STATE OF CALIFORNIA
Franchise Tax Board

FTB 1051A LLC

Guidelines for Married/RDP Filing Separate Tax Returns

In this document, we refer to the California Revenue and Taxation Code as R&TC.

What's New

In general, for tax years beginning on or after January 1, 2015, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2015. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to **ftb.ca.gov** and search for **conformity**. Find additional information in FTB Publication 1001, *Supplemental Guidelines to California Adjustment*, and the instructions for California Schedule CA (540) or Schedule CA (540NR). Go to **ftb.ca.gov** and search for the respective **form number** to find any of the publications we reference above.

General Information

For federal income tax purposes, married taxpayers can file either married filing jointly or married filing separately. In most cases the married filing jointly status offers the lowest tax rate, especially if you are domiciled in a community property state such as California.

Married/RDP couples under California law must file their California tax returns using either the married/RDP filing jointly or married/RDP filing separately filing status. RDPs have the same legal benefits, protections, and responsibilities as married couples unless otherwise specified. Married/RDPs may also qualify to claim HOH filing status.

For purposes of California income tax, references to a spouse, a husband, or a wife also refer to a California RDP, unless otherwise specified. When we use the initials RDP, they refer to a California, registered domestic partner and a California registered domestic partnership as applicable. For more information on RDPs, go to **ftb.ca.gov** and search for **737** to find FTB Pub. 737, *Tax Information for Registered Domestic Partners*. Married and RDP, apply the community or separate property rules based on their state of domicile to arrive at their separate income for California.

California requires you to use the same filing status on your California tax return as you used on your federal tax return, unless you are an RDP or meet one of the exceptions listed under **Joint Federal Tax Return**

If you are an RDP and file head of household for federal, you may file head of household for California only if you meet the requirements to be considered not in a registered domestic partnership or considered unmarried.

Joint Federal Tax Return

If you are married and file a joint federal tax return, you may file separate for California if either of the following exceptions applies:

- One spouse is an active duty military member.
- One spouse is a nonresident for the entire tax year and had no California sourced income during the tax year. For more information get FTB Publication 1031, *Guidelines for Determining Resident Status*.

Community and separate property rules must be applied when determining if the nonresident spouse is required to report California sourced income.

Filing a Separate Federal Tax Return

If you file a separate tax return, you must follow the property rules from your state of domicile for the division of income and deductions.

If you domicile in a community property state, you and your spouse/RDP must each report half of the community income, plus your separate income on your respective separate tax returns.

If you domicile in a separate property state, only income from assets held jointly would be split. Your taxable income, as well as your exemptions and deductions, may be different if you file married filing separately instead of married filing jointly on your federal tax return. Some of these differences may also apply on your California tax return. See comparison table on page 4.

Community Property

Generally, community property is all property a husband, a wife, or an RDP acquire while domiciled in a community property state or held jointly with their spouse/RDP. It does not include separate property as defined in this publication under Separate Property. Each spouse/RDP owns one-half of all community property. We consider property not specifically identified as separate to be community property.

Community Income

Generally, income generated from community property or property held jointly is community income. Community income also includes compensation for services if the spouse/RDP earning the compensation is domiciled in a community property state. Community income must be split equally between you and your spouse/RDP when you file separate tax returns.

In California, community status ends when marital/RDP partners physically separate with no immediate intention of reconciliation. Income earned or received after community status ends is separate income.

Separate Property

Separate property is:

- Property owned separately by a spouse/RDP before marriage or RDP.
- Property received separately as gifts or inheritances.
- Property purchased with separate property funds.
- Money earned or received while domiciled in a separate property state.
- All property declared separate property in a valid agreement (pre- or postnuptial or RDP agreement).

You must maintain the property separately. If you use the property for community purposes, or if you commingle it, it may lose its separate property character, overriding any agreements.

Separate Income

Generally, income from separate property belongs to the spouse/RDP who owns the property. If you and your spouse/RDP file separate tax returns, you must each report your separate income on those tax returns, in addition to your one-half of community property.

Deductions

You will generally divide equally between spouses/RDP, expenses incurred to earn or produce community business or investment income.

Expenses incurred to earn or produce separate business or investment income are deductible by the spouse/RDP who owns the investment generating the income if that spouse/RDP pays the expenses from his or her separate funds.

Expenses not attributable to any specific income, such as medical expenses, are deductible by the spouse/RDP that pays them. If you pay these expenses from community funds, you divide them equally between you and your spouse/RDP.

If one spouse/RDP itemizes deductions, you both must itemize deductions.

Income Division for California Residents

Example 1: In the current tax year, you and your spouse/RDP are residents of and domiciled in California. You earn $15,000 in wages. Your spouse/RDP earns $30,000. In addition to wages, you inherit stock. The stock is in your name only, and you keep the stock and dividend income separate from community funds. You receive $5,000 in dividends. You decide to file separate tax returns.

Determination: You and your spouse/RDP each have $22,500 in community income: ($15,000 + $30,000 = $45,000 / 2). In addition to your $22,500 in community income, you must include the $5,000 of separate income from dividends, making your total income $27,500.

Example 2: In the current tax year, you domicile in a separate property state, and you are a California resident. Your spouse/RDP domiciles in California and is a California resident. You have wages of $45,000 and your spouse/RDP has wages of $20,000. You and your spouse/RDP file California income tax returns as married filing separately.

Determination: Because you domicile in a separate property state, your income is separate property. You report all of your $45,000, and one-half of your spouse/RDP's wages, on your separate return. Because your spouse/RDP domiciles in a community property state (California), half of your spouse/RDP's $20,000 in wages is your share of community property earnings. Therefore, you include $10,000 of your spouse/RDP's wages on your separate tax return. Your spouse/RDP will report $10,000 wages on a separate tax return as the spouse/RDP's share of community property earnings

Exemption Credits

When you file separate tax returns, you and your spouse/RDP must each claim your own personal exemption credit.

When you have more than one dependent supported by community funds, you and your spouse/RDP can divide the number of dependents between you in any manner you choose. However, you and your spouse/RDP may not both claim the same dependent.

Withholding Credit

You must claim withholding credit from various income sources in the same manner as you reported the income. If the income is:

- Community income, one-half of the withholding associated with one-half of the community income is reported on each spouse's/RDP's separate tax return.
- Separate income, the spouse/RDP that earned or received the income and contributed the withholding, reports all the withholding that is associated with the separate income.

Estimated Tax Payments

Generally, estimated tax payments are treated in the same manner as withholding credits. However, if joint estimated tax payments are submitted and the couple files separate tax returns, the payments may not be allocated evenly without notification from you or your spouse/RDP before filing your separate tax returns.

Changing Your Filing Status

If you file a valid California joint tax return, you cannot change your filing status after the original due date (or after the extended due date if the original tax return was filed under extension) from married/RDP filing jointly to married/RDP filing separate unless:

- Your marriage/RDP was annulled.
- The joint tax return was not valid because you were not married/RDP.
- An executor or administrator disaffirms a joint tax return by filing a separate tax return for the decedent. The separate tax return must be filed within one year after the last day allowed for filing the surviving spouse's (or RDPs beginning with tax years on or after January 1, 2007) tax return (including extensions).
- For tax years beginning January 1, 2000, one spouse/RDP was an active duty military member during the tax year.

- For tax years beginning January 1, 2000, (or RDP beginning with tax years on or after January 1, 2007) one spouse/RDP was a nonresident for the entire tax year and had no income from California sources during the tax year. See FTB Pub. 1031.
- The last exception does not apply if the spouse/RDP with California source income is domiciled in a community property state, unless the income is separate income.
- Four years have elapsed since the tax return was due (without regard to an extension of time granted to either spouse/RDP). (R&TC § 18526(a))

If you file a separate tax return, you can amend it to change the filing status to married/RDP filing jointly as long as the filing status of the federal tax return is married filing jointly unless:

- One spouse/RDP received a Notice of Proposed Assessment for the tax year and filed a protest or appeal.
- One spouse/RDP filed a suit in any court for recovery of tax for the tax year.
- One spouse/RDP entered into a closing agreement under R&TC § 19441 for the tax year.
- Four years elapsed since the tax return was due (without regard to an extension of time granted to either spouse/RDP).

RDPs cannot file joint for federal but can change from separate to joint for California the same as spouses unless one of the bulleted circumstances listed above applies.

Internet and Telephone Assistance/Asistencia Por Internet y Telefono

Website/Sitio web:	**ftb.ca.gov**
Telephone/Telefono:	800.852.5711 from outside the United States/ dentro de los Estados Unidos
	916.845.6500 from within the United States/ fuera de los Estados Unidos
TTY/TDD:	800.822.6268 for persons with hearing or speech impairments/para personas con discapacidades auditivas o del habla

If You File Married/RDP Filing Separately Instead of Married/RDP Filing Jointly		
	Federal Tax Return	**California Tax Return**
1.	Include interest income from **U.S. savings bonds** used for higher education.	Exclude interest income from U.S. savings bonds.
2.	You may need to include more of your **social security and railroad retirement benefits** in your taxable income.	Exclude social security and railroad retirement benefits.
3.	You cannot deduct **student loan interest.**	Same.
4.	Generally, you cannot claim **personal, blind, or senior exemptions or deductions** for your spouse if you file a separate tax return. However, you may claim an exemption for your spouse on your separate tax return if your spouse has no gross income for the tax year and is not the dependent of another taxpayer. In addition, you may claim a higher standard deduction on your separate tax return if (a) your spouse is age 65 or older or blind, (b) you can claim an exemption for your spouse because he or she has no gross income for the tax year and (c) your spouse is not the dependent of another taxpayer. Community or separate property rules apply when determining gross income.	Generally, you cannot claim **personal, blind, or senior exemption credits** for your spouse/RDP if you file a separate tax return. However, you may claim a personal exemption for your spouse/RDP on your separate tax return if your spouse/RDP is blind, has no gross income for the tax year, and is not the dependent of another taxpayer. Community or separate property rules apply when determining gross income.
5.	You and your spouse must either both **itemize** or both take the **standard deduction**. If your spouse takes the standard deduction, you must also take the standard deduction, even if your itemized deductions are greater. If your spouse itemizes, you must also itemize, even if your itemized deductions are less than the standard deduction.	Same. This rule also applies to RDPs for California.
6.	You can only claim the **child and dependent care expenses credit** on your separate tax return if either (1) you are legally separated from your spouse, or (2) you did not live with your spouse at any time during the last six months of the tax year, your home was the main home for your qualifying person for more than half the tax year, and you furnished more than half the cost of maintaining your home during the tax year.	Same. This rule also applies to RDPs for California.
7.	You cannot claim the **credit for the elderly or the disabled** unless you lived apart from your spouse all tax year.	There are no comparable California credits.
8.	You cannot claim the **American opportunity and lifetime learning credits**.	There are no comparable California credits.
9.	Your **child tax credit** may be reduced.	There is no comparable California credit.
10.	You can only claim the credit or exclusion for an **adoption** on your separate tax return if either (1) you are legally separated from your spouse, or (2) you did not live with your spouse at any time during the last six months of the tax year, your home was your eligible child's home for more than half the tax year, and you paid more than half the cost of keeping up your home for the tax year. You can claim both the credit and the exclusion as long as you do not claim them for the same expense. The exclusion amount reported does not include assistance payments made by your employer.	You can claim the credit for an adoption on your separate tax return. Or, you can claim the exclusion for an adoption on your separate tax return if either (1) you are legally separated from your spouse/RDP, or (2) you did not live with your spouse/RDP at any time during the last six months of the tax year, your home was your eligible child's home for more than half the tax year, and you paid more than half the cost of keeping up your home for the tax year. You can claim both the credit and the exclusion as long as you do not claim them for the same expense. The exclusion amount reported does not include assistance payments made by your employer.
11.	You are not entitled to claim the **earned income credit**.	Same. Married/RDP couples filing separate returns are not entitled to claim EITC.