



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.18.4

AUGUST 18, 2025

EFFECTIVE DATE

(08-18-2025)

PURPOSE

- (1) This transmits revised IRM 25.18.4, Community Property, Collection of Taxes in Community Property States.

MATERIAL CHANGES

- (1) Changes to this IRM are listed in the table below:

Reference	Description of Change
IRM 25.18.4.1	Added component for Primary Stakeholders.
IRM 25.18.4.1.3	Updated title to Roles and Responsibilities.
IRM 25.18.4.1.4	Revised terms to mirror definitions used in IRM 25.18.5.1.4, <i>Terms</i> .
IRM 25.18.4.1.5	Added additional IRM resources.
IRM 25.18.4.2	Edited content in paragraph 2 for clarity.
IRM 25.18.4.9	Revised language to clarify post-marital debts are presumed to be community debt.
IRM 25.18.4.11	Revised language in this subsection to clarify innocent spouse relief affects income tax.
IRM 25.18.4.15	Clarified creditor notice requirements pursuant to the California Family Code.
Throughout	Made minor editorial changes throughout this IRM. Organizational terms, IRM references, legal references, and website addresses were updated as necessary.

EFFECT ON OTHER DOCUMENTS

IRM 25.18.4, dated February 26, 2018, is superseded.

AUDIENCE

All IRS employees who are working cases involving taxpayers domiciled in community property states, or cases otherwise raising community property issues.

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25.18.4

Collection of Taxes in Community Property States

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25.18.4.1
(08-18-2025)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides technical guidance regarding taxpayers domiciled in community property states, or cases otherwise raising community property issues.
- (2) **Audience:** This IRM applies to all IRS employees who are working on cases involving taxpayers domiciled in community property states, or cases otherwise raising community property issues.
- (3) **Policy Owner:** The Director, Examination Field and Campus Policy, who reports to the Director, Examination Headquarters.
- (4) **Program Owner:** Field Examination General Processes (FEGP), which is under the Director, Examination Field and Campus Policy.
- (5) **Primary Stakeholders:** IRS employees who are working cases involving taxpayers domiciled in community property states, or cases otherwise raising community property issues are the primary stakeholders for this IRM.
- (6) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, *Providing Feedback About an IRM Section - Outside of Clearance*.

25.18.4.1.1
(02-26-2018)
Background

- (1) This IRM provides information regarding the collection of taxes in community property states.

25.18.4.1.2
(02-26-2018)
Authority

- (1) Federal law determines how property is taxed, but state law determines whether, and to what extent, a taxpayer has “property” or “rights to property” subject to taxation. *Aquilino v. United States*, 363 U.S. 509 (1960); *Morgan v. Commissioner*, 309 U.S. 78 (1940). Accordingly, federal tax is assessed and collected based upon a taxpayer’s state created rights and interest in property. Additional information can be found, but is not limited to, the following IRC sections:
 - IRC 66, *Treatment of Community Income*
 - IRC 6015, *Relief From Joint and Several Liability on Joint Return*
 - IRC 6320, *Notice and Opportunity for Hearing Upon Filing of Notice of Lien*
 - IRC 6321, *Lien for Taxes*
 - IRC 6330, *Notice and Opportunity for Hearing Before Levy*
 - IRC 6331, *Levy and Distraint*
 - IRC 6334, *Property Exempt From Levy*

25.18.4.1.3
(08-18-2025)
Roles and Responsibilities

- (1) The Director, Examination Headquarters, is the executive responsible for providing policy and guidance for SB/SE Examination employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers’ rights. See IRM 1.1.16.5.5, *Examination Headquarters*, for additional information.
- (2) The Director, Examination Field and Campus Policy, reports to the Director, Examination Headquarters, and is responsible for the delivery of policy and guidance that impacts the examination process. See IRM 1.1.16.5.5.1, *Examination Field and Campus Policy*, for additional information.

- (3) Field Examination General Processes (FEGP), which is under the Director, Examination Field and Campus Policy, is the group responsible for providing policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.5.5.1.1, *Field Examination General Processes*, for additional information.
- (4) Employees are responsible for properly applying the laws of the applicable community property state fairly and consistently.
- (5) Employees and their managers should thoroughly acquaint themselves with the information contained in this IRM, as well as other resources, such as those listed in IRM 25.18.4.1.5, *Related Resources*, below.

25.18.4.1.4
(08-18-2025)

- (1) The following table contains a list of terms used throughout this IRM.

Terms

Term	Definition
Community Property	Generally, defined as all property acquired during marriage that is not established to be separate property. Community property is the default characterization of all marital assets. See IRM 25.18.1.3.10, <i>Definition of Community Property</i> , for additional information.
Community Property Law	A property system where the presumption is that each spouse contributes income and assets to the “community” of the spouses, and shares equally in any earnings, assets, and debts of the community. See IRM 25.18.1.2.2, <i>Community Property Law</i> , for more information.
Community Property States	States that use community property law as their property system. Each state’s law can vary based on the individual state statutes. See IRM 25.18.1.2.3, <i>Community Property States</i> , for more information.
Registered Domestic Partners	Two individuals who are in registered domestic partnerships, under the laws of California, Nevada, and Washington, and are subject to state community property laws in the same manner as married couples. Registered domestic partners, civil unions or other non-marital relationships that are not denominated as marriages under state law are not married for federal tax purposes. Therefore, individuals in these non-marital relationships may not file married filing jointly or married filing separately federal income tax returns. See IRM 25.18.1.3.3, <i>Registered Domestic Partners</i> , and IRM 25.18.5.7, <i>Registered Domestic Partners</i> , for more information.

Term	Definition
Separate Property	Generally all property acquired before the creation or after termination of the community property estate and property acquired by one spouse during marriage through gift, inheritance, or an award for personal injury damages. See IRM 25.18.1.3.11, <i>Definition of Separate Property</i> , and IRM 25.18.1.3.16, <i>Sale or Exchange of Separate Property</i> , for additional information on the character of property purchased with separate property.

25.18.4.1.5
(08-18-2025)

Related Resources

- (1) The following IRMs provide additional information regarding community property:
 - IRM 25.15.5, *Relief from Community Property Laws*
 - IRM 25.15.6, *Field Examination Procedures*
 - IRM 25.18.1, *Basic Principles of Community Property Law*
 - IRM 25.18.2, *Income Reporting Considerations of Community Property*
 - IRM 25.18.5, *Injured Spouse*
- (2) Helpful information can be found on the following websites:
 - *Community Property - Exam Technical Services*
 - *SB/SE Counsel State Law Guides* (provides additional information on each of the nine community property states)

25.18.4.2
(08-18-2025)

Context of Collection Issues

- (1) Where spouses are jointly and severally liable for federal taxes on account of having filed a joint federal income tax return, the taxes may be collected from the separate property of either spouse or any of their community property. Community property collection issues rarely arise in this context. Community property collection issues typically arise where only one spouse owes a tax liability. This can come up in many contexts, but the most frequent examples are where spouses do not file returns, where they file separate returns, where one spouse is granted innocent spouse relief, or where one spouse is responsible for employment taxes or is assessed a trust fund recovery penalty. The issue in these contexts is what assets are available to satisfy the obligations.
- (2) If a taxpayer neglects or refuses to pay assessed taxes after notice and demand, a federal tax lien arises against the taxpayer. Refer to IRC 6321, *Lien for Taxes*. The lien attaches to all of the taxpayer's property and rights to property. Under federal law, the IRS steps into the shoes of the taxpayer. See *United States v. Rodgers*, 461 U.S. 677 (1983). State law determines a taxpayer's property and rights to property. Because a federal tax lien against one spouse (but not the other spouse) attaches to "all of the taxpayer's property and rights to property" in a community property state, the lien would attach to the liable spouse's ownership interest in the community property. This gives the IRS a collection right against this property.
- (3) Under the laws of all community property states, under certain circumstances a private creditor has the right to collect a debt from all or part of both spouses' interests in community property. Where state law recognizes such a right, this

is considered a right to property of the liable spouse that is subject to the IRS's tax lien. See *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). Thus, in some states a levy for one spouse's separate tax liability would attach to all of the other spouse's wages, or a levy on one spouse's wages for the same liability would attach to all of that spouse's wages, even though the other spouse has a half interest in them.

25.18.4.3
(06-05-2017)

Process for Determining Collection Options

- (1) In the community property states, a federal tax lien will always attach to all of the liable spouse's separate property. Also, the tax lien will always attach to at least the liable spouse's half interest in community property. To determine how to collect the tax, a revenue officer must go through a two-step process. The first step is to characterize all of the property available for collection as either community property or separate property. The second step is to determine whether state law creates additional property rights of the liable spouse that would cause the tax lien to attach to more than the liable spouse's half interest in the community property.
- (2) Some states attempt to protect a spouse's interest in community property from attachment by creditors. For example, many states prohibit creditors from collecting premarital debts from the non-liable spouse's contribution to community property. In Wisconsin, the laws prohibit a creditor from garnishing the non-liable spouse's wages for the liable spouse's premarital obligations. These are generally referred to as "exemption statutes." The federal courts have held that state law exemption statutes do not apply to the federal government. Therefore, if state law creates a community property interest, state law cannot prevent a federal tax lien from attaching to the liable spouse's half interest in it. *In Re Ackerman*, 424 F.2d 1148 (9th Cir. 1970); *In Re Overman*, 424 F.2d 1142 (9th Cir. 1970); and *Broday v. United States*, 455 F.2d 1097 (5th Cir. 1972). Therefore, the minimum claim the IRS has against any item of community property is half. However, depending on state law, the IRS may be able to reach more than half. See IRM 25.18.4.8, *Collecting Premarital Liabilities*, and IRM 25.18.4.9, *Collecting Post-Marital Liabilities*.
- (3) The IRS has ceased the practice of recording notices of federal tax lien that specifically reference a liable spouse's interest in community property held in the name of a non-liable spouse. The IRS takes the position that the notice of federal tax lien filed against the liable spouse provides proper notice of the attachment of the tax lien to community property held in the name of the non-liable spouse.

25.18.4.4
(06-05-2017)

Same Sex Marriage, Domestic Partnerships, and Tax Collection

- (1) **Same-sex marriage.** Same-sex married couples receive the same state and federal benefits and burdens as opposite-sex married couples. Therefore, same-sex married couples who domicile in a community property state are subject to community property tax collection rules in the same manner as opposite-sex married couples (see IRM 25.18.1.3.2(2), *Marriage*). This is a result of the ruling in "*Obergefell v. Hodges*", 135 S.Ct. 2584 (2015), in which the Supreme Court held that:
 - a. State laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples and
 - b. All states must recognize same-sex marriages performed in other states.

- (2) **Registered Domestic Partners and offsets.** Registered domestic partners are not married for federal tax purposes. Therefore, they may not file federal joint returns. However, under the laws of California, Nevada, and Washington, registered domestic partners are subject to state community-property laws in the same manner as married couples. See Cal. Fam. Code Section 297.5(a); Nev. Rev. Stat. Section 122A.200; Wash. Rev. Code Section 26.16.030. Because they are subject to state community property rules in the same manner as married couples, the community property assets of a registered domestic partner in these states would be available to satisfy the separate tax debt of a registered domestic partner in the same manner the assets would be available to satisfy a separate debt of married spouses in these states. See IRM 25.18.1.3.3, *Registered Domestic Partners*.

25.18.4.5
(06-05-2017)

**Levies Against a
Non-Liable Spouse To
Reach a Liable Spouse's
Share of Community
Property**

- (1) In all of the community property states, in some circumstances, it is possible to serve a levy on the non-liable spouse's salary or wages to reach the liable spouse's community property interest. *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989); *Tull v. United States*, 848 F. Supp. 1466 (E.D. Cal. 1994), rev'd on other grounds, 69 F.3d 394 (9th Cir. 1995); *Vorhies v. Z Management*, 87-1 USTC ¶ 9200, 59 AFTR 2d 87-658 (W.D. Wis. 1987). Special issues arise with respect to such levies.
- a. A levy against a non-liable spouse's wages to reach the liable spouse's share of community property is not subject to a continuous levy under IRC 6331(e), *Continuous Levy on Salary and Wages*. The Code provides that a levy on "salary or wages payable to or received by a taxpayer shall be continuous ...". This phrase should be read literally. A levy to reach a liable spouse's community property interest in a non-liable spouse's wages is not continuous, because those wages are not earned by the "taxpayer," the person against whom the tax liability is assessed. Thus, the IRS must issue separate levies to reach each wage payment. However, if the continuous levy is improperly used, it would not preclude the IRS from enforcing it as a one-time levy. See, e.g., *United States v. Raymond James and Associates*, 98-2 U.S.T.C. ¶ 50,534 (M.D. Fla. 1998); cf. *Moore v. General Motors Pension Plans*, 91 F.3d 848 (7th Cir. 1996) (pension plan served with levy immune from suit for complying even if levy was invalid).
 - b. A non-liable spouse may claim an exemption for levied wages. IRC 6334(a)(9), *Minimum Exemption for Wages, Salary, and Other Income*, provides for a minimum exemption from levy for amounts payable to or received by an individual as wages or salary for personal services. The nature of the property levied upon, i.e., the fact that it is wages or salaries, is determinative. The fact that state community property law may create a property interest in income on behalf of a party other than the party who actually earned the income does not alter the nature of that property. As the purpose of the wage exemption is to ensure that persons whose salary has been levied have some funds to meet their living expenses, a non-liable spouse whose wages are levied upon may also claim an exemption.
 - c. The non-liable spouse would not be entitled to collection due process rights under IRC 6330, *Notice and Opportunity for Hearing Before Levy*, before the issuance of the levy. These rights are given only to the taxpayer (i.e., the liable spouse).
 - d. Social security payments are not community property. *In re Marriage of Zahm*, 138 Wash.2d 213, 220, (Wash. 1999); *Richard v. Richard*, 659

S.W.2d 746, 3 Soc.Sec.Rep.Serv. 1109 (Tex.App.-Tyler 1983); *In re Marriage of Nizenkoff*, 65 Cal.App.3d 136, 140-141, 135 Cal.Rptr. 189 (Cal. App. 1 Dist. 1976). Since a liable spouse has no community property interest in the social security benefits of a non-liable spouse, a levy cannot be made on the non-liable spouse's social security benefits to pay the other spouse's tax liability.

25.18.4.6
(02-15-2005)

**Management and
Control and Collection**

- (1) The issue of which spouse has management and control over community property has limited impact on tax collection, except in the State of Texas. In Texas, management and control determines the collection remedy if only one spouse owes taxes. Tax debts of a spouse may be satisfied with 100% of the liable spouse's sole management community property, 100% of joint management community property and 50% of the non-liable spouse's sole management community property. See *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). There are special limitations on homestead property in Texas. If homestead property is involved, contact Counsel. For a discussion of management and control, see IRM 25.18.1.3.12, *Management and Control*.

25.18.4.7
(06-05-2017)

**Premarital v.
Post-Marital Obligations**

- (1) As discussed above, in some circumstances states allow private creditors to reach more than half of community property to satisfy the debt of one spouse. This is considered to create a property interest of the liable spouse that is subject to a tax lien. In most states this depends on whether the obligation arose or was incurred before or after marriage. Therefore, to determine whether this right to property exists, it is important to know when the spouses were married and when the liability was incurred.
- (2) Where different property rights exist depending on when the liability arose, it is important to determine whether it arose before or after the marriage. Determining the date of marriage is relatively simple, but issues may arise as to when the liability was incurred. A tax liability accrues when all events have occurred that fix the liability. *United States v. Anderson*, 269 U.S. 422 (1926), also see *United States v. Hughes Properties, Inc.*, 476 U.S. 593 (1986). An individual's income tax liability accrues as of the end of the year. See, e.g., *In re Luongo*, 259 F.3d 323 (5th Cir. 2001). With regard to an employment tax liability, it arises when the wage is paid. *Otte v. United States*, 419 U.S. 43 (1974). If there is a doubt as to when a liability arose, Counsel should be contacted.

25.18.4.8
(06-05-2017)

**Collecting Premarital
Liabilities**

- (1) In all states, the IRS can collect unpaid premarital liabilities from all of the separate property of the liable spouse. There is a difference among the states as to what part of community property can be reached. The differences are described below:
 - a. **100% States.** Some states do not distinguish between pre and post-marital obligations and allow creditors to collect an obligation from 100% of community property. Therefore, in these states the IRS may also collect taxes from 100% of community property for all premarital debts of a spouse. The laws of these states grant the liable spouse a property interest in the non-liable spouse's share of community property. These states include California, Idaho and Louisiana.
 - b. **50% States.** Some states allow collection of premarital debts from the liable spouse's 50% interest in community property. This does not create

any property rights of the liable spouse in the non-liable spouse's share of community property. These states include Nevada, New Mexico and Washington.

- c. **Wisconsin and Arizona.** Because each spouse has a half interest in community property, a federal tax lien attaches to 50% of all community property. However, Wisconsin law also provides that premarital debts (Wisconsin includes these in a classification of debts called predetermination date obligations) can be collected from the liable spouse's contribution to community property. This would, for example, include 100% of the liable spouse's wages. As already discussed, where state law recognizes such a right, this is considered a right to property of the liable spouse that is subject to the IRS's tax lien. Refer to *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). Therefore, in this circumstance the IRS can take 100% of the liable spouse's contribution to community property, plus 50% of any other community property. Thus, for example, the IRS could reach 100% of the liable spouse's wages and 50% of the non-liable spouse's wages. Arizona is similar to Wisconsin. In Arizona, all separate property of the liable spouse is available. In addition, 100% of community property traceable to or contributed by the liable spouse and 50% of all other community property would also be available.
- d. **Texas.** Because each spouse has a half interest in community property, a federal tax lien attaches to 50% of all community property in Texas. However, Texas law also allows a creditor to reach 100% of the liable spouse's sole management community property and 100% of joint management community property to satisfy a premarital debt. As already discussed, where state law recognizes such a right, this is considered a right to property of the liable spouse that is subject to the IRS's tax lien. *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). Therefore, in this circumstance the IRS can take 100% of the liable spouse's sole management community property and 100% of any joint management community property, plus 50% of all other community property. Thus, for example, the IRS could reach 100% of the liable spouse's wages and 50% of the non-liable spouse's wages. If property subject to a lien is a homestead, collection is subject to other limitations, and Counsel should be contacted.

25.18.4.9
(08-18-2025)
**Collecting Post-Marital
Liabilities**

- (1) **Generally.** In all states, the IRS can collect unpaid post-marital liabilities from all of the separate property of the liable spouse. There are differences in the treatment of community property; most states recognize an ability to collect from more than the liable spouse's share of community property and this is considered a property right subject to the federal tax lien. The differences are described below:
 - a. **100% States.** All states, except Texas, allow collection of some post-marital obligations from 100% of community property. Some states (California, Idaho and Louisiana) allow creditors to collect all debts of either spouse from 100% of community property. Other states (Nevada and New Mexico) only allow this with respect to post-marital obligations. As already discussed, where state law recognizes such a right, this is considered a right to property of the liable spouse that is subject to the IRS's tax lien. See *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). Accordingly, in these states (California, Idaho, Louisiana, Nevada

and New Mexico) the IRS can collect a post-marital tax liability of either spouse from 100% of community property.

- b. **Community Debt States.** Some states characterize post-marital debts as either community or separate debts. Arizona, Washington, and Wisconsin are examples of this. Community debts may be satisfied from all community property, while other debts may only be satisfied from the liable spouse's half of community property or from the liable spouse's contribution to community property (i.e., 100% of that spouse's wages). These states presume that post-marital debts are community debts. A community debt is one that benefits the marriage or family. For the debt to be a community debt, all that is required is a relationship between the obligation and a business which benefits the community. See, e.g., *Garrett v. Shannon*, 13 Ariz. App. 332, 476 P.2d 538 (1970). In these states, the IRS takes the position that tax liabilities are community debts. Income taxes and excise taxes generally arise from gain-seeking activities that benefit the community and are community debts. See *Wine v. Wine*, 14 Ariz. App. 103; 480 P.2d 1020 (1971). Similarly, trust fund recovery penalties usually arise out of employment and are community debts. See *Hyde v. United States*, 72 AFTR 2d 93-5298 (D. Ariz. 1993).
- c. **Texas.** Texas follows the same rules for pre and post-marital obligations. Texas law allows a creditor to collect from 100% of the liable spouse's sole management community property (again, including 100% of the liable spouse's wages). Texas law also allows a creditor to reach 100% of joint management community property. Texas law prohibits a creditor from reaching the non-liable spouse's sole management community property, but since the liable spouse still has a half interest in this property, the tax lien still reaches half. If the property is a homestead, collection is subject to other limitations, and Counsel should be contacted.

25.18.4.10
(02-26-2018)
**Other Liabilities and
Collection Remedies**

- (1) IRC 66 has three subsections that can affect the reporting of community property income but it does not negate liability that arises against a spouse under the operation of other (non-community property) laws. See IRM 25.18.2.3.1, *General Provisions of IRC 66*. For example:
 - It does not negate transferee liability if it applies. See 26 CFR 1.66-1(c) for more information.
 - It does not negate collection remedies based on state law against community property in the hands of the other spouse.

Example: Both spouses are domiciled in Arizona and both owe taxes. One spouse is granted relief under IRC 66. The IRS can still collect the other spouse's unpaid liability from all of their community property. See IRM 25.18.4.11, *Effect of Innocent Spouse Relief*, for guidance on the effect of innocent spouse relief. Also see *Ordlock v. Commissioner*, 126 T.C. 47 (2006).

25.18.4.11
(08-18-2025)
**Effect of Innocent
Spouse Relief**

- (1) The effect of innocent spouse relief is to make a spouse no longer liable for income tax attributable to community property items of the other spouse. It removes or prevents the assessment of tax against a spouse. It does not affect the ability of the IRS to collect from the non-liable spouse's interest in community property if state law gives the liable spouse an interest in the non-liable spouse's share of the community property to which the tax lien is

attached. This is true even if this has an adverse impact on the non-liable spouse who was granted innocent spouse relief.

Example: If a spouse receives innocent spouse relief in a state that would allow a private creditor to garnish the non-liable spouse's wages for a debt of the liable spouse, then the IRS can still collect from this property. The tax lien for the collection of the liable spouse's taxes attaches to the non-liable spouse's wages.

- (2) IRC 6015(g), *Credits and Refunds*, does not override the IRS's ability to offset payments made from community property under state law. Subject to other limitations in the Code, IRC 6015(g) allows taxpayers who have received innocent spouse relief to receive refunds of certain payments they have made toward the liability. However, the IRS may still be able to retain all or part of the payments that would otherwise be refundable under IRC 6015(g) if they were made from community property and the tax lien for the collection of the liable spouse's unpaid tax attaches to the community property. See *Ordlock v. Commissioner*, 126 T.C. 47(2006).

25.18.4.12
(02-15-2005)
**Effect of Spouse's Death
on Collection**

- (1) In all community property states, the death of a spouse terminates the community. This means that no new community property may be created. For example, wages of the surviving spouse are no longer community property. In most states, items of community property do not automatically pass to the surviving spouse. The surviving spouse continues to have a half interest in the property with the decedent's estate. Most states provide, however, that items of former community property remain available to satisfy community debts as they would have before the death of the spouse and to the extent of their value at the decedent's death. If this issue arises in a case, local law should be consulted.

25.18.4.13
(02-15-2005)
**Effect of Dissolution of
the Community Property
Regime on Collection**

- (1) As discussed above, depending on the state involved, a decree of divorce, legal separation or physical separation will terminate ("dissolve") the community property regime. Dissolution impacts on tax collection. For example, wages of the non-liable spouse earned after the dissolution are no longer community property. Most states provide, however, that items of former community property remain available to satisfy community debts as they would have before the dissolution to the extent of their value at the date of dissolution. If this issue arises in a case, local law should be consulted.

25.18.4.14
(03-04-2011)
**Effect of Change of
Domicile on Existing
Community Property**

- (1) If spouses move from a community property jurisdiction to a common law jurisdiction, existing community property does not lose its character by virtue of the move. *In re Marriage of Moore & Ferrie*, 14 Cal. App. 4th 1472, 18 Cal. Rptr. 2d 543 (Cal. App.1993).

25.18.4.15
(08-18-2025)
**Effect of Marital
Agreements on
Collection**

- (1) All community property states allow spouses to vary the effects of the community property regime by written agreements. The legal requirements for such marital agreements vary by state. The IRS will honor such agreements in accordance with state law. Refer to Rev. Rul. 73-390, 1973-2 C.B. 12. These agreements impact the rights of creditors, including the IRS. A spouse, for example, could divest their interest in community property earned by or titled to the other spouse. See, e.g., *Calmes v. United States*, 926 F. Supp. 582 (N.D. Texas 1996).

- (2) Most states have developed rules for regulating how creditors receive notice of these agreements and/or what effect the agreement has on the creditor. For example, in some states, if notice is not given the laws provide that the agreement will not apply to the creditor. Wisconsin, for example, requires actual notice before the liability is incurred. See Wis. Stat. Section 766.55(4m). Louisiana requires the agreements to be recorded. See La. Civ. Code Art. 2332. Washington provides that these agreements are neither valid nor enforceable against creditors in existence at the time the agreement was executed. Refer to Wash. Rev. Code Section 26.16.050. Arizona does not require notice but they may apply fraudulent conveyance statutes to the agreements. See *State ex rel. Indus. Comm'n v. Wright*, 43 P. 3d 203 (Ct. App. Div. 1, Dept. A 2002). California does not require notice unless the agreement would transmute land and they may also apply fraudulent conveyance statutes to the agreement. See Cal. Fam. Code Section 852(b).
- (3) If the agreement is entered into after marriage and after the liability was incurred, these fraudulent conveyance statutes have been held not only to prevent recharacterization of existing assets, but also recharacterization of property to be received in the future (e.g., wages or other future income). See, e.g., *State Board of Equalization v. Woo*, 98 Cal. Rptr. 2d 206, 82 Cal. App. 4th 481 (Ct. App. 2000); *State ex rel. Indus. Comm'n v. Wright*, 202 Ariz. 255, 43 P.3d 203 (Ct. App. 2002); Cf., *United States v. Loftis*, 607 F.3d 173 (5th Cir. 2010) (attempt to partition community property to avoid levy held a fraudulent conveyance); but see *O'Kane v. United States*, 1989 U.S. Dist. LEXIS 15,631, 1989 WL 252397 (D. Idaho 1989). It should be noted, however, that a premarital agreement opting out of community property is unlikely to be considered a fraudulent conveyance, particularly if the liability was incurred after the spouses entered into the agreement. See, e.g., *Calmes v. United States*, 926 F. Supp. 582 (N.D. Texas 1996); *Schlaefel v. Financial Management Service, Inc.*, 196 Ariz. 336, 996 P.2d 745 (Ct. App. 2000); *Leasefirst v. Borrelli*, 13 Cal. App. 4th Supp. 28, 17 Cal. Rptr.2d 114 (App. Dept. Sup. Ct. 1993). For a summary of state laws in this area, see IRM 25.18.1-1, *Comparison of State Law Differences in Community Property States*.

25.18.4.16
(06-05-2017)

Mortgage Reduction and Other Tracing Issues

- (1) Mixing and tracing issues commonly arise when a spouse owns an asset as separate property and uses community property or uncompensated labor of a spouse to pay down debt on the asset or improve it. The most common circumstance is where a spouse owns a house prior to marriage (a separate property asset), and after marriage uses wages (a community property asset) to pay down the mortgage on the property or uses community property or the uncompensated labor of a spouse after marriage to improve the property.
- (2) Under community property principles, mixing community property with separate property can transmute the separate property into community property but only if the separate property component cannot be traced. In the context of mortgages or improvements to real property, the separate property component can usually be traced, so the transmutation will not occur. See discussion in IRM 25.18.1.3.23, *Mixing or Commingling Community Property With Separate Property*.
- (3) If the separate property can be traced, all community property states recognize that, in some measure, the community needs to be compensated for the use of the community property in reducing the mortgage or improving the property. Most states call this a "right to reimbursement." See discussion in Elizabeth Barker Brandt, *The Treatment of Community Property Payments (Including*

Principal and Interest) on Separate Property, 30 Idaho L. Rev. 697 (1994). Other states treat the claim as creating an interest in property.

- (4) The community property states also have varying rules about valuing the interest, and some states even value the interest differently depending on whether the interest involves payment of a mortgage or improvements to the property. Expenses, such as insurance, taxes, or ordinary maintenance do not increase the equity value of the property and do not create the right to reimbursement or any equity interest in the property. See, e.g., *In re Marriage of Moore*, 28 Cal. 3d 366, 618 P.2d 208 (1980); *In re Estate of Kobylski*, 503 N.W.2d 369 (Wis. Ct. App. 1993); *Rogers v. Rogers*, 754 S.W.2d 236 (Ct. App. Tex. 1988).
- (5) This issue can be important in cases where only one spouse owes taxes and community property is used to acquire or improve separate property of the other spouse. For example, assume A takes out a mortgage and buys a house. A subsequently marries B. The house would be considered A's separate property. Assume after marriage, the spouses use their wages (which are a community property asset) to pay down the mortgage. As discussed above, this creates some type of right to reimbursement or interest in property under state law. If the IRS has a tax lien against B, the issue will often be whether the tax lien attaches to the right to reimbursement or interest in property. This issue has ramifications for offers in compromise, foreclosure suits, applications for discharge, and other collection matters. There is little case law on this issue. The outcome, however, will depend on whether the right to reimbursement is "property or rights to property" under IRC 6321. "[One] look[s] to state law to determine what rights the taxpayer has in the property the Government seeks to reach, then to federal law to determine whether the taxpayer's state-delineated rights qualify as 'property' or 'rights to property' within the compass of federal tax lien legislation." Refer to *United States v. Craft*, 535 U.S. 274 (2002) and *Drye v. United States*, 528 U.S. 49, 58 (1999). The first step is to determine whether the taxpayer has any rights under state law provided by the right to reimbursement. In identifying rights created under state law, the focus should be on the substance of the rights the state law provides, "not merely the labels the State gives these rights or the conclusions it draws from them. Such labels are irrelevant to the federal question of which bundles of rights constitute property that may be attached by a federal tax lien." *Craft*, 535 U.S. at 279. The second step is to determine whether the rights determined in step one are "property or rights to property" under IRC 6321. Some community property states treat the right to reimbursement as an ownership right under state law. Others treat the right as a claim against the separate property protected by an equitable lien. The state-law characterization of a right to reimbursement is described below.
 - a. **Arizona.** Arizona recognizes a right to reimbursement but does not treat it as an ownership interest. It imposes an equitable lien against the separate property that is unenforceable until divorce or death. See *Drahos v. Rens*, 717 P.2d 927 (Ariz. Ct. App. 1985).
 - b. **California.** California treats the claim as an ownership interest in property. The value of the interest is measured by the ratio the payments on the purchase price made with community funds bear to the payments made with separate funds. *In re Marriage of Moore*, 28 Cal. 3d 366, 618 P.2d 208 (1980).
 - c. **Idaho.** Idaho recognizes a right to reimbursement but does not treat it as an ownership interest. It imposes an equitable lien against the separate

- property. See *Hooker v. Hooker*, 95 Idaho 518, 511 P.2d 800 (1972); *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976); *Tilton v. Tilton*, 85 Idaho 245, 378 P.2d 191 (1963).
- d. **Louisiana.** Louisiana recognizes a right to reimbursement. It does not treat the right to reimbursement as an ownership interest, nor does it describe it as an equitable lien. See e.g., *Washington v. Washington*, 846 So.2d 895 (La. Ct. App. 2003); *In re Sucession of Horn*, 827 So.2d 1241 (La. Ct. App. 2002).
 - e. **Nevada.** Nevada treats the claim as an ownership interest in property. With regard to the pay down of a mortgage with community property, the community interest is valued according to the ratio that the mortgage principal reduction attributable to community property payments bears to original purchase price; credit for outstanding loan balance should be divided according to number of monthly payments made by separate or community property. With regard to improvements to the property made with separate property funds or labor, the determination is supposed to be made on a case by case basis that reflects the true value of the contribution, but the courts will generally use a reimbursement approach. *Malmquist v. Malmquist*, 106 Nev. 231, 792 P.2d 372 (1990).
 - f. **New Mexico.** New Mexico treats the claim as an interest in property. The courts have treated the claim as an “equity investment” in the real property. See *Portillo v. Shappie*, 636 P.2d 878 (1981). In *Chance v. Kitchell*, 659 P.2d 895 (1983), the New Mexico Supreme Court held that the paying down of a mortgage on separate property owned by the wife with community funds created an equitable lien against the property. The Court partitioned the property between the surviving wife and the deceased husband’s heirs. The value of the claim is determined based on the value of the property with the improvements compared to the hypothetical value of the property without the improvements. *Portillo v. Shappie*, 636 P.2d 878 (1981).
 - g. **Texas.** Texas does not treat the right to reimbursement as an ownership interest. It imposes an equitable lien against a spouse’s separate real property to secure the other spouse’s right of reimbursement for community improvements. Refer to *Heggen v. Pemelton*, 836 S.W.2d 145 (1992) and *Jensen v. Jensen*, 665 S.W.2d 107 (1984).
 - h. **Washington.** Washington does not explicitly treat the right to reimbursement as an ownership interest. It imposes an equitable lien against a spouse’s separate real property to secure the other spouse’s right of reimbursement for community property improvements to that property. Refer to *Merkel v. Merkel*, 234 P.2d 857 (1951). There is some indication in the case law that the right to reimbursement is an interest to which a creditor’s lien can attach. See, e.g., *Conley v. Moe et al.*, 7 Wash.2d 355, 110 P.2d 172 (1941).
 - i. **Wisconsin.** While the Wisconsin courts have not definitively decided this issue, based on Wisconsin statutes it would appear that Wisconsin law supports treating the claim as a property interest. See Wis. Stat. Section 766.63(2). The value of the claim is determined based on the enhanced value of the property compared to the value of the property without the improvements. *In re Estate of Kobylski*, 503 N.W.2d 369 (Wis. Ct. App. 1993). See also discussion in David R. Knauss, *What Part of Yours Is Mine?: The Creation of a Marital Property Ownership Interest By Improving Nonmarital Property Under Wisconsin Marital Property Law*, 2005 Wis. L. Rev. 855 (2005).

- (6) Before the IRS will pursue a property interest based on a right to reimbursement, the amount of the property interest based on the circumstances needs to be determined because Courts generally do not recognize de minimis claims. See, e.g., *In re Geise*, 132 B.R. 908 (Bankr. E.D. Wis. 1991). See also IRM 25.3.2.3, *Criteria for Bringing Suit*.
- (7) Since the facts of each individual case and state law determine if the taxpayer's right to reimbursement is a property right under IRC 6321, IRS personnel should seek Counsel advice when these types of issues arise.

25.18.4.17
(06-05-2017)
**Effect of Community
Property on Offers In
Compromise**

- (1) **Context of Issues.** Community property is not an issue when a joint offer in compromise is submitted by spouses domiciled in a community property state, and both spouses are liable for the tax. In this circumstance, the assets and income of both are considered.
- (2) **Joint Liability, Offer by One Spouse.** Where spouses are subject to community property laws and owe a joint liability, but only one spouse submits an offer, community property rules are an issue. Separate property and separate property income of the spouse making the offer ("the offering spouse") should be considered. In addition, the offering spouse's share of community property and community property income should be considered. If, under applicable state law, all or part of the non-offering spouse's share (i.e. the spouse who is not making the offer) of community property and community property income would be available to satisfy the tax liability, these items should also be considered in the offer in compromise. Divorced and legally separated spouses (and physically separated spouses who do not intend to resume their marriage in California or Washington) are no longer subject to community property laws.
- (3) **One Spouse Liable.** Where only one spouse is liable for a tax and that spouse makes an offer in compromise, community property rules apply as follows. Anything that could be classified as the liable spouse's separate property or income should be considered in the offer. In addition, the liable spouse's share of community property and community property income should be considered. If, under the community property laws of the state involved, part or all of the non-liable spouse's share of community property or income would be available to satisfy the tax liability, the portion available should also be considered in the offer in compromise. Refer to Treas. Reg. 301.7122-1(c)(2)(ii)(B). However, where spouses demonstrate that collection from assets or income of the non-liable spouse would have a "material and adverse impact" on the standard of living of the taxpayer, the non-liable spouse, and their dependents, these assets will not be considered in determining the acceptability of the offer. Refer to Treas. Reg. 301.7122-1(c)(2)(ii)(B). Community property assets or income will not be disregarded under this regulation to allow the taxpayers to maintain a luxurious or affluent lifestyle. In most cases, it is anticipated that any "material and adverse impact" of considering community property income in an offer will be eliminated by the allowance of necessary living expenses in accordance with IRS guidelines. See (4) below. In addition, community property assets will not be disregarded under this regulation unless including the assets in an offer would have an adverse impact on the taxpayer's ability to meet reasonable living expenses.
- (4) **Calculating Allowable Expenses.** As indicated above, the non-offering spouse's share of community property income will be considered to the extent that the liability could be collected from it under state law. If income of the non-

offering spouse is considered, this raises the issue of how much and whose expenses should be allowed. Expenses will be allowed in proportion to the total income of the spouses considered in the offer. It is necessary to first determine how much of the total income earned by both spouses should be considered in the offer. The amount of expenses should be allowed in proportion to the total income. The total expenses of both spouses should be determined based on national standards and other expenses that would be applicable if both spouses were making the offer and were liable for the tax. This amount should then be reduced by the appropriate percentage. For example, if 50% of the total income of both spouses would be available to satisfy the tax liability, then 50% of the total expenses of both spouses should be allowed against this income. If 100% of the income is available, then 100% of the expenses should be allowed against the income.

25.18.4.18
(02-15-2005)
**Community Property
and Bankruptcy**

- (1) Spouses filing for bankruptcy may either file a joint petition under Bankruptcy Code 11 USC 302(a), *Joint Cases*, or file bankruptcy petitions separately. When spouses file a joint petition and the two bankruptcy estates are substantively consolidated under 11 USC 302(b), community property does not pose much of a problem, because creditors may file claims against all of the community property and any separate property of either spouse. Issues arise, however, where spouses file separate petitions or only one spouse files a petition. These issues include, for example, what property is included in the estate, whether to file a claim, how the automatic stay applies, and what effect the discharge has. For purposes of this section, the spouse who files the bankruptcy petition is referred to as the “debtor spouse,” and the spouse who has not filed the petition is referred to as the “non-debtor spouse.”

25.18.4.18.1
(02-15-2005)
**Property of the Estate
and Debts**

- (1) **Generally.** The filing of a bankruptcy petition creates an estate that includes all of the debtor’s interest in property (except qualified pension plans). If the debtor is married, domiciled in a community property state, and files a joint petition with their spouse and the two estates are substantively consolidated, all of both spouses’ property (including community property) is included in the estate. In this situation, there is nothing different about a bankruptcy filing in a community property state from any other state. If, however, only one spouse files the petition for bankruptcy, the effect of community property must be considered.
- (2) **Filing By One Spouse, Assets Considered.** Under the Bankruptcy Code, the bankruptcy estate includes the debtor spouse’s separate property and all community property that is under the sole, equal or joint management and control of the debtor spouse (as determined under state law). In addition, the bankruptcy estate includes community property to the extent that the property is liable for either an allowable claim against the debtor spouse, or a claim against both spouses. Refer to 11 USC 541(a)(2), *Property of the Estate*. In most states, community property laws make all or part of community property held by either spouse liable for claims against only one of the spouses, so the property will probably be included in the estate up to the value of the claims. In addition, at least half of all community property is liable for federal tax obligations. *In Re Ackerman*, 424 F.2d 1148 (9th Cir. 1970); *In Re Overman*, 424 F.2d 1142 (9th Cir. 1970); and *Brodav v. United States*, 455 F.2d 1097 (5th Cir. 1972); See also IRM 25.18.4.3, *Processing for Determining Collection Options*. The estate does not include the non-debtor spouse’s separate property.

- (3) **Chapter 13 Post-Petition Income.** In a Chapter 13 case, the estate includes “property of the kind specified in such section that the debtor acquires after the commencement of the case ...” and “earnings from services performed by the debtor after the commencement of the case.” Refer to 11 USC 1306(a), *Property of the Estate*. Courts are split on whether this includes the non-debtor spouse’s income earned after the commencement of the case. Compare *In re Nahat*, 278 B.R. 108 (N.D. Tex. 2002) and *In re Harmon*, 118 B.R. 68 (E.D. Mich. 1990) with *In re Whitus*, 240 B.R. 705 (Bankr. W.D. Tex. 1999) and *In re Cardillo*, 170 B.R. 490 (Bankr. D. N.H. 1994). Whether these earnings are included in the estate may affect whether a plan should be confirmed. If this issue arises, check with Counsel to determine the rule in your jurisdiction.

25.18.4.18.2
(03-04-2011)
Automatic Stay

- (1) When a bankruptcy petition is filed, the automatic stay applies to prevent collection of pre-petition debts against either the debtor or property of the estate. If the spouses file a joint petition, property of the estate includes each spouse’s separate property and all of their community property. Thus, when a joint petition is filed, the automatic stay prevents collection action against either spouse or any of their community or separate property.
- (2) If only one spouse files the bankruptcy petition, the automatic stay still prevents any collection action against all or nearly all of the community property. This is because the stay prevents collection action against property of the estate. As previously discussed, the estate includes all community property that is under the sole, equal or joint management and control of the debtor spouse. It can also include community property under the management and control of non-debtor spouse. See IRM 25.18.4.18.1, *Property of the Estate and Debts*. Action against such property would be a violation of the automatic stay. The automatic stay could also apply to acts to collect income of the non-debtor spouse. *In re Passmore*, 156 B.R. 595 (Bankr. E.D. Wis. 1993) (Holding that a garnishment of the non-debtor spouse’s community property wages is a violation of the automatic stay). Further, even a voluntary wage assignment by the non-debtor spouse is likely to be a violation of the automatic stay. However, the automatic stay does not apply to collection actions against the separate property of the non-debtor spouse, because the non-debtor spouse’s separate property is not part of the estate. See IRM 25.18.4.15, *Effect of Marital Agreements on Collection*. If there is a question regarding whether a proposed collection action is a violation of the automatic stay, Counsel should be contacted.

25.18.4.18.3
(06-05-2017)
Proofs of Claim

- (1) When a person liable for a pre-petition tax files a bankruptcy petition, the IRS generally files a proof of claim. Refer to 11 USC 501, *Filing of Proofs of Claims or Interests*, and 11 USC 502, *Allowance of Claims or Interests*. When spouses domiciled in a community property state file a joint petition and the bankruptcy estates are substantively consolidated under 11 USC 302(b), **Joint Cases**, the IRS simply files a proof of claim for all taxes owed by either spouse. When only one spouse in a community property state files for bankruptcy, the IRS files a proof of claim for the separate and joint liabilities owed by the taxpayer. The IRS may also be able to include separate tax liabilities of the non-debtor spouse on its proof of claim. The Bankruptcy Code allows creditors of the non-debtor spouse holding “community claims” to file a claim in the debtor’s bankruptcy case. Refer to 11 USC 101(7), 101(10), *Definitions*, and 11 USC 501(a). A community claim is a pre-petition claim for which community property of the kind that would be included in the bankruptcy estate (see IRM 25.18.4.18.1, *Property of the Estate and Debts*) is liable, whether or not there

is any such property at the commencement of the case. Refer to 11 USC 101(7). Generally, pre-petition taxes incurred during the marriage by either spouse are community claims. Thus, the IRS will typically be able to include the non-debtor spouse's separate tax liability on its proof of claim. Filing a community claim for the separate taxes owed by the non-debtor spouse may be the only way for the IRS to collect the taxes from community assets, since the property in the estate may be liquidated and distributed to creditors in the bankruptcy case, and the bankruptcy discharge may prevent the IRS from collecting community claims from post-petition community property. See IRM 25.18.4.15, *Effect of Marital Agreements on Collection*. If an issue arises concerning whether a community claim for liabilities of the non-debtor spouse should be filed, Counsel should be contacted.

- (2) When a community claim is being filed in the debtor spouse's bankruptcy for a tax owed by the non-debtor spouse, the claim should be classified in the same manner it would have been if the non-debtor spouse had filed the bankruptcy petition. For example, if the IRS has filed a pre-petition notice of federal tax lien against the non-debtor spouse for a tax obligation that could be collected from community property, this would be a secured claim in the debtor spouse's bankruptcy proceeding. If no notice of federal tax lien was filed, the claim will be classified as priority or unsecured based on the age and/or type of tax involved. See 11 USC 507, *Priorities*, and 11 USC 541(a)(2).
- (3) Note that the Bankruptcy Code establishes a separate distribution scheme for community property in Chapter 7 cases. See 11 USC 726(c), *Distribution of Property of the Estate*. This distribution scheme, handled by the Chapter 7 trustee, has no effect on the status (secured, priority or general unsecured) of the IRS's claim.

25.18.4.18.4
(06-05-2017)
Discharge Provisions

- (1) **Discharge of Community Claims – Hypothetical Discharge of Non-Debtor Spouse.** 11 USC 524(a)(3) and 11 USC 524(b), *Effect of Discharge*, set forth special discharge provisions relating to claims against the community property of the estate. If both spouses file for bankruptcy, both spouses receive a discharge, and there are generally no issues resulting from community property. If only one spouse files for bankruptcy, the effect of community property must be considered. Under the discharge provisions, if only one spouse filed bankruptcy, only that spouse receives a discharge. However, under 11 USC 524(a)(3), the debtor spouse's discharge will generally prevent the collection from post-petition community property of pre-petition community claims incurred by either spouse. The non-debtor spouse is said to receive a "hypothetical discharge." The "hypothetical discharge" is an exception to the general rule of 11 USC 524(e) that a debtor's discharge does not affect the liability of any other entity on, or the property of any other entity for, a debt. The hypothetical discharge is inapplicable if the debtor does not receive a discharge.
- (2) **Exceptions to Hypothetical Discharge.** Claims for community debts incurred by the non-debtor spouse may be filed in the debtor spouse's bankruptcy. See IRM 25.18.4.18.3, *Proof of Claim*. As indicated above, the discharge of the debtor spouse generally prevents a creditor of either spouse from collecting pre-petition community claims from post-petition community property. However, a creditor may collect a pre-petition community claim from post-petition community property if the community claim is excepted, or would be excepted, from discharge under USC 11 523, *Exceptions To Discharge*, 11 USC 1228(a)(1), *Discharge*, or 11 USC 1328(a)(1), *Discharge*. Further, under 11

USC 524(b)(2), if the non-debtor spouse would have been denied a discharge under 11 USC 727, *Discharge*, had the non-debtor spouse filed a Chapter 7 case on the same date that the debtor's case was filed, then a pre-petition community claim incurred by either spouse may be collected from community property.

- (3) **Termination of the Hypothetical Discharge.** The non-debtor spouse's hypothetical discharge is only good while the non-debtor spouse remains married to the debtor, the spouses live together in a community property state, and the debtor is alive. If the spouses are divorced or if the debtor spouse dies, property acquired by the non-debtor spouse is no longer community property. Therefore, community claims incurred by the non-debtor spouse can again be collected from the non-debtor spouse's property. *In re Kimmel*, 378 B.R. 630 (9th Cir. B.A.P. 2007). Also, if the spouses change their domicile to a non-community property jurisdiction, any property subsequently acquired by the non-debtor spouse is not community property and would be available to the creditor. The creditors of the non-debtor spouse generally can collect claims incurred by the non-debtor spouse from the separate property of the non-debtor spouse regardless of the discharge.
- (4) **Notice to Non-debtor Spouse's Creditors.** Creditors of the non-debtor spouse must receive appropriate notice of the debtor spouse's bankruptcy. *In re Sweitzer*, 111 B.R. 792 (Bankr. W.D. Wis. 1990). If the lack of notice results in inequitable treatment, it may be necessary to file an objection to the dischargeability of the community claims against the non-debtor spouse.

