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Community Property



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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

New Form 8958. Form 8958, Allocation of Tax Amounts Between Certain Individuals in Community Property States, is new. Use Form 8958 to determine the allocation of tax amounts between married filing separate spouses, California or Washington same-sex spouses, or registered domestic partners (RDPs) with community property rights. Each of you must complete and attach Form 8958 to your Form 1040.

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. For federal tax purposes, a marriage means only a legal union between a man and woman as husband and wife and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife. 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 (RDPs) and same-sex spouses. This publication is also for RDPs who are domiciled in Nevada, Washington, or California and for individuals in California and Washington who, for state law purposes, are married to an individual of the same sex. For 2010 and following years, a RDP in Nevada, Washington, or California (or a person in California or Washington who is married to a person of the same sex) generally must follow state community property laws and report half the combined community income of the individual and his or her RDP (or California or Washington same-sex spouse).

These rules apply to RDPs in Nevada, Washington, and California in 2010 and following years because they have full community property rights in 2010. Nevada RDPs attained these rights as of October 1, 2009. Washington RDPs attained them as of June 12, 2008, and California RDPs attained them as of January 1, 2007. For years prior to 2010, RDPs who reported income without regard to the community property laws may file amended returns to report half of the community income of the RDPs for the applicable periods, but are not required to do so. If one of the RDPs files an amended return to report

half of the community income, the other RDP must report the other half.

RDPs (and individuals in California and Washington who are married to an individual of the same sex) are not married for federal tax purposes. They can use only the single filing status, or if they qualify, the head of household filing status.



You can find answers to frequently asked questions by going to www.irs.gov/pub555 and clicking on Questions and Answers for Registered Domestic Partners in Community Property States and Same-Sex Spouses in California 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
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Branch
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1111 Constitution Ave. NW, IR-6526
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You can email us at taxforms@irs.gov. Please put “Publications Comment” on the subject line. You can also send us comments from www.irs.gov/formspubs/. Select “Comment on Tax Forms and Publications” under “More Information.”

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.

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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 RDP/California or Washington same-sex spouse) 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 RDP (and an individual in California and Washington who is married to an individual of the same sex) 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 RDP/California or Washington same-sex spouse), or both acquire during your marriage (or registered domestic partnership/same-sex marriage in California or Washington) while you and your spouse (or RDP/California or Washington same-sex spouse) are domiciled in a community property state.
- That you and your spouse (or RDP/California or Washington same-sex spouse) 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 RDP/California or Washington same-sex spouse), or both during your marriage (or registered domestic partnership/same-sex marriage in California or Washington).
- 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 RDP/California or Washington same-sex spouse) owned separately before your marriage (or registered domestic partnership/same-sex marriage in California or Washington).
- Money earned while domiciled in a noncommunity property state.
- Property that you or your spouse (or RDP/California or Washington same-sex spouse) received separately as a gift or inheritance during your marriage (or registered domestic partnership/same-sex marriage in California or Washington).
- Property that you or your spouse (or RDP/California or Washington same-sex spouse) bought with separate funds, or acquired in exchange for separate property, during your marriage (or registered domestic partnership/same-sex marriage in California or Washington).
- Property that you and your spouse (or RDP/California or Washington same-sex spouse) 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 RDP/California or Washington same-sex spouse) who owns the property.



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 RDP/California or Washington same-sex spouse) 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.

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.

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

<p>Community property is property:</p> <ul style="list-style-type: none"> • That you, your spouse (or RDP/California or Washington same-sex spouse), or both acquire during your marriage (or registered domestic partnership/same-sex marriage in California or Washington) while you 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 RDP/California or Washington same-sex spouse) agreed to convert from separate to community property. • That cannot be identified as separate property. 	<p>Separate property is:</p> <ul style="list-style-type: none"> • Property that you or your spouse (or RDP/California or Washington same-sex spouse) owned separately before your marriage (or registered domestic partnership/same-sex marriage in California or Washington). • 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/same-sex marriage in California or Washington). • Property bought with separate funds, or exchanged for separate property, during your marriage (or registered domestic partnership/same-sex marriage in California or Washington). • Property that you and your spouse (or RDP/California or Washington same-sex spouse) 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.
<p>Community income ^{1,2,3} is income from:</p> <ul style="list-style-type: none"> • Community property. • Salaries, wages, or pay for services of you, your spouse (or RDP/California or Washington same-sex spouse), or both during your marriage (or registered domestic partnership/same-sex marriage in California or Washington). • Real estate that is treated as community property under the laws of the state where the property is located. 	<p>Separate income ^{1,2} is income from:</p> <ul style="list-style-type: none"> • Separate property which belongs to the spouse who owns the property. • Separate property which belongs to the RDP/California or Washington same-sex spouse who owns the property.

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

²Check 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.

³Under 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.

Wages, earnings, and profits. A spouse's (or RDP's/California or Washington same-sex spouse'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 RDP/California or Washington same-sex spouse) 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 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 RDP/California or Washington same-sex spouse) whose name is on the account. That spouse (or RDP/California or Washington same-sex spouse) 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/same-sex marriage in California or Washington) 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 RDP/California or Washington same-sex spouse) 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/same-sex marriage in California or Washington) 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 RDP/California or Washington same-sex marital status) 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 RDP/California or Washington same-sex spouse), 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. RDPs and same-sex married couples in California and Washington 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 RDP/California or Washington same-sex spouse). When community funds provide support for more than one person, each of whom otherwise qualifies as a dependent, you and your spouse (or RDP/California or Washington same-sex spouse) 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 RDP/California or Washington same-sex spouse). Each of you is entitled to deduct one-half of the expenses on your separate returns. Separate business or investment income is deductible by the spouse (RDP/California or Washington same-sex spouse) who earns the 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 RDPs/California or Washington same-sex spouses). The deduction for each spouse (or RDP/California or Washington same-sex spouse) 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. RDPs and same-sex spouses in California and Washington 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 RDP/California or Washington same-sex spouse 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 (RDPs and same-sex spouses in California and Washington 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 RDPs and same-sex spouses in California and Washington.



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 RDP's/California or Washington same-sex spouse'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 RDPs or California or Washington same-sex spouses.

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 husband and wife 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:

	<u>George</u>	<u>Sharon</u>
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	<u>\$26,500</u>	<u>\$34,500</u>

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 same-sex couple's community may end in several ways and the community assets must be divided between the RDPs or California or Washington same-sex spouses.

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 RDPs and individuals married to a same-sex spouse in California and Washington).

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.



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 RDPs and same-sex married couples in California and Washington, an unequal division of community property in a divorce or 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 RDP/California or Washington same-sex spouse) 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 RDP/California or Washington same-sex spouse) 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 RDP or an individual married to a same-sex individual in California or Washington, 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.



This discussion concerning joint versus separate returns does not apply to RDPs and same-sex married couples in California and Washington.

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.



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 RDPs and individuals in California and Washington who are married to an individual of the same sex. 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 RDPs who are domiciled in Nevada, Washington, or California and for individuals in California and Washington who, for state law purposes, are married to an individual of the same-sex. For 2010 and following years, a RDP in Nevada, Washington, or California (or a person in California or Washington who is married to a person of the same sex) must follow state community property laws and report half the combined community income of the individual and his or her RDP (or California or Washington same-sex spouse).

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 RDP's/California or Washington same-sex spouse'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

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free help with your tax return. Free help in preparing your return is available nationwide from IRS-certified volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-moderate income, elderly, disabled, and limited English proficient taxpayers. The Tax Counseling for the Elderly (TCE) program is designed to assist 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. Some VITA and TCE sites provide taxpayers the opportunity to prepare their return with the assistance of an IRS-certified volunteer. To find the nearest VITA or TCE site, visit IRS.gov or call 1-800-906-9887 or 1-800-829-1040.

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. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2012 refund. Go to IRS.gov and click on *Where's My Refund*. Information about your return will generally be available within 24 hours after the IRS receives your e-filed return, or 4 weeks after you mail your paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2012 tax return handy so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
- *Where's My Refund?* has a new look this year! The tool will include a tracker that displays progress through three stages: (1) return received, (2) refund approved, and (3) refund sent. *Where's My Refund?* will provide an actual personalized refund date as soon as the IRS processes your tax return and approves your refund. So in a change from previous filing seasons, you won't get an estimated refund date right away. *Where's My Refund?* includes information for the most recent return filed in the current year and does not include information about amended returns.
- You can obtain a free transcript online at IRS.gov by clicking on *Order a Return or Account Transcript* under "Tools." For a transcript by phone, call 1-800-908-9946 and follow the prompts in the recorded message. You will be prompted to provide your SSN or Individual Taxpayer Identification Number (ITIN), date of birth, street address and ZIP code.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products.
- Research your tax questions.
- Search publications by topic or keyword.
- Use the Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the IRS Withholding Calculator at www.irs.gov/individuals.
- Determine if Form 6251 (Alternative Minimum Tax—Individuals), must be filed by using our Alternative Minimum Tax (AMT) Assistant available at IRS.gov by typing *Alternative Minimum Tax Assistant* in the search box.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions (limited to 5 years). You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems most business days in IRS Taxpayer Assistance Centers (TAC). An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications. The TTY/TDD telephone number is for individuals who are deaf, hard of hearing, or have a speech disability. These individuals can also access the IRS through relay services such as the Federal Relay Service at www.gsa.gov/fedrelay.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- *Checking the status of your 2012 refund.* To check the status of your 2012 refund, call 1-800-829-1954 or 1-800-829-4477 (automated *Where's My Refund?* information 24 hours a day, 7 days a week). Information about your return will generally be available within 24 hours after the IRS receives your e-filed return, or 4 weeks after you mail your paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2012 tax return handy so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. *Where's My Refund?* will provide an actual personalized refund date as soon as the IRS processes your tax return and approves your refund. *Where's My Refund?* includes information for the most recent return filed in the current year and does not include information about amended returns.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Some products and services are available on a walk-in basis.

- **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. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- **Services.** You can walk in to your local TAC most business days for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local TAC where you can talk with an IRS representative face-to-face. No appointment is necessary—just walk in. Before visiting, check www.irs.gov/localcontacts for hours of operation and services provided. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested by calling your local TAC. You can leave a message and a representative will call you back within 2 business days. All other issues will be handled without an appointment. To call your local TAC, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.



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

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

Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS) is your voice at the IRS. Its job is to ensure that every taxpayer is treated fairly, and that you know and understand your rights. TAS offers free help to guide you through the often-confusing process of resolving tax problems that you haven't been able to solve on your own. Remember, the worst thing you can do is nothing at all.

TAS can help if you can't resolve your problem with the IRS 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 have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for help, they will do everything they can to get your problem resolved. You will be assigned to one

advocate who will be with you at every turn. TAS has offices in every state, the District of Columbia, and Puerto Rico. Although TAS is independent within the IRS, their advocates know how to work with the IRS to get your problems resolved. And its services are always free.

As a taxpayer, you have rights that the IRS must abide by in its dealings with you. The TAS tax toolkit at www.TaxpayerAdvocate.irs.gov can help you understand these rights.

If you think TAS might be able to help you, call your local advocate, whose number is in your phone book and on our website at www.irs.gov/advocate. You can also call the toll-free number at 1-877-777-4778. Deaf and hard of hearing individuals who have access to TTY/TDD equipment can call 1-800-829-4059. These individuals can also access the IRS through relay services such as the Federal Relay Service at www.gsa.gov/fedrelay.

TAS also handles large-scale or systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it through the Systemic Advocacy Management System at www.irs.gov/advocate.

Low Income Taxpayer Clinics (LITCs). Low Income Taxpayer Clinics (LITCs) are independent from the IRS. Some clinics serve individuals whose income is below a certain level and who need to resolve a tax problem. These clinics provide professional representation before the IRS or in court on audits, appeals, tax collection disputes, and other issues for free or for a small fee. Some clinics can provide information about taxpayer rights and responsibilities in many different languages for individuals who speak English as a second language. For more information and to find a clinic near you, see the LITC page on www.irs.gov/advocate or IRS Publication 4134, *Low Income Taxpayer Clinic List*. This publication is also available by calling 1-800-TAX-FORM (1-800-829-3676) or at your local IRS office.

Free tax services. Publication 910, *IRS Guide to Free Tax Services*, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.



DVD for tax products. You can order Publication 1796, *IRS Tax Products DVD*, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.

- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet-based tax research materials.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
 - The first release will ship the beginning of January 2013.
 - The final release will ship the beginning of March 2013.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).



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