

# Publication 504

## Divorced or Separated Individuals

For use in preparing

**2023** Returns

Volume 2 of 2



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## **Instruments Executed Before 1985**

Information on pre-1985 instruments was included in this publication through 2004. If you need the 2004 revision, please visit [IRS.gov/FormsPubs](https://www.irs.gov/forms-pubs).

## **Certain Rules for Instruments Executed or Modified After 2018**

Amounts paid as alimony or separate maintenance payments under a divorce or separation instrument executed after 2018 won't be deductible by the payer. Such amounts also won't be includible in the income of the recipient. The same is true of alimony paid under a divorce or separation instrument executed before 2019 and modified after 2018, if the modification expressly states that the alimony isn't deductible to the payer or includible in the income of the recipient. The examples below illustrate the tax treatment of alimony payments under the post-2018 alimony rules. In each of the examples, assume the

payments qualify as alimony under the Internal Revenue Code of 1986.

**Example 1.** On December 2, 2015, a court executed a divorce decree providing for monthly alimony payments beginning January 1, 2016, for a period of 9 years. On May 16, 2023, the court modified the divorce decree to increase the amount of monthly alimony payments. The first increased alimony payment was due on June 1, 2023. The modification didn't expressly provide that the post-2018 alimony rules apply to alimony payments made after the date of the modification. Therefore, all alimony payments made in 2023 are includible in the recipient's income and deductible from the payer's income.

# Worksheet 1. Recapture of Alimony

Keep for Your Records



**Note. Don't enter less than -0- on any line.**

1. Alimony paid in <b>2nd year</b> .....	1.	_____	
2. Alimony paid in <b>3rd year</b> .....	2.	_____	
3. Floor .....	3.	<u>\$15,000</u>	
4. Add lines 2 and 3 .....	4.	_____	
5. Subtract line 4 from line 1. If zero or less, enter -0- .....	5.	_____	
6. Alimony paid in <b>1st year</b> .....	6.	_____	
7. Adjusted alimony paid in <b>2nd year</b> (line 1 minus line 5) .....	7.	_____	
8. Alimony paid in <b>3rd year</b> .....	8.	_____	
9. Add lines 7 and 8 .....	9.	_____	
10. Divide line 9 by 2.0 .....	10.	_____	
11. Floor .....	11.	<u>\$15,000</u>	
12. Add lines 10 and 11 .....	12.	_____	
13. Subtract line 12 from line 6 .....	13.	_____	
14. <b>Recaptured alimony.</b> Add lines 5 and 13 .....	*14.	_____	

\* If you deducted alimony paid, report this amount as income on Schedule 1 (Form 1040), line 2a.  
If you reported alimony received, deduct this amount on Schedule 1 (Form 1040), line 19a.

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**Example 2.** Assume the same facts as in *Example 1* above except the modification expressly provided that the post-2018 alimony rules apply. The alimony payments made in January 2023 through May 2023 are includible in the recipient's income and deductible from the payer's income. The alimony payments made in June 2023 through December 2023 are neither includible in the recipient's income nor deductible from the payer's income.

**Example 3.** On December 2, 2015, a couple executed a written separation agreement providing for monthly alimony payments on the first day of each month, beginning January 1, 2016, for a period of 9 years. The written separation agreement set forth that it expires upon the execution of a divorce decree dissolving the couple's marriage.

On May 27, 2023, a court executed the divorce decree awarding alimony under the same terms as described in the couple's

separation agreement. The alimony payments made in January 2023 through May 2023 under the written separation agreement are includible in the recipient's income and deductible from the payer's income. The court executed the divorce decree after December 31, 2018; therefore, alimony payments made in June 2023 through December 2023 under the divorce decree are neither includible in the recipient's income nor deductible from the payer's income.

**Example 4.** On October 1, 2018, a couple executed a written separation agreement subject to the laws of State X. The written separation agreement requires a \$1,000 monthly alimony payment on the last business day of a month for a period of 3 years. Under the laws of State X, at the time of divorce, a written separation agreement may survive as an independent contract. In the process of obtaining their divorce, the couple decided their separation agreement

will remain an independent contract and won't be incorporated or merged into their divorce decree. The court, after acknowledging the separation agreement as fair and equitable, executed a divorce decree on April 1, 2023, dissolving the couple's marriage. The divorce decree did not mention alimony. All alimony payments made in 2023 are includible in the recipient's income and deductible from the payer's income because the alimony payments were made under the written separation agreement that was executed on or before December 31, 2018.

## **Qualified Domestic Relations Order**

A qualified domestic relations order (QDRO) is a judgment, decree, or court order (including an approved property settlement agreement) issued under a state's domestic relations law that:

- Recognizes someone other than a participant as having a right to receive benefits from a qualified retirement plan (such as most pension and profit-sharing plans) or a tax-sheltered annuity;
- Relates to payment of child support, alimony, or marital property rights to a spouse, former spouse, child, or other dependent of the participant; and
- Specifies certain information, including the amount or part of the participant's benefits to be paid to the participant's spouse, former spouse, child, or other dependent.

**Benefits paid to a child or other dependent.** Benefits paid under a QDRO to the plan participant's child or other dependent are treated as paid to the participant. For information about the tax treatment of benefits from retirement plans, see Pub. 575.

**Benefits paid to a spouse or former spouse.** Benefits paid under a QDRO to the plan participant's spouse or former spouse must generally be included in the spouse's or former spouse's income. If the participant contributed to the retirement plan, a prorated share of the participant's cost (investment in the contract) is used to figure the taxable amount.

The spouse or former spouse can use the special rules for lump-sum distributions if the benefits would have been treated as a lump-sum distribution had the participant received them. For this purpose, consider only the balance to the spouse's or former spouse's credit in determining whether the distribution is a total distribution. See *Lump-Sum Distributions* in Pub. 575 for information about the special rules.

**Rollovers.** If you receive an eligible rollover distribution under a QDRO as the plan participant's spouse or former spouse, you

may be able to roll it over tax free into a traditional individual retirement arrangement (IRA) or another qualified retirement plan.

For more information on the tax treatment of eligible rollover distributions, see Pub. 575.

## **Individual Retirement Arrangements**

The following discussions explain some of the effects of divorce or separation on traditional individual retirement arrangements (IRAs). Traditional IRAs are IRAs other than Roth or SIMPLE IRAs.

**Spousal IRA.** If you get a final decree of divorce or separate maintenance by the end of your tax year, you can't deduct contributions you make to your former spouse's traditional IRA. You can deduct only contributions to your own traditional IRA.

## **IRA transferred as a result of divorce.**

The transfer of all or part of your interest in a traditional IRA to your spouse or former spouse, under a decree of divorce or separate maintenance or a written instrument incident to the decree, isn't considered a taxable transfer. Starting from the date of the transfer, the traditional IRA interest transferred is treated as your spouse's or former spouse's traditional IRA.

**IRA contribution and deduction limits.** All taxable alimony you receive under a decree of divorce or separate maintenance is treated as compensation for the contribution and deduction limits for traditional IRAs.

For more information about IRAs, including Roth IRAs, see Pub. 590-A and Pub. 590-B.

## **Property Settlements**

Generally, there is no recognized gain or loss on the transfer of property between spouses, or between former spouses if the transfer is

because of a divorce. You may, however, have to report the transaction on a gift tax return. See *Gift Tax on Property Settlements*, later. If you sell property that you own jointly to split the proceeds as part of your property settlement, see *Sale of Jointly Owned Property*, later.

## **Transfer Between Spouses**

Generally, no gain or loss is recognized on a transfer of property from you to (or in trust for the benefit of):

- Your spouse, or
- Your former spouse, but only if the transfer is incident to your divorce.

This rule applies even if the transfer was in exchange for cash, the release of marital rights, the assumption of liabilities, or other consideration.

**Exceptions to nonrecognition rule.** This rule doesn't apply in the following situations.

- Your spouse or former spouse is a nonresident alien.
- Certain transfers in trust, discussed later.
- Certain stock redemptions under a divorce or separation instrument or a valid written agreement that are taxable under applicable tax law, as discussed in Regulations section 1.1041-2.

**Property subject to nonrecognition rule.**

The term "property" includes all property whether real or personal, tangible or intangible, or separate or community. It includes property acquired after the end of your marriage and transferred to your former spouse. It doesn't include services.

**Health savings account (HSA).** If you transfer your interest in an HSA to your spouse or former spouse under a divorce or separation instrument, it isn't considered a

taxable transfer. After the transfer, the interest is treated as your spouse's HSA.

**Archer medical savings account (MSA).** If you transfer your interest in an Archer MSA to your spouse or former spouse under a divorce or separation instrument, it isn't considered a taxable transfer. After the transfer, the interest is treated as your spouse's Archer MSA.

**Individual retirement arrangement (IRA).** The treatment of the transfer of an interest in an IRA as a result of divorce is similar to that just described for the transfer of an interest in an HSA and an Archer MSA. See *IRA transferred as a result of divorce*, earlier, under *Individual Retirement Arrangements*.

**Incident to divorce.** A property transfer is incident to your divorce if the transfer:

- Occurs within 1 year after the date your marriage ends, or

- Is related to the end of your marriage.

A divorce, for this purpose, includes the end of your marriage by annulment or due to violations of state laws.

***Related to end of marriage.*** A property transfer is related to the end of your marriage if both of the following conditions apply.

- The transfer is made under your original or modified divorce or separation instrument.
- The transfer occurs within 6 years after the date your marriage ends.

Unless these conditions are met, the transfer is presumed not to be related to the end of your marriage. However, this presumption won't apply if you can show that the transfer was made to carry out the division of property owned by you and your spouse at the time your marriage ended. For example, the presumption won't apply if you can show that the transfer was made more than 6 years

after the end of your marriage because of business or legal factors that prevented earlier transfer of the property and the transfer was made promptly after those factors were taken care of.

**Transfers to third parties.** If you transfer property to a third party on behalf of your spouse (or former spouse, if incident to your divorce), the transfer is treated as two transfers.

- A transfer of the property from you to your spouse or former spouse.
- An immediate transfer of the property from your spouse or former spouse to the third party.

You don't recognize gain or loss on the first transfer. Instead, your spouse or former spouse may have to recognize gain or loss on the second transfer.

For this treatment to apply, the transfer from you to the third party must be one of the following.

- Required by your divorce or separation instrument.
- Requested in writing by your spouse or former spouse.
- Consented to in writing by your spouse or former spouse. The consent must state that both you and your spouse or former spouse intend the transfer to be treated as a transfer from you to your spouse or former spouse subject to the rules of Internal Revenue Code section 1041. You must receive the consent before filing your tax return for the year you transfer the property.



*This treatment doesn't apply to transfers to which Regulations section 1.1041-2 (certain stock redemptions) applies.*

**Transfers in trust.** If you make a transfer of property in trust for the benefit of your spouse (or former spouse, if incident to your divorce), you generally don't recognize any gain or loss.

However, you must recognize gain or loss if, incident to your divorce, you transfer an installment obligation in trust for the benefit of your former spouse. For information on the disposition of an installment obligation, see Pub. 537.

You must also recognize as gain on the transfer of property in trust the amount by which the liabilities assumed by the trust, plus the liabilities to which the property is subject, exceed the total of your adjusted basis in the transferred property.

**Example.** You own property with a fair market value of \$12,000 and an adjusted basis of \$1,000. You transfer the property in trust for the benefit of your spouse. The trust didn't assume any liabilities. The property is

subject to a \$5,000 liability. Your recognized gain is \$4,000 (\$5,000 – \$1,000).

**Reporting income from property.** You should report income from property transferred to your spouse or former spouse as shown in Table 5.

For information on the treatment of interest on transferred U.S. savings bonds, see chapter 1 of Pub. 550.



When you transfer property to your spouse (or former spouse, if incident to your divorce), you must give your spouse sufficient records to determine the adjusted basis and holding period of the property on the date of the transfer. If you transfer investment credit property with recapture potential, you must also provide sufficient records to determine the amount and period of the recapture.

## **Tax treatment of property received.**

Property you receive from your spouse (or former spouse, if the transfer is incident to your divorce) is treated as acquired by gift for income tax purposes. Its value isn't taxable to you.

**Basis of property received.** Your basis in property received from your spouse (or former spouse, if incident to your divorce) is the same as your spouse's adjusted basis. This applies for determining either gain or loss when you later dispose of the property. It applies whether the property's adjusted basis is less than, equal to, or greater than either its value at the time of the transfer or any consideration you paid. It also applies even if the property's liabilities are more than its adjusted basis.

This rule generally applies to all property received after July 18, 1984, under a divorce or separation instrument in effect after that date. It also applies to all other property

received after 1983 for which you and your spouse (or former spouse) made a “section 1041 election” to apply this rule. For information about how to make that election, see Temporary Regulations section 1.1041-1T(g).

**Example.** You and your former spouse owned your home jointly. You transferred your interest in the home to your former spouse when you divorced last year. Your former spouse’s basis in the interest they received from you is your adjusted basis in the home. Your former spouse’s total basis in the home is the joint adjusted basis.

**Property received before July 19, 1984.** Your basis in property received in settlement of marital support rights before July 19, 1984, or under an instrument in effect before that date (other than property for which you and your spouse (or former spouse) made a “section 1041 election”) is its fair market value when you received it.

**Example.** You and your former spouse owned your home jointly before your divorce in 1983. That year, you received your former spouse's interest in the home in settlement of your marital support rights. Your basis in the interest you received from your former spouse is the part of the home's fair market value proportionate to that interest. Your total basis in the home is that part of the fair market value plus your adjusted basis in your own interest.

**Property transferred in trust.** If the transferor recognizes gain on property transferred in trust, as described earlier under Transfers in trust, the trust's basis in the property is increased by the recognized gain.

**Example.** Your spouse transfers property in trust, recognizing a \$4,000 gain. Your spouse's adjusted basis in the property was \$1,000. The trust's basis in the property is \$5,000 (\$1,000 + \$4,000).

## **Gift Tax on Property Settlements**

Generally, a transfer to a spouse who is a citizen of the United States isn't subject to federal gift tax, because there is an unlimited deduction for transfers to a U.S. citizen spouse. However, a transfer to a former spouse isn't generally eligible for a marital deduction, and may be subject to federal gift tax unless the transfer qualifies for one or more of the exceptions explained in this discussion. If your transfer of property doesn't qualify for an exception, or qualifies only in part, you must report it on a gift tax return. See *Gift Tax Return*, later.

For more information about the federal gift tax, see *Estate and Gift Taxes* in Pub. 559, Form 709 and its instructions.

### **Exceptions**

Your transfer of property to your spouse or former spouse isn't subject to gift tax if it meets any of the following exceptions.

- It is made in settlement of marital support rights.
- It qualifies for the marital deduction.
- It is made under a divorce decree.
- It is made under a written agreement, and you are divorced within a specified period.
- It qualifies for the annual exclusion.
- It qualifies for the unlimited exclusion for direct payments of tuition or medical care.

**Settlement of marital support rights.** A transfer in settlement of marital support rights isn't subject to gift tax to the extent the value of the property transferred isn't more than the value of those rights. This exception doesn't apply to a transfer in settlement of dower, curtesy, or other marital property rights.

**Table 5. Property Transferred Pursuant to Divorce**

*The tax treatment of items of property transferred from you to your spouse or former spouse pursuant to your divorce is shown below.*

<b>IF you transfer ...</b>	<b>THEN you ...</b>	<b>AND your spouse or former spouse ...</b>	<b>FOR more information, see ...</b>
income-producing property (such as an interest in a business, rental property, stocks, or bonds)	include on your tax return any profit or loss, rental income or loss, dividends, or interest generated or derived from the property during the year until the property is transferred	reports any income or loss generated or derived after the property is transferred.	Pub. 550, Investment Income and Expenses. (See <i>Ownership transferred under U.S. Savings Bonds</i> in chapter 1.)
interest in a passive activity with unused passive activity losses	can't deduct your accumulated unused passive activity losses allocable to the interest	increases the adjusted basis of the transferred interest by the amount of the unused losses.	Pub. 925, Passive Activity and At-Risk Rules.
investment credit property with recapture potential	don't have to recapture any part of the credit	may have to recapture part of the credit if they dispose of the property or change its use before the end of the recapture period.	Form 4255, Recapture of Investment Credit.
interests in nonstatutory stock options and nonqualified deferred compensation	don't include any amount in gross income upon the transfer	includes an amount in gross income when they exercise the stock options or when the deferred compensation is paid or made available to them.	

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**Marital deduction.** A transfer of property to your spouse before receiving a final decree of divorce or separate maintenance isn't subject to gift tax. However, this exception doesn't apply to:

- Transfers of certain terminable interests (for example, certain interests in trust), or
- Transfers to your spouse if your spouse isn't a U.S. citizen.

**Transfer under divorce decree.** A transfer of property under the decree of a divorce court having the power to prescribe a property settlement isn't subject to gift tax. This exception also applies to a property settlement agreed on before the divorce if it was made part of or approved by the decree.

**Transfer under written agreement.** A transfer of property under a written agreement in settlement of marital rights or to provide a reasonable child support allowance isn't subject to gift tax if you are

divorced within the 3-year period beginning 1 year before and ending 2 years after the date of the agreement. This exception applies whether or not the agreement is part of or approved by the divorce decree.

**Annual exclusion.** The first \$17,000 of gifts of present interests to each person during 2023 isn't subject to gift tax. This includes transfers to a former spouse or transfers to a current spouse that don't qualify for the marital deduction. The annual exclusion is \$175,000 for transfers to a spouse who isn't a U.S. citizen provided the gift would otherwise qualify for the gift tax marital deduction if the donee were a U.S. citizen.

***Present interest.*** A gift is considered a present interest if the donee has unrestricted rights to the immediate use, possession, and enjoyment of the property or income from the property.

**Direct payments of tuition or medical care.** Direct payments of tuition to an educational organization or to any person or organization that provides medical care (including direct payments to a health insurer) aren't subject to federal gift tax. Therefore, such payments made for the benefit of a spouse or former spouse won't be subject to federal gift tax.

### **Gift Tax Return**

Report a transfer of property subject to gift tax on Form 709. Generally, Form 709 is due April 15 following the year of the transfer.

**Transfer under written agreement.** If a property transfer would be subject to gift tax except that it is made under a written agreement, and you don't receive a final decree of divorce by the due date for filing the gift tax return, you must report the transfer on Form 709 and attach a copy of your written agreement. The transfer will be treated as not subject to the gift tax until the

final decree of divorce is granted, but no longer than 2 years after the effective date of the written agreement.

Within 60 days after you receive a final decree of divorce, send a certified copy of the decree to the IRS office where you filed Form 709.

## **Sale of Jointly Owned Property**

If you sell property that you and your spouse own jointly, you must report your share of the recognized gain or loss on your income tax return for the year of the sale. Your share of the gain or loss is determined by your state law governing ownership of property. For information on reporting gain or loss, see Pub. 544.

**Sale of home.** If you sold your main home, you may be able to exclude up to \$250,000 (up to \$500,000 if you and your spouse file a joint return) of gain on the sale. For more information, including special rules that apply

to separated and divorced individuals selling a main home, see Pub. 523.

## **Costs of Getting a Divorce**

You can't deduct legal fees and court costs for getting a divorce. In addition, you can't deduct legal fees paid for tax advice in connection with a divorce and legal fees to get alimony or fees you pay to appraisers, actuaries, and accountants for services in determining your correct tax or in helping to get alimony.

**Other nondeductible expenses.** You can't deduct the costs of personal advice, counseling, or legal action in a divorce. These costs aren't deductible, even if they are paid, in part, to arrive at a financial settlement or to protect income-producing property.

You also can't deduct legal fees you pay for a property settlement. However, you can add it to the basis of the property you receive. For example, you can add the cost of preparing

and filing a deed to put title to your house in your name alone to the basis of the house.

Finally, you can't deduct fees you pay for your spouse or former spouse, unless your payments qualify as alimony. (See Payments to a third party under *Alimony*, earlier.) If you have no legal responsibility arising from the divorce settlement or decree to pay your spouse's legal fees, your payments are gifts and may be subject to the gift tax.

## **Tax Withholding and Estimated Tax**

When you become divorced or separated, you will usually have to file a new Form W-4 with your employer to claim your proper withholding. If you receive alimony, you may have to make estimated tax payments.



*If you don't pay enough tax either through withholding or by making estimated tax payments, you will have an underpayment of estimated tax and you*

*may have to pay a penalty. If you don't pay enough tax by the due date of each payment, you may have to pay a penalty even if you are due a refund when you file your tax return.*

For more information, see Pub. 505.

**Joint estimated tax payments.** If you and your spouse made joint estimated tax payments for 2023 but file separate returns, either of you can claim all of your payments, or you can divide them in any way on which you both agree. If you can't agree, the estimated tax you can claim equals the total estimated tax paid times the tax shown on your separate return for 2023, divided by the total of the tax shown on your 2023 return and your spouse's 2023 return. You may want to attach an explanation of how you and your spouse divided the payments.

If you claim any of the payments on your tax return, enter your spouse's or former spouse's SSN in the space provided on Form

1040 or 1040-SR. If you were divorced and remarried in 2023, enter your present spouse's SSN in that space and enter your former spouse's SSN, followed by "DIV" to the left of Form 1040, line 26.

## **Community Property**

If you are married and your domicile (permanent legal home) is in a community property state, special rules determine your income. Some of these rules are explained in the following discussions. For more information, see Pub. 555.

**Community property states.** Community property states include:

- Arizona,
- California,
- Idaho,
- Louisiana,
- Nevada,

- New Mexico,
- Texas,
- Washington, and
- Wisconsin.

## **Community Income**

If your domicile is in a community property state during any part of your tax year, you may have community income. Your state law determines whether your income is separate or community income. If you and your spouse file separate returns, you must report half of any income described by state law as community income and all of your separate income, and your spouse must report the other half of any community income plus all of their separate income. Each of you can claim credit for half the income tax withheld from community income.

## **Community Property Laws Disregarded**

The following discussions are situations where special rules apply to community property.

### **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 didn't treat as community income. You will be responsible for reporting all of it if:

- You treat the item as if only you are entitled to the income, and
- You don't notify your spouse of the nature and amount of the income by the due date for filing the return (including extensions).

**Relief from liability for tax attributable to an item of community income.** You aren't responsible for the tax on an item of community income if all five of the following conditions exist.

1. You didn't file a joint return for the tax year.
2. You didn't include an item of community income in gross income on your separate return.
3. The item of community income you didn't include is one of the following.
  - a. Wages, salaries, and other compensation your spouse (or former spouse) received for services they performed as an employee.
  - b. Income your spouse (or former spouse) derived from a trade or business they 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 didn't know of, and had no reason to know of, that community income.
  - 5. Under all facts and circumstances, it wouldn't be fair to include the item of community income in your gross income.

**Equitable relief from liability for tax attributable to an item of community income.** To be considered for equitable relief from liability for tax attributable to an item of

community income, you must meet all of the following conditions.

1. You timely filed your claim for relief.
2. You and your spouse (or former spouse) didn't transfer assets to one another as a part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, former spouse, or business partner.
3. Your spouse (or former spouse) didn't transfer property to you for the main purpose of avoiding tax or the payment of tax.
4. You didn't knowingly participate in the filing of a fraudulent joint return.
5. The income tax liability from which you seek relief is attributable (either in full or in part) to an item of your spouse (or former spouse) or an unpaid tax resulting from your spouse's (or

former spouse's) income. If the liability is partially attributable to you, then relief can only be considered for the part of the liability attributable to your spouse (or former spouse). The IRS will consider granting relief regardless of whether the understated tax, deficiency, or unpaid tax is attributable (in full or in part) to you if any of the following exceptions apply.

- a. The item is attributable or partially attributable to you solely due to the operation of community property law. If you meet this exception, that item will be considered attributable to your spouse (or former spouse) for purposes of equitable relief.
- b. If the item is titled in your name, the item is presumed to be attributable to you. However, you

can rebut this presumption based on the facts and circumstances.

- c. You didn't know, and had no reason to know, that funds intended for the payment of tax were misappropriated by your spouse (or former spouse) for their benefit. If you meet this exception, the IRS will consider granting equitable relief although the unpaid tax may be attributable in part or in full to your item, and only to the extent the funds intended for payment were taken by your spouse (or former spouse).
- d. You establish that you were the victim of spousal abuse or domestic violence before the return was filed, and that, as a result of the prior abuse, you didn't challenge the treatment of

any items on the return for fear of your spouse's (or former spouse's) retaliation. If you meet this exception, relief will be considered even though the understated tax or unpaid tax may be attributable in part or in full to your item.

- e. The item giving rise to the understated tax or deficiency is attributable to you, but you establish that your spouse's (or former spouse's) fraud is the reason for the erroneous item.

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

**Spousal agreements.** In some states, spouses 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.

**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 didn't 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 haven't transferred, directly or indirectly, any of the earned income in (3) between yourselves before the end of the year. Don't take into account transfers

satisfying child support obligations or transfers of very small amounts or value.

If all these conditions exist, you and your spouse must report your community income as explained in the following discussions. See also *Certain community income not treated as community income by one spouse*, earlier.

***Earned income.*** Treat earned income that isn't 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 doesn't 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 isn't 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 didn't live together at any time during the year. Both domiciles were in a community property state. They didn't 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 .....	<u>500</u>	<u>500</u>
<b>Totals</b>	<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 didn't 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 don't 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.

## **Ending the Marital Community**

When the marital community ends as a result of divorce or separation, the community assets (money and property) are divided between the spouses. Each 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. Income received after the community ended is separate income, taxable only to the 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 doesn't 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.

### **Alimony (Community Income)**

Payments that may otherwise qualify as alimony aren’t deductible by the payer if they

are the recipient spouse's part of community income. They are deductible by the payer as alimony and taxable to the recipient spouse 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 earlier under Spouses living apart all year don't 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.



*Amounts paid as alimony or separate maintenance payments under a divorce or separation instrument executed after 2018 won't be deductible by the payer. Such amounts also won't be includible in the income of the recipient. The same is true of alimony paid under a divorce or separation instrument executed before 2019 and modified after 2018 if the modification expressly states that the alimony isn't deductible to the payer or includible in the income of the recipient.*

## **How To Get Tax Help**

If you have questions about a tax issue; need help preparing your tax return; or want to download free publications, forms, or instructions, go to [IRS.gov](https://www.irs.gov) to find resources that can help you right away.

### **Preparing and filing your tax return.**

After receiving all your wage and earnings statements (Forms W-2, W-2G, 1099-R,

1099-MISC, 1099-NEC, etc.); unemployment compensation statements (by mail or in a digital format) or other government payment statements (Form 1099-G); and interest, dividend, and retirement statements from banks and investment firms (Forms 1099), you have several options to choose from to prepare and file your tax return. You can prepare the tax return yourself, see if you qualify for free tax preparation, or hire a tax professional to prepare your return.

**Free options for tax preparation.** Your options for preparing and filing your return online or in your local community, if you qualify, include the following.

- **Free File.** This program lets you prepare and file your federal individual income tax return for free using software or Free File Fillable Forms. However, state tax preparation may not be available through Free File. Go to [IRS.gov/FreeFile](https://www.irs.gov/FreeFile) to see if you qualify for free online federal tax

preparation, e-filing, and direct deposit or payment options.

- **VITA.** The Volunteer Income Tax Assistance (VITA) program offers free tax help to people with low-to-moderate incomes, persons with disabilities, and limited-English-speaking taxpayers who need help preparing their own tax returns. Go to [IRS.gov/ VITA](https://www.irs.gov/VITA), download the free IRS2Go app, or call 800-906-9887 for information on free tax return preparation.
- **TCE.** The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors. Go to [IRS.gov/TCE](https://www.irs.gov/TCE) or download the free IRS2Go app for information on free tax return preparation.

- **MilTax.** Members of the U.S. Armed Forces and qualified veterans may use MilTax, a free tax service offered by the Department of Defense through Military OneSource. For more information, go to [MilitaryOneSource](https://www.militaryonesource.com) ([MilitaryOneSource.mil/MilTax](https://www.militaryonesource.com/MilTax)).

Also, the IRS offers Free Fillable Forms, which can be completed online and then e-filed regardless of income.

**Using online tools to help prepare your return.** Go to [IRS.gov/Tools](https://www.irs.gov/Tools) for the following.

- The [Earned Income Tax Credit Assistant](https://www.irs.gov/EITCAssistant) ([IRS.gov/EITCAssistant](https://www.irs.gov/EITCAssistant)) determines if you're eligible for the earned income credit (EIC).
- The [Online EIN Application](https://www.irs.gov/EIN) ([IRS.gov/EIN](https://www.irs.gov/EIN)) helps you get an employer identification number (EIN) at no cost.
- The [Tax Withholding Estimator](https://www.irs.gov/W4App) ([IRS.gov/W4App](https://www.irs.gov/W4App)) makes it easier for you

to estimate the federal income tax you want your employer to withhold from your paycheck. This is tax withholding. See how your withholding affects your refund, take-home pay, or tax due.

- The [\*First-Time Homebuyer Credit Account Look-up\*](#) ([\*IRS.gov/HomeBuyer\*](#)) tool provides information on your repayments and account balance.
- The [\*Sales Tax Deduction Calculator\*](#) ([\*IRS.gov/SalesTax\*](#)) figures the amount you can claim if you itemize deductions on Schedule A (Form 1040).



**Getting answers to your tax questions.** On IRS.gov, you can get up-to-date information on current events and changes in tax law.

- [\*IRS.gov/Help\*](#): A variety of tools to help you get answers to some of the most common tax questions.

- [IRS.gov/ITA](https://www.irs.gov/ita): The Interactive Tax Assistant, a tool that will ask you questions and, based on your input, provide answers on a number of tax topics.
- [IRS.gov/Forms](https://www.irs.gov/forms): Find forms, instructions, and publications. You will find details on the most recent tax changes and interactive links to help you find answers to your questions.
- You may also be able to access tax information in your e-filing software.

**Need someone to prepare your tax return?** There are various types of tax return preparers, including enrolled agents, certified public accountants (CPAs), accountants, and many others who don't have professional credentials. If you choose to have someone prepare your tax return, choose that preparer wisely. A paid tax preparer is:

- Primarily responsible for the overall substantive accuracy of your return,
- Required to sign the return, and
- Required to include their preparer tax identification number (PTIN).



*Although the tax preparer always signs the return, you're ultimately responsible for providing all the information required for the preparer to accurately prepare your return and for the accuracy of every item reported on the return. Anyone paid to prepare tax returns for others should have a thorough understanding of tax matters. For more information on how to choose a tax preparer, go to [Tips for Choosing a Tax Preparer](#) on IRS.gov.*

**Employers can register to use Business Services Online.** The Social Security Administration (SSA) offers online service at [SSA.gov/employer](https://www.ssa.gov/employer) for fast, free, and secure W-2 filing options to CPAs, accountants,

enrolled agents, and individuals who process Form W-2, Wage and Tax Statement, and Form W-2c, Corrected Wage and Tax Statement.

**IRS social media.** Go to [IRS.gov/SocialMedia](https://www.irs.gov/SocialMedia) to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are our highest priority. We use these tools to share public information with you. **Don't** post your social security number (SSN) or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- [Youtube.com/irsvideos](https://www.youtube.com/irsvideos).
- [Youtube.com/irsvideomultilingua](https://www.youtube.com/irsvideomultilingua).
- [Youtube.com/irsvideosASL](https://www.youtube.com/irsvideosASL).

**Watching IRS videos.** The IRS Video portal ([IRSVideos.gov](https://www.irs.gov/irs/videos)) contains video and audio presentations for individuals, small businesses, and tax professionals.

**Online tax information in other languages.** You can find information on [IRS.gov/MyLanguage](https://www.irs.gov/MyLanguage) if English isn't your native language.

**Free Over-the-Phone Interpreter (OPI) Service.** The IRS is committed to serving taxpayers with limited-English proficiency (LEP) by offering OPI services. The OPI Service is a federally funded program and is available at Taxpayer Assistance Centers

(TACs), most IRS offices, and every VITA/TCE tax return site. The OPI Service is accessible in more than 350 languages.

**Accessibility Helpline available for taxpayers with disabilities.** Taxpayers who need information about accessibility services can call 833-690-0598. The Accessibility Helpline can answer questions related to current and future accessibility products and services available in alternative media formats (for example, braille, large print, audio, etc.). The Accessibility Helpline does not have access to your IRS account. For help with tax law, refunds, or account-related issues, go to [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp).

**Note.** Form 9000, Alternative Media Preference, or Form 9000(SP) allows you to elect to receive certain types of written correspondence in the following formats.

- Standard Print.
- Large Print.

- Braille.
- Audio (MP3).
- Plain Text File (TXT).
- Braille Ready File (BRF).

**Disasters.** Go to [IRS.gov/DisasterRelief](https://www.irs.gov/DisasterRelief) to review the available disaster tax relief.

**Getting tax forms and publications.** Go to [IRS.gov/Forms](https://www.irs.gov/Forms) to view, download, or print all the forms, instructions, and publications you may need. Or, you can go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to place an order.

**Getting tax publications and instructions in eBook format.** Download and view most tax publications and instructions (including the Instructions for Form 1040) on mobile devices as eBooks at [IRS.gov/eBooks](https://www.irs.gov/eBooks).

IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven't been tested on other dedicated eBook readers, and

eBook functionality may not operate as intended.

**Access your online account (individual taxpayers only).** Go to [IRS.gov/Account](https://www.irs.gov/Account) to securely access information about your federal tax account.

- View the amount you owe and a breakdown by tax year.
- See payment plan details or apply for a new payment plan.
- Make a payment or view 5 years of payment history and any pending or scheduled payments.
- Access your tax records, including key data from your most recent tax return, and transcripts.
- View digital copies of select notices from the IRS.
- Approve or reject authorization requests from tax professionals.

- View your address on file or manage your communication preferences.

**Get a transcript of your return.** With an online account, you can access a variety of information to help you during the filing season. You can get a transcript, review your most recently filed tax return, and get your adjusted gross income. Create or access your online account at [IRS.gov/ Account](https://www.irs.gov/Account).

**Tax Pro Account.** This tool lets your tax professional submit an authorization request to access your individual taxpayer IRS online account. For more information, go to [IRS.gov/TaxProAccount](https://www.irs.gov/TaxProAccount).

**Using direct deposit.** The safest and easiest way to receive a tax refund is to e-file and choose direct deposit, which securely and electronically transfers your refund directly into your financial account. Direct deposit also avoids the possibility that your check could be lost, stolen, destroyed, or returned undeliverable to the IRS. Eight in 10

taxpayers use direct deposit to receive their refunds. If you don't have a bank account, go to [IRS.gov/DirectDeposit](https://www.irs.gov/DirectDeposit) for more information on where to find a bank or credit union that can open an account online.

## **Reporting and resolving your tax-related identity theft issues.**

- Tax-related identity theft happens when someone steals your personal information to commit tax fraud. Your taxes can be affected if your SSN is used to file a fraudulent return or to claim a refund or credit.
- The IRS doesn't initiate contact with taxpayers by email, text messages (including shortened links), telephone calls, or social media channels to request or verify personal or financial information. This includes requests for personal identification numbers (PINs), passwords, or similar information for credit cards, banks, or other financial accounts.

- Go to [IRS.gov/IdentityTheft](https://www.irs.gov/IdentityTheft), the IRS Identity Theft Central webpage, for information on identity theft and data security protection for taxpayers, tax professionals, and businesses. If your SSN has been lost or stolen or you suspect you're a victim of tax-related identity theft, you can learn what steps you should take.
- Get an Identity Protection PIN (IP PIN). IP PINs are six-digit numbers assigned to taxpayers to help prevent the misuse of their SSNs on fraudulent federal income tax returns. When you have an IP PIN, it prevents someone else from filing a tax return with your SSN. To learn more, go to [IRS.gov/IPPIN](https://www.irs.gov/IPPIN).

## Ways to check on the status of your refund.

- Go to [IRS.gov/Refunds](https://www.irs.gov/Refunds).
- Download the official IRS2Go app to your mobile device to check your refund status.
- Call the automated refund hotline at 800-829-1954.



*The IRS can't issue refunds before mid-February for returns that claimed the EIC or the additional child tax credit (ACTC). This applies to the entire refund, not just the portion associated with these credits.*

**Making a tax payment.** Payments of U.S. tax must be remitted to the IRS in U.S. dollars. [Digital assets](https://www.irs.gov/DigitalAssets) are **not** accepted. Go to [IRS.gov/Payments](https://www.irs.gov/Payments) for information on how to make a payment using any of the following options.

- [IRS Direct Pay](#): Pay your individual tax bill or estimated tax payment directly from your checking or savings account at no cost to you.
- [Debit Card, Credit Card, or Digital Wallet](#): Choose an approved payment processor to pay online or by phone.
- [Electronic Funds Withdrawal](#): Schedule a payment when filing your federal taxes using tax return preparation software or through a tax professional.
- [Electronic Federal Tax Payment System](#): Best option for businesses. Enrollment is required.
- [Check or Money Order](#): Mail your payment to the address listed on the notice or instructions.
- [Cash](#): You may be able to pay your taxes with cash at a participating retail store.

- [Same-Day Wire](#): You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and time frames.

**Note.** The IRS uses the latest encryption technology to ensure that the electronic payments you make online, by phone, or from a mobile device using the IRS2Go app are safe and secure. Paying electronically is quick, easy, and faster than mailing in a check or money order.

**What if I can't pay now?** Go to [IRS.gov/Payments](#) for more information about your options.

- Apply for an [online payment agreement](#) ([IRS.gov/OPA](#)) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.

- Use the [Offer in Compromise Pre-Qualifier](#) to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to [IRS.gov/OIC](#).

**Filing an amended return.** Go to [IRS.gov/Form1040X](#) for information and updates.

**Checking the status of your amended return.** Go to [IRS.gov/WMAR](#) to track the status of Form 1040-X amended returns.



*It can take up to 3 weeks from the date you filed your amended return for it to show up in our system, and processing it can take up to 16 weeks.*

**Understanding an IRS notice or letter you've received.** Go to [IRS.gov/Notices](#) to find additional information about responding to an IRS notice or letter.

## **Responding to an IRS notice or letter.**

You can now upload responses to all notices and letters using the Document Upload Tool. For notices that require additional action, taxpayers will be redirected appropriately on IRS.gov to take further action. To learn more about the tool, go to [IRS.gov/Upload](https://www.irs.gov/Upload).

**Note.** You can use Schedule LEP (Form 1040), Request for Change in Language Preference, to state a preference to receive notices, letters, or other written communications from the IRS in an alternative language. You may not immediately receive written communications in the requested language. The IRS's commitment to LEP taxpayers is part of a multi-year timeline that began providing translations in 2023. You will continue to receive communications, including notices and letters, in English until they are translated to your preferred language.

**Contacting your local TAC.** Keep in mind, many questions can be answered on IRS.gov without visiting a TAC. Go to [IRS.gov/LetUsHelp](https://www.irs.gov/LetUsHelp) for the topics people ask about most. If you still need help, TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment, so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to [IRS.gov/TACLocator](https://www.irs.gov/TACLocator) to find the nearest TAC and to check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

## **The Taxpayer Advocate Service (TAS) Is Here To Help You What Is TAS?**

TAS is an *independent* organization within the IRS that helps taxpayers and protects taxpayer rights. TAS strives to ensure that every taxpayer is treated fairly and that you

know and understand your rights under the [\*Taxpayer Bill of Rights\*](#).

## **How Can You Learn About Your Taxpayer Rights?**

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to

[\*TaxpayerAdvocate.IRS.gov\*](#) to help you understand what these rights mean to you and how they apply. These are ***your*** rights. Know them. Use them.

## **What Can TAS Do for You?**

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue.

TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;

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

## **How Can You Reach TAS?**

TAS has offices [in every state, the District of Columbia, and Puerto Rico.](#) To find your advocate's number:

- Go to [TaxpayerAdvocate.IRS.gov/Contact-Us](https://www.irs.gov/advocate);
- Download Pub. 1546, The Taxpayer Advocate Service Is Your Voice at the IRS, available at [IRS.gov/pub/irspdf/p1546.pdf](https://www.irs.gov/pub/irspdf/p1546.pdf);
- Call the IRS toll free at 800-TAX-FORM (800-829-3676) to order a copy of Pub. 1546;
- Check your local directory; or

- Call TAS toll free at 877-777-4778.

## **How Else Does TAS Help Taxpayers?**

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, report it to TAS at [IRS.gov/SAMS](https://www.irs.gov/SAMS). Be sure to not include any personal taxpayer information.

## **Low Income Taxpayer Clinics (LITCs)**

LITCs are independent from the IRS and TAS. LITCs represent individuals whose income is below a certain level and who need to resolve tax problems with the IRS. LITCs can represent taxpayers in audits, appeals, and tax collection disputes before the IRS and in court. In addition, LITCs can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Services are offered for free or a small fee. For more information or to find an LITC near you, go to the LITC page at

[TaxpayerAdvocate.IRS.gov/LITC](http://TaxpayerAdvocate.IRS.gov/LITC) or see IRS Pub. 4134, [Low Income Taxpayer Clinic List](http://LowIncomeTaxpayerClinicList.IRS.gov/pub/irs-pdf/p4134.pdf), at [IRS.gov/pub/irs-pdf/p4134.pdf](http://IRS.gov/pub/irs-pdf/p4134.pdf).

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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.

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