

# 'Single bliss' pays off at tax time for unwed couples

Do you have to pay to legally play house?  
Congress and the Internal Revenue Service (IRS) may be contributing to the escalating divorce rate and number of couples living together without "benefit" of wedlock.

Today, in the United States, a married couple with each spouse earning \$30,000 will pay an estimated \$3,970 more in federal income taxes than their unmarried counterparts, if both couples take the standard deduction. This seeming inequity, discussed in a University of Michigan Law School publication, resulted from the 1969 Tax

Reform Act which created new tax rates for single persons in order to offset some of the tax advantages of marriage.

In the process, the legislation inadvertently created what amounts to a tax "penalty" for married people.

**THE DISPARITY** has led to a spate of year-end "quick divorces" as married couples attempt to list their official tax status as "single" on Dec. 31. In some cases, the couples remarry after the new year.

Legal implications of this situation, and of a new crackdown by the Internal

Revenue Service (IRS), are examined in the current issue of the Michigan Law Review, a publication of the U-M Law School.

Although the IRS has sought to invalidate these year-end tax avoidance schemes on grounds that they are "sham transactions," the courts are not likely to stand behind the IRS unless the legislation is changed by Congress, argues a "note" prepared by the Law Review's editorial board.

Noting that such "sham transactions" by commercial firms have been found invalid in IRS legal actions, the Law Review article suggests that applica-

tion of the same doctrine in divorce cases does not follow any "clear legislative purpose."

It notes, for example, that divorce is an area governed by individual state law (even in cases where a foreign divorce must be recognized on basis of the law of a couple's state of residence), and that it is doubtful the legislature desires to "federalize divorce laws" or intended purposely to create a marriage tax penalty.

"Admittedly, year-end divorce and remarriage schemes are troublesome tax avoidance devices. They violate no-

tions of fair play and equity," notes the article.

"But if Congress is genuinely offended by the schemes it can attack them through direct rules. The IRS should not be allowed to lead the assault by applying a business doctrine to the most intimate societal unit."

APPLICATION of the "sham" doctrine by the IRS in divorce cases was first raised in 1976 after the "60 Minutes" television program featured

some studies of marriages dissolved to save taxes.

After the show, the IRS "discussed the problem hypothetically in Revenue Ruling 76-255 . . . (which) suggests that the Internal Revenue Service will challenge divorces obtained in foreign jurisdictions whenever the couples intend to, and do immediately, remarry," according to the article.

In addition to "letter rulings" in response to specific inquiries, the IRS has recently begun to challenge year-end divorce schemes in court.

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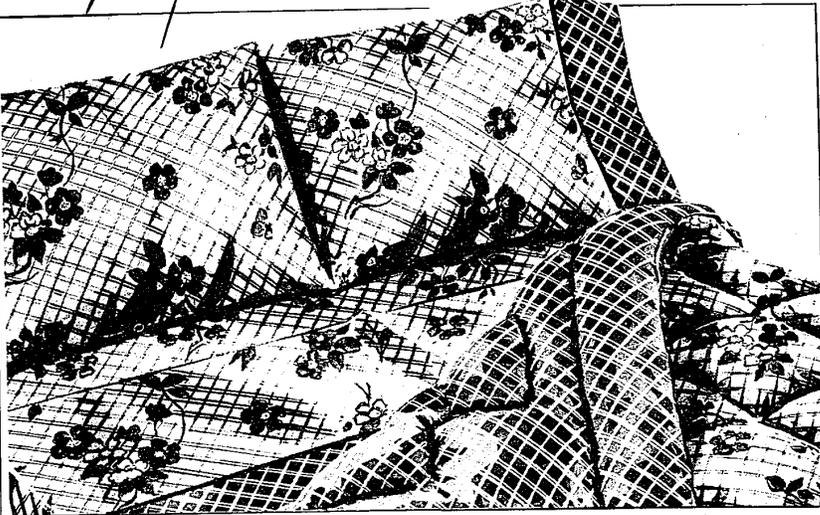
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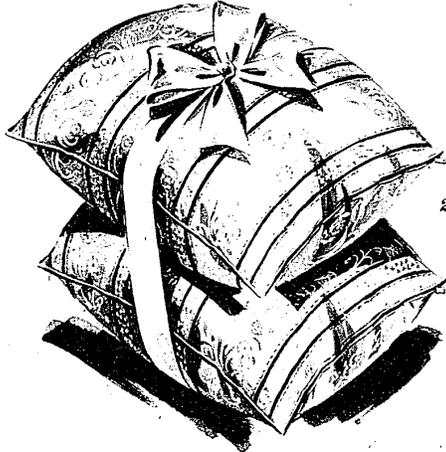
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