HEINONLINE

heinonline.com | support@heinonline.com

CITATIONS:

Bluebook 22nd ed.
Jacob Goldin & Zachary Liscow, Beyond Head of Household: Rethinking the Taxation of Single Parents, 71 TAX L. REV. 367 (2018).

ALWD 7th ed.
Jacob Goldin & Zachary Liscow, Beyond Head of Household: Rethinking the Taxation of Single Parents, 71 Tax L. Rev. 367 (2018).

APA 7th ed.
Goldin, Jacob, & Liscow, Zachary. (2018). Beyond head of household: rethinking the taxation of single parents. Tax Law Review, 71(2), 367-414.

Chicago 18th ed.
Goldin, Jacob, and Liscow, Zachary. "Beyond Head of Household: Rethinking the Taxation of Single Parents." Tax Law Review 71, no. 2 (2018): 367-414. HeinOnline.

McGill Guide 10th ed.
Jacob Goldin & Zachary Liscow, "Beyond Head of Household: Rethinking the Taxation of Single Parents" (2018) 71:2 Tax L Rev 367.

AGLC 4th ed.
Jacob Goldin and Zachary Liscow, 'Beyond Head of Household: Rethinking the Taxation of Single Parents' (2018) 71(2) Tax Law Review 367

MLA 9th ed.
Goldin, Jacob, and Zachary Liscow. "Beyond Head of Household: Rethinking the Taxation of Single Parents." Tax Law Review, vol. 71, no. 2, Winter 2018, pp. 367-414. HeinOnline.

OSCOLA 5th ed.
Jacob Goldin & Zachary Liscow, 'Beyond Head of Household: Rethinking the Taxation of Single Parents' (2018) 71 Tax L Rev 367 Export To:

Date Downloaded: Tue Oct 20 16:07:39 2026

Source: https://access.heinonline.com/HOL/Page?handle=hein.journals/taxlr71&id=379

Terms, Conditions & Use of PDF Document:
Please note, citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper formatting. Your use of this HeinOnline PDF indicates your acceptance of William S. Hein & Co., Inc. and HeinOnline's Terms & Conditions: https://help.heinonline.com/kb/terms-conditions/. The search text of this PDF is generated from uncorrected OCR text. To obtain permission to use this article beyond the scope of your license, please use: https://www.copyright.com.

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

HeinOnline is a product of William S. Hein & Co., Inc. | 2350 North Forest Road, Getzville, NY 14068

Beyond Head of Household: Rethinking the Taxation of Single Parents

JACOB GOLDIN* AND ZACHARY LISCOW**

I. INTRODUCTION

Since 1951, unmarried taxpayers with qualifying dependents—usually children—have been able to claim the head of household filing status and take advantage of its beneficial rate schedule.[1] Largely unchanged in its long history since then, the head of household filing status has managed to fly beneath the radar of most tax scholars and policymakers.[2] And indeed various tax policy proposals discard the

* Assistant Professor of Law, Stanford Law School.

** Associate Professor of Law, Yale Law School. We thank Anne Alstott, Ellen Aprill, Joe Bankman, Conor Clarke, Adam Cole, Daniel Feenberg, Brian Galle, David Gamage, Jed Glickstein, Daniel Halperin, Yair Listokin, Louis Kaplow, Austin Nichols, Jason Oh, Katherine Pratt, Erin Scharff, Larry Zelenak, and participants at Duke Law School, Georgetown Law School, Harvard Law School, Loyola Law School, Stanford Law School, and the National Tax Association Annual Meeting for helpful conversations and suggestions. We are grateful to Deborah Schenk for many helpful editorial suggestions. Taylor Cranor and Michael Loughlin provided outstanding research assistance.

[1] Section 1(b) establishes the head of household filing status, which provides a separate rate schedule for certain households defined in § 2(b). See Revenue Act of 1951, Pub. L. No. 82-183, ch. 521, § 301, 65 Stat. 452, 480.

This Article was written and accepted for publication prior to passage of the Tax Cuts and Jobs Act (TCJA) in December 2017. As the data to evaluate the changes introduced by the TCJA were not available to us by the date that our revisions were due during the article editing process, we focus our analysis on pre-TCJA law. We discuss the most relevant changes from the TCJA in Part VIII. Although passage of the TCJA may affect the specific numerical results, it does not affect our central claims here.

[2] There are several important exceptions. Deborah Schenk proposed reforms to the head of household filing status as part of a broader simplification of the tax treatment of family status. Deborah H. Schenk, Simplification for Individual Taxpayers: Problems and Proposals, 45 Tax L. Rev. 121, 139-40 (1989). Because it is not classified as a tax expenditure, the budgetary costs of the head of household filing status are infrequently estimated. See Staff of the Joint Comm. on Tax'n, 115th Cong., Estimates of Federal Tax Expenditures for Fiscal Years 2016-2020 (Comm.Print 2017), available at https://www.jtc.gov/publications.html?func=startdown&id=4971. The most recent estimate we could find, using 1999 data, concluded that its budgetary cost was $3.9 billion in 2001 dollars. See David T. Ellwood & Jeffrey B. Liebman, The Middle-Class Parent Penalty: Child Benefits in the U.S. Tax Code, 15 Tax Pol'y & Econ. 1, 8 tbl.1 (2001). More recently, the Tax Policy Center has considered the distribution of benefits from head of household filing status along with other provisions across the income distribution. T03-0063—$1,000 Dividend Exemption: Distribution of Income Tax Change by AGI Class, Non-Elderly Returns, 2003, Urban-

Imaged with the permission of Tax Law Review of New York University School of Law

filing status, seemingly without considering its purpose.[3] This neglect by academics and policymakers is unfortunate: The head of household filing status has quietly grown in size and expense as more children are raised outside of traditional two-parent households. In 2011, more than 22 million people filed their taxes as head of household[4] compared to just 1 million that did so in 1960.[5] And as the filing status has become more important over time, a number of problems in its design have grown more pronounced as well. In this Article, we argue that the current design of the head of household status undermines its ability to relieve the tax burden on single-parent households—but that relieving the tax burden on single-parent households remains an important goal. In place of the filing status, we propose an expanded child tax credit for single parents and argue that this reform would improve tax policy along a number of dimensions.

Because the head of household status has been the focus of so little attention by academics, our first goal is primarily descriptive. Drawing on a sample of federal income tax returns, we investigate the aggregate cost of the filing status to the fisc. We estimate that eliminating the head of household status would have resulted in $9.4 billion more in revenues in 2011, a vast increase from its 1960 cost of $301 million (in 2015 dollars).[6]

After documenting the magnitude of the budgetary cost of the head of household filing status, we turn to the distribution of its benefits. Although the conventional wisdom is that this status is primarily a tax benefit for low-income families, we highlight an important sense in which the opposite is true. Because the tax benefit is designed as a

---

Brookings Tax Pol'y Ctr. (Jan. 30, 2003), http://www.taxpolicycenter.org/model-estimates/1000-dividend-exemption-2003/1000-dividend-exemption-distribution-income-tax-2. But these estimates do not isolate the benefits stemming from head of household filing status as opposed to other provisions of the Code. The Urban Institute also discusses the income distribution of all child-related benefits. Elaine Maag, Child Benefits in the Tax Code: Does the Current System Make Sense?, Urb. Inst.: Urb. Wire (May 6, 2013), https://www.urban.org/urban-wire/child-benefits-tax-code-does-current-system-make-sense; see Elaine Maag, Simplicity: Considerations in Designing a Unified Child Credit, 63 Nat'l Tax J. 765, 770 fig.1 (2010) (containing simulations of the distributional consequences of various child-related benefits).

[3] For example, at least one of President Trump's campaign tax proposals eliminated it. See Lily L. Batchelder, Urban-Brookings Tax Pol'y Ctr., Families Facing Tax Increases Under Trump's Tax Plan 3 (2016); see also notes 93-94 and accompanying text (describing earlier plans eliminating the head of household filing status as part of larger reforms).

[4] See IRS, Statistics of Income, Individual Statistical Tables by Filing Status tbl.1.6 (2011), https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-filing-status.

[5] See IRS, Statistics of Income, Individual Income Tax Returns 1960, at 17 tbl.R (1960), https://www.irs.gov/pub/irs-soi/60inar.pdf.

[6] We use 2011 data, since it is the most recently available to us. Throughout, we report values in 2015 dollars because we primarily describe the tax law from that year.

Imaged with the permission of Tax Law Review of New York University School of Law

filing status, high-income taxpayers who file as head of household are guaranteed a larger tax reduction than low-income taxpayers who do so. We investigate the magnitude of this disparity as well as whether it has changed over time. The results are striking: In 2011, a household earning in the twenty-fifth percentile of the income distribution saved $23 annually by filing as head of household. In contrast, the annual tax savings were $1573 for a household earning in the seventy-fifth percentile of the income distribution that filed as head of household.[7]

We then turn to policy design. We begin by developing a utilitarian framework that shows why there *should* be differential tax treatment by marital status for those with children, arguing against those who wish to eliminate the differential treatment. Although our framework suggests a role for a single-parent tax benefit like head of household, it implies that the magnitude of the benefit *should not* rise with taxpayers' income and *should* rise with the number of children a taxpayer supports. Under current law, however, the benefit provided by head of household often does rise with income and does not vary based on the size of a qualifying household, the reverse of what is implied by our framework.

Under current law, taxpayers with children receive a partially refundable, per-child tax benefit under the Child Tax Credit.[8] Under our proposed reform, the newly created Head of Household Credit would scale up the amount of the tax benefit provided by the Child Tax Credit for single-parent households. The two main arguments in favor of the reform are simple. First, if the Code is going to provide additional tax relief to single parents, the amount of that relief should not be greater for higher-income taxpayers. Second, the amount of relief for single parents should be linked to the number of children they support, but under current law a household receives the same tax benefit from the head of household filing status whether it supports one, two, three, or more children. Using data from a large sample of anonymized tax returns, we estimate that the cost savings from eliminating the status would accommodate a refundable head of household credit of $294 per child per year (approximately 30% of the Child Tax Credit that existed during the time period of our analysis).[9]

This Article proceeds as follows. Part II describes the history of the head of household filing status. Part III describes its operation today. Part IV investigates the budgetary cost and the distribution of its benefits, including how those quantities have changed over time. Part V

[7] See Table 3.

[8] IRC § 24.

[9] As described below, the reform would actually reverse current policy, which provides a smaller child tax credit to some single than married taxpayers with the same income, because the tax credit's phase-out begins earlier for single taxpayers than for married ones.

Imaged with the permission of Tax Law Review of New York University School of Law

lays out a normative framework for evaluating the design of the filing status, and Part VI uses that framework to critique existing policy. Part VII describes our proposed reform, the head of household credit, and investigates the consequences of replacing the head of household filing status with it. Part VIII briefly describes the implications for our analysis of the Tax Cuts and Jobs Act, which was passed while this paper was entering the final stages of editing. Part IX concludes.

II. The Origins of the Head of Household Filing Status

The head of household filing status was established with the Revenue Act of 1951.[10] The origins of the modern filing status were in the 1930 Supreme Court case *Poe v. Seaborn*.[11] At that point in U.S. history—and from the beginning of the income tax in 1913 until 1948—each individual generally was taxed separately on his or her own income regardless of marital status[12] (apart from the personal exemption, which was affected by marital status).[13] *Seaborn* held that each member of a marriage was taxable on one-half of "community income" (the sum of income earned by the spouses), even if the income in question had been earned solely by the other spouse.[14] This decision advantaged married couples in community property states over married couples in other states—because the Code is progressive, income splitting reduces a couple's total tax liability. Many states that lacked community property regimes when *Seaborn* was decided responded to the decision by introducing community property, so that their residents could benefit from income splitting. Although a subsequent Supreme Court decision held that elective community property regimes did not qualify couples for income-splitting,[15] the movement toward community property was slowed rather than stopped.

---

[10] See 1951 Act, note 1, sec. 301, 65 Stat. at 480; Arthur H. Goodman, Observations on the Revenue Act of 1951, 20 Fordham L. Rev. 273, 274-77 (1951) (providing a description and critique of the adoption of the filing status).

[11] 282 U.S. 101 (1930).

[12] For additional description, see Boris I. Bittker, Federal Income Taxation and the Family, 27 Stan. L. Rev. 1389, 1399-416 (1975). See generally Druker v. Commissioner, 697 F.2d 46 (2d Cir. 1982) (describing the evolution from separate to joint filing in the United States).

[13] The original 1913 income tax allowed a $3000 personal exemption to an unmarried taxpayer and $4000 for cohabiting married couples. Revenue Act of 1913, Pub. L. No. 63-16, ch. 16, § II.C, 38 Stat. 114, 168. The Revenue Act of 1916 allowed heads of families, single people with at least one dependent child, to claim the married couple exemption. Revenue Act of 1916, Pub. L. No. 64-271, ch. 463, § 7(a), 39 Stat. 756, 761; Lawrence Zelenak, Figuring Out the Tax: Congress, Treasury, and the Design of the Early Modern Income Tax 181 (2018). This system of exemptions was erased by the Revenue Act of 1944, Pub. L. No. 78-315, sec. 10(a), ch. 210, § 25(a)(3), 58 Stat. 231, 238.

[14] *Seaborn*, 282 U.S. at 118.

[15] Commissioner v. Harmon, 323 U.S. 44, 45-46 (1944).

Imaged with the permission of Tax Law Review of New York University School of Law

In 1948, Congress responded to the controversy and confusion in this area by allowing all married couples to split their income, regardless of where they lived.[16] In particular, the Revenue Act of 1948 allowed all couples to split their income equally so that each taxpayer was treated as single—in effect, setting the tax on married couples equal to twice what a single taxpayer would owe if he or she had earned one-half of the married couple's income.[17] Under the progressive income tax schedule then in place, this created a substantial "marriage bonus" for many federal taxpayers.[18]

The Revenue Act of 1951 addressed this large marriage bonus by creating the head of household filing status.[19] The idea was to give approximately half of the income-splitting benefit gained by married taxpayers to single taxpayers who maintained a household for their dependents.[20]

Subsequently, however, the initial rationale for the head of household filing status was eliminated by the Tax Reform Act of 1969, which replaced the "marriage bonus" with a "marriage penalty" for many taxpayers. It did this by increasing the number of filing statuses from two to four (married filing jointly, head of household, single, and married filing separately), and by designing the corresponding rate schedules so that the tax liability of someone filing as single would never exceed 120% of the tax liability of a married couple with the same total income filing a joint return.[21] In making these changes, the 1969 Act created a marriage penalty for those—often households with two earners—who would have owed less in taxes had they been unmarried. Despite the elimination of many marriage bonuses from 1969 onwards, the head of household filing status remains an important feature of the modern Code.[22]

---

[16] See Revenue Act of 1948, Pub. L. No. 80-471, ch. 168, § 301, 62 Stat. 110, 114.

[17] Id.

[18] Id. at 111; Revenue Act of 1945, Pub. L. No. 79-214, ch. 453, § 101, 59 Stat. 556, 557-58.

[19] See 1951 Act, note 1, sec. 301, 65 Stat. at 480. Specifically, that act extended half of the income-splitting benefit for married taxpayers to single taxpayers eligible for at least one exemption for a child or relative. In 1954, Congress expanded the definition of "head of household" to include single taxpayers who paid more than half the cost of maintaining the primary residence for their dependent mother or father even if the parent did not live with the taxpayer. IRC § 1(b)(2) (1954).

[20] Bittker, note 11, at 1428.

[21] See Tax Reform Act of 1969, Pub. L. No. 91-172, § 803, 83 Stat. 487, 678–85.

[22] By setting all but the highest thresholds for the married filing jointly brackets to twice the corresponding thresholds for unmarried taxpayers, the TCJA returned the Code to a system dominated by marriage bonuses.

Imaged with the permission of Tax Law Review of New York University School of Law

III. Basic Features of the Head of Household Filing Status

A. *Eligibility*

Eligibility for the head of household filing status is set out in § 2(b). In general, a taxpayer may claim this status if he or she is unmarried and lives with a child or other relative in a home that the taxpayer maintains.[23]

Eligibility for claiming as a head of household can be broken down into three requirements. First, the taxpayer must be unmarried.[24] As with other parts of the Code, in some cases a taxpayer is considered to be unmarried if he or she meets the other requirements to file as head of household and lives apart from his or her spouse for the final six months of the tax year.[25]

Second, the taxpayer must maintain his or her household. The statute specifies that a taxpayer meets this requirement only if he or she pays for over half the cost of maintaining the household.[26]

Third, a taxpayer may only claim head of household filing status if he or she lives with a qualifying person.[27] The qualifying person may be either a child of the taxpayer or one of several specified types of relatives. Although fairly complicated, understanding the qualifying person rules is critical for understanding the current operation of the filing status as well as our proposed reform.

Since 2005, the requirements for an individual to constitute a qualifying person for the head of household filing status are (for the most part) the same as the requirements for the individual to be claimed on a tax return for the purposes of other Code provisions.[28] In particular, a qualifying person for head of household filing status purposes may be either a "qualifying child" or a "qualifying relative" of the taxpayer.[29] A qualifying child is usually, as its name suggests, a child of the taxpayer (although siblings, nieces, and nephews can count as well).[30] A taxpayer is not required to be the primary source of support for a qualifying child, but a qualifying child cannot provide more

---

23 IRC § 2(b)(1). A taxpayer may also claim this status by maintaining the household of a parent, even if the parent does not live with the taxpayer. IRC § 2(b)(1)(B).

24 IRC § 2(b)(1).

25 IRC §§ 2(c), 7703(b).

26 IRC § 2(b)(1).

27 Specifically, the taxpayer's home must be the qualifying person's "principal place of abode." IRC § 2(b)(1)(A), (B).

28 See Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, Title II, 118 Stat. 1166, 1169–78. One difference is that members of a taxpayer's household who are not related to the taxpayer may qualify as dependents but may not qualify a taxpayer for head of household filing status. IRC § 2(b)(3)(B)(i).

29 IRC §§ 2(b)(1)(A), 152(a).

30 IRC § 152(c).

Imaged with the permission of Tax Law Review of New York University School of Law

than half of his or her own support.[31] Finally, to count as a qualifying child, the child must be under nineteen years old for the entire tax year (or twenty-four years old if the child is a full-time student).[32] After becoming too old to meet the definition of a qualifying child, an individual may continue to qualify the taxpayer for the head of household filing status as a qualifying relative, but only if the additional requirements for that condition are met.

Taxpayers who do not have a qualifying child may still qualify as a head of household if instead they have a qualifying relative. There are four main differences between a qualifying relative and a qualifying child. First, a qualifying relative may be related to the taxpayer through a broader range of relationships than a qualifying child (for example parents and grandparents can count as well).[33] Second, there are no age limits for qualifying relatives; thus a taxpayer's child may qualify the taxpayer to claim as a head of household when the child becomes too old to count as a qualifying child. Third, qualifying relatives cannot earn too much income of their own. For 2015, the income limit for qualifying relatives is $4000 per year, with the threshold tied to the size of the personal exemption.[34] Finally, with certain exceptions, the taxpayer must provide over half of an individual's support for that individual to be the taxpayer's qualifying relative.[35]

B. Tax Benefits from the Head of Household Filing Status

Filing as a head of household provides tax benefits to eligible taxpayers by increasing the income threshold at which new marginal tax rates kick in. For example, under 2015 law, single taxpayers[36] cross from the 15% to the 25% marginal tax rate bracket once their taxable income exceeds $37,450.[37] In contrast, taxpayers who qualify for head of household do not face the 25% marginal tax rate until their taxable income exceeds $50,200.[38] Thus a single taxpayer with taxable income of $45,000 would face a 25% marginal tax rate, whereas a

---

[31] IRC § 152(c)(1)(D).

[32] IRC § 152(c)(3)(A). There is no age limit for children who are "permanently and totally disabled." IRC § 152(c)(3)(B).

[33] See IRC § 152(d)(2).

[34] IRC § 152(d)(1)(B). Under a literal reading, the TCJA appears to set this threshold amount to zero, although we suspect this may have been a drafting error.

[35] IRC § 152(d)(1)(C).

[36] By "single taxpayers" or "single filers," we mean taxpayers whose filing status is single, as opposed to, say, married filing separately. We refer to taxpayers who are unmarried as "unmarried taxpayers" or "unmarried filers."

[37] IRC § 1(c).

[38] IRC § 1(b).

Imaged with the permission of Tax Law Review of New York University School of Law

head-of-household filer with the same annual taxable income would face a marginal tax rate of only 15%.

The head of household statutory tax rates are described in Table 1 and graphically depicted in Figure 1, along with the tax schedules for single filers. The solid line represents the marginal tax rate schedule for a single filer and the dashed line represents the corresponding rates for head-of-household filers. The ranges where the solid line is above the dashed line correspond to those taxable incomes for which the head-of-household filers receive a preferential marginal tax rate relative to single filers. The figure illustrates that the head of household filing status is only associated with advantageous marginal tax rates compared to single filing status for certain income windows. As we explain in Part VI, however, this does not mean that the tax benefits of the status are limited to taxpayers within these income windows. Rather, even head-of-household filers facing the same marginal tax rates as single filers will face lower average tax rates, and thus lower tax liability.

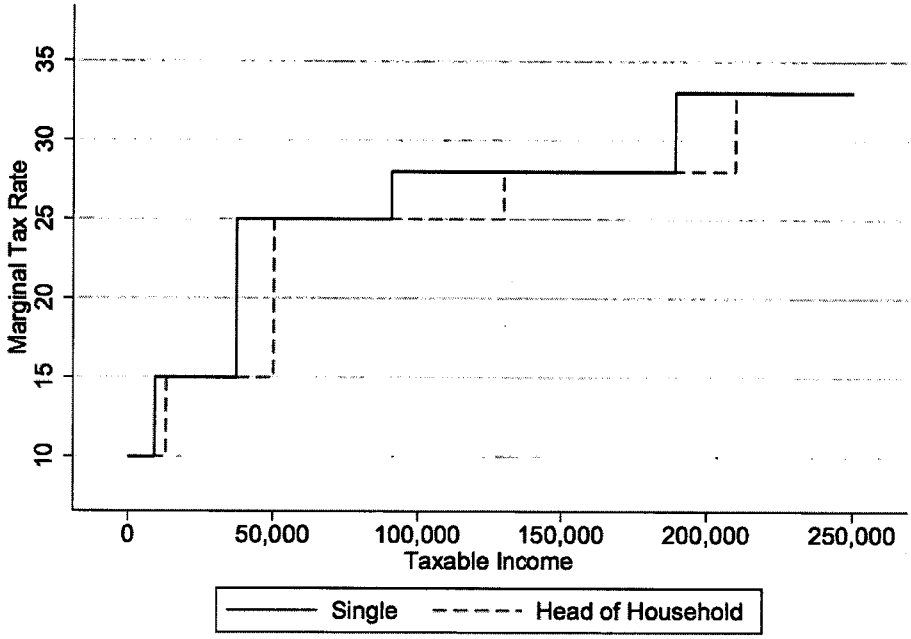
TABLE 1
TAX RATES BY FILING STATUS[39]

Single			*Married*			*Head of Household*		
Rate	*Min*	*Max*	*Rate*	*Min*	*Max*	*Rate*	*Min*	*Max*
10%	0	$9,225	10%	$0	$18,450	10%	$0	$13,150
15%	$9,226	$37,450	15%	$18,451	$74,900	15%	$13,151	$50,200
25%	$37,451	$90,750	25%	$74,901	$151,200	25%	$50,201	$129,600
28%	$90,751	$189,300	28%	$151,201	$230,450	28%	$129,601	$209,850
33%	$189,301	$411,500	33%	$230,451	$411,500	33%	$209,851	$411,500
35%	$411,501	$413,200	35%	$411,501	$464,850	35%	$411,501	$439,000
39.6%	$413,201		39.6%	$464,851		39.6%	$439,001	
Standard Deduction $6,300			Standard Deduction $12,600			Standard Deduction $9,250		

[39] Rev. Proc. 2014-61, 2014-47 I.R.B. 860.

Imaged with the permission of Tax Law Review of New York University School of Law

FIGURE 1[40]
MARGINAL TAX RATE BY FILING STATUS



Apart from the beneficial marginal tax rate schedule, those filing as head of household also benefit from an advantageous standard deduction. Whereas single taxpayers receive a standard deduction of $6300 (in tax year 2015), those filing as head household can claim a standard deduction of $9250.[41] As with the marginal tax schedule, the standard deduction for a head of household lies between that of single filers and married taxpayers filing jointly, whose standard deduction in 2015 was $12,600.[42] Note that the standard deduction benefit is over and above the personal exemption of $4000 per child that all taxpayers may claim, regardless of marital status.[43]

C. *Other Family Tax Benefits*

In addition to one's filing status, several other Code provisions are linked to taxpayers' marital status and the number of children they support. In this Section we briefly review four of the most important of these: the Child Tax Credit, the Earned Income Tax Credit (EITC), the Child and Dependent Care Credit, and the personal ex-

[40] Rev. Proc. 2014-61, 2014-47 I.R.B. 860.
[41] Rev. Proc. 2014-61, 2014-47 I.R.B. 860, 865.
[42] Id.
[43] Id. at 866.

Imaged with the permission of Tax Law Review of New York University School of Law

emption.[44] Our description of these benefits reflects 2015 law, for consistency with our analysis that follows.

1. Child Tax Credit

The Child Tax Credit provides a tax credit of up to $1000 for each of the taxpayer's children.[45] The credit is partially refundable; if the amount of the credit exceeds the taxpayer's liability, a portion of the credit may be applied as a refund.[46]

For a taxpayer to claim the Child Tax Credit based on a child, the child must satisfy the definition of a qualifying child with respect to the taxpayer.[47] The definition of a qualifying child is generally the same for Child Tax Credit purposes as for the head of household filing status. In particular, the child must live with the taxpayer for most of the tax year, satisfy one of several relationships to the taxpayer, and not provide more than half of his or her own support.[48] Unlike the head of household filing status, however, the Child Tax Credit is only available for individuals below the age of seventeen.[49] Thus a mother who lives with her eighteen-year-old son (and no other children) might qualify for head of household but could not claim the Child Tax Credit. In addition, the credit is only available for qualifying children of the taxpayer, not for qualifying relatives (unlike the head of household filing status).[50]

Although the amount of the Child Tax Credit does not directly depend on the taxpayer's marital status, the credit phases out for taxpayers whose income exceeds a certain threshold, and that threshold depends on the taxpayer's filing status. For taxpayers filing as single

---

[44] Other provisions of the Code relating to family size include various education credits and deductions, IRC §§ 25A, 222, the exclusion for employer-provided dependent care assistance, IRC § 129, and the premium tax credit, IRC § 36B, that was created as part of the Affordable Care Act.

[45] IRC § 24(a).

[46] Technically, the Child Tax Credit itself is not refundable, but the "Additional Child Tax Credit" is refundable. Those with fewer than three children are eligible for a refund of up to 15% of their income beyond $3000, up to a maximum credit of $1000 per child. IRC § 24(d)(1)(B)(i). Those with three or more children are eligible for somewhat more. IRC § 24(d)(1)(B)(ii). The Additional Child Tax Credit was expanded by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1003, 123 Stat. 115, 313 (lowering the income threshold above which taxpayers are eligible to receive the Additional Child Tax Credit from $10,000 to $3000), and this expansion was extended from 2010 until 2012 by the Tax Relief and Job Creation Act of 2010, Pub. L. No. 111-312, § 103(b), 124 Stat. 3296, 3299, and until 2017 by the America Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 103(b), 126 Stat. 2313, 2319 (2013).

[47] IRC § 24(c).

[48] IRC § 152(c).

[49] IRC § 24(c)(1).

[50] See IRC § 24(a).

Imaged with the permission of Tax Law Review of New York University School of Law

or head of household, the Child Tax Credit begins to phase out once the taxpayer's income exceeds $75,000.[51] For married filers, the credit does not begin to phase out until the taxpayer's income exceeds $110,000.[52] This discrepancy means that unmarried parents with incomes in this range receive a smaller credit per child than do married parents with incomes in the same range.

2. *Earned Income Tax Credit*

The Earned Income Tax Credit provides a refundable tax credit to low-income, working taxpayers.[53] The amount of the credit depends on both the taxpayer's marital status and the number of children the taxpayer lives with. The phase-out range for the Earned Income Tax Credit depends on both the taxpayer's marital status and the number of children in the household.[54] In contrast, the maximum amount of the credit and the phase-*in* range are the same for married and unmarried taxpayers with children.[55] Like the Child Tax Credit, the Earned Income Tax Credit phase-out begins at a lower income threshold for taxpayers who are unmarried, as compared to taxpayers who are married filing jointly, and this discrepancy results in a tax penalty for single relative to married parents.

Like the Child Tax Credit (and unlike the head of household filing status), the Earned Income Tax Credit may only be claimed for individuals who meet the definition of a qualifying child with respect to the taxpayer: It cannot be claimed based on a qualifying relative.[56] However, there are two important differences between the Child Tax Credit and the Earned Income Tax Credit with respect to the rules for qualifying children. First, whereas the Child Tax Credit can only be claimed for children below the age of seventeen, taxpayers may claim the Earned Income Tax Credit for children up to the age of nineteen.[57] Second, children claimed for the Earned Income Tax Credit are not required to meet the support test that is generally required to be a qualifying child.[58] That is, unlike other Code provisions, an individual can be a taxpayer's qualifying child even if the individual provides more than half of his or her own support.

---

[51] IRC § 24(b)(2)(B). The Child Tax Credit phases out linearly from $75,000 to $95,000, with $50 reduced from the credit for each $1000 increase in income. IRC § 24(b)(1).

[52] IRC § 24(b)(2)(B).

[53] IRC § 32.

[54] See IRC § 32(b)(2).

[55] See IRC § 32(a)(2), (b)(1).

[56] See IRC § 32(c)(1).

[57] IRC § 152(c)(3).

[58] IRC § 32(c)(3)(A).

Imaged with the permission of Tax Law Review of New York University School of Law

3. *Child and Dependent Care Credit*

The Child and Dependent Care Credit, or Child Care Credit for short, provides a tax credit for child care expenses incurred by a taxpayer so that the taxpayer can work.[59] The credit is nonrefundable, meaning that like the head of household filing status, it only benefits taxpayers who would otherwise have positive tax liability.[60] The Child Care Credit can be claimed for expenses for up to two qualifying individuals, which for this purpose, generally refers to dependents of the taxpayer below the age of thirteen.[61] Taxpayers who incur child care expenses that enable the taxpayer to work are able to claim the credit with respect to a portion of such expenses.

Notably, the design of the Child Care Credit differs from the design of the head of household filing status with respect to the two features of this filing status that we focus on below. First, the amount of the Child Care Credit does not increase with a taxpayer's income. Rather, the fraction of expenses covered by the credit declines for higher income taxpayers, from a 35% reimbursement rate for taxpayers with adjusted gross income below $15,000 down to a 20% reimbursement rate for taxpayers with adjusted gross income above $43,000.[62] Notwithstanding the declining reimbursement rate schedule, the overall progressivity of the credit is greatly reduced by the fact that it is nonrefundable.

The second feature of the Child Care Credit that differs from the head of household filing status is that the benefits taxpayers receive under the credit varies (to some degree) based on the number of children a taxpayer has. In particular, the maximum amount of expenses a taxpayer may use to qualify for the credit is $3000 for taxpayers with one qualifying individual and $6000 for taxpayers with two qualifying individuals.[63] Although the maximum credit amount does not increase beyond two qualifying individuals, this feature provides a meaningful contrast to the head of household filing status, for which the benefits do not even vary between taxpayers with one versus two qualifying individuals.

---

[59] IRC § 21.

[60] IRC § 21(d).

[61] IRC § 21(b)(1)(A). As with the other tax benefits listed in this Section, older individuals may qualify as well if they are physically or mentally incapable of caring for themselves. IRC § 21(b)(1)(B).

[62] See IRC § 21(a)(2).

[63] IRC § 21(c).

Imaged with the permission of Tax Law Review of New York University School of Law

4. Dependent Deduction

Taxpayers receive a deduction for each child that they claim as a dependent, which reduces their taxable income by the personal exemption amount.[64] The personal exemption amount is adjusted annually for inflation; in 2015 it was $4000 per dependent.[65]

Among the Code provisions linked to family size, the rules for which individuals can be claimed as a taxpayer's dependent are most similar to the rules for which individuals qualify a taxpayer to file as head of household. Like the rules for the head of household filing status, taxpayers may claim as a dependent an individual that is either a qualifying child or a qualifying relative.[66] The biggest difference in the eligibility rules between the two tax provisions concerns the rules governing individuals who are unrelated to the taxpayer. For the head of household filing status, only related individuals may qualify the taxpayer for the tax benefit.[67] In contrast, a taxpayer may claim even an unrelated individual as a dependent for purposes of the dependency deduction, provided the individual lives with the taxpayer and satisfies the other requirements to be the taxpayer's qualifying relative.[68]

Although the size of the personal exemption does not depend on the taxpayer's filing status, taxpayers' personal exemptions phase out once their income exceeds a certain threshold, and the size of that threshold does depend on the taxpayer's filing status.[69] In particular, the threshold at which a taxpayer's personal exemptions begin to phase out for tax year 2015 begins at $258,250 for taxpayers filing as single, $309,900 for married taxpayers filing jointly, and $284,050 for taxpayers filing as head of household.[70] As with the child tax credit, the higher phase-out range for married taxpayers results in tax savings for married taxpayers with children relative to unmarried taxpayers with children.

---

[64] IRC § 151. As described above, our description of this provision reflects pre-TCJA law. The TCJA eliminates the dependent deduction for tax years 2018 to 2025. We include a description of it here to provide context for the empirical results that follow.

[65] Rev. Proc. 2014-61, 2014-47 I.R.B. 860.

[66] IRC §§ 151(c), 152(a).

[67] IRC § 2(b)(3)(B)(i). The list of allowable relationships is spelled out in § 152(c)(2) and § 152(d)(2)(A)-(G).

[68] IRC § 152(d)(2)(H). Another difference between who can qualify a taxpayer for the head of household filing status and who can be claimed as a dependent is that in certain cases a noncustodial parent may claim a child as a dependent, but only the custodial parent may claim a child for head of household status. See IRC §§ 2(b)(1)(A)(i), 152(e).

[69] IRC § 151(d)(3).

[70] Rev. Proc. 2014-61, 2014-47 I.R.B. 860.

Imaged with the permission of Tax Law Review of New York University School of Law

IV. Descriptive Statistics

In this Part we study the characteristics of head-of-household filers and the distribution of benefits associated with the filing status.

A. Data

We investigate the cost and distribution of the head of household filing status, and the characteristics of head-of-household filers, using the Statistics of Income (SOI) data from the IRS. The SOI data contain a micro-sample of actual tax returns from the U.S. population, stripped of all identifying information such as names, Social Security numbers, and geographic location. Our sample contains approximately 163,800 tax returns. All analyses are weighted to provide results that are representative of the universe of tax returns received by the IRS.

The most recent year the SOI data is available is 2011. To study the budgetary cost and distribution of benefits for more recent years, we adjust the dollar figures in the SOI data to 2015 dollars using the Bureau of Labor Statistic's Consumer Price Index (CPI).[71]

B. Who Files as Head of Household

This Section draws on the SOI tax return data to investigate the characteristics of households that file as head of household.

Table 2
Head of Household Filer Characteristics

Fraction of filing population	0.15
Mean AGI	$34,467
Median AGI	$25,183
Fraction taking standard deduction	0.81
Mean dependents	1.6
Fraction claiming at least one child for Child Tax Credit	0.74
Fraction claiming at least one child for Earned Income Tax Credit	0.59

Although the data lack many demographic variables, Table 2 highlights several interesting patterns. First, these households have moderate incomes—the median filer reports income of $25,183. Second, the income distribution of head-of-household filers is skewed right, as the mean income of these filers exceeds the median by approximately $9000. Third, although on average households claiming head of

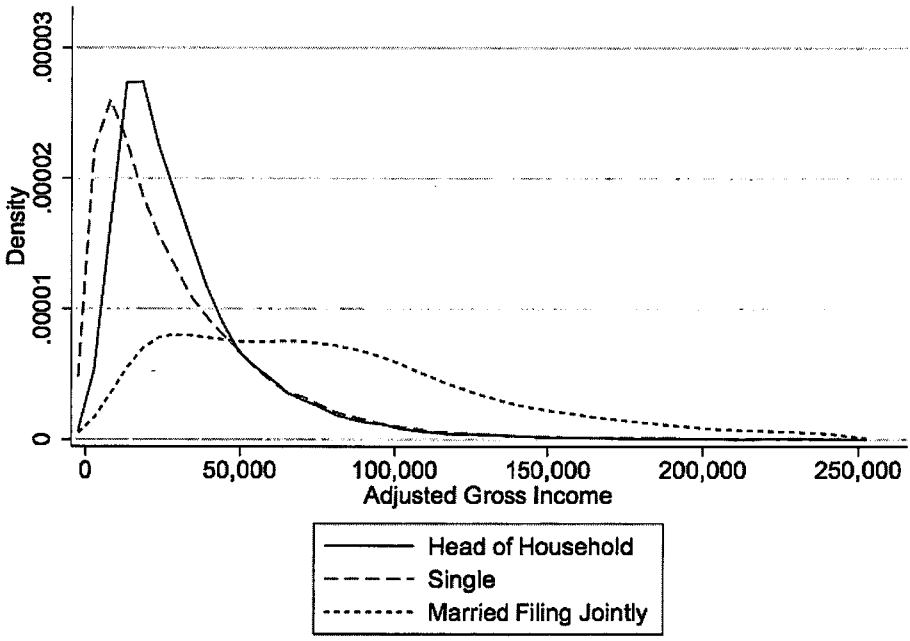
[71] Since the most recently available data is from 2011, but we use 2015 law, we inflate to 2015 prices. Bureau of Labor Statistics, U.S. Dep't of Labor, Consumer Price Index, available at https://www.bls.gov/cpi.

Imaged with the permission of Tax Law Review of New York University School of Law

household status claim 1.6 dependents, only 74% of those taxpayers claim a child for the Child Tax Credit. This discrepancy suggests that many of the individuals being used to qualify households for the head of household filing status do not meet the stricter requirements to qualify for the Child Tax Credit—they may be too old, or lack the proper relationship to the taxpayer. And although the child eligibility requirements for the Earned Income Tax Credit are less stringent than those for the Child Tax Credit (older children may be claimed for the former but not the latter), only 59% of households claiming head of household filing status claim a child for the Earned Income Tax Credit.

Figure 2 provides a more detailed look at patterns in filing status by income.

FIGURE 2
FILING STATUS BY INCOME



On average, head-of-household filers have substantially lower incomes than taxpayers filing jointly as married—this is not surprising as married households may have two earners whose incomes are being reported on the tax return. In contrast, the income distribution of head-of-household taxpayers slightly exceeds the corresponding distribution for taxpayers filing as single.

Imaged with the permission of Tax Law Review of New York University School of Law

B. Aggregate Cost

This Section estimates the budgetary cost of the head of household filing status. To do so, we compare the total amount of taxes owed under the law that includes the head of household filing status with the amount of taxes that would be owed if all taxpayers who file as head of household were instead treated as single filers.[72] To compute federal income tax liability under this counterfactual policy change, we utilize the National Bureau of Economic Research's TAXSIM program.[73] TAXSIM computes an individual's tax liability from the relevant inputs. To compute tax liability under the simulated policy, we simply run the SOI tax return data through TAXSIM after changing the filing status of each head-of-household taxpayer in the data to be single. We obtain federal income tax liability under the law that includes the head of household filing status by applying TAXSIM to the original SOI data without modification. The difference in tax liability between these policies provides a rough estimate of the budgetary costs of head of household filing status.[74] Applying this procedure yields an estimated budgetary cost of the head of household filing status of approximately $9.4 billion.

D. Distribution of the Head of Household Filing Status Benefits by Income

In this Section, we consider how the benefits of the head of household filing status are distributed across the population of taxpayers. On one level, the answer to this question is obvious: The availability

---

[72] Some might argue that the relevant baseline for determining the budgetary cost of the head of household filing status to the fisc is not the rate schedule for single filers but rather the rate schedule for married filers. Such a comparison would show the head of household filing status saving money rather than costing money. This point reflects a difficulty with tax expenditure analysis more generally in that cost estimates must be made relative to a particular baseline, and the proper baseline for the analysis is often controversial. Nonetheless, although the choice of a particular baseline may be somewhat arbitrary, we focus on the comparison of the head of household filing status to single filers to match our normative model below. Although this choice of baseline is supported by the fact that many have proposed treating current head-of-household filers as single filers whereas we are unaware of anyone who suggests treating current head-of-household filers as married couples, alternative baselines could also be reasonable for a descriptive account of the budgetary cost of the Head of Household Credit. Note also that the choice of baseline does not affect one's conclusions about whether a proposed reform is revenue-neutral relative to the status quo—our focus below.

[73] Information on TAXSIM is available at National Bureau of Economic Research, http://users.nber.org/~taxsim (last visited Feb. 28, 2018). We use the version of TAXSIM for STATA. Our estimates using TAXSIM reflect the law as of tax year 2015, the most recent version of TAXSIM available to us as of the writing of this Article.

[74] One reason these estimates are rough is because they fail to account for behavioral elasticities.

Imaged with the permission of Tax Law Review of New York University School of Law

of this filing status benefits single parents (and more precisely, the set of unmarried taxpayers with qualifying children or qualifying relatives, as described in Part III). However, because of the way the filing status is designed, the amount of tax savings it provides differs greatly based on the taxpayer's income. In particular, the benefit of the head of household filing status rises dramatically with a taxpayer's income.[75]

To understand why head-of-household benefits accrue more to high-income taxpayers than to low-income ones, it is important to understand the difference between single and head-of-household tax rates. Although single filers and those filing as head of household have the same marginal tax rates for most taxable incomes,[76] the average tax rate for the two groups can differ significantly. Consider two taxpayers with $15,000 of taxable income, one of whom is single and one of whom files as head of household. Both taxpayers face a marginal tax rate of 15%. But because the head-of-household taxpayer faced a marginal tax rate of 10% for his taxable income between $9226 and $13,150, and the single taxpayer faced a marginal tax rate of 15% for his income in this same range, the average tax rate for the head-of-household filer—and hence that taxpayer's total tax liability—is lower as well. Now suppose our hypothetical taxpayers earned $55,000 of taxable income. As before, both taxpayers face the same marginal tax rate (25%) on additional income that they earn. Now, however, there are two income ranges for which the head-of-household taxpayer pays a lower tax rate than the single taxpayer: income between $9226 and $13,150 (10% versus 15%) and income between $37,451 and $50,200 (15% versus 25%). As a result, the difference in total tax liability between the head-of-household filer and the single filer is greater when those taxpayers earn higher incomes.

Because the tax savings associated with the head of household filing status grow whenever there is a range of taxable income in which the two filing statuses receive different marginal tax rates, the benefits of the head of household status grow larger as a taxpayer's income increases. This difference is captured in Figure 3, which computes the tax savings associated with the head of household filing status based on a taxpayer's income—that is, the difference in tax liability between

---

[75] It is widely recognized that other tax features of the Code, such as the standard deduction and personal exemption, generate larger benefits to higher-income taxpayers to the extent the higher-income taxpayers have higher marginal tax rates. In contrast, as we explain in this Section, differences in marginal tax rates between high- and low-income taxpayers are not the source of the skewed benefits associated with the head of household filing status.

[76] See Figure 1.

Imaged with the permission of Tax Law Review of New York University School of Law

a head-of-household filer and a single filer with the same income, neither of whom is subject to the Alternative Minimum Tax (AMT).[77]

FIGURE 3
HEAD OF HOUSEHOLD FILING STATUS BENEFIT BY INCOME

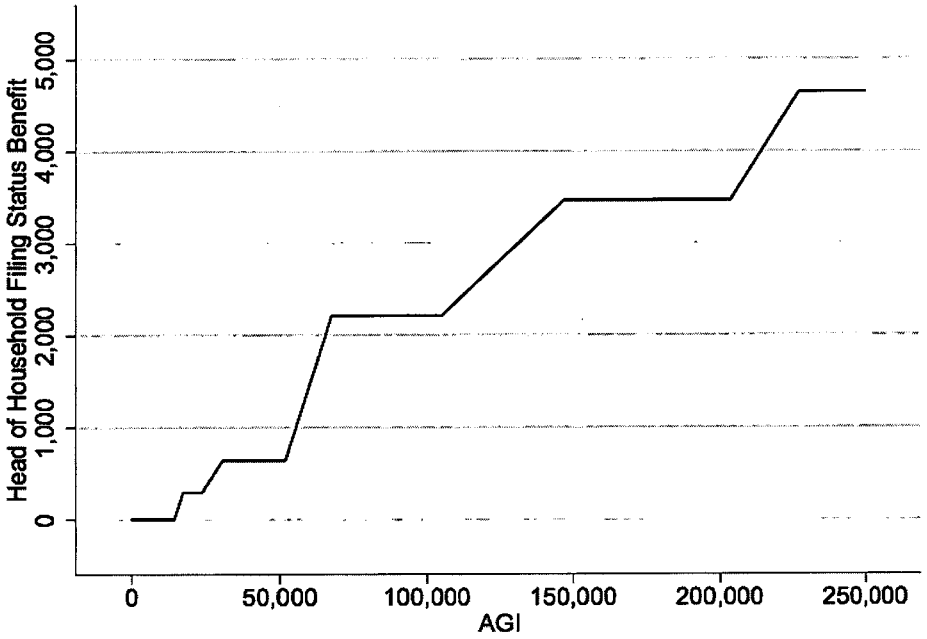


Figure 3 shows that the savings from filing as head of household are flat (but positive) over areas in which the marginal tax rates for the two filing statuses are the same, and the tax savings are upward sloping for taxable income ranges in which the marginal tax rates diverge.

Although the most important source of differences in the head of household filing status benefit by income are differences in statutory tax rates, two other features of the relationship between income and the filing status benefit are important to note. The first is that, as described above,[78] head-of-household filers receive a larger standard deduction than single filers. As with itemized deductions, the value of the standard deduction rises with a taxpayer's marginal tax rate. Hence, for head-of-household filers claiming the standard deduction, the value of this feature of the head of household filing status also tends to increase with the taxpayer's income.[79] On the other hand,

[77] Our calculations assume a hypothetical taxpayer with one child and who claims the standard deduction.

[78] See Section III.B.

[79] To the extent that taxpayers' *effective* marginal tax rate—that is, the combined effect of the statutory tax rate along with income phase-outs of benefit—is actually decreasing at

Imaged with the permission of Tax Law Review of New York University School of Law

fewer taxpayers claim the standard deduction at higher incomes than at lower ones, implying that the fraction of head-of-household filers who benefit from this feature of the filing status declines by taxpayer income.

A second important feature of the tax law to keep in mind when analyzing the distributional benefits of the head of household filing status is the interaction between the filing status and the AMT. In particular, because AMT taxpayers cannot take the standard deduction,[80] taxpayers who fall into the AMT lose this feature of the head of household filing status benefit. In addition, the AMT tax schedule is the same for taxpayers filing as single and those filing as head of household. Note though that some taxpayers subject to the AMT may still benefit from the existence of the head of household filing status; this occurs when their liability under the AMT exceeds their liability under the head of household schedule (so that the AMT binds), but their liability under the single schedule would exceed their liability under the AMT.

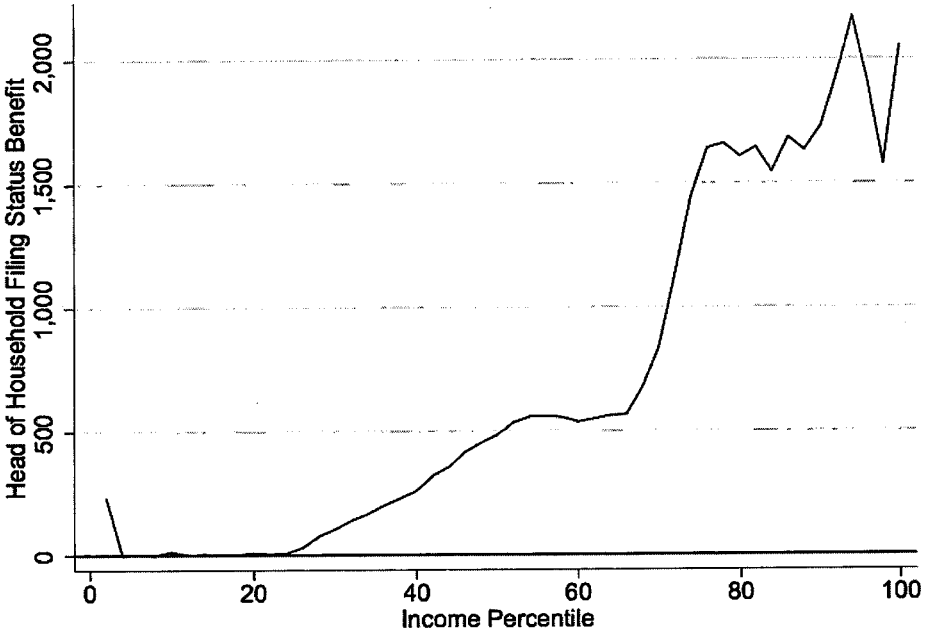
Figure 4 combines all three of these features—statutory tax rates, variation in standard deduction amount, variation in standard deduction claiming rates, and the AMT—in a single graph. The figure plots the average tax savings from the head of household filing status by income percentile for taxpayers filing as head of household. The data in the figure are obtained by simulating the change in tax liability for each taxpayer under the counterfactual policy in which head-of-household taxpayers are forced to file as single and then averaging the results across taxpayers in each income percentile. The figure thus captures differences in the benefits of the head of household filing status not only from the beneficial tax schedule and standard deduction amount, but also differences in the fraction of head-of-household filers claiming the standard deduction and subject to the AMT by income. In addition, this figure captures differences in the average effective marginal tax rates faced by taxpayers in different income percentiles.

various income ranges, the magnitude of the benefit from the standard deduction reduction is decreasing over these ranges as well.

[80] IRC § 56(b)(1)(E).

Imaged with the permission of Tax Law Review of New York University School of Law

FIGURE 4
HEAD OF HOUSEHOLD FILING STATUS BENEFIT BY INCOME PERCENTILE



So far we have been focusing on the distribution of head-of-household benefits among the population of those filers. Table 3 summarizes the distribution of head-of-household benefits over the income distribution of all filers, taking into account both differences in the prevalence of head-of-household filers by income as well as differences in the amount of benefits associated with claiming the filing status at different incomes. As above, the results in the table are computed by simulating the change in tax liability for each taxpayer under the counterfactual policy in which head-of-household taxpayers are forced to file as single. Married taxpayers and those filing as single receive no change in tax liability in this exercise.

Imaged with the permission of Tax Law Review of New York University School of Law

TABLE 3
DISTRIBUTION OF HEAD OF HOUSEHOLD FILING STATUS BENEFITS BY INCOME

Income	*Fraction Filing as Head of Household*	*Mean Benefit from Head of Household Filing Status*	
Percentile		*All Filers*	*Head of Household Filers*
25th	0.28	$6	$23
75th	0.09	$149	$1573
Decile			
1	0.06	$2	$38
2	0.18	$1	$3
3	0.26	$12	$46
4	0.26	$52	$198
5	0.24	$99	$408
6	0.20	$110	$547
7	0.15	$91	$630
8	0.10	$143	$1468
9	0.05	$87	$1642
10	0.03	$59	$1939
Overall Population	0.15	$66	$428

Table 3 shows that the fraction of taxpayers filing as head of household peaks at the fourth income decile, but remains significant in the higher income deciles as well. Particularly striking are the differences in the average head-of-household benefit for taxpayers in different deciles; the average benefit for taxpayers claiming head of household status in the eighth income decile is over 3.5 times that of taxpayers eight in the fifth income decile. The difference in the average benefits for taxpayers who qualify is more than enough to offset the fact that a smaller fraction of taxpayers in the higher decile claim the filing status; the largest tax savings from the filing status go to taxpayers in the eighth income decile.

E. Changes in the Distribution of Head-of-Household Benefits Over Time

Although the basic design of the head of household filing status has remained fairly stable since its creation, dramatic changes have occurred in U.S. marital patterns and in other aspects of the tax law over this time period. In this Section we explore what if any consequence these changes have had for the head of household filing status.

One source of change has been changes in demography, in particular, marital patterns among U.S. households. Since the enactment of the head of household filing status, many more U.S. families are

Imaged with the permission of Tax Law Review of New York University School of Law

headed by unmarried individuals. One can clearly see these trends in the share of children born to unmarried mothers, which has steadily increased from 10.7% in 1970 to 41% in 2009.[81] Put differently, "[f]rom 1970 to 2002, the percentage of children living in two-parent families fell from 85% to 69%," while the share "living in single-parent families more than doubled, from 11% to 27%.[82] In 2012, 65% of children lived with their married parents, but 36% did not, with 24% living with their mothers only."[83]

These demographic changes are reflected in the prevalence of head-of-household filers. In 1960, 1.7% of taxpayers filed as head of household; in 2014, 15% of taxpayers did.[84] Simply put, many more filers are eligible for the head of household filing status because many more are single filers with children.

Another driver of the changing distribution of head-of-household benefits are changes in the income profile of taxpayers eligible for the filing status. Figure 5 depicts this change. It separates the population into income deciles for each of 1960 and 2011. It then shows for each decile in each year the percent filing as head of household, normalized by the average percent in that year filing as head of household. For example, in 2011, 15.1% filed as head of household overall and 14.1% filed as head of household in the seventh decile, yielding the ratio of 0.94 shown in the figure. At the time the head of household filing status was created, single parent status was much less concentrated among low-income households than it is today, yielding the relatively large concentration shown at higher incomes in the figure in 1960 and at lower incomes in 2011. As a result, the income distribution of those claiming the head of household status has shifted dramatically downwards.

---

[81] Stephanie J. Ventura & Christine A. Bachrach Nonmarital Childbearing in the United States, 48 Nat'l Vital Statistics Reports No. 16, at 17 tbl.1 (2000) https://www.cdc.gov/nchs/data/nvsr/nvsr48/nvs48_16.pdf; U.S. Bureau of the Census, Statistical Abstract of the United States: 2012, at 70 tbl.89 (2012), https://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf.

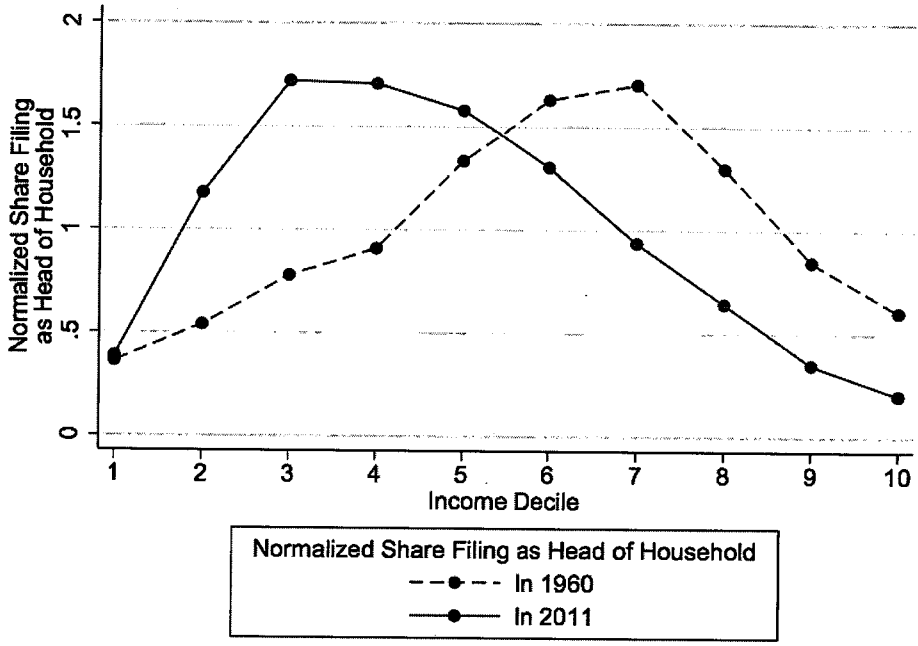
[82] Anne L. Alstott, Updating the Welfare State: Marriage, the Income Tax, and Social Security in the Age of Individualism, 66 Tax L. Rev. 695, 714 (2013).

[83] Id; see generally Andrew J. Cherlin, The Deinstitutionalization of American Marriage, 66 J. Marriage & Fam. 848 (2004) (arguing that marriage has become deinstitutionalized over recent years due to the changing of social norms).

[84] The 1960 statistic is from our calculations using the SOI. See IRS, Statistics of Income, Number of Returns Adjusted Gross Income, and Taxable Income by Marital Status of Taxpayer, tbl.R (1960), https://www.irs.gov/pub/irs-soi/60inar.pdf.

Imaged with the permission of Tax Law Review of New York University School of Law

FIGURE 5
HEAD OF HOUSEHOLD FILING STATUS PREVALENCE BY INCOME IN 1960 VS 2011



Note: The figure shows the percent of filers in a given decile in a given year filing as head of household divided by the average percent filing as head of household in that year.

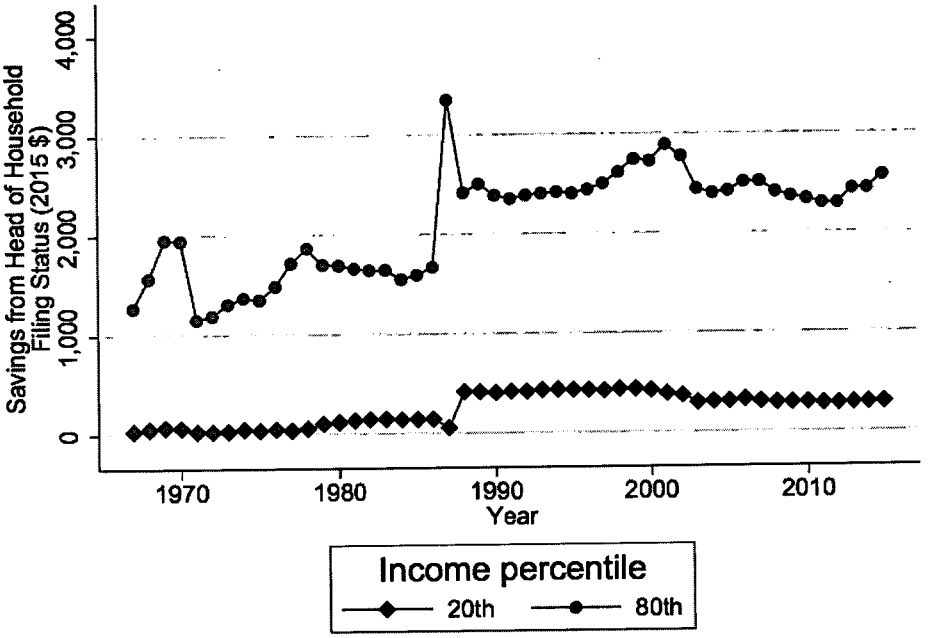
Apart from demography, the major source of changes in the distribution of head-of-household benefits has been from changes in the tax law. As discussed above, the source of the different tax savings by income are a function of differences in the marginal tax rate schedules for single and head-of-household filers, which in turn result from differences in the bracket thresholds associated with different filing statuses. Thus, as various tax reforms over the years have changed the tax brackets for single and head-of-household filers, the distribution of head-of-household benefits by income has changed as well. These changes are captured in Figure 6, which graphs head-of-household benefits for hypothetical taxpayers with income at the 80th and 20th income percentiles.[85] Figure 6 thus captures the changing income distribution of benefits as the tax schedules changed. The figures begin

[85] For the income percentile data, see Historical Income Tables: Income Inequality, Table H-1: Income Limits for Each Fifth and Top 5 Percent of Households, U.S. Census Bureau, https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-inequality.html (last visited Mar. 26, 2018). The data ultimately come from the Current Population Survey.

Imaged with the permission of Tax Law Review of New York University School of Law

in 1967 and end in 2015, which are the limits of the years for which income percentile information is available from the U.S. Census.

FIGURE 6
HEAD OF HOUSEHOLD FILING STATUS BENEFITS OVER TIME



V. NORMATIVE FRAMEWORK

Thus far our focus has been on describing the head of household filing status and documenting the distribution of the benefits it provides. We now turn to normative questions about how the filing status should be designed. In this Part we develop a simple model. We take as the key policy question underlying the head of household filing status whether and how having children should differentially affect single versus married filers. After all, the distinctive feature of the head of household filing status is that when single filers have a child, they gain access to this more advantageous tax schedule, whereas married filers gain no analogous benefit. (Of course, both married and single filers gain access to the Child Tax Credit and other child-related tax provisions.)

With this goal in mind, our model is designed to offer guidance on three questions. First, how should tax benefits for having a child depend on marital status? That is, should there be what we call a "marriage-dependent child subsidy"—a tax benefit for unmarried parents for having a child that married parents do not receive? Second, how

Imaged with the permission of Tax Law Review of New York University School of Law

should a potential marriage-dependent child subsidy vary with household income? And third how should the marriage-dependent child subsidy vary with the number of children a household has?

For purposes of the model, we adopt a utilitarian social welfare function. For simplicity, we follow Louis Kaplow's analysis of the optimal tax treatment of families and ignore behavioral responses to taxation;[86] the income response to taxation is not essential to the issue at hand, and ignoring the issue considerably simplifies the analysis, allowing us to focus on the issues particular to taxation of the family. Changes in subsidies based on marital structure or family size may cause taxpayers to change their behavior in other ways, and we return to such issues in Section VII.E.

In the model, every person has equal weight, and families split their resources equally among each member of the family. That is, a child has the same welfare weight and utility over consumption as an adult. Also in the model, both children and adults cost a fixed amount of resources to maintain—for housing, clothing, and the like. Since we assume a declining marginal utility of income, having another mouth to feed and needing to pay more for the upkeep of either adults or children generates increased optimal transfers from the government.

The model implies that there are two reasons that the government should increase transfers to families if they have children. First, a child is another person with equal weight in the social welfare function. And, given a declining marginal utility of income, splitting the same income between two people rather than one leads to a higher marginal utility of income for the members of the family with the child, suggesting that the government should increase its transfers to the family with the child. Second, children cost money to raise, including feeding, housing, and child care; these expenditures reduce the disposable income available to families with children, increasing the marginal utility of consumption for them and their children.

Specifically, suppose that there are four types of individuals in society: married without kids (m), single without kids (s), married with one kid (mk), and single with one kid (sk). The number of households in the population in each of these groups is given by: α_m, α_s, α_{mk}, and α_{sk} (respectively).

Each couple has a fixed endowment y. For simplicity, we assume that there is only one earner per household. In married households, one spouse does not work and is free to provide child care. The fixed cost of each adult in the household is A. The fixed cost of each child in the household is C for singles, but βC for married couples (with $\beta<1$). One can understand β as representing the reduced cost of child

[86] See Louis Kaplow, The Theory of Taxation and Public Economics 315-44 (2008).

Imaged with the permission of Tax Law Review of New York University School of Law

care for married couples with a stay-at-home spouse, since the spouse who does not work outside the home can provide child care, and the couple can avoid paying expenses for child care outside of the home. For couples in which both spouses work full-time, β would represent the fact that a married couple will generally have more nonworking hours available for child care than a single parent who works full-time.

Suppose that each household's utility U can be represented as:

$$U = n\,u\left(\frac{after_tax_income}{n}\right)$$

where n is family size and *after_tax_income* = *endowment* + *transfers* − *family_costs*. So households' take-home income (*after_tax_income*) consists of their endowment y, a tax (a negative T) or transfer (a positive T) from the government, and *family_costs* (A and C). Taxes and transfers T depend on marital status and number of children, with t_s for single without kids, t_{sk} for single with a kid, t_m for married without kids, and t_{mk} for married with one kid. The taxes and transfers are negative for a tax and positive for a subsidy. We assume that after-tax income is split evenly among the household members. As a result, the groups have the following household utilities:

(1) $$U_s = u(y - A + t_s)$$

(2) $$U_{sk} = 2u\left(\frac{y-A-C+t_{sk}}{2}\right)$$

(3) $$U_m = 2u\left(\frac{y-2A+t_m}{2}\right)$$

(4) $$U_{mk} = 3u\left(\frac{y-2A-\beta C+t_{mk}}{3}\right)$$

Social welfare is thus given by $\alpha_{mk}U_{mk} + \alpha_{sk}U_{sk} + \alpha_m U_m + \alpha_s U_s$.

Finally, the government has the budget constraint of being able to fund the transfers with taxes among the four groups:

(5) $$\alpha_m t_m + \alpha_s t_s + \alpha_{sk} t_{sk} + \alpha_{mk} t_{mk} = 0.$$

We abstract away from other government expenditures.

With this setup, we achieve three results (with proofs in the Appendix). A first question to ask is whether single parents should receive any additional tax benefits over and above parents who are married. After all, we have argued that the original purpose of the head of household filing status is to a significant extent antiquated. Given this, perhaps single parents should simply be treated the same as other unmarried individuals. Indeed, recent policy proposals have suggested eliminating the filing status entirely without a replacement.[87]

[87] See notes 92–94 and accompanying text.

Imaged with the permission of Tax Law Review of New York University School of Law

However, our model suggests a welfarist case for maintaining an extra subsidy for single parents.

Result 1: The tax benefit to having a child should depend on marital status. In particular, the optimal marriage-dependent child subsidy, $(t_{sk} - t_s) - (t_{mk} - t_s)$*, is given by* $(1 - \beta)C > 0$.

We know that the extra tax benefit $(1 - \beta)C$ is positive because $\beta < 1$. The extra tax benefit for single parents with children compensates for the extra cost of raising a child as a result of not benefitting from the additional home child care that a partner can provide. Intuitively, because singles need to pay for child care outside of the home, their marginal utility of consumption goes down by more when they have a child than for married couples, making it valuable for the government to increase transfers for singles than for married couples when they have a child.

To answer the other two questions, on how the marriage-dependent child subsidy should vary with income and number of children, it is helpful to expand the model. To address the question whether the marriage-dependent child subsidy should vary with income, we add four new groups to the existing four groups in the population. Each household in one of the new groups has income yy. This setup yields the following result (proof in the Appendix):

Result 2: The optimal marriage-dependent child subsidy does not vary by income.

This result follows from the fact that the difference in the optimal tax/subsidy between the higher- and lower-income groups of the same marital/child type is the same for all four marital/child types. As a result, the subsidy for children cannot vary by income, since the tax/subsidy structure for the lower-income groups is the same as the structure for the higher-income groups, just with a constant term subtracted. Intuitively, we first want to solve the problem of distribution within each income level; after that problem is solved (by equalizing marginal utilities across income levels), there is no reason that singles with children and married couples with children should be treated differently across income levels, since the different incomes have effectively been neutralized in the first, within-income step.

Similarly, the model can be enriched to address the question how the optimal tax/subsidy should vary with the number of children. To help address this question, we add two groups to the original four, one with a single parent and two kids and one with married parents and two kids, corresponding to utilities:

Imaged with the permission of Tax Law Review of New York University School of Law

$$U_{s2k} = 2u\left(\frac{y-A-2C+t_{s2k}}{3}\right)$$

$$U_{m2k} = 3u\left(\frac{y-2A-2\beta C+t_{m2k}}{4}\right)$$

We assume that child care costs double with two children and discuss below the results when this is not the case and instead the costs of a second child are less than the costs of the first child. This setup yields the result (proof also in the appendix):

Result 3: The optimal marriage-dependent child subsidy for single parents increases linearly in the number of children. For each extra child, a single filer should receive (1 – β) C more than a married filer.

This result, which is the same outcome as Result 1, is intuitive and is true essentially for the same reason that Result 1 is true: It costs more for single filers to raise a child than for married filers to raise a child. Because of the linearity implicit in our model (C and β remain the same as the number of children increase) this result stays true—and true to the same extent—as the number of children increases. Below, we consider the implications of relaxing the assumption of constant costs per child.

The model formalizes notions of vertical and horizontal equity. The model incorporates families of different incomes and expenditures: The lower the per-person disposable income (that is, the lower the income or higher the expenditure), the more the government optimally will transfer to the individual, because of the declining marginal utility of consumption. Incorporating the possibility of differential treatment based on income formalizes a notion of vertical equity based on equalizing the marginal utility of consumption of people of different income levels. And incorporating the costs of raising children formalizes a notion of horizontal equity, in that those costs differentiate who within an income level should pay more or less in taxes in order to equalize the marginal utility of consumption. Together, the model in a sense formalizes a goal of taxing based on "ability to pay": Those with more income and lower child expenses are able to pay more. In the next Part, we propose a reform of the head of household filing status based on these results.

VI. Shortcomings of the Head of Household Filing Status

This Part investigates problems with the current design of the head of household filing status, drawing on the normative framework and

Imaged with the permission of Tax Law Review of New York University School of Law

the descriptive analysis described above. The next Part proposes a reform to address these problems.

A. Vertical Equity

Our model suggests that the marriage-dependent child subsidy should be constant across the income distribution. One of the primary problems identified by this Article with the head of household filing status is that the size of the tax benefit it provides instead increases with a taxpayer's income. We justified the model's result on utilitarian grounds, motivated by a declining marginal utility of consumption, but liberal grounds, like those provided by Rawls, would also find such regressive spending problematic.[88] As discussed above, this regressive feature of the head of household filing status is a direct result of the fact that the tax benefit is designed as a filing status, with an advantageous marginal tax rate schedule, as opposed to, say, a credit—an alternative design that the next Part considers.[89]

As discussed above, the differences in the size of the benefit by income are dramatic. Single taxpayers with children whose earnings put them in the twenty-fifth percentile of the income distribution in 2011 received $23 in tax reduction from filing as head of household, whereas those earning in the seventy-fifth percentile received a benefit of $1573.[90] To the extent that the point of the filing status is to recognize differences in disposable income between married and unmarried parents, there is little reason to think that difference would be larger for those at higher incomes. If anything, to the extent that lower-income parents have less leisure time or less flexible work schedules, the difference in the marginal utility of consumption between married and unmarried parents may be even greater for low-income families than for high-income families.

To be sure, it is certainly likely that the average expenditures on a child are higher for higher income families. And so the opportunity cost of time is greater too, as well as actual expenditures. Although the actual expenditures of raising a child may tend to be higher on average at higher incomes, that empirical fact is not a justification for designing the Code to entrench this disparate use of resources under our utilitarian framework.[91]

---

[88] See John Rawls, A Theory of Justice (1971).

[89] Note that the distribution of the head of household filing status design across the income distribution made more sense under the original rationale for the filing status, because the marriage bonuses being offset were larger for higher income taxpayers.

[90] See Table 3.

[91] A more difficult possibility is that higher-income taxpayers consume more child care not only because they are richer but also because they have more expensive tastes. This possibility raises thorny but familiar questions about the role of expensive tastes in

Imaged with the permission of Tax Law Review of New York University School of Law

B. Horizontal Equity

Our model also implies that the extra tax benefit that singles receive for having a child should increase as the number of children increases. A second flaw in the current design of the head of household filing status is a discrepancy in how it treats single parents with different numbers of children, or rather, the lack of any such discrepancy. To the extent that there is an added burden for single parents relative to married parents to raising a child, that burden increases with the number of children someone has. This fact is recognized in the Earned Income Tax Credit and Child Tax Credit, which both provide greater benefits for taxpayers with more children. Yet the head of household filing status does not; a single parent raising one child receives the same benefit as a single parent raising four children on her own.

As well, to the extent that lower-income households on average have more children than higher-income ones, this is another way that the current design of the benefit is skewed towards high-income families.

C. Simplicity and Administration

Although not part of our model, there are likely some additional administrative costs associated with the head of household filing status by virtue of its unique position as a filing status. Although taxpayers who file with the help of paid preparers or tax preparation software are unlikely to be misled, the very name head of household is probably misleading to many others. That is, a person who knows nothing about the Code is likely to believe that they are a head of household even if they do not have children; nothing about the phrase denotes that it is related to being a single parent. Although we lack this evidence, we suspect this causes some number of filing mistakes that could easily be avoided by changing the name.

Additionally, the head of household filing status adds a whole new rate schedule to the Code. Although the complexities of this are alleviated in a world of online filing, it still increases the complexity of the Code, making it more difficult for taxpayers to predict their tax burden in advance. An alternative that follows existing features of the Code for single (and other) tax filers would be desirable on grounds of simplicity.

---

welfarist analyses. See, e.g., G.A. Cohen, Equality of What? On Welfare, Goods and Capabilities, 56 Louvain Econ. Rev. 357, 361 (1990).

Imaged with the permission of Tax Law Review of New York University School of Law

VII. THE HEAD OF HOUSEHOLD CREDIT

So far we have identified several problems with the head of household filing status. Our question in this Part is how the tax benefit should be designed to better accomplish the goals we have identified. There are several options for reform of the head of household filing status.[92]

The first option for reforming the head of household filing status is to completely abolish the filing status. This option would save the government money and eliminate the regressive subsidy, but would violate our result that it is desirable to reduce taxes on single parents paying for expenses related to children.

Second, the government could replace the filing status with an expanded Child Tax Credit for all taxpayers with children. This option would continue helping children, consistent with our utilitarian calculus. However, it would not differentiate the treatment of head-of-household filers and married filers; rather, it would ignore differences in those taxpayers' per-person disposable income. This option is similar to a reform offered in 2014 by the then-Chairman of the House Ways and Means Committee[93] and offered in 2005 by the President's Advisory Panel on Federal Tax Reform set up by President George W. Bush, as part of broader consolidations of family-related credits.[94] However, as argued above, single taxpayers with children

---

[92] Our proposal could interact with other proposals for reforming the taxation of marriage. See, e.g., Yair Listokin, Taxation and Marriage: A Reappraisal, 67 Tax L. Rev. 185 (2013) (arguing that the "trilemma" of taxing marriage in a way that is progressive, treats couples that earn the same amount equally, and treats individuals the same regardless of whether they are married should be resolved by sacrificing each of the three goals equally, since the costs to violating each of the three goals may be convex).

[93] The plan, developed by the Chairman of the House Ways and Means Committee, Representative David Camp, is known colloquially as the "Camp Plan." House Ways and Means Comm., The Tax Reform Act of 2014, at 14 (2014), http://waysandmeans.house.gov/UploadedFiles/Tax_Reform_Executive_Summary.pdf ("[O]ur plan collapses six different family tax benefits (basic standard deduction, additional standard deduction, personal exemptions for taxpayer and spouse, personal exemptions for dependents, child tax credits, and head of household filing status) into three simple family tax benefits: a larger standard deduction, an additional deduction for single parents, and an expanded child and dependent tax credit of $1,500 per child and $500 per dependent."); see also James R. Nunns, Amanda Eng & Lydia Austin, Urban-Brookings Tax Pol'y Ctr., Description and Analysis of the Camp Tax Reform Plan 5 (July 8, 2014), http://www.taxpolicycenter.org/UploadedPDF/413176-Camp-Plan-Description-and-Analysis.pdf (describing the filing status aspects of the Camp Plan).

[94] The panel also suggested consolidating the standard deduction, personal exemption, dependency exemption, head-of-household filing status, and the Child Tax Credit with a "Family Credit." President's Advisory Panel on Fed. Tax Reform, Simple, Fair, and Pro-Growth: Proposal to Fix America's Tax System 60 (2005), https://www.treasury.gov/resource-center/tax-policy/Documents/Report-Fix-Tax-System-2005.pdf. The Republican Staff of the Senate Finance Committee offers additional recent analysis in Republican Staff, S. Comm. on Fin., Comprehensive Tax Reform for 2015 and Beyond (2014), https://

Imaged with the permission of Tax Law Review of New York University School of Law

have a higher per-person marginal utility of consumption than couples with children. They also have more need, since they do not have a second individual to provide child care, justifying a larger tax preference for children for single taxpayers—and making this option undesirable.

Finally, a third possibility for reform is to replace the head of household filing status with a new tax credit covering single parents. This is our preferred option. The new credit would continue to provide a larger benefit for having a child to single taxpayers, but would equally benefit lower-income households who also bear the expense of raising children. Like the other options, it simplifies the Code.

A. Mechanics of the Head of Household Credit

Since the optimal size of a marriage-dependent child subsidy is beyond the scope of the Article and because of the political desirability of a budget-neutral proposal, we operate within the constraints of the existing expense of the head of household filing status. Our proposal is to eliminate this filing status and to apply the budgetary savings from doing so towards the creation of an expanded child tax credit for single parents.[95] We refer to the new proposed credit as the Head of Household Credit.[96]

1. Size of Credit

For taxpayers who qualify, the amount of the Head of Household Credit would depend only on the number of children the taxpayer has. Consequently, the credit would not vary based on a taxpayer's income. This design feature has two important advantages relative to the current design of the head of household filing status. First, the

---

www.finance.senate.gov/imo/media/doc/Comprehensive%20Tax%20Reform%20for%202015%20and%20Beyond5.pdf.

[95] The reform would also replace the other provisions in the Code linked to the head of household filing status, such as the expanded standard deduction.

[96] Our proposal would eliminate benefits for those with nonchild dependents who currently benefit from the head of household status. There may be reasons that raising children may be more of a merit good than taking care of (say) elderly adults—for example, because society benefits from increased later earnings of children in a way that it does not for elderly adults (regarding children as merit goods, see Section VII.E). But other reasons apply equally well to both children and elderly adults. We make this choice not because of an underlying normative commitment distinguishing taking care of children from taking care of elderly adults, but rather to parallel the tax treatment of married couples who have such dependents. For married couples, taking care of an elderly person would entitle one to a dependent exemption, but not to a Child Tax Credit (at least under pre-TCJA law)—we follow that here. Section D considers two alternative proposals that would maintain head of household filing status eligibility for unmarried taxpayers supporting adult dependents.

Imaged with the permission of Tax Law Review of New York University School of Law

size of the benefit would not increase with a taxpayer's income, promoting vertical equity. Second, taxpayers with more children would receive a larger benefit, consistent with the notion that the goal of the benefit is to recognize the greater marginal utility of consumption of those with more children. These are the key features of the Head of Household Credit. In order to simulate the policy, we must resolve the remaining design questions as well, but the simulation considers the robustness to different ways of answering them.

2. *Eligibility*

Like head of household filing status, eligibility for the Head of Household Credit would depend on meeting two conditions. First, the taxpayer must be unmarried. Second, the taxpayer must have an eligible child. Recall from Part III that the criteria for an eligible child differs between the head of household filing status and the Child Tax Credit: In general, only children under seventeen qualify for the credit,[97] whereas most dependents (who may be older than seventeen) can qualify a taxpayer for head of household filing status.[98] Which individuals should be eligible for the Head of Household Credit? The choice will affect several categories of households: those with children between the ages of seventeen and nineteen; those with children between the ages of nineteen and twenty-four who are full-time students; those with children of any age who are permanently disabled; or those supporting relatives who live with the taxpayer and who earn less than $4000 a year.

An important goal of the head of household filing status may be recognizing the nonfinancial resources that taxpayers put into supporting the people who live with them.[99] The nonfinancial resources contributed by any individual are likely greater when the taxpayer is responsible for the care on his or her own.[100] Therefore, on average it

---

[97] IRC § 24(c)(1).

[98] IRC §§ 2(b)(1), 152(c)-(d).

[99] For example, consider the time that parents put in driving children to soccer practice and keeping track of everyone's schedule, and the resulting drain. Without these nonfinancial costs, the goals could be accomplished with a deduction for child care expenses.

[100] This proposition depends on filing as a head of household (as "unmarried") being equivalent to being "single"—that is, unpartnered for the purpose of raising children. Of course, the two are not equivalent, especially given rising rates of cohabiting, but unmarried, parents raising children together. Indeed, between 2011 and 2013, 25.9% of children were born into households with parents that were cohabitating at birth, nearly double the rate of 14.3% from 2002. Neil Shah, U.S. Sees Rise in Unmarried Parents, Wall St. J., Mar. 10, 2015, https://www.wsj.com/articles/cohabiting-parents-at-record-high-1426010894 (video accompanying article). With cohabitation, the normative rationale for a bonus child tax credit for "singles" is undercut because the cohabitating partner can also take part in child care, providing time and financial resources. Of course, the issue of cohabitation is a

Imaged with the permission of Tax Law Review of New York University School of Law

seems reasonable that the benefit might be more important for taxpayers who support children who are totally disabled—who likely require the spending of large amounts of nonfinancial resources—and less important for older children (between seventeen and nineteen, or older full-time students) who may be more capable of taking care of themselves (at least in nonfinancial ways). This reasoning suggests treating totally disabled children as eligible children for the Head of Household Credit, but not the other categories of dependents who qualify for head of household filing status but not the Child Tax Credit.[101] Similarly, elderly parents living in the households of their adult children may require care-taking and other resources that are easier to provide in households headed by a married couple as opposed to a single taxpayer. Consequently, we propose that the Head of Household Credit include as a qualifying individual parents of the taxpayer living in the taxpayer's home.

---

problem for the single filing status itself, not just the head of household filing status or our proposal.

It is beyond the scope of the Article to address the issue of cohabitation. Nevertheless, we sketch out how the Code might target aid to single, but not cohabitating, individuals if policymakers wish to do so. But we do so without taking a stand on the merits of these provisions or on whether the Code should incentivize marriage over cohabitation. First, however, a note on the scope of the issue of cohabitating parents taking advantage of the head of household filing status: Though the rate of cohabitation has increased substantially at *birth*, many of the couples do not stay together, so that among couples with children in 2012, only 11.6% were cohabitating but unmarried, amounting to 3.2 million couples with one partner potentially claiming head of household filing status out of 13.4 million that claimed the status in 2012. See Jonathan Vespa, Jamie M. Lewis & Rose M. Kreider, U.S. Census Bureau, America's Families and Living Arrangements: 2012, at 22 (2013); IRS, Statistics of Income, Individual Statistical Tables By Tax Rate and Income Percentile tbl.3.6 (2012), https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile.

As to the ways to target tax provisions to single but not cohabitating individuals, there are a couple of possible tweaks to the Code. Take the example of a cohabiting couple living with their child. One of the adult members of the couple earns 60% of household income and the other earns 40% of household income. Under current law, the partner earning 60% of household income can claim the child to use the head of household filing status if the taxpayer pays over 50% the costs of maintaining the household. IRC § 2(b)(1). One change to prevent this would be to tweak § 2(b)(1): Increasing this 50% threshold to, say, 65%, would prevent one member of this couple from taking the status and generally reduce the likelihood that one of two cohabitating, but working, parents can claim the status. This change would not deal with the issue of cohabitating partners, one of whom does not work; to address that issue, a direct provision on cohabitation or time spent providing child care could be added. Either of these provisions could discourage cohabitation, which could be advantageous if the discouragement led to higher marriage rates or disadvantageous if it led to less cohabitation without an increase in marriage.

[101] Although including children with permanent disabilities and parents living at home in the scope of individuals covered by the Head of Household Credit is consistent with its purpose, one downside is that doing so pushes the credit further away from the traditional Child Tax Credit, and by doing so, potentially introduces a new source of complexity.

Imaged with the permission of Tax Law Review of New York University School of Law

3. *Refundability*

As described in Part III, the benefits of the current head of household filing status are not available to taxpayers who would otherwise lack positive tax liability. In contrast, the Child Tax Credit is partially refundable. By making the Head of Household Credit refundable, taxpayers with lower incomes would benefit from it. On the other hand, refundability would increase the cost of the credit, reducing the amount that could be provided in a budget-neutral manner. Our proposed Head of Household Credit would be fully refundable, which accords with our utilitarian theory; if it were nonrefundable, low-income parents would not gain any extra spending power.

4. *Phase-Out*

Following our model, we do not phase out the Head of Household Credit as incomes increase. The head of household filing status benefits do not phase out as income rises (except at very high incomes as a result of the AMT). To be consistent with the model and parallel the head of household filing status where it does not conflict with our model, as our default we do not phase out the Head of Household Credit with income. We alter this assumption in our alternative simulations.

B. Policy Simulation

Our goal in this Section is to determine the maximum feasible size of the Head of Household Credit—designed according to the specifications in the previous Section—by applying the savings from replacing the head of household filing status to the new credit. From the previous analysis, we know the budgetary cost of the filing status is approximately $9.4 billion. To determine the maximum feasible size for the Head of Household Credit then, we simply identify the size of the credit that would generate $9.4 billion in tax savings for eligible taxpayers.

Our procedure for answering this question is as follows. First, we calculate each individual's tax liability using the SOI data assuming that the head of household filing status has been eliminated—that is, any taxpayer who filed as head of household filing status is assumed to file as single instead. Next, we choose a hypothetical value for the Head of Household Credit and compute the size of each taxpayer's credit according to this potential value. As described above, apart from marital status and refundability, eligibility for the Head of Household Credit would include individuals who are treated as eligible individuals for the Child Tax Credit, as well as certain older depen-

Imaged with the permission of Tax Law Review of New York University School of Law

dents who are not eligible for the Child Tax Credit (such as children who are permanently disabled or parents living at home).[102] Because the proposed Head of Household Credit is refundable, the amount of the credit does not need to be reduced for taxpayers with negative tax liability.

After computing the size of the Head of Household Credit for each taxpayer, we sum the credit across all taxpayers to calculate its aggregate cost. If that cost exceeds the cost of the head of household filing status, we repeat the procedure with a smaller credit amount; if the filing status cost exceeds the credit cost, we increase the credit. Applying this procedure yields a maximum feasible value for the Head of Household Credit of approximately $294 per qualifying child.[103]

C. Distributional Effects of Switching to the Head of Household Credit

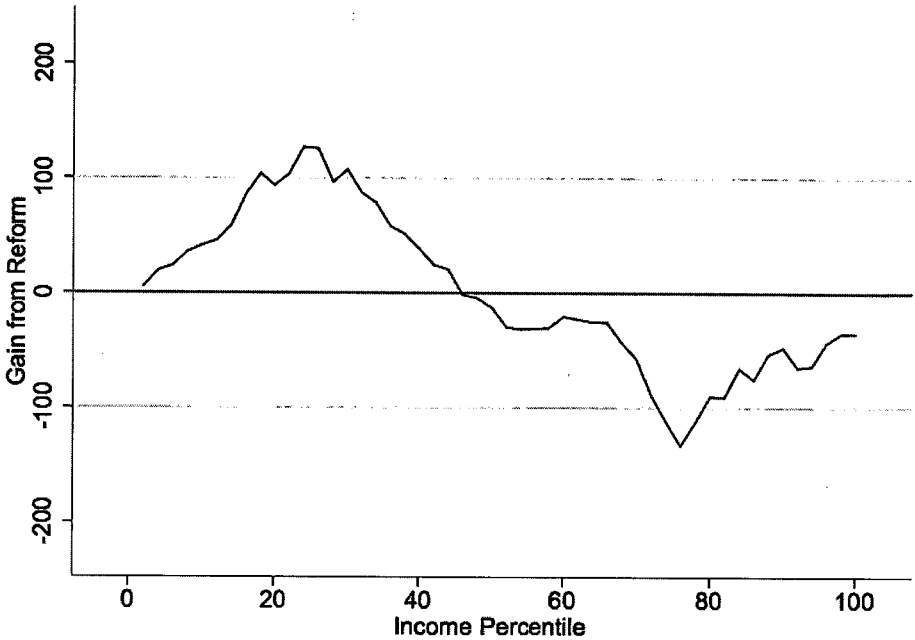
Switching from head of household filing status to the Head of Household Credit would have important distributional consequences, displayed graphically in Figure 7.

[102] See IRC §§ 2(b), 24(c), 152; see also notes 18-31 and accompanying text. In our data we are unable to directly observe which children are totally and permanently disabled, so we ignore this (relatively small) group for purposes of the simulation. Similarly, although the Head of Household Credit only includes dependent parents living at home, we cannot identify in our data which dependent parents live at home and which live in their own household. To be conservative in our calculation of the feasible Head of Household Credit amount, we assume in the simulation that all dependent parents are eligible for the credit.

[103] Our estimate of the credit amount is based on it being revenue neutral now. If over time the share of head-of-household filers that is relatively low-income continues to increase, then the price of our credit would increase at a faster rate than that of the filing status, since we increase benefits to lower-income and lower those to higher-income households relative to the status quo policy.

Imaged with the permission of Tax Law Review of New York University School of Law

FIGURE 7
WINNERS AND LOSERS FROM HEAD OF HOUSEHOLD CREDIT REFORM



The biggest gains from the reform would go to single-parent households supporting multiple children at the lowest part of the income distribution. This is not surprising in light of the previous analysis: Under current law, low-income head-of-household filers received much less than the average benefit provided by the filing status. Similarly, households supporting multiple children would benefit more than households supporting a single child—both groups receive the same benefit under current policy, but the former would receive more than the latter under the Head of Household Credit. The flip side to this coin is that higher-income taxpayers would benefit less from the credit than they currently do under filing status.

The distributional consequences of adopting the Head of Household Credit are further explored in Table 4, which uses the SOI tax return data to break down the distributional effects of the reform by income decile.

Imaged with the permission of Tax Law Review of New York University School of Law

TABLE 4
DISTRIBUTIONAL IMPACT REFORM

	Head of Household Filing Status Filers			*All Filers*
Income Decile	Head of Household Filing Status *Benefit Amount*	*Household Credit Amount*	*Net Gain from Reform*	*Net Gain from Reform*
1	$38	$360	$323	$25
2	$3	$350	$346	$78
3	$46	$407	$361	$112
4	$198	$401	$203	$62
5	$408	$398	-$10	$5
6	$547	$388	-$159	-$28
7	$630	$371	-$260	-$35
8	$1468	$353	-$1115	-$107
9	$1642	$371	-$1271	-$66
10	$1939	$335	-$1604	-$48

A number of effects shape the effect of the reform by income. First, as discussed above, average head of household filing benefits are increasing over most of the income distribution. Second, the average number of head-of-household-filing-status and head-of-household-credit eligible individuals within a household—and hence the household's tax benefit under the Head of Household Credit—varies by income decile. Third, the fraction of households itemizing their deductions (and hence forgoing the higher standard deduction associated with head of household filing status) varies by income decile. Finally, the fraction of households subject to the AMT—an important limit on the benefits available under the head of household filing status—rises over most of the income distribution. Table 4 incorporates the net distributional impact of these various effects. For all but the highest income deciles, the benefit of the reform is declining by income, with the effect becoming negative for taxpayers in the sixth income decile.[104]

D. Alternative Policy Options

This Section considers alternate design possibilities for the Head of Household Credit. All of these options retain the key features of the reform: that the credit amount depends on the number of the taxpayer's children and does not depend on the taxpayer's income (other than through a potential phase-out). The analysis in this Section shows how other features of the design of the Head of Household

[104] Fortunately for the proposal's political feasibility, roughly half of the income distribution is a net winner—and it is the half that, while perhaps less politically powerful, gains much more from increasing their after-tax income by a dollar.

Imaged with the permission of Tax Law Review of New York University School of Law

Credit affect the maximum feasible credit size and the distributional effects of the reform.

1. Eligibility

Instead of mirroring eligibility for the Child Tax Credit, the Head of Household Credit could be based on all dependents currently qualifying for the head of household filing status.[105] The effect of this change would be to expand the number of households eligible for the Head of Household Credit and to raise the average number of qualifying individuals among eligible households. The households that would benefit most from this change are those who can claim a child for purposes of the head of household filing status but not for purposes of the Child Tax Credit. For example, this would include households who support children over the age of nineteen who are full-time students (and under the age of twenty-four) or who live at home without meaningful incomes of their own.

Repeating the analysis from the previous Section with this modification would result in a smaller Head of Household Credit of $229 per dependent. This difference reflects the fact that unmarried taxpayers on average claim 0.30 individuals who would qualify for the Head of Household Credit under the Child Tax Credit eligibility rules and 0.42 individuals who would qualify them under the "any dependent" rule. The distributional effects of a Head of Household Credit with the modified eligibility rules are reported in Column 2 of Table 5. Relative to the baseline eligibility rules (Column 1), this option would result in similar benefits across income deciles.

[105] See notes 18-31 and accompanying text.

Imaged with the permission of Tax Law Review of New York University School of Law

TABLE 5
DISTRIBUTIONAL EFFECT OF ALTERNATIVE REFORMS

	1	2	3	4	5
Income Decile	*Baseline Reform*	*All Dependents Eligible*	*Phase-Out*	*Non-Refundable*	*Half Credit for Additional Children*
1	$25	$24	$27	$0	$21
2	$78	$77	$82	$0	$68
3	$112	$111	$119	-$9	$90
4	$62	$65	$69	-$41	$40
5	$5	$9	$11	-$20	-$15
6	-$28	-$28	-$23	$36	-$44
7	-$35	-$36	-$31	$77	-$45
8	-$107	-$108	-$110	-$11	-$114
9	-$66	-$68	-$86	-$12	-$70
10	-$48	-$49	-$59	-$19	-$50
Max Credit Size	$294	$229	$311	$1158	$305

Note: Cells denote mean gain from reform among all filers in the decile.

2. *Phase-Out*

Our proposed Head of Household Credit does not phase out. In this alternative, we follow the same phase-out schedule as the 2015 tax year Child Tax Credit, which begins to phase out at $75,000 for unmarried taxpayers;[106] the phase-out occurs at the rate of a $50 loss of benefit for each additional $1000 earned. Adding the phase-out would decrease the budgetary cost of the credit, increasing the maximum feasible credit size to $311 per child. Column 3 of Table 5 documents the distributional effect of this policy. The redistributional effect of this alternative is slightly increased relative to the baseline proposal.

3. *Refundability*

Unlike the other modifications considered so far, making the Head of Household Credit nonrefundable would reduce its budgetary costs by reducing payments to households who owe no income tax. Because many of the beneficiaries of the policy change fall into this category, a nonrefundable Head of Household Credit would support a substantially larger maximum credit, specifically $1158 per child. Column 4 of Table 5 documents the distributional effect of a reform along these lines; not surprisingly, the analysis shows the benefit of the reform would be smaller for those in the lowest income deciles, many of whom would be unable to benefit from a nonrefundable credit. In

[106] IRC § 24(b)(2)(B).

Imaged with the permission of Tax Law Review of New York University School of Law

contrast, taxpayers in the sixth and seventh income deciles would benefit from this change because they are able to take advantage of the full value of the Head of Household Credit, but do not receive the full value of the current head of household filing status.

4. *Linearity of Child Care Costs*

Our model assumed that the costs of raising children scale up linearly with children. Raising a child costs C for single couples and βC for married parents—and those costs are multiplied by two for two children, by three for three children, and so on. As a result, our per-child subsidy scales up linearly with the number of children. However, we need not adopt that linear cost structure. Suppose, for example, that we think of the main differentiator of costs between married and single parents as the costs of child care. A single parent has to use paid child care, while a married couple with only one spouse working outside the home can take care of the children at home without paying for child care. Then, for the first child, the costs might be C for single parents and βC for married parents, but—for subsequent children—the costs might be βC for all children after the first, representing the costs of food, space, and the like that do not vary depending upon marital status. Under that set of assumptions, child care costs do not increase at all for a single parent as he has more children. In that case, the Head of Household Credit should not scale up linearly with the number of children, under the notion that it costs the same amount to get a babysitter for one child as for two children. Under those assumptions, the Head of Household Credit should not increase as the number of children in a family increases.

More likely, the truth is between these two extremes, and the Head of Household Credit should increase when unmarried parents have more children but not by the full $(1 - \beta)C$ per child. We do not take a strong position on the cost structure of children as the number of children increases, beyond the argument that the first child is plausibly costlier for single parents due to child care responsibilities.[107]

Column 5 of Table 5 considers the results of a simulation in which we assume that the cost of each child beyond the first is equal to one-half the cost of the first child, 0.5 C. The simulation shows that this change accommodates an increase in the maximum size of the credit

[107] A related consideration is that the costs per child may differ dramatically by the child's age—for example, the ideal subsidy amount may be lower for children once they have reached school age.

A related consideration is that the costs per child may differ dramatically by the child's age—for example, the ideal subsidy amount may be lower for children once they have reached school age.

Imaged with the permission of Tax Law Review of New York University School of Law

for one child from $294 to $305, and reduces the credit amount for the second child from $294 to $147.

E. Other Considerations

While capturing important features for the design of taxation of the family, our model did not consider every possibly relevant factor. In this Section, we briefly sketch a variety of other goals tax policy might hope to achieve in this area.

First, children may be considered "merit goods," goods that society deems as particularly valuable of government encouragement.[108] For example, policymakers may believe that it is inherently good for parents to spend money on children or may want to encourage spending on children in order to increase their human capital and future tax payments or reduce future crime rates or use of public benefits (none of which parents are likely to sufficiently take into account). Of course, none of the Child Tax Credit, head of household filing status, or Head of Household Credit actually specifically subsidizes spending on children (unlike the child care credit). An increased tax credit for child care or subsidies for housing or food for children would do that, but parents are free to choose how to spend these subsidies. In the case of expenses like housing and food that would look similar to the government if spent on adults or children, it may be difficult for the government to target spending on children specifically. So these tax credits may be viewed as a second-best, constrained-optimal way of increasing spending on children, not through subsidizing spending on children, but rather increasing spending by merely increasing resources for those with children.[109] With that view of the purpose of the head of household filing status it is unclear how subsidies for children should vary, since the optimal policy would depend on behavior on which we do not have good estimates. If a dollar transferred to single parents with a child yields more child-related spending than a dollar to married parents of the same income with a child, that would be a reason to transfer more to the single parent on the basis of merit goods. However, we do not know of good studies showing this either way, so we cannot make conclusions about how the merit good aspect

---

[108] See Richard A. Musgrave, The Theory of Public Finance: A Study in Public Economy 13–15 (1959) (explaining merit wants and how to satisfy public wants); *Richard A. Musgrave,* A Multiple Theory of Budget Determination, 17 Pub. Fin. Analysis 333, 333-35 (1957) (distinguishing between public and private wants). Of course, one could argue that expenses for raising children are not merit goods—that raising children is like any other consumption good not deserving of differential treatment by the Code.

[109] Effectively the policy has an income effect but not a substitution effect.

Imaged with the permission of Tax Law Review of New York University School of Law

of spending on children should affect an optimal subsidy structure for children.

Another possible goal is encouraging child rearing. That is, not spending on children but rather *having* children is a merit good. The idea here is that the government wants to encourage more childbearing, perhaps with a goal of having a demographic structure that allows younger workers to pay for public benefits for older workers like Social Security or promoting another positive externality. Subsidies associated with having children do directly target that activity. With this goal, the government ought not disproportionally subsidize different family structures: If the positive externality associated with having a child is $1000 per child, then the government should subsidize $1000 per child, and the more responsive families will respond more and collect more of the subsidy. Of course, if the positive externality depended on family income or family structure, then the subsidy should be adjusted depending upon the size of the externality.

A third social goal affected by the structure of child-related subsidies is encouraging marriage. Because eligibility for the Head of Household Credit is linked to marital status, replacing the head of household filing status with the credit would change the tax incentives surrounding marriage—positively for middle-and upper-income taxpayers whose filing status benefits would be reduced by the reform and negatively for low-income taxpayers who would gain the most from the reform.[110] And, any additional subsidy to single parents for having children could discourage marriage, though the available evidence shows little if any impact of the tax treatment of marriage on marriage rates.[111] To the extent that the Head of Household Credit

[110] Thus the proposal would exacerbate the marriage penalties that currently exist for low-income taxpayers but lessen the substantial marriage penalties that currently exist for high-income taxpayers. See Lawrence Zelenak, For Better and Worse: The Differing Income Tax Treatments of Marriage at Different Income Levels, 93 N.C. L. Rev. 783, 795–806 (explaining the marriage penalty for lower- and upper-income couples).

[111] James Alm & Leslie A. Whittington, Does the Income Tax Affect Marital Decisions?, 48 Nat'l Tax J. 565, 571 (1995) (finding mixed evidence of the existence of effects and, when finding effects, finding small ones); Anne Alstott, Tax Policy and Feminism: Competing Goals and Institutional Choices, 96 Colum. L. Rev. 2001, 2011 (1996) (reaching a similar conclusion); David T. Ellwood, The Impact of the Earned Income Tax Credit and Social Policy Reforms on Work, Marriage, and Living Arrangements, 53 Nat'l Tax J. 1063, 1063-64 (2000) (finding that the Earned Income Tax Credit and welfare reforms have no discernable effect on marriage rates); David L. Sjoquist & Mary Beth Walker, The Marriage Tax and the Rate and Timing of Marriage, 48 Nat'l Tax J. 547, 547 (1995) (finding some impact in the timing of marriage, but no impact on marriage rates); Edward Fox, Do Taxes Affect Marriage? Lessons from History 7–8 (NYU Ctr. for Law, Econ. & Org., Working Paper No. 17-15, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2988559 (finding modest but statistically significant effects of a marriage bonus on marriage rates). But see Katherine Michelmore, The Earned Income Tax Credit and Union Formation: The Impact of Expected Spouse Earnings 4 (May 26, 2015) (unpublished manu-

Imaged with the permission of Tax Law Review of New York University School of Law

discourages marriage and to the extent that encouraging marriage is an important social goal, the Head of Household Credit becomes less desirable.

A fourth social goal is efficiency. Like other simulations of this form, we abstract away from behavioral responses to differences in tax rates. Eliminating head of household filing status would raise marginal tax rates and potentially reduce labor supply for some taxpayers. Since lower tax rates lead to lower distortions (ceteris paribus), changing from a lower rate schedule to a credit could reduce efficiency through higher marginal tax rates, which would in turn make the switch from the head of household filing status to the Head of Household Credit less appealing. That said, we are unaware of any evidence suggesting that single parents should have a lower marginal tax rate than other groups on the basis of efficiency. That is, there is little reason to think that their elasticity of income is higher; indeed, it may be lower since they need to pay for the costs of their children.

VIII. Effect of the Tax Cuts and Jobs Act

In December of 2017, Congress enacted the Tax Cuts and Jobs Act (TCJA). The TCJA modifies the Code in a number of respects that are relevant for the analysis in this Article. These changes affect the specifics of the analysis—such as how large of a head of household credit could be created from a revenue-neutral elimination of the head of household filing status—but do not affect our basic argument. That is, even after the TCJA, the head of household filing status guarantees a larger tax benefit for higher-income taxpayers and generates the same benefit regardless of the number of qualifying children the taxpayer supports.

Most fundamentally, TCJA aligns the statutory tax rate for unmarried and head of household tax filers whose taxable incomes exceed $51,800. Setting aside for a moment the preferential standard deduction for head-of-household filers, this change effectively converts the filing status into a type of tax credit for those with sufficiently high taxable incomes. The maximum credit amount is reached at $51,800 of taxable income, since head-of-household and unmarried taxpayers above that threshold are taxed at the same marginal rate. The maxi-

---

script), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2610682 (finding significant effects of the credit on marriage rates among low-income women).

Interestingly, despite the attention paid to marriage penalties in the development of the 1969 legislation, marriage penalties associated with the head of household filing status do not appear to have received much (if any) attention in the development of that legislation. S. Rep. No. 91-552, at 12, 260-62, 297 (1969). We are grateful to Daniel Halperin for pointing this out to us.

Imaged with the permission of Tax Law Review of New York University School of Law

mum value of the credit itself is $1391.50, which is the difference in tax liability due to the different rate schedules between an unmarried and head of household filer with taxable income above $51,800.

There are several important differences between the Head of Household Credit we propose and the "credit" created by the changes in the tax brackets under the TCJA. First, the TCJA credit is phased in, in that its value increases from zero with a taxpayer's income until the maximum credit amount is reached. In this way it recreates some of the regressivity of the pre-reform filing status. Second, the TCJA credit is nonrefundable, meaning that low-income single parents do not benefit from it. Third, the TCJA credit is per household, whereas our proposed credit is per child, so that single parents who support more children receive a larger benefit.

A second important way in which TCJA alters the analysis in this Article is increasing the magnitude of the additional standard deduction that head-of-household filers relative to unmarried filers. This difference is $3000 under pre-reform law and $6000 under the TCJA. Relatedly, the increase in the standard deduction will result in fewer high-income taxpayers itemizing, and hence in more of that group receiving the preferential head-of-household standard deduction amount.

Finally, by raising the AMT exemption amount, the TCJA reduces the effect of the most important limitation on the benefits associated with head of household filing status. Recall that all unmarried filers face the same tax rates under the AMT and that the AMT lacks a standard deduction. Hence, by reducing the number of taxpayers who are subject to the AMT, the TCJA expands the benefits of the head-of-household filing status for many high-income taxpayers.

IX. Conclusion

The head of household filing status has quietly grown in size and importance in the decades since it was first introduced. In this Article we describe the beneficiaries of this provision and assess its normative value. We argue that, though there could be many potential alternatives, one good option is replacing the head of household filing status with an expanded child tax credit for single parents. This change would better target the benefit to those families who need it most.

Imaged with the permission of Tax Law Review of New York University School of Law

APPENDIX

Result 1:

From equations (1) – (4), we have the following first-order conditions:

(5) $$t_s\colon u'(y - A + t_s) = -\lambda$$

(6) $$t_{sk}\colon u'\left(\frac{y-A-C+t_{sk}}{2}\right) = -\lambda$$

(7) $$t_m\colon u'\left(\frac{y-2A+t_m}{2}\right) = -\lambda$$

(8) $$t_{mk}\colon u'\left(\frac{y-2A-\beta C+t_{mk}}{3}\right) = -\lambda$$

From this, we can see that the marginal utility of each group must be the same, so the term inside the parentheses must also be the same. Setting the terms from the parenthesis in (6)-(8) equal to the term in parenthesis in (5), for single taxpayers without children yields:

(9) $$y - A + t_s = \frac{y-A-C+t_{sk}}{2} \Longrightarrow t_{sk} = y - A + 2t_s + C$$

(10) $$y - A + t_s = \frac{y-A+t_m}{2} \Longrightarrow t_m = y + 2t_s$$

(11) $$y - A + t_s = \frac{y-A-\beta C+t_{mk}}{3} \Longrightarrow t_{mk} = 2y - A + 3t_s + \beta C$$

Plugging the term for single taxpayers without children as well as these three terms into equation (5) yields the result for t_s, which can then be plugged into equations (9)-(11), yielding:

$$t_s = \frac{A}{4} - \frac{y}{2} - \frac{(1+\beta)C}{8}$$

$$t_{sk} = -\frac{A}{2} + \frac{3}{4}C - \frac{\beta C}{4}$$

$$t_m = \frac{A}{2} - \frac{(1+\beta)C}{4}$$

$$t_{mk} = -\frac{A}{4} + \frac{y}{2} - \frac{3}{8}C + \frac{5\beta C}{8}$$

As a result:

$$t_{sk} - t_s = -\frac{A}{2} + \frac{3}{4}C - \frac{\beta C}{4} - \left(\frac{A}{4} - \frac{y}{2} - \frac{(1+\beta)C}{8}\right)$$

$$= -\frac{3A}{4} + \frac{y}{2} + \frac{7C}{8} - \frac{\beta C}{8}$$

$$t_{mk} - t_m = -\frac{A}{4} + \frac{y}{2} - \frac{3}{8}C + \frac{5\beta C}{8} - \left(\frac{A}{2} - \frac{(1+\beta)C}{4}\right)$$

$$= -\frac{3A}{4} + \frac{y}{2} - \frac{1}{8}C + \frac{7\beta C}{8}$$

Arithmetic yields the result that $(t_{sk} - t_s) - (t_{mk} - t_m) = (1 - \beta)C$.

Imaged with the permission of Tax Law Review of New York University School of Law

Result 2:

To be clear, the four added groups to (1)-(4) have utilities:

$$U_s = u(\gamma y - A + t_s)$$

$$U_{sk} = 2u\left(\frac{\gamma y - A - C + t_{sk}}{2}\right)$$

$$U_m = 2u\left(\frac{\gamma y - 2A + t_m}{2}\right)$$

$$U_{mk} = 3u\left(\frac{\gamma y - 2A - \beta C + t_{mk}}{3}\right)$$

This result follows from the fact that setting the within-parenthesis term from any one of equations (1)-(4) to the term from its corresponding group with a different income yields the result that the difference in taxes between the two groups is equal to $y - \gamma y$. Since that is true for all of the household types, the child subsidy cannot depend on income.

Result 3:

With these six groups, the optimal tax/subsidy scheme is:

$$t_s = \frac{2}{5}A - \frac{1}{5}C - \frac{3}{5}y - \frac{1}{5}C\beta$$

$$t_{sk} = -\frac{1}{5}A + \frac{3}{5}C - \frac{1}{5}y - \frac{2}{5}C\beta$$

$$t_m = \frac{4}{5}A - \frac{2}{5}C - \frac{1}{5}y - \frac{2}{5}C\beta$$

$$t_{mk} = \frac{1}{5}A - \frac{3}{5}C + \frac{1}{5}y + \frac{2}{5}C\beta$$

$$t_{s2k} = -\frac{4}{5}A + \frac{7}{5}C + \frac{1}{5}y - \frac{3}{5}C\beta$$

$$t_{m2k} = -\frac{2}{5}A - \frac{4}{5}C + \frac{3}{5}y + \frac{6}{5}C\beta$$

The amount that married parents get for a second child is:

$$t_{m2k} - t_{mk} = -\frac{3}{5}A - \frac{1}{5}C + \frac{2}{5}y + \frac{4}{5}C\beta$$

The amount that single parents get for a second child is:

$$t_{s2k} - t_{sk} = -\frac{3}{5}A + \frac{4}{5}C + \frac{2}{5}y - \frac{1}{5}C\beta$$

Subtracting the extra tax benefit for married from the extra benefit for children yields:

$$(t_{s2k} - t_{sk}) - (t_{m2k} - t_{mk}) = C - \beta C.$$

Imaged with the permission of Tax Law Review of New York University School of Law

Imaged with the permission of Tax Law Review of New York University School of Law