

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT
DEPARTMENT OF ECONOMIC SECURITY

1. Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:

Unemployment Insurance Tax: Spouse's Services Performed in a Community Property State for a Partnership. The substantive policy statement number is 17P-C031.

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

The substantive policy statement was issued and will become effective upon filing with the Office of the Secretary of State.

3. Summary of the contents of the substantive policy statement:

The substantive policy statement describes the Department's determination regarding the treatment of services performed by spouses for the purposes of Unemployment Insurance Tax.

4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:

A.R.S. § § 25-214, 25-215, and 23-617 (4)

5. Statement as to whether the substantive policy statement is a new statement or a revision:

This is a new substantive policy statement.

6. Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:

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Policy Statement
Number: 17P-C031
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

A spouse's services performed in a community property state for a partnership.

AUTHORITY

Arizona Revised Statute (A.R.S.) § 23-617 defines exempt employment to include under (4):
"Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by an individual under the age of twenty-one years in the employ of the individual's father or mother."

However, for a spousal employee to be in exempt employment if working for a spouse in a partnership, the spousal employee must have the requisite family relationship to each of the partners within the partnership per A.R.S. § 23-617 (4).

With respect to liens and a spouse who is not a partner, A.R.S. § 25-215 addresses the issue of liability of community property and separate property regarding community and separate debts and provides:

"A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent agreement of the property owner to the contrary.

B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would have been such spouse's separate property if single.

C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would have been community debts if incurred in this state."

In addition, A.R.S. § 25-214 address the issue of management and control:

"A. Each spouse has the sole management, control and disposition rights of each spouse's separate property.

B. The spouses have equal management, control and disposition rights over their community property and have equal power to bind the community.

C. Either spouse separately may acquire, manage, control or dispose of community property or bind the community, except that joinder of both spouses is required in any of the following cases:

1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.
2. Any transaction of guaranty, indemnity or suretyship.
3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.”

DISCUSSION AND CONCLUSION

The following are examples of the requisite familial relationship required for a spouse’s services to be in exempt employment under A.R.S. § 23-617 (4).

Example of exempt family employment:

John Smith and Mark Smith formed a partnership making laser printers. Mark is the son of John Smith. The business did so well that John decided to hire his wife Marge, to handle the bookkeeping duties. Wages paid to Marge (because she is performing services for her spouse and son) are not reportable to the Department because she maintains the requisite family relationship to each partner as described in A.R.S. § 23-617 (4).

Example of non-exempt family employment

Using the above example, if John and Mark Smith formed a new partnership with Joe Jackson (who is the brother of Marge), then paid wages to Marge (because she is performing services for her spouse, son, and brother) Marge’s wages would be reportable to the Department because she no longer maintains the required family relationship to each partner as described in A.R.S. § 23-617 (4).

Although Arizona is one of eight (8) community property states, it cannot be presumed that a spouse is in the business. Therefore, the Department will establish the account as a sole proprietor unless the Form UC-001 lists the spouse on item V (showing percentage of ownership). In addition, income generated from a partnership is taxable on an individual basis whereby a spouse (in most cases) will receive the benefits from the partnership income. Consequently, when filing liens against a non-member spouse the Department will include the non-member spouse’s information on the filed/recorded liens and the Department should note the information on the non-member spouse on the Form UC-001 for skip tracing.

REFERENCES

A.R.S. §§ 25-214, 25-215, and 23-617 (4).

AGENCY RECEIPT

NOTICE OF SUBSTANTIVE POLICY STATEMENT

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Unemployment Insurance Tax: Spouse's Services Performed in a Community Property State for a Partnership. The substantive policy statement number is 17P-C031.