Chapter 1

Filing Status

Your filing status determines the tax rates that will apply *{1.2}* to your taxable income when you file your return. Filing status also determines the standard deduction you may claim *{14.1}* if you do not itemize deductions and your ability to claim certain other deductions, credits, and exclusions.

This chapter explains the five different filing statuses: single, married filing jointly, married filing separately, head of household, and qualifying surviving spouse. If you are married, filing a joint return is generally advantageous, but there are exceptions discussed in *{1.3}*. If you are unmarried and are supporting a child who lives with you, you may qualify as a head of household *{1.12}*, which will enable you to use more favorable tax rates than those allowed for single taxpayers. If you were a surviving spouse in either 2025 or 2024 and in 2026 a dependent child lived with you, you may be able to file as a qualifying surviving spouse for 2026, which allows you to use joint return rates *{1.11}*.

Special filing situations, such as for children, nonresident aliens, and deceased individuals, are also discussed in this chapter.

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1.1 Which Filing Status Should You Use?

Your filing status generally depends on whether you are married at the end of the year, and, if unmarried, whether you maintain a household for a qualifying dependent. The five filing statuses are: single, married filing jointly, married filing separately, head of household, and qualifying surviving spouse. The filing status you use determines the tax rates that apply to your taxable income *{1.2}*, as well as the standard deduction you may claim *{14.1}* if you do not itemize deductions. Certain other deductions, credits, or exclusions are also affected by filing status. For example, if you are married, certain tax benefits are only allowed if you file jointly, but in certain cases, more deductions overall may be allowed if you file separately *{1.3}*.

If you are married at the end of the year, you may file jointly *{1.4}* or separately *{1.3}*. If you lived apart from your spouse for the last half of 2026 and your child lived with you, you may qualify as an "unmarried" head of household *{1.12}* for 2026, which allows you to apply more favorable tax rates than you could as a married person filing separately.

If you are unmarried at the end of the year, your filing status is single unless you meet the tests for a head of household or qualifying surviving spouse. Generally, you are a head of household *{1.12}* if you pay more than 50% of the household costs for a dependent child or relative who lives with you, or for a dependent parent, whether or not he or she lives with you. For 2026, you generally are a qualifying surviving spouse *{1.11}* if you were a surviving spouse in 2025 or 2024 and in 2026 you paid more than 50% of the household costs for you and your dependent child. The tax rates for heads of household and for qualifying surviving spouses are more favorable than those for single taxpayers *{1.2}*.

Marital status determined at the end of the year. If you are divorced or legally separated during the year under a final decree of divorce or separate maintenance, you are treated as unmarried for that whole year, assuming you have not remarried before the end of the year. For the year of the divorce or legal separation, file as a single person unless you care for a child or parent and qualify as a head of household *{1.12}*.

If at the end of the year you are living apart from your spouse, or you are separated under a provisional decree that has not yet been finalized, you are not considered divorced. If you care for a child and meet the other head of household tests *{1.12}*, you may file as an unmarried head of household. Otherwise, you must file a joint return or as a married person filing separately.

If at the end of the year you live together in a common law marriage that is recognized by the law of the state in which you live or the state where the marriage began, you are treated as married.

If your spouse dies during the year, you are treated as married for that entire year and may file a joint return for you and your deceased spouse, assuming you have not remarried before year's end *{1.10}*.

Same-sex marriage. Lawfully married same-sex couples are treated as married for all federal tax purposes. The IRS recognizes your marriage to a same-sex spouse if the marriage was legally entered into in one of the 50 states, the District of Columbia, Puerto Rico, U.S. territory or possession, or foreign country. However, registered domestic partnerships, civil unions, and similar relationships that are recognized by state law (or foreign law) but that are not treated as marriages under state law are not treated as marriages for federal tax purposes.

As a married couple, you and your spouse must file your federal return using a filing status of married filing jointly *{1.4}* or married filing separately *{1.3}*. However, if you lived apart for the last six months of 2026 and one of you maintained a home for a child or other qualifying relative, that spouse may be able to file as a head of household *{1.12}*.

Planning Reminder

Getting Married Can Raise Your Taxes

The so-called marriage penalty is faced by couples whose joint return tax liability exceeds the combined tax they would pay if they had remained single. This is generally the case where each spouse earns a substantial share of the total income. Legislation has substantially reduced the marriage penalty by allowing married couples filing jointly a standard deduction *{14.1}* that is double the amount allowed to a single person, and by making the first five tax brackets (up to 32%) *{1.2}* twice as wide as the brackets for a single person.

On the other hand, if one spouse has little or no income, there generally is a marriage bonus or singles penalty, as the couple's tax on a joint return is less than the sum of the tax liabilities that would be owed if they were single.

1.2 Tax Rates Based on Filing Status

The most favorable tax brackets apply to married persons filing jointly and qualifying surviving spouses *{1.11}*, who also use the joint return rates. The least favorable brackets are those for married persons filing separately, but filing separately is still advisable for married couples in certain situations *{1.3}*. *See Table 1-1* for a comparison of the 2026 tax rate brackets that apply to ordinary income (such as salary, interest income, or short-term capital gains).

If you have children and are unmarried at the end of the year, do not assume that your filing status is single. If your child lives with you in a home you maintain, you generally may file as a head of household *{1.12}*, which allows you to use more favorable tax rates than a single person. If your spouse died in either of the two prior years and you maintain a household for your dependent child, you generally may file as a qualified surviving spouse, which allows you to use favorable joint return rates *{1.11}*.

If you are married at the end of the year but for the second half of the year you lived with your child apart from your spouse, and you and your spouse agree not to file jointly, you may use head of household tax rates, which are more favorable than those for married persons filing separately.

What is your top tax bracket and effective tax rate? Depending on your taxable income *{22.1}*, ordinary income such as salary, interest income, short-term capital gains, or retirement plan distributions (IRA, 401(k), etc.) can be subject to one or more of the following tax rates: 10%, 12%, 22%, 24%, 32%, 35% or 37%. Rates on qualified dividends *{5.2}* and net capital gain *{6.3}* can be either 0%, 15%, 20%, 25%, or 28%, depending on the amount of your other income and type of asset sold; *see* below.

The 2026 rate brackets that apply to income other than net capital gain or qualified dividends are shown below in *Table 1-1*. If your top bracket is 22%, for example, this means that each additional dollar of ordinary income will be taxed at 22% for regular income tax purposes; 22% is your "marginal" tax rate. However, because the rate brackets are graduated, your effective tax rate may be significantly lower than your top marginal tax rate. For example, if in 2026 you are single with taxable income of $52,315.00, all of which is ordinary income, your marginal rate is 22%, but the first $12,400.00 is taxed at 10% (tax of $1,240.00), the next $38,000.00 ($50,400 – $12,400) is taxed at 12% (tax of $4,560.00), and only the last $1,915.00 ($52,315 – $50,400) is taxed at 22% (tax of $421.30). The total tax on the taxable income of $52,315.00 is $6,221.30 which represents an "effective tax rate" of 11.89% ($6,221.30/$52,315.00 taxable income). This reflects the fact that most of your taxable income is taxed in the 10% and especially the 12% brackets, and only a small amount at your top marginal tax rate of 22%.

If you have substantial employee compensation and/or self-employment net earnings in excess of the applicable threshold for your filing status *{28.2}*, you are subject to an additional 0.9% Medicare tax on the excess earnings.

The tax rate on qualified dividends *{5.2}* and net capital gain *{6.3}* is generally lower than your top bracket rate on ordinary income. Depending on your top rate bracket for ordinary income *{Table 1-1}*, the rate applied to your net capital gain *{6.3}* and to most qualified dividends is either 0%, 15%, or 20% *{6.3}*. This does not include 28% rate gains *{5.3}* or unrecaptured Section 1250 gains *{6.3}*, which are not eligible for the 0%, 15% and 20% rates. For unrecaptured Section 1250 gains, the rate cannot exceed 25%; for 28% rate gains the maximum rate is 28%.

If your taxable income *{22.1}* does not exceed the endpoint for the 10% bracket shown in *Table 1-1* and you do not have 28% or unrecaptured Section 1250 gains, you do not owe any tax on any of your net capital gain *{6.3}* or on your qualified dividends *{5.2}*; the rate is zero (0%). For the most part, this is also true if your taxable income is within the 12% bracket *{Table 1-1}*, except that a small amount of income that would otherwise be taxed near the top of the 12% bracket does not qualify for the 0% rate. Specifically, the 0% rate on net capital gain and qualified dividends applies for 2026 if taxable income is no more than $98,900 if you are married filing jointly or a qualifying surviving spouse, $49,450 if you are single or married filing separately, or $66,200 if you are a head of household *{6.3}*. Note that the $98,900, $49,450, and $66,200 endpoints for the 0% rate are $1,900 less for joint returns and qualifying surviving spouses, $950 less for singles, and $1,250 less for head of household, than the endpoints for the 12% ordinary income bracket as shown in *Table 1-1*. For taxpayers whose taxable income exceeds the above ceiling for the 0% rate ($98,900, $49,450, or $66,200), some net capital gains (except for 28%/unrecaptured Section 1250 gains) and qualified dividends may still escape tax under the 0% rate, with the remainder subject to the 15% or 20% rate *{6.3}*.

If you are subject to the additional Medicare tax on net investment income because your modified adjusted gross income exceeds the threshold for your filing status, you will have to pay an additional 3.8% tax on some or all of the net investment income *{28.3}*.

Use the proper table or worksheet to compute regular income tax liability. To actually compute your 2026 regular income tax, look up your tax in the Tax Table *{22.2}* or use the Tax Computation Worksheet *{22.3}* only if you do not have net capital gains or qualified dividends. If you have 2026 net capital gain or qualified dividends, use the Qualified Dividends and Capital Gain Tax Worksheet or the Schedule D Tax Worksheet *{6.3}*. Depending on your income, you may also be liable for the additional 0.9% Medicare tax or the 3.8% net investment income tax *{22.8}*.

AMT. If you are subject to alternative minimum tax (AMT) on Form 6251, you generally apply either a 26% or 28% rate to your AMT taxable income (reduced by the applicable AMT exemption), but the favorable regular tax rates for net capital gains and qualified dividends also apply for AMT purposes *{23.1}*.

Table 1-1 Taxable Income Brackets for 2026 Assuming You Have Only Ordinary Income*

	Married filing jointly and qualifying surviving spouse	Single	Head of Household	Married filing separately
10% bracket for 2026 applies if taxable income is:	Up to $24,800	Up to $12,400	Up to $17,700	Up to $12,400
12% bracket for 2026 applies if taxable income is:	$24,801 through $100,800	$12,401 through $50,400	$17,701 through $67,450	$12,401 through $50,400
22% bracket for 2026 applies if taxable income is:	$100,801 through $211,400	$50,401 through $105,700	$67,451 through $105,700	$50,401 through $105,700
24% bracket for 2026 applies if taxable income is:	$211,400 through $403,550	$105,701 through $201,775	$105,701 through $201,750	$105,701 through $201,775
32% bracket for 2026 applies if taxable income is:	$403,551 through $512,450	$201,776 through $256,225	$201,751 through $256,200	$201,776 through $256,225
35% bracket for 2026 applies if taxable income is:	$512,451 through $768,700	$256,226 through $640,600	$256,201 through $640,600	$256,226 through $384,350
37% bracket for 2026 applies if taxable income is:	$768,701 or more	$640,601 or more	$640,601or more	$384,351 or more

*If you have qualified dividends and/or net capital gain, you must use the Qualified Dividends and Capital Gain Tax Worksheet, or the Schedule D Tax Worksheet to figure your tax liability; *see 6.3*.

1.3 Filing Separately Instead of Jointly

Filing a joint return saves taxes for a married couple where one spouse earns all, or substantially all, of the taxable income. If both you and your spouse earn taxable income, you should figure your tax on joint and separate returns to determine which method provides the lower tax.

Although your tax rate *{1.2}* will generally be higher on a separate return, filing separately may provide an overall tax savings (for both of you together) where filing separately allows you to claim more deductions. On separate returns, larger amounts of medical expenses or casualty losses may be deductible because lower adjusted gross income floors apply. Unless one spouse earns substantially more than the other, separate and joint tax rates are likely to be the same, regardless of the type of returns filed. The Mike & Fran Palmer Example below illustrates how filing separately can save a married couple taxes in some cases.

EXAMPLE

Mike and Fran Palmer are both under age 65. For 2026, Mike's adjusted gross income (AGI) is $84,775, and Fran's AGI is $60,000. All of their income is ordinary income (no qualified dividends or net capital gain) *{1.2}*. Fran has unreimbursed medical expenses of $16,605 *{15.2}* before taking into account the 7.5% of AGI floor *{15.1}*; Mike's unreimbursed medical expenses are $1,000. Personal property that Mike owned in his own name was damaged in a storm that was designated as a federal disaster *{19.1}*, and he has a disaster loss of $20,078 prior to taking into account the $100 floor and the 10% of AGI floor *{19.8}*. Mike has deductible mortgage interest expenses of $5,000 and Fran has $1,900. Mike's deductible state and local taxes are $2,399; Fran's are $1,000. Mike and Fran both made deductible charitable contributions of $3,000 (net of their 0.5% floor).

As the example worksheet below shows, filing separate returns for 2026 saves Mike and Fran an overall $1,658, because together they can deduct more on separate returns than on a joint return. They can each itemize deductions on a separate return because their deductions (*see* Line 7 below) exceed the $16,100 basic standard deduction allowed to a married person filing separately *{14.2}*. If they filed jointly, their deductible medical expenses and casualty loss would be substantially lower than the total they can claim on separate returns.

Item	Mike (Separately)	Fran (Separately)	Joint Return
1. AGI	$ 84,775	$ 60,000	$ 144,775
2. Medical expenses	1,000	16,605	17,605
Less 7.5% of AGI *{15.1}*	6,358	4,500	10,858
Allowable medical	0	12,105	6,747
3. Taxes *{16.1}*	2,399	1,000	3,399
4. Mortgage interest *{17.1}*	5,000	1,900	6,900
5. Disaster loss	20,078	0	20,078
Less $100 and 10% of AGI *{19.8}*	8,578		14,578
Allowable casualty loss deduction	11,500		5,500
6. Charitable contributions (after 0.5% AGI Floor)	3,000	3,000	6,000
7. Total itemized (Lines 2–6)	21,899	18,005	28,546
8. Taxable income (Line 1 minus Line 7)	62,876	41,995	116,229
9. Income tax for 2026 (Tax on Line 8)	8,545	4,791	14,994
Total tax filing separately (Line 9)	13,336		
Savings from filing separately ($14,994 – $13,336)	$ 1,658		

Planning Reminder

Changing From Separate to Joint Return

If you and your spouse file separate returns (including a return as a head of household if eligible; *see 1.12*), you can file an amended return (Form 1040-X) to change to a joint return. You generally have three years from the original due date (without extensions) of the separate returns to file the amended return.

However, if you file separate returns and either of you has received a notice of deficiency from the IRS, you cannot file a Tax Court petition in order to switch from separate returns to a joint return. The IRS and Tax Court have held that this rule applies not just to spouses who filed as married filing separately, but also where one of the spouses mistakenly files as head of household. The Eighth Circuit Court of Appeals, as well as the Fifth and Eleventh Circuits take a more favorable view. For example, the Eighth Circuit in 2015 reversed the Tax Court and held that the prohibition against changing to a joint return after a notice of deficiency and Tax Court petition applies to married persons filing separately, but not to a spouse who has filed as head of household.

Caution

Charitable Contributions Must Exceed 0.5% of AGI.

The 0.5% floor for charitable contributions is new for 2026. *See* Chapter 18.

State Consideration?

State Filing Status May Vary From Federal

Some states permit a different filing status than what was filed for your federal return. For example, your federal return may be filed as "Married filing jointly," but you may be able to file the state return as "Married filing separately." Review your state's Department of Revenue website for specific details.

Suspicious of your spouse's tax reporting? If you suspect that your spouse is evading taxes and may be liable on a joint return, you may want to file a separate return. By filing separately, you avoid liability for unpaid taxes due on a joint return, plus interest and penalties.

If you do file jointly and the IRS tries to collect tax due on the joint return from you personally, you may be able to avoid liability under the innocent spouse rules *{1.7}*. If you are no longer married to or are separated from the person with whom you jointly filed, you may be able to elect separate liability treatment *{1.8}*.

Standard deduction restriction on separate returns. Keep in mind that if you and your spouse file separately, both of you must either itemize or claim the standard deduction, which for 2026 is $16,100 for married persons filing separately who are under age 65 and not blind *{14.3}*. Thus, if you and your spouse are both under age 65, you file separate returns for 2026 and your spouse itemizes deductions on Schedule A of Form 1040 or 1040-SR, your standard deduction is zero; you do not have the option of claiming the $16,100 standard deduction and must itemize your deductions on your separate Schedule A even if they are much less than $16,100.

Certain benefits require joint return and some benefits harder to claim if filing separately. If married, you must file jointly to claim certain tax benefits, and other tax breaks are much harder to claim on separate returns. For example, you must file jointly to claim the American opportunity credit or lifetime learning credit *{33.7}*, the premium tax credit (unless a spouse is a victim of domestic violence) *{25.13}*, and the deduction for student loan interest *{33.13}*. You also must file jointly to deduct a contribution to an IRA for a nonworking spouse *{9.3}*.

Some benefits are allowed on separate returns only if you live apart from your spouse for all or part of the year. The adoption credit, dependent care credit and the Earned Income Credit *{Chapter 25}*, must be claimed on a joint return unless you live apart for the last six months of the year. If you want to take advantage of the $25,000 rental loss allowance *{11.2}* or the credit for the elderly and disabled *{Chapter 34}*, you must file jointly unless you live apart for the whole year.

IRA contributions are restricted on separate returns. Roth IRA contributions generally may not be made by a married person filing separately because of an extremely low phase-out range *{9.21}*. Similarly, deductions for traditional IRA contributions are restricted on separate returns where the spouses live together at any time during the year and either is an active plan participant *{9.4}*.

In figuring whether you are subject to alternative minimum tax (AMT), your exemption amount is half that allowed to a joint return filer *{23.1}*.

If you receive Social Security benefits, 85% of your benefits generally are subject to tax on a separate return unless you live apart the entire year *{34.3}*. Similarly, for purposes of figuring Medicare Part B and Part D premiums, harsher premium surcharge rules apply to married persons filing separately who live together at any time during the year *{34.10}*.

1.4 Filing a Joint Return

If you are married *{1.1}* at the end of the year, you may file a joint return with your spouse. Same-sex marriages that are legally entered into are recognized for all federal tax purposes; *see 1.1*.

You may not file a 2026 joint return if you were divorced or legally separated under a decree of divorce or separate maintenance that is final by the end of the year. You may file jointly for 2026 if you separated during the year under an interlocutory (temporary or provisional) decree or order, so long as a final divorce decree was not entered by the end of the year. If during the period that a divorce decree is interlocutory you are permitted to remarry in another state, the IRS recognizes the new marriage and allows a joint return to be filed with the new spouse. However, courts have refused to allow a joint return where a new marriage took place in Mexico during the interlocutory period in violation of California law.

Would you be better off filing separately instead of jointly? Filing jointly saves taxes for many married couples, but if you and your spouse both earn taxable income, in some cases overall tax liability is reduced by filing separately. This is particularly true where one

spouse has deductible expenses that could be claimed on a separate return but not on a joint return because of floors based on adjusted gross income *{1.3}*.

Once you file jointly, you cannot switch to separate returns for that year after the due date for the return has passed. The only exception is for the executor of a deceased spouse, who has one year from the due date (plus extensions) to change to a separate return for the deceased *{1.14}*. Once you file separately, you generally may file an amended return to change to a joint return; *see* the Planning Reminder in *{1.3}*.

Both spouses generally liable on joint return but "innocent" spouse may be relieved of liability. When you and your spouse file jointly, each of you may generally be held individually liable for the entire tax due, plus interest and any penalties. The IRS may try to collect the entire amount due from you even if your spouse earned all of the income reported on the joint return, or even if you have divorced under an agreement that holds your former spouse responsible for the taxes on the joint returns you filed together. However, there are exceptions to this joint liability rule for "innocent" spouses and for divorced or separated persons.

You may be able to obtain innocent spouse relief where tax on your joint return was understated without your knowledge because your spouse omitted income or claimed erroneous deductions or tax credits. In such a case, you may claim innocent spouse relief on Form 8857 within two years from the time the IRS begins a collection effort from you for taxes due on the return *{1.7}*.

If you are divorced, legally separated, living apart or the spouse with whom you filed jointly has died, you may be able to avoid tax on the portion of a joint return deficiency that is allocable to your ex-spouse by claiming separate liability relief on Form 8857 *{1.8}* within two years of the time the IRS begins collection efforts against you. In some cases, it may be easier to qualify for relief under the separate liability rules than under the innocent spouse rules because innocent spouse relief may be denied if you had "reason to know" that tax was understated on the joint return, whereas the IRS must show that you had "actual knowledge" of the omitted income or erroneous deductions or credits to deny a separate liability election.

Signing the joint return. Both you and your spouse must sign the joint return. Under the following rules, if your spouse is unable to sign, you may sign for him or her.

If, because of illness, your spouse is physically unable to sign the joint return, you may, with the oral consent of your spouse, sign his or her name on the return followed by the words "By _____, Husband (or Wife)" (The IRS continues to use husband and wife in its instructions.). You then sign the return again in your own right and attach a signed and dated statement with the following information: (1) the type of form being filed, (2) the tax year, (3) the reason for the inability of the sick spouse to sign, and (4) that the sick spouse has consented to your signing.

To sign for your spouse in other situations, you need authorization in the form of a power of attorney, which must be attached to the return. IRS Form 2848 may be used.

If your spouse does not file, you may be able to prove you filed a joint return even if your spouse did not sign and you did not sign as your spouse's agent where:

- You intended it to be a joint return—your spouse's income was included (or the spouse had no income).
- Your spouse agreed to have you handle tax matters and you filed a joint return.
- Your answers to the questions on the tax return indicate you intended to file a joint return.
- Your spouse's failure to sign can be explained.

EXAMPLE

The Hills generally filed joint returns. In one year, Mr. Hill claimed joint return filing status and reported his wife's income as well as his own; in place of her signature on the return, he indicated that she was out of town caring for her sick mother. She did not file a separate return. The IRS refused to treat the return as joint. The Tax Court disagreed. Since Mrs. Hill testified that she would have signed had she been available, her failure to do so does not bar joint return status. The couple intended to make a joint return at the time of filing.



Filing Tip

Spouse in Combat Zone

If your spouse is in a combat zone or a qualified hazardous duty area *{35.4}*, you can sign a joint return for your spouse. Attach a signed explanation to the return.

1.5 Nonresident Alien Spouse



Filing Tip

Election To File a Joint Return

Where a U.S. citizen or resident is married to a nonresident alien, the couple may file a joint return if both elect to be taxed on their worldwide income. The requirement that one spouse be a U.S. citizen or resident need be met only at the close of the year. Joint returns may be filed in the year of the election and all later years until the election is terminated.

If you are married and at the end of the year one of you is a U.S. citizen or resident alien *{1.18}* and the other spouse is a nonresident alien *{1.16}*, a joint return may be filed only if both of you make a special election to treat the nonresident alien spouse as a U.S. resident, which means you will both be taxed on your worldwide income. The same rule applies if one spouse is a "dual status" taxpayer for the year. Thus, if you are a U.S. citizen and your spouse is a nonresident alien at the beginning of the year who becomes a resident during the year, the special election must be made to file jointly. The election is made by attaching a signed statement to the joint return, indicating your intent to be treated as full-year U.S. residents. If you and your spouse make the election, you must keep books and records of your worldwide income and give the IRS access to such books and records.

If the election is not made, you may be able to file as head of household if you have another qualifying person and meet the head of household requirements *{2.2}*.

Once the election is made to treat a nonresident alien spouse as a U.S. resident, the election applies to later years unless you revoke it, or it is suspended or terminated under IRS rules. A revocation before the due date of the return is effective for that return. An election is suspended if neither spouse is a citizen or resident for any part of the taxable year. If an election is suspended it may again become effective if either spouse becomes a U.S. citizen or resident. If either spouse does not keep adequate records or provide the necessary information on world-wide income to the IRS, the election is terminated. An election also terminates if you legally separate under a decree of divorce or separate maintenance; the termination applies as of the beginning of the year in which the separation occurs. The election automatically terminates in the year following the year of the death of either spouse. However, if the survivor is a U.S. citizen or resident and has a qualifying child, he or she may be able to use joint return rates as a qualifying surviving spouse *{1.11}* in the two years following the year of the spouse's death. Once the election is terminated, neither spouse may ever again make the election to file jointly.

1.6 Community Property Rules



Legislative Alert

States with Elective Community Property

Alaska, Tennessee, South Dakota, Kentucky, and Florida have a "community property" election by agreement or by a trust. However, Publication 555, Community Property, indicates the publication does not apply to individuals in elective community property states. As a result, extra caution should be taken when moving from or to community property states.

If you live in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin, the income and property you and your spouse acquire during the marriage is generally regarded as community property. Community property means that each of you owns half of the community income and community property, even if legal title is held by only one spouse. But note that there are some instances in which community property rules are disregarded for tax purposes; these instances are clearly highlighted in the pertinent sections of this book.

Form 8958 required if filing separately. If the community property rules apply for tax purposes and you and your spouse file separate returns instead of filing jointly, then on your separate returns each of you must report half of your combined community income and deductions in addition to your separate income and deductions. You must attach Form 8958 to your separate Form 1040 or 1040-SR to show how the allocations between you were made.

Separate property may still be owned. Property owned before marriage generally remains separate property; it does not become community property when you marry. Property received during the marriage by one spouse as a gift or an inheritance from a third party is generally separate property. In some states, if the nature of ownership cannot be fixed, the property is presumed to be community property.

In some states, income from separate property may be treated as community property income. In other states, income from separate property remains the separate property of the individual owner.

Divorce or separation. If you and your spouse divorce, your community property automatically becomes separate property. A separation agreement or a decree of legal separation or of separate maintenance may or may not end the marital community, depending on state law.

Community income rules may not apply to separated couples. If spouses in a community property state file separate returns, each spouse must generally report one-half of the community income. However, a spouse may be able to avoid reporting income earned by his or her spouse if they live apart during the entire calendar year and do not file a joint return.

To qualify, one or both spouses must have earned income for the year and none of that earned income may be transferred, directly or indirectly, between the spouses during the year. One spouse's payment to the other spouse solely to support the couple's dependent children is not a disqualifying transfer. If the separated couple qualifies under these tests, community income is allocated as follows:

- Earned income (excluding business or partnership income) is taxed to the spouse who performed the personal services.
- Business income (other than partnership income) is treated as the income of the spouse carrying on the business.
- Partnership income is taxed to the spouse entitled to a distributive share of partnership profits.

Innocent spouse rules apply to community property. As discussed above, community property rules may not apply to earned income where spouses live apart for the entire year and file separate returns. In addition, a spouse who files a separate return may be relieved of tax liability on community income that is attributable to the other spouse if he or she does not know (or have reason to know) about the income and if it would be inequitable under the circumstances for him or her to be taxed on such income. Even if you fail to qualify for such relief because you knew (or had reason to know) about the income, the IRS may relieve you of liability if it would be inequitable to hold you liable.

The IRS may disregard community property rules and tax income to a spouse who treats such income as if it were solely his or hers and who fails to notify the other spouse of the income before the due date of the return (including extensions).

Relief from liability on joint return. If you file jointly, you may elect to avoid liability under the innocent spouse rules *{1.7}* and the separate liability rules *{1.8}*. In applying those rules, items that would otherwise be allocable solely to your spouse will not be partly allocated to you merely because of the community property laws.

Death of spouse. The death of a spouse dissolves the community property relationship, but income earned and accrued from community property before death is community income.

Moving from a community property to a common law (separate property) state. Most common law states (those which do not have community property laws) recognize that both spouses have an interest in property accumulated while residing in a community property state. If the property is not sold or reinvested, it may continue to be treated as community property. If you and your spouse sell community property after moving to a common law state and reinvest the proceeds, the reinvested proceeds are generally separate property, which you may hold as joint tenants or in another form of ownership recognized by common law states.

Moving from a common law to a community property state. Separate property brought into a community property state generally retains its character as separately owned property. However, property acquired by a couple after moving to a community property state is generally owned as community property. In at least one state (California), personal property that qualifies as community property is treated as such, even though it was acquired when the couple lived in a common law state.

1.7 Innocent Spouse Rules

Unless you qualify for relief, you are personally liable for any tax due on a joint return you have filed, whether you are still married to the spouse with whom you filed the joint return or you have since divorced or separated.



IRS Alert

Registered Domestic Partners Must Split Income

Registered domestic partners in California, Nevada, and Washington are subject to the federal income tax community property rules. Each registered domestic partner must report half of the combined community property income (as determined by state law) on his or her federal tax return, whether from earnings for personal services or income from property.

For federal tax purposes, registered domestic partners are not considered married *{1.1}* and may not file joint returns. They must file as single taxpayers unless eligible for head of household status. Each registered domestic partner must file Form 8958 showing how income and deductions are allocated between the partners.

Legally married same-sex couples are treated as married for all federal tax purposes; *see 1.1*.



Caution

Knowledge May Bar Innocent Spouse Relief

The IRS may try to defeat your claim for innocent spouse relief on the grounds that you knew, or should have known, that tax was understated on the joint return.

If you are still married and living with the same spouse, the only way to avoid personal liability on the joint return is to qualify as an innocent spouse under the rules in this section, or to apply for equitable relief from the IRS *{1.9}*.

If you are divorced, legally separated, living apart, or your spouse has died, you may either seek relief under the innocent spouse rules below or you may be able to claim separate liability treatment *{1.8}* or seek equitable relief *{1.9}* from the IRS.

Qualifying tests for innocent spouse relief. You must satisfy all of the following conditions to qualify for innocent spouse relief:

1. The tax shown on the joint return was understated due to the omission of income by your spouse, or erroneous deductions or credits claimed by your spouse. This means that your actual tax liability is more than the amount shown on the joint return. Innocent spouse relief is not available if the right amount of tax was reported on the return but it was not paid. However, where tax was underpaid, you may request equitable relief *{1.9}*.
2. When signing the joint return, you did not know and had no reason to know that tax on the return was understated.

   In considering whether you had "reason to know" of the tax understatement, the IRS and Tax Court will ask whether a reasonable person in similar circumstances would have known of it. All facts and circumstances will be taken into account including your education level, business experience, involvement in the activity that gave rise to the understatement, and whether you failed to ask about items on the joint return or about omissions from the return that a reasonable person would have questioned.

   Although the "knowledge" test can be a significant hurdle, partial relief may be available. If you knew or had reason to know that there was "some" tax understatement on the return but were unaware of the extent of the understatement, innocent spouse relief is available for the liability attributable to the portion of the understatement that you did not know about or have reason to know about.
3. Taking all the circumstances into account, it would be inequitable to hold you liable for the tax. The IRS and courts will consider the extent to which you benefited from the tax underpayment, beyond receiving normal support. Thus, it is possible to be held liable for a tax understatement that you did not know about or have reason to know about, on the grounds that you benefited from the underpayment in the form of a high standard of living. The IRS will also consider whether you later divorced or were deserted by your spouse.
4. You file Form 8857 to request innocent spouse relief.



Law Alert

IRS Must Notify Non-Electing Spouse

After the filing of Form 8857, the IRS is required to notify the non-electing spouse (or former spouse) of an electing spouse's request for relief and allow the non-electing spouse an opportunity to participate in the determination. If the IRS makes a preliminary determination granting full or partial relief to the electing spouse, the non-electing spouse may file a written protest and obtain an Appeals Office conference.

Request for relief must be filed on Form 8857. You must file Form 8857 to request innocent spouse relief. You must provide details concerning your finances and your involvement in preparing the joint returns for which relief from liability is sought. The request must be made no later than two years from the date that the IRS first begins collection activity against you for tax due on the joint return, such as (1) by reducing a current refund by an amount the IRS says you owe on the prior joint return, or (2) garnishing your wages to recover tax the IRS says you owe on the joint return. If the request is not made by the end of that two-year period, you will not be granted innocent spouse relief even if you meet the above qualification tests. However, for equitable relief, the two-year deadline for filing a request is extended to 10 years from the date that the tax liability was assessed *{1.9}*.

The final determination on whether innocent spouse relief is granted is made by the IRS Office of Chief Counsel and not the Cincinnati Centralized Innocent Spouse Office (CCISO) that first reviews all requests.

Tax Court appeal. If the IRS denies your request for innocent spouse relief, you have 90 days to petition the Tax Court for review. If you petition the Tax Court, the non-electing spouse has the right to intervene in the proceeding.

1.8 Separate Liability Relief for Former Spouses

If the IRS attempts to collect the taxes due on a joint return from you and you have since divorced or separated, you may be able to avoid or at least limit your liability by filing Form 8857 to request separate liability relief. If you qualify, you will be liable only for the part of the tax liability (plus interest and any penalties) that is allocable to you. If a tax deficiency is entirely allocable to your former spouse under the rules discussed below, you will not have to pay any part of it. However, you may not avoid liability for any part of a tax deficiency allocable to the other spouse if you had actual knowledge of the income or expense item that gave rise to the tax deficiency that the IRS is trying to collect. *See* below for details of the knowledge test.

Furthermore, you may not avoid liability to the extent that certain disqualified property transfers were made between you and the other spouse. Relief may be completely denied for both spouses if transfers were made as part of a fraudulent scheme.

As with innocent spouse relief *{1.7}*, separate liability relief applies only to tax understatements where the proper tax liability was not shown on the joint return. If the proper liability was shown but not paid, equitable relief *{1.9}* may be requested.

Are you eligible for separate liability relief? You may request separate liability relief on Form 8857 if, at the time of filing:

1. You are divorced or legally separated from the spouse with whom you filed the joint return, or
2. You have not lived with your spouse (with whom you filed the return) at any time in the 12-month period ending on the date you file the election, or
3. The spouse with whom you filed the joint return has died.

You may be eligible for relief even if you knew about the errors if:

1. You were a victim of spousal abuse or domestic violence before signing the return.
2. You didn't challenge the items on the return because of fear.
3. You signed the joint return because you were pressured or threatened.

You must be prepared to explain to the IRS which items giving rise to the tax understatement are allocable to you and which are allocable to the other spouse. However, you do not have to actually compute your separate liability on Form 8857.

Deadline for relief request. To request separate liability relief, you must file Form 8857 no later than two years after the IRS begins collection activities against you.

Actual knowledge of the item allocable to the other spouse bars relief. If you request separate liability treatment and the IRS shows that at the time you signed the joint return you had actual knowledge of an erroneous item (omitted income or improper deduction or credit) that would otherwise be allocated to the other spouse, you may not avoid liability for the portion of a deficiency attributable to that item. However, if you signed the return under duress, separate liability is not barred despite your knowledge because a return signed under duress is not considered to be a joint return. You are not liable for tax due on that return and you will be treated as filing separately.

The actual knowledge test is intended by Congress to be more favorable to the taxpayer than the "had reason to know" test under the innocent spouse rules *{1.7}*. Congressional committee reports state that the IRS is required to prove that an electing spouse had actual knowledge of an erroneous item and may not infer such knowledge. According to the Tax Court, the IRS must prove actual knowledge by a "preponderance of the evidence." If the IRS proves actual knowledge of an erroneous item, that item is treated as allocable to both spouses, so the IRS can collect that portion of the deficiency from either spouse.

Where income attributable to your spouse was omitted from your joint return, you will be considered to have "actual knowledge" of it, and separate liability relief will not be allowed, if you knew your spouse received the income, even if you did not know whether



Caution

Actual Knowledge Bars Relief

Separate liability relief generally allows you to avoid liability for the portion of a tax deficiency that is allocable to the other spouse. Such relief is unavailable, however, to the extent that you had actual knowledge of the omitted income or deducted item that gave rise to the tax deficiency.

the correct taxable amount was reported on the return; *see* the following Example 1 . In the case of a disallowed deduction, the Tax Court requires the IRS to prove that you had actual knowledge of the "factual circumstances" that made the item nondeductible in order for relief to be denied. In one case, the Tax Court denied relief to a spouse who prepared the joint returns on which unsubstantiated Schedule C deductions attributable to her former husband's business were claimed. She had "actual knowledge" because she had access to the business records and knew the extent of the substantiation available for the deductions when she prepared the returns.

In cases involving limited partnership tax-shelter deductions, the IRS may be unable to prove that the spouse claiming relief had disqualifying knowledge, but relief may still be partially denied if he or she received a tax benefit from the deductions; *see* the following Example 3 .

EXAMPLES

1. Cheshire knew that her husband had received an early retirement distribution. She knew that the distribution had been deposited into their joint account and used to pay off a mortgage, buy a truck, pay other family expenses and provide start-up capital for the husband's business. Cheshire's husband falsely told her that a CPA had determined that most of his retirement distribution was not taxable. After they divorced, Cheshire requested separate liability election to avoid tax on the unreported income. She claimed that she was entitled to relief because she did not know that the taxable amount of the retirement distribution had been misstated on their joint return. The Tax Court held that she could not obtain relief because she knew about the retirement distribution. It is immaterial that she did not know that the reporting of the distribution on the tax return was incorrect. The Court of Appeals for the Fifth Circuit affirmed. The District of Columbia Circuit has also denied a wife's claim for relief because she had actual knowledge of her husband's retirement income.
2. You file a joint return on which you report wages of $150,000 and your husband reports $30,000 of self-employment income. The IRS examines your return and determines that your husband failed to report $20,000 of income, resulting in a $9,000 deficiency. You file a claim for separate liability relief with the IRS after obtaining a divorce.

   Assume that the IRS proves that you had actual knowledge of $5,000 of the unreported income but not the other $15,000. You are liable for 25% of the deficiency, or $2,250, allocable to the $5,000 of income that you knew about ($2,250 = $5,000 ÷ $20,000 × $9,000). Your former spouse is liable for the entire deficiency since the unreported income was his. The IRS can collect the entire deficiency from him, or can collect $2,250 from you and the balance from him.
3. Mora's husband arranged an investment in a cattle-breeding tax shelter partnership. He put the partnership in both of their names, although Mora did not sign any of the partnership papers. On their joint returns, they claimed partnership losses which turned out to be inflated; deductions were based on overvalued cattle. After their divorce, the IRS disallowed the partnership losses and Mora elected separate liability relief. The IRS refused, claiming that she participated in making the investment so the claimed losses were allocable to her as well as her husband. The Tax Court held that Mora was not involved in making the investment and so the partnership losses are allocable to the husband unless Mora knew the factual basis for the denial of the deductions or she received a tax benefit from the deductions. She did not know about the overvaluation of the cattle, which was the factual basis for the IRS' denial of the deductions. In fact, the IRS conceded that neither spouse understood the nature of their investment or the basis of the deductions. This may often be the case where passive investors claim deductions passed through to them by a limited partnership. For this reason, the IRS argued that the "knowledge of the factual basis" test makes it too easy for limited partnership investors to obtain relief. The Tax Court responded that the law does not distinguish between passive and active investments and there is no policy reason for the courts to create a distinction. Furthermore, although the husband also lacked knowledge of the factual basis for the disallowance of the losses, he cannot avoid liability for the deficiency since the erroneous deductions would be allocable to him on a separate return.

Despite Mora's "win" on the actual knowledge issue, she remained partially liable for the deficiency because she received a tax benefit from the erroneous deductions. Under the tax benefit rule discussed below, the deductions first offset the income that would have been reported by the husband had he filed a separate return. The balance of the deductions benefited Mora by reducing her separate return income. If she benefited from 25% of the deductions, she would remain liable for 25% of the deficiency.

Allocating tax liability between spouses. Generally, if you claim separate liability relief, you are liable only for the portion of the tax due on the joint return that is allocable to you, determined as if you had filed a separate return. If erroneous items (omitted income or improper deductions or credits) are allocable to the other spouse but you had actual knowledge of the items as discussed above, you cannot avoid liability and the IRS remains able to collect the tax due from either of you. Where deductions are allocable to the other spouse and you are not barred from relief by the actual knowledge test, you can still be held partially liable if you received a tax benefit from the deductions; *see* the discussion of the tax benefit rule below.

In general, the allocation of a tax deficiency depends on which spouse's "items" gave rise to the deficiency. The items may be omitted income or disallowed deductions or credits. Items are generally allocated to the spouse who would have reported them on a separate return. If a deficiency is based on unreported income, the deficiency is allocated to the spouse who earned the income. Income from a jointly owned business is allocated equally unless you provide evidence that more should be allocated to the other spouse. Similarly, if a deficiency is based on the denial of personal deductions, the deficiency is allocated equally between you unless you show that a different allocation is appropriate. A deficiency based on the denial of business deductions is allocated according to your respective ownership shares in the business. If the IRS can show fraud, it can reallocate joint return items.

On Form 8857, you do not have to figure the portion of the deficiency for which you are liable. The IRS will figure your separate liability (and any related interest and penalties).

EXAMPLES

1. After you obtain a divorce, the IRS examines a joint return you filed with your former husband and assesses a tax deficiency attributable to income he failed to report. If you did not know about the omitted income and timely elect separate liability treatment, you are not liable for any part of the tax deficiency, which is entirely allocable to your former husband who earned the income. You are not liable even if the IRS is unable to collect the tax from your former husband and you have substantial assets from which the tax could be paid.
2. The IRS assesses a joint return deficiency attributable to $35,000 of income that your former spouse failed to report and $15,000 of disallowed deductions that you claimed. Both of you may make the separate liability election and limit your respective liabilities.

   If you claim relief, your liability will be limited to 30% of the deficiency, as your disallowed deductions of $15,000 are 30% of the $50,000 of items causing the deficiency. If your former husband makes the claim, he will be liable for the remaining 70% of the deficiency (his $35,000 of unreported income is 70% of the $50,000 of items causing the deficiency). *See* IRS Publication 971 for further information on Innocent Spouse Relief.

   If either of you does not make a relief claim, the non-requesting person could be held liable for 100% of the deficiency unless innocent spouse relief is available or the IRS grants equitable relief.

Tax benefit rule limits relief based on erroneous deductions or credits. The tax benefit limitation is an exception to the general rule that allocates items between the spouses as if separate returns had been filed. If you received a tax benefit from an erroneous deduction or credit that is allocable to the other spouse, you remain liable for the proportionate part of the deficiency. You are treated as having received a tax benefit if the disallowed deduction exceeded the income that would have been reported by the other spouse on a hypothetical separate return.

Transfers intended to avoid tax. You may be held liable for more than your allocable share of a deficiency if a disqualified asset transfer was made to you by your spouse with a principal purpose of avoiding tax. Transfers made to you within the one-year period preceding the date on which the IRS sends the first letter of proposed deficiency are presumed to have a tax avoidance purpose unless they are pursuant to a divorce decree or decree of separate maintenance. You may rebut the presumption by showing that tax avoidance was not the principal purpose of the transfer. If the tax avoidance presumption is not rebutted, the transfer is considered a disqualified transfer and the value of the transferred asset adds to your share of the liability as otherwise determined under the above election rules.

EXAMPLE

On a joint return, you report wages of $100,000 and your husband reports $15,000 of self-employment income. You divorce the following year. The IRS examines the return and disallows a $20,000 business expense deduction claimed by your former husband, resulting in a $5,600 tax deficiency. You elect separate liability relief. Of the $20,000 deduction, $15,000 is allocable to your former husband as that amount offset his entire income. The $5,000 balance offset your separate income and thereby gave you a tax benefit. Your former husband will be liable for 75% of the deficiency ($4,200) and you will be liable for the 25% balance ($1,400).

If your former husband had reported income of $30,000 instead of $15,000, you would not be liable for any part of the deficiency under the tax benefit rule. The deduction is attributed entirely to his income, so the entire deficiency is allocated to him.

These allocations assume that the IRS does not show that you had "actual knowledge" *(see above)* of the deductions attributable to your former husband. To the extent you had such knowledge, the deductions are allocable to both of you, so both of you remain liable for that part of the deficiency.

If the IRS proves that you and your former spouse transferred assets between you as part of a fraudulent scheme, neither of you will be allowed to claim separate liability relief; both of you will remain individually liable for the entire joint return deficiency. *See* IRS Publication 971 for further information on Innocent Spouse Relief.

Appeal to Tax Court. You may petition the Tax Court if the IRS disputes your claim or your allocation of liability. The petition must be filed within 90 days of the date on which the IRS mails a determination to you by registered or certified mail if the IRS mailing is within six months of the filing of the election. If an IRS notice is not mailed within the six-month period, a Tax Court petition may be filed without waiting for an IRS response or, if you do wait, you have until 90 days after the date the IRS mails the notice to file the petition.

The IRS may not take any collection action against you during the 90-day period and if the Tax Court petition is filed, the suspension lasts until a final court decision is made.

1.9 Equitable Relief

The IRS may grant equitable relief for liability on a joint return where innocent spouse relief *{1.7}* and separate liability *{1.8}* are not available. For example, separate liability relief and innocent spouse relief are not available where the proper amount of tax was reported on a joint return but your spouse failed to pay the tax owed. If you signed a correct return on which tax was owed and, without your knowledge, your spouse used the funds intended for payment of the tax for other purposes, the IRS may grant you equitable relief. A request for equitable relief is made on Form 8857. The IRS may also grant equitable relief in cases where the proper amount of tax was understated on the joint return if it would be inequitable to hold you liable.

Threshold conditions you must meet for relief. Each of the following conditions must be met before the IRS will even consider granting you equitable relief:

1. You filed a joint return for the year that relief is sought.
2. Relief is not available under the innocent spouse *{1.7}* or separate liability *{1.8}* rules.

Court Decision

Equitable Relief for Interest and Penalties Based on Own Income

The Tax Court held that a business owner was entitled to equitable relief for late-filing and late-payment penalties and most of the interest assessed by the IRS although the underlying tax liability was attributable to his own income. The taxpayer had relied on his spouse to handle the books for the business and deal with their accountant. She had the accountant prepare their 2003 joint return and the taxpayer signed it, but she never mailed the return, for reasons unknown. After she died in 2005, the taxpayer discovered that the return had not been filed, and in September 2006 he filed a 2003 return reporting his income (the wife had no 2003 income) but did not pay the tax due on the return.

The taxpayer asked the Tax Court for equitable relief from the IRS' interest charges and penalties but not for the tax on the underpayment itself, which he had the legal obligation to pay. The Court noted that the IRS' own guidelines (Revenue Procedure 2013-34) allow equitable relief to be granted where the other spouse's fraud was responsible for the nonpayment of tax, even though the liability was attributable to the requesting spouse (threshold condition 6; *see 1.9*). Here, the taxpayer's wife misled him into thinking that the return had been filed and the tax paid. It would be inequitable to hold him liable for the late filing and payment penalties and for the portion of interest that accrued while he reasonably believed that the tax had been paid (the interest from the due date of the 2003 return until he signed and filed the return in September 2006).

3. No assets were transferred between you and your spouse as part of a fraudulent scheme.
4. Your spouse did not transfer assets to you for the purpose of tax avoidance. If there was such a transfer, relief can be granted only to the extent income tax liability exceeds the value of these assets.
5. You did not file or fail to file the return with fraudulent intent.
6. The income tax liability for which you are seeking relief is attributable to the other spouse (with whom the joint return was filed). There are exceptions to this requirement if community property law applies, you have nominal ownership of property subject to a deficiency, the other spouse misappropriated funds intended for payment of the tax without your knowledge, or you did not challenge the treatment of items on the joint return because of prior abuse that made you fear retaliation by the other spouse.

Deadline for requesting equitable relief. If the IRS claims that you are liable for unpaid tax on the joint return, you may submit a claim for equitable relief until the statute of limitations on IRS collections expires, which generally is 10 years after the tax has been assessed.

Relief granted in streamlined determination. If you meet the threshold requirements (shown above) for obtaining equitable relief, the IRS will grant relief in a streamlined determination if you are no longer married, you would face economic hardship if relief were not granted, and you did not know or have reason to know that tax was understated on the joint return or that the tax shown would not be paid. Streamlined relief will not be denied even if you had such knowledge or reason to know, if you were subjected to abuse by the other spouse or you were unable to challenge how items were treated on the joint return or why the tax due was not paid because the other spouse controlled the household finances. If the conditions for streamlined relief are met, the other factors normally taken into account (discussed below) will not be considered.

Factors the IRS will consider. If the threshold conditions are satisfied and you do not qualify for streamlined relief as just discussed, you must convince the IRS that equitable relief is appropriate. The IRS will consider all the facts and circumstances. *See* IRS Publication 594 for instructions on how you can request relief from a balance due.

The following is a nonexclusive list of factors that the IRS will take into account (Revenue Procedure 2013-34) in determining whether to grant equitable relief: whether you are separated or divorced from the spouse with whom you filed the joint return, whether you would suffer economic hardship (i.e., be unable to meet basic living expenses), whether you received any significant benefit from the unpaid tax or item giving rise to the deficiency (beyond normal support), whether you knew or had reason to know that tax was understated on the joint return or that the tax would not be paid, whether you were obligated to pay the outstanding tax liability by a divorce decree or other legally binding agreement, whether you have made a good faith effort to comply with the tax laws in later years, and whether you were in poor health (physical or mental) when you signed the joint return or you requested relief.

In considering whether to grant equitable relief, the IRS has expanded the weight that it gives to abuse of the spouse seeking relief by the other spouse (with whom the joint return was filed), or the other spouse's financial control. If you are requesting equitable relief and were the victim of physical or psychological abuse, or were unable to challenge how items were treated on the joint return or why taxes were not paid because the other spouse controlled the family finances, the abuse or lack of financial control may mitigate other factors that might otherwise weigh against granting equitable relief (Revenue Procedure 2013-34). For example, ordinarily, if you knew or had reason to know that income was omitted from the joint return, or that the other spouse would not or could not pay the tax due on the return, such "knowledge or reason to know" would be a factor weighing against your request for equitable relief. However, if you were abused or unable to challenge the tax treatment or nonpayment because the other spouse controlled the finances, this will favor the granting of relief even if you knew or had reason to know that there was a tax understatement or that the tax would not be paid.



Legislative Alert

Taxpayer First Act Allows Tax Court to Consider Equitable Relief Requests De Novo

The standard of review by the court is "de novo," meaning it can take a new look at the case without being restricted to the administrative proceedings.

Appeal to Tax Court. If the IRS denies your request for equitable relief, you may petition the Tax Court for review of the IRS decision. The petition must be filed with the Tax Court no later than the 90th day after the date that the IRS mails its final determination notice to you.

1.10 Death of Your Spouse in 2026

If your spouse died in 2026, you are considered married for the whole year. If you did not remarry in 2026, you may file a 2026 joint return for you and your deceased spouse. Generally, you file a joint return with the executor or administrator. But you alone may file a joint return if you are otherwise entitled to file jointly and:

1. The deceased did not file a separate return, and
2. Someone other than yourself has not been appointed as executor or administrator before the due date for filing the return. An executor or administrator appointed after the joint return is filed may revoke the joint return within the one-year period following the due date.



Filing Instruction

Reporting Income of Deceased Spouse

If your spouse died during the year and you are filing a joint return, include his or her income earned through the date of death.

If you do file jointly, you include on the return all of your income and deductions for the full year and your deceased spouse's income and deductions up to the date of death *{1.14}*.

For 2027 and 2028, you may be able to file as a qualifying surviving spouse if a dependent child lives with you *{1.11}*.

Joint return barred. As a surviving spouse, you may not file a joint return for you and your deceased spouse if:

1. You remarry before the end of the year of your spouse's death. In this case you may file jointly with your new spouse. A final return for the deceased spouse must be filed by the executor or administrator using the filing status of married filing separately.
2. You or your deceased spouse has a short year because of a change in annual accounting period.
3. Either of you was a nonresident alien at any time during the tax year; but *see 1.5*.



Planning Reminder

Possible Estate Insolvency

If you will be appointed executor or administrator and are concerned about estate insolvency, it may be advisable to hedge as follows: (1) File separate returns. If it is later seen that a joint return is preferable, you have three years to change to a joint return. (2) File jointly but postpone being appointed executor or administrator until after the due date of the joint return. In this way, the joint return may be disaffirmed if the estate cannot cover its share of the taxes.

Executor or administrator may revoke joint return. If an executor or administrator is later appointed, he or she may revoke a joint return that you alone have filed by filing a separate return for the decedent. Even if you have properly filed a joint return for you and the deceased spouse (as just discussed), the executor or administrator is given the right to revoke the joint return. But a state court held that a co-executrix could not refuse to sign a joint return where it would save the estate money.

To revoke the joint return, the executor must file a separate return within one year of the due date (including extensions). The executor's separate return is treated as a late return; interest charges and a late filing penalty apply. The joint return that you filed is deemed to be your separate return. Tax on that return is recalculated by excluding items belonging to your deceased spouse.

Signing the return. A joint return reporting your deceased spouse's income should list both of your names. Where there is an executor or administrator, the return is signed by you as the surviving spouse and the executor or administrator in his or her official capacity. If you are the executor or administrator, sign once as surviving spouse and again as the executor or administrator. Where there is no executor or administrator, you sign the return, followed by the words "filing as surviving spouse."

Surviving spouse's liability. If a joint return is filed and the estate cannot pay its share of the joint income tax liability, you, as the surviving spouse, may be liable for the full amount. Once the return is filed and the filing date passes, you can no longer change the joint return election and file a separate return unless an administrator or executor is appointed after the due date of the return.

In that case, as previously discussed, the executor may disaffirm the joint return.

1.11 Qualifying Surviving Spouse Status for 2026 If Your Spouse Died in 2025 or 2024

For the two years after the year of your spouse's death, you may be able to file as a qualifying surviving spouse. If your spouse died in either 2025 or 2024 and you meet the following three requirements, your 2026 filing status is qualifying surviving spouse, which allows you to use the same tax rate brackets as married persons filing jointly.

1. You have not remarried as of the end of 2026. If you did remarry in 2026, you file a 2026 joint return with your new spouse unless you choose to file as married filing separately.
2. You are entitled to claim as your dependent *{2.2}* for 2026 a child, stepchild, or adopted child who lived with you during 2026 and you paid over half the cost of maintaining your home. The child must live with you for the entire year, not counting temporary absences such as to attend school or take a vacation. A foster child is not considered your child for purposes of these rules.
3. You were entitled to file jointly in the year of your spouse's death, even if you did not do so.

If you meet all these tests and do not itemize deductions (Schedule A, Form 1040, or 1040-SR), use the standard deduction for married couples filing jointly *{14.2}*. To figure your regular income tax liability, you generally use the IRS Tax Table *{22.2}* or Tax Computation Worksheet *{22.3}* for qualifying surviving spouse, the same one used by married couples filing jointly.

Spouse's death before 2024. If your spouse died before 2024 and you did not remarry by the end of 2026, you may be able to use head of household rates for 2026 if you maintain a home for a child or other qualified person under the rules discussed in *1.12*.

Filing Tip

Dependent Child

In determining whether a child, stepchild, or adopted child is your dependent for purposes of qualifying surviving spouse status, you can include someone who does not meet all of the regular dependent tests *{2.2}*. You may include a child who cannot be treated as your dependent for one of the following reasons: (1) the child has gross income equal to or more than the annual limit for qualifying relatives ($5,300 for 2026), (2) the child is married and files a joint return with their spouse, or (3) you could be claimed as the dependent of another taxpayer. Enter the child's name in the filing status area at the top of your return.

1.12 Qualifying as Head of Household

You can file as "head of household" for 2026 if you are unmarried at the end of 2026 and you maintained a household for your child, parent, or other qualifying person. You must be a U.S. citizen or resident for the entire year. Tax rates are lower for a head of household than for a person filing as single *{1.2}* and the standard deduction is higher *{14.2}*. If you are married but for the last half of 2026 you lived apart from your spouse, you may be treated as unmarried and able to qualify for head of household tax rates and standard deduction, which are more favorable than those for a married person filing separately; *see* Test 1 below.

Head of household tests. You must meet both of these tests to qualify as a head of household:

1. You were unmarried at the end of the year or you are treated as unmarried (Test 1 below).
2. You paid more than half of the year's maintenance costs for the home of a qualifying person (Test 2 below). A qualifying person other than your parent must live with you in that same house for over half the year, disregarding temporary absences. A qualifying parent does not have to live with you.

Test 1: Are you unmarried? You are "unmarried" for 2026 head of household purposes if you are any one of the following:

- Single as of the end of 2026.
- A surviving spouse and your spouse died before 2026. If a dependent child lives with you, *see 1.11* to determine if you may use the even more advantageous filing status of qualifying surviving spouse. If your spouse died in 2026, you are treated as married for the entire year and cannot qualify as a 2026 head of household, but a joint return may be filed *{1.10}*.
- Legally separated or divorced under a final court decree as of the end of 2026. A custody and support order does not qualify as a legal separation. A provisional decree (not final), such as a support order *pendente lite* (while action is pending) or a temporary order, has no effect for tax purposes until the decree is made final.

Filing Tip

Advantages of Head of Household Status

Tax rate brackets are more favorable for a head of household than for a person filing as single. The standard deduction is also higher. For a married person who lived apart from his or her spouse during the last half of the year, qualifying as a head of household allows use of tax rate brackets that are more favorable than those for married persons filing separately *{1.2}*.

- Married but living apart from your spouse. You are considered unmarried for 2026 head of household purposes if your spouse was not a member of your household during the last six months of 2026, you file separate 2026 returns, and in 2026 you maintained a household for more than half the year for a dependent child, stepchild, or adopted child. A foster child qualifies if he or she was placed with you by an authorized placement agency, or by a court judgment, decree, or order. You must be able to claim the child as your dependent *{2.2}*, but you are treated as meeting this test if you are the custodial parent and you waive the right to claim the child as your dependent in favor of the noncustodial parent *{2.7}*. You are not considered to be "living apart" if you and your spouse lived under the same roof during the last six months of the year.
- Married to an individual who was a nonresident alien during any part of 2026 and you do not elect to file a joint return reporting your joint worldwide income *{1.5}*.

Test 2: Did you maintain a home for a qualifying person? You must pay more than half the costs of maintaining a home for a qualifying person.

Qualifying person. A child or relative can be your qualifying person for head of household purposes only if he or she is a qualifying child or a qualifying relative under the rules for dependents *{2.2}*. However, you may be eligible for head of household status even if you are unable to actually claim the person as your dependent. For example, an unmarried child who meets the definition of a qualifying child *{2.2}* but who cannot be claimed as your dependent because of one of the additional tests *{2.2}* is nonetheless a qualifying person for head of household purposes. If, under the special rules for divorced or separated parents *{2.7}*, you are the custodial parent and you waive your right to treat your child as a dependent in favor of the other parent, you may claim head of household status; the other parent may not.

A married child must be your dependent to be a qualifying person for head of household purposes unless the only reason you cannot treat the child as your dependent is that you are the dependent of another taxpayer *{2.2}*.

Your parent or any other qualifying relative can be your qualifying person for head of household purposes only if you can treat that person as your dependent *{2.2}*. However, you are not eligible for head of household status if the relative is your dependent only because (1) you have a multiple support agreement granting you the right to claim the person as your dependent *{2.6}* or (2) he or she is your qualifying relative under the member-of-household test *{2.4}*.

Maintaining a household. For a qualifying person other than your parent, the home that you maintain must be the principal residence for both of you for more than half the year, disregarding temporary absences; *see* Example 2 below. If the qualifying person is your parent, it does not matter where he or she lives, so long as you pay more than half of the household costs.

You must pay for more than half of the rent, property taxes, mortgage interest, utilities, repairs, property insurance, domestic help, and food eaten in the home. Do not consider the rental value of the lodgings provided to the qualifying person or the cost of clothing, medical expenses, education, vacation costs, life insurance, or transportation you provide, or the value of your work around the house.

Temporary absences disregarded. In determining whether you and a qualifying person lived in the same home for more than half the year, temporary absences are ignored if the absence is due to illness, or being away at school, on a business trip, on vacation, serving in the military, or staying with a parent under a child custody agreement. The IRS requires that it be reasonable to expect your qualifying child or relative to return to your household after such a temporary absence, and that you continue to maintain the household during the temporary absence. Under this rule, you would lose the right to file as head of household if your qualifying person moved into his or her own permanent residence before the end of the year.



Planning Reminder

Special Separate Household Rule for Parent

If your dependent parent is the qualifying person, you may claim head of household status even if he or she does not live with you. You must pay over half of your parent's household expenses, whether your parent lives alone, with someone else, or in a senior citizens' residence.



Caution

Meeting Member-of-Household Test Insufficient

Under the qualifying relative rules, you may be able to treat as your dependent a friend or distant relative that you support in your home under the "member of household" test *{2.4}*. Even if the "member of household" test is met, head of household status is not allowed; a person who qualifies as your dependent under the "member of household" test is not a qualifying person for head of household purposes.

EXAMPLES

1. Your mother lived with your sister in your sister's apartment, which cost $12,000 to maintain in 2026. Of this amount, you contributed $7,000 and your sister $5,000. Your mother's only income is from Social Security and she did not contribute any funds to the household. You qualify as head of household for 2026 because you paid over half the cost of maintaining the home for your mother, who qualifies as your dependent (she is a "qualifying relative" *{2.4}*). A child or dependent relative other than your parent would have to live with you to enable you to file as head of household.
2. Doctors advised McDonald that her mentally ill son might become self-sufficient if he lived in a separate residence, but one nearby enough for her to provide supervision. She took the advice and kept up a separate home for her son that was about a mile from her own home. She frequently spent nights at his home and he at hers. The Tax Court agreed with the IRS that McDonald could not file as head of household since her principal residence was not the same as her son's.

1.13 Filing for Your Child

The income of your minor child is not included on your return unless you make a special election to report a child's investment income *{24.4}*. A minor is considered a taxpayer in his or her own right. If the child is required to file a return but is unable to do so because of age or for any other reason, the parent or guardian is responsible for filing the return.

A tax return must be filed for a dependent child who had more than $1,350 of investment income and no earned income (for personal services) for 2026. If your child had only earned income (for personal services) and no investment income, a tax return must be filed if the earned income exceeded $16,100. *See page 4* for further filing threshold rules.

If the child is unable to sign the return, the parent or guardian should sign the child's name in the proper place, followed by the words, "by [signature], parent [or guardian] for minor child." A parent is liable for tax due on pay earned by the child for services, but not on investment income.

A child who is not required to file a return should still do so for a refund of taxes withheld.

Social Security numbers. A parent or guardian must obtain a Social Security number for a child before filing the child's first income tax return. The child's Social Security number must also be provided to banks, brokers, and other payers of interest and dividends to avoid penalties and backup withholding *{26.10}*. To obtain a Social Security number, file Form SS-5 with your local Social Security office. If you have applied for a Social Security number but not yet received it by the filing due date, write "applied for" on the tax return in the space provided for the number.

Whether or not you are filing a return for a child, you must obtain and report on your return a Social Security number for a child whom you are claiming as a dependent *{2.1}*.

Wages you pay your children. You may deduct wages paid to your children in your business. Keep records showing that their activities are of a business rather than personal nature.

Withholding for children. Children with wages are generally subject to withholding and should file Form W-4 with their employer. An exemption from withholding may be claimed only in limited cases. The child must certify on Form W-4 that he or she had no federal tax liability in the prior year and expects no liability in the current year for which the withholding exemption is sought. For example, a child who had no tax liability for 2025 and who expected to qualify as another taxpayer's dependent for 2026 could not claim an exemption from withholding on Form W-4 for 2026 if he or she expected to have investment income exceeding $450 and total income (expected investment income plus wages) of more than $1,350; *see* IRS Publication 505 for further exemption details. The $450 and $1,350 amounts most likely will increase by an inflation adjustment for 2027.

Wages you pay to your own children under age 18 for working in your unincorporated business are not subject to FICA taxes (Social Security and Medicare) *{26.8}*.



Caution

Kiddie Tax May Apply to Investment Income

If your child has 2026 investment income exceeding $2,700, the excess is subject to the "kiddie tax" rules if (1) the child is under age 18, or (2) at the end of the year is either age 18 or a full-time student under age 24, and did not have earned income exceeding 50% of his or her total support for the year. *See Chapter 24* for kiddie tax details.

1.14 Return for Deceased

When a person dies, another tax-paying entity is created—the decedent's estate. Until the estate is fully distributed, it will generally earn income for which a return must be filed. For example, Carlos Perez's only income is salary and bank interest. He dies on June 30, 2026. The wages and bank interest he earned through June 30 are reported on his final income tax return, which is due by April 15, 2027. Interest earned on his bank account after June 30 is attributed to the estate, or to the account beneficiary if the right to the account passes by law directly to the account beneficiary. Income received by the estate is reported on Form 1041, the income tax return for the estate, if the estate has gross income of $600 or more. If Carlos was married, his surviving spouse could file a joint return *{1.10}* for 2026 and include all of Carlos's earnings through June 30. If she jointly owned the bank account with Carlos, the interest after as well as before June 30 could be reported on their joint return.

Planning Reminder

Promptly Closing the Estate

To expedite the closing of the decedent's estate, an executor or other personal representative of the decedent may file Form 4810 for a prompt assessment. Once filed, the IRS has 18 months to assess additional taxes. The request does not extend the assessment period beyond the regular limit, which is three years from the date the return was filed. Form 4810 must be filed separately from the final return.

What income tax returns must be filed on behalf of the deceased? If the individual died after the close of the taxable year but before the income tax return was filed, the following must be filed:

1. Income tax return for the prior year;
2. Final income tax return, covering earnings in the period from the beginning of the taxable year to the date of death; and
3. Estate income tax return, covering earnings in the period after the decedent's death.

If the individual died after filing a return for the prior tax year, then only 2 and 3 must be filed.

EXAMPLE

Steven Jones, a resident of New York, died on January 31, 2027, before he could file his 2026 tax return. His 2026 income tax return must be filed by April 15, 2027 unless an extension is obtained. A final income tax return to report earnings from January 1, 2027, through January 31, 2027 (date of death), will have to be filed by April 15, 2028. Jones's estate will have to file an income tax return on Form 1041 to report earnings and other income that were not earned by Jones before February 1, 2027, unless the gross income of the estate is under $600.

Filing Instruction

IRD Not Included on Decedent's Final Return

Do not report on the decedent's final return income that is received after his or her death, or accrues after or because of death if the decedent used the accrual method. This income is considered "income in respect of a decedent," or IRD *{12.16}*. IRD is taxed to the estate or beneficiary receiving the income in the year of the receipt. On the decedent's final return, only deductible expenses paid up to and including the date of death may be claimed. If the decedent reported on the accrual basis, those deductions accruable up to and including the date of death are deductible. If the decedent mailed or delivered a check for payment of a deductible item, a deduction is allowable on the decedent's last return, even though the check was not cashed or deposited by the recipient until after the decedent's death. If the check was not honored by the bank, the item is not deductible.

Who is responsible for filing? The executor, administrator, or other legal representative is responsible for filing all returns. For purposes of determining whether a final income tax return for the decedent is due, the annual gross income test at page 4 is considered in full. You do not prorate it according to the part of the year the decedent lived. A surviving spouse may assume responsibility for filing a joint return for the year of death if no executor or administrator has been appointed and other tests are met *{1.10}*. However, if a legal representative has been appointed, he or she must give the surviving spouse consent to file a joint return for the year of the decedent's death. In one case, a state court held that a co-executrix could not refuse consent and was required to sign a joint return where it would save the estate money.

How do you report the decedent's income and deductions? You follow the method used by the decedent during his or her life, either the cash method or the accrual method, to account for the income up to the date of death. The income does not have to be put on an annual basis. Each item is taxed in the same manner as it would have been taxed had the decedent lived for the entire year.

If the decedent owned U.S. Savings Bonds, *see 5.29*.

When one spouse dies in a community property state *{1.6}*, how should the income from the community property be reported during the administration of the estate? The IRS says that half the income is the estate's and the other half belongs to the surviving spouse.

Deductible expenses paid (or accrued under the accrual method) by the decedent before death are claimed on the final return.

Medical expenses of the decedent. If the estate pays the decedent's personal medical expenses (not those for the decedent's dependents) within one year of the date of death, the expenses can be deducted on the decedent's final return, subject to the adjusted gross income floor *{15.7}*. However, the expenses are not deductible for income tax purposes if they are deducted for estate tax purposes. To deduct such medical expenses on the decedent's final return, a statement must be attached to the final return affirming that no estate tax deduction has been taken and that the rights to the deduction have been waived.

Partnership income. The death of a partner closes the partnership tax year for that partner. The final return for the partner must include his or her distributive share of partnership income and deductions for the part of the partnership's tax year ending on the date of death. Thus, if a partner dies on July 26, 2026, and the partnership's taxable year ends December 31, 2026, the partner's final 2026 return must include partnership items for January 1, 2026, through July 26, 2026. Partnership items for the balance of 2026 must be reported by the partner's executor or other successor in interest on the estate's income tax return.

Dependents allowed on a final return. If the dependent could have claimed dependents *{2.2}* had he or she had not died, the final return may include those same claims.

Estimated taxes. No estimated tax need be paid by the executor after the death of an unmarried individual; the entire tax is paid when filing the final tax return. But where the deceased and a surviving spouse paid estimated tax jointly, the rule is different. The surviving spouse is still liable for the balance of the estimated tax unless an amended estimated tax voucher is filed. Further, if the surviving spouse plans to file a joint return *{1.10}* that includes the decedent's income, estimated tax payments may be required *{Chapter 27}*.

Where the estate has gross income, estimated tax installments are not required on Form 1041-ES for the first two years after the decedent's death.

Signing the return. An executor or administrator of the estate signs the return. If it is a joint return; *see 1.10*.

When a refund is due on a final return. The decedent's final return may also be used as a claim for a refund of an overpayment of withheld or estimated taxes. Form 1310 may be used to get the refund, but the form is not required if you are a surviving spouse filing a joint return for the year your spouse died. If you are an executor or administrator of the estate and you are filing Form 1040 or 1040-SR for the decedent, you do not need Form 1310, but you must attach to the return a copy of the court certificate showing your appointment as personal representative.

Itemized deduction for IRD subject to estate tax. Items of gross income that the decedent had a right to receive but did not receive before death (or accrue if under the accrual method) are subject to income tax when received by the estate or beneficiary. This "income in respect of a decedent," or IRD, is also included in the decedent's estate for estate tax purposes. If estate tax is paid, an individual beneficiary may claim an itemized deduction for an allocable share of the estate tax paid on IRD items; *see 12.17* for deduction details.

1.15 Return for an Incompetent Person

A legal guardian of an incompetent person files a return for an incompetent whose gross income meets the filing tests on *pages 4–6*. Where a spouse becomes incompetent, the IRS says the other spouse may file a return for the incompetent without a power of attorney, if no legal guardian has been appointed. For example, during the period an individual was in a mental hospital, and before he was adjudged legally incompetent, his spouse continued to operate his business. She filed an income tax return for him and signed it for him although she had no power of attorney. The IRS accepted the return as properly filed. Until a legal guardian was appointed, she was charged with the care of her husband and his property.

The IRS has accepted a joint return filed by a wife in her capacity as legal guardian for her missing husband. However, the Tax Court has held that where one spouse is mentally incompetent, a joint return may not be filed because the incompetent spouse was unable to consent to a joint return; an appeals court agreed.

1.16 How a Nonresident Alien Is Taxed

A nonresident alien is generally taxed only on income from U.S. sources. A nonresident alien's income that is effectively connected with a U.S. business and capital gains from the sale of U.S. real property interests are subject to tax at regular graduated U.S. rates, the same as for a U.S. citizen *{1.2}*. Other capital gains are not taxed unless a nonresident alien has a U.S. business or is in the U.S. for 183 days during the year. Generally, investment income of a nonresident alien from U.S. sources that is not effectively connected with a U.S. business is subject to a 30% tax rate (or lower rate if provided by treaty).

Nonresident aliens who are required to file must do so on Form 1040-NR. If you are a nonresident alien, refer to IRS Publication 519, U.S. Tax Guide for Aliens. It explains how nonresident aliens pay U.S. tax.

Caution

Who Is a Resident?

An alien's mere presence in the U.S. does not make him or her a "resident." An alien is generally treated as a "resident" only if he or she is a lawful permanent resident who has a "green card" or meets a substantial presence test *{1.18}*.

Dual status. In the year a person arrives in or departs from the U.S., both resident and nonresident status may apply.

Certain restrictions apply to dual status taxpayers. For example, a joint return may not be filed, unless you and your spouse agree to be taxed as U.S. residents for the entire year.

For details on filing a return for a dual status year, *see* IRS Publication 519 and the instructions to Form 1040-NR.

EXAMPLE

On May 14, 2026, Leon Marchand arrived on a non-immigrant visa and was present in the U.S. for the rest of the year. From January 1 to May 13, 2026, he is a nonresident; from May 14 to the end of the year, he is a resident, under the 183-day test *{1.18}*. Since he is a U.S. resident on the last day of the year, he files Form 1040 or 1040-SR and reports on it the income received during the period he was a resident, as well as income received during the period of nonresidency that was effectively connected with a U.S. business. He writes "Dual-Status Return" across the top of the Form 1040 or 1040-SR. The income for the nonresident portion of the year should be shown on a statement attached to the Form 1040 or 1040-SR. Form 1040-NR can be used as the statement; mark "Dual-Status Statement" across the top of the Form 1040-NR.

1.17 How a Resident Alien Is Taxed

A resident alien *{1.18}* is taxed on worldwide income from all sources, just like a U.S. citizen. The exclusion for foreign earned income may be claimed if the foreign physical presence test is satisfied or if the bona fide residence test is met by an individual residing in a treaty country *{36.11}*. A resident alien may generally claim a foreign tax credit *{36.13}*. A resident alien's pension from a foreign government is subject to regular U.S. tax. A resident alien working in the United States for a foreign government is not taxed on the wages if the foreign government allows a similar exemption to U.S. citizens.

1.18 Who Is a Resident Alien?

The following tests determine whether an alien is taxed as a U.S. resident. Intent to remain in the U.S. is not considered.

You are treated as a resident alien and taxed as a U.S. resident for 2026 tax purposes if you meet either of the following tests:

1. You have been issued a "green card," which grants you the status of lawful permanent resident. If you were outside the U.S. for part of 2026 and then became a lawful permanent resident, *see* the rules below for dual tax status.
2. You meet a 183-day substantial presence test. Under this test, you are treated as a U.S. resident if you were in the U.S. for at least 31 days during the calendar year and have been in the U.S. for at least 183 days within the last three years (the current year and the two preceding calendar years). The 183-day test is complicated and there are several exceptions, as discussed below.

Planning Reminder

Is 2026 Your First Year of Residency?

If you were not a U.S. resident during 2025 but in 2026 you satisfy both the lawful resident (green card) test and the 183-day presence test, your residence begins on the earlier of the first day you are in the U.S. while a lawful permanent resident or the first day of physical presence.

Substantial presence test. To determine if you meet the 183-day substantial presence test for 2026, the following cumulative times are totaled. Each day in the U.S. during 2026 is counted as a full day. Each day in 2025 counts as 1/3 of a day; each day in 2024 counts as 1/6 of a day. Note that you must be physically present in the U.S. for at least 31 days in the current year. If you are not, the 183-day test does not apply.

Other exceptions to the substantial presence test are: commuting from Canada or Mexico; keeping a tax home and close contacts or connections in a foreign country; having a diplomat, teacher, trainee, or student status; being a professional athlete temporarily in the U.S. to compete in a charitable sports event; or being confined in the U.S. for certain medical reasons. These exceptions are explained in the following paragraphs.

Commute from Mexico or Canada. If you regularly commute to work in the U.S. from Mexico or Canada, commuting days do not count as days of physical presence for the 183-day test.

Medical exception. If you plan to leave but cannot physically leave the U.S. because of a medical condition that arose in the U.S., you may be treated as a nonresident, even if present here for more than 183 days during the year. You must file Form 8843 to claim the medical exception.

Tax home/closer connection exception. If you are in the United States for less than 183 days during 2026, show that you had a closer connection with a foreign country than with the U.S., and keep a tax home there for the year, you generally will not be subject to tax as a U.S. resident even if you meet the substantial presence test. Under this exception, it is possible to have a U.S. abode and a tax home in a foreign country. A tax home is usually where a person has his or her principal place of business; if there is no principal place of business, it is the place of regular abode. Proving a tax home alone is not sufficient; the closer connection relationship must also be shown.

To claim the closer connection exception, you must file Form 8840 explaining the basis of your claim. The tax home/closer connection exception does not apply to an alien who is present for 183 days or more during a year or who has applied for a "green card." A relative's application is not considered as the alien's application.

Exempt-person exception. Days of presence in the U.S. are not counted under the 183- day test if you are considered an exempt person such as a teacher, trainee, student, foreign-government-related person, or professional athlete temporarily in the U.S. to compete in a charitable sports event.

To exclude days of presence as a teacher, trainee, student, or professional athlete, you must file Form 8843 with the IRS.

A foreign-government-related person is any individual temporarily present in the U.S. who (1) has diplomatic status or a visa that the Secretary of the Treasury (after consultation with the Secretary of State) determined represents full-time diplomatic or consular status; or (2) is a full-time employee of an international organization; or (3) is a member of the immediate family of a diplomat or international organization employee.

A teacher or trainee is any individual other than a student who is temporarily present in the U.S. under a "J" or "Q" visa and who substantially complies with the requirements for being so present.

A student is any individual who is temporarily present in the U.S. under either an "F," "J," "M," or "Q" visa and who substantially complies with the requirements for being so present.

The exception generally does not apply to a teacher or trainee who has been exempt as a teacher, trainee, or student for any part of two of the six preceding calendar years. However, if during the period you are temporarily present in the U.S. under an "F," "J," "M," or "Q" visa and all of your compensation is received from outside the U.S., you may qualify for the exception if you were exempt as a teacher, trainee, or student for less than four years in the six preceding calendar years. The exception also does not apply to a student who has been exempt as a teacher, trainee, or student for more than five calendar years, unless you show that you do not intend to reside permanently in the U.S. and that

you have substantially complied with the requirements of the student visa providing for temporary presence in the U.S.

Tax treaty exceptions. The lawful permanent residence test and the substantial physical presence test do not override tax treaty definitions of residence. Thus, you may be protected by a tax treaty from being treated as a U.S. resident even if you would be treated as a resident under either test.

Dual tax status in first year of residency. If you first became a lawful permanent resident of the U.S. (received a green card) during 2026 and were not a U.S. resident during 2025, your period of U.S. residency begins with the first day in 2026 that you are present in the U.S. with the status of lawful permanent resident. Before that date, you are a nonresident alien. This means that if you become a lawful permanent resident during 2026 and remain a resident at the end of the year, you have a dual status tax year. On Form 1040 or 1040-SR, you attach a separate statement showing the income for the part of the year you are a nonresident. Form 1040-NR (or 1040-NR-EZ) may be used as the statement. Write "Dual-Status Return" across the top of the Form 1040 or 1040-SR and "Dual-Status Statement" across the top of the Form 1040-NR (or 1040-NR-EZ).

To figure tax for a dual status year, *see* IRS Publication 519 and the instructions to Form 1040-NR.

You also may have a dual status year if you were not a U.S. resident in 2025, and in 2026 you are a U.S. resident under the 183-day presence test. Your period of U.S. residency starts on the first day in 2026 for which you were physically present; before that date you are treated as a nonresident alien. However, if you meet the 183-day presence test (but not the green card test) and also spent 10 or fewer days in the U.S. during a period in which you had a closer connection to a foreign country than to the U.S., you may disregard the 10-day period. The purpose of this exception is to allow a brief presence in the U.S. for business trips or house hunting before the U.S. residency period starts.

If you are married at the end of the year to a U.S. citizen or resident alien, you and your spouse may elect to be treated as U.S. residents for the entire year by reporting your worldwide income on a joint return. You must attach to the joint return a statement signed by both of you that you are choosing to be treated as full-year U.S. residents.

EXAMPLES

1. Manuel Riveras, who has never before been a U.S. resident, lives in Spain until May 18, 2026, when he moves to the U.S. He remains in the U.S. through the end of the year, thereby satisfying the physical presence test. On May 18, he is a U.S. resident. However, for the period before May 18, he is taxed as a nonresident *{1.16}*.
2. Same facts as in Example 1, but Riveras attends a meeting in the U.S. on February 2 through 8. On May 18, he moves to the U.S.; May 18, not February 2, is the starting date of the residency. During February, he had closer connection to Spain than to the U.S. Thus, his short stay in February is an exempt period.

First-year choice. If you do not meet either the green card test or the 183-day substantial presence test for the year of your arrival in the U.S. or for the immediately preceding year, but you do meet the substantial presence test for the year immediately following the year of your arrival, you may elect to be treated as a U.S. resident for part of the year of your arrival. To do this, you must (1) be present in the U.S. for at least 31 consecutive days in the year of your arrival; and (2) be present in the U.S. for at least 75% of the number of days beginning with the first day of the 31-consecutive-day period and ending with the last day of the year of arrival. For purposes of this 75% requirement, you may treat up to five days of absence from the U.S. as days of presence within the U.S.

Do not count as days of presence in the U.S. days for which you are an exempt individual as discussed earlier.

You make the first-year election to be treated as a U.S. resident by attaching a statement to Form 1040 or 1040-SR for the year of your arrival. A first-year election, once made, may not be revoked without the consent of the IRS.

If you make the election, your residence starting date for the year of your arrival is the first day of the earliest 31-consecutive-day period of presence that you use to qualify for the choice. You are treated as a U.S. resident for the remainder of the year.

Last year of residence. You are no longer treated as a U.S. resident as of your residency termination date. If you do not have a green card but are a U.S. resident for the year under the 183-day presence test, and you leave the U.S. during that year, your residency termination date is the last day you are present in the U.S., provided that: (1) after leaving the U.S. you had a closer connection to a foreign country than to the U.S. and had your tax home in that foreign country for the rest of the year, and (2) you are not treated as a U.S. resident for any part of the next calendar year.

If during the year you give up your green card (lawful permanent resident status) and meet tests (1) and (2), your residency termination date is the first day that you are no longer a lawful permanent resident. If during the year you meet both the green card test and the 183-day presence test and meet tests (1) and (2), your residency termination date is the later of the last day of U.S. presence or the first day you are no longer a lawful permanent resident. If tests (1) and (2) are not met, the residency termination date is the last day of the calendar year. In the year of your residency termination date, the filing rules for dual status taxpayers in this section apply.

For the year you give up your residence in the United States, you must file Form 1040-NR and write "Dual-Status Return" across the top. Attach Form 1040, Form 1040-SR, or other statement to show the income for the part of the year you are a resident; across the top write "Dual-Status Statement." *See* the instructions to Form 1040-NR and IRS Publication 519 for filing the dual status return.

1.19 Certificate of Tax Compliance for Alien Leaving the United States

Current law generally requires an alien who plans on leaving the U.S. to go to an IRS office before departure to obtain a "sailing" or "departure" permit, technically known as a "certificate of compliance." Diplomats, employees of international organizations or foreign governments, students, industrial trainees and exchange visitors are generally exempt from the permit requirement; *see* Publication 519 for other exceptions. If an exception does not apply, Form 1040-C must be filed to report the income received and expected to be received for the year. In some cases, a shorter Form 2063 may be filed instead of Form 1040-C. If the Form 1040-C (or Form 2063) shows that there will be a tax due, the IRS will generally issue a certificate of compliance without requiring you to pay the tax or posting a bond for it so long as the IRS determines that your departure will not jeopardize collection of the tax. *See* Publication 519 for further details.



Planning Reminder

Departure Permit

An alien planning to leave the U.S. may have to obtain a "certificate of compliance" on Form 1040-C (or Form 2063) from the IRS to certify that his or her U.S. tax obligations have been satisfied; *see* Publication 519 for exceptions and further details.

1.20 Expatriation Tax

U.S. citizens who have renounced their citizenship and long-term U.S. residents who end their residency are considered expatriates subject to special tax rules. You are considered a long-term resident for purposes of these rules if you give up lawful permanent residency ("green card") after holding it for at least eight of the prior 15 years. Form 8854 must be filed to establish that you have expatriated for tax purposes. The IRS warns that until Form 8854 is filed and the appropriate actions are taken to notify the State Department or Department of Homeland Security of the expatriation, you are not relieved of the obligation to file U.S. tax returns and report your worldwide income as a citizen or resident of the United States.

Expatriation in 2026 or before 2026 but after June 16, 2008. If you expatriated in 2026, you are generally subject to a "mark-to-market" tax (under Code Section 877A) on Form 8854 if any of the following is true: (1) your average annual net income tax liability for the five years ending before the date of expatriation exceeds $211,000 or (2) your net worth on the date of expatriation was $2 million or more, or (3) you fail to certify on Form 8854 under penalty of perjury that you complied with all U.S. federal tax obligations for

the five years preceding the expatriation date. The $211,000 threshold is subject to an inflation adjustment for expatriations after 2026.

Under the "mark-to market" tax, you are treated as if you had sold all of your assets (but *see* below for deferred compensation items and interests in nongrantor trusts) for their fair market value on the day before the expatriation date, and the net gain on the deemed sale is taxable for 2026 to the extent it exceeds $910,000. Losses are taken into account and the wash sale rules do not apply. The $910,000 floor may be increased by an inflation adjustment for expatriations after 2026.

An irrevocable election can be made on Form 8854 (in Part II, Section D) to defer payment of the tax on the deemed sales until the assets are sold (or death, if sooner) provided a bond or other security is provided to the IRS. The election is made on a property-by-property basis. Interest will be charged for the deferral period. If the deferral election is made, Form 8854 must be filed annually.

Deferred compensation items and interests in nongrantor trusts are not subject to the mark-to-market tax, but are generally subject to a withholding tax of 30% when distributed to you. IRAs and certain other tax-deferred accounts are treated as if they were completely distributed on the day before the expatriation date, but early distribution penalties do not apply.

See the Form 8854 instructions for further details.

Expatriation after June 3, 2004, and before June 17, 2008. In general, special tax rules that applied under Code Section 877 to individuals who expatriated after June 3, 2004, and before June 17, 2008, no longer apply. Individuals who expatriated during this period were subject to tax on their U.S. source income (as determined under Code Section 877) for a 10-year period if (1) their average annual net income tax liability for the five years ending before the date of expatriation exceeded a specified amount that depended on the year of expatriation, or (2) their net worth on the date of expatriation was $2 million or more, or (3) they failed to certify on Form 8854 under penalty of perjury that they complied with all U.S. federal tax obligations for the five years preceding the expatriation date. Form 8854 had to be filed for the 10-year period.

If you expatriated after June 3, 2004, and before June 17, 2008, and you complied with the annual Form 8854 filing requirements, you are no longer subject to the Section 877 tax rules because the 10-year period for which the Section 877 rules applied ended by 2018. However, if you never filed a Form 8854, you continue to be treated as a U.S. citizen or U.S. permanent resident for income tax purposes until Form 8854 is filed. The 10-year period for which you are subject to the special tax rules of Section 877 begins after the Form 8854 is filed. Use the 2018 Form 8854 and the 2018 instructions for your initial filing but modify the year on the form by crossing out 2018 at the top and entering the actual year of filing. Also use the 2018 form and enter the current year (crossing out 2018) for subsequent annual filings within the 10-year period.