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Observing Money, Marriage and Taxation

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SYMPOSIUM 1999
**Women, Equity and Federal Tax Policy: Open
Questions**

**Forum on Married Women and the Income Tax:
Marriage Penalties and Marriage Bonuses
of the 105th Congress**

**Panel I:
Observing Money, Marriage and Taxation**

Professor Ann F. Thomas

PROF. THOMAS: Marriage penalties and marriage bonuses in income the tax are in the news but they are not new.¹ Indeed, even in the halcyon days of individual income tax returns, between 1913 and 1948, there was often a marriage penalty in the form of a married couple's shared personal deduction. In 1913 married couples shared a personal deduction of \$4,000 and unmarried individuals and spouses living apart were each entitled to their own \$3,000 personal deduction.² Sole earner married couples received a marriage bonus of a \$10 tax savings and dual income couples paid a marriage penalty of \$20.

Naturally, people complained about this and, interestingly, they called it a marriage penalty. Conservatives described it as anti-marriage and feminists said it devalued women.³ However, marriage penalties remained a feature of the income tax for much of that period.

¹ See, e.g., Boris I. Bittker, *Federal Income Taxation and the Family*, 27 STAN. L. REV. 1389, 1429-31 (1975) (describing the marriage penalty as it operated after 1971).

² See, e.g., Tariff Act of October 3, 1913, 38 Stat. 114, 168 (codified as I.R.C. § IIA (1913)).

³ For a modern restatement of these views see Ben Wildavsky, *Richer or Poorer*, NAT'L J., Aug. 15, 1998, at 1916 (describing the social conservative's concern that the marriage penalty is "anti-marriage"); see also Llewelyn H. Rockwell, Jr., *Resort to Income Splitting*, WASH. TIMES, Jan. 13, 1998, at A12 (describing the feminist view that the marriage penalty is unfair to women).

Today we have even more varieties of marriage penalties and bonuses than ever before, and the numbers look very different.

Dr. O'Neill has outlined the numbers for us. The magnitude of the penalty and bonus issue is considerable; with about \$33 billion in marriage penalties, and \$41 billion in marriage bonuses in the aggregate *each year*, most married couples in the United States are affected by this aspect of the income tax.⁴ This is, obviously, an important question. Moreover, it is one that requires a multi-disciplinary approach to resolve. One of our goals in putting together this symposium is to stimulate and support a dialogue between social scientists and legal scholars working on marriage penalty and marriage bonus issues. Tax law does not hold all the answers and economics does not hold the entire answer either, but together we can talk about what the issues are and what the possible solutions are.

The format for our panel will be as follows: the Moderators will make brief introductions and each panelist will have about ten minutes to speak. Then, after all members of the panels have had their say, the Moderator will start some questions and let the panelists talk to each other and then open questions to the floor.

Our first Panel this morning has, primarily, a social science focus, looking at some of the assumptions about financial behavior within marriage that underlie our current structure of taxation for married couples. We are going to move right into the first panel presentation and hear first from Leslie Whittington, who is an economist. Leslie is an Associate Professor of Public Policy at Georgetown University in Washington D.C. Along with co-author James Alm, she has written a very influential series of papers and articles about tax policy and marriage behavior of different kinds.⁵

⁴ See *Proposals to Reduce Taxes: Hearings Before the Committee on Ways and Means*, 105th Cong. (forthcoming) (1998) (statement of June E. O'Neill, Director of the Congressional Budget Office), available in <www.house.gov/ways_means/fullcomm/testimony/2-4-98/2-onei.htm> (visited Oct. 14, 1999) (showing that a majority of couples filing joint 1996 returns was affected by either a marriage bonus or penalty) (hereinafter *Proposals to Reduce Taxes*).

⁵ See, e.g., James Alm and Leslie A. Whittington, *The Rise and Fall and Rise . . . of the Marriage Tax*, 49 NAT'L TAX J. 571 (1996); see also James Alm & Leslie A. Whittington, *Income Taxes and the Marriage Decision*, in APPLIED ECON 25, Jan. 1, 1995, (Chapman and Hall 1995); see also James Alm and Leslie A. Whittington, *Does the Income Tax Affect Marital Decisions?*, 48 NAT'L TAX J. 565 (1995) [hereinafter *Marital*].