



## Internal Document: Special Situations

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### ➤ **What if the taxpayer's spouse is not present?**

For MFJ returns, both the primary taxpayer and spouse must be present at every stage of the process for us to prepare the return. We need to verify the identity of both taxpayers at intake, at tax prep, and at the quality review. The primary taxpayer or spouse can step out during any part of our process without violating our policy of both spouses being present AS LONG AS they are both present at the beginning of each step. While we sometimes need to ask both spouses many questions throughout the process, we do also want to accommodate families as best we can since the tax preparation process can last several hours.

The only exception for this is during the Drop Off process; both spouses must be present at intake to sign the consent form and validate their identity. One spouse can come by to pick up the return to mail in to the IRS or both spouses can come together to sign the 8879.

#### **Exceptions:**

[Please note, **when only one spouse is present to file a MFJ return, it is our policy that we will prepare it as a paper return** rather than electronically filing it. In all of these cases, we must save a copy of the relevant authorization in the processing envelope for our records.]

- **Spousal consent:** If one spouse is unable to be physically present at the tax site due to being incapacitated, incarcerated, or out of the country, we can give the spouse that is present a spousal consent form for the other spouse to sign. This is a signed declaration giving us authorization to prepare the tax return without both spouses being present. This form can be found on CTC Resources and is updated every year. However, the spousal consent form does not give authorization to sign the return on the spouse's behalf. After we finish preparing it as a paper return, we will give copies of the return to the spouse that is present; he or she will then get the other spouse to sign the return and they will mail it in the IRS.
- Form 2848 **Power of Attorney** and Declaration of Representative (or guardianship or another legal type of power of attorney)
  - If the taxpayer has a Form 2848, make sure it specifically authorizes the taxpayer to prepare and sign the tax return for the tax year in question.
  - If the tax return were e-filed, the taxpayer would need to mail in Form 2848 with Form 8453. Otherwise, the taxpayer can mail in the return with the Form 2848. (FC's policy is to prepare all returns containing Power of Attorney as paper returns.)
- **Surviving spouse filing MFJ with deceased spouse** (no written authorization required to sign)
- **Spouse serving in a combat zone** – (no written authorization required to sign)

### ➤ **Steps for spousal consent returns:**

1. We make copies of photo identification and SSN/ITINs as usual.
2. Returns prepared using a spousal consent form will be paper returns. At the end of the process, we will issue two copies of the return to the taxpayer to sign with his/her spouse and mail in to the IRS.



3. Even though the return is set to paper, **we keep a copy of the photo IDs and social security cards of both spouses, as well as the spousal consent form.** (The taxpayer will need to get a new spousal consent form signed each year.)
  4. Don't forget to make a note in the tax software!
- **If we e-file the return, the taxpayer will need to mail Form 8453 with the required document in these cases:**
- **Form 2848**, Power of Attorney and Declaration of Representative
    - FC policy is to mail all returns that are prepared for someone with Power of Attorney
  - **Form 8332** Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent
    - The custodial parent gives Form 8332 to the non-custodial parent for the year(s) they allow the non-custodial parent to claim the exemption for the dependent. (Although taxpayers can't claim a deduction for exemptions beginning in 2018, eligibility to claim an exemption for a child remains important for determining who may claim the child tax credit, the additional child tax credit, and the credit for other dependents, as well as other tax benefits.) The non-custodial parent must submit this form or a similar statement for each year they claim the exemption for the dependent.
  - **Form 8949** Sales and Other Dispositions of Capital Assets (or a statement with the same information), if you elect not to report your transactions electronically on Form 8949.

The taxpayer mails in Form 8453 with the required statement/document within 3 days of the return being accepted by the IRS. These are just the situations we encounter in the VITA program; the complete list of documents that could need to be mailed with Form 8453 is longer.

- **Deceased taxpayer:**
- **FC's policy is to mail returns where one of the taxpayers is deceased.** There is an option in TaxSlayer to indicate which taxpayer is deceased. TaxSlayer will also automatically note on the top of the 1040 the decedent's name and date of death.
  - If the taxpayer died during the year and the surviving spouse did not remarry, a joint return can be filed.
  - If the spouse died before signing the return, the executor or administrator must sign the return for the deceased spouse. If no one has yet been appointed as executor, the surviving spouse can sign the return for the deceased spouse and enter "Filing as surviving spouse" in the area where the return is signed.
  - Any existing Form 2848 for Power of Attorney is invalid once someone becomes incompetent, incapacitated, or dies.



➤ **Who can file for a deceased taxpayer?**

- Surviving spouse (if filing jointly):
  - Must provide copy of the death certificate.
  - We make copies of photo IDs and SSN/ITINs as usual.
  - **We keep a copies of** both spouses' SSN/ITINs and photo IDs and the death certificate.
  - Don't forget to make a note in the tax software!
  - If the surviving spouse is requesting reissuance of a refund check to be only in the name of the surviving spouse, the spouse will need to complete Form 1310 (found in Miscellaneous Forms section in TaxSlayer).
- Court-appointed or certified personal representative (i.e. executor) for decedent's estate
  - If filing the original return, only need to attach to the return the court certificate showing your appointment. (A copy of the will does not count.) Mail in the return to the IRS.
  - **We keep copies of** the court-appointed certificate, the deceased taxpayer's SSN/ITIN, the deceased taxpayer's photo ID, and the court-appointed representative's photo ID.
  - If filing an amendment to claim a refund, complete Form 1310 (in TaxSlayer) and attach a copy of the court certificate showing your appointment. (If you already sent the court certificate to the IRS, complete Form 1310 and write "Certificate Previously Filed" at the bottom of the form.)
  - If filing an amendment but not to claim a refund, only need to attach to the return the court certificate. Do not need to complete Form 1310.
  - The executor of the estate can amend the return of a deceased taxpayer to the MFS filing status for up to a year after the return was originally filed.
- Someone other than the surviving spouse or executor claiming a refund for the estate:
  - If you are claiming a refund for the taxpayer and no executor has been appointed, you must complete Form 1310 and send in with the return. You must maintain a copy of the death certificate or a formal notification from the appropriate government office informing the next of kin of the decedent's death.
  - Must show proof of death to Foundation Communities, such as a death certificate or formal notification from appropriate government office (e.g. Dept. of Defense).
  - **We keep copies of** the death certificate, the deceased taxpayer's SSN/ITIN, the deceased taxpayer's photo ID, and the photo ID for the person filing the return. If this person appears on the return, we also keep a copy of their SSN/ITIN.
  - Mail in the return with Form 1310 (but not copy of death certificate).

➤ **Can a taxpayer whose spouse is incarcerated file as Head of Household?**

One of the requirements for someone who is married to file as Head of Household is that your spouse did not live in your home during the last 6 months in the tax year. What does it mean if your spouse was incarcerated during that time?



If the spouse not present is incarcerated but intends to return to the home upon release, the taxpayer would *not* be eligible for Head of Household filing status. But if the couple is separated and the spouse not present does not expect to return to the home upon being released, the taxpayer could qualify for Head of Household filing status (provided she/he meets all other tests).

On Page B-8 of Pub 4012 for the Determination of Filing Status – Decision Tree, it says that a spouse is considered to live in your home even if he or she is temporarily absent due to illness, education, business, vacation, military service, or incarceration.

On page 9 of Pub 501, it says (in reference to spouses and qualifying dependents), **“You and your qualifying person are considered to live together even if one or both of you are temporarily absent from the home due to special circumstances** such as illness, education, business, vacation, military service, or detention in a juvenile facility. **It must be reasonable to assume the absent person will return to the home after the temporary absence. You must continue to keep up the home during the absence.”**

➤ **Amending Filing Status from Married Filing Separate to Married Filing Joint (or MFJ to MFS)**

Tax Law: Once you have filed your tax return as Married Filing Joint (MFJ), you CANNOT amend your filing status after the April 15th deadline. Any change to filing status has to be done before the deadline. [Exception: A court-appointed personal representative may revoke an election to file a joint return previously made by the surviving spouse alone. This is done by filing a separate return for the decedent within 1 year from the due date of the return (including any extensions). The joint return made by the surviving spouse will then be regarded as the separate return of that spouse by excluding the decedent's items and refiguring the tax liability.]

Once you've filed your tax return as Married Filing Separate (MFS), you have three years from the original deadline to make the change to your tax return. This deadline DOES NOT include any filing extensions.

TaxSlayer Rules: You can amend a Married Filing Joint (MFJ) return to a Married Filing Separate (MFS) return and vice versa. When amending a MFJ return to a MFS return, first delete all information associated with the spouse on that return. This includes all Form W-2s, Schedule Cs, Schedule SEs, etc. Anything that can be denoted as 'spouse' needs to be deleted. Next, change the filing status to MFS. When changing from MFS to MFJ, select the taxpayer you'd like to be the primary taxpayer. Change the filing status to MFJ, then add all information pertaining to the other spouse.

➤ **Can we prepare an amendment for a return that was out of scope?**

No, unless the return is brought into scope by the amendment. But if the return when originally prepared was out of scope and the amendment does not bring it into scope, we cannot prepare the amendment.

➤ **Child's Return:**



If a child can't sign his or her name, the parent, guardian, or another legally responsible person must sign the child's name in the space provided followed by the words "By (parent or guardian signature), parent of guardian for minor child." Pub 4012, K-12

➤ **We must see original photo identification for primary and secondary taxpayers**

The Community Tax Centers must confirm the identity of the taxpayer and spouse to avoid the potential for identity theft or tax fraud. If an unknown taxpayer or spouse cannot substantiate their identity, or if the volunteer is uncomfortable accepting the items presented as proof of identity, the taxpayer and/or spouse should be advised to return with an acceptable form of identification. *We must see the original photo identification for the primary and secondary taxpayer, including for nonresident alien spouses (whether or not the spouse is present for tax preparation).*

**Valid documents we will accept as proof of identity** (for primary and secondary taxpayers):

- Driver's license
- Employer identification card with photo
- School identification card with photo
- State identification card
- Department of Criminal Justice-issued identification card with photo
- Military identification with photo
- Voter identification with photo (many foreign countries issue this)
- Visa
- Passport
- National identification card with photo

➤ **Expired Photo Identification:**

In all cases, ask the taxpayer to bring in valid photo identification. Only in exceptional cases when a taxpayer does not possess a valid ID, such as when a taxpayer is unable to acquire another photo ID or would face significant barriers to acquiring a photo ID, can we as a last resort accept an expired photo ID. In these cases, the site coordinator has discretion to accept an expired ID that bears a reasonable resemblance to the taxpayer. Intake will initial next to the copy of the expired photo ID and mark that the ID was approved. Our policy: "Confirming the Identity and SSN or ITIN of Community Tax Center Clients" on CTC Resources.

➤ **Exception to ITIN verification when ITIN expired AND client no longer has letter in possession**

As stated in "Confirming the Identity and SSN or ITIN of Community Tax Center Clients," if a client has an ITIN that has expired AND no longer has the ITIN in their possession, we will not require the client to present the ITIN card/letter. In these cases, a client will only need to present the ITIN number and the exactly spelling of their name as shown on the ITIN card/letter. We make this exception because the IRS



will not issue the client another copy of an expired ITIN and the ITIN renewal process requires substantiating one's identify.

It is important to the success of the client's ITIN renewal that we know exactly how the client's name appears on the ITIN card/letter. If the client is not sure, please advise them to **call the ITIN hotline at 800-908-9982** and ask the representative to confirm their ITIN number and name.

➤ **Exceeding income eligibility limit to amend a CTC-prepared return**

If a taxpayer requests that the CTCs file an amendment for a tax return we prepared in order to correct a mistake on the return or to add missing information, we will make an exception to our income limit if the amended return results in the taxpayer(s) being over our income eligibility limit. We will make a note in the tax software that the original return was within scope and the amended return was prepared specifically to correct the return or add missing information.

➤ **When we realize during tax prep that the taxpayer's income exceeds our eligibility threshold**

It is part of the intake interview process to add up income documents and determine if the taxpayer meets the Community Tax Centers income eligibility requirements. If the taxpayer has been honest and forthcoming and we do not catch during the intake interview process that a taxpayer is in fact over income for a specific tax year and the mistake is realized at any later part of the tax preparation process, we will prepare the return. This is to ensure we are not discriminating unintentionally depending on the situation. Our policy is to (1) immediately notify intake staff/volunteers of the mistake and (2) make a note in the tax software explaining that we waived the income requirement for this return because it was our mistake and we did not catch the error until the taxpayer had finished the intake interview and had entered the tax prep phase.

➤ **How to handle IRS letters re: returns e-filed without the 1095-A and Form 8962**

- We need a copy of the IRS letter, the 1095-A from the Marketplace, and a copy of the original return if we did not prepare it ourselves.
- The IRS is not asking the taxpayer to file an amendment.
- We add the information from the 1095-A to the return. (If we did not prepare the original return, we first enter the information into the tax software to generate the current tax return.) **We do not add the 1095-A as if it were an amendment. We make a detailed note about the 1095-A being added after the return was originally e-filed or mailed in to the IRS.**
- We then print out two copies of the newly-generated Form 8962. We give one copy to the taxpayer for their records and mail in the other copy with a copy of the IRS letter. The IRS will then proceed to finish processing the return and refund amount (if applicable).

➤ **Filing a tax return to reconcile Premium Tax Credits for a dependent parent**



This situation comes up occasionally, so we have clarified our policy here. If an adult child (with or without a spouse) can claim a parent (or both parents) as a dependent, the parent is the dependent of the adult child whether or not the child decides to claim the parent. Therefore, the parent should apply for Marketplace coverage reflecting the accurate household size and income (including that of the adult child), and the parent's Advanced Premium Tax Credits should be reconciled on the adult child's return (with the parent as a dependent). In the situation that the dependent parent inaccurately received APTC as his/her own household and not reflecting the adult child's household size or income level, the Community Tax Centers will not prepare an incorrect tax return to reconcile PTC for the parent. The Community Tax Centers will file a return with the adult child claiming the dependent parent and reconciling the PTC received for that tax year.

➤ **A note on marriage:**

We usually take people at their word regarding whether they are married or unmarried. In cases when a taxpayer is unclear on the law regarding marriage or when we feel the information they have given us is inconsistent or questionable, we may ask more questions to determine the correct marital status for IRS purposes. Regarding same-sex marriages, "The IRS has a general rule recognizing a marriage of same-sex spouses that was validly entered into in a domestic or foreign jurisdiction whose laws authorize the marriage of two individuals of the same sex even if the married couple resides in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages." In other words, if a couple is married in a state/country where that marriage is legally recognized, the couple is considered married for IRS purposes. For more information, see this flow chart on [Filing Status Options for Married Taxpayers](#), as well as [instructions for how to prepare a Married Filing Separately return](#) (see the second page).

➤ **A note on legal separation:**

Some people who are married may say they are legally separated. **Legal separation does not exist in Texas**, so for this arrangement to be valid for tax purposes, the couple would have had to undergone legal separation in a state that recognized that process. If the couple was living in Texas when they separated, they are considered married for tax purposes. Their options are to file jointly, file separately (although we may or may not be able to prepare the return), or possible to file head of household if he/she meets the restricted set of criteria for those who are married but living apart. For more information, see this flow chart on [Filing Status Options for Married Taxpayers](#), as well as [instructions for how to prepare a Married Filing Separately return](#) (see the second page).

➤ **A note on taxpayers with nonresident alien spouses:**

If, at the end of the tax year, you are married and one spouse is a US citizen or a resident alien the other is a nonresident alien, you can choose to treat the nonresident as a US resident. If you make that special election to file as **married filing jointly**, the nonresident alien spouse agrees to be treated as a resident alien for tax purposes. Both spouses must report their combined worldwide income and deduct



combined allowable worldwide expenses. Once the election is made, it applies to all later years until it's properly terminated. See Pub 54 for further reading.

**How to make the choice to treat nonresident alien spouse as resident alien for tax purposes:**

- Print the declaration of residency statement from the CTC Resources page (under filing status and dependents section). The spouses will need to complete and mail in the declaration with the return for the first tax year for which the choice applies (If one spouse died, include the name and address of the person making the choice for the deceased spouse.) Per FC policy, returns where one spouse is a nonresident alien are treated as paper returns. Both spouses will need to sign the return (unless the resident spouse has a signed Power of Attorney), and the resident spouse will mail the return and declaration of residency to the IRS.

If the nonresident alien does not elect to be treated as a resident alien, the taxpayer uses the **married filing separately** filing status. If the nonresident alien elects not to be treated as a resident alien, the taxpayer (who is the US citizen or resident alien) may be considered unmarried for **head of household** purposes if the taxpayer has a qualifying person (who cannot be the nonresident spouse) and meets the other tests to be eligible to file head of household. For more, see this flow chart on [Filing Status Options for Married Taxpayers](#), as well as [instructions for how to prepare a Married Filing Separately return](#) (see the second page).

➤ **What is a Multiple Support Agreement to claim a Qualifying Relative?**

Generally, to claim a person as a qualifying relative, you must pay over half of that person's support. However, even if you did not meet this support test, you may be able to claim him or her as a dependent if all five of the following apply:

1. You and one or more other eligible persons together paid over half of that person's support. (An eligible person is someone who could have claimed a person as a dependent except that he/she did not pay over half of that person's support.)
2. You paid over 10% of the support.
3. No one alone paid over half of that person's support.
4. The other dependency tests are met.
5. Each other eligible person who paid over 10% of the support agrees not to claim that person as a dependent by giving you a signed statement. You do not attach the statement to your return but must keep it in your records.

➤ **When can a taxpayer filing separately claim a spouse's personal exemption (for tax years 2017 and prior)?**

- If you file a separate return, you can claim the exemption for your spouse only if your spouse had no gross income, is not filing a return, and can't be claimed as a dependent on another taxpayer's return (even if the other taxpayer does not claim the spouse).



- This also applies for nonresident alien spouses. In the initial filing year, the taxpayer could request an ITIN for the nonresident alien spouse and have the nonresident alien spouse sign the 1040, W7 ITIN application, and the MFJ residency declaration. In following years, the taxpayer could file MFS and claim the nonresident alien spouse's personal exemption (avoiding the requirement of the spouse's signature on the tax return), as long as the nonresident spouse has no gross income for U.S. tax purposes, has an ITIN, and isn't the dependent of another U.S. taxpayer.
- If you are a surviving spouse without gross income and you remarry in the year your spouse died, you can be claimed as an exemption on both the final separate return of your deceased spouse and the separate return of your new spouse for that year. If you file a joint return with your new spouse, you can be claimed as an exemption only on that return.

➤ **What do we do if a 1099-MISC (or 1099-NEC for TY20) shows medical research as nonemployee compensation?**

We will occasionally prepare a return for a taxpayer who has participated in medical research and been issued a 1099-MISC. Payments for medical research should go in box 3 of the 1099-MISC, but the company may be incorrectly placed the amount in box 7 for nonemployee compensation. (An example of a company that pays for medical research is Austin Institute for Clinical Research.) In these situations, our policy is to **(1) enter the income as Other Income on the return** (as though it had been entered in box 3). We will also **(2) prepare the return as a Paper return** and **(3) have the taxpayer include with the return a copy of the 1099-MISC and a brief statement** explaining that the amount received for medical research was erroneously categorized as nonemployee compensation. Our intention is to prepare the return correctly but also preempt a letter to the client from the IRS by sending in an explanation with the original tax return.