

Policy & Preparation: Incarcerated Spouse

If one spouse of a taxpayer couple who file Married Filing Jointly (MFJ) is incarcerated and unable to be present at the Tax Centers, Foundation Communities will assist the taxpayer with preparation of an MFJ tax return if:

- The incarcerated spouse has signed the **Spousal Consent to Prepare** ([Spousal Consent Form to Prepare Taxes](#)). All returns prepared using a spousal consent must be set to **Paper** and mailed to the IRS. See [When Is It A Paper Return?](#);

OR

- The on-site spouse has a signed **Power of Attorney** from the incarcerated spouse that includes financial matters. This return may be e-filed in certain circumstances. See [Policy & Preparation: Power of Attorney](#).

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

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

If the spouse who is not present is incarcerated but intends to return to the home upon release, the taxpayer is *not* eligible for Head of Household filing status. But if the couple is separated and the incarcerated spouse is not expected to return to the home upon being released, the taxpayer could qualify for Head of Household filing status (provided they meet all other tests).

On page B-12 of IRS [Pub 4012](#), the Determination of Filing Status – Decision Tree states 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 IRS [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.”**