

LAW SUMMARY
HEAD OF HOUSEHOLD FILING STATUS
MARRIED (CONSIDERED UNMARRIED) TAXPAYER
APPLICABLE TO THE 2005 and 2006 TAX YEARS

A. INTRODUCTION

1. This Law Summary explains the legal requirements that a taxpayer who was legally married as of the last day of the tax year must meet to qualify for head of household filing status.
2. A taxpayer who was unmarried as of the last day of the tax year must use the separate Law Summary for unmarried taxpayers. A taxpayer is unmarried for the purpose of qualifying for head of household filing status if his or her spouse was a nonresident alien at any time during the year. (See section O, Nonresident Alien Spouse.) Registered domestic partners can qualify for head of household filing status by meeting the requirements set forth in the Law Summary for unmarried taxpayers.
3. 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.
4. The California requirements for head of household filing status are the same as the federal requirements.¹

B. REQUIREMENTS FOR HEAD OF HOUSEHOLD FILING STATUS

1. To qualify for head of household filing status, a married taxpayer must meet all of the following requirements to be considered unmarried.
 - a. The taxpayer's spouse must not have lived in the taxpayer's home at any time during the last six months of the tax year.² (See section L, Temporary Absence.)
 - b. The taxpayer must pay more than half the cost of keeping up his or her home for the tax year.³ (See section I, Keeping Up a Home.)
 - c. For more than half the tax year, the taxpayer and the taxpayer's **child** must have lived together in the taxpayer's home as their main home. "Child" includes the taxpayer's birth child, stepchild, adopted child, or foster child.⁴
 - d. The taxpayer's child must meet the requirements to be either a Qualifying Child or a Qualifying Relative.⁵
 - e. The taxpayer must be entitled to a dependent exemption credit for the child.⁶ That is, in addition to meeting the requirements to be either a Qualifying Child or a Qualifying Relative, the taxpayer's child must also meet the joint return and citizenship tests. See section F for the

requirements that must be met to qualify for a dependent exemption credit.

- f. The taxpayer must not be a nonresident alien at any time during the tax year.⁷ (See section N, Nonresident Alien Taxpayer.)

C. MARRIED TAXPAYER DEFINED

1. A taxpayer's marital status is determined as of the close of his or her taxable year.⁸ A taxpayer is married as of the last day of the tax year if he or she was legally married and had not obtained a final decree of divorce or a final decree of legal separation by the last day of the year.

D. QUALIFYING PERSON

1. The taxpayer must have a qualifying person to be eligible for head of household filing status. The qualifying person must be related to the taxpayer either by blood or by marriage.⁹

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

1. Only the taxpayer's child can qualify a married (considered unmarried) taxpayer for head of household filing status (see a., b., c., and d. below).¹⁰ The taxpayer must also be entitled to a dependent exemption credit for the child.¹¹
 - a. Birth **child**
 - b. Step**child**
 - c. Adopted **child**, or
 - d. Foster **child**.

F. DEPENDENT EXEMPTION CREDIT

1. For a taxpayer to be entitled to a dependent exemption credit for a child, the child must meet the requirements to be the taxpayer's Qualifying Child¹² or Qualifying Relative¹³ and must also meet all of the following three tests¹⁴ (see paragraphs 2, 3, and 4 below). If the child does not meet the age test to be the taxpayer's Qualifying Child, the child may still meet the requirements to be the taxpayer's Qualifying Relative. (See section G, Qualifying Child, and section H, Qualifying Relative.)

2. **Dependent of Another Taxpayer Test**

The taxpayer is not entitled to an exemption for a dependent if the taxpayer can be claimed as a dependent by another taxpayer.¹⁵

3. **Joint Return Test**

A taxpayer is not allowed an exemption credit for a dependent if the dependent filed a joint federal return with his or her spouse unless both of the following apply:¹⁶

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

4. **Citizenship Test**

For some part of the tax year, the taxpayer's child must be a citizen or national of the United States, or a resident of the United States, Canada, or Mexico.¹⁷

G. **QUALIFYING CHILD**

1. **Relationship Test**

For a married taxpayer to meet this test for the purpose of qualifying for head of household filing status, his or her qualifying person must be one of the following relatives:¹⁸

Birth child	Stepchild
Adopted child	Foster child

2. **Age Test**

The child must be under 19 years of age or a full-time student under 24 years of age.¹⁹ The age test is satisfied if the child is permanently and totally disabled at any time during the calendar year.²⁰ If the child does not meet the age test to be a Qualifying Child, he or she may still meet the requirements to be a Qualifying Relative (see section H, paragraph 1).

A full-time student²¹ is a person who during some part of each of five calendar months during the calendar year either:

- a. Attended a school that had a regular teaching staff, course of study, and regularly enrolled body of students in attendance, and was enrolled for the number of hours or courses considered by the school as full-time attendance, or
- b. Was enrolled in and attended a full-time, on-farm training course given either by a school described

in a. above, or by a state, county, or local government.

3. **Residency Test**

The child must live with the taxpayer for more than half the year.²²

4. **Support Test**

The child must not have provided more than half of his or her own support.²³

5. **Special Rule for Two or More Claiming a Qualifying Child²⁴**

a. If two or more taxpayers including a parent claim the same child as a Qualifying Child for a particular tax year, the child shall be treated as the Qualifying Child of the taxpayer who is:

- (1) A parent of the child, or
- (2) If none of the taxpayers is a parent, the taxpayer with the highest adjusted gross income for the taxable year.

b. If the parents both claim the same child, the child shall be the Qualifying Child of:

- (1) The parent with whom the child resided for the longest period of time during the taxable year, or
- (2) If the child resides with both parents for the same amount of time during the taxable year, the parent with the highest adjusted gross income may claim the child as a Qualifying Child, but only for the purpose of qualifying for a dependent exemption credit for the child. A child who lives with both parents for the same amount of time during the year cannot qualify either parent for head of household filing status because the child did not live with either parent for more than half the year.

H. **QUALIFYING RELATIVE**

1. **Not a Qualifying Child Test**

To be a Qualifying Relative, the taxpayer's child must not meet the requirements to be the taxpayer's Qualifying Child or the Qualifying Child of anyone else.²⁵ If the child does not meet the age test to be a Qualifying Child, he or she may still meet the requirements to be a Qualifying Relative and qualify the taxpayer for both a dependent exemption credit and head of household filing status.

Note: If the child does not meet the residency test to be a Qualifying Child, he or she may still qualify the taxpayer for a dependent exemption credit as a Qualifying Relative. However, the child cannot qualify the taxpayer for head of household filing status. If the child does not meet the support test to be a Qualifying Child, he or she cannot qualify the taxpayer for either the dependent exemption credit or head of household filing status.

2. Member of the Household or Relationship Test²⁶

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

a. Member of the Household

In general, to meet this test for the purpose of qualifying the taxpayer for a *dependent exemption credit*, a child must live with the taxpayer for the entire tax year as a member of the taxpayer's household. However, for a married taxpayer to be entitled to a dependent exemption credit for a child for the purpose of qualifying for *head of household filing status*, the child must bear one of the relationships to the taxpayer that are listed in section 2b, below.²⁷

b. Relationship

For a married taxpayer to meet this test for the purpose of qualifying for head of household filing status, his or her qualifying person must be one of the following relatives:²⁸

Birth child	Stepchild
Adopted child	Foster child

3. 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. For the allowable federal dependent exemption amount, see the federal instruction booklet for the particular tax year.²⁹ If the dependent is married, his or her community interest in the spouse's income must be considered in applying the gross income test.

4. Support Test

Generally, a taxpayer must provide more than half of his or her child's total support during the tax year to meet the support test.³⁰ To determine whether the taxpayer provided more than half the cost of a child's total support, the taxpayer must compare the amount the taxpayer contributed for the child's support to the entire amount of support the child received from all other sources. Total support includes tax-exempt income such as social security benefits and welfare benefits, and the child's own funds used for support.

A taxpayer's contribution may not include any part of the child's support that was paid by the child with the child's own wages, even if the taxpayer paid the wages. The child's own funds are not support unless they are actually spent for support.

I. KEEPING UP A HOME

1. A taxpayer must pay more than half the cost of keeping up his or her home during the tax year.³¹
2. 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 child who qualifies the taxpayer for head of household filing status.³²
3. 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.³³
4. 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 during the first six months of the year that were paid out of community funds are considered to have been paid half by the taxpayer and half by the taxpayer's spouse.³⁴

J. MAIN HOME

1. The main home is where the taxpayer and his or her child lived together for more than half the year, except for temporary absences.³⁵ (See section L, Temporary Absence.)

K. TAXPAYER MARRIED ON THE LAST DAY OF THE TAX YEAR AND LIVED WITH HIS OR HER SPOUSE³⁶

1. 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 during the first six months of the tax year, 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.

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 B, paragraph 1b.)

- a. The taxpayer and his or her spouse chose to treat the nonresident alien 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 six-month extended due date for filing a return for the tax year at issue,⁴² or

- b. The taxpayer's spouse met either the green card test or the substantial presence test in the tax year at issue to be a resident.

- (1) Green Card Test. The taxpayer's spouse met the green card test for the tax year if he or she had an alien registration card (green card) 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*.)

L. TEMPORARY ABSENCE

1. 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 child is still considered to occupy the household.³⁷
2. 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 child will return to the household after the temporary absence, and the taxpayer continues to maintain a household in anticipation of such return.³⁸

M. FOSTER CHILD

1. A child is the taxpayer's foster child and is treated as the taxpayer's child by blood only if the child was placed in the taxpayer's home by an authorized placement agency or by a court.³⁹

N. NONRESIDENT ALIEN TAXPAYER

1. 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.⁴⁰

O. NONRESIDENT ALIEN SPOUSE

1. 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.⁴¹ However, if the conditions in paragraph 2a. below are met, the taxpayer has chosen to treat the nonresident alien spouse as a resident alien in the tax year at issue.
2. The taxpayer's spouse was not a nonresident alien in a tax year if:

P. ADDITIONAL LIMITATION

1. The same child cannot qualify more than one taxpayer for head of household filing status for the same tax year.⁴³

¹ California Revenue and Taxation Code section 17042 follows the federal Internal Revenue Code (IRC) sections 2(b) and 2(c).

² IRC section 7703(b)(3); *Appeal of Lucille Valentine*, 79-SBE-181, December 11, 1979.

³ IRC section 7703(b)(2).

⁴ IRC sections 7703(b)(1) and 152(f)(1).

⁵ IRC section 2(b)(1)(A)(i) and (ii).

⁶ IRC section 7703(b)(1).

⁷ IRC section 2(b)(3)(A).

⁸ IRC section 7703(a).

⁹ *Appeal of Stephen M. Padwa*, 77-SBE-078, May 10, 1997; *Appeal of Priscilla L. Campbell*, 79-SBE-035, February 8, 1979.

¹⁰ IRC section 7703(b)(1).

¹¹ IRC sections 2(c), 7703(b)(1) and 152(f)(1); Treasury Regulation (Treas. Reg.) section 1.7703-1(b)(1)(ii).

¹² IRC section 152(c).

¹³ IRC section 152(d).

¹⁴ IRC section 152(b).

¹⁵ IRC section 152(b)(1).

¹⁶ IRC section 152(b)(2); Rev. Rul. 65-34, 1965-1 C.B. 86; Rev. Rul. 54-567, 1954-2 C.B. 108.

¹⁷ IRC section 152(b)(3).

¹⁸ IRC section 152(f)(1).

¹⁹ IRC section 152(c)(3)(A).

²⁰ IRC section 152(c)(3)(B).

²¹ IRC section 152(f)(2); Treas. Reg. section 1.151-3(b) and (c).

²² IRC section 152(c)(1)(B).

²³ IRC section 152(c)(1)(D).

²⁴ IRC section 152(c)(4).

²⁵ IRC section 152(d)(1)(D).

²⁶ IRC section 152(d)(2).

²⁷ IRC section 2(b)(3)(B)(i).

²⁸ IRC section 152(f)(1).

²⁹ IRC section 152(d)(1)(B).

³⁰ IRC section 152(d)(1)(C); Treas. Reg. section 1.152-1(a).

³¹ IRC sections 2(b)(1)(A) and 7703(b)(2); Treas. Reg. section 1.2-2(d).

³² Treas. Reg. section 1.2-2(d).

³³ *Gulvin v. Commissioner* (5th Cir. 1981) 644 F.2d, affg. T.C. Memo 1980 111, 40 T.C.M. (CCH) 126.

³⁴ *Maria Reyes Abrams* (1989) T.C. Memo 1989-462, 57 T.C.M. (CCH) 1433.

³⁵ IRC section 2(b)(1)(A); Treas. Reg. section 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.

³⁶ *Appeal of Barbara Godek*, 98-SBE-006, November 19, 1998.

³⁷ Treas. Reg. sections 1.2-2(c)(1) and (2), 1.152-1(b), and 1.7703-1(b)(3) and (5).

³⁸ Treas. Reg. sections 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.

³⁹ IRC section 152(f)(1)(C).

⁴⁰ IRC section 2(b)(3)(A); Treas. Reg. section 1.2-2(b)(6).

⁴¹ IRC section 2(b)(2)(B).

⁴² IRC section 6013(g); Treas. Reg. section 301.9100-2(b).

⁴³ Treas. Reg. section 1.2-2(b)(2).