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Internal Revenue Code Section 1.6013-1(d)

Joint returns

(a) In general.

(1) A husband and wife may elect to make a joint return under section 6013(a) even though one of the spouses has no gross income or deductions. For rules for determining whether individuals occupy the status of husband and wife for purposes of filing a joint return, see paragraph (a) of §1.6013-4. For any taxable year with respect to which a joint return has been filed, separate returns shall not be made by the spouses after the time for filing the return of either has expired. See, however, paragraph (d)(5) of this section for the right of an executor to file a late separate return for a deceased spouse and thereby disaffirm a timely joint return made by the surviving spouse.

(2) A joint return of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of paragraph (a)(5) of §1.6012-1, relating to returns made by agents, shall apply where one spouse signs a return as agent for the other, or where a third party signs a return as agent for one or both spouses.

(b) Nonresident alien. A joint return shall not be made if either the husband or wife at any time during the taxable year is a nonresident alien, unless an election is in effect for the taxable year under section 6013(g) or (h) and the regulations thereunder.

(c) Different taxable years. Except as otherwise provided in this section, a husband and wife shall not file a joint return if they have different taxable years.

(d) Joint return after death.

(1) Section 6013(a)(2) provides that a joint return may be made for the survivor and the deceased spouse or for both deceased spouses if the taxable years of such spouses begin on the same day and end on different days only because of the death of either or both. Thus, if a husband and wife make their returns on a calendar year basis, and the wife dies on August 1, 1956, a joint return may be made with respect to the calendar year 1956 of the husband and the taxable year of the wife beginning on January 1, 1956, and ending with her death on August 1, 1956. Similarly, if husband and wife both make their returns on the basis of a fiscal year beginning on July 1 and the wife dies on October 1, 1956, a joint return may be made with respect to the fiscal year of the husband beginning on July 1, 1956, and ending on June 30, 1957, and with respect to the taxable year of the wife beginning on July 1, 1956, and ending with her death on October 1, 1956.

(2) The provision allowing a joint return to be made for the taxable year in which the death of either or both spouses occurs is subject to two limitations. The first limitation is that if the surviving spouse remarries before the close of his taxable year, he shall not make a joint return with the first spouse who died during the taxable year. In such a case,

however, the surviving spouse may make a joint return with his new spouse provided the other requirements with respect to the filing of a joint return are met. The second limitation is that the surviving spouse shall not make a joint return with the deceased spouse if the taxable year of either spouse is a fractional part of a year under section 443(a)(1) resulting from a change of accounting period. For example, if a husband and wife make their returns on the calendar year basis and the wife dies on March 1, 1956, and thereafter the husband receives permission to change his annual accounting period to a fiscal year beginning July 1, 1956, no joint return shall be made for the short taxable year ending June 30, 1956. Similarly, if a husband and wife who make their returns on a calendar year basis receive permission to change to a fiscal year beginning July 1, 1956, and the wife dies on June 1, 1956, no joint return shall be made for the short taxable year ending June 30, 1956.

(3) Section 6013(a)(3) provides for the method of making a joint return in the case of the death of one spouse or both spouses. The general rule is that, in the case of the death of one spouse, or of both spouses, the joint return with respect to the decedent may be made only by his executor or administrator, as defined in paragraph (c) of §1.6013-4. An exception is made to this general rule, whereby in the case of the death of one spouse, the joint return may be made by the surviving spouse with respect to both him and the decedent if all the following conditions exist:

(i) No return has been made by the decedent for the taxable year in respect of which the joint return is made;

(ii) No executor or administrator has been appointed at or before the time of making such joint return; and

(ii) No executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse.

These conditions are to be applied with respect to the return for each of the taxable years of the decedent for which a joint return may be made if more than one such taxable year is involved. Thus, in the case of husband and wife on the calendar year basis, if the wife dies in February 1957, a joint return for the husband and wife for 1956 may be made if the conditions set forth in this subparagraph are satisfied with respect to such return. A joint return also may be made by the survivor for both himself and the deceased spouse for the calendar year 1957 if it is separately determined that the conditions set forth in this subparagraph are satisfied with respect to the return for such year. If, however, the deceased spouse should, prior to her death, make a return for 1956, the surviving spouse may not thereafter make a joint return for himself and the deceased spouse for 1956.

(4) If an executor or administrator is appointed at or before the time of making the joint return or before the last day prescribed by law for filing the return of the surviving spouse, the surviving spouse cannot make a joint return for himself and the deceased spouse whether or not a separate return for the deceased spouse is made by such executor or administrator. In such a case, any return made solely by the surviving spouse shall be treated as his separate return. The joint return, if one is to be made, must be made by both the surviving spouse and the executor or administrator. In determining whether an executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse, an extension of time for making the return is included.

(5) If the surviving spouse makes the joint return provided for in subparagraph (3) of this paragraph and thereafter an executor or administrator of the decedent is appointed, the executor or administrator may disaffirm such joint return. This disaffirmance, in order to be effective, must be made within one year after the last day prescribed by law for filing the return of the surviving spouse (including any extension of time for filing such return) and must be made in the form of a separate return for the taxable year of the decedent with respect to which the joint return was made. In the event of such proper disaffirmance the return made by the survivor shall constitute his separate return, that is, the joint return made by him shall be treated as his return and the tax thereon shall be computed by excluding all items properly includible in the return of the deceased spouse. The separate return made by the executor or administrator shall constitute the return of the deceased spouse for the taxable year.

(6) The time allowed the executor or administrator to disaffirm the joint return by the making of a separate return does not establish a new date for the return of the deceased spouse. Accordingly, the provisions of sections 6651 and 6601, relating to delinquent returns and delinquency in payment of tax, are applicable to such return made by the executor in disaffirmance of the joint return.

(e) Return of surviving spouse treated as joint return. For provisions relating to the treatment of the return of a surviving spouse as a joint return for each of the next two taxable years following the year of the death of the spouse, see section 2 and §1.2-2.