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SHOULD YOU FILE MARRIED FILING SEPARATELY?

By Victor Sy, CPA, MBA

Of course not. Why should I pay taxes based on the highest tax rates? The lowest rates belong to joint filers and widows, followed by heads of household, and single taxpayers. Certainly, it does not make sense to file married filing separate and pay those sky-high rates. Or does it?

Read on and compare your answers before and after analyzing the advantages and disadvantages of married couples filing separately.

Advantages:

1. Your spouse may have some undeclared income or other potential tax problems and you do not want to be left holding the bag. This gets more complicated if you have more assets or income than your spouse. Expect the IRS to come after both your assets and income but with more interest in yours.
2. Your spouse owes back taxes from before the marriage.
3. Your spouse has back child support (the state Franchise Tax Board could come after your federal and state tax refunds).
4. Your spouse has unpaid federal student loans.
5. You do not need and would rather force passive losses from real estate rental to be suspended.
6. You have disproportionate medical or itemized deductions that would be lost in a joint return.

Disadvantages:

1. You are forced to use the highest tax brackets.
2. You lose earned income credit.
3. You lose child and dependent care credit unless you lived apart for the last six months of the year.
4. You cannot use standard deduction if the other spouse itemizes.
5. You could lose IRA deduction because lower phase out amounts unless you lived apart for entire year.
6. You could end up paying for taxable social security in the higher second tier rate of 85%.
7. You cannot exclude interest income from Series EE bond.
8. You cannot claim the \$25,000 passive activity loss from rental activities.
9. You lose credit for elderly or disabled unless you live apart for the entire year.
10. You lose education benefits: Hope, Lifetime, student loan, tuition and fees deduction.

Now, if your spouse happens to fall under any of the first four categories under the listed disadvantages, would you consider filing separately? I would. However, if your spouse were innocent from any of these situations, a joint return or head of household status would generally result in lower taxes, unless, of course, you fall into the marriage penalty trap. But then, that's another subject for your future reading.

Good day.