

(Added Pub. L. 94-455, title XIX, §1901(a)(11), Oct. 4, 1976, 90 Stat. 1765.)

### § 66. Treatment of community income

#### (a) Treatment of community income where spouses live apart

If—

(1) 2 individuals are married to each other at any time during a calendar year;

(2) such individuals—

(A) live apart at all times during the calendar year, and

(B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;

(3) one or both of such individuals have earned income for the calendar year which is community income; and

(4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

#### (b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

#### (c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual). Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

#### (d) Definitions

For purposes of this section—

##### (1) Earned income

The term "earned income" has the meaning given to such term by section 911(d)(2).

##### (2) Community income

The term "community income" means income which, under applicable community property laws, is treated as community income.

##### (3) Community property laws

The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

(Added Pub. L. 96-605, title I, §101(a), Dec. 28, 1980, 94 Stat. 3521; amended Pub. L. 98-369, div. A, title IV, §424(b)(1)-(2)(B), July 18, 1984, 98 Stat. 802, 803; Pub. L. 101-239, title VII, §7841(d)(8), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105-206, title III, §3201(b), July 22, 1998, 112 Stat. 739.)

#### AMENDMENTS

1998—Subsec. (c). Pub. L. 105-206 inserted at end "Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability."

1989—Subsec. (d)(1). Pub. L. 101-239 substituted "section 911(d)(2)" for "section 911(b)".

1984—Pub. L. 98-369, §424(b)(2)(A), struck out "where spouses live apart" in section catchline.

Subsec. (a). Pub. L. 98-369, §424(b)(2)(B), substituted "Treatment of community income where spouses live apart" for "General rule" in heading.

Subsecs. (b) to (d). Pub. L. 98-369, §424(b)(1), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 applicable to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before such date but remaining unpaid as of such date, see section 3201(g)(1) of Pub. L. 105-206, set out as a note under section 6015 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to all taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies with corresponding provisions deemed to be included in the Internal Revenue Code of 1939 and applicable to all taxable years to which such Code applies, except subsection (b) of this section is applicable to taxable years beginning after December 31, 1984, see section 424(c) of Pub. L. 98-369, set out as a note under section 6013 of this title.

#### EFFECTIVE DATE

Pub. L. 96-605, title I, §101(c), Dec. 28, 1980, 94 Stat. 3522, provided that: "The amendments made by this section [enacting this section] shall apply to calendar years beginning after December 31, 1980."

## § 67. 2-percent floor on miscellaneous itemized deductions

#### (a) General rule

In the case of an individual, the miscellaneous itemized deductions for any taxable year shall