

**LAW SUMMARY**  
**HEAD OF HOUSEHOLD FILING STATUS**  
**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 unmarried on the last day of the tax year must meet to qualify for head of household filing status.
2. A taxpayer who was legally married as of the last day of the tax year must use the separate Law Summary for married taxpayers. Registered domestic partners can qualify for head of household filing status by meeting the requirements for unmarried taxpayers set forth in this Law Summary.
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.<sup>1</sup>

**B. REQUIREMENTS FOR HEAD OF HOUSEHOLD FILING STATUS**

1. To qualify for head of household filing status, an unmarried taxpayer must meet all of the following requirements:
  - a. The taxpayer must be unmarried on the last day of the tax year.<sup>2</sup> (See section C, Unmarried Taxpayer Defined.)
  - b. The taxpayer must pay more than half the cost of keeping up his or her home for the tax year.<sup>3</sup> (See section K, Keeping Up a Home.)
  - c. The taxpayer's home must be the main home of the taxpayer's qualifying person who lived with the taxpayer for more than half the tax year.<sup>4</sup> However, the taxpayer's parent does not have to live with the taxpayer.<sup>5</sup> (See section L, Main Home.)
  - d. The taxpayer's qualifying person must meet the requirements to be either a Qualifying Child or a Qualifying Relative.<sup>6</sup>
  - e. The taxpayer must be entitled to a dependent exemption credit for his or her qualifying person. That is, in addition to meeting the requirements to be either a Qualifying Child or Qualifying Relative, the taxpayer's qualifying person 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 for a person. However, an unmarried taxpayer does not have to be entitled to a dependent exemption credit for a

- Qualifying Child who is unmarried.<sup>7</sup> That is, the joint return and citizenship tests need not be met. (See section G, Qualifying Child.)
- f. The taxpayer must not be a nonresident alien at any time during the tax year.<sup>8</sup> (See section P, Nonresident Alien Taxpayer.)

**C. UNMARRIED TAXPAYER DEFINED**

1. 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.<sup>9</sup> 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.<sup>10</sup>
  - c. The taxpayer was legally separated under a final decree of legal separation that was issued by the last day of the tax year.<sup>11</sup> A petition for legal separation is not the same as a final decree.<sup>12</sup> Also, merely living apart from a spouse is not the same as being legally separated under a final decree of legal separation.<sup>13</sup>
  - 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.<sup>14</sup> (See section Q, Nonresident Alien Spouse.)

**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.<sup>15</sup>

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

1. Any of the following relatives can qualify an unmarried taxpayer for head of household filing status.<sup>16</sup>

Birth Child	Stepchild
Grandchild	Adopted child
Foster child	
Parent	Grandparent
Brother	Sister
Half-brother	Half-sister
Stepbrother	Stepsister

Stepfather	Stepmother
Son-in-law	Daughter-in-law
Brother-in-law	Sister-in-law
Father-in-law	Mother-in-law
Uncle	Aunt
Nephew	Niece

NOTE: An uncle or aunt must be the brother or sister of the taxpayer's father or mother.<sup>17</sup> A nephew or niece must be the son or daughter of the taxpayer's brother or sister.<sup>18</sup>

- a. Single on the last day of the tax year, or
- b. Married on the last day of the tax year,<sup>26</sup> and
  - (1) Was a citizen or national of the United States, or a resident of the United States, Canada, or Mexico, and
  - (2) Did not file a joint return with his or her spouse.

## F. DEPENDENT EXEMPTION CREDIT

1. For a taxpayer to be entitled to a dependent exemption credit for a person, the person must meet the requirements to be the taxpayer's Qualifying Child<sup>19</sup> or Qualifying Relative<sup>20</sup> and must also meet all of the following three tests<sup>21</sup> (see paragraphs 2, 3, and 4 below). If the person does not meet the age test to be a Qualifying Child, the person 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.<sup>22</sup>

### 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:<sup>23</sup>

- 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 qualifying person must be a citizen or national of the United States, or a resident of the United States, Canada, or Mexico.<sup>24</sup>

## G. QUALIFYING CHILD

### 1. Relationship Test<sup>25</sup>

The qualifying person must be the taxpayer's birth child, stepchild, grandchild, adopted child, foster child, brother, sister, half-brother, half-sister, stepbrother, stepsister, nephew or niece who was:

### 2. Age Test

The qualifying person must be under 19 years of age or a full-time student under 24 years of age.<sup>27</sup> The age test is satisfied if the person is permanently and totally disabled at any time during the calendar year.<sup>28</sup> If the person 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 student<sup>29</sup> 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 qualifying person must live with the taxpayer for more than half the year.<sup>30</sup>

### 4. Support Test

The qualifying person must not have provided more than half of his or her own support.<sup>31</sup>

### 5. Special Rule for Two or More Claiming a Qualifying Child<sup>32</sup>

- 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.

filing status, his or her qualifying person must be one of the following relatives:<sup>36</sup>

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

NOTE: An uncle or aunt must be the brother or sister of the taxpayer's father or mother.<sup>37</sup> A nephew or niece must be the son or daughter of the taxpayer's brother or sister.<sup>38</sup>

## H. QUALIFYING RELATIVE

### 1. Not a Qualifying Child Test

To be a Qualifying Relative, the taxpayer's qualifying person must not meet the requirements to be the taxpayer's Qualifying Child or the Qualifying Child of anyone else.<sup>33</sup> If the person 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 person 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 person cannot qualify the taxpayer for head of household filing status. If the person 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 Test<sup>34</sup>

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 for a *dependent exemption credit*, a qualifying person must live with the taxpayer for the entire tax year as a member of the taxpayer's household. However, for an unmarried taxpayer to be entitled to a dependent exemption credit for a person for the purpose of qualifying for *head of household filing status*, the person must bear one of the relationships to the taxpayer that are listed in section 2b, below.<sup>35</sup>
- b. Relationship  
For an unmarried taxpayer to meet this test for the purpose of qualifying for head of household

### 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.<sup>39</sup> For the allowable federal dependent exemption amount, see the federal instruction booklet for the particular tax year. 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 the cost of a qualifying person's total support during the tax year to meet the support test.<sup>40</sup> To determine whether the taxpayer provided more than half the cost of a person'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.

### I. SPECIAL RULE FOR DIVORCED OR LEGALLY SEPARATED PARENTS<sup>41</sup>

1. When a child lives with both parents who are divorced or legally separated, the custodial parent is the parent in whose home the child lived for the greater part of the year. The other parent is the

noncustodial parent.<sup>42</sup> A child is treated as the Qualifying Child or Qualifying Relative of the noncustodial parent if all of the following conditions are met:<sup>43</sup>

- a. The parents are divorced, legally separated, or lived apart at all times during the last six months of the year. (Parents who have never married each other must live apart at all times during the last six months of the year.)
  - b. The child was in the custody of one or both of the child's parents for more than half of the year.
  - c. The child received more than half of his or her support during the calendar year from his or her parents.
  - d. As provided in a decree of divorce or legal separation or written separation agreement that applies to the tax year at issue:
    - (1) The noncustodial parent is entitled to the dependent exemption credit for the child, or
    - (2) The custodial parent signed a written statement that he or she will not claim the dependent exemption credit for the child. (The custodial parent may sign federal Form 8332, *Release of Claim to Exemption for Child of Divorced or Separated Parents*, or a similar statement.) The noncustodial parent must attach a copy of the statement to his or her income tax return.
2. The noncustodial parent qualifies for the dependent exemption credit for a child who is treated as his or her Qualifying Child or Qualifying Relative under the conditions set forth above. However, by law, the noncustodial parent cannot qualify for head of household filing status.

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*.

#### **J. EXCEPTIONS TO THE DEPENDENT EXEMPTION CREDIT REQUIREMENT<sup>44</sup>**

1. 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. As provided in a decree of divorce or legal separation or written separation agreement that applies to the tax year at issue, the noncustodial

parent is entitled to the dependent exemption credit for the child, or

- b. As provided in a decree of divorce or legal separation or written separation agreement that applies to the tax year at issue, the taxpayer who was the custodial parent 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.

See IRS Publication 501, *Exemptions, Standard Deduction, and Filing Information*.)

#### **K. 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.<sup>45</sup>
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 relative who qualifies the taxpayer for head of household filing status.<sup>46</sup>
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.<sup>47</sup>
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 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.<sup>48</sup>

#### **L. MAIN HOME**

1. The main home is where the taxpayer and his or her Qualifying Child or Qualifying Relative lived together for more than half the year, except for temporary absences.<sup>49</sup> (See section N, Temporary Absence.)
2. An unmarried taxpayer may claim his or her parent as a qualifying person 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.<sup>50</sup>

**M. TAXPAYER DIVORCED OR LEGALLY SEPARATED ON THE LAST DAY OF THE TAX YEAR AND LIVED WITH HIS OR HER SPOUSE<sup>51</sup>**

1. 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.

**N. 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 qualifying person is still considered to occupy the household.<sup>52</sup>
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 person will return to the household after the temporary absence, and the taxpayer continues to maintain a household in anticipation of such return.<sup>53</sup>

**O. 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.<sup>54</sup>

**P. 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.<sup>55</sup>

**Q. 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.<sup>56</sup> 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:
  - 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,<sup>57</sup> 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.*)

**R. ADDITIONAL LIMITATIONS**

1. A person who is not related to the taxpayer, but meets the member of the household test to be a Qualifying Relative, cannot qualify the taxpayer for head of household filing status.<sup>58</sup>
2. The same person cannot qualify more than one taxpayer for head of household filing status for the same tax year.<sup>59</sup>

<sup>1</sup> California Revenue and Taxation Code section 17042 follows the federal Internal Revenue Code (IRC) sections 2(b) and 2(c).  
<sup>2</sup> IRC sections 2(b)(1) and 7703(a).  
<sup>3</sup> IRC section 2(b)(1)(A); Treasury Regulation (Treas. Reg.) section 1.7703-1(b)(4).  
<sup>4</sup> IRC section 2(b)(1)(A).  
<sup>5</sup> IRC section 2(b)(1)(B).  
<sup>6</sup> IRC section 2(b)(1)(A)(i) and (ii).  
<sup>7</sup> IRC section 2(b)(1)(A)(i)(I) and (II).  
<sup>8</sup> IRC section 2(b)(3)(A).  
<sup>9</sup> IRC section 2(b)(2)(A); Treas. Reg. section 1.2-2(b)(5).  
<sup>10</sup> *Appeal of Richard F. Savage*, 82-SBE-168, July 26, 1982.  
<sup>11</sup> IRC section 2(b)(2)(A); Treas. Reg. section 1.2-2(b)(5).  
<sup>12</sup> *Appeal of James H. Rooney*, 81-SBE-074, June 23, 1981; *Appeal of Richard F. Savage*, 82-SBE-168, July 26, 1982.  
<sup>13</sup> Treas. Reg. section 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.  
<sup>14</sup> IRC section 2(b)(2)(B); Treas. Reg. section 1.2-2(b)(5); FTB Legal Ruling 95-1, January 5, 1995.  
<sup>15</sup> *Appeal of Stephen M. Padwa*, 77-SBE-078, May 10, 1997; *Appeal of Priscilla L. Campbell*, 79-SBE-035, February 8, 1979.  
<sup>16</sup> IRC section 2(b)(1)(A)(i) and (ii).  
<sup>17</sup> IRC section 152(d)(2) F.  
<sup>18</sup> IRC section 152(d)(2)(E).  
<sup>19</sup> IRC section 152(c).  
<sup>20</sup> IRC section 152(d).  
<sup>21</sup> IRC section 152(b).  
<sup>22</sup> IRC section 152(b)(1).  
<sup>23</sup> IRC section 152(b)(2); Rev. Rul. 65-34, 1965-1 C.B. 86; Rev. Rul. 54-567, 1954-2 C.B. 108.  
<sup>24</sup> IRC section 152(b)(3).  
<sup>25</sup> IRC section 152(c)(2).  
<sup>26</sup> IRC section 2(b)(1)(A)(i)(I) and (II).  
<sup>27</sup> IRC section 152(c)(3).  
<sup>28</sup> IRC section 152(c)(3)(B).  
<sup>29</sup> IRC section 152(f)(2); Treas. Reg. section 1.151-3(b) and (c).  
<sup>30</sup> IRC section 152(c)(1)(B).  
<sup>31</sup> IRC section 152(c)(1)(D).  
<sup>32</sup> IRC section 152(c)(4).  
<sup>33</sup> IRC section 152(d)(1)(D).  
<sup>34</sup> IRC section 152(d)(2).  
<sup>35</sup> IRC section 2(b)(3)(B)(i).  
<sup>36</sup> IRC section 152(d)(2).  
<sup>37</sup> IRC section 152(d)(2)(F).  
<sup>38</sup> IRC section 152(d)(2)(E).  
<sup>39</sup> IRC section 152(d)(1)(B).  
<sup>40</sup> IRC section 152(d)(1)(C); Treas. Reg. section 1.152-1(a).  
<sup>41</sup> IRC section 152(e).  
<sup>42</sup> IRC section 152(e)(3).  
<sup>43</sup> IRC section 152(e)(1) and (2).  
<sup>44</sup> IRC sections 2(b)(1)(A)(i) and 152(e)(1) and (2).

<sup>45</sup> IRC sections 2(b)(1)(A) and 7703(b)(2).  
<sup>46</sup> Treas. Reg. section 1.2-2(d).  
<sup>47</sup> *Gulvin v. Commissioner* (5th Cir. 1981) 644 F.2d 2, affg. T.C. Memo 1980 111, 40 T.C.M. (CCH) 126.  
<sup>48</sup> *Maria Reyes Abrams* (1989) T.C. Memo 1989-462, 57 T.C.M. (CCH) 1433.  
<sup>49</sup> 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.  
<sup>50</sup> IRC section 2(b)(1)(B); Treas. Reg. section 1.2-2(c)(2).  
<sup>51</sup> *Appeal of William Tierney*, Order Denying Petition for Rehearing, 97-SBE-006-A, September 10, 1997.  
<sup>52</sup> Treas. Reg. sections 1.2-2(c)(1) and (2), 1.152-1(b), and 1.7703-1(b)(3) and (5).  
<sup>53</sup> 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.  
<sup>54</sup> IRC section 152(f)(1)(C).  
<sup>55</sup> IRC section 2(b)(3)(A); Treas. Reg. section 1.2-2(b)(6).  
<sup>56</sup> IRC section 2(b)(2)(B).  
<sup>57</sup> IRC section 6013(g); Treas. Reg. section 301.9100-2(b).  
<sup>58</sup> IRC section 2(b)(3)(B)(i).  
<sup>59</sup> Treas. Reg. section 1.2-2(b)(2).