

Rewarding Housework without Encouraging It

This paper evaluates the exclusion of married women's housework from gross income. This practice discriminates against married couples where both spouses perform market labor, and devalues housework, leaving women economically vulnerable. While I realize that these problems may be partially solved by changing the joint filing system, because I feel that the housework women perform needs to be measured and compensated, I am limiting my discussion to the imputed income from services of married persons as one taxpaying unit.¹

I. Current State of the Law: Imputed Income is Excluded from Gross Income.

The housework married women perform for their household is not considered to be "gross income" under the Internal Revenue Code (the Code). The truth of this statement seems to be generally accepted and unquestioned, but the rationale remains unclear. No provisions of the Code or of the Treasury Regulations address imputed income.²

Spousal housework is a unique category of imputed income because it comprises a relatively large tax shelter as compared with other self-performed activities. The value of spousal housework is immense and un-taxed. The United Nations estimates that women's unpaid

¹ This system taxes couples as a unit on their aggregate income, which results in what has become known as the "marriage penalty." Jeannette Anderson Winn, *Till Death Do We Split: Married Couples and Single Persons Under the Individual Income Tax*, 34 S.C. L. Rev. 829, 835-36 (1983). The penalty occurs when the higher rate applied to the higher combined income results in a married couple paying more taxes than a non-married couple with the same income. The severity of the penalty increases the more evenly the taxable income is divided between the spouses. *Id.* Independent filing has been called for by many feminists as a way of promoting women's independence. Annie Alstott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 96 Colum. L. Rev. 2001, 2009 (1996). Individual filing would raise the average tax rate of one-earner couples and reduce the average tax rate of two-earner couples. *Id.*

² I.R.C. §§ 61, 62; Treas. Reg. 1-61

domestic labor produces the equivalent of eleven trillion dollars of wealth annually worldwide.³

It puts the value of the entire worldwide economy at twenty-three trillion dollars.⁴

A The Current Gendered Division of Labor.

Women perform the majority of housework. I use the term “housework” to include cooking, cleaning, laundry, childcare, shopping, and other tasks that are required for the day-to-day functioning of a household. Women perform eighty percent of child-care activities and more than sixty percent of housework.⁵ Experts estimate women spend thirty-one to fifty hours per week on household labor.⁶ Additionally, married women working full time spend an average of almost twenty-five hours per week doing housework.⁷ On the other hand, full time, working, married men average only thirteen hours.⁸

Throughout this paper, I focus on how the exclusion of imputed income from gross income affects women. I would like to note, however, that the rule excluding imputed income is gender neutral on its face. For all the non traditional couples where the man performs housework while the woman performs market labor, that couple also pays less tax than the two-earner couple because benefit from the man’s housework is excluded from income. The man’s work in this situation is equally devalued and the two-earner couple remains disadvantaged in comparison to these nonconformist one-earner couples. Thus, the exclusion of imputed income from household services fails to recognize the worth of housework by both genders.

B What is income?

³ Marian Okada, *A Labor of Love*, 9 Cardozo Women’s L.J. 527, 528 (2003).

⁴ *Id.*

⁵ Joan Williams, *Unbending Gender*, 2 (2000).

⁶ *Id.* at 2; Nancy C. Staudt, *Taxing Housework*, 84 Geo. L.J. 1571, 1580 (1996); Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 Yale J.L. & Feminism 51, 52 (1997).

⁷ Joni Hersch, *Taxing Women: Thoughts on a Gendered Economy: Symposium: An Economic Perspective: The Economics of Home Production*, 6 S. Cal. Rev. L. & Women’s Stud. 421, 425 (1997).

⁸ *Id.*

Both the Sixteen Amendment of the U.S. Constitution and section 61 of the Internal Revenue Code (I.R.C.) define “income” as “income from whatever source derived.”⁹ Income is an expansive and elastic concept, which Congress uses to exert “the full measure of its taxing power.”¹⁰ Gross income is “income realized in any form, whether in money, property, or services...”¹¹ Section 61 lists specifically includes items in “gross income,” but this list is not finite and items are not to be excluded from gross income without a specific provision saying so.¹²

The benefit derived from spousal housework seems to fit within the I.R.C.’s broad definition of income. The working spouse realizes income from the services of the non-working spouse in the form of home-cooked meals, childcare, and cleaning services. Moreover, the income from household services is not specifically excluded by a statutory provision. Without statutory authorization to exclude these services, the income from them should be included in calculating the gross income.¹³

There are several theoretical approaches to defining personal income. The most prominent, Haig-Simons Approach, defines income as the sum of consumption rights exercises and the change in savings over the course of the year.¹⁴ In effect this approach measures a person’s income according to how much one consumes.¹⁵ Another approach is the Economic Benefit Approach, which posits that people should be taxed on the economic benefit they receive

⁹ U.S. CONST. amend. XVI; I.R.C. § 61.

¹⁰ *Helvering v. Clifford*, 309 U.S. 331, 334.

¹¹ Treas. Reg. Section 1.61-1(a).

¹² *Id.*

¹³ *Id.*

¹⁴ H. Simons, *Personal Income Taxation* 50 (1938).

¹⁵ Michael J. McIntyre and Oliver Oldman, *Taxation of the Family in a Comprehensive and Simplified Income Tax*, 90 Harv. L. Rev. 1573 (1977)

during the year, including benefit received from intangible items.¹⁶ A more simple approach to income is the “Ability to Pay.”¹⁷ This approach rationalizes a higher tax according to a person’s ability to pay that tax.

The unpaid work performed by one’s spouse seems to fit within the purpose behind income taxation. The spouse acquires more consumption rights throughout the year, the spouse receives and economic benefit equal to the value of those services, and including these services as gross income would yield a more accurate measurement of a person’s ability to pay.¹⁸

C Spousal Housework is Imputed Income.

Why are the un-paid services provided by one’s spouse not “income”? Spousal housework is what is known as imputed income. Imputed income has been defined as “a flow of satisfactions from durable good owned and used by the taxpayer, or from goods and services arising out of the personal exertions of the taxpayer on his own behalf.”¹⁹ The most common example of imputed income is the rental value of an owner’s home.²⁰ Imputed Income also includes the value of produce grown by a farmer on his own land and consumed by his family, but any profit from produce sold in the market is considered taxable income to the farmer. Imputed Income also includes the flow of satisfaction from the personal exertions of the taxpayer’s spouse.²¹ Due to the lack of a statutory exemptions and case law on point, there exists several hypotheses.

¹⁶ R. A. Musgrave & A. T. Peacock, *Classics in the Theory of Public Finance* (1958).

¹⁷ *Id.*

¹⁸ While some might argue that the beneficiary of spousal house labor is not receiving monetary income and therefore does not have a greater ability to pay, I contend that because they do not have to purchase market household labor nor do it themselves, beneficiaries do have more actual wealth than those without spouse’s doing house labor.

¹⁹ Donald B. Marsh, *The Taxation of Imputed Income*, 58 Pol. Sci. Q. 514, 514 (1943).

²⁰ *Helvering v. Independent Life Ins. Co.*, 292 U.S. 371 (1934).

²¹ Michael J. Graetz & Deborah H. Schenk, *Federal Income Taxation: Principles and Policies 4th Ed.*, 464-65 (2001); J. Martin Burke & Michael K. Friel, *Taxation of Individual Income 4th Ed.*, 31 (1997).

One explanation for spousal housework being excluded from income is that all other items of income involve a taxable event or a transaction.²² Because a husband and wife are one tax unit under the Code, there is no realization of the gain or benefit when goods or services are exchanged between them. This idea is also exemplified in I.R.C. § 1041 which exempts property transfers incident to marriage. However, not all income involves a transaction. For example, gifts involve a transaction transferring property from the donor to donee. The code excludes the value of the gift from income under I.R.C. § 102. Also, under I.R.C. § 104, compensatory damages incurred because of personal physical injuries are excluded from gross income even though such an award transfers money to the victim.

A more traditional explanation is that family life is private and therefore government should not examine the allocation of resources within the home. This rationale has been used to oppress women for centuries. The mythical separation between public and private spheres of life has been used to shelter male violence from public scrutiny and to disqualify women for public support. In continuation with the trend of excluding women from the market place, the public private divide is justifying a tax policy that degrades women's work.

Moreover, the Code imposes taxes in other areas of private life such as vacation homes and home-offices under I.R.C. § 280A, and personal hobbies under I.R.C. § 183. For each of these activities the code breaks down the expenses into those allocable to the activity and those expenses that are personal. Likewise, death might be one of the most private experiences a person can have, but the tax code does not shy away from examining the allocation of resources regarding a person's death.²³

²² Proposed in class by Professor Nancy Shurtz. (Fall 2005).

²³ I.R.C § 641. The Estate Tax.

Another explanation put forward is that all un-paid services performed by spouses are gifts to the other spouse. Gifts are specifically excluded from gross income under §102 as long as they are from a disinterested and detached generosity and out of love and affection.²⁴ The problem with assuming housework is a gift is that women's intent is superceded by the government, taking away women's ability to choose whether their work is given without an expectation of some form of repayment. Under section 102 the IRS speaks for non working spouses: "our work is freely given out of love and affection and we expect nothing in return."

Transfers made with the expectation that future services or compensation will be rendered in return are not gifts.²⁵ There are no studies indicating that non-working spouses don't expect some form of return whether it be money, food, or shelter. If a spouse expects some form of compensation, the benefit to the other spouse should be included in income and taxed. There may be times when chores are done purely out of love and affection, but the I.R.S. should not create a blanket categorization of housework as a gift.

II. The Exclusion of Spousal Housework Disadvantages Two-earner Couples.

Jack and Jill are a married couple with two kids. Jack earns \$50,000 a year working as a accountant. Jill cleans the house and takes care of the kids. As a couple, their taxable income is \$50,000 per year (his salary is considered gross income and her housework and childcare are not). if they are in the 30% bracket, they will pay \$15,000 in taxes. Leaving them with \$35,000. Ken and Barbi are a married couple with 2 kids. Ken earns \$50,000 a year working as a store manager. Barbi earns \$30,000 a year working as a model. They hire a housekeeper and a childcare provider whom they pay a total of \$30,000 a year. As a couple, their taxable income is

²⁴ I.R.C. § 102; *C.I.R. v. Duberstein*, 363 U.S. 278, 285, 80 S.Ct. 1190 (1960).

²⁵ *Olk v. United States*, 536 F.2d 876 (9th Cir.), cert denied, 429 U.S. 920 (1976).

\$80,000 (both their salaries are considered gross income). If they are taxed at 30%, they will pay \$24,000 in taxes. Subtracting the cost of housework and childcare, they will have \$26,000 left over. Jack and Jill will have \$9,000 more than Ken and Barbi at the end of the year.

As exemplified by the example, couples have a tax incentive to have one spouse stay home to perform the childcare and housework. Even if a two wage-earning couple does all their own childcare and housework as well as work, they are at a disadvantage because they will not have as much leisure time as the one wage-earning couple.

Moreover, the tax system is contributing to traditional gendered divisions of labor.²⁶ The tax code's incentive for one earner couples encourages traditional gender roles because usually the man will be the wage earner and the woman will work in the home. The fact that men have a higher earning potential only compounds this dynamic because if only one spouse is going to work in the market it makes financial sense for it to be the one who will earn more.

The Exclusion of Spousal Housework Devalues Women.

First, the lack of consideration of this subject by Congress indicates the insignificance placed on the work. Despite the fact that home labor comprises somewhere between twenty-four percent and sixty percent of the United States Gross Domestic Product, congressional tax committees have failed to explain why this untapped tax base remains excluded from income.²⁷ Congressional avoidance of this issue may have to do with the facts that men carry more weight as taxpayers due to their greater incomes, men far outnumber women as legislators, and that men fill many more seats on congressional tax committees in particular.²⁸ We should be suspect of the overwhelming power concentration generally, but particularly so in light of the fact that at

²⁶ *Supra* n. 6 at 1573.

²⁷ Ann Chadeau, *What is Households' Non-Market Production Worth?*, 18 OECD Econ. Stud. 85 (1992).

²⁸ Marjorie E. Kornhauser, *A Legislator name Sue: Re-Imaging the Income Tax*.

least until recently most Congressmen were the sole earner in their family and probably benefited from the exclusion of housework.²⁹ The tacit endorsement of sexually oppressive tax policy may also be explained by the fact that male politicians, by virtue of being male, may not consider the plight of women generally.

Spousal housework becomes economically valuable to a couple when it is excluded from income. In this indirect way, women's work is valued. On the other hand, even though one-wager earner couples are receiving a benefit from the exclusion of imputed income, it does not follow that the women doing the work are receiving that benefit. That Congress assumes resources are divided equally between spouses is shown by the joint return provisions.³⁰ This assumption is not fully warranted, however. Much research demonstrates that resources are not equally shared within families.³¹ Spouses do not equally share in savings accrued during marriage.³² The same goes for other assets like retirement funds and pension rights.³³ Studies indicate that often women do not have access to disposable income, especially women who are married to high-income men.³⁴ Therefore, while I acknowledge that housework is being recognized as valuable to their spouses in the form of a tax shelter, the non-working spouse does not necessarily reap this benefit.

²⁹ This theory is further supported by the fact that most Congressmen are wealthy. Low-income couples are likely to be two-wage earning couples. The benefit derived from the exclusion of imputed income is only available if a couple has enough market income to pay for all their expenses with only one spouse performing market labor. If the couple does not have enough market income to support themselves during the year, the second spouse will have to enter the market also. Thus, the exclusion of imputed income helps couples who have the resources to support themselves without two wages, i.e. Congressmen and their wives.

³⁰ I.R.C. § 6093; joint filing adds the income from each spouse and taxes the marital unit at the rate applicable to the sum, effectively taxing each spouse at a higher rate than they would be taxed at if they were not married and filed individually. The policy behind this is that each spouse enjoys the consumption rights from the other's income and should be taxed on that benefit.

³¹ Christine Delphy & Diana Leonard, *Class Analysis, Gender Analysis and the Family*, in *Gender and Stratification* 57, 65-66 (1986); Jan Pahl, *Money and Marriage* 1-2 (1989).

³² *Id.*

³³ *Id.*

³⁴ *Supra* n. 57.

III. The Exclusion of Spousal Housework Leaves Women Financially Vulnerable.

A significant amount of economic security comes from participation in wage labor. Along with the obvious advantage of a salary, market employment makes women eligible for social security, disability, and medicare benefits.³⁵ Social security laws entitle married women to derivative social security benefits based on their husband's waged labor subject to some restrictions.³⁶ However, many women are disqualified due to divorce, death, or because their husbands do not qualify.³⁷

Unpaid household labor is not included in the calculation of retirement benefits from social security.³⁸ Therefore, in order for women to receive independent benefits they must participate in market labor. Consequently, even though women work more hours than men (combined paid and unpaid) women do not receive as much social security benefits as men.

Additionally, even if non-working spouses receive an equal amount of the extra disposable income derived from the exclusion of housework from income, they will still be disadvantaged during retirement. Many retired women live alone and below the poverty line due to the lack of social security benefits forgone by working in the home without pay.³⁹

IV. Objectives:

A Distinguish Between Types of Imputed Income.

³⁵ 20 C.F.R § 404.

³⁶ *Id* at §404.330-46.

³⁷ Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security and Stone, Seidman, Sunstein & Tushnet's Constitutional Law*, 89 Colum. L. Rev. 264, 276-85.

³⁸ *Id.*

³⁹ *Supra* n. 21 at 1599.

First, the work of spouses should be treated differently than the self-performed work done by the taxpayer him/herself and other types of imputed income for several reasons. As explained above, excluding the income derived from the work of spouses reinforces traditional divisions of labor, devalues women's part of that labor, and causes women to lose important social welfare benefits. All three of these effects obstruct the path to gender equity in this country. Also, taxpayer's who perform their own services receive the benefit themselves. With household labor there is no promise that the house-worker reaps the benefits of the tax exclusion. Thus, because the exclusion of other forms of imputed income works no comparable harm to half the population, the tax code should distinguish between imputed income from one's own work or property and imputed income from one's spouse's.

B Recognize the Productive Value of Housework.

We should tax imputed income from spousal housework because housework itself is valuable. Katherine Silbaugh argues that we should focus on improving the legal status of home labor as well as encouraging greater market labor participation for women.⁴⁰ Silbaugh contends that, regardless of why women do housework, we need to recognize the productive nature of housework in order to give women economic security.⁴¹ Catherine MacKinnon might agree with her in that in order for us to know whether women would choose housework over other work, we must first give women economic independence. The question remains, whether compensating housework will lead to economic independence.

⁴⁰ Katherine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 Nw. U. L. Rev. 1, 85 (1996).

⁴¹ *Id.* Silbaugh feels that under the present conditions of extreme devaluation of housework it is impossible to judge the inherent desirability of market work vs. housework. She advocates for protecting what women do now as much as removing legal barriers to protections based on what men do.

Marxist feminists emphasize women's contribution to our system of production.⁴²

Women are responsible for the social reproduction necessary for the industrial economy to function, upholding homes, raising children, and maintaining community ties. According to Marxist Feminist, women's subordination is based man's expropriation of this reproductive labor, while men sell their own labor on the market.⁴³

Radical Feminists argue that housework is demeaning and a function of power relations between men and women.⁴⁴ This theory assumes that housework is women's work and because women do it, it carries little social value in our patriarchal society.⁴⁵

Whether housework is unappreciated because it is women's work or its women's work because it's unappreciated is a difficult question. If it's the former, we need to apply the same market value to it as we do to men's work. Productive labor should be compensated regardless of the gender of the person performing the labor. If it's the latter, we will also need to create incentives to encourage women to engage more in market labor. We should not encourage women to do society's undesirable work. Either way though, the economically productive aspect of housework needs to be recognized and rewarded in order to provide economic security to women independent from their relationships with men.

Housework produces many benefits to society. Childcare is probably the most important. Without caretakers for our children our society would deteriorate quickly. Many feminist advocate the legal recognition of the political and productive nature of caretaking.⁴⁶ The

⁴² *Supra* n. 6. 54-55 (citing Evelyn Nakano Glenn, From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor, 18 SIGNS 1, 1 (1992)).

⁴³ *Id.*

⁴⁴ Catherine MacKinnon, *Toward a Feminist Theory of the State*, 80 (1989).

⁴⁵ *Id.*

⁴⁶ See generally Martha Albertson Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* 39-41 (1995).

“different voice” espoused by Carol Gilligan should be considered a valuable aspect of women’s work in the home.⁴⁷ We need to measure and compensate all of these productive parts of what women do at home.

C Promote Two-Earner Couples.

The tax code should encourage both spouses to perform market labor. As explained above, market labor provides economic security through social security and medicare benefits. Market labor also includes publicly influential positions like writers, actors, and politicians.

I.R.S. neutrality on this issue is not enough. Some liberal feminist might apply an “equal treatment” approach to conclude that the tax code should treat one and two earner couples the same.⁴⁸ However, I feel that to overcome America’s cultural preference for traditional gender roles we need a tax incentive for two earner couples. Many women’s decision to enter the market is often not driven by economic factors.⁴⁹ So, even if the tax code is neutral on the issue, many other aspects of our culture and legal system are not.⁵⁰ The tax code can compensate.

Furthermore, promoting the two-earner couple will diminish gendered labor roles. The gendered division of labor is a function of women’s inferior status in our society. Encouraging both spouses to work in the market will mean more women in the market with economic security and more prominence in society. Nonetheless, encouraging two earner couples will not eliminate the woman’s role category. Despite more women entering the market, the woman’s side of the labor divide seems to have remained the woman’s side. Studies show that providing

⁴⁷ Carol Gilligan, *In a Different Voice* (1982). In her book she emphasizes distinctly female characteristics arising out of developmental differences. Because of women’s unique psychology and perspective, human development theories based on studies of boys and men failed to take into account the unique value system of women incorporating responsibility toward others and empathy. *Id.*

⁴⁸ *Supra* n. 1 at fn. 18.

⁴⁹ *Supra* n. 7 at 485.

⁵⁰ For example, many television programs portray traditional family structures with positive connotations. Cooking and cleaning products are targeted at women through advertisements. The lack of part time jobs and adequate employment sponsored parental leave also push women into the home.

market opportunities for women does not cause a corresponding decrease in the level of women's housework.⁵¹ Women may gain economic security in the form of social security and Medicare from participating in market labor, but they are still working the second shift at home, leaving them with less leisure time.⁵²

In summary, we need to measure and reward the productive aspects of housework so as to apply the same market standards of value and income to women's work and men's work. Simultaneously, we need to create an incentive for two-earner couples because even if housework is somewhat desirable to women, women need to be more influential in the public, which requires some market work. Paying women for housework will not lead to gender equity as quickly as getting women in positions of power. While there are socially important aspects of housework, women have the capacity to contribute much more to our culture. Women's voice needs to be heard outside the home as well. Thus, while housework should be regarded as income-producing work under the tax code, we should not encourage traditional gendered divisions of labor. The code should compensate women for their work but not so much that we elevate the status of housework enough to discourage market work.

V. Administrative Concerns.

One of the biggest arguments against taxing housework is that to do so would be administratively impossible. Many tax experts contend that there is no way for the I.R.S. to find out how much time a non-working spouse devotes to housework. Along the same lines, some people enjoy housework and more specifically, childcare. Should time spent with one's child be

⁵¹ *Id.*

⁵² *Supra* n 7 at 425.

considered work or leisure? Another problem is the valuation of the work. Without an employer, there is no oversight or supervision of the work and so even if we can measure the amount of time spent on these jobs, the quality of the work varies from household to household. How should the I.R.S. account for these variations?

Nancy Staudt points out that Congress has chosen to balance public policy concerns with administrative efficiency in other areas of tax law.⁵³ She uses as examples the dependency exemption and the Earned Income Tax Credit (EITC). Both of which apply categorical rates, for the ease of administration. The dependency exemption signifies a tax expenditure to off set the cost a taxpayer incurs when supporting a dependent.⁵⁴ The EITC offsets a portion of low income taxpayers' tax burden.⁵⁵ Both of these options chose estimation over calculating the actual expenses because the public's interest outweighed the need for complete accuracy.

These two examples show how Congress will choose fairness over administrative difficulties in some circumstances. Just so, Congress could devise a scheme that would roughly estimate the quality and quantity of housework performed by non-working spouses.

A Measuring the Worth of Housework.

The most obvious method with which to measure the value of housework is according to minimum wage. This would be a simple, easy way to guarantee a minimum level of economic security through social security and medicare benefits. One draw-back might be that housework would be undervalued and that the low income would not yield sufficient payments in retirement for a woman to live on.

⁵³ 84 Geo. L.J. 1571, 1622-24.

⁵⁴ I.R.C. § 152.

⁵⁵ I.R.C. § 32.

Another method to measure housework with is the replacement method.⁵⁶ This method equates the value of housework with the cost of purchasing the same service in the market. Due to the increase in domestic services available in the market, we can easily calculate the cost of jobs like laundry, childcare, cleaning, and live-in chiefs.

Another method is treating spousal housework as an exchange for other goods. As touched on above, when goods or services are provided to another with the expectation that future compensation will be given in the form of other goods or services, each party must report income as the fair market value of what is received in the exchange.⁵⁷ If the services were rendered at a stipulated price, such price will be presumed to be the fair market value of the compensation received.⁵⁸ Thus, if we apply this rule to housework, we could argue that household services are always rendered at a stipulated price, and that price is what the working spouse gives the non-working spouse throughout the year. So, in application to a one earner couple, the value of housework would be equal to the rental value of the home/apartment provided plus the money for food plus any other payments received like utilities, health and car insurance, and entertainment expenses. This would result in higher income couples having higher income from housework and therefore their taxes would be higher.

B Who Should Bear the Tax Burden.

Nancy Staudt proposes separate collection and taxation for imputed income through the use of imputed wage.⁵⁹ The wage would be taxed as a payroll tax and not an income tax. She

⁵⁶ 84 Geo. L.J. 1571, 1625 (citing Euston Quah, *Economic and Home Production*, 213 (1993).)

⁵⁷ *Supra* n. 18; Treas. Reg. § 1.61-2(d)(1). This regulation provides that if services are paid for other than in money, the fair market value of the property or services taken in payment must be included in income. And, if services are rendered at a stipulated price, the tax code will presume that the agreement was an arm's length transaction and adopt the stipulated price as the fair market value.

⁵⁸ *Id.*

⁵⁹ 84 Geo. L.J. 1571, 1641-43.

would measure the value of housework by looking at factors such as the number of kids in the household, and number of hours spent of housework on average. Payroll taxes apply to the first dollar earned and allocate a portion of the tax to be used for social security.⁶⁰ She would also give a Household Income Credit (HIC) for low-income workers, which would work just like the earned income credit except it would take into account housework not market work. Her system would apply both to married and non-married women.

Edward McCaffery proposes a tax on married men for the value of the rate of return on the husband's market production made possible by the wife's efforts at home.⁶¹ He would tax at higher rates men with non-market working wives than part time working wives and both higher than for full time working spouses. This results in valuing the wife's work in relation to how much the husband makes, because husbands who have larger incomes fall into higher tax rate brackets. If an even higher rate is applied for men with non working or part time working spouses, richer couples will pay more for their housework than poorer couples will. This is unrealistic for the simply reason that rich wives do not necessarily do more or better housework than poor wives.

There are benefits to each of these options. I would choose to tax couples for the value of housework. I propose we use Straudt's factors, such as number of children in the house, the amount of time spent on housework on average to come up with different categories of taxpayers. I would apply McCaffery's three tiered approach, distinguishing between couples with only one full time earner, one part time and one full time earner, and two full time earners.

⁶⁰ Income Taxes also allocate a portion to social security, but not until the tax payer makes a certain minimum amount.

⁶¹ Edward McCaffery, *Taxing Women* (1997).

For each category, a different amount of income would be presumed to flow from the services of a spouse. Each couple would report the amount for their category as gross income.

Also, I would also take into account the income level of the couple. If the couple's combined income is not enough for them to survive on and pay the taxes on housework, I would suggest a refundable credit for the same amount taxed for housework. A credit is a dollar for dollar reduction in taxes. A refundable credit occurs in the event the credit is larger than the all other taxes owed. In this event, the excess amount of credit would be given directly to the taxpayer as a tax refund. I would use a credit instead of an exemption because a credit still requires the couple to include the value of their housework in income, thereby recognizing its worth economically. The credit would ensure the couple received roughly the same amount included in income in the form of a credit. I chose a credit instead of a deduction because deductions reduce tax liability before the rate is applied which means the couple may not receive the full value of their services. Moreover, deductions are non-refundable, meaning if the deduction is more than tax liability, taxpayer will receive zero.

This scheme would cause middle and high-income one-earner couples to pay the most in taxes, which is justified because they are the group that benefits the most from spousal housework. The scheme would give both spouses social security benefits and medicare. Furthermore, using Professor Staudt's factors to measure the income with, we avoid the problem of McCaffery's plan, which unrealistically measures the income from housework in relation to the income of the working spouse. Additionally, by continuing to utilize the current income tax system, my proposal for including the value of housework as part of income taxation would not require separate calculation for payroll taxes like Professor Staudt's. Payroll taxes also cause

greater tax burden for low income households.⁶² Utilizing the progressive rate system of the income tax would not increase that burden.

The Limits of Taxation on Feminist Objectives.

The problem with both of these approaches is that many women's decision to enter the market is often not driven by economic factors.⁶³ Women may feel motivated by the personal autonomy that comes with a paid job. Many women probably choose market or non-market work based on what their own mother did. Also, even if women do succumb to the tax incentive to perform market labor over house labor, their labor will still not be valued as highly as men's. In light of the sexism of the marketplace, we cannot assume that the existence of more women in the market will lead to wage parity.⁶⁴

Another limitation of tax law is the codes lack of control over the specific allocation of resources within a family. When a couple is given a deduction or credit for the non-working spouse's work, there is no way to guarantee that the benefit is shared equally. This problem is minor in light of the facts that the non-working spouse will be accruing social security benefits, her work will be measured and accounted for by the I.R.S. and she will not be financially dissuaded from performing market work herself. Therefore tax law's limited behavior effects should not dissuade our effort to recognize what women do.

⁶² *Supra* n 7 at 515-16.

⁶³ *Id* at 485.

⁶⁴ Rosemary Hunter, *Afterward: A Feminist Response to the Gender Gap in Compensation Symposium*, 82 Geo. L.J. 147, 155 (1993)(stating that even if women get into the market "there is no guarantee that gender segregation will not reconstitute itself in a different pattern, with women still clustered in relatively low-paid labor market ghettos."); *See also* Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 Yale J.L. & Feminism 51 for the proposition that commodifying household services has only shifted the burden of menial housework to women of a racial minority.