Micro- and Macro-Economic Effects: Secreting Assets to Evade Non-Business (Private) Obligations and Responsibilities

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INTRODUCTION

There is extensive research and discussion in and among academic, law enforcement, and government regulatory circles focusing on issues of bank secrecy, money laundering, tax fraud, bribery and secreting of wealth. Of great concern is the public side of hiding assets. This includes examining the efforts of governments and their regulatory and policing agencies to limit these activities, identifying and exploring the efficacy of the various means to combat money laundering through greater transparency in the financial services sectors of the economy, enhanced investigatory tools for regulators, and increased obligations on participants in the financial markets, including professional advisors, to report suspicious financial activities and movements of funds. However, there is a conspicuous absence of discussion of the broad human impacts wrought by the secrecy of assets.

There is little doubt in the international community that the 11th September, 2001 terrorist attacks in the USA required the movement of substantial sums in international commerce in order to train the terrorists and provide them the resources with which to carry out their attacks. The human cost of those attacks was massive. Yet, it is not only instances of catastrophic proportions that should engender efforts to control and interdict the hiding of wealth. There is also a private side to hiding assets that has contributed to the impoverishment of women and children in the USA (and possibly in other nations as well). In the small-scale events that impact on only a narrow group of individuals may be devastating to the members of that narrow group, whether a family, a community or the employees of a single business. The adverse effects on the narrow group may reverberate through the broader community.

This paper investigates the effect on the family and the society when a US business owner hides his wealth from creditors and family members. The paper offers a simple case study in which the business owner secretes assets offshore. The offshore element is consistent with the nature of the business but is not essential to the example, as there are opportunities to hide wealth without transporting it offshore. The paper will present the case facts first. It will then identify some ethical issues that arise when explicit and implicit promises are not honoured. Next, it will examine direct economic impacts on spouses and children as the primary provider disappears with his hidden wealth and includes discussion of additional stresses that taxing authorities place on those who remain behind. Finally, the paper seeks to integrate the economic impact on the single family with its broader economic impacts as hidden assets sometimes burden the family and local and national economies.

The case of Susan and Robert Jones

Susan and Robert Jones married in 1985. Their son David was born in 1988 and daughter Abigail in 1991. Robert built up a freight transfer and forwarding business with a staff of seven US employees. Susan helped in the business while raising the children. Susan was responsible for paying the business’s bills, including payroll — but followed Robert’s instructions as to which bills to pay and when to pay them. Robert prepared joint US income tax returns for the couple and both signed the returns each year. Susan and Robert enjoyed a trusting relationship and a high lifestyle.

Robert received payments in cash from many of the business’s customers and, early in 1995, began channelling most of the cash into bank accounts in jurisdictions that had strong bank secrecy laws and protected the anonymity of their customers. Some of Robert’s customers made payments into the same accounts by wire and electronic transfers. In 1997 Robert stopped instructing Susan to pay social security taxes and tax withholding amounts to the US government. While Susan thought it odd that the payments stopped and questioned Robert, his
reassurance that there was nothing to worry about sufficed to calm her concerns.

In September 2000, Robert disappeared. Susan had a small amount of money in the couple's joint bank accounts, their house encumbered by an 85 per cent mortgage, credit card debt and car loans. Without Robert, the business could not continue. While it is unclear whether or not Susan was a co-owner of the business, employees to whom final pay cheques were due threatened to sue Susan. Rumour has it that Robert is living in grand style with a friend in one of the islands from the substantial unreported sums he derived from the business.

At the time Robert disappeared, the Internal Revenue Service (IRS) had commenced an audit of the couple's federal income tax returns for the years 1995 through 1998. A disgruntled employee who found some computer files relating to shipments of questionable content and wire transfer instructions triggered the audit by alerting the Internal Revenue Service that there was evidence of unreported income.

COMMITMENT, OBLIGATIONS, AND RESPONSIBILITIES

The ethic of responsibility

The case above describes a husband and father, Robert, who has abandoned his family, and a business owner who has abandoned his business. In doing so, Robert has undermined the financial well-being of those he has left behind, has committed crimes for which, in some instances, he has left others to account, and he has ensured that those he deserted will experience stress and emotional upheaval. Robert's failure to uphold his promises and commitments, familial and business, raise a number of ethical issues. This section of the paper will focus on the ethical implications of failing to keep promises and explore the origins of ethical duties associated with promise making.

It is clear that Robert may be guilty of committing a number of wrongs that, in the US legal system, could result in civil and criminal charges. However, the question this section of the paper seeks to explore is broader: specifically, is Robert's conduct morally wrong and did it breach ethical standards? To address that question, generally acceptable norms of ethical conduct have to be present and violations of those norms have to be established. With regard to norms of ethical conduct, the paper will focus on the commitments and responsibilities arising from the roles in which the actors were engaged: Robert as a father and a business owner, and Susan as a possible partner in the business. Robert is the main object of our attention; however, at times the spotlight may turn on Susan as well.

The philosophical underpinnings of commitment and the consequent generation of responsibilities have been discussed by many. Using terms such as 'commitment', 'integrity', 'responsibility', 'obligation', and 'promise keeping' in referring to essentially synonymous concepts, several writers have examined the ethical and moral issues associated with promises and the obligations arising from those promises. May credits Max Weber with developing an ethic of responsibility, wherein an individual is called to be concerned with how other people and relationships are likely to be affected by his or her actions. May finds that an individual's deepest sense of moral commitment comes from the sense of self, through which an individual becomes personally invested in a group. The shared commitments among members of that group contribute to what May terms solidarity. Solidarity, socialisation, and role-based moral authority operate on an individual's consciousness from which feelings of obligation are generated. May also recognises that institutions and traditions of a particular community contribute to the development of obligations. Building on Weber, May posits an 'ethic of responsibility' which includes the following:

(1) a responsiveness to those whom we could help, especially those who are in relationships with us or toward whom we have taken on a certain role;

(2) a sensitivity to the peculiarities of a person's concrete circumstances and contexts;

(3) a motivation to respond to another that grows out of the needs of others, especially those who depend on us;

(4) a wide discretion concerning what is required to be a reasonable person, rather than an emphasis on keeping an abstract commandment or rule;

(5) a respect for the legitimacy of emotions as a source of moral knowledge and especially for the feelings of guilt, shame and remorse that are central to people's actual experiences;

(6) a sense of what it means to be a responsible
person that is tied more to who we are, and what we can do, than what we have done.\textsuperscript{4}

May also agrees with Goodin\textsuperscript{5} who links responsibility with vulnerability. In Goodin's framework, key in the development of responsibility is that others are depending on us. However, May qualifies his agreement with Goodin by saying that not all our responsibilities grow out of relationships of vulnerability and dependency. There are, he observes, relationships among equals (or near equals) that also give rise to responsibilities. For example, voluntary acts in which individuals engage, such as entering into contracts, give rise to responsibilities. Extending this distinction further, he notes that mutual (as compared to unilateral) dependency is often a characteristic of relationships, such as citizenship, that give rise to responsibilities.\textsuperscript{6} However, May also notes that certain societal institutions, such as marriage, are designed to protect the partners from harms that are made more likely by closeness of association.\textsuperscript{7}

Scalon\textsuperscript{8} also considers the notion of dependency as a factor in creating obligations. In examining morality associated with duties between individuals, he concludes that breaking a promise is a moral wrong when the promise creates an obligation to another, if the promisor has led that other person to form reasonable expectations about the promisor's future conduct. In Scalon's view, the obligation to perform according to the promise is the central concern of the morality of promises.\textsuperscript{9}

Ethical conduct, must thus include responsible and reasonable conduct toward those who are dependent. Ethical behaviour must also include respect for, and honour of, promises and commitments made between equals, whether such commitments are explicit or implicit. Robert and Susan, it is argued below, violated these ethical norms by engaging in dishonourable personal and business conduct.

When Robert and Susan married, they took public vows of fidelity and responsibility recognised by religious and civil institutions. Their marriage, therefore, reflects both civil and religious commitments — promises with resulting obligations that arise from the law, religious traditions, and role expectations associated with the marital relationship.\textsuperscript{10} When children are a result of the marriage, additional obligations arise. One such obligation is the financial well-being of the family unit. It is expected that parents will provide for and meet all other financial obligations of raising their families. To the extent that children need a safe and loving environment to fulfil their potential, additional commitments and responsibilities arise: from societal role expectations as well as from our laws. Since Robert married and had children, he voluntarily agreed to take on certain roles in the family, creating expectations and vulnerability in others who rely on his fulfillment of those expectations. He has moral obligations to keep his commitments. Since Robert abandoned his family and secreted family assets, he has failed to keep the promises inherent in his roles as husband and father.

Robert also opened a business that employed a number of employees. In hiring these employees, Robert made implicit promises that created an ethical responsibility. Those promises generated the obligation to treat the employees, who were vulnerable to Robert's actions in his role as head of the business, according to their reasonable expectations. It is reasonable, for example, for employees to expect that the owner of the business would act according to the laws associated with their employment status and that the employer would not purposely undermine the financial integrity of the business.

Robert also abandoned creditors. When creditors advanced funds for personal and business purchases, Robert promised to repay the debts. Again, we see that he has failed to keep those promises.

Susan is also vulnerable to a claim that she did not uphold her responsibilities to the employees, and that she broke the law. While it is tempting to see Susan as a victim — and in many respects she is — she also has some responsibilities to the others who were harmed by Robert's acts. She was in a responsible position in the business and, according to the duties inherent in that role, she made a commitment to those who depended on her to exercise care in the execution of those responsibilities. Simply to say that she relied on Robert's direction in the execution of her duties with respect to payroll matters is not sufficient to excuse her moral responsibilities to protect the employees' interests while handling matters related to their compensation. Further, if she had access to financial records while she was paying bills for the business, she may also have failed the creditors. Her failure to comply with the laws may leave her morally as well as legally culpable.

**An alternative approach**

The classic deontological and consequentialist philosophical theories can also be applied to the issue of
promise keeping. Deontology is the moral theory claiming that at least some behaviours are morally obligatory. Immanuel Kant is the most well-known deontologist. To determine if an act, such as failing to fulfill a promise, would fall under such an obligation, the analysis would involve the concept of the categorical imperative. This principle can be described as admonishing people to engage only in those acts which they would wish to recognise as universal laws governing everyone, or, alternatively stated, to treat all humans as ends in themselves, not merely as means to be manipulated for one’s own ends. This philosophical position is often contrasted with consequentialist approaches, in particular, utilitarianism. For utilitarians, the morally right act is the one that produces the greatest amount of happiness, or pleasure for everyone.

Taking a broader perspective with respect to promise keeping, one might ask if there is a moral duty to obey the law. Many of the promises in this case also involve legal issues that could ultimately be taken to the courts for resolution. If it is determined that the actors also incurred legal obligations, is it then possible to conclude that failing to honour a legal obligation is itself immoral? Harris concludes that, “In the history of speculative thought, adherents of widely different social perspectives have said there is.” Many philosophers describe a social contract as the underlying rationale for finding that an individual has a moral duty to obey the law. This obligation derives from the philosophical position that an individual has made an implicit promise of obedience to a government in exchange for protection and other benefits provided by the governing entity.

Returning to Robert and Susan, using the deontological framework would compel individuals to accept Robert’s acts as universal rules that would govern all. Clearly, the facts of this case would suggest otherwise. Under the consequentialist, or utilitarian framework, to consider his behaviour moral, the conclusion would have to be that Robert’s acts resulted in the greatest happiness for the most people. While Robert may be living the high life, he has left his family and a group of employees quite unhappy. Further, in examining the moral duty to obey just laws, it is therefore not difficult to conclude that Robert has violated his moral obligation to obey the civil laws governing marital and familial responsibilities. Regarding the business, it is easy to see the several laws Robert has broken. He has embezzled money from the firm and has failed to make required tax payments. Nothing indicates that Robert considered these laws unjust; rather, it appears quite clear that his actions were based on greed. Consequently, in flaunting these laws he is also morally wrong.

In applying the various frameworks to evaluate the ethical and moral implications of the failure to act responsibly and honour commitments, it is evident that Robert, and to some extent Susan, fell short of the moral obligations associated with their respective commitments.

**ASSET PRESERVATION AND RESTORATION: LEGAL REMEDIES**

It is apparent that Robert, and to a lesser extent, Susan, failed to meet their respective ethical and moral obligations. While Robert abandoned his family and secreted assets, Susan has to contend with the threat of legal action from her former employees. Now a single parent with two children, the ethics of responsibility dictates that she acts so she can meet her parental and financial obligations towards herself and her children.

Susan knows that she must act quickly. She has heard that Robert is living the high life and squandering assets that should be divided and utilised to secure her and her children’s future. Paramount in her mind, therefore, is the need to preserve family assets for her family’s use. In other circumstances, she might have chosen not to use the judicial system to facilitate the division of assets. Susan understands that utilisation of the legal system becomes necessary in order to ensure an equitable division of assets, especially where there is concern that wealth has been secreted away by an ex-spouse intent on hiding assets in order to frustrate the settlement process.

Use of the formal judicial process to settle asset claims takes time. Therefore, Susan may not benefit from such a settlement if Robert has squandered away family resources. In such an instance, it is possible that she benefits from a pre-settlement judgment. Pre-settlement litigation serves several functions in the public interest, including protection of the integrity of the legal system. Pre-settlement litigation maintains the status quo by reducing the likelihood that any final judgment achieved through the legal system will be rendered meaningless by the evading spouse’s efforts to hide assets. The ability to freeze assets and prevent the squandering of the assets may remove any incentive to delay the post-break up
division of assets as access and use of disputed assets is limited during the duration of the settlement process. Accordingly, an incentive to settle expeditiously is fostered by legal remedies limiting the dissolution of family wealth. Further, the ability to prevent the dissipation of assets or to allow for the restoration of assets additionally diminishes the coercive ‘leverage’ couples may seek to utilise following the break-up of a relationship.

Susan understands the numerous problems and difficulties associated when assets are secreted from the domestic sphere. She wonders what specific remedies are available for their prevention or restoration. Provisional and pre-settlement or pre-judgment remedies enable creditors, including a former spouse, to preserve the value of potential judgments while settlement proceedings are pending by preventing debtors from transferring, encumbering, dissipating or concealing assets otherwise available to satisfy judgments. Many of these remedies are temporary and can only be pursued in connection with actions on the underlying claims. These remedies are examined below.

Equitable remedy of a preliminary injunction

Where legal remedies for the preservation or restoration of assets are inadequate, the courts may utilise the equitable remedy of injunctions to prevent irreparable harm from the dissipation or hiding of assets. Obtaining an injunction to freeze funds in debt claims is difficult and is typically only available where the plaintiff establishes serious threat of loss to the claimant, that the defendant’s property rights will be respected and that the defendant’s due process rights will also be protected. Generally, the granting of this equitable remedy will also depend on whether such judicial order will interfere with rights or priorities of other creditors. If so, courts are inclined to avoid such a preliminary remedy.

In addition, statutes addressing the marital rights of divorcing parties may specifically authorise the freezing of assets to preserve marital assets pending the divorce decree or settlement. In such a case, the plaintiff claims equitable ownership, yet the plaintiff is not limited to an order freezing assets that can be identified as belonging to her. Instead, the statute may authorise an order restraining disposition of marital assets during the remainder of the divorce action. Such statutes eliminate the requirement that the moving party post an undertaking and establish the probability of success.

Pre-judgment attachment

Statutes authorising attachment permit the plaintiff (debtor) to attach property, tangible or intangible, or funds belonging to the defendant (creditor) prior to trial and before the plaintiff has even established any rights against the defendant. Attachment allows creditors holding either unsecured claims, such as an ex-spouse, or claims secured only by personal property, to create judicial liens on a debtor’s property before the final resolution of adjudication, often on an ex parte basis, where there are exigent circumstances (as where the defendant is about to flee the jurisdiction or fraudulently dispose the money or property). Thus, attachment does not transfer money or property; it merely holds it so that it is available if the trial shows the plaintiff is entitled to it for the satisfaction of the claim. Upon the filing of a bond, or other security, plaintiff may obtain a pre-judgment order for the attachment of defendant’s property in a wide variety of circumstances. Such freezing of the defendant’s assets prevents dissipation or removal from the jurisdiction while additionally creating leverage, from hardship, which may pressure the defendant to settle the claim expeditiously. A person seeking attachment must adhere to relevant statutory guidelines, which vary from state to state, and must establish a prima facie claim. Additionally, the court is required to make preliminary determinations regarding the merits of the underlying dispute. A serious limitation of this remedy is its limited territorial scope. Attachment is applicable on a per state basis and, accordingly, if assets are located in several jurisdictions, the claimant must pursue this remedy in a multiplicity of locales, potentially making this an inconvenient, time-consuming, expensive, and cumbersome venture.

Garnishment of wages

Garnishment is similar to attachment, except with garnishment the plaintiff does not reach property or money held by the defendant; instead, the plaintiff attaches a claim the defendant has against a third party. Just as other creditors may pursue the remedy of garnishment, so too might an ex-spouse seek to have monies owed automatically deducted from the salary or wages of an evading spouse or seek a writ of garnishment against a bank freezing
the defendant’s bank account until final determination of the settlement at trial. Garnishment is also available as a permanent remedy to enforce a final judgment. State statutes control the details of the garnishment process.

Transference of property titles
This remedy alleviates a situation where an ex-spouse has improperly, suspiciously, or fraudulently transferred real or personal property to a third party in order to frustrate the settlement process. In such situations, courts have jurisdiction to reverse the transfers and properly vest title in the claimant spouse.31

Shift tax burdens
Where, for instance, an ex-spouse is exposed to an increased tax burden due to the false reporting by the evading spouse of alimony or child support, the court may order the evading spouse to indemnify the claimant for the wrongly imposed tax liability.32

Recapturing property
This concerns recapturing property from fraudulent grantees or from sub-grantees who took gratuitously or paid value with notice.33 This remedy includes interfering with third parties, corporations, or trusts where they are utilised to secrete assets.34 Courts will pierce the corporate veil to determine if a corporation or trust is but an alter ego of the evading spouse or, otherwise, a sham entity. Where this is the case, the court may impose a lien against shares or debentures of the corporation and may grant a vested interest in the trust or even impose a lien on property owned by the trust.35 Such orders will be issued where necessary to protect the ex-spouse’s remaining community property and to secure payment of the judgment.

Invalidation of obligations
This is the invalidation of obligations created fraudulently in order to defeat creditors rights.36 Ex-spouses may encumber their assets in an attempt to create financial obligations where none exist. Again, courts have the jurisdiction to reverse suspicious, evasive, and fraudulent obligations created with intent to frustrate the settlement process.

Criminalisation of bankruptcy fraud
Where deliberate misuse of the bankruptcy system is found, this is yet another possible remedy.37 Where an ex-spouse, or other creditor, misuses the bankruptcy scheme the relevant statutes provide a number of remedies including criminalisation, if the deeds rise to this level of culpability.

Awarding attorneys’ fees
Where ex-spouses have been put through the inconvenience and frustration of consistently engaging the courts in an effort to prevent the dissipation of assets, or to ensure the enforcement of court orders, courts are willing to make significant monetary awards to pay or subsidise legal fees.38

Contempt rulings
Finally, where an evading spouse has refused to honour a court order made against him imposing an equitable remedy,39 courts have increasingly utilised the standard contempt of court determination whereby a defendant may be coerced into compliance with its decree, for example by fine or imprisonment. The contempt power allows the judge to impose either criminal or civil sanctions for failure of the defendant to follow a coercive order.40 A criminal sanction might be, for example, a fine of $1,000 or imprisonment for ten days. A civil sanction is one designed to coerce the defendant into compliance with the order, so it would not be a fixed fine or jail sentence. Instead, the civil contempt sanction would be a daily fine until the defendant complies with the decree, or an indefinite jail sentence until compliance is forthcoming.41

TAX OBLIGATIONS AND RELIEF
Taxes and taxing authorities
The legal remedies, if a judgment can be attained and enforced, would certainly alleviate some of Susan’s concerns about herself and her children’s financial future. But with Robert and financial assets overseas, she has very little assurance that she will ever benefit from those assets. To make things worse, Susan must deal with the additional stress of examination by the tax authorities. When Robert disappeared with substantial cash balances secreted, a tax audit had already begun. Like most married couples in the USA, Susan and Robert filed joint federal income tax returns for the years under audit. Although they could have filed separate returns, they derived some economic benefit from filing jointly rather than separately.42 Under US law, spouses who file joint tax returns are jointly

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Susan faces bankruptcy. Even if Susan finds relief from most other debts in the course of an individual bankruptcy, tax liability attributable to fraud is not dischargeable in bankruptcy. Thus, even if Susan gets her financial problems under control with an individual plan in bankruptcy or a bankruptcy discharge, income tax liability looms for the funds Robert secreted.

Susan may have an opportunity for relief from the tax liability under the ‘innocent spouse’ provisions of the tax law. Until 1998, a spouse seeking relief from liability for substantial understatements of tax liability attributable to the other spouse’s activities had to establish that she not only did not know of the income but ‘had no reason to know’ that her spouse (i) omitted items of gross income or (ii) claimed deductions, credits or tax basis for which he had no basis in fact or law on the joint return the spouses filed. The courts frequently considered four factors to be critical to evaluation of the ‘reason to know’ standard. The factors are: (1) the purported innocent spouse’s level of education, (2) the spouse’s involvement in the family’s business and financial affairs, (3) the presence of expenditures that appear lavish or unusual when compared to the family’s past levels of income, and (4) the culpable spouse’s evasiveness and deceit concerning the couple’s finances. Lifestyle of the spouse claiming relief may be critical to determining whether or not she benefited from the unreported income. Given Susan’s involvement in the business and her responsibility for various accounting functions, as well as the couple’s lifestyle before Robert’s disappearance, Susan’s chance of finding relief under the law as it existed before the IRS Restructuring Act was remote.

Under current law, Susan’s chances of capturing relief from the joint tax liability are better but far from certain. Statistics of claims filed under the new innocent spouse provision confirm that taxpayers generally believe that the new standards are easier to meet. Filings of innocent spouse claims increased from approximately 3,000 in the last four months prior to the passage of the IRS Reform Act to 43,255 in the first seven months following the date the new law took effect.

The basic standard for relief has changed only slightly, allowing relief for any unreported amount due to any erroneous item without regard to size. Susan’s involvement in the business may yet bar her from relief under the basic standard, as she must establish that she had ‘no reason to know’ that she
and Robert understated their income because the business had unreported revenues.\textsuperscript{67}

Partial relief from liability may be available if she had some knowledge but did not know the extent of the understatement.\textsuperscript{68} Current law also includes a flexible residual relief category that offers innocent spouse relief to individuals who do not qualify for relief under the general rule.\textsuperscript{69} This category measures access to relief from liability under broad equitable principles.\textsuperscript{70}

Since Susan no longer lives with Robert, she may qualify for the limitation of liability for taxpayers not living together.\textsuperscript{71} Under this new innocent spouse relief rule, Susan may elect to separate her tax liability from Robert's liability despite the filing of the joint return.\textsuperscript{72} In order to qualify for separation of liability, the spouses must have not lived together for 12 months prior to the election.\textsuperscript{73} As Robert has abandoned the family, Susan should have little difficulty meeting this requirement. She has two years to make the election after the start of IRS collection activity.\textsuperscript{74} So long as Susan meets the threshold living apart requirement, she qualifies for separation of liability, unless the IRS establishes that Susan had actual knowledge of the unreported income.\textsuperscript{75} The effect of the election will be to limit Susan's liability to that portion of the tax deficiency that is properly attributable to her activities.\textsuperscript{76} Susan must establish the correct allocation of tax items between Robert and herself.\textsuperscript{77}

If Susan fails to qualify for relief from tax liability for her missing husband's wrongdoing under the general relief rules, she nevertheless may enjoy partial or full relief under the statute's residual relief category. This category applies broad equitable principles to relieve spouses of liability for the other spouse's tax liability.\textsuperscript{78} If Susan persuades the government that given all the facts and circumstances, it would be inequitable to hold her liable, the IRS may grant her discretionary relief.\textsuperscript{79} Under the equitable relief rubric, the IRS may consider Susan's ability to pay the tax and the economic hardship payment may cause her and her children.\textsuperscript{80}

**Trust fund taxes**

Even if Susan captures some tax relief under the innocent spouse rules, she may find her liability for failure to pay over so-called 'trust fund' taxes to be intractable.\textsuperscript{81} Trust fund taxes are not dischargeable in bankruptcy.\textsuperscript{82} Because Susan handled the business's payroll, the government may contend that she was responsible for withholding and paying over to the government the income tax and social security taxes withheld from the employees' pay cheques.\textsuperscript{83} Under US law, the employer withholds those taxes for the benefit of the US government and holds the money in trust for the government.\textsuperscript{84}

Trust fund taxes pose a particularly knotty problem with respect to governmental revenues. A taxpayer's failure to pay his or her full share of income taxes has a broad, but subtle, macro-economic impact. While depriving the government of revenue to which it is entitled, the immediate economic impact is difficult to identify. In theory, each other taxpayer makes up part of the revenue shortfall the tax shirker generates — but there is no direct link between treasury expenditures and the uncollected taxes.

The link between withholding taxes and government expenditure is, however, direct and immediate. The employees from whom the employer withheld the taxes claim the withholding as a payment on their individual tax declarations. In many instances, they will be entitled to a refund of part or all of the amounts withheld because their tax liability is less than the amount withheld.\textsuperscript{85} When the employer fails to deposit the withheld taxes, the US Treasury must pay the refund without collecting the tax.\textsuperscript{86} As a practical matter, the government cannot refuse to recognise the uncollected withholding as a payment of tax as that refusal would penalise the employee for the employer's failure to comply with the law. Employees in general are unlikely to be able to exert significant control over the employer and the employer's failure to pay. Moreover, employees may not refuse to permit withholding, even if they are willing to substitute self-deposit of their taxes for withholding.\textsuperscript{87} The government is far better positioned to coerce the employer to pay and better able to bear the loss from employers who fail to pay than are employees from whom the taxes have been withheld.

As to social security taxes,\textsuperscript{88} the link between the employer's non-payment and the burden to the government is also direct. A separate Treasury account tracks and sometimes holds those taxes separately from general revenues to insure that the government will pay various benefits to the citizenry. While Congress frequently debates borrowing from the trust fund surplus\textsuperscript{89} in order to fund current non-social security programmes, Congress
historically has shown considerable restraint in leaving the trust fund intact.\textsuperscript{90}

Given the nature of trust fund taxes, compelling policy reasons exist to prevent individuals responsible for withholding the taxes from failing to pay them over to the treasury. Accordingly, Congress enacted the 100 per cent penalty that imposes personal liability for the trust fund taxes on any individual who has withholding authority and control.\textsuperscript{91} This penalty may apply to a responsible person whose superior ordered him or her not to pay the trust fund taxes.\textsuperscript{92} Unless Susan can establish that her function was merely ministerial, that she had no choice but to follow Robert's instructions, relief from the 100 per cent responsible person penalty is unavailable to her.\textsuperscript{93} If she had responsibility and authority to pay the withheld taxes over to the government, she remains personally liable for failure to do so.\textsuperscript{94}

**Offers in compromise**

If all else fails Susan, her newly impoverished state may make her an ideal candidate for an offer in compromise.\textsuperscript{95} While she may not have much to offer, she is entitled to have the IRS consider her offer to pay a portion of her tax liability as a settlement with the government.\textsuperscript{96} Her offer may include trust fund as well as income taxes. The compliance division of the IRS (offer groups) initially considers offers in compromise for acceptability.\textsuperscript{97} The offer groups base their determination whether to accept an offer on evaluation of doubt as to liability or collectability of the taxpayer's account\textsuperscript{98} as well as economic hardship, efficient tax administration and other equitable factors that the IRS Restructuring Act required.\textsuperscript{99} If the offer group refuses the offer, the taxpayer may request an administrative review of the offer from the appeals division of the IRS. The appeals division employs the same factors as collection but generally provides a secondary review, rather than summary affirmation, of actions the collection division takes so that taxpayer arguments that failed at collection level nevertheless may succeed in appeals.\textsuperscript{100}

Considering Susan's straightened circumstances and her need for funds to support her children, she is likely to gain some or complete relief under the offer in compromise procedure. Examiners for the IRS must discuss collection options with taxpayers where, as in Susan's case, there is doubt as to collectability.\textsuperscript{101} In order to make the offer, Susan is likely to seek access to professional advice that she may not be able to afford, but the offers specialists within the IRS must assist taxpayers in preparing offers in compromise.\textsuperscript{102}

Whatever the outcome, it is predictable that Susan will have to deal with tax issues. The issues will consume time and energy. Even if the result is favourable for Susan, resolution of disputes with the IRS will add to the stress of her circumstances that arise from Robert hiding assets and disappearing to follow the hidden assets.

**MICRO- AND MACRO-ECONOMIC IMPACT**

**Behavioural impact: child rearing, divorce and remarriage, labour supply**

Understandably, Susan is concerned about the impact Robert's action would have on her family and herself. With the IRS investigating and former employees threatening to sue her, whatever assets she has are encumbered by potential claims against them. Her concern is heightened by the fact that many non-custodial parents like Robert, even those who do not disappear, fail to live up to their financial obligations towards their ex-spouses and their children.\textsuperscript{103} Susan is acutely aware of the problems associated when a non-custodial parent like Robert abrogates financial responsibilities. She would like Robert to make necessary support payments allowing her to raise her children without economic duress, but she knows that many families like hers have been forced to the brink of poverty and have often sought the help of federal and state welfare agencies for temporary economic assistance.\textsuperscript{104}

Policy makers at the federal, state, and local levels have been concerned about the plight of those like Susan. However, public assistance to families like Susan's is proving to be increasingly costly, and it is becoming difficult to support families at current, often considered inadequate, assistance levels.\textsuperscript{105} To reduce demand on government budgets, policy makers in the USA took a series of actions beginning with the Child Support Enforcement Program in 1975. Commonly known as the IV-D, the programme was established to ensure that non-custodial parents like Robert took financial responsibility and provided adequate financial support for their children.

Susan is well aware that the IV-D enforcement programme has gone through many changes. Each
change has improved her ability to use the power of state and federal agencies to enforce child support laws and improve child support recovery. For example, if Robert is earning wages, Susan could use the help of state agencies to withhold child support payments. Changes made in 1984 allow Susan to ask a judge to make changes in the financial arrangement, and to ask for larger support payments if circumstances warranted. A 1992 change in the law made it a federal crime if a non-custodial parent fails to make support payments for a child living in a different state. In 1996, the law was strengthened further. Susan could, if needed, seek the help of state agencies to establish paternity, locate a missing parent like Robert and search a new national database registering all new employees to establish if Robert is working. This also allows for the seizure of assets from a delinquent non-custodial parent.

The provisions in the IV-D programme are important to Susan. Many of the decisions she will make for herself and her family will depend on whether she can expect continued and timely child support from Robert. She and Robert bought a home in a community with the best public school system in their metropolitan area. They both understood that their children's future educational attainment would depend on the quality of public schools in their community or her ability to purchase private education. But with Robert gone and without any other visible means of support, Susan has to decide where she will live. Without Robert, Susan will probably have to move from her current house into a community with less desirable public schools. The option of sending her children to a reputable private school has all but disappeared. She is quite concerned that Robert's decision to leave and not provide financial support has exposed her children to the likelihood of lower educational attainment, lower future productivity, and lower future earnings.

Susan had seen many of her friends divorce. The decision to seek a divorce is influenced by the financial settlement each party involved in the divorce is expected to receive. If the likely custodial parent sees a high probability of maintaining her standard of living because she receives child support, alimony, child-care costs, and health insurance benefits, then the economic cost of divorce is low, and she is more likely to ask for a divorce. The perceived cost to the likely non-custodial parent, in the same circumstance, is relatively high, and he may be reluctant to agree to a divorce.

The financial circumstance surrounding a divorce or non-payment of support could also impact Susan's decision to re-marry. Marriage is the culmination of a search process. Search for a new marriage partner involves time and cost. The timing and duration of such a search depends on the financial condition of the parties involved. Robert secreting assets and abandoning financial responsibility has made it less probable that Susan will search for a new partner immediately. Without Robert's support, Susan lacks the financial means to hire someone to take care of her children while she actively seeks a new partner. Without active search, the likelihood of finding a new partner to marry is diminished. She is also concerned that she may not be a suitable partner for the type of individual she would want to marry. Without child support payments from Robert, she and her children could not contribute to the financial well being of the potential new household. Financial stress could make her a less attractive marriage partner, and diminish the likelihood of marriage.

One way for Susan to reduce the financial stress is for her to join the labour force once again. When Susan married Robert she decided to concentrate on raising her family and helping Robert at his business. Outside of the responsibility of paying bills and payroll, she had acquired few marketable skills. Stunned that Robert has left her and the children with no visible and enduring means of financial support, she has to decide if she is going back to work, and if so the number of hours she will actually work. If she goes to work, Susan is likely to earn a small wage income. Since Robert is nowhere to be found, Susan will have to pay for child-care costs from her wage earnings, effectively reducing the hourly wage she earns. Further, the type of job she could find comes without many benefits. She is particularly concerned about health care benefits for herself and her children. But her earned income will make her and her children ineligible for other assistance such as health care. Susan is not sure if going to work is the best thing for her to do. As an alternative, Susan is considering enrolling in her state's Temporary Assistance for Needy Families (TANF) programme. She thought that she could use the temporary assistance while she establishes a support order and use her state's IV-D enforcement programme to seek out Robert. Enrolling in the TANF programmes would help her in other ways; outside of the cash assistance she would receive, she would also become eligible for food stamps and, of particular
importance, Medicaid benefits. She has encountered many women who have chosen the latter because limited earnings potential and lack of in-kind benefits make participation in TANF programmes economically attractive.  

Susan understands that public assistance would provide her with temporary relief. Concerned that many individuals who rely on public assistance programmes are becoming permanently dependent on the programmes, the US Congress changed the welfare laws in 1996. The current law allows a person two consecutive years of assistance and a maximum of five years over her lifetime. With Robert not providing support, the cash, food and medical assistance from the government will be enough to subsist on. Susan hopes that Robert can be found and forced to take financial responsibility. If that were the case, she would lose state supported benefits, eventually at the rate of $1 for each $1 of support she receives. This high implicit tax rate has kept many on public assistance from seeking employment. Along with the high implicit tax rate, she would have to pay for child-care costs unless Robert can be found and forced to pay child-care costs. She fully appreciates the fact that if Robert cannot be made to pay child support, pay for child-care costs when Susan works, and pay for private health insurance, she might be better off seeking public assistance and staying on it for a while.

Cost recovery and cost avoidance
State and federal governments have been very concerned about the labour supply decisions of women who divorce or whose partners abandon them. Abandonment or divorce accompanied by non-payment of child support greatly burdens the state through the justice system, the income tax system, child and spousal support subsidies, social assistance for impoverished families, the collection of unpaid child support and alimony, and through the research and development of policies and strategies in these areas.  

Data from the USA show a disturbing trend. While the child support caseload declined from 19 million in 1995 to 17.5 million in 2000, the caseload is expected to increase to 22 million by 2009. The number of support-eligible children is expected to increase from 20 million in 2000 to 30 million in 2009. Many of these children will grow up in households living in poverty and will receive some form of public assistance. For example, in 1999, 30 per cent of custodial parents lived in poverty, and 15 per cent of all custodial parents received some form of public assistance. As the number of child support cases increases over the next decade, the cost of cash and in-kind public assistance programmes are likely to increase significantly.

Public officials have sought to limit the cost to the public sector. The iterations from 1975 to 1996 in the Child Support Enforcement programmes are designed to improve the odds of establishing child support payment orders and the likelihood of collecting child support when support orders are established. Canadian and US data show that this is not an easy task. Indeed, spousal and child support is often not paid even in cases where a judicial order has issued. In the Canadian province of Ontario, alone, estimates indicated that there were 90,000 unpaid support orders, in 1993, representing $470bn in delinquent payments. Of the total amount of $29.1bn (Canadian) due in 1997, approximate 59 per cent was collected. The amount due and not collected was estimated to be $12bn. US data confirms the Canadian experience. In 2000, 10.5 million cases had support orders, and partial or full collections were made from 7.2 million cases. No collections were made from the remaining 30 per cent of the cases. In 2000, $23bn of current support payments were due and only $12.5bn or 56 per cent collected. This pales in comparison with the child support payments past due. In 2000, $84bn of child support payments were past due (compared to $34.5bn in 1995), and only $5.6bn or 7 per cent was actually collected.

As noted above, a significant percentage of custodial parents live in poverty and receive public assistance. In response, public policy has been designed to improve both cost recovery and cost avoidance through increased collection of child support. Cost recovery occurs when state and federal officials are able to deduct public assistance payments to custodial families. Cost avoidance occurs when a family that would otherwise seek in-kind and cash public assistance chooses not to do so because child support payments make them ineligible for support. Public assistance payments are deducted dollar for dollar after a minimum pass through (usually set at $50 a month). Improvements in child support recovery efforts, through wage garnishment, withholding of federal and state taxes, and asset seizures, allowed the federal and state government to collect $2.6bn
Table 1: Child support 1997

<table>
<thead>
<tr>
<th>Child support payments due and actually received, by gender*</th>
<th>Custodial parents</th>
<th>Custodial mothers</th>
<th>Custodial fathers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custodial parents due child support payments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total (thousands)</td>
<td>7,006</td>
<td>6,331</td>
<td>674</td>
</tr>
<tr>
<td>Mean payments (dollars)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due</td>
<td>4,152</td>
<td>4,172</td>
<td>3,965</td>
</tr>
<tr>
<td>Received</td>
<td>2,440</td>
<td>2,503</td>
<td>1,856</td>
</tr>
<tr>
<td>Deficit</td>
<td>1,712</td>
<td>1,669</td>
<td>2,109</td>
</tr>
<tr>
<td>Aggregate payments (billions of dollars)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child support due</td>
<td>29.1</td>
<td>26.4</td>
<td>2.7</td>
</tr>
<tr>
<td>Child support received</td>
<td>17.1</td>
<td>15.8</td>
<td>1.3</td>
</tr>
<tr>
<td>Aggregate child support deficit</td>
<td>12.0</td>
<td>10.6</td>
<td>1.4</td>
</tr>
<tr>
<td>Percentage of aggregate due actually received</td>
<td>58.8</td>
<td>60.0</td>
<td>46.8</td>
</tr>
</tbody>
</table>

*People 15 years and older with own children under 21 years of age present from an absent parent as of spring 1998

in 2000. Of the amount collected, the TANF families actually received $165m or about 6 per cent. This $2.6bn represents about 15 per cent of all expenditures in TANF programmes in 2000. It is also estimated that if all court orders were established and child support collected in all child support cases in the USA, TANF, food stamp and Medicaid programme expenditure could drop by 16 per cent. In 1989 this would have saved $4.7bn, and considerably more in 2000.120 It is also estimated that an additional dollar of child support collected reduces state expenditure by about 23 cents.121 Applying this figure to the $84bn in delinquent payments, abandonment and secreted assets have cost the public sector an additional $20bn over the past two decades. Since the current amount delinquent is $10bn, the public sector cost of hidden assets would be around $2.5bn yearly. As the child support caseload and children needing support are projected to increase throughout this decade, the cost of secreted asset will also increase proportionally. These are, of course, estimates of direct cost to the public sector when assets are secreted. Further costs arise because of lost or reduced productivity of custodial parent and tax revenue lost when either the custodial or non-custodial parent reduces the labour supply.

Feminisation of poverty

Public policy designed to improve cost recovery and increase cost avoidance decreases the public sector cost of abandonment of family responsibility and asset secretion. But data cited above indicates that only 6 per cent of the additional child support collected, or about $165m, goes to the families directly. The remaining 94 per cent accrues to the federal and state governments. Research in this area suggests that while efforts to enforce child support laws and increase child support payments may reduce public sector cost, these efforts do very little to improve the economic well-being of families.122 Given the increasing incidence of divorce,123 and the stark reality facing many families following the break up of the family unit, an examination must be made of the financial hardships suffered by parties in a divorce situation. A long existent phenomenon has been noted and studied — ‘the feminisation of poverty’.124 This phenomenon identifies the fact that a disproportionate percentage of women are poor and a disproportionate percentage of the poor are women.125 Further, and more pertinent to the thesis of this paper, is that men fare far better, financially, than women following the dissolution of a marriage.126 This unfortunate reality has further consequences for the economic well-being of minor children. Therefore, the feminisation of poverty is an inclusive term that should also be used to reference the plight of children following the dissolution of a marriage.127

Women and children have a common economic reality. Most children live with women and share their economic circumstances. Most women disproportionately assume the direct and indirect
costs and responsibilities of child rearing both during and after a relationship. Unless child support policies recognise existing gender biases and aim at avoiding their further entrenchment, both women and children will continue to live in depressed economic circumstances.\textsuperscript{128}

As a result of the stark reality facing families after divorce, serious contemplation must be given to the financial hardships suffered in a family breakdown situation. It seems intuitively obvious that surviving and thriving financially on a split income, following divorce, may be difficult and likely reduces the standard of living of all concerned. Statistical analysis demonstrates that women and children bear the primary burden of the economic impact of divorce.\textsuperscript{129} It has been noted that, on average, women’s standard of living declines approximately 27 per cent after divorce, while the same measurement indicated a 10 per cent increase in the standard of living for men.\textsuperscript{130}

For most women and children, divorce means precipitous downward mobility — both economically and socially. The reduction in income brings residential moves and inferior housing, drastically diminished or non-existent funds for recreation and leisure, and intense pressures for an inadequate time and money. Financial hardships in turn cause social dislocation and a loss of familiar networks for emotional support and social services, and intensify psychological stress for women and children alike. On a societal level, divorce increases female and child poverty and creates an ever-widening gap between the economic well-being of divorced men, on the one hand, and their children and former wives on the other.\textsuperscript{131}

Hence, separate and apart from the issue of the adequacy of child support and alimony, the hiding of assets following divorce or separation exacerbates a situation already tipped against most women and children in their care. It is widely accepted that custodial parents, often mothers, bear the brunt of economic dislocation.\textsuperscript{132} Further there is the nexus between inadequate child support and women’s long-term economic circumstances (which last long after the children have grown and left the household).\textsuperscript{133} If the legal system is not cognizant of the complexity of child rearing costs and the negative exponential consequences of forgone support, then gender inequality and the feminisation of poverty will continue such that women who head single-parent families will continue to be among the least economically advantaged members of our communities.

CONCLUSION

This paper presented a simple case where Robert, a father, a husband, and a business owner abandons his family and secretes family and business assets overseas. The facts of the case are simple and seemingly innocuous. However, the impact on those directly involved is devastating. Robert’s decision not to honour commitments and meet his obligations to his family and his employees, apart from being unethical, imposed tangible legal and financial costs on those around him. These costs arise because with assets secreted, many of the normal transactions that are associated with asset use, such as payment of taxes or payments to creditors do not occur. To the extent that other members of the immediate family participate in the business, these members of the family potentially become the subject of legal action. This may happen even when the immediate family members do not knowingly participate or benefit from the hiding of assets.

This paper also discussed the consequences when a non-custodial parent hides assets, and refuses financial obligations to his family. While the custodial parent may try to protect herself by engaging in pre-settlement litigation, the success of the effort would depend on the ability to find the hidden assets and keep them intact. The large amounts of money that are owed for child support indicates that the task of identifying and protecting hidden assets is not easily accomplished, and particularly so when assets are secreted overseas. On the other hand, without such assets available to help custodial families, many custodial families experience a significant drop in their standard of living. It is not uncommon to observe a sizeable proportion of these families living a life of poverty, often depending on the state for cash and basic necessities such as food, housing and health care. The economic cost imposed on society, through lost productivity, lost tax revenue, and through the use of public sector resources to assist such families is significant. The fact that such economic costs are borne by women and the children in their custody is cause for further concern.

REFERENCES

\begin{itemize}
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(2) Ibid., p. 45.
(3) Ibid. at pp. 59–60.
(4) Ibid. at p. 88.
(6) May, ref. 1 above, p. 103.
(7) Ibid. at p. 72.
(9) Ibid. at pp. 301–302.
(10) May. ref. 1 above, p. 72.
(13) For further definition of utilitarianism, see Bullock and Stallybrass, ref. 11 above, pp. 656–657.
(14) Harris, J. W. (1989) Legal Philosophies, Butterworths, London. The qualification most often found is that the law be 'just'. Determination of whether a law is just has been the subject of much discourse over the ages. For a review of various approaches to the issue, see, for example, Lord Lloyd of Hampstead, and Freeman, M. D. A. (1985) Lloyd's Introduction to Jurisprudence, 5th edn, Steven and Sons, London.
(16) 'Pre-settlement' refers to the time period prior to final division of family assets, whether by engagement of the judicial system, arbitration, mediation or a less formal process of dispute resolution.
(18) Ibid. at p. 300.
(19) Provisional remedies ... relieve before a full trial can be held, although the plaintiff may be required to make at least a brief appearance before a judge before relief is granted. Permanent remedies are those awarded after a trial has established rights and appropriate remedial measures. Provisional remedies aim only at preserving the status quo. Provisional remedies are also denied unless there is a pressing reason to grant them. Dobbs, D. B. (1973) Dobbs Law of Remedies: Practitioner Practice Series §213, 2nd edn.
(20) The old adage that equity will not intervene where the plaintiff has an 'adequate remedy at law' is still the general rule. Wasserman, ref. 17 above, p. 262; Dobbs, ref. 19.
(21) The plaintiff posting adequate security may satisfy this requirement. Ibid.
(23) See Murphy v. Murphy, 812 P.2d 906 (Alaska 1991) (injunction was issued enjoining the ex-wife from transferring, selling, conveying or alienating any property received as a distribution of marital property). See also Lebowski v. Lebowski, 93 AD 2d 535 (NY App. Div. 1983) (confirming the court's ability to issue preliminary injunctions aimed at the preservation of marital assets pending equitable distribution).
(24) For example see 'Domestic Relations Law, Provisions Applicable to More Than One Type of Matrimonial Action', NY Dow Rev. Law 234 (Consol. 2001). In any action for divorce, for a separation, for an annulment or to declare the nullity of a void marriage, the court may (1) determine any question as to the title to property arising between the parties, and (2) make such direction, between the parties, concerning the possession of property, as in the court's discretion justice requires having regard to the circumstances of the case and of the respective parties. Such direction may be made in the final judgment, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and final judgment.
(25) Wasserman, ref. 17 above.
(26) 'Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested', Black's Law Dictionary (1999) 7th edn. p. 597.
(27) For instance, where the defendant is a non-resident of the state or a foreign corporation where the defendant threatens to remove property from the state with intent to hinder, defraud or delay creditors, or, perhaps most directly relevant to an ex-spouse, where the payment of monies is expected and delayed and such claim is unsecured or the security is valueless. Wasserman, ref. 17 above, p. 270.
(28) Ibid. Wasserman, ref. 17 above. And author argues that the creation of such leverage may unfairly improve the position of the plaintiff and is a reason why prejudgment attachment should not be preferred remedy.
(29) Ibid.
(30) Dobbs, ref. 19 above, §1.3. One usually contemplates the garnishment of wages or salaries, which is usually a claim for work that an employee expects and may enforce against their employer.
(31) See Rich v Rich, No. C8-96-2593, 1997 WL 406645 (Minn. Ct App. 1997), where a husband who did not pay his tax obligations, such that his ex-wife's wages were garnished to collect back taxes, was ordered to repay her for the income she had lost due to the garnishment of her wages. Additionally, it was found that Mr Rich had hidden and disguised income from the purchase and sale of motor vehicles. Accordingly, the court ordered that he provide vehicle titles to his ex-wife. See also Ebel v Ebel (In re Marriage of Ebel), 618 NW 2d 273 (Wis. Ct App. 2000), where the court found the retained earnings of the corporation to be 'excessive'. In calculating the spouse's income for child support purposes, the court included one half of the retained earnings.
of the corporation (Ehle, Inc.). It also aggregated one half of the wages improperly paid to family members.


(34) See Ruice-Latella v Dec’s Inc., No. CT-00049738, 2000 WL 1260983 (Conn. Super Ct 2000), where the court, as part of an effort to compel Mt Latella to comply with the orders of the court, ordered him to execute and tender to his ex-wife a security agreement pledging his 120 shares of stock in Dec’s Inc., a waste disposal company, as security for the money he owed her.

(35) See Bengt, 726 P.2d 1088, where in addition to piercing the corporate veil, the court awarded punitive damages because the conduct of the evading spouse rose to the level of being akin to a tort, as it was fraudulent and in bad faith. The judge found that the actions of the evading spouse were willful, malicious, and contemptuous.


(39) Equitable remedies are generally enforceable by consent while legal remedies are not. Dobbs, ref. 19 above, §12.

(40) Ibid. §1.4.

(41) Ibid.

(42) With both spouses working, they may have been better off economically if they had remained unmarried, even if they lived together and shared expenses, because more of their aggregate income would have been subject to tax at each rate of tax as each individual moved up the tax rate scale. US income tax rate brackets are narrower for joint returns than twice the size of the brackets for unmarried individuals. Separate filing for married couples is rarely advantageous, because each rate bracket for separately filing married individuals is half the size of the married filing jointly bracket rather than the broader brackets available for unmarried individuals. See s. 1 of the Internal Revenue Code of 1986, as amended (the ‘Code’ or ‘IRC’) followed by a section number.

(43) IRC §6013(d)(3) (2001).


(45) Revenue Act of 1948, Pub. L. No. 80–471, ch. 168, 911, 62 Stat. 119, 114. The Revenue Act of 1938, 52 Stat. 478 (see HR Rep. No. 1869, 75th Cong. 3d Sess. (1938)) explicitly imposed joint and several liability for joint tax returns, citing ‘administrative reasons’. It was not until 1948 when Congress allowed more favourable marriage rates, with an income-splitting option. Nevertheless, even the original joint filing provisions provided a benefit to taxpayers as the unmutilated deductions of one spouse became available to the other.


(47) In the sense of not legally separated. For purposes of the US tax laws, a couple, once married, generally is married until divorce or legal separation, IRC §7703(a) (2001). However, for purposes of including and deducting alimony payments following a divorce or decree of separate maintenance, a couple ceases to be married only if they no longer are members of the same household, IRC §71(b)(1)(C) (2001).

(48) Beck, ref. 44 above, p. 317. ‘The Internal Revenue Service may collect from either spouse at its pleasure, and apparently chooses its target simply from the point of view of ease of collection’. Under French law, the taxing authorities may not commence collection proceedings against a divorced or abandoned wife until all remedies against the husband are exhausted. Beck, p. 386, citing Int. CJ, 7th July, 1980, 80–118–A1 (French Treasury Directive).

(49) Discussed in detail later.

(50) IRC §502(b) (2001). See eg McQuatters v Commissioner, TC Memo. 1973–240, involving tax deficiencies being assessed against individual employees who the IRS alleged did not report the full amounts of their tip income. The Tax Court approved a deficiency assessed on an estimated percentage of tips to meals.

(51) Welsh v Helvering, 290 US 111, 115 (1933).

(52) The petitioner has the burden of proof in showing that the Secretary’s determination is incorrect. The petitioner has to prove by a preponderance of the evidence that the determination is incorrect. Helvering v Taylor, 293 US 507, 515, (1035), Tax Court Rule 142(a).

(53) IRC §6601 (2001).

(54) IRC §6651 (2001).

(55) IRC §6651(c) (2001).

(56) IRC §6664(b) (penalties) and 6661(c)(1) (interest); Dello v Commissioner, 24 TC 434 (1955).

(57) IRC §6663(c).

(58) Chapter 7 of the Bankruptcy Act of 1978 permits individuals to eliminate their various personal debts by means of a bankruptcy proceeding, 11 USC §§301, 727.

(59) 11 USC §§523(a)(1)(C).

(60) IRC §6013(e) before repeal by s. 320(e)(1) of the IRS Restructuring and Reform Act of 1998 (the ‘IRS Restructuring Act’), PL 105–206, effective for tax liability incurred after 22nd July, 1998 or before that date and outstanding on that date.


(62) Treas. Reg. §1.6013–5(b). See also Altman v US, 738 F. Supp. 83, 86 (1990), which states that to qualify as an innocent spouse, she must show she neither knew, nor had reason to know, nor benefited from the unreported income.


(64) Statement of Charles O. Rossotti, Commissioner of Internal Revenue, before the Senate Finance Committee (2nd February, 2000), at 7.

(65) Statement of Michael Brostek, Director, Tax Issues, Government Accounting Office at USA Senate Finance Committee, Hearing on Tax Scans, 2001 TNT 68–93. The IRS did not establish its Innocent Spouse Tracking System Data until after the Reform Act.

(66) IRC §6015(b)(1)(B).

(67) IRC §6015(b)(1)(C)
Securing Assets to Evade Non-Business Obligations and Responsibilities

(68) IRC §6015(b)(2). See discussion in text.
(69) IRC §6015(f). See discussion in text.
(70) IRC §6015(c)(1).
(71) IRC §6015(c)(2) (2001).
(72) IRC §6015(c)(1).
(74) IRC §6015(c)(2)(B) (2001).
(75) IRC §6015(c)(3).C.
(76) IRC §6015(c)(1) (2001).
(77) IRC §6015(c)(2) (2001).
(78) IRC §6015(d).
(79) Ibid.
(81) Each employer has the obligation to withhold income taxes from the compensation of employees and pay the amounts withheld to the US Treasury. IRC §§3402, 3403. IRC §3102 imposes a like withholding obligation with respect to social security taxes. And see IRC §3501.
(83) IRC §5672 imposes a 100 per cent penalty for withheld taxes upon the responsible person.
(84) Ibid. The trust is not a true trust but shares certain characteristics with a trust so that treating the person who is responsible for withholding like a trustee has some justification.
(85) IRC §51 makes the tax withheld on wages a refundable tax credit for the employer.
(86) Treas. Reg. §1.51-1(a) (1986).
(87) IRC §3402(a).
(89) Surplus exists only in the sense that the government does not need the funds currently to meet its benefit obligations but even the most favourable estimate predicts that the ageing US population will compel the government to augment the social security budget from other sources within the next 5–15 years. The Board of Trustees of the Federal Old-Age and Survivors Disability Insurance estimates that the fund will begin running a deficit around 2015 and will be exhausted by 2037 if there is no change in the system. Soc. Sec. Adm. 2000 Annual report of the Board of Trustees of Federal Old-Age and Survivors Disability Insurance Trust Fund 3–4 (2000) (these figures refer to combined OASDI trust funds and use intermediate assumptions), available at ftp://ftp.ssa.gov/Pub/OACT/TR00.pdf.
(90) Senator Daniel Patrick Moynihan criticised the Bush I administration for using the Social Security Trust Fund as 'general revenue for general government' in 1990 (it had been used to mask the general deficit since 1988). 'Moynihan Proposes Return to Pay as You Go For Social Security', BN3 Washington Insider, 2nd January, 1990. In 1998, Senate Democrats denounced the Republican majority for attempting to finance tax cuts with the temporary Social Security surplus. Newman, B. (1998) 'USA Budget: Roth Says Kasich Plan to Fund Big Tax Cuts With Social Security Surplus Is Impractical', BN3 Washington Insider, 27th July. Finally in 1999, GOP leaders pledged that they would not support any bills that 'dipped into the Social Security Trust Fund Surplus', although by year's end they could not keep the promise. Newman, B. (1999) 'USA Budget: CBO Says Congress Broke Spending Cap, Dipped Into Social Security Surplus', BN3 Washington Insider, 3rd December. Also in 1999, the House passed HR 1259 that would lock away the entire projected $1.8tn surplus and make it harder to use for anything other than Social Security or Medicare reform. The Senate rejected the Bill along party lines. Apparently there is still no prohibition on 'dipping into the fund'. This year's tax cuts resulted almost immediately in dipping, and that was before President Bush requested an additional $18bn for defence, and well before the 11th September tragedy that caused him to ask for even more. 147 Cong. Rec. S 7313, 'Use of Medicare and Social Security Trust Funds', Senators Conrad, Dorgan, and Byrd.
(91) IRC §6672.
(93) IRC §5672. Except through an offer in compromise discussed in the following.
(94) IRC §6671 defines 'person' as including 'an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs'. Operating the businesses through a limited liability vehicle that generally affords protection from personal responsibility does not insulate the responsible person from liability for trust fund taxes.
(95) IRC §7122.
(96) Treasury regulation §6011.203 outlines the procedures for offers in compromise.
(98) These historical standards have applied to offers in compromise for many years. 'Report Of The Joint Committee On Taxation Relating To The Internal Revenue Service As Required By Theirs Reform And Restructuring Act Of 1998', JCM-33–01 (7th May, 2001), 2001 TNT 89–8, para. 192.
(99) Ibid. The IRS stated that in 2000, it accepted approximately 80 per cent of offers in compromise that taxpayers based upon new, broadened standards of severe economic hardship.
(101) See Internal Revenue Service Manual Handbook 4.3.2., s. 1.2(4) (25th May, 2000).
(103) Recent US data show that 30 per cent of families due child support failed to collect due payment and many of the remaining 70 per cent receive only partial payment. As of 1995, 13.7 million families had a single parent raising children, with each child a candidate to receive child support. Of these families, about 8 million had child support orders in place. Among these families, 7 million families were due payment with about 70 per cent or 5 million families having received some or all of the due payment.
(104) US data show that in 1993, approximately 47 per cent of AFDC mothers were never married, 25 per cent were widowed or divorced, and 17 per cent were married but the father was not living at home. In all, over 80 per cent of families on AFDC were eligible for child support.
(105) A person needing public assistance may also become eligible for other programmes such as, Medicaid, food stamps, low income housing, and school lunch, and in the case of pregnant women or with small children, in the Women with Infant Children (WIC) programme. Total expenditures in the programmes were approximately about $170bn in fiscal year 2000, with Medicaid accounting for over 60 per cent of the expenditures.
(106) Both the custodial and the non-custodial parent can ask for such review at three-year intervals.
(107) Until 1975, the US federal role in child support enforcement was limited. Following adoption of Public Law 93–467, the federal responsibilities included establishing standards for state programmes, monitoring state programmes, and
establishing service to locate missing parents. The revisions in 1984 required states to withhold income of and establish claims on other assets of delinquent parent. States were also to establish child support payment guidelines. In addition to the items mentioned in the text, the Child Support Recovery Act of 1992 and the Personal Responsibility and Work Opportunity Act of 1996 imposed higher sanctions (revocation of license) and strengthened enforcement mechanisms.


(110) See, for example, Rubin, P. (1986) 'Child Support, Welfare, Dependency, and Poverty', American Economic Review, Vol. 76, No. 4, pp. 768–788. Rubin finds that participation higher for low wage women and lower for women who receive child support payments. The author also reports that the post divorce decision to work is significantly affected by prior history of work. Those who were working at the time of divorce were more likely to work while those who were unemployed or not in the labour force were more likely not to work and seek public assistance instead. Huu also reports that a $1,000 increase in child support increases the labour supply of never married women by 53 hours. Wu, Wei Yin (1999) 'Child Support, Welfare, Dependency, and Women's Labor Supply', Journal of Human Resources, Vol. 4, No. 1, pp. 71–103. See also Pearce, who notes that much of women's poverty is due to two causes unique to females. Women must provide all or most of the support for their children, and they are disadvantaged in the labour market. Pearce, D. (1985) 'Welfare is not for Women: Toward a Model of Advocacy to Meet the Needs of Women in Poverty', Clearing House Review, Vol. 19, p. 413.


(113) Ibid.

(114) The 30 per cent poverty rate in 1999 is significantly larger than the poverty rate of 12 per cent among the general population. Ibid.

(115) In 1997 there were 7,006 thousand custodial parents (6,331 mothers and 675 fathers) owed money for child support. See US Census Bureau, Current Population Survey, April 1998 at http://www.census.gov/hhes/www/childsupport/tables/tab4.html. The mean amount due was $4,152, and only $2,440 was received, a deficit of $1,712.


(118) Or, an eligible family chooses not to ask for support because the additional public assistance would represent a marginal increase in their welfare, and they would have to abide the conditions imposed by the state to receive such support. Cost avoidance can also occur because the custodial parent chooses to marry and/or chooses to work for income in addition to child support payments. The latter is more likely if the non-custodial parent shares child-care costs and also provides private health insurance.

(119) Office of Child Support Enforcement, ref. 117 above. The state governments received a total of $1.45bn while the US Federal government kept $1.88bn.


(121) Sorensen and Wheaton, ibid.

(122) See Rubin, ref. 110 above.

(123) In Canada, consistency in the rate of divorce has been observed since the enactment of the Divorce Act in 1968. The divorce rate in 1968 was 54.8 per 100,000 people. By 1978, the divorce rate had risen to 243.4 per 100,000 people, and by 1988 to 308.1 per 100,000 people. In Canada in 1990 there were 294 divorces per 100,000 people. Adams, and Nagnon, D. (1989) 'Marrying and Divorcing: A Status Report for Canada', Can. Soc. Trends, Vol. 1, 1, indicated that one in every three Canadian marriages was expected to end in divorce. In 1998, 2.46 per 1,000 people were divorced in Canada. See Divorce Magazine.com, at http://www.divorcemag.com/statistics/ statsCAN.html; see also Non-US Divorce Rates at http://www.divorceinfo.org/nonus.html. Similar trends have been observed in the USA where, as of 1992, 11 per cent of all adults who had ever been married were divorced. See Saluter, A. F. (1992) US Dept of Commerce, US Census Bureau, Current Population Survey Reports, Marital Status and Living Arrangements, Vol. VII, March. This figure rose from only 4 per cent in 1970. Additionally, the Department of Commerce figures point to a 58 per cent increase in the number of female single-parent households between 1970 and 1980. This trend continued from 1980–90 where there was a further 25 per cent increase and a further four per cent increase in female-headed households from 1990–91. Canadian statistics reveal a similar trend as the number of single-parent families increased from 478,000 in 1971 to more than twice that number in 1991, reaching 955,000 families. This 1991 figure represents the fact that single parent's head 13 per cent of all Canadian families — this is an increase of 4 per cent from 1971. In Canada, of the 955,000 families headed by single parents in 1991, women headed over 80 per cent and 57 per cent of these female-headed families resulted from divorce or separation.
Finally, 40 per cent of divorces granted in 1989 involved children.


(126) It has become apparent that the majority of the single-parent families are barely surviving economically. Canadian statistics released in 1993 indicate that single woman and children are getting poorer, the number of divorces is rising, and the feminisation of poverty is escalating. See Statistics Canada (1993), A Portrait of Families in Canada, 8th November, available at: http://www.statscan.ca/english/IPS/Data/89-523-XPE.htm [hereinafter Portrait]. In 1991, 949,000, or 13 per cent, of Canadian families lived below the cut-off level set by Statistics Canada for low-income families. Three out of five single-parent families fell within this low-income group. Of the female-headed single-parent families, 61.9 per cent fell into this group of low-income families. The corresponding figure for male-headed families was 24.4 per cent. Therefore, the economic plight of single mothers is highlighted by the fact that female-headed single parents, which made up 6 per cent of the total number of Canadian families, represented 29 per cent of all low-income families. In the USA the figures are comparable. In 1991, 35.6 per cent of female, single-parent families were below the poverty line, as compared to an average of 11.3 per cent of all families. Dukler, J. and Proctor, B. D. (2000) US Dept of Commerce, US Census bureau, Current Population Reports, Poverty in the United States, p. 71, September, available at: http://www.census.gov/hhes/www/povly99.html. In 1999, 27.8 per cent of female, single-parent families were below the poverty line, as compared to 9.3 per cent of all families. The corresponding figure for male-headed families in 1991 was 13 per cent, and in 1999, it was 17 per cent.

(127) See Moynihan, D. (1966) Family and Nation, p. 147. (The term 'feminisation of poverty' gets only halfway to the point which is that children, slightly more than half of whom are male, are disproportionately poor in the USA.


(129) Patter, ref. 126 above; Salter, ref. 123 above; Dukler and Proctor, ref. 126 above, p. 6; Pearce, ref. 107 above.


(131) Weitzman, ref. 130 above.

(132) See Feinberg and Knox, ref. 124 above; the Canadian Department of Justice released a survey on the effect of divorce on families in 1990. Can. Dept of Justice, Bureau of Review (1995) Evaluation of Divorce Act — Phase I: Monitoring and Evaluation, p. 91. This survey revealed that following divorce, 46 per cent of women lived below the poverty line, even when child and spousal support payments were considered. Without such payments, 55 per cent fell below the poverty line. By contrast, only 10 per cent of men lived on or below the poverty line after paying support. Can. Dept of Justice, Bureau of Review (1987) Evaluation of Divorce Act — Phase I: Collection of Basic Data. The situation in the USA is comparable. Indeed, the poverty rate for children in 1991 was found to be 19.6 per cent higher than that obtained for any other age group. For example, in 1990, 61.5 per cent of all children in the USA living below the poverty line lived with a single parent and 51.1 per cent of these children with a single mother. US Dept of Commerce (1992) Statistical Abstracts of the United States 1992, 112th edn.

(133) Zweibel, ref. 128 above, p. 6. See L'Heureux-Dube, ref. 111 above, referencing many statistics evidencing the feminisation of poverty following divorce, and recognising the complicated and often ignored, social, non-monetary and economic situation of women and children after the dissolution of a marriage.

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