

Filing Status: Married Filing Separately

Background

Because Texas is a community property state, all family income is owned equally by both spouses. This means that in order to file a Married Filing Separately (MFS) return for married taxpayers living in Texas, both spouses must equally divide the total income. Example: Mary earns \$15,000, and her husband John earns \$25,000, for a total family income of \$40,000. If Mary and John elect to file separate MFS returns, then they will pay taxes as though each had reported income of \$20,000. Because this can get very complicated, and it requires that both spouses be present at the same time, such returns cannot be prepared at CTC sites.

Foundation Communities policy

There are exceptions to the community property law. Foundation Communities' policy is that (1) if the spouses lived apart during all of the tax year and did not transfer income between themselves or (2) if the client does not know about, does not have, and cannot get the amount of their spouse's income (for cases of domestic abuse or spousal abandonment), then CTC volunteers may prepare an MFS return for the CTC client. The MFS return will report only income of the spouse who files the return. **All MFS returns will be paper returns.** Volunteer preparers should inform the client that the IRS may question the return, especially if the other spouse itemizes deductions or claims the same dependents.

If the client was married on December 31 of the tax year, lived with the other spouse during the tax year, and has or can get the other spouse's income, then CTC volunteers may **not** prepare a MFS return. The issues of splitting income and deductions, as well as which spouse claims the dependents, are beyond the scope of the VITA program. Such a client must seek professional tax assistance.

Remind clients that on a MFS return, the client:

- Generally will pay a higher tax rate;
- Is limited to a standard deduction which is half the amount of a joint return;
- Is not eligible for Earned Income Tax Credit;
- Is not eligible for the Child and Dependent Care Credit;
- Is not eligible for Education Credits;
- Is not eligible for the health insurance Premium Tax Credit;
- Reduces eligibility for the Child Tax Credit and Retirement Savings Credit; and
- Cannot claim the standard deduction if the spouse itemizes deductions.

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.

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 possibly to file head of household if he/she meets the restricted set of criteria for those who are married but lived apart from their spouse.

A note on taxpayers with nonresident alien spouses:

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident alien and the other is a nonresident alien, you can choose to treat the nonresident as a U.S. 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 their 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.

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 U.S. citizen or resident alien) may be considered unmarried for **head of household** purposes if the taxpayer has a qualifying person (which cannot be the nonresident spouse) and meets the other tests to be eligible to file head of household.

Entering the spouse's SSN/ITIN

The taxpayer will be required to provide the spouse's name and SSN/ITIN. If the taxpayer knows the spouse's SSN/ITIN, enter that number. If the taxpayer does not know the spouse's SSN/ITIN or the spouse does not have a taxpayer identification number, enter 111-00-1111 but **white out this number everywhere it appears on the printed return.** In summary, you want either the spouse's real SSN/ITIN to appear on the return or no number to appear. **You do not want a number other than the spouse's actual SSN/ITIN to appear on the return.**

Form 8958

If an eligible client elects to file MFS, then the tax preparer will report on Form 1040 only the income earned by that spouse. The tax preparer will need to complete Form 8958 in order to complete the return; this form requires the allocation of tax amounts between the spouses since Texas is a community property state. Since we do not do allocations of tax amounts between spouses, open the form (under Federal Section > Miscellaneous Forms) and enter \$1 in a field with income already entered from the spouse that is present. The software should then let you navigate the e-file section to set the return to paper. Once the return is printed, **you will then white out all entries where \$1 has been allocated to the spouse and write the correct total amount in the taxpayer's column.** Example: one income entry shows \$25,629 for the taxpayer and \$1 for the spouse. White out both entries and re-write the correct total of \$25,630 for the taxpayer.

	Taxpayer	Spouse
SOMERSET ISD	\$28,414.00	\$ 1
State Income Tax Refund	\$0.00	\$
Capital gain (or loss)	\$0.00	\$
Taxable amount of pensions and annuities	\$0.00	\$
Rental real estate, royalties, partnerships, S corporations, trusts, etc.	\$0.00	\$
Withholdings	\$596.00	\$