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# **POLYGAMY: ILLEGAL RELATIONSHIP, LEGAL TAX SHELTER**

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## **ABSTRACT**

The polygamist community in southern Utah has been the subject of investigations for welfare fraud, bank fraud, bigamy and crimes against children. Yet, there have been no publicized investigations regarding income tax avoidance. A common perception in southern Utah is that polygamists do not pay federal income taxes. This perception is supported by published income tax statistics. This article explores possible reasons the polygamist community, in general, is able to avoid taxation. The results of the research indicate that polygamists who are able to avoid taxes do so as a result of aggressive tax planning as applied to their unique family structure. Additionally, these planning techniques may provide a refund where no taxes have been paid creating an additional form of welfare benefit.

## **I. INTRODUCTION**

Utah's deep roots in polygamy date back to the time the Mormons first settled the territory. Even though plural marriage later became illegal both under federal and state law and the Mormon Church renounced its practice in the late 1800's, break off churches continued the practice. One of the largest polygamist groups in the nation is the Fundamentalist Church of Jesus Christ of Latter-day Saints ("FLDS church"). Its primary location is in the twin border towns of Hildale, Utah and Colorado City, Arizona. Several members of the FLDS church including its leader, Warren Jeffs, have been the subject of numerous criminal investigations involving crimes against children, bigamy and fraud.

Although the news rarely has carried reports covering the lack of taxes paid by this particular community, published data indicates an unusually odd income tax situation in Hildale. Statistics reveal that the average income per filer in Hildale is only \$17,377, which is the lowest of all towns in Utah.<sup>i</sup> Furthermore, Hildale ranks last among Utah towns for the average amount of federal income taxes paid per tax filer.<sup>ii</sup> Also, Hildale residents are number one in the state for the average number of exemptions claimed on their tax returns.<sup>iii</sup> A Los Angeles Times reporter alleged that polygamists use illegal means, such as understating income or failing to file returns at all, to avoid paying income taxes.<sup>iv</sup> For example, in 2001 the polygamist, Tom Green,

who was convicted of welfare fraud and five counts of bigamy, failed to file income tax returns.<sup>v</sup> However, our research failed to uncover wide spread evidence to support the proposition that polygamists avoid taxes through fraud. We explored two other alternatives that possibly could account for the unusual statistical data. First, we examined the possibility that federal tax law favors the unique family organization of the polygamist when they file tax returns in the simplest manner available. Second, we explored the possibility that polygamists use aggressive tax planning techniques to create an unusual tax shelter. All of our analysis is based on 2005 federal income tax law and the principles illustrated here do not significantly change under 2006 tax law.

## **II. TAX LAW FAVORING POLYGAMISTS**

At first glance, it appears that the law favors the unique family structure. For example, a polygamous taxpayer with twenty four children is entitled to a variety of deductions based solely on the unusual composition of the family which could possibly shelter \$93,200 of income.<sup>vi</sup> In Exhibit I, below, we produced a simple income tax return with the intent to demonstrate that these deductions do, indeed, create an impressive tax shelter by filing the simplest return possible. Surprisingly, the results did not produce the expected outcome. Instead, the return showed that polygamists are penalized under our current income tax system when they file in the simplest manner possible.

## **III. POLYGAMOUS MARRIAGE PENALTIES**

To illustrate the impact of so-called polygamous marriage penalties, compare a hypothetical tax situation of a polygamous family to a traditional family similarly situated (i.e. each family has \$5,000 of gross income per family member). Assume a polygamous taxpayer with a legal wife, four plural wives not recognized by the law, and twenty-four children, owns a business with net income of \$150,000. He is the sole provider in the family. He files one income tax return for the entire family. Likewise, assume a traditional taxpayer with a wife and four children owns a business with net income of \$30,000. He files one income tax return for the entire family. Exhibit I illustrates the tax consequences associated with these two hypothetical families.

Exhibit I	30 member Polygamous Family	6 member Traditional Family
Business Income	\$150,000	\$30,000
Self Employment Tax Deduction <sup>vii</sup>	<u>-\$7,589</u>	<u>-\$2,120</u>
Adjusted Gross Income	\$142,411	\$27,880
Standard Deduction <sup>viii</sup>	-\$10,000	-\$10,000
Personal Exemptions <sup>ix</sup>	-\$6,400	-\$6,400
Dependency Deductions <sup>x</sup>	<u>-\$76,800</u>	<u>-\$12,800</u>
Taxable Income	\$49,211	-\$1,320
Regular Tax <sup>xi</sup>	\$6,654	0
Alternative Minimum Tax <sup>xii</sup>	\$15,293	0
Self Employment Tax <sup>xiii</sup>	<u>\$15,177</u>	<u>\$4,239</u>
Total Tax Before Credits	\$37,124	\$4,239
Earned Income Credit <sup>xiv</sup>	0	-\$1,977
Child Tax Credit <sup>xv</sup>	-\$21,947	0
Additional Child Tax Credit <sup>xvi</sup>	<u>-\$403</u>	<u>-\$2,532</u>
Tax Due (Refund)	\$14,774	(\$270)

One might expect the returns to produce a proportionate tax result meaning that since the traditional family received a refund of \$270 then the polygamous family should have received a refund of five times that amount, \$1,350, or since the polygamous family incurred a tax liability of \$14,774, then the traditional family should have incurred a liability of \$2,955, one fifth the polygamist's liability. Contrary to this expectation, the polygamous family that files a tax return in this simplified manner incurs a substantial tax liability whereas the traditional family receives a refund. What causes this unexpected result? The polygamous taxpayer with high income and substantial deductions is penalized by the alternative minimum tax ("AMT") and the disqualification for any earned income tax credit ("EIC").

The AMT forces a minimum tax on high income earners who take advantage of numerous deductions and credits to reduce federal income tax liability. A married couple with income of \$150,000 is potentially subject to a 26% minimum tax on income in excess of the "exemption amount."<sup>xvii</sup> A high income polygamous taxpayer triggers the AMT due to the inordinate amount of dependency deductions. In Exhibit I the taxpayer has income of \$84,411 in excess of the "exemption amount."<sup>xviii</sup> This triggers the 26% tax on the excess generating a minimum tax of \$21,947 before application of self-employment taxes and credits.

As a form of public assistance, the EIC provides for a potential refundable credit to families with low income. Arguably, a polygamous taxpayer earning \$150,000 with a family consisting of five wives and twenty-four children is just as impoverished as a family of six with an annual income of \$30,000. However, the EIC

does not consider the need for a higher income necessary to adequately provide for a larger family. The EIC is completely phased out for a married couple with two or more children and adjusted gross income greater than \$37,262.<sup>xxix</sup> For those who meet the conditions of the credit, it can reduce or eliminate federal income tax liability. Moreover, if a taxpayer has no tax liability, the EIC even provides for a potential welfare payment of \$4,400.<sup>xx</sup> Therefore, a polygamist, who needs to earn more income than the average family to support his large household, and who files his tax return in the simple manner depicted in Exhibit I, is denied this valuable credit.

To a lesser degree a polygamous filer is penalized under the rules applicable to the standard deduction and the personal and dependency exemptions. For example, a single individual receives a \$5,000 standard deduction.<sup>xxi</sup> A married couple receives a standard deduction of \$10,000, twice that of a single person.<sup>xxii</sup> Carried out to its logical end a marriage consisting of six individuals should be entitled to a standard deduction of \$30,000. However, the tax code limits a polygamous taxpayer to the \$10,000 maximum, regardless of the number of wives in the family.

Similarly, personal exemptions are not multiplied based on the number of plural wives in a family. A filer is entitled to a personal exemption deduction for self and spouse.<sup>xxiii</sup> Therefore the polygamous filer receives a personal exemption for himself and his legal wife but gives up a personal exemption deduction for each of his plural wives.

Beginning in 2005 a taxpayer is entitled to a deduction for each and every individual that qualifies as his dependent based on one of two tests, the “qualifying child” test or the “qualifying relative” test.<sup>xxiv</sup> Obviously plural wives cannot qualify as dependents under the “qualifying child” test. Furthermore, a close examination of the law reveals that plural wives cannot qualify as dependents under the “qualifying relative” test either since the law states that “an individual shall not be treated as a member of the taxpayer’s household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.”<sup>xxv</sup> In Utah the relationship between a plural wife and her husband is in violation of local bigamy law.<sup>xxvi</sup> Therefore a plural wife cannot be considered a member of a taxpayer’s household for purposes of the dependency exemption.

#### **IV. POLYGAMY AS A TAX SHELTER**

The polygamous community in southern Utah is not ignorant of the potential penalties described above nor do they file tax returns in the manner described in Exhibit I.<sup>xxvii</sup> Filing a return claiming an inordinate number of dependency deductions will draw the attention of the IRS. Also, their communities employ experienced tax

professionals knowledgeable in tax planning strategies.<sup>xxviii</sup> A polygamous family can use techniques such as dependency planning and income shifting to eliminate or minimize the family income tax liability.

Dependency planning is a technique that is useful between a plural wife and her husband. If the children are living in a household with both parents, the children are qualifying dependents to both parents and, when the parents file separate returns, either parent, but not both, is potentially entitled to a dependency exemption for each child.<sup>xxix</sup> Who claims a child may depend on which parent will receive the greatest tax benefit for the family. The parent whose income tax return falls within the higher tax bracket would enjoy the greatest tax benefit and should claim the dependency exemption. The key to successful dependency planning is consistency from year to year. Trading the deduction back and forth each year is suspect.<sup>xxx</sup>

Special rules apply in situations where parents of children live apart and have never been married, as is the case in some polygamous families where a plural wife and her children reside in a separate house from the children's father. Generally, the custodial parent is entitled to the dependency exemptions since the children abide with that parent. However, the custodial parent may shift the dependency exemptions to the noncustodial parent by signing a declaration stating she will not claim a child as a dependent and the noncustodial parent attaches the declaration to his tax return.<sup>xxxi</sup> Caution must be exercised because the IRS has ruled that only the custodial parent may claim a child as a dependent if the parents were never married and live apart, but the Tax Court ruled otherwise in *J.R. King*.<sup>xxxii</sup> Furthermore, the plain language of the statute supports the Tax Court position.<sup>xxxiii</sup> Also, if the dependency exemption is shifted to the noncustodial parent by this method, then the child tax credit applicable to such child is shifted to the noncustodial parent, but the earned income credit is not impacted by the shift.

Income shifting is an extremely valuable tool to any self-employed individual. Like any other business, a self-employed taxpayer can employ family members. Wages paid to family members are a business deduction to the business owner who is in a relatively high tax bracket and create reportable income to the wage earner in a relatively low, and potentially even zero, tax bracket. Additionally, self-employed taxpayers receive a benefit unavailable to incorporated businesses. Self-employed individuals are exempt from paying and withholding FICA taxes on wages paid to family members who are under age 18.<sup>xxxiv</sup> This results in an immediate 15.3% tax savings to the family. This form of income shifting provides several benefits to a polygamous family. First, it reduces the husband's adjusted gross income enough to eliminate his income tax liability and create refundable credits. Second, it shifts income to the plural wives who have ample deductions to shelter the income and

qualify for refundable credits. Third, it shifts income to children to the extent needed to shelter additional income. Fourth, it erases many of the polygamous marriage penalties and eliminates deduction anomalies that provoke IRS scrutiny. Fifth, all income is preserved within the family to meet family financial needs.

To achieve the maximum benefits available through income shifting, each plural wife would file an individual income tax return reporting her wages. For tax purposes, a plural wife is treated as a single person who is entitled to claim a standard deduction as either a single taxpayer or as head of household.<sup>xxxv</sup> Furthermore, each single taxpayer is entitled to a personal exemption and dependency exemption for each “qualifying child.” To maximize the refundable credits paid to a plural wife, her wages should be restricted to \$14,399.<sup>xxxvi</sup> Her tax refund would decrease as her income exceeds this amount.

Each working child would file an individual income tax return. Older children could earn as much as \$8,200<sup>xxxvii</sup> without incurring a tax liability if they were not claimed as dependents by their parents. Younger children could earn as much as \$5,000 without incurring a tax liability even if their parents claimed them as dependents. Efforts need to be made to ensure that the husband and each plural wife retains at least two dependency exemptions a piece to maximize the EIC.

To illustrate the power of income shifting assume the same facts as provided in Exhibit I with the following additional information. The husband files a joint return with his legal wife and claims three of their four children as dependents. He employs each of the four plural wives in the family business. He pays them each \$14,399 in salary. He instructs each of his plural wives to file their own income tax returns. Each plural wife has five children. The husband employs five of the oldest children in the family business, one from each wife. He pays them each \$8,192 per year.<sup>xxxviii</sup> They are instructed to file their own income tax returns and claim standard deductions and personal exemptions. The husband employs seven other children paying them each \$4,992<sup>xxxix</sup> per year. He files a return for each of them claiming a standard deduction. The tax consequences of this plan are shown below in Exhibit II.

Exhibit II	Husband & Legal Wife	Four Plural Wives	Twelve Children Combined	Total
Income <sup>xi</sup>	\$16,500	\$57,596	\$75,904	\$150,000
FICA Deduction <sup>xii</sup>	-\$4,406	\$0	\$0	-\$4,406
Self-Employment Tax Deduction <sup>xiii</sup>	-\$855	\$0	\$0	-\$855
Adjusted Gross Income	\$11,239	\$57,596	\$75,904	\$144,739
Standard Deduction <sup>xiii</sup>	-\$10,000	-\$20,000	-\$60,000	-\$90,000
Personal Exemptions <sup>xiv</sup>	-\$6,400	-\$12,800	-\$16,000	-\$35,200
Dependency Deductions <sup>xiv</sup>	-\$9,600	-\$51,200	\$0	-\$60,800
Taxable Income	-\$14,761	-\$26,404	-\$96	-\$41,261
Regular Tax	\$0	\$0	\$0	\$0
Self-Employment Tax <sup>xvi</sup>	\$1,709	\$0	\$0	\$1,709
Total Tax Before Credits	\$1,709	\$0	\$0	\$1,709
Earned Income Credit <sup>xvii</sup>	-\$4,400	-\$17,600	\$0	-\$22,000
Additional Child Tax Credit <sup>xviii</sup>	-\$36	-\$2,040	\$0	-\$2,076
Tax Refund	-\$2,727	-\$19,640	\$0	-\$22,367
FICA Tax Paid <sup>xix</sup>	\$4,406	\$4,406	\$0	\$8,812
Net Welfare Benefit	\$1,679	-\$15,234	\$0	-\$13,555

Applying this strategy, the family receives an income tax refund of \$22,367 which overcomes the polygamous marriage penalties described earlier. However, the positive impact of this strategy is slightly diminished by the \$8,812 in FICA taxes incurred on the wages of the four plural wives. Nevertheless, the overall family cash flow from tax savings is dramatically improved by \$28,329. This is derived by comparing the tax liability in Exhibit I of \$14,774 with the net welfare payment to the family of \$13,555 as shown in Exhibit II. In the end this strategy proves to be a powerful tax shelter that not only completely eliminates a tax liability but produces a substantial welfare payment.

## V. CONCLUSION

The general perception in southern Utah, that polygamists do not pay federal income taxes, is probably true in many cases. The objective seems to be achieved by coupling their unique family structure with aggressive tax planning strategies available under a complicated network of tax law. This strategy is not without risk. When examining the allocation of income as performed in Exhibit II, the issue of reasonable compensation should be considered. The legitimacy of the husband reporting only \$16,500 of income in a business conducted by him and earning \$150,000 before deducting wages to family members is questionable. Likewise, the question of whether or not each child and plural wife is actually performing the services and being paid a reasonable wage for those services is an issue to be



examined. If the allocations of income are artificial, done for the sole purpose of obtaining a form of welfare benefit from the federal government, this strategy would probably be challenged by the IRS.

Before jumping to the conclusion that the polygamous family is gaming the system and should be punished, consider the question of whether or not this strategy places a polygamous family in a superior position to a similarly situated traditional family. Consider, again, our other family of six consisting of a husband, wife and four children, which similarly eschews the simple tax reporting method used in Exhibit 1 and uses the same tax planning strategy as the polygamous family. The husband conducts a business earning \$30,000 before deducting the wages of his employee-children.<sup>i</sup> He employs his oldest child at a rate of \$8,192 per year and one other child at the rate of \$4,992. The oldest child files a return claiming a \$5,000 standard deduction and a \$3,200 personal exemption. The other child files a return claiming only the \$5,000 standard deduction. No tax is due on either one of these returns. The parents' tax return provides a refund of \$2,718.<sup>ii</sup> The per capita refund to the traditional family is \$453 (\$2,718/6) while the per capital refund in the polygamous family is \$452 (13,555/30). Hence, the polygamous family is in almost exactly the same tax position as the traditional family using similar strategies.

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### ENDNOTES

<sup>i</sup> Utah State Tax Commission, Economic and Statistical Information, Income and Corporation Tax, 2004 Federal Return Data, Selected City Values.

<sup>ii</sup> Id.

<sup>iii</sup> Id.

<sup>iv</sup> Cart, Julie (2001). Utah Paying a High Price for Polygamy. *Los Angeles Times*, Sept. 9, 2001.

<sup>v</sup> Id.

<sup>vi</sup> IRC §63 provides for a \$10,000 standard deduction for husband and legal wife. IRC §151(c) provides for a \$3,200 dependency exemption for each qualifying child. Treas. Reg. §1.151-1(a)(1) provides for a \$3,200 personal exemption, one for the husband and one for his legal spouse ( $\$10,000 + [\$3,200 * 24] + [\$3,200 * 2] = \$93,200$ ).

<sup>vii</sup> IRC §164(f) provides that the deduction for self-employment tax is equal to ½ of self-employment tax. For the polygamous filer the deduction is calculated as follows:  $\$15,177 * 50\% = \$7,589$ . For the traditional filer the deduction is calculated as follows:  $\$4,239 * 50\% = \$2,120$ .

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<sup>viii</sup> IRC §63 provides for a deduction of the standard deduction when a taxpayer does not elect to itemize deductions. In both situations the standard deduction is \$10,000.

<sup>ix</sup> Treas. Reg. §1.151-1(a)(1) provides for a personal exemption for self and spouse when a joint return is filed. Personal exemptions, in both situations, are calculated as follows: \$3,200 personal exemption \* 2 (husband and legal wife) = \$6,400.

<sup>x</sup> IRC §151(c) provides for a dependency exemption for each qualifying dependent. For the polygamous filer the deduction is calculated as follows: \$3,200 dependency exemption \* 24 children = \$76,800. For the traditional filer the deduction is calculated as follows: \$3,200 \* 4 children = \$12,800.

<sup>xi</sup> The regular tax for the polygamous filer is calculated using the 2005 Tax Table for a married couple filing jointly with taxable income of \$49,211.

<sup>xii</sup> IRC §55(b)(1)(A)(i) provides for a minimum tax of 26% on income in excess of the exempt amount. For the polygamous filer the tax is calculated as follows: \$142,411 (AGI) - \$58,000 (exempt amount) \* 26% - \$6,654 (regular tax) = \$15,293.

<sup>xiii</sup> IRC §1401 provides for the imposition of the self-employment tax. For the polygamous filer it is calculated as follows:  $(\$150,000 * 92.35% * 2.9%) + (\$90,000 * 12.4%) = \$15,177$ . For the traditional filer it is calculated as follows:  $\$30,000 * 92.35% * 15.3% = \$4,239$ .

<sup>xiv</sup> The earned income credit for the traditional family was calculated from the 2005 Earned Income Credit Table using the filing status of married filing jointly with two or more children and earned income of \$27,880. The polygamous filer does not qualify for the earned income credit because earned income is in excess of \$37,262.

<sup>xv</sup> IRC §24 provides for a \$1,000 credit per qualifying dependent. The credit is reduced by 5% of the amount of AGI in excess of \$110,000 for filing status of married filing jointly. Furthermore, the credit cannot exceed the regular tax plus the alternative minimum tax. For the polygamous filer the credit is calculated as follows: \$1,000 credit \* 24 children = \$24,000, reduced to \$22,350 [ $\$24,000 - (\$142,411 - \$110,000 * 5\%)$ ] and limited to \$21,947 (\$6,654 regular tax + \$15,293 alternative minimum tax). The traditional family does not qualify for the child tax credit due to the absence of regular and alternative minimum taxes.

<sup>xvi</sup> IRC §24(d) provides for an additional child tax credit that is refundable to the extent a filer is limited in taking the child tax credit. The polygamous filer initially is entitled to a child tax credit of \$22,350 but is limited by tax paid of \$21,947. Thus, the additional child tax credit is \$403 ( $\$22,350 - \$21,947$ ). The traditional filer is initially entitled to a child tax credit of \$4,000 but is disallowed the child tax credit for lack of income tax liability. The traditional filer's additional child tax credit is calculated as follows:  $(\$27,880 \text{ earned income} - \$11,000) * 15\% = \$2,532$ .

<sup>xvii</sup> IRC §55(b)(1)(A)(i).

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<sup>xxviii</sup> Alternative minimum taxable income of \$142,411 – exemption of \$58,000 = \$84,411.

<sup>xix</sup> See EIC Table at Appendix to IRS Publication 596, 2005 Earned Income Credit (EIC).

<sup>xx</sup> Id.

<sup>xxi</sup> IRC §63(c)(2)(C)(4) & (7).

<sup>xxii</sup> IRC §63(c)(2)(A)(i) & (4) &(7).

<sup>xxiii</sup> IRC §151(d) and Treas. Reg. §1.151-1(b).

<sup>xxiv</sup> IRC §152.

<sup>xxv</sup> IRC §152(f)(3).

<sup>xxvi</sup> Utah Code Annotated §76-7-701 (1999).

<sup>xxvii</sup> Anonymous. We interviewed representatives from four separate polygamous families. Two of the individuals are plural wives who prepare their own income tax returns, one of whom is an accountant in her husband's conglomerate of eight construction related businesses. The other two individuals are husbands who prepare their own income tax returns, one of whom has substantial experience, spanning several years, assisting other polygamists in the preparation of their income tax returns. Initially, we asked them to respond to a questionnaire containing fifteen questions. Thereafter, we conducted an open forum meeting with all four representatives present. The content of the meeting included personal introductions, review of the questionnaire, responses to a variety of questions, and commentary by the representatives. Each member of the group spoke on condition of anonymity. We felt extremely fortunate to have secured the cooperation of these four individuals. Individuals in polygamous communities are very mistrusting of people outside their communities and generally do not cooperate with inquiring outsiders.

<sup>xxviii</sup> Id.

<sup>xxix</sup> IRC §152(c) (4) provides for a tie-breaking rule in situations where a qualifying child is claimed by both parents who live in the same household. The parent with the highest AGI is entitled to claim the child. This tie-breaking rule is inapplicable in polygamous family situations because the parents, generally, will not be both trying to claim the child as a dependent.

<sup>xxx</sup> Anonymous. A source provided an example of an incident where the IRS questioned a dependency deduction due to switching of deduction between a husband and one of his plural wives.

<sup>xxxi</sup> See §152(e).

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<sup>xxxii</sup> *J.R. King*, 121 TC 245, Dec 55,309 (2003). Also, see Williamson, Staley, and Russo, “Dependency Exemptions for Children of Separated Parents: The Case of Never-Married Individuals,” *The Tax Magazine*, October 2004. The article describes a planning opportunity for never-married parents living apart. By signing and filing Form 8332 with the IRS, such parents are able to transfer dependency exemptions from a custodial parent to a noncustodial parent. Using this technique, dependency exemptions can be shifted to the parent in the highest tax bracket. Similarly, a polygamous husband and a plural wife living apart can avail themselves of the same strategy for the purpose of minimizing the overall family tax liability.

<sup>xxxiii</sup> See §152(e)(1)(A)(iii).

<sup>xxxiv</sup> IRC §3121(b)(3) and IRS Publication No. 15, page 8 (Revised January 2006).

<sup>xxxv</sup> IRC §2(b) provides that an individual may claim head of household status if the individual: is not married at the close of the taxable year; is not a surviving spouse; maintains a household which constitutes for more than one-half of the taxable year the principal place of abode, as a member of such household, of a qualified dependent; and furnishes more than one-half the cost of maintaining the household during the taxable year. When several adults with children occupy the same home, but claim separate households, as is done in some polygamous families, what constitutes a household and who is providing more than one-half the cost to maintain the household become important issues. In *the Estate of Fleming v. Commissioner*, 33TCM 619 (1974), the Tax Court concluded that two separate households existed within one residence. The facts of the case supported the intent of the two families to maintain separate households within the residence and, although the taxpayer did not provide more than one-half the cost to maintain the entire residence, she did provide more than one-half the cost of maintaining her family living within the residence. Similarly, one anonymous source described a situation where a plural wife was denied head of household status because her area of the home was not sufficiently independent from the rest of the house and she could not substantiate that she provided more than one-half the support for her household. He explained that to ensure head of household status in these circumstances it is best if a plural wife and her children have a separate outside entrance to their living area, a separate kitchen and have a door separating their area from the rest of the home. Additionally, she must maintain records to substantiate that she is providing the appropriate cost of maintaining her separate living area for her family.

<sup>xxxvi</sup> The maximum EIC of \$4,400 begins to phase out by 21.06% of earned income in excess of \$14,399. See 2005 Earned Income Credit (EIC) Table.

<sup>xxxvii</sup> \$8,200 is the sum of the standard deduction of \$5,000 plus personal exemption of \$3,200.

<sup>xxxviii</sup> In this illustration income allocated to the children in excess of this amount would cause the father’s income to be reduced to a point where he would forgo some credits and reduce his refund.

<sup>xxxix</sup> In this illustration income allocated to the children in excess of this amount would cause the father’s income to be reduced to a point where he would forgo some credits and reduce his refund.

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<sup>xi</sup> Income to the plural wives is calculated as follows:  $\$14,399 * 4 \text{ plural wives} = \$57,596$ . Income to the twelve children is calculated as follows:  $(\$8,192 * 5 \text{ children}) + (\$4,992 * 7 \text{ children}) = \$75,904$ .

<sup>xli</sup> An employer is permitted a deduction for FICA taxes paid on wages of employees. In this situation the employer is responsible for one half of FICA taxes calculated on the compensation paid to his plural wives  $(\$57,596 * 15.3\% * 1/2 = \$4,406)$ .

<sup>xliii</sup> IRC §164(f) permits a self-employed taxpayer a deduction equal to one half of self-employment taxes incurred in his business  $[(\$150,000 \text{ gross income} - \$133,500 \text{ wages} - \$4,406 \text{ FICA taxes}) * 92.35\% * 15.3\% * 50\% = \$855]$ .

<sup>xliii</sup> \$10,000 represents the standard deduction for a married couple filing a joint return, i.e. the polygamist husband and his legal wife. Each plural wife is entitled to a standard deduction of \$5,000 as a single individual  $(\$5,000 * 4 = \$20,000)$ . Each child is entitled to a standard deduction for earned income plus \$300 but not to exceed \$5,000  $(\$5,000 * 12 \text{ children} = \$60,000)$ .

<sup>xliv</sup> \$6,400 consists of two personal exemptions of \$3,200, one for the husband and one for his legal wife. \$12,800 consists of four personal exemptions of \$3,200, one for each tax return filed by the four plural wives. \$16,000 consists of five personal exemptions, one for each child that is not being claimed as a dependent by a parent.

<sup>xlv</sup> \$9,600 consists of three dependency exemptions of \$3,200 claimed by the husband and his legal wife, for three of their four children. The fourth child will take his own personal exemption on his separate return. \$51,200 consists of sixteen dependency exemptions of \$3,200. Each of the four plural wives claimed four of her five children as dependents  $(\$3,200 * 4 \text{ children} * 4 \text{ plural wives} = \$51,200)$ . Again, one child of each set of five will take his own personal exemption on his separate return.

<sup>xlvi</sup> Self-employment tax is calculated at the rate of 15.35% of 92.35% of net business income  $[(\$150,000 \text{ gross business income} - \$133,500 \text{ wages} - \$4,406 \text{ FICA tax}) * 92.35\% * 15.3\% = \$1,709]$ .

<sup>xlvii</sup> \$4,400 is the maximum EIC available for a married taxpayer with at least two dependents and income between \$11,000 and \$16,399. Each plural wife is entitled to the maximum EIC  $(\$4,400 * 4 \text{ plural wives} = \$17,600)$ .

<sup>xlviii</sup> The husband and each plural wife lost the benefit of the child tax credit because they had no tax liability to be offset by the credit. However, they are entitled to the additional child tax credit. The husband's credit is calculated as follows:  $15\% (\$11,239 - \$11,000) = \$36$ . The credit for the plural wives is calculated as follows:  $15\% (\$14,399 - \$11,000) * 4 \text{ (number of plural wives)} = \$2,040$ .

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<sup>xlix</sup> FICA taxes paid one half by the employer and one half by the employees are netted against the income tax refunds to accurately reflect the true amount of taxes paid.

<sup>l</sup> Per capita gross income for this family is \$5,000 ( $\$30,000/6$ ) just like it is for the polygamous family ( $\$150,000/30$ ).

<sup>li</sup> Income is calculated as follows: \$30,000 (gross income) - \$13,184 (wages paid to children) - \$1,188 (self-employment tax deduction) - \$10,000 (standard deduction) - \$16,000 (five exemptions) = 0 (taxable income). The tax refund is calculated as follows: \$4,400 (EIC) + \$694 (additional child tax credit) - \$2,376 (self-employment tax) = \$2,718.