

**ARIZONA INDIVIDUAL INCOME TAX RULING**  
**ITR 93-25**

(Note added on 4/15/2011)

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

**ISSUE:**

May the department levy on a divorced individual's property to collect tax due on a separate income tax return filed by a former spouse for a tax year in which the parties were married?

**APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 25-211 provides that all property acquired by either husband or wife during marriage is community property, except that which is acquired by gift or by inheritance.

A.R.S. § 25-213 provides that all property owned by each spouse before marriage, and the property acquired after marriage by gift or by inheritance, is the separate property of such spouse.

A.R.S. § 43-301 sets forth the individual filing requirements and provides for joint liability in the case of a husband and wife.

A.R.S. § 43-562 also provides for joint liability in the case of a husband and wife.

**DISCUSSION:**

In the case of a husband and wife, the spouse who controls the disposition of or who receives or spends community income, as well as the spouse who is taxable on such income, is liable for the payment of Arizona income taxes on such income. When separate returns are filed, each spouse is liable for the tax imposed on his or her separate income, his or her share of community income, and his or her spouse's share of community income to the extent he or she receives, controls, or spends the other spouse's share of that community income.

When there is a divorce, the general rule is that community debts remain joint obligations of the parties. A divorce decree may specifically allocate a community debt, such as liability for income tax, to one of the parties. While such allocation may be binding on the parties, it is not binding on the department. The department may levy on

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the property of either of the former spouses to collect taxes imposed on community income for which they are jointly and severally liable.

To determine when taxpayers are jointly and severally liable on community income, see Arizona Individual Income Tax Ruling ITR 93-24. *(Note: ITR 93-24 was superseded by ITR 97-2 on August 8, 1997.)*

### **RULING:**

When married individuals file separate Arizona income tax returns, both spouses may be jointly and severally liable for the taxes imposed on community income. The department may levy on a divorced individual's property to collect taxes for which he or she is jointly and severally liable.

Harold Scott, Director

Signed: December 6, 1993

### Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.

**APPENDIX TO ARIZONA INDIVIDUAL INCOME TAX RULING - ITR 93-25  
(Appendix Amended 4/15/2011)**

For more information concerning the application of Arizona's community property provisions to Arizona income taxation, see the following income tax rulings:

- ITR 93-18     Income Reporting Requirements for Married Arizona Residents Who File Separate Arizona Individual Income Tax Returns
- ITR 93-19     Deductions, Exemptions, and Credits for Married Taxpayers Who File Separate Arizona Individual Income Tax Returns
- ITR 93-20     Income Reporting Requirements of Resident and Nonresident Spouses Who File Separate Arizona Individual Income Tax Returns
- ITR 95-2       Filing a Joint Tax Return When a Resident Spouse is Married to a Part-Year Resident or Nonresident
- ITR 93-22     When Community Income May Be Treated as Separate Income
- ITR 93-23     Reporting Income, Deductions, Exemptions, and Withholding for Divorced Individuals for the Year of Divorce
- ITR 97-2       Joint and Several Income Tax Liability
- ITR 93-26     Tax Collection from Married Individuals for Premarital Income Tax Liabilities