hours.

Analysis

As part of his broader dissent in *Compania General* (1927), Justice Oliver Wendell Holmes conceded: "It is true…that every exaction of money for an act is a discouragement to the extent of the payment required."[21] Many married couples with similar incomes filing jointly may agree with Justice Holmes' assessment as they see their after-tax income fall because they decide to work more hours or get married. University of Chicago Law School Professor Daniel Hemel makes a similar point in his analysis of the relationship between various penalties for married couples and the progressive tax system:

> If you are reading this and you are a member of a dual-earner married couple with a combined income of $200,000 per year and with, say, a 2-year old and a newborn, consider that the expected net present value of the tax savings from getting divorced and cohabitating with your spouse from now until when your 2 year-old goes off to college is on the order of $70,000…This is not a brief for divorce and cohabitation;[22] it is merely to point out that marriage penalties remain real and substantial.[23]

19 See also Robert Bellafiore, "The Earned Income Tax Credit (EITC): A Primer," Tax Foundation, May 21, 2019, https://taxfoundation.org/earned-income-tax-credit-eitc/.

20 Cf. "Key Findings" in Pomerlau (2015) above, and Amir El-Sibaie, "Marriage Penalties and Bonuses under the Tax Cuts and Jobs Act," Tax Foundation, February 2018, https://files.taxfoundation.org/20180216105630/Tax-Foundation-FF573.pdf, which argue that while "research shows that marriage penalties and bonuses do not have much effect on whether a couple will marry, they do impact how much each spouse works." Notwithstanding this caveat, lower-income filers face disincentives if they work additional hours while combining incomes with their partners on a joint return.

21 Justice Holmes couches this adage in light of an oft-quoted and overarching point: "But that which, in its immediacy, is a discouragement may be part of an encouragement when seen in its organic connection with the whole. Taxes are what we pay for civilized society, including the chance to insure." See J. Holmes, Dissenting Opinion, *Compania General de Tabacos* v. *Internal Revenue Collector*, 275 U.S. 87 (1927), https://supreme.justia.com/cases/federal/us/275/87/.

22 See Boris I. Bittker, "Federal Income Taxation and the Family," Note 56.

23 Daniel Hemel, "Beyond the Marriage Tax Trilemma."

The second-earner penalty and the marriage penalty are linked and result in similar outcomes for taxpayers confronted with the choices of working another hour and being married. The second-earner penalty reduces the incentive to work on the margin, which disproportionately impacts female workers.[24] If policymakers wish to encourage female labor force participation, then this penalty hinders that effort. Similarly, the marriage penalty represents a de facto tax increase for couples who earn similar incomes and choose to consolidate their incomes.

Both examples illustrate the disincentive to increase productivity and the lack of tax neutrality for joint filers. This also shows that taxes often have a greater distortionary effect on decision-making than is originally assumed by policymakers when designing tax policies. Underscoring this point, Chief Justice Marshall opined: "That the power to tax involves the power to destroy…[is a] proposition not to be denied."[25] In the context of the second-earner and marriage penalties, it might be more precise to say that, at minimum, the power to tax involves the power to distort and discourage.

These penalties create difficult trade-offs for low- and middle-income filers. Of course, the second-earner and marriage penalties also impact higher-income filers. The critical distinction, however, is that the latter possess a greater monetary ability to remit their tax bill than the former.[26]

Additionally, the code provides tax bonuses for couples who earn disproportionate incomes. For example, suppose an unmarried couple earned a total of $85,000, but the distribution was unequal: $65,000 from the first partner and $20,000 from the second. As an unmarried couple, the tax bill would be $21,260 ($17,420 plus $3,840). When the couple gets married, their taxable income remains the same, but their tax liability changes to $19,889.[27] This distortion becomes more apparent as income increases and the earning disparity widens.[28]

The tax code should not penalize taxpayers for their decision to marry or work, nor encourage distortions within the code. In other words, "the fundamental purpose of taxes is to raise necessary revenue for programs, not micromanage a complex market economy with subsidies and penalties. The tax system's central aim should be to minimize distortions in the economy, and to *interfere as little as possible with the decisions of free people in the marketplace*."[29]

Moreover, "*taxes should neither encourage nor discourage personal or business decisions*. The purpose of taxes is to raise needed revenue, not to favor or punish specific industries, activities, and products. Minimizing tax preferences broadens the tax base, so that the government can raise sufficient revenue with lower rates."[30] While this is the goal toward which all sound policy should aim, it has rarely been the reality. Bittker succinctly captured this discrepancy: "The Internal Revenue Code, in brief, is a patchwork, its history being a myriad of compromises fashioned to meet particular problems."[31]

24 Boris I. Bittker, "Federal Income Taxation and the Family."

25 C. J. Marshall, Opinion of the Court, *McCullough v. Maryland*, 17 U.S. 316 (1819), https://supreme.justia.com/cases/federal/us/17/316/.

26 Often called the "ability-to-pay" principle, an essential criterion for the justification of a progressive tax system.

27 Tax Foundation, "Tax Plan Calculator," tax year 2019, https://www.taxfoundation.org/tax-calculator/.

28 See Daniel Hemel, "Beyond the Marriage Tax Trilemma.

29 Emphasis mine. Andrew Chamberlain, "Ten Principles of Sound Tax Policy," Tax Foundation, Oct. 7, 2005, https://taxfoundation.org/ten-principles-sound-tax-policy/.

30 Emphasis added. Tax Foundation, "Principles of Sound Tax Policy," https://taxfoundation.org/principles/.

31 Boris I. Bittker, "Federal Income Taxation and the Family."

Options for Mitigating Marriage and Second-earner Penalties

Increase credit phaseouts and marginal tax bracket flex points on joint filers

Tax policy scholars have suggested that policymakers increase the income level where credits phase out—and at which marginal tax rate brackets begin—for married filers so that they are double the point where the credits end for single filers.[32] This effectively eliminates the disincentive for single filers (excluding head of household) to file jointly since those filers will not lose a significant portion of their benefits by doing so.[33] It also allows both taxpayers to continue working and combine their incomes without fear that the other will need to reduce work hours or quit their occupation in order to maintain their credits.[34]

However, there are limitations to this fix. Many tax credits—with the notable exception of the Child and Dependent Care Tax Credit (CDCTC)—are primarily targeted toward lower-income filers in the bottom two income quintiles (i.e., 0 to 20 percent and 20 percent to 40 percent). These credits are designed to increase after-tax income by reducing tax liability, which in some cases results in a refund. In so doing, proponents argue, the credits reduce poverty.[35]

As many filers noticed in the aftermath of the Tax Cuts and Jobs Act (TCJA), the doubling of income phaseouts for credits such as the Child Tax Credit (CTC) can expand the number of filers eligible for the credit to individuals in the third and fourth quintiles (40 percent to 60 percent and 60 percent to 80 percent), reducing government revenue and making the credit benefits available to higher-income filers. The TCJA's expansion of the CTC increased the income eligibility for married filers from $110,000 adjusted gross income (AGI, pre-TCJA) to $400,000 AGI in order to eliminate marriage penalties on the new phaseout point for single filers ($200,000) until 2025.

If marriage penalties are eliminated by doubling the credit phaseouts and tax brackets for single filers, it would improve the neutrality and slightly reduce the progressivity of the tax code relative to prior law (i.e., via the reduction in effective marginal tax rates for higher-income filers). To some, the reduction in progressivity is counterbalanced by the increase in equity between single and married filers (reducing marriage penalties). This option also enjoys more widespread consideration from scholars across the political spectrum, notwithstanding its implicit erosion of progressivity.[36]

Eliminate "head of household" filing status

Added in 1951 for widowers and single parents caring for dependents (either young, old, or disabled), the head of household filing status contains wider brackets and increased credit benefits in order to account for the loss of a second-earner and the presence of dependents. If a head of household filer married, in many cases, they would see their benefits reduced relative to where they were when

32 David T. Ellwood and Isabel V. Sawhill, "Fixing the Marriage Penalty in the EITC," Brookings Institution, Sept. 20, 2000, https://www.brookings.edu/wp-content/uploads/2016/06/20000920.pdf.

33 See Table 3, "Low Income Filers Can Face Large Marriage Penalties, in Amir El-Sibaie, "Marriage Penalties and Bonuses under the Tax Cuts and Jobs Act."

34 See Key Findings in Id., 1.

35 Taylor LaJoie, "The Child Tax Credit: Primer," Tax Foundation, April 2020, 14, https://files.taxfoundation.org/20200413132740/Child-Tax-Credit-A-Primer.pdf.

36 Cf. Id. with Elaine Maag, Donald Marron, and Erin Huffer, "Redesigning the EITC: Issues in Design, Eligibility, Delivery, and Administration," Tax Policy Center, June 10, 2019, 10, https://www.taxpolicycenter.org/publications/redesigning-eitc-issues-design-eligibility-delivery-and-administration/full.

they filed independently. However, there may be other items which could offset the decrease in tax benefits, such as an additional source of income.

To simplify the tax code and reduce the marginal disincentive for marriage, the head of household filing status could be eliminated. Despite making the code simpler by eliminating an entire filing status, there would be drawbacks for filers currently benefiting from the head of household filing status.

Eliminating the head of household filing status, thus requiring these individuals to file as singles, would push some taxpayers into higher tax brackets. Facing higher marginal income tax rates, these taxpayers would have less incentive to work. According to the Tax Foundation General Equilibrium Model, eliminating the head of household filing status would reduce GDP by -0.1% and result in 114,000 fewer full-time equivalent jobs. This would increase revenues by $199 billion on a conventional basis and $138 billion on a dynamic basis over a 10-year window.

On a conventional basis, removing the filing status would have the largest negative effect on taxpayers in the second-lowest income quintile (Table 4).[37] It would have the smallest effect on taxpayers in the lowest quintile, many of whom do not have taxable income and would not be affected by the change. On a dynamic basis, taxpayers across all income quintiles would see a decrease in after-tax income (Table 4):

TABLE 4.

Low- and Middle-income Filers See Reduction in After-Tax Income if Head of Household Filing Status Is Eliminated

Income Group	Conventional	Dynamic
0% to 20%	0.0%	-0.1%
20% to 40%	-0.3%	-0.4%
40% to 60%	-0.2%	-0.3%
60% to 80%	-0.2%	-0.2%
80% to 100%	0.0%	-0.1%
80% to 90%	-0.1%	-0.2%
90% to 95%	0.0%	-0.1%
95% to 99%	0.0%	-0.1%
99% to 100%	0.0%	-0.1%
Total	**-0.1%**	**-0.2%**

Source: Author's calculations; Tax Foundation's General Equilibrium Model, 2020.

37 Tax Foundation found that repealing the status in 2016 also produced lower after-tax income for all income quintiles on a dynamic basis. See Tax Foundation, *Options for Reforming America's Tax Code*, Option 47, "Eliminate the Head of Household Filing Status," 2016, 63, https://files.taxfoundation.org/20170130145208/TF_Options_for_Reforming_Americas_Tax_Code.pdf.

Second-earner deduction

Some have advocated for a specialized treatment of second-earner income which offsets some of the marginal tax rate hikes second earners face. One proposal would provide a 20 percent deduction for second-earners on earnings up to $60,000, which would phase out once joint income reaches $110,000.[38] Proponents of such a policy argue that a dual-income-earning family where both partners earn $25,000 each would see a 4 percent increase in after-tax income if the plan were adopted. The proposal offers a revenue neutral option which keeps the deduction parameters constant with a reduction in total benefits due to a lower phaseout threshold, projecting a 3 percent increase in after-tax income.[39]

However, the proposal's authors admit that it "does not target the lowest-earning families in the population, those with less than approximately $13,000 in annual earnings. Earners in that range currently benefit from the 40 percent subsidy of the maximum EITC. Our proposal is focused on earners whose family income places them beyond the subsidy range of the EITC."[40]

This proposal was released prior to the increases in EITC benefits throughout the 2010s and the changes made by the TCJA. Even so, the principle still remains: a second-earner deduction would primarily benefit couples with higher incomes (depending on where the phaseout points are set), since deductions are proportional to the tax rate they offset. Lower-income filers would likely gain more via a credit, although that brings a higher revenue cost and more complexity to the code, which is already riddled with credits designed to offset higher effective marginal tax rates.

Overarching Principles for Future Consideration

There are no easy solutions to the marriage and second-earner penalties. Each option contains its own set of advantages and drawbacks which scholars and policymakers must grapple with. The fact that Bittker's seminal report on taxation and the family in 1975 is still a relevant publication today points to the reality that there are far more questions in this area of tax policy than answers.

Even so, there are a few salient points which rise to the forefront. First, progressivity obstructs the goals of marriage neutrality and couple's neutrality, an impasse that can only be surmounted through extraordinary measures, such as instituting a per-person tax credit in conjunction with a proportional (i.e., flat tax) system to offset regressivity and promote code neutrality and simplicity.[41] Second, the consolidation of income between disparate and similarly-earning individuals leads, in many cases, to bonuses for the former and penalties for the latter.

38 Melissa S. Kearney and Lesley J. Turner, "Giving Secondary Earners a Tax Break: A Proposal to Help-Low- and Middle-Income Families."

39 The first proposal ("baseline") would phase out all benefits by the time joint income reached $200,000. The revenue neutral option brought benefits to zero by the time joint income reached $100,000. See Id., 15.

40 Id., 13.

41 For one version of this, see Daniel Hemel's "demogrant," a $10,000 refundable tax credit per person under a 35 percent proportional tax rate, in "Beyond the Marriage Tax Trilemma."

Third, a comprehensive resolution of these difficult realities lies in an overhaul of the tax code, such as reducing progressivity or redesigning filing statuses to treat married filers as two single filers with combined incomes.[42] Fourth—and complementary to the previous point—scholars and policymakers could conceivably tax (or provide credits for) each filer on their own wage income (e.g., W-2, etc.) separately, irrespective of marital status.[43] Under such a system, inheritance, investment, and other estate and gift-related income could be taxed using a separate joint return.

Finally—and perhaps most fundamentally—the tax treatment of dual-income earners in a family ultimately derives from social and legal assumptions the tax code makes when evaluating the nature of taxable units. In 1966, the Canadian Royal Commission on Taxation concluded that the family should be seen as the primary taxable unit: "We believe firmly that the family is today, as it has been for many centuries, the basic economic unit in society."[44] In the United States, the code more often cites the individual—rather than the family—as the primary taxable icon.[45] Lawmakers could consider and reevaluate which constitutes the basic unit of taxation, adjusting policy accordingly.

Conclusion

Under current law, the tax code does not treat all filers exactly the same, especially when they earn similar labor incomes. Under a progressive income tax system, some filers will see increased after-tax income while others face higher effective marginal tax rates. This reality becomes more relevant when two individuals combine their incomes, especially when each earns similar incomes.

Simultaneously ensuring tax progressivity, neutrality, simplicity, stability, and transparency for joint filers is a difficult mandate. More discussion and research is needed to determine whether and how taxable income should be treated when filers choose to marry and work in a progressive income tax system.

42 For the conclusion that the solution lies in overhauling the tax code without any specific remedy, see Kyle Pomerleau, "Understanding the Marriage Penalty and Marriage Bonus," and Amir El-Sibaie, "Marriage Penalties and Bonuses under the Tax Cuts and Jobs Act."

43 Concurrently, the code could also provide a tax allowance for expenses for all employed taxpayers, not simply those who combine incomes in a dual-income earner household. As Bittker points out, "This reasoning was accepted during the years when an earned-income deduction was authorized by Congress (1924-1931 and 1934-1943); all taxpayers receiving earned income were eligible, regardless of their marital status." In 1975, this general idea was actualized through the creation of a 10 percent dependent exemption with taxpayers with dependents who make under $8,000 (AGI) with a $500 max deduction. See Boris I. Bittker, "Federal Income Taxation and the Family."

44 Report of the Royal Commission on Taxation (Carter Commission) (1966). See Boris I. Bittker, "Income Tax Reform in Canada: The Report of the Royal Commission on Taxation," *University of Chicago Law Review* 35:4 (1967), 637.

45 See IRC Section 62: "'Adjusted gross income' means, in the case of an *individual*, gross income minus the following deductions." Emphasis mine. Cf. IRC 63(b), etc.