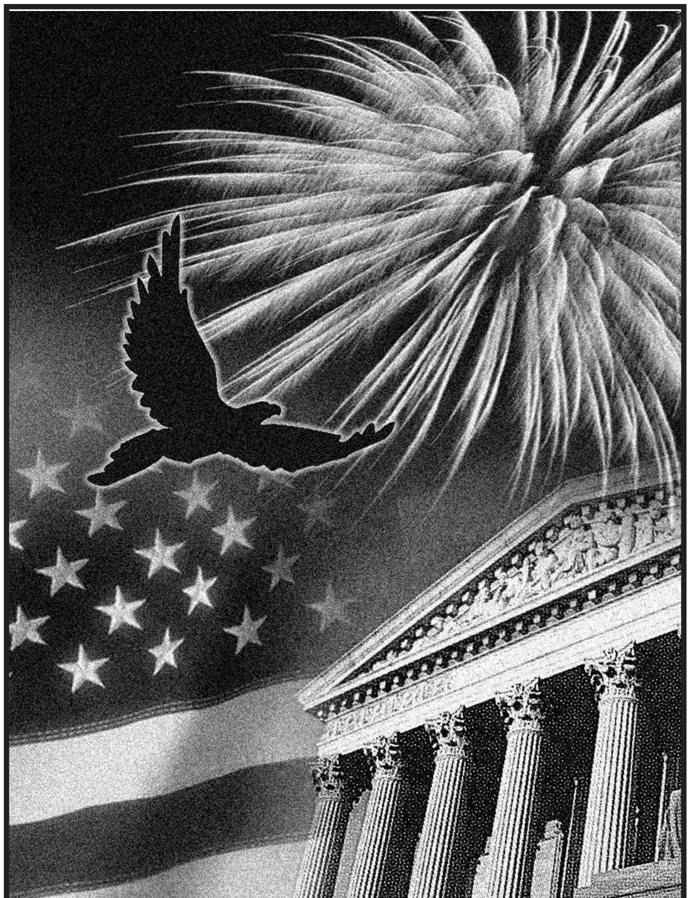
IRS

Publication 555
(Rev. December 2024)

Community Property



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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 will usually 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 apply to the states of Alaska, Tennessee, and South Dakota unless taxpayers in those states make an election to opt into community property treatment.

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 (RDPs). This publication is also for RDPs who are domiciled in Nevada, Washington, or California. RDPs 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 RDP.

RDPs 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 suggestions for future editions.

You can send us comments through *IRS.gov/FormComments*. Or, you can write to the 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 and suggestions as we revise our tax forms, instructions, and publications. **Don't** send tax questions, tax returns, or payments to the above address.

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

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

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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 RDP) 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, an RDP 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 RDP), or both acquire during your marriage (or registered domestic partnership) while you and your spouse (or your RDP) are domiciled in a community property state;
- That you and your spouse (or your RDP) 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 RDP), 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 RDP) 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 RDP) received separately as a gift or inheritance during your marriage (or registered domestic partnership);
- Property that you or your spouse (or your RDP) 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 RDP) 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 RDP) who owns the property.

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

Registered Domestic Partnerships

Community and separate property. An 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 members of the registered domestic partnership are 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 individual retirement arrangements (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, an RDP may only file as single or as head of household (if the qualifying dependent is someone other than the other RDP).

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

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

Business and investment expenses. Investment expenses, deductible under section 212 of the Internal Revenue Code, are suspended until 2025. However, the

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

Community property is property: • That you, your spouse (or your RDP), or both acquire during your marriage (or registered domestic partnership) while you and your spouse (or your RDP) 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 RDP) 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 RDP) 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 RDP) 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 RDP), 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 RDP) 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 under *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.

suspension does not apply to business expense deductions under section 162 of the Code.

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 are 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 RDP) 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.

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

CAUTION *Check your state law if you are separated but 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 an RDP'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 RDP) 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 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. New rule—Alimony or separate maintenance aid under an instrument executed after December 31, 2018, is neither includible in the income of the payee nor deductible from the income of the payor. 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 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 RDP) whose name is on the account. That spouse (or RDP) 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 spouse were domiciled in a community property state during the past 15 years.

Because 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 spouse's.

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

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

Partnership income. If an interest is held in a partnership, and income from the partnership is attributable to the efforts of either spouse (or RDP), 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 RDP), the partnership income will be characterized in accordance with the discussion under Income from separate property, later.

Tax-exempt income. For spouses, community income exempt from federal tax generally keeps its exempt status for both spouses. For example, under certain circumstances, income earned outside the United States is tax exempt. If you earned income and met the conditions that made it exempt, the income is also exempt for your spouse even though he or she may not have met the conditions. RDPs 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. Business and investment expenses ordinarily deductible under section 212 of the Internal Revenue Code are suspended until 2025. However, the suspension does not apply to business expense deductions under section 162 of the Code.

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 RDP). Each of you is entitled to deduct one-half of the expenses on your separate returns. Expenses incurred by a spouse (or RDP) to produce separate business or investment income is deductible by the spouse (or the RDP) who earns the corresponding separate business or investment income.

Other limits may also apply to business and investment expenses. For more information, see chapter 8 of Pub. 334, Tax Guide for Small Business; 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. Also see Alimony received, earlier.

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, 2018, 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 separation 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 RDPs). The deduction for each spouse (or each RDP) 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 is 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. RDPs report community income for self-employment tax purposes the same way they do for income tax purposes.

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

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

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

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 RDP'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 RDPs.

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.

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. 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 RDPs.

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 RDPs).

Example. Taylor and Blake owned community property that had a basis of $80,000. When Taylor died, their community property had an FMV of $100,000. One-half of the FMV of their community interest was includible in Taylor's estate. The basis of Blake's half of the property is $50,000 after Taylor died (half of the $100,000 FMV). The basis of the other half to Taylor'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 RDPs, 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 RDP) 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 RDP) 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 an RDP, 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*, earlier. Those spouses must report their community income as explained in that discussion.

Joint Return Versus Separate Returns

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

CAUTION *This discussion concerning joint returns versus separate returns doesn't apply to RDPs.*

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 RDPs. For a discussion of the effect of community property laws on certain items of income, deductions, credits, and other return amounts, see *Identifying Income, Deductions, and Credits*, earlier.

Attach your Form 8958 to your separate return showing how you figured the income, deductions, and federal income tax withheld that each of you reported. Form 8958 is used for married spouses in community property states who choose to file married filing separately. Form 8958 is also used for RDPs who are domiciled in Nevada, Washington, or California. An RDP 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 RDP.

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 RDP'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* 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.

- **Direct File.** Direct File is a permanent option to file individual federal tax returns online—for free—directly and securely with the IRS. Direct File is an option for taxpayers in participating states who have relatively simple tax returns reporting certain types of income and claiming certain credits and deductions. While Direct File doesn't prepare state returns, if you live in a participating state, Direct File guides you to a state-supported tool you can use to prepare and file your state tax return for free. Go to *IRS.gov/DirectFile* for more information, program updates, and frequently asked questions.
- **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* 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*, 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* 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* (*MilitaryOneSource.mil/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* for the following.

- *IRS.gov/DirectFile* offers an Eligibility Checker to help you determine if Direct File is the right choice for your tax filing needs.
- The *Earned Income Tax Credit Assistant* (*IRS.gov/EITCAssistant*) determines if you're eligible for the earned income credit (EIC).
- The *Online EIN Application* (*IRS.gov/EIN*) helps you get an employer identification number (EIN) at no cost.
- The *Tax Withholding Estimator* (*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*: 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*: 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).

CAUTION

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 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.

Business tax account. If you are a sole proprietor, a partnership, or an S corporation, you can view your tax information on record with the IRS and do more with a business tax account. Go to *IRS.gov/BusinessAccount* for more information.

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 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*.
- *Youtube.com/irsvideosmultilingua*.
- *Youtube.com/irsvideosASL*.

Online tax information in other languages. You can find information on *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*.

Alternative media preference. 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* to review the available disaster tax relief.

Getting tax forms and publications. Go to *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* to place an order.

Mobile-friendly forms. You'll need an IRS Online Account (OLA) to complete mobile-friendly forms that require signatures. You'll have the option to submit your form(s) online or download a copy for mailing. You'll need scans of your documents to support your submission. Go to *IRS.gov/MobileFriendlyForms* for more information.

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*.

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* 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*.

Tax Pro Account. This tool lets your tax professional submit an authorization request to access your individual taxpayer IRS OLA. For more information, go to *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* 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*, 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*.

Ways to check on the status of your refund.

- Go to *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.

CAUTION *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* are **not** accepted. Go to *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*: This is the 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.

CAUTION *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.

IRS Document Upload Tool. You may be able use the Document Upload Tool to respond digitally to eligible IRS notices and letters by securely uploading required documents online through IRS.gov. For more information, go to IRS.gov/DUT.

Schedule LEP. 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 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 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."

Below is a message to you from the Taxpayer Advocate Service, an independent organization established by Congress.

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is the Taxpayer Advocate Service?

The Taxpayer Advocate Service (TAS) is an independent organization within the Internal Revenue Service (IRS). TAS helps taxpayers resolve problems with the IRS, makes administrative and legislative recommendations to prevent or correct the problems, and protects taxpayer rights. We work to ensure that every taxpayer is treated fairly and that you know and understand your rights under the Taxpayer Bill of Rights. We are Your Voice at the IRS.

How Can TAS Help Me?

TAS can help you resolve problems that you haven't been able to resolve with the IRS on your own. Always try to resolve your problem with the IRS first, but if you can't, then come to TAS. Our services are free.

- TAS helps all taxpayers (and their representatives), including individuals, businesses, and exempt organizations. You may be eligible for TAS help if your IRS problem is causing financial difficulty, if you've tried and been unable to resolve your issue with the IRS, or if you believe an IRS system, process, or procedure just isn't working as it should.
- To get help any time with general tax topics, visit www.TaxpayerAdvocate.IRS.gov. The site can help you with common tax issues and situations, such as what to do if you make a mistake on your return or if you get a notice from the IRS.
- TAS works to resolve large-scale (systemic) problems that affect many taxpayers. You can report systemic issues at www.IRS.gov/SAMS. (Be sure not to include any personal identifiable information.)

How Do I Contact TAS?

TAS has offices in every state, the District of Columbia, and Puerto Rico. To find your local advocate's number:

- Go to www.TaxpayerAdvocate.IRS.gov/Contact-Us,
- Check your local directory, or
- Call TAS toll free at 877-777-4778.

What Are My Rights as a Taxpayer?

The Taxpayer Bill of Rights describes ten basic rights that all taxpayers have when dealing with the IRS. Go to www.TaxpayerAdvocate.IRS.gov/Taxpayer-Rights for more information about the rights, what they mean to you, and how they apply to specific situations you may encounter with the IRS. TAS strives to protect taxpayer rights and ensure the IRS is administering the tax law in a fair and equitable way.

Index

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.