

LAW SUMMARY

HEAD OF HOUSEHOLD FILING STATUS

APPLICABLE TO THE 2004 TAX YEAR AND PRIOR

INTRODUCTION

1. This Law Summary explains the legal requirements that a taxpayer must meet to qualify for head of household filing status.

Although a taxpayer may be the "head of his or her household," the taxpayer may not qualify for head of household filing status on his or her tax return.

The California requirements for head of household filing status are the same as the federal requirements. California Revenue and Taxation Code section (§) 17042 follows federal Internal Revenue Code (IRC) §§ 2(b) and 2(c).

2. To qualify for head of household filing status, a taxpayer must meet all of the following requirements:
 - a. The taxpayer must be either unmarried, or qualify to be considered unmarried, on the last day of the tax year. (See sections 4 and 5, below.)
 - b. The taxpayer must pay more than half the cost of keeping up his or her home for the tax year. (See sections 14 to 17.)
 - c. The taxpayer's home must be the main home of the taxpayer's qualifying relative who lived with the taxpayer for more than half the tax year. (See sections 7 and 8 for qualifying relatives. See section 19 if the qualifying relative is a parent.)
 - d. The taxpayer must not be a nonresident alien at any time during the tax year. (See section 11.)

MARITAL STATUS ON THE LAST DAY OF THE TAX YEAR

3. A taxpayer can only qualify for head of household filing status if, on the last day of the tax year, the taxpayer is either UNMARRIED or qualifies to be CONSIDERED UNMARRIED. (IRC §§ 2(b)(1) and 2(c).)

UNMARRIED

4. A taxpayer is unmarried on the last day of the tax year if any of the following applies:
 - a. The taxpayer was never married.
 - b. The taxpayer was legally divorced under a final decree of divorce that was issued by the last day of the tax year. (IRC § 2(b)(2)(B); Treas. Reg. § 1.2-2(b)(5).) A petition for divorce is not the same as a final decree. Until a final decree of divorce is issued, a married taxpayer remains married. (*Appeal of Richard F. Savage*, 82-SBE-168, July 26, 1982.)
 - c. The taxpayer was legally separated under a final decree of legal separation that was issued by the last day of the tax year. (IRC § 2(b)(2)(B); Treas. Reg. § 1.2-2(b)(5).) A petition for legal separation

is not the same as a final decree. (*Appeal of James H. Rooney*, 81-SBE-074, June 23, 1981; *Appeal of Richard F. Savage*, 82-SBE-168, July 26, 1982.) Also, merely living apart from a spouse is not the same as being legally separated under a final decree of legal separation. (Treas. Reg. § 1.7703-1(a); *Appeal of Enis V. Harrison*, 77-SBE-090, June 28, 1977; *Appeal of Norma Vaccaro (Alvarez)*, 82-SBE-051, March 3, 1982.)

- d. The taxpayer's spouse was a nonresident alien at any time during the tax year and the taxpayer did not choose to treat the nonresident alien spouse as a resident alien. (IRC § 2(b)(2)(C); Treas. Reg. § 1.2-2(b)(5); FTB Legal Ruling 95-1, January 5, 1995.)

MARRIED BUT CONSIDERED UNMARRIED

5. A married taxpayer can only qualify for head of household filing status if he or she meets all of the following requirements to be considered unmarried:
 - a. The taxpayer filed a separate tax return from his or her spouse. (IRC §§ 2(c) and 7703(b)(1).)
 - b. The taxpayer paid more than half the cost of keeping up his or her home for the tax year. (See sections 14 to 17, Keeping Up a Home.)
 - c. The taxpayer's spouse did not live in the taxpayer's home at any time during the last six months of the tax year. (IRC §§ 2(c) and 7703(b)(2); *Appeal of Lucille Valentine*, 79-SBE-181, December 11, 1979. See sections 22 and 23, Temporary Absence.)
 - d. (1) For more than half the tax year, the taxpayer and the taxpayer's **child**, for whom the taxpayer is entitled to a dependent exemption credit, lived together in the taxpayer's home as their main home. ("Child" includes a taxpayer's birth child, stepchild, or adopted child.) Or,
(2) For the entire tax year, the taxpayer and the taxpayer's **foster child**, for whom the taxpayer is entitled to a dependent exemption credit, lived together in the taxpayer's home as their main home.

(IRC § 7703(b)(1). See sections 18 and 19, Main Home, sections 24 to 26, Foster Child, and sections 27 to 33, Dependent Exemption Credit.)

Qualifying Relative

6. Only certain specified relatives can qualify a taxpayer for head of household filing status. The taxpayer's marital status on the last day of the tax year determines which relatives can qualify a taxpayer for head of household filing status. For unmarried, see section 7. For married (considered unmarried), see section 8. (IRC §§ 2(b), 2(c), 152(a)(1) to (8), and 7703(b).)

**RELATIVES WHO CAN QUALIFY
AN UNMARRIED TAXPAYER
FOR HEAD OF HOUSEHOLD FILING STATUS**

7. Only the following relatives can qualify an unmarried taxpayer for head of household filing status.

a. The taxpayer's birth child, stepchild, grandchild, or adopted child who was:

- (1) Single on the last day of the tax year, or
- (2) Married on the last day of the tax year, if the taxpayer is entitled to a dependent exemption credit for the child.

(IRC § 2(b)(1)(A)(i).)

b. The taxpayer's foster child for whom the taxpayer was entitled to a dependent exemption credit.

(IRC §§ 2(b)(1)(A)(ii) and 152(b)(2); Rev. Rul. 84-89, 1984-1 C.B. 5; Treas. Reg. § 1.2-2(b)(3)(ii). See sections 24 to 26, Foster Child.)

c. Any of the following relatives of the taxpayer for whom the taxpayer is entitled to a dependent exemption credit.

Parent	Grandparent
Sister	Brother
Half-sister	Half-brother
Stepsister	Stepbrother
Stepmother	Stepfather
Daughter-in-law	Son-in-law
Sister-in-law	Brother-in-law
Mother-in-law	Father-in-law
Aunt	Uncle
Niece	Nephew

NOTE: An aunt or uncle must be the sister or brother of the taxpayer's mother or father. A niece or nephew must be the son or daughter of the taxpayer's sister or brother.

(IRC § 2(b)(1)(A)(ii); Treas. Reg. § 1.2-2(b)(3)(ii).)

**RELATIVES WHO CAN QUALIFY
A MARRIED (CONSIDERED UNMARRIED) TAXPAYER
FOR HEAD OF HOUSEHOLD FILING STATUS**

8. Only the following relatives of the taxpayer can qualify a married (considered unmarried) taxpayer for head of household filing status.

Birth **child**
Step**child**
Adopted **child**, or
Foster **child**.

The taxpayer must be entitled to a dependent exemption credit for the above qualifying relatives.

(IRC § 7703(b); Treas. Reg. § 1.7703-1(b). See sections 24 to 26, Foster Child.)

Additional Limitations

- 9. A taxpayer cannot claim his or her spouse as a qualifying relative. (IRC § 152(a)(9).)
- 10. The same person cannot qualify more than one taxpayer for head of household filing status for the same tax year. (Treas. Reg. § 1.2-2(b)(2).)

Nonresident Alien Taxpayer

11. If the taxpayer was a nonresident alien (neither a resident nor a citizen of the U.S.) at any time during the tax year, the taxpayer cannot qualify for head of household filing status even if the taxpayer met all of the other requirements for the status. (IRC § 2(b)(3)(A); Treas. Reg. § 1.2-2(b)(6).)

Nonresident Alien Spouse

12. If a taxpayer's spouse was a nonresident alien at any time during the tax year, and the taxpayer did not choose to treat the nonresident alien spouse as a resident alien, the taxpayer was unmarried for head of household purposes. (IRC § 2(b)(2)(C).)

13. The taxpayer's spouse was not a nonresident alien in a tax year if:

- a. The taxpayer and his or her spouse chose to treat the spouse as a resident alien in a prior tax year in which they filed a joint return, and they did not revoke the choice by the due date for filing a return for the tax year at issue (IRC § 6013(g)), or
- b. The taxpayer's spouse met either the green card test or the substantial presence test in the tax year at issue.

(1) Green Card Test. The taxpayer's spouse met the green card test for the tax year if he or she was issued an alien registration card (green card) by the Immigration and Naturalization Service at any time during the tax year.

(2) Substantial Presence Test. The taxpayer's spouse met the substantial presence test for the tax year if he or she lived in the U.S. for at least 31 days during the tax year and 183 days or more during the three-year period that includes the tax year and the two preceding years, counting all of the days the spouse was present in the U.S. in the tax year, one-third of the days the spouse was present in the U.S. in the first year preceding the tax year, and one-sixth of the days the spouse was present in the U.S. in the second year preceding the tax year. Days of presence are not counted if the spouse was an exempt individual such as, among others, a student who was temporarily present in the U.S. with an F, J, M, or Q visa.

(See IRS Publication 519, *U.S. Tax Guide for Aliens*.)

Keeping Up a Home

14. A taxpayer must pay more than half the cost of keeping up his or her home during the tax year. (IRC § 2(b)(1).)
15. The costs of keeping up a home include rent, mortgage interest, property taxes, property insurance on the home, repairs, utilities, and food eaten in the home. Costs not included in keeping up a home are clothing, education, medical treatment, vacations, life insurance, transportation, or the value of services rendered in the household by either the taxpayer or by the relative who qualifies the taxpayer for head of household filing status. (Treas. Reg. § 1.2-2(d).)
16. Public assistance payments, including Temporary Assistance for Needy Families (TANF, formerly Aid to Families with Dependent Children (AFDC)), cannot be counted as payments made by the taxpayer. However, such payments must be included in the total cost of keeping up the home, and it must be shown that the taxpayer paid more than half of the total cost.
- (*Gulvin v. Commissioner* (5th Cir. 1981) 644 F.2d 2, affg. T.C. Memo 1980 111, 40 T.C.M. (CCH) 126.)
17. During the period when a taxpayer lived with his or her spouse, any costs of keeping up the home in which the taxpayer and the taxpayer's spouse lived that were paid out of community funds are considered to have been paid half by the taxpayer and half by the taxpayer's spouse. Therefore, neither the taxpayer nor the taxpayer's spouse paid more than half the cost of keeping up the home.
- (*Maria Reyes Abrams* (1989) T.C. Memo 1989-462, 57 T.C.M. (CCH) 1433.)

Main Home

18. The main home is where the taxpayer and his or her qualifying relative lived together for more than half the year, except for temporary absences.
- (IRC § 2(b)(1)(A); Treas. Reg. § 1.2-2(c)(1); *Appeal of Ronald C. White*, 85-SBE-019, February 5, 1985; *Stanback, Jr. v. U.S.* (M.D.N.C. 1977) 77-1 USTC ¶ 9181, 39 AFTR 2d 77-805, 77-807. See sections 22 and 23, Temporary Absence.)
19. An unmarried taxpayer may claim his or her parent as a qualifying relative even if the parent did not live with the taxpayer. However, the taxpayer must have paid more than half the cost of keeping up the home that was the parent's main home for the entire tax year. (IRC § 2(b)(1)(B); Treas. Reg. § 1.2-2(c)(2).)

Taxpayer Divorced or Legally Separated On the Last Day of the Tax Year

20. If the taxpayer lived with his or her spouse at any time during the tax year, but was divorced or legally separated by the last day of the tax year, the taxpayer

may include the following periods in determining the number of days the taxpayer's home was the main home for the taxpayer's child:

- a. Half of the number of days the taxpayer, the taxpayer's spouse, and the taxpayer's child lived together, and
- b. All of the days the taxpayer and the taxpayer's child lived together in the taxpayer's home while the taxpayer's spouse did not live there.

(*Appeal of William Tierney*, Order Denying Petition for Rehearing, 97-SBE-006-A, September 10, 1997.)

Taxpayer Married on the Last Day of the Tax Year

21. If the taxpayer was married on the last day of the tax year and lived with his or her spouse at any time during the **first** six months of the tax year, the taxpayer may include the following periods in determining the number of days the taxpayer's home was the main home for the taxpayer's child:
- a. Half of the number of days the taxpayer, the taxpayer's spouse, and the taxpayer's child lived together, and
 - b. All of the days the taxpayer and the taxpayer's child lived together in the taxpayer's home while the taxpayer's spouse did not live there.

(*Appeal of Barbara Godek*, 98-SBE-006, November 19, 1998.)

NOTE: If the taxpayer was married on the last day of the tax year and lived with his or her spouse at any time during the **last** six months of the tax year, the taxpayer cannot qualify to be considered unmarried. Therefore, he or she cannot qualify for head of household filing status. (See section 5(c).)

Temporary Absence

22. A temporary absence is an absence from the taxpayer's home that is due to special circumstances. During a temporary absence, the taxpayer, the taxpayer's spouse, or the taxpayer's qualifying relative is still considered to occupy the household.
- (Treas. Reg. §§ 1.2-2(c)(1) and (2), 1.152-1(b), and 1.7703-1(b)(3) and (5).)
23. Special circumstances include absences due to illness, education, business, vacation, military service, incarceration, or a custody agreement under which a child or stepchild is absent for less than six months. An absence will only be considered temporary if it is reasonable to assume that the person will return to the household after the temporary absence, and the taxpayer continues to maintain a household in anticipation of such return.
- (Treas. Reg. §§ 1.2-2(c)(1) and (2), 1.152-1(b), and 1.7703-1(b)(3) and (5). *Appeal of Richard Byrd*, 84-SBE-167, December 13, 1984;)

Foster Child

24. A foster child is a child who is in the care of a person or persons (other than the parent(s) or legal guardian(s) of the child) who care for the child as their own child. A child is the taxpayer's foster child and is treated as the taxpayer's child by blood if all of the following apply:

- a. The taxpayer was entitled to a dependent exemption credit for the child, and
- b. The taxpayer's home was the child's main home for the entire tax year, and
- c. The child was a member of the taxpayer's household for the entire tax year.

(IRC §§ 152(a)(9) and 152(b)(2); Treas. Reg. §§ 1.152-1(b) and 1.152-2(c)(4). See sections 22 and 23, Temporary Absence.)

25. If either or both of a child's parents lived in the taxpayer's home with the taxpayer and the child, the taxpayer cannot claim the child as his or her foster child. Therefore, the child cannot qualify the taxpayer for head of household filing status, even if the child lived with the taxpayer during the entire tax year and the taxpayer paid all of the household expenses.

(*Appeal of Louis P. Halvas*, 97-SBE-013, November 20, 1997; *Appeal of Michael Curtis*, 97-SBE-012, August 1, 1997.)

26. For an adult to qualify as a taxpayer's foster child, the foster relationship between the taxpayer and the individual must have begun before the individual became an adult (i.e., before the individual reached the age of 18).

(*Appeal of Patrick R. Lobo*, 99-SBE-001, January 7, 1999.)

DEPENDENT EXEMPTION CREDIT

27. For the taxpayer to qualify for a dependent exemption credit for a person, all of the following five tests set forth in sections 28 to 32 must be met. (IRC §§ 151(c) and 152.)

For additional information regarding the dependent exemption credit, see IRS Publication 17, *Your Federal Income Tax*, or IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information*.

28. Member of the Household or Relationship Test

For the taxpayer to meet this test, one of the following must apply:

- a. Member of the Household
The person must live with the taxpayer for the entire tax year as a member of the taxpayer's household, or

b. Relationship

The person must be one of the following relatives of the taxpayer:

Birth Child	Stepchild
Grandchild	Adopted child
Foster child	
Parent	Grandparent
Sister	Brother
Half-sister	Half-brother
Stepsister	Stepbrother
Stepmother	Stepfather
Daughter-in-law	Son-in-law
Sister-in-law	Brother-in-law
Mother-in-law	Father-in-law
Aunt	Uncle
Niece	Nephew

NOTE: An aunt or uncle must be the sister or brother of the taxpayer's mother or father. A niece or nephew must be the son or daughter of the taxpayer's sister or brother.

(IRC §§ 151(c) and 152.)

A person who is not one of the relatives listed above cannot qualify the taxpayer for head of household filing status, even if the taxpayer was entitled to a dependent exemption credit for that person.

(IRC § 2(b)(3)(B)(i); *Appeal of Kenneth J. Aparicio*, 80-SBE-143, November 18, 1980.)

29. **Citizenship Test**

For some part of the tax year, the taxpayer's qualifying relative must be a citizen, national, or resident of the United States, or a resident of Canada or Mexico. (IRC § 152(b)(3).)

30. **Joint Return Test**

A taxpayer is not allowed an exemption credit for a dependent if the dependent filed a joint state or federal return with his or her spouse. (IRC § 151(c)(2).) However, the taxpayer is entitled to a dependent exemption credit for a married dependent who filed a joint state or federal return, if the taxpayer met all of the other requirements for a dependent exemption, and all the following apply:

- a. Neither the taxpayer's dependent nor the dependent's spouse was required to file a state or federal return, and
- b. Neither the taxpayer's dependent nor the dependent's spouse would have a state or federal tax liability if they filed separate returns, and
- c. The taxpayer's dependent and the dependent's spouse only filed a joint state or federal return to obtain a refund of tax withheld.

(Rev. Rul. 65-34, 1965-1 C.B. 86; Rev. Rul. 54-567, 1954-2 C.B. 108.)

31. Gross Income Test

For a taxpayer to be entitled to an exemption for a dependent, the dependent's gross income must be less than the allowable federal dependent exemption amount for the particular tax year. (IRC § 151(c)(1).) For the allowable federal dependent exemption amount, see the federal instruction booklet for the particular tax year.

However, the gross income test does not apply if the dependent was the taxpayer's child and was either under 19 years of age or was a full-time student under 24 years of age. (IRC § 151(c)(1).) A child is a son, stepson, daughter, stepdaughter, grandchild, foster child, or legally adopted child. (IRC §§ 151(c)(3) and 152(b); Treas. Reg. § 1.151-3(a). See sections 24 to 26, Foster Child.) A full-time student is a person who during some part of each of five calendar months during the calendar year:

- a. attended a school that had a regular teaching staff, course of study, and regularly enrolled body of students in attendance, **and**
- b. was enrolled for the number of hours or courses considered by the school as full-time attendance, **or**
- c. was a student taking a full-time, on-farm training course given either by a school described in a. above, or by a state, county, or local government.

(IRC § 151(c)(4); Treas. Reg. § 1.151-3(b) and (c).)

32. Support Test

Generally, a taxpayer must provide more than half the cost of a qualifying relative's total support during the tax year to meet the support test. To determine whether the taxpayer provided more than half the cost of a qualifying relative's total support, the taxpayer must compare the amount the taxpayer contributed for the person's support to the entire amount of support the person received from all other sources. Total support includes tax-exempt income such as social security benefits and welfare benefits, and the person's own funds used for support. A taxpayer's contribution may not include any part of the person's support that was paid by the person with the person's own wages, even if the taxpayer paid the wages. The person's own funds are not support unless they are actually spent for support. (IRC § 152(a); Treas. Reg. § 1.152-1(a).)

Support Test for Child of Divorced or Separated Parents

Regardless of which parent actually provided more than half of his or her child's support, the custodial parent (the parent in whose home the child lived for the greater portion of the tax year) is considered to have provided more than half of the child's support if all of the following conditions are met:

- a. The parents are divorced, legally separated, or lived apart at all times during the last six months of the tax year,
- b. The child was in the custody of one or both parents for more than half the tax year, and
- c. The child received more than half of his or her support during the tax year from his or her parents.

The custodial parent is entitled to the dependent exemption credit for the child as long as he or she meets all of the above requirements for the credit and none of the exceptions in section 33 applies. It does not matter if the noncustodial parent actually provided more than half of the child's support. The noncustodial parent is only entitled to the dependent exemption credit for the child if one of the exceptions set forth in section 33 applies.

(IRC § 152(e)(1).)

33. Exceptions to the Dependent Exemption Credit Requirement

If the taxpayer must be entitled to a dependent exemption credit for his or her child to qualify for head of household filing status, the taxpayer can still meet this requirement if the only reason the taxpayer cannot claim a dependent exemption credit for the child is because of one of the following:

- a. Although the taxpayer is the child's custodial parent and is entitled to claim a dependent exemption credit for the child, the taxpayer provided a statement in writing to the noncustodial parent allowing the noncustodial parent to claim the dependent exemption credit to which the taxpayer was entitled, or
- b. A decree of divorce or legal separation or a written agreement went into effect after 1984 which states that the noncustodial parent may claim a dependent exemption credit for the child without regard to any condition, such as payment of support, or
- c. The noncustodial parent provided at least \$600 of support for the child during the tax year and claimed an exemption for the child under a pre-1985 decree of divorce or legal separation, or a pre-1985 written agreement, unless the decree or agreement was later modified to state that the above provision no longer applies.

(IRC §§ 2(b)(1)(A)(i) and 152(e)(2) and (4). See IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information*.)