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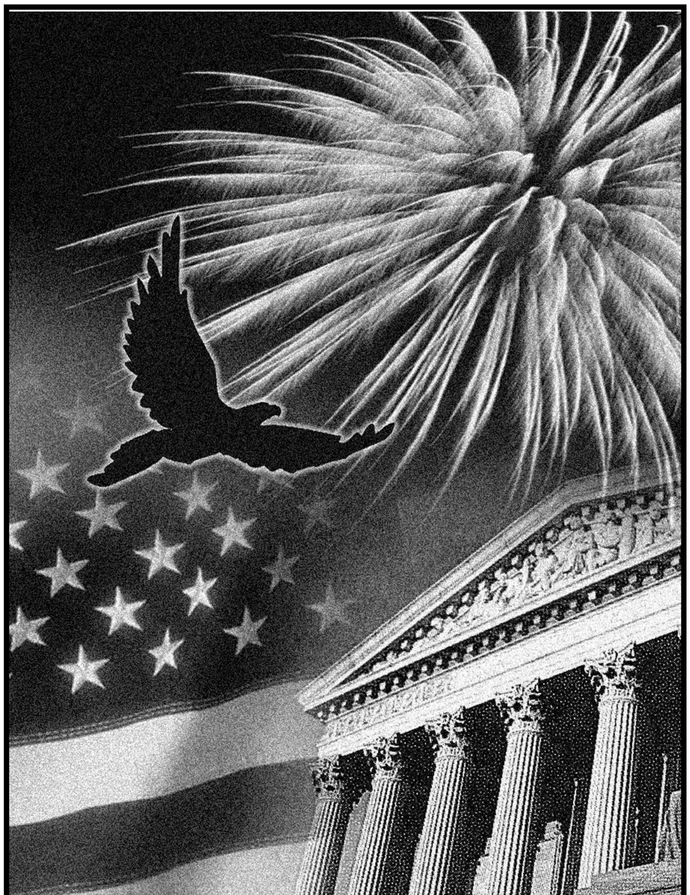
Community Property



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Contents

Future Developments

For the latest information about developments related to Publication 555, such as legislation enacted after it was published, go to *www.irs.gov/pub555*.

What's New

Same-sex marriages. For federal tax purposes, individuals of the same sex are married if they were lawfully married in a state (or foreign country) whose laws authorize the marriage of two individuals of the same sex, even if the state (or foreign country) in which they now live does not recognize same-sex marriage. The term "spouse" includes an individual married to a person of the same sex if the couple is lawfully married under state (or foreign) law. However, individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that is not called a marriage under state (or foreign) law are not married for federal tax purposes.

The word “state” as used here includes the District of Columbia, Puerto Rico, and U.S. territories and possessions. It means any domestic jurisdiction that has the legal authority to sanction marriages. The term “foreign country” means any foreign jurisdiction that has the legal authority to sanction marriages.

If individuals of the same sex are married, they generally must use the married filing jointly or married filing separately filing status. However, if they did not live together during the last 6 months of the year, one or both of them may be able to use the head of household filing status. For details, see Publication 501, Exemptions, Standard Deduction, and Filing Information.

Also see Revenue Ruling 2013-17 and *Answers to Frequently Asked Questions for Individuals of the Same Sex Who Are Married Under State Law* on IRS.gov.

Important Reminder

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication is for married taxpayers who are domiciled in one of the following community property states:

- Arizona,
- California,
- Idaho,
- Louisiana,
- Nevada,
- New Mexico,
- Texas,
- Washington, or
- Wisconsin.

This publication does not address the federal tax treatment of income or property subject to the "community property" election under Alaska state laws.

Community property laws affect how you figure your income on your federal income tax return if you are married, live in a community property state or country, and file separate returns. If you are married, your tax usually will be less if you file married filing jointly than if you file married filing separately. However, sometimes it can be to your advantage to file separate returns. If you and your spouse file separate returns, you have to determine your community income and your separate income.

Community property laws also affect your basis in property you inherit from a married person who lived in a community property state. See *Death of spouse*, later.

Registered domestic partners. This publication is also for registered domestic partners who are domiciled in Nevada, Washington, or California. Registered domestic partners in Nevada, Washington, or California generally must follow state community property laws and report half the combined community income of the individual and his or her registered domestic partner.

Registered domestic partners are not married for federal tax purposes. They can use the single filing status, or if they qualify, the head of household filing status.

TIP *You can find answers to frequently asked questions by going to www.irs.gov/pub555 and clicking on* Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions *under* Other Items You May Find Useful.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Tax Forms and Publications Division
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can send your comments from www.irs.gov/formspubs. Click on "More Information" and then on "Give us feedback on forms and publications."

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs to download forms and publications, call 1-800-TAX-FORM (1-800-829-3676), or write to the address below and receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Tax questions. If you have a tax question, check the information available on IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

Useful Items

You may want to see:

Publication

- ❑ **504** Divorced or Separated Individuals
- ❑ **505** Tax Withholding and Estimated Tax
- ❑ **971** Innocent Spouse Relief

Form (and Instructions)

- ❑ **8857** Request for Innocent Spouse Relief
- ❑ **8958** Allocation of Tax Amounts Between Certain Individuals in Community Property States

See *How To Get Tax Help* near the end of this publication for information about getting these publications and forms.

Domicile

Whether you have community property and community income depends on the state where you are domiciled. If you and your spouse (or your registered domestic partner) have different domiciles, check the laws of each to see whether you have community property or community income.

You have only one domicile even if you have more than one home. Your domicile is a permanent legal home that you intend to use for an indefinite or unlimited period, and to which, when absent, you intend to return. The question of your domicile is mainly a matter of your intention as indicated by your actions. You must be able to show that you intend a given place or state to be your permanent home. If you move into or out of a community property state during the year, you may or may not have community income.

Factors considered in determining domicile include:

- Where you pay state income tax,
- Where you vote,
- Location of property you own,
- Your citizenship,
- Length of residence, and
- Business and social ties to the community.

Amount of time spent. The amount of time spent in one place does not always explain the difference between home and domicile. A temporary home or residence may continue for months or years while a domicile may be established the first moment you occupy the property. Your intent is the determining factor in proving where you have your domicile.

Note. When this publication refers to where you live, it means your domicile.

Community or Separate Property and Income

If you file a federal tax return separately from your spouse, you must report half of all community income and all of your separate income. Likewise, a registered domestic partner must report half of all community income and all of his or her separate income on his or her federal tax return. You each must attach your Form 8958 to your Form 1040 showing how you figured the amount you are reporting on your return.

Generally, the laws of the state in which you are domiciled govern whether you have community property and community income or separate property and separate income for federal tax purposes. The following is a summary of the general rules. These rules are also shown in Table 1.

Community property. Generally, community property is property:

- That you, your spouse (or your registered domestic partner), or both acquire during your marriage (or registered domestic partnership) while you and your spouse (or your registered domestic partner) are domiciled in a community property state.
- That you and your spouse (or your registered domestic partner) agreed to convert from separate to community property.
- That cannot be identified as separate property.

Community income. Generally, community income is income from:

- Community property.
- Salaries, wages, and other pay received for the services performed by you, your spouse (or your registered domestic partner), or both during your marriage (or registered domestic partnership) while domiciled in a community property state.
- Real estate that is treated as community property under the laws of the state where the property is located.

Separate property. Generally, separate property is:

- Property that you or your spouse (or your registered domestic partner) owned separately before your marriage (or registered domestic partnership).
- Money earned while domiciled in a noncommunity property state.
- Property that you or your spouse (or your registered domestic partner) received separately as a gift or inheritance during your marriage (or registered domestic partnership).
- Property that you or your spouse (or your registered domestic partner) bought with separate funds, or acquired in exchange for separate property, during your marriage (or registered domestic partnership).
- Property that you and your spouse (or your registered domestic partner) converted from community property to separate property through an agreement valid under state law.
- The part of property bought with separate funds, if part was bought with community funds and part with separate funds.

Separate income. Generally, income from separate property is the separate income of the spouse (or the registered domestic partner) who owns the property.

CAUTION: *In Idaho, Louisiana, Texas, and Wisconsin, income from most separate property is community income.*

Identifying Income, Deductions, and Credits

If you file separate returns, you and your spouse (or your registered domestic partner) each must attach your Form 8958 to your Form 1040 to identify your community and separate income, deductions, credits, and other return amounts according to the laws of your state.

CAUTION *Under special rules, income that can otherwise be characterized as community income may not be treated as community income for federal income tax purposes in certain situations. See Community Property Laws Disregarded, later.*

CAUTION *Check your state law if you are separated but do not meet the conditions discussed in Spouses living apart all year, later. In some states, the income you earn after you are separated and before a divorce decree is issued continues to be community income. In other states, it is separate income.*

Income

The following is a discussion of the general effect of community property laws on the federal income tax treatment of certain items of income.

Wages, earnings, and profits. A spouse's (or your registered domestic partner's) wages, earnings, and net profits from a sole proprietorship are community income and must be evenly split.

Dividends, interest, and rents. Dividends, interest, and rents from community property are community income and must be evenly split. Dividends, interest, and rents from separate property are characterized in accordance with the discussion under Income from separate property, later.

Example. If you and your spouse (or your registered domestic partner) buy a bond that is considered community property under your state laws, half the bond interest belongs to you and half belongs to your spouse. You each must show the bond interest and the split of that interest

Table 1. **General Rules — Property and Income: Community or Separate?**

Community property is property:	**Separate property** is:
• That you, your spouse (or your registered domestic partner), or both acquire during your marriage (or registered domestic partnership) while you and your spouse (or your registered domestic partner) are domiciled in a community property state. (Includes the part of property bought with community property funds if part was bought with community funds and part with separate funds.) • That you and your spouse (or your registered domestic partner) agreed to convert from separate to community property. • That cannot be identified as separate property.	• Property that you or your spouse (or your registered domestic partner) owned separately before your marriage (or registered domestic partnership). • Money earned while domiciled in a noncommunity property state. • Property either of you received as a gift or inherited separately during your marriage (or registered domestic partnership). • Property bought with separate funds, or exchanged for separate property, during your marriage (or registered domestic partnership). • Property that you and your spouse (or your registered domestic partner) agreed to convert from community to separate property through an agreement valid under state law. • The part of property bought with separate funds, if part was bought with community funds and part with separate funds.
Community income [1,2,3] is income from: • Community property. • Salaries, wages, or pay for services of you, your spouse (or your registered domestic partner), or both during your marriage (or registered domestic partnership) while domiciled in a community property state. • Real estate that is treated as community property under the laws of the state where the property is located.	**Separate income** [1,2] is income from: • Separate property which belongs to the spouse (or registered domestic partner) who owns the property.

[1]In Idaho, Louisiana, Texas, and Wisconsin, income from most separate property is community income.

[2]Check your state law if you are separated but do not meet the conditions discussed in Spouses living apart all year, later. In some states, the income you earn after you are separated and before a divorce decree is issued continues to be community income. In other states, it is separate income.

[3]Under special rules, income that can otherwise be characterized as community income may not be treated as community income for federal income tax purposes in certain situations. See Community Property Laws Disregarded, later.

on your Form 8958, and report half the interest on your Form 1040. Attach your Form 8958 to your Form 1040.

Alimony received. Alimony or separate maintenance payments made prior to divorce are taxable to the payee spouse only to the extent they exceed 50% (his or her share) of the reportable community income. This is so because the payee spouse is already required to report half of the community income. See also *Alimony paid*, later.

Gains and losses. Gains and losses are classified as separate or community depending on how the property is held. For example, a loss on separate property, such as stock held separately, is a separate loss. On the other hand, a loss on community property, such as a casualty loss to your home held as community property, is a community loss. See Publication 544, Sales and Other Dispositions of Assets, for information on gains and losses. See Publication 547, Casualties, Disasters, and Thefts, for information on losses due to a casualty or theft.

Withdrawals from individual retirement arrangements (IRAs) and Coverdell Education Savings Accounts (ESAs). There are several kinds of individual retirement arrangements (IRAs). They are traditional IRAs (including SEP-IRAs), SIMPLE IRAs, and Roth IRAs. IRAs and ESAs by law are deemed to be separate property. Therefore, taxable IRA and ESA distributions are separate property, even if the funds in the account would otherwise be community property. These distributions are wholly taxable to the spouse (or registered domestic partner) whose name is on the account. That spouse (or registered domestic partner) is also liable for any penalties and additional taxes on the distributions.

Pensions. Generally, distributions from pensions will be characterized as community or separate income depending on the respective periods of participation in the pension while married (or during the registered domestic partnership) and domiciled in a community property state or in a noncommunity property state during the total period of participation in the pension. See the example under *Civil service retirement*, later. These rules may vary between states. Check your state law.

Lump-sum distributions. If you were born before January 2, 1936, and receive a lump-sum distribution from a qualified retirement plan, you may be able to choose an optional method of figuring the tax on the distribution. For the 10-year tax option, you must disregard community property laws. For more information, see Publication 575, Pension and Annuity Income, and Form 4972, Tax on Lump-Sum Distributions.

Civil service retirement. For income tax purposes, community property laws apply to annuities payable under the Civil Service Retirement Act (CSRS) or Federal Employee Retirement System (FERS).

Whether a civil service annuity is separate or community income depends on your marital status (or your status as a registered domestic partner) and domicile of the employee when the services were performed for which the annuity is paid. Even if you now live in a noncommunity property state and you receive a civil service annuity, it may be community income if it is based on services you performed while married (or during the registered domestic partnership) and domiciled in a community property state.

If a civil service annuity is a mixture of community income and separate income, it must be divided between the two kinds of income. The division is based on the employee's domicile and marital status (or registered domestic partnership) in community and noncommunity property states during his or her periods of service.

Example. Henry Wright retired this year after 30 years of civil service. He and his wife were domiciled in a community property state during the past 15 years.

Since half the service was performed while the Wrights were married and domiciled in a community property state, half the civil service retirement pay is considered to be community income. If Mr. Wright receives $1,000 a month in retirement pay, $500 is considered community income—half ($250) is his income and half ($250) is his wife's.

Military retirement pay. State community property laws apply to military retirement pay. Generally, the pay is either separate or community income based on the marital status and domicile of the couple while the member of the Armed Forces was in active military service. For example, military retirement pay for services performed during marriage and domicile in a community property state is community income.

Active military pay earned while married and domiciled in a community property state is also community income. This income is considered to be received half by the member of the Armed Forces and half by the spouse.

Partnership income. If an interest is held in a partnership, and income from the partnership is attributable to the efforts of either spouse (or registered domestic partner), the partnership income is community property. If it is merely a passive investment in a separate property partnership, the partnership income will be characterized in accordance with the discussion under *Income from separate property*, later.

Tax-exempt income. For spouses, community income exempt from federal tax generally keeps its exempt status for both spouses. For example, under certain circumstances, income earned outside the United States is tax exempt. If you earned income and met the conditions that made it exempt, the income is also exempt for your spouse even though he or she may not have met the conditions. Registered domestic partners should consult the particular exclusion provision to see if the exempt status applies to both.

Income from separate property. In some states, income from separate property is separate income. These states include Arizona, California, Nevada, New Mexico, and Washington. Other states characterize income from separate property as community income. These states include Idaho, Louisiana, Texas, and Wisconsin.

Exemptions

When you file separate returns, you must claim your own exemption amount for that year. (See your tax return instructions.)

You cannot divide the amount allowed as an exemption for a dependent between you and your spouse (or your registered domestic partner). When community funds provide support for more than one person, each of whom otherwise qualifies as a dependent, you and your spouse (or your registered domestic partner) may divide the number of dependency exemptions as explained in the following example.

Example. Ron and Diane White have three dependent children and live in Nevada. If Ron and Diane file separately, only Ron can claim his own exemption, and only Diane can claim her own exemption. Ron and Diane can agree that one of them will claim the exemption for one, two, or all of their children and the other will claim any remaining exemptions. They cannot each claim half of the total exemption amount for their three children.

Deductions

If you file separate returns, your deductions generally depend on whether the expenses involve community or separate income.

Business and investment expenses. If you file separate returns, expenses incurred to earn or produce community business or investment income are generally divided equally between you and your spouse (or your registered domestic partner). Each of you is entitled to deduct one-half of the expenses on your separate returns. Expenses incurred by a spouse (or registered domestic partner) to produce separate business or investment income is deductible by the spouse (or the registered domestic partner) who earns the corresponding separate business or investment income.

Other limits may also apply to business and investment expenses. For more information, see Publication 535, Business Expenses, and Publication 550, Investment Income and Expenses.

Alimony paid. Payments that may otherwise qualify as alimony are not deductible by the payer if they are the recipient spouse's part of community income. They are deductible as alimony only to the extent they are more than that spouse's part of community income.

Example. You live in a community property state. You are separated but the special rules explained later under Spouses living apart all year do not apply. Under a written agreement, you pay your spouse $12,000 of your $20,000 total yearly community income. Your spouse receives no other community income. Under your state law, earnings of a spouse living separately and apart from the other spouse continue as community property.

On your separate returns, each of you must report $10,000 of the total community income. In addition, your spouse must report $2,000 as alimony received. You can deduct $2,000 as alimony paid.

IRA deduction. Deductions for IRA contributions cannot be split between spouses (or registered domestic partners). The deduction for each spouse (or each registered domestic partner) is figured separately and without regard to community property laws.

Personal expenses. Expenses that are paid out of separate funds, such as medical expenses, are deductible by the spouse who pays them. If these expenses are paid from community funds, divide the deduction equally between you and your spouse.

Credits, Taxes, and Payments

The following is a discussion of the general effect of community property laws on the treatment of certain credits, taxes, and payments on your separate return.

Child tax credit. You may be entitled to a child tax credit for each of your qualifying children. You must provide the name and identification number (usually the social security number) of each qualifying child on your return. See your tax return instructions for the maximum amount of the credit you can claim for each qualifying child.

Limit on credit. The credit is limited if your modified adjusted gross income (modified AGI) is above a certain amount. The amount at which the limitation (phaseout) begins depends on your filing status. Generally, your credit is limited to your tax liability unless you have three or more qualifying children. See your tax return instructions for more information.

Self-employment tax. For the effect of community property laws on the income tax treatment of income from a sole proprietorship and partnerships, see Wages, earnings, and profits and Partnership income, earlier. The following rules only apply to persons married for federal tax purposes. Registered domestic partners report community income for self-employment tax purposes the same way they do for income tax purposes.

Sole proprietorship. With regard to net income from a trade or business (other than a partnership) that is community income, self-employment tax is imposed on the spouse carrying on the trade or business.

Partnerships. All of the distributive share of a married partner's income or loss from a partnership trade or business is attributable to the partner for computing any self-employment tax, even if a portion of the partner's distributive share of income or loss is community income or loss that is otherwise attributable to the partner's spouse for income tax purposes. If both spouses are partners, any self-employment tax is allocated based on their distributive shares.

Federal income tax withheld. Report the credit for federal income tax withheld on community wages in the same manner as your wages. If you and your spouse file separate returns on which each of you reports half the community wages, each of you is entitled to credit for half the income tax withheld on those wages. Likewise, each registered domestic partner is entitled to credit for half the income tax withheld on those wages.

Estimated tax payments. In determining whether you must pay estimated tax, apply the estimated tax rules to your estimated income. These rules are explained in Publication 505.

If you think you may owe estimated tax and want to pay the tax separately (registered domestic partners must pay the tax separately), determine whether you must pay it by taking into account:

1. Half the community income and deductions,
2. All of your separate income and deductions, and
3. Your own exemption and any exemptions for dependents that you may claim.

Whether you and your spouse pay estimated tax jointly or separately will not affect your choice of filing joint or separate income tax returns.

If you and your spouse paid estimated tax jointly but file separate income tax returns, either of you can claim all of the estimated tax paid, or you may divide it between you in any way that you agree upon.

If you cannot agree on how to divide it, the estimated tax you can claim equals the total estimated tax paid times the tax shown on your separate return, divided by the total of the tax shown on your return and your spouse's return.

If you paid your estimated taxes separately, you get credit for only the estimated taxes you paid.

Earned income credit. You may be entitled to an earned income credit (EIC). You cannot claim this credit if your filing status is married filing separately.

If you are married, but qualify to file as head of household under rules for married taxpayers living apart (see Publication 501, Exemptions, Standard Deduction, and Filing Information), and live in a state that has community property laws, your earned income for the EIC does not include any amount earned by your spouse that is treated as belonging to you under community property laws. That amount is not earned income for the EIC, even though you must include it in your gross income on your income tax return. Your earned income includes the entire amount **you** earned, even if part of it is treated as belonging to your spouse under your state's community property laws. The same rule applies to registered domestic partners.

CAUTION *This rule does not apply when determining your adjusted gross income (AGI) for the EIC. Your AGI includes that part of both your and your spouse's (or your registered domestic partner's) wages that you are required to include in gross income shown on your tax return.*

For more information about the EIC, see Publication 596, Earned Income Credit (EIC).

Overpayments. The amount of an overpayment on a joint return is allocated under the community property laws of the state in which you are domiciled.

- If, under the laws of your state, community property is subject to premarital or other separate debts of either spouse, the full joint overpayment may be used to offset the obligation.
- If, under the laws of your state, community property is not subject to premarital or other separate debts of either spouse, only the portion of the joint overpayment allocated to the spouse liable for the obligation can be used to offset that liability. The portion allocated to the other spouse can be refunded.

Community Property Laws Disregarded

The following discussions are situations where special rules apply to community property and community income for spouses. These rules do not apply to registered domestic partners.

Certain community income not treated as community income by one spouse. Community property laws may not apply to an item of community income that you received but did not treat as community income. You are responsible for reporting all of that income item if:

1. You treat the item as if only you are entitled to the income, and
2. You do not notify your spouse of the nature and amount of the income by the due date for filing the return (including extensions).

Relief from liability arising from community property law. You are not responsible for the tax relating to an item of community income if all the following conditions are met.

1. You did not file a joint return for the tax year.
2. You did not include an item of community income in gross income.
3. The item of community income you did not include is one of the following:
   a. Wages, salaries, and other compensation your spouse (or former spouse) received for services he or she performed as an employee.
   b. Income your spouse (or former spouse) derived from a trade or business he or she operated as a sole proprietor.
   c. Your spouse's (or former spouse's) distributive share of partnership income.
   d. Income from your spouse's (or former spouse's) separate property (other than income described in (a), (b), or (c)). Use the appropriate community

property law to determine what is separate property.

e. Any other income that belongs to your spouse (or former spouse) under community property law.

4. You establish that you did not know of, and had no reason to know of, that community income.
5. Under all facts and circumstances, it would not be fair to include the item of community income in your gross income.

Requesting relief. For information on how and when to request relief from liabilities arising from community property laws, see *Community Property Laws* in Publication 971, Innocent Spouse Relief.

Equitable relief. If you do not qualify for the relief discussed earlier under *Relief from liability arising from community property law* and are now liable for an underpaid or understated tax you believe should be paid only by your spouse (or former spouse), you may request equitable relief. To request equitable relief, you must file Form 8857, Request for Innocent Spouse Relief. Also see Publication 971.

Spousal agreements. In some states a married couple may enter into an agreement that affects the status of property or income as community or separate property. Check your state law to determine how it affects you.

Nonresident alien spouse. If you are a U.S. citizen or resident alien and you choose to treat your nonresident alien spouse as a U.S. resident for tax purposes and you are domiciled in a community property state or country, use the community property rules. You must file a joint return for the year you make the choice. You can file separate returns in later years. For details on making this choice, see Publication 519, U.S. Tax Guide for Aliens.

If you are a U.S. citizen or resident alien and do not choose to treat your nonresident alien spouse as a U.S. resident for tax purposes, treat your community income as explained next under *Spouses living apart all year.* However, you do not have to meet the four conditions discussed there.

Spouses living apart all year. If you are married at any time during the calendar year, special rules apply for reporting certain community income. You must meet all the following conditions for these special rules to apply.

1. You and your spouse lived apart all year.
2. You and your spouse did not file a joint return for a tax year beginning or ending in the calendar year.
3. You and/or your spouse had earned income for the calendar year that is community income.
4. You and your spouse have not transferred, directly or indirectly, any of the earned income in condition (3) above between yourselves before the end of the year. Do not take into account transfers satisfying child support obligations or transfers of very small amounts or value.

If all these conditions are met, you and your spouse must report your community income as discussed next. See also *Certain community income not treated as community income by one spouse*, earlier.

Earned income. Treat earned income that is not trade or business or partnership income as the income of the spouse who performed the services to earn the income. Earned income is wages, salaries, professional fees, and other pay for personal services.

Earned income does not include amounts paid by a corporation that are a distribution of earnings and profits rather than a reasonable allowance for personal services rendered.

Trade or business income. Treat income and related deductions from a trade or business that is not a partnership as those of the spouse carrying on the trade or business.

Partnership income or loss. Treat income or loss from a trade or business carried on by a partnership as the income or loss of the spouse who is the partner.

Separate property income. Treat income from the separate property of one spouse as the income of that spouse.

Social security benefits. Treat social security and equivalent railroad retirement benefits as the income of the spouse who receives the benefits.

Other income. Treat all other community income, such as dividends, interest, rents, royalties, or gains, as provided under your state's community property law.

Example. George and Sharon were married throughout the year but did not live together at any time during the year. Both domiciles were in a community property state. They did not file a joint return or transfer any of their earned income between themselves. During the year their incomes were as follows:

	George	**Sharon**
Wages	$20,000	$22,000
Consulting business	5,000	
Partnership		10,000
Dividends from separate property	1,000	2,000
Interest from community property	500	500
Total	$26,500	$34,500

Under the community property law of their state, all the income is considered community income. (Some states treat income from separate property as separate income—check your state law.) Sharon did not take part in George's consulting business.

Ordinarily, on their separate returns they would each report $30,500, half the total community income of $61,000 ($26,500 + $34,500). But because they meet the four conditions listed earlier under *Spouses living apart all year*, they must disregard community property law in reporting all their income (except the interest income) from community property. They each report on their returns only their own earnings and other income, and their share of the interest income from community property. George reports $26,500 and Sharon reports $34,500.

Other separated spouses. If you and your spouse are separated but do not meet the four conditions discussed earlier under *Spouses living apart all year*, you must treat your income according to the laws of your state. In some states, income earned after separation but before a decree of divorce continues to be community income. In other states, it is separate income.

End of the Community

The marital community may end in several ways. When the marital community ends, the community assets (money and property) are divided between the spouses. Similarly, a registered domestic partnership may end in several ways and the community assets must be divided between the registered domestic partners.

Death of spouse. If you own community property and your spouse dies, the total fair market value (FMV) of the community property, including the part that belongs to you, generally becomes the basis of the entire property. For this rule to apply, at least half the value of the community property interest must be includible in your spouse's gross estate, whether or not the estate must file a return (this rule does not apply to registered domestic partners).

Example. Bob and Ann owned community property that had a basis of $80,000. When Bob died, his and Ann's community property had an FMV of $100,000. One-half of the FMV of their community interest was includible in Bob's estate. The basis of Ann's half of the property is $50,000 after Bob died (half of the $100,000 FMV). The basis of the other half to Bob's heirs is also $50,000.

For more information about the basis of assets, see Publication 551, Basis of Assets.

CAUTION *The above basis rule does not apply if your spouse died in 2010 and the spouse's executor elected out of the estate tax, in which case section 1022 will apply. See Publication 4895, Tax Treatment of Property Acquired From a Decedent Dying in 2010, for additional information.*

Divorce or separation. If spouses divorce or separate, the (equal or unequal) division of community property in connection with the divorce or property settlement does not result in a gain or loss. For registered domestic partners, an unequal division of community property in a property settlement may result in a gain or loss. For information on the tax consequences of the division of property under a property settlement or divorce decree, see Publication 504.

Each spouse (or each registered domestic partner) is taxed on half the community income for the part of the year before the community ends. However, see *Spouses living apart all year*, earlier. Any income received after the community ends is separate income. This separate income is taxable only to the spouse (or the registered domestic partner) to whom it belongs.

An **absolute decree of divorce or annulment** ends the marital community in all community property states. A decree of annulment, even though it holds that no valid marriage ever existed, usually does not nullify community property rights arising during the "marriage." However, you should check your state law for exceptions.

A **decree of legal separation or of separate maintenance** may or may not end the marital community. The court issuing the decree may terminate the marital community and divide the property between the spouses.

A **separation agreement** may divide the community property between you and your spouse. It may provide that this property, along with future earnings and property acquired, will be separate property. This agreement may end the community.

In some states, the marital community ends when the spouses permanently separate, even if there is no formal agreement. Check your state law.

If you are a registered domestic partner, you should check your state law to determine when the community ends.

Preparing a Federal Income Tax Return

The following discussion does not apply to spouses who meet the conditions under *Spouses living apart all year*, discussed earlier. Those spouses must report their community income as explained in that discussion.

Joint Return Versus Separate Returns

Ordinarily, filing a joint return will give you a greater tax advantage than filing a separate return. But in some cases, your combined income tax on separate returns may be less than it would be on a joint return.

CAUTION *This discussion concerning joint versus separate returns does not apply to registered domestic partners.*

The following rules apply if your filing status is married filing separately.

1. You should itemize deductions if your spouse itemizes deductions, because you cannot claim the standard deduction.
2. You cannot take the credit for child and dependent care expenses in most instances.
3. You cannot take the earned income credit.
4. You cannot exclude any interest income from qualified U.S. savings bonds that you used for higher education expenses.

5. You cannot take the credit for the elderly or the disabled unless you lived apart from your spouse all year.
6. You may have to include in income more of any social security benefits (including any equivalent railroad retirement benefits) you received during the year than you would on a joint return.
7. You cannot deduct interest paid on a qualified student loan.
8. You cannot take the education credits.
9. You may have a smaller child tax credit than you would on a joint return.
10. You cannot take the exclusion or credit for adoption expenses in most instances.

TIP *Figure your tax both on a joint return and on separate returns under the community property laws of your state. You can then compare the tax figured under both methods and use the one that results in less tax.*

Separate Return Preparation

If you file separate returns, you and your spouse must each report half of your combined community income and deductions in addition to your separate income and deductions. Each of you must complete and attach Form 8958 to your Form 1040 showing how you figured the amount you are reporting on your return. On the appropriate lines of your separate Form 1040, list only your share of the income and deductions on the appropriate lines of your separate tax returns (wages, interest, dividends, etc.). The same reporting rule applies to registered domestic partners. For a discussion of the effect of community property laws on certain items of income, deductions, credits, and other return amounts, see *Identifying Income, Deductions, and Credits*, earlier.

Attach your Form 8958 to your separate return showing how you figured the income, deductions, and federal income tax withheld that each of you reported. Form 8958 is used for married spouses in community property states who choose to file married filing separately. Form 8958 is also used for registered domestic partners who are domiciled in Nevada, Washington, or California. A registered domestic partner in Nevada, Washington, or California must follow state community property laws and report half the combined community income of the individual and his or her registered domestic partner.

Extension of time to file. An extension of time for filing your separate return does not extend the time for filing your spouse's (or your registered domestic partner's) separate return. If you and your spouse file a joint return, you cannot file separate returns after the due date for filing either separate return has passed.

How To Get Tax Help

Whether it's help with a tax issue, preparing your tax return or a need for a free publication or form, get the help you need the way you want it: online, use a smart phone, call or walk in to an IRS office or volunteer site near you.

Free help with your tax return. You can get free help preparing your return nationwide from IRS-certified volunteers. The Volunteer Income Tax Assistance (VITA) program helps low-to-moderate income, elderly, people with disabilities, and limited English proficient taxpayers. The Tax Counseling for the Elderly (TCE) program helps taxpayers age 60 and older with their tax returns. Most VITA and TCE sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. In addition, some VITA and TCE sites provide taxpayers the opportunity to prepare their own return with help from an IRS-certified volunteer. To find the nearest VITA or TCE site, you can use the VITA Locator Tool on IRS.gov, download the IRS2Go app, or call 1-800-906-9887.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, visit AARP's website at *www.aarp.org/money/taxaide* or call 1-888-227-7669. For more information on these programs, go to IRS.gov and enter “VITA” in the search box.

Internet. IRS.gov and **IRS2Go** are ready when you are —24 hours a day, 7 days a week.

- Download the free IRS2Go app from the iTunes app store or from Google Play. Use it to check your refund status, order transcripts of your tax returns or tax account, watch the IRS YouTube channel, get IRS news as soon as it's released to the public, subscribe to filing season updates or daily tax tips, and follow the IRS Twitter news feed, @IRSnews, to get the latest federal tax news, including information about tax law changes and important IRS programs.
- Check the status of your 2013 refund with the *Where's My Refund?* application on IRS.gov or download the IRS2Go app and select the *Refund Status* option. The IRS issues more than 9 out of 10 refunds in less than 21 days. Using these applications, you can start checking on the status of your return within 24 hours after we receive your e-filed return or 4 weeks after you mail a paper return. You will also be given a personalized refund date as soon as the IRS processes your tax return and approves your refund. The IRS updates *Where's My Refund?* every 24 hours, usually overnight, so you only need to check once a day.
- Use the *Interactive Tax Assistant* (ITA) to research your tax questions. No need to wait on the phone or stand in line. The ITA is available 24 hours a day, 7 days a week, and provides you with a variety of tax information related to general filing topics, deductions, credits, and income. When you reach the response screen, you can print the entire interview and the final

response for your records. New subject areas are added on a regular basis.
Answers not provided through ITA may be found in *Tax Trails*, one of the Tax Topics on IRS.gov which contain general individual and business tax information or by searching the *IRS Tax Map*, which includes an **international subject index**. You can use the **IRS Tax Map**, to search publications and instructions by topic or keyword. The IRS Tax Map integrates forms and publications into one research tool and provides single-point access to tax law information by subject. When the user searches the IRS Tax Map, they will be provided with links to related content in existing IRS publications, forms and instructions, questions and answers, and Tax Topics.

- Coming this filing season, you can immediately view and print for free all 5 types of individual federal tax transcripts (tax returns, tax account, record of account, wage and income statement, and certification of non-filing) using **Get Transcript**. You can also ask the IRS to mail a return or an account transcript to you. Only the mail option is available by choosing the *Tax Records* option on the IRS2Go app by selecting *Mail Transcript* on IRS.gov or by calling 1-800-908-9946. Tax return and tax account transcripts are generally available for the current year and the past three years.
- Determine if you are eligible for the EITC and estimate the amount of the credit with the *Earned Income Tax Credit (EITC) Assistant*.
- Visit *Understanding Your IRS Notice or Letter* to get answers to questions about a notice or letter you received from the IRS.
- If you received the First Time Homebuyer Credit, you can use the *First Time Homebuyer Credit Account Look-up* tool for information on your repayments and account balance.
- Check the status of your amended return using *Where's My Amended Return?* Go to IRS.gov and enter *Where's My Amended Return?* in the search box. You can generally expect your amended return to be processed up to 12 weeks from the date we receive it. It can take up to 3 weeks from the date you mailed it to show up in our system.
- Make a payment using one of several safe and convenient electronic payment options available on IRS.gov. Select the Payment tab on the front page of IRS.gov for more information.
- Determine if you are eligible and apply for an *online payment agreement*, if you owe more tax than you can pay today.
- Figure your income tax withholding with the *IRS Withholding Calculator* on IRS.gov. Use it if you've had too much or too little withheld, your personal situation has changed, you're starting a new job or you just want to see if you're having the right amount withheld.
- Determine if you might be subject to the Alternative Minimum Tax by using the *Alternative Minimum Tax Assistant* on IRS.gov.
- Request an **Electronic Filing PIN** by going to IRS.gov and entering *Electronic Filing PIN* in the search box.
- Download forms, instructions and publications, including accessible versions for people with disabilities.
- Locate the nearest **Taxpayer Assistance Center (TAC)** using the *Office Locator* tool on IRS.gov, or choose the *Contact Us* option on the IRS2Go app and search *Local Offices*. An employee can answer questions about your tax account or help you set up a payment plan. Before you visit, check the *Office Locator* on IRS.gov, or *Local Offices* under Contact Us on IRS2Go to confirm the address, phone number, days and hours of operation, and the services provided. If you have a special need, such as a disability, you can request an appointment. Call the local number listed in the Office Locator, or look in the phone book under United States Government, Internal Revenue Service.
- Apply for an **Employer Identification Number (EIN).** Go to IRS.gov and enter *Apply for an EIN* in the search box.
- Read the Internal Revenue Code, regulations, or other official guidance.
- Read Internal Revenue Bulletins.
- Sign up to receive local and national tax news and more by email. Just click on "subscriptions" above the search box on IRS.gov and choose from a variety of options.

Phone. You can call the IRS, or you can carry it in your pocket with the IRS2Go app on your smart phone or tablet. Download the free IRS2Go app from the iTunes app store or from Google Play.

- Call to locate the nearest volunteer help site, 1-800-906-9887 or you can use the VITA Locator Tool on IRS.gov, or download the IRS2Go app.
Low-to-moderate income, elderly, people with disabilities, and limited English proficient taxpayers can get free help with their tax return from the nationwide Volunteer Income Tax Assistance (VITA) program. The Tax Counseling for the Elderly (TCE) program helps taxpayers age 60 and older with their tax returns. Most VITA and TCE sites offer free electronic filing. Some VITA and TCE sites provide IRS-certified volunteers who can help prepare your tax return. Through the TCE program, AARP offers the Tax-Aide counseling program; call 1-888-227-7669 to find the nearest Tax-Aide location.
- Call the automated *Where's My Refund?* information hotline to check the status of your 2013 refund 24 hours a day, 7 days a week at 1-800-829-1954. If you e-file, you can start checking on the status of your return within 24 hours after the IRS receives your tax return or 4 weeks after you've mailed a paper return.

The IRS issues more than 9 out of 10 refunds in less than 21 days. *Where's My Refund?* will give you a personalized refund date as soon as the IRS processes your tax return and approves your refund. Before you call this automated hotline, have your 2013 tax return handy so you can enter your social security number, your filing status, and the exact whole dollar amount of your refund. The IRS updates *Where's My Refund?* every 24 hours, usually overnight, so you only need to check once a day. Note, the above information is for our automated hotline. Our live phone and walk-in assistors can research the status of your refund only if it's been 21 days or more since you filed electronically or more than 6 weeks since you mailed your paper return.

- Call the *Amended Return Hotline*, 1-866-464-2050, to check the status of your amended return. You can generally expect your amended return to be processed up to 12 weeks from the date we receive it. It can take up to 3 weeks from the date you mailed it to show up in our system.
- Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, publications, and prior-year forms and instructions (limited to 5 years). You should receive your order within 10 business days.
- Call **TeleTax,** 1-800-829-4477, to listen to pre-recorded messages covering general and business tax information. If, between January and April 15, you still have questions about the Form 1040, 1040A, or 1040EZ (like filing requirements, dependents, credits, Schedule D, pensions and IRAs or self-employment taxes), call 1-800-829-1040.
- Call using TTY/TDD equipment, 1-800-829-4059 to ask tax questions or order forms and publications. The TTY/TDD telephone number is for people who are deaf, hard of hearing, or have a speech disability. These individuals can also contact the IRS through relay services such as the Federal Relay Service.

Walk-in. You can find a selection of forms, publications and services — in-person.

- Products. You can walk in to some post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, and city and county government offices have a collection of products available to photocopy from reproducible proofs.
- Services. You can walk in to your local TAC for face-to-face tax help. An employee can answer questions about your tax account or help you set up a payment plan. Before visiting, use the *Office Locator* tool on IRS.gov, or choose the *Contact Us* option on the IRS2Go app and search *Local Offices* for days and hours of operation, and services provided.

Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 business days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

The Taxpayer Advocate Service Is Here to Help You. **The Taxpayer Advocate Service (TAS)** is your voice at the IRS. Our job is to ensure that every taxpayer is treated fairly and that you know and understand your rights.

What can TAS do for you? We can offer you free help with IRS problems that you can't resolve on your own. We know this process can be confusing, but the worst thing you can do is nothing at all! TAS can help if you can't resolve your tax problem and:

- Your problem is causing financial difficulties for you, your family, or your business.
- You face (or your business is facing) an immediate threat of adverse action.
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

If you qualify for our help, you'll be assigned to one advocate who'll be with you at every turn and will do everything possible to resolve your problem. Here's why we can help:

- TAS is an independent organization within the IRS.
- Our advocates know how to work with the IRS.
- Our services are free and tailored to meet your needs.
- We have offices in every state, the District of Columbia, and Puerto Rico.

How can you reach us? If you think TAS can help you, call your local advocate, whose number is in your local directory and at www.irs.gov/advocate, or call us toll-free at 1-877-777-4778.

How else does TAS help taxpayers?

TAS also works to resolve large-scale, systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it to us through our Systemic Advocacy Management System at www.irs.gov/sams.

Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) serve individuals whose income is below a certain level and need to resolve tax problems such as audits, appeals and tax collection disputes. Some clinics can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Visit www.irs.gov/litc or see IRS Publication 4134, Low Income Taxpayer Clinic List.

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To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.