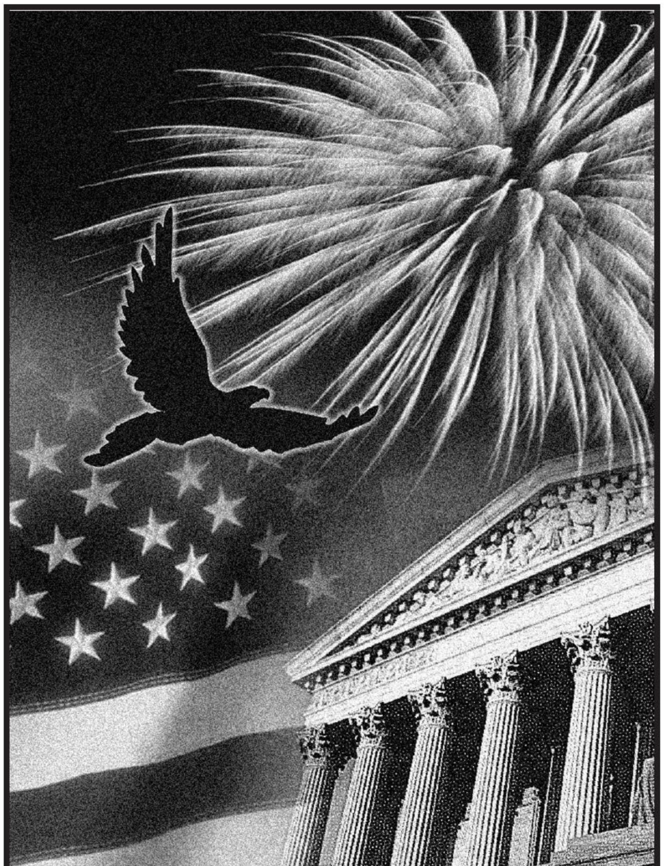
Publication 555

Community Property



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Department of the Treasury
Internal Revenue Service

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Contents

Future Developments

For the latest information about developments related to Pub. 555, such as legislation enacted after it was published, go to *IRS.gov/Pub555.*

What's New

Tennessee and South Dakota. The states of Tennessee and South Dakota have passed elective Community Property Laws. This publication does not address the federal tax treatment of income or property subject to the “community property” election.

Registered Domestic Partnership. Descriptions of registered domestic partnerships and related topics have been included in the relevant sections.

Reminders

Same-sex marriages. For federal tax purposes, marriages of couples of the same sex are treated the same as marriages of couples of the opposite sex. For federal tax purposes, the term “spouse” means an individual lawfully married to another individual and includes an individual married to a person of the same sex. However, individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't considered a marriage under state law aren't considered married for federal tax purposes.

Divorce or separation instruments 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.

Personal exemption suspended. Beginning in 2018, you can’t claim a personal exemption for yourself, your spouse, or your dependents.

Photographs of missing children. The IRS is a proud partner with the *National Center for Missing & Exploited Children® (NCMEC)*. 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

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

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

Note. This publication doesn't address the federal tax treatment of income or property subject to the “community property” election under Alaska, Tennessee, and South Dakota state laws.

Married individuals. 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.
- Wisconsin.

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

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

TIP *You can find answers to frequently asked questions by going to IRS.gov/Pub555 and clicking on* Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions *under* Other Items You May Find Useful.

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

You can send us comments through *IRS.gov/FormComments*. Or, you can write to: Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can’t respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. We can’t answer tax questions sent to the above address.

Tax questions. If you have a tax question not answered by this publication, check the *How To Get Tax Help* section at the end of this publication, or go to the IRS Interactive Tax Assistant page at *IRS.gov/Help/ITA* where you can find topics using the search feature or by viewing the categories listed.

Getting tax forms, instructions, and publications. Visit *IRS.gov/Forms* to download current and prior-year forms, instructions, and publications.

Ordering tax forms, instructions, and publications. Go to *IRS.gov/OrderForms* to order current forms, instructions, and publications; call 800-829-3676 to order prior-year forms and instructions. Your order should arrive within 10 business days.

Useful Items

You may want to see:

Publications

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

Forms (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* at the end of this publication for information about getting these publications and forms.

Domicile

The law of the state, or the law of the foreign country, where you are domiciled will determine if you have community property, community income, or both. If you and your spouse (or your registered domestic partner) have different domiciles, check the laws of each to see if you have community property, community income, or both.

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 doesn't always explain the difference between home and domicile. A temporary home or residence may continue for months or years while a domicile may be established the first moment you occupy the property. Your intent is the determining factor in proving where you have your domicile.

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

Community or Separate Property and Income

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

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

Community property. Generally, community property is property:

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

Community income. Generally, community income is income from:

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

Separate property. Generally, separate property is:

- Property that you or your spouse (or your registered domestic partner) owned separately before your marriage (or registered domestic partnership);
- Money earned while domiciled in a noncommunity property state;
- Property that you or your spouse (or your registered domestic partner) received separately as a gift or inheritance during

your marriage (or registered domestic partnership);

- Property that you or your spouse (or your registered domestic partner) bought with separate funds, or acquired in exchange for separate property, during your marriage (or registered domestic partnership);
- Property that you and your spouse (or your registered domestic partner) converted from community property to separate property through an agreement valid under state law; and
- The part of property bought with separate funds, if part was bought with community funds and part with separate funds.

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

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

Registered Domestic Partnerships

Community and separate property. A registered domestic partner (RDP) must report half of all community income and all of his or her separate income unless certain exceptions apply. For example, if the RDP acted as if he or she was the only one entitled to the income and didn't notify his or her partner of the nature and amount of the income before the due date of his or her own or his or her partner's return, the income might not be eligible for community property treatment. Generally, the laws of the state in which the registered domestic partnership is domiciled governs whether the RDP has community income or separate income. Community property, generally, includes earned income, self-employment income from sole proprietorships, interest, dividends, and rent. Gains and losses are classified as community or separate depending on how property is held. Pensions are classified as community or separate depending on the period of participation in the pension during the registered domestic partnership and whether domiciled in a community property state or in a noncommunity property state during the total period of participation in the pension. Distributions from IRAs are deemed as separate property.

Note. A partner in a registered domestic partnership cannot use the other partner's earnings in computing his or her earned income for purposes of claiming the dependent care credit, the refundable portion of the child tax credit, or the earned income credit.

Filing status. Generally, a registered domestic partner may only file as single, or as head-of-household (if the qualifying dependent is someone other than the other registered domestic partner).

Deductions. Your deductions generally depend on whether the expenses involve community or separate income.

Standard and itemized deductions. A registered domestic partner may itemize or claim the standard deduction regardless of whether his or her partner itemizes or claims the standard deduction.

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

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

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

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

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

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Business and investment expenses. Expenses incurred to earn or produce community business or investment income are generally divided equally between the partners in the registered domestic partnership. Each of the partners is generally entitled to deduct one-half of the expenses on his or her separate return. The expenses for separate business or investment income is deductible by the RDP who earns the income.

IRA deduction. Deductions for IRA contributions can't be split between the RDPs. The deduction for each RDP is figured separately without regard to community property laws.

Personal expenses. Expenses that are paid out of separate funds, such as medical expenses, are deductible by the RDP who pays for them. If these expenses are paid from community funds, normally the deduction is divided equally between the partners.

Federal income tax withheld. As a general rule, each RDP is entitled to credit for half the income tax withheld from wages that are community property.

For specific information that pertains to your situation, check with the laws of your state.

Identifying Income, Deductions, and Credits

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

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

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

Income

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

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

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

If you and your spouse (or your registered domestic partner) buy a bond that is considered community property under your state laws, half the bond interest belongs to you and half belongs to your spouse. You each must show the bond interest and the split of that interest on your Form 8958, and report half the interest on your return. Attach your Form 8958 to your return.

Alimony received. 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. 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 _Payments not alimony, 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 Pub. 544, Sales and Other Dispositions of Assets, for information on gains and losses. See Pub. 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 IRAs. They are traditional IRAs (including SEP-IRAs), SIMPLE IRAs, and Roth IRAs. IRAs and ESAs by law are deemed to be separate property. Therefore, taxable IRA and ESA distributions are separate property, even if the funds in the account would otherwise be community property. These distributions are wholly taxable to the spouse (or registered domestic partner) whose name is on the account. That spouse (or registered domestic partner) is also liable for any penalties and additional taxes on the distributions.

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

Lump-sum distributions. If you were born before January 2, 1936 and receive a lump-sum distribution from a qualified retirement plan, you may be able to choose an optional method of figuring the tax on the distribution. For the 10-year tax option, you must disregard community property laws. For more information, see Pub. 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 registered domestic partnership) and domicile of the employee when the services were performed for which the annuity is paid. Even if you now live in a noncommunity property state and you receive a civil service annuity, it may be community income if it is based on services you performed while married (or during the registered domestic partnership) and domiciled in a community property state.

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

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

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

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

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

Partnership income. If an interest is held in a partnership, and income from the partnership is attributable to the efforts of either spouse (or registered domestic partner), the partnership income is community property. If it is a separate property partnership and the income from the partnership isn't attributable to the efforts of either spouse (or registered domestic partner), the partnership income will be characterized in accordance with the discussion under *Income from separate property,* later.

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

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

Deductions

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

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

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

Payments not alimony. Prior to the enactment of the Tax Cuts and Jobs Act (TCJA) rules, payments that may otherwise qualify as alimony or separate maintenance aren’t deductible by the payer if they are the recipient spouse’s part of community income. See *Example 1* below.

Example 1—pre-TCJA (old rule). You live in a community property state. You are separated but the special rules explained later under *Spouses living apart all year* don't apply. Under a court order of separation executed on November 1, 2019, you pay your spouse as support $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.

Example 2—TCJA (current rule). Assume the same facts as in *Example 1*, but you pay your spouse pursuant to a court order of separate maintenance executed after December 31, 2018. As in *Example 1,* each of you must report $10,000 of the total community income. However, you may not deduct $2,000 as alimony paid and your spouse isn't required to report $2,000 as alimony received. For the treatment of income after divorce, see End of the Community, later.

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

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

Credits, Taxes, and Payments

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

Child tax credit. You may be entitled to a child tax credit for each of your qualifying children. You must provide the name and 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. You may be entitled to a credit for other dependents for each of your children who are not a qualifying child for the child tax credit and for each qualifying relative. See your tax return instructions for more information.

Credit for other dependents. You may be entitled to a credit for other dependents for each qualifying child who isn't a qualifying child for the child tax credit and for each qualifying relative. For more information, see the instructions for your return.

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 married persons for federal tax purposes. Registered domestic partners report community income for self-employment tax purposes the same way they do for income tax purposes.

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

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

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

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

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

1. Half the community income and deductions, and
2. All of your separate income and deductions.

Whether you and your spouse pay estimated tax jointly or separately won't 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 can't 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 (EIC). You may be entitled to an EIC. You can't 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 Pub. 501, Dependents, Standard Deduction, and Filing Information), and live in a state that has community property laws, your earned income for the EIC doesn't include any amount earned by your spouse that is treated as belonging to you under community property laws. That amount isn't earned income for the EIC, even though you must include it in your gross income on your income tax return. Your earned income includes the entire amount **you** earned, even if part of it is treated as belonging to your spouse under your state's community property laws. The same rule applies to registered domestic partners.

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

For more information about the EIC, see Pub. 596, Earned Income Credit.

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 isn't 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 don't apply to registered domestic partners.

Certain community income not treated as community income by one spouse. Community property laws may not apply to an item of community income that you received but didn't 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 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 relating to an omitted item of community income if **all** the following conditions are met.

1. You didn't file a joint return for the tax year.
2. You didn't include the item of community income in gross income.

3. The item of community income you didn't include in your gross income 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 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.

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, Innocent Spouse Relief.

Equitable relief. If you don't qualify for the relief discussed earlier under *Relief from liability for tax attributable to an item of community income* 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 Pub. 971.

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

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

If you are a U.S. citizen or resident alien and don't 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 don't 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 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 condition (3) above 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 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 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:

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

Under the community property law of their state, all the income is considered community income. (Some states treat income from separate property as separate income—check your state law.) Sharon 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.

End of the Community

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

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

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

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

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

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

An **absolute decree of divorce or annulment** ends the marital community in all community property states. A decree of annulment, even though it holds that no valid marriage ever existed, usually 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.

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

Preparing a Federal Income Tax Return

The following discussion doesn't 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 doesn't apply to registered domestic partners.

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

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

you used for higher education expenses.

5. You can't take the credit for the elderly or the disabled unless you lived apart from your spouse all year.
6. You will likely have to include in income a greater percentage of any social security benefits or equivalent railroad retirement benefits you received.
7. You can't deduct interest paid on a qualified student loan.
8. You can't take the education credits.
9. You may have a smaller child tax credit and credit for other dependents than you would on a joint return.
10. You can't take the exclusion or credit for adoption expenses in most instances.

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

Separate Return Preparation

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

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

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

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 and find resources that can help you right away.

Preparing and filing your tax return. After receiving your wage and earning statements (Form W-2, W-2G, 1099-R, 1099-MISC) from all employers and interest and dividend statements from banks (Forms 1099), you can find free options to prepare and file your return on IRS.gov or in your local community if you qualify.

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. 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.

You can go to IRS.gov to see your options for preparing and filing your return, which include the following.

- **Free File.** Go to *IRS.gov/FreeFile* to see if you qualify to use brand-name software to prepare and *e-file* your federal tax return for free.
- **VITA.** Go to *IRS.gov/VITA*, download the free IRS2Go app, or call 800-906-9887 to find the nearest VITA location for free tax return preparation.
- **TCE.** Go to *IRS.gov/TCE*, download the free IRS2Go app, or call 888-227-7669 to find the nearest TCE location for free tax return preparation.

Employers can register to use Business Services Online. The SSA offers online service for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Forms W-2, Wage and Tax Statement, and Forms W-2c, Corrected Wage and Tax Statement. Employers can go to *SSA.gov/employer* for more information.

Getting answers to your tax questions. On IRS.gov, get answers to your tax questions anytime, anywhere.

- Go to *IRS.gov/Help* for a variety of tools that will help you get answers to some of the most common tax questions.
- Go to *IRS.gov/ITA* for the Interactive Tax Assistant, a tool that will ask you questions on a number of tax law topics and provide answers. You can print the entire interview and the final response for your records.
- Go to *IRS.gov/Forms* to search for our forms, instructions, and publications. You will find details on 2019 tax changes and hundreds of interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Tax reform. Tax reform legislation affects individuals, businesses, and tax-exempt and government entities. Go to *IRS.gov/TaxReform* for information and updates on how this legislation affects your taxes.

IRS social media. Go to *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 paramount. We use these tools to share public information with you. **Don't** post your social security number 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.*
- *Youtube.com/irsvideosmultilingua.*
- *Youtube.com/irsvideosASL.*

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Getting tax information in other languages. For taxpayers whose native language isn't English, we have the following resources available. Taxpayers can find information on IRS.gov in the following languages.

- *Spanish (IRS.gov/Spanish).*
- *Chinese (IRS.gov/Chinese).*
- *Korean (IRS.gov/Korean).*
- *Russian (IRS.gov/Russian).*
- *Vietnamese (IRS.gov/Vietnamese).*

The IRS Taxpayer Assistance Centers (TACs) can assist with interpreter services. Taxpayers can access oral interpreters in more than 300 languages when interacting face to face or over the phone with IRS employees through the use of the over-the-phone interpreter services.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print all of the forms, instructions, and publications you may need. You can also download and view popular tax publications and instructions (including the 1040 and 1040-SR instructions) on mobile devices as an eBook at no charge at *IRS.gov/eBooks*. Or you can go to *IRS.gov/OrderForms* to place an order and have them mailed to you within 10 business days.

Access your online account (individual taxpayers only). Go to *IRS.gov/Account* to securely access information about your federal tax account.

- View the amount you owe, pay online, or set up an online payment agreement.
- Access your tax records online.
- Review the past 24 months of your payment history.
- Go to *IRS.gov/SecureAccess* to review the required identity authentication process.

Using direct deposit. The fastest way to receive a tax refund is to combine direct deposit and IRS *e-file*. Direct deposit securely and electronically transfers your refund directly into your financial account. Eight in 10 taxpayers use direct deposit to receive their refund. The IRS issues more than 90% of refunds in less than 21 days.

Getting a transcript or copy of a return. The quickest way to get a copy of your tax transcript is to go to *IRS.gov/Transcripts*. Click on either “Get Transcript Online” or “Get Transcript by Mail” to order a copy of your transcript. If you prefer, you can order your transcript by calling 800-908-9946.

Using online tools to help prepare your return. Go to *IRS.gov/Tools* for the following.

- The *Earned Income Tax Credit Assistant* (*IRS.gov/EITCAssistant*) determines if you’re eligible for the EIC.
- The *Online EIN Application* (*IRS.gov/EIN*) helps you get an employer identification number.
- The *Tax Withholding Estimator* (*IRS.gov/W4app*) makes it easier for everyone to pay the correct amount of tax during the year. The Estimator replaces the Withholding Calculator. The redesigned tool is a convenient, online way to check and tailor your withholding. It’s more user-friendly for taxpayers, including retirees and self-employed

individuals. The new and improved features include the following.

- Easy to understand language;
- The ability to switch between screens, correct previous entries, and skip screens that don’t apply;
- Tips and links to help you determine if you qualify for tax credits and deductions;
- A progress tracker;
- A self-employment tax feature; and
- Automatic calculation of taxable social security benefits.

• 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 or 1040-SR), choose not to claim state and local income taxes, and you didn’t save your receipts showing the sales tax you paid.

Resolving tax-related identity theft issues.

- The IRS doesn’t initiate contact with taxpayers by email or telephone to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.
- Go to *IRS.gov/IDProtection* for information.
- If your SSN has been lost or stolen or you suspect you’re a victim of tax-related identity theft, visit *IRS.gov/IdentityTheft* to learn what steps you should take.

Checking on the status of your refund.

- Go to *IRS.gov/Refunds.*
- The IRS can’t issue refunds before mid-February 2020 for returns that claimed the EIC or the ACTC. This applies to the entire refund, not just the portion associated with these credits.

- Download the official IRS2Go app to your mobile device to check your refund status.
- Call the automated refund hotline at 800-829-1954.

Making a tax payment. The IRS uses the latest encryption technology to ensure your electronic payments are safe and secure. You can make electronic payments online, by phone, and from a mobile device using the IRS2Go app. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to *IRS.gov/Payments* 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 or Credit Card*: Choose an approved payment processor to pay online, by phone, and by mobile device.
- *Electronic Funds Withdrawal*: Offered only 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 cut-off times.

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*.

Checking the status of an amended return. Go to *IRS.gov/WMAR* to track the status of Form 1040-X amended returns. Please note that 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. Go to *IRS.gov/Notices* to find additional information about responding to an IRS notice or letter.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS Taxpayer Assistance Center (TAC). Go to *IRS.gov/LetUsHelp* for the topics people ask about most. If you still need help, IRS 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* to find the nearest TAC, 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. Their job is 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.* Your local advocate’s number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them 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, please report it to them at *IRS.gov/SAMS*.

TAS also has a website, *Tax Reform Changes*, which shows you how the new tax law may change your future tax filings and helps you plan for these changes. The information is categorized by tax topic in the order of the IRS Form 1040 or 1040-SR. Go to *TaxChanges.us* for more information.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

Low Income Taxpayer Clinics (LITCs)

LITCs are independent from the IRS. LITCs represent individuals whose income is below a certain level and need to resolve tax problems with the IRS, such as audits, appeals, and tax collection disputes. In addition, clinics 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. To find a clinic near you, visit *IRS.gov/LITC* or see IRS Pub. 4134, *Low Income Taxpayer Clinic List.*

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

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