

INCOME TAX ISSUES AFFECTING MARRIED AND DIVORCED TAXPAYERS

This publication is designed to provide general information with respect to issues affecting married taxpayers. For complete details, refer to the Arizona Revised Statutes. In case of inconsistency or omission in this publication, the Arizona Revised Statutes will prevail.

ARIZONA COMMUNITY PROPERTY

Q1. What is community property for Arizona purposes?

A1. For the most part, all property that either you or your spouse acquire while you are married is community property. Some exceptions apply to this general rule. For instance, property that you acquire by gift or that you inherit is not community property. Also, property that you acquire after service of a petition for divorce, legal separation or annulment, is not community property, if that results in a divorce, a legal separation or an annulment.

Q2. What is separate property for Arizona purposes?

A2. For the most part, separate property is all property owned by each spouse before you get married. Property that you acquire by gift or that you inherit after you get married is also separate property. Also property that you acquire after service of a petition for divorce, legal separation or annulment, is separate property, if that petition results in a divorce, a legal separation or an annulment.

Q3. Who is a "married person," for Arizona income tax purposes?

A3. A "married person," for Arizona income tax purposes, is a person who is married as of the last day of the taxable year.

Q4. What is community income for Arizona income tax purposes?

A4. For the most part, the income earned by both you and your spouse is community income. Also, income earned from community assets is community income. Community income is split equally between you and your spouse (50% to the husband and 50% to the wife).

Q5. What is separate income for Arizona income tax purposes?

A5. For the most part, income from separate assets is separate income. All of the separate income (100%) belongs to the spouse who owns the

separate property. Separate assets would include assets you owned before you got married or assets you acquired by gift or that you inherited.

Q6. Is there ever a time when I can treat community income as separate income?

A6. Yes. If you can treat community income as separate income for federal income tax you will also be able to treat that community income the same on your Arizona return. For federal income tax purposes, community income may be treated as separate income when one of the following applies:

1. It is unfair to one of the spouses to treat income as community property.
2. When one spouse does not notify the other spouse of the community income.
3. When the spouses are separated for the entire year, and various requirements are met.

For more information see Internal Revenue Code § 66.

FILING RETURNS—BOTH SPOUSES ARIZONA RESIDENTS

Filing a Joint Return - Both Spouses Arizona Residents

Q7. If I am filing a joint return, do I need to worry about community and separate income?

A7. No. When you file a joint return, you claim all of your income together, so you will not need to determine what income is community income or what income is separate income.

FILING SEPARATE RETURNS—BOTH SPOUSES ARIZONA RESIDENTS

Q8. If both my wife and I are full year Arizona residents, and we file separate returns, how should we each report our income on those returns?

A8. In this case, each spouse must report one-half of the total community income plus all of his or her separate income on their respective Arizona returns.

Example: H and W are married and file separate Arizona income tax returns. H's and W's total income is made up of community wages of \$65,000 and community and separate interest income of \$35,000. The breakdown of the wages and interest for each is as follows:

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	H	W	H and W
Wages	\$ 40,000	\$ 25,000	
Separate interest	\$ 10,000	\$ 20,000	
Interest from community savings account			\$ 5,000
H and W would report the following income on his or her respective separate Arizona income tax return:			
	H	W	
Wages	\$ 32,500	\$ 32,500	
Separate Interest	\$ 10,000	\$ 20,000	
Interest from community savings account	\$ 2,500	\$ 2,500	
Total	\$ 45,000	\$ 55,000	

Q9. How do my spouse and I treat deductions on our separate returns?

A9. When you and your spouse file separate returns, both of you must either claim the standard deduction or you both must itemize deductions. One of you may not claim a standard deduction when the other one itemizes deductions. If this does occur, we will disallow the standard deduction regardless of which return may have been filed first.

Q10. If my spouse and I itemized deductions, how do we claim them on our separate returns?

A10. It depends on whether you or your spouse paid the deductible expenses with community funds or with separate funds. If the expenses were paid with community funds, you must divide the deduction equally between you and your spouse. In this case you would each claim 50% of the deduction. If the expenses were paid with separate funds, those expenses are deductible by the spouse who paid the expenses. Under no condition may you and your spouse claim more than 100% of the allowable deductions.

Q11. How do my spouse and I treat dependent exemptions on our separate returns?

A11. If you and your spouse have a dependent that only one of you supports from his or her separate funds, then the spouse who provides that support may claim that dependent. On the other hand, if you supported the dependent from community funds, then either you or your spouse may claim the dependent, but you cannot split it. If you and your spouse have two

or more dependents that you supported from community funds, then you and your spouse may divide the number of dependents taken on either return as you choose. The following examples will show how to treat dependents on separate returns when the dependent(s) is supported from community funds.

Example 1: H and W support one dependent from community funds. H and W file separate Arizona income tax returns. In this case either H or W may claim the dependent exemption, but they cannot divide it (\$2,300) between them.

Example 2: H and W support two dependents from community funds. H and W file separate Arizona income tax returns. In this case both H and W may each claim one dependent exemption (\$2,300) or either H or W may claim two exemptions (\$4,600), but they cannot divide them any other way.

Q12. How do my spouse and I treat personal exemptions on our separate returns?

A12. When you and your spouse file separate returns, you get one personal exemption (total for married filing joint \$4,200 or \$6,300). Either you or your spouse may claim the personal exemption, or you may split it between you. If you and your spouse do anything other than a 50/50 split of the personal exemption, you must complete Form 202.

Example: H and W have no dependents. H and W file separate returns. H takes a personal exemption of \$2,100. W takes a personal exemption of \$2,100. In this case the amounts claimed as a personal exemption are proper since the total amount claimed is not more than \$4,200.

Q13. How do my spouse and I treat Arizona Withholding on our separate returns?

A13. When you and your spouse file separate returns, you may each claim one-half of the Arizona income tax withheld from community income.

Q14. How do my spouse and I treat credits on our separate returns?

A14. When you and your spouse file separate returns, you each may claim any income tax credits related to your specific separate property. You may also each claim one-half of any income tax credits related to items of community property.

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Filing Returns for Spouses with Different Residency Status

Spouses with Different Residency Status Filing Separate Returns

Q15. If I am an Arizona resident and my spouse is a nonresident, what income must we report if we file separate Arizona returns?

A15. Resident Spouse

As the resident spouse, you must report one-half of the total community income plus all separate income. Whether income is community or separate is determined by the laws of the state in which the person is a resident. If your nonresident spouse is a resident of a community property state, then the total community income will include income from both Arizona and the state where your spouse is a resident. Total community income would include wages you and your spouse (if a resident of a community property state) earn while you are married. As a result, you (the resident spouse) may have to report to Arizona, community income from that state. In general, if the nonresident spouse is a resident of a non-community property state, the total community income will only include Arizona community income.

Nonresident Spouse

The nonresident spouse must report one-half of the community income from Arizona sources plus all separate income from Arizona sources.

Example 1: H, an Arizona resident, is married to W a nonresident. W is a resident of a community property state. H and W file separate Arizona income tax returns. H and W have total income of \$65,000 of community wages and \$35,000 of interest income from both community and separate property. The breakdown of the wages and interest for H and W is as shown.

	H	W	
Wages	\$ 40,000	\$ 25,000	
Separate interest	\$ 10,000	\$ 20,000	
Interest from community savings account		\$5,000	
H and W must report the following income on his or her respective separate Arizona income tax return.			
	H	W	
Wages	\$ 32,500	\$ 20,000	
Separate Interest	\$ 10,000	\$ 0	
Interest from community savings account	\$ 2,500	\$ 0	
Total	\$ 45,000	\$ 20,000	

Example 2: H, an Arizona resident, is married to W a nonresident. W is a resident of a non-community property state. H and W file separate Arizona income tax returns. H and W have total income of \$100,000 (\$40,000 of community wages, \$25,000 of non-community wages, \$30,000 of separate interest and \$5,000 of community interest). The breakdown of the wages and interest for H and W is as shown.

	H	W	
Wages	\$ 40,000	\$ 25,000	
Separate interest	\$ 10,000	\$20,000	
Interest from community savings account	\$5,000		
H and W must report the following income on his or her respective separate Arizona income tax return:			
	H	W	
Wages	\$ 20,000	\$ 20,000	
Separate Interest	\$ 10,000	\$ 0	
Interest from community savings account	\$ 2,500	\$ 2,500	
Total	\$ 32,500	\$ 22,500	

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Filing a Joint Return – Resident and Part-year Resident

Q16. If I am a full-year Arizona resident and my spouse is a part-year Arizona resident, can we file a joint return?

A16. Yes. A full-year resident spouse may file a joint return with his or her Arizona part-year resident spouse. When filing a joint income tax return with your part-year resident spouse, you must use Form 140PY to file that return.

Q17. If I am a full year resident filing a joint return with my part-year resident spouse, what income must we report on that Arizona return?

A17. When a full-year resident and a part-year resident file a joint Arizona income tax return, the full-year resident individual must report all income from all sources (including community property income earned by an out-of-state spouse) and the part-year resident must report all income earned while an Arizona resident plus any income derived from Arizona sources while an Arizona nonresident (including any community property income earned by the Arizona resident spouse). The exemptions must be apportioned as if both the full-year resident spouse and the part-year resident spouse were part-year residents.

The income reported on Form 140PY must reflect the aggregate income that would be reported on separate Arizona income tax returns, if the married couple were filing separate Arizona income tax returns. For the resident spouse, income reported to Arizona would include one-half of the total community income plus all separate income. Whether income is community or separate is determined by the laws of the state in which the person is a resident. If the part-year resident spouse was a resident of a community property state, then the total community income would include income from both Arizona and the state where the spouse was a resident. Total community income would include wages earned by both spouses while married (if the part year resident spouse was also a resident of a community property state during the taxable year). As a result, the resident spouse may have to report to Arizona, community income from another state. In general, if the part-year resident spouse was a resident of a non-community property state, the total community income will only include Arizona community income.

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Example 1: Part-year resident (from a community property state) married to an Arizona full-year resident.

H, an Arizona resident, is married to W who became an Arizona resident on July 1 of the taxable year. **W was a resident of a community property state prior to moving to Arizona.** For the year that W became an Arizona resident, H and W file a joint Arizona income tax return using Form 140PY. Prior to completing Form 140PY for the taxable year, both H and W must figure how much income each would be required to report to Arizona on separate Arizona income tax returns. H and W have total income of \$100,200 (\$65,200 of community wages and \$35,000 of interest income from both community and separate property). The breakdown of the wages and interest for H and W is as shown.

	H		W	
	H's Yearly Total	W's Total For the Year	Prior to AZ Residency	After AZ Residency
Wages	\$ 40,000	\$25,200	\$12,600	\$ 12,600
Separate interest income	\$ 10,000	\$20,000	\$10,000	\$ 10,000
Interest from community savings account		\$ 5,000		\$ 5,000
Total income	\$50,000	\$50,200	\$22,600	\$27,600

If both H and W were to file separate Arizona income tax returns, those returns should reflect the following income on each respective separate Arizona income tax return.

	H	W
Wages	\$ 32,600	\$ 26,300
Separate interest income	\$ 10,000	\$ 10,000
Interest from community savings account	\$ 2,500	\$ 2,500
Total	\$ 45,100	\$ 38,800

The above income reportable by H to Arizona is determined as follows:

½ of community property wages earned by H during the taxable year	\$20,000	
½ of community property wages earned by W during the part of the year that W was an Arizona nonresident	\$ 6,300	
½ of community property wages earned by W during the part of the year that W was an Arizona resident	\$ 6,300	
Total wage income reportable to Arizona by H		\$32,600
H's separate interest income	\$10,000	
½ of the total community property interest income	\$ 2,500	
Total interest income reportable to Arizona by H		\$12,500
Total income reportable to Arizona by H		\$45,100

The above income reportable by W to Arizona is determined as follows:

½ of community property wages earned by H during the taxable year	\$20,000	
½ of community property wages earned by W during the part of the year that W was an Arizona resident	\$ 6,300	
Total wage income reportable to Arizona by W		\$26,300
W's separate interest income earned while an Arizona resident	\$10,000	
½ of the total community property interest income	\$ 2,500	
Total interest income reportable to Arizona by W		\$12,500
Total income reportable to Arizona by W		\$38,800

Amounts Reported by both H and W on Form 140PY

	H	W	Total Reported on AZ Form 140PY
Wages	\$ 32,600	\$ 26,300	\$58,900
Interest Income	\$ 12,500	\$ 12,500	\$25,000
Form 140PY Arizona Gross income			\$83,900

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Example 2. Part-year resident (from a non-community property state) married to an Arizona full-year resident.

H, an Arizona resident, is married to W who became an Arizona resident on July 1 of the taxable year. W was a resident of a non-community property state prior to moving to Arizona. For the year that W became an Arizona resident, H and W file a joint Arizona income tax return using Form 140PY. Prior to completing Form 140PY for the taxable year, both H and W must figure how much income each would be required to report to Arizona on separate Arizona income tax returns. H and W have total income of \$100,200 (\$65,200 of community wages and \$35,000 of interest income from both community and separate property). The breakdown of the wages and interest for H and W is as shown.

	H		W	
	H's Total For the Year	W's Total For the Year	Prior to AZ Residency	After AZ Residency
Wages	\$ 40,000	\$25,200	\$12,600	\$ 12,600
Separate interest income	\$ 10,000	\$20,000	\$10,000	\$ 10,000
Interest from community savings account		\$ 5,000		\$ 5,000
Total income	\$50,000	\$50,200	\$22,600	\$27,600

If both H and W were to file separate Arizona income tax returns those returns should reflect the following income on each respective separate Arizona income tax return.

	H	W
Wages	\$ 26,300	\$ 26,300
Separate interest income	\$ 10,000	\$ 10,000
Interest from community savings account	\$ 2,500	\$ 2,500
Total	\$ 38,800	\$ 38,800

The above income reportable by H to Arizona is determined as follows:

½ of community property wages earned by H during the taxable year	\$20,000	
½ of community property wages earned by W during the part of the year that W was an Arizona resident	\$ 6,300	
Total wage income reportable to Arizona by H		\$26,300
H's separate interest income	\$10,000	
½ of the total community property interest income	\$ 2,500	
Total interest income reportable to Arizona by H		\$12,500
Total income reportable to Arizona by H		\$38,800

The above income reportable by W to Arizona is determined as follows:

½ of community property wages earned by H during the taxable year	\$20,000	
½ of community property wages earned by W during the part of the year that W was an Arizona resident	\$ 6,300	
Total wage income reportable to Arizona by W		\$26,300
W's separate interest income	\$10,000	
½ of the total community property interest income	\$ 2,500	
Total interest income reportable to Arizona by W		\$12,500
Total income reportable to Arizona by W		\$38,800

Amounts Reported by both H and W on Form 140PY

	H	W	Total Reported on AZ Form 140PY
Wages	\$ 26,300	\$ 26,300	\$52,600
Interest Income	\$ 12,500	\$ 12,500	\$25,000
Form 140PY Arizona Gross income			\$77,600

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Filing a Joint Return – Resident and Nonresident

Q18. If I am a full-year Arizona resident and my spouse is an Arizona nonresident, can we file a joint tax return?

A18. Yes. A full-year Arizona resident spouse may file a joint return with his or her Arizona nonresident spouse. When filing a joint income tax return with your nonresident spouse, you must use Form 140NR to file that return.

Q19. If I am a full-year resident filing a joint return with my nonresident spouse, what income must we report on that Arizona return?

A19. When a full-year resident and a nonresident file a joint Arizona income tax return, the full-year resident must report to Arizona all income from all sources (including community property income earned by an out-of-state spouse) and the Arizona nonresident must report all income derived from Arizona sources (including any community property income earned by the Arizona resident spouse). The exemptions must be apportioned as if both the resident spouse and

the nonresident spouse were nonresidents.

The income reported on Form 140NR must reflect the aggregate income that would be reported on separate Arizona income tax returns, if the married couple were filing separate Arizona income tax returns. For the resident spouse, income reported to Arizona would include one-half of the total community income plus all separate income. Whether income is community or separate is determined by the laws of the state in which the person is a resident. If the nonresident spouse was a resident of a community property state, then the total community income will include income from both Arizona and the state where the spouse is a resident. Total community income would include wages earned by both spouses while married (if the nonresident spouse was a resident of a community property state). As a result, the resident spouse may have to report to Arizona, community income from that state. In general, if the nonresident spouse was a resident of a non-community property state, the total community income will only include Arizona community income.

Example 1: Nonresident (resident of a community property state) married to an Arizona full-year resident.

H, an Arizona resident, is married to **W who is a resident of a community property state**. H and W file a joint Arizona income tax return using Form 140NR. Prior to completing Form 140NR for the taxable year, both H and W must figure how much income each would be required to report to Arizona on separate Arizona income tax returns. H and W have total income of \$100,200 (\$65,200 of community wages and \$35,000 of interest income from both community and separate property). The breakdown of the wages and interest for H and W is as shown.

	H	W
	H's Total For the Year	W's Total For the Year
Wages	\$ 40,000	\$25,200
Separate interest income	\$ 10,000	\$20,000
Interest from community savings account		\$ 5,000
Total income	\$50,000	\$50,200

If both H and W were to file separate Arizona income tax returns those returns should reflect the following income on each respective separate Arizona income tax return.

	H	W
Wages	\$ 32,600	\$ 20,000
Separate interest income	\$ 10,000	\$ 0
Interest from community savings account	\$ 2,500	\$ 0
Total	\$ 45,100	\$ 20,000

The above income reportable by H to Arizona is determined as follows;

½ of community property wages earned by H during the taxable year	\$20,000	
½ of community property wages earned by W during the year	\$ 12,600	
Total wage income reportable to Arizona by H		\$32,600
H's separate interest income	\$10,000	
½ of the total community property interest income	\$ 2,500	
Total interest income reportable to Arizona by H		\$12,500
Total income reportable to Arizona by H		\$45,100

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The income reportable by W to Arizona is determined as follows;		
½ of community property wages earned by H during the taxable year	\$20,000	
Total wage income reportable to Arizona by W		\$20,000
Total interest income reportable to Arizona by W		\$ 0
Total income reportable to Arizona by W		\$20,000
Amounts Reported by both H and W on Form 140PY		
	H	W
Wages	\$ 32,600	\$ 20,000
Interest Income	\$ 12,500	\$ 0
Form 140NR Arizona Gross income		\$65,100

Example 2: Nonresident (resident of a non-community property state) married to an Arizona full-year resident.

H, an Arizona resident, is married to **W who is a resident of a non-community property state**. H and W file a joint Arizona income tax return using Form 140NR. Prior to completing Form 140NR for the taxable year, both H and W must figure how much income each would be required to report to Arizona on separate Arizona income tax returns. H and W have total income of \$100,200 (\$40,000 of community wages, \$25,200 of separate wages and \$30,000 of separate interest income and \$5,000 of community interest income). The breakdown of the wages and interest for H and W is as shown.

	H	W
	H's Total For the Year	W's Total For the Year
Wages	\$ 40,000	\$25,200
Separate interest income	\$ 10,000	\$20,000
Interest from community savings account	\$ 5,000	
Total income	\$55,000	\$45,200

If both H and W were to file separate Arizona income tax returns those returns should reflect the following income on each respective separate Arizona income tax return.

	H	W
Wages	\$ 20,000	\$ 20,000
Separate interest income	\$ 10,000	\$ 0
Interest from community savings account	\$ 2,500	\$ 2,500
Total	\$ 32,500	\$ 22,500

The above income reportable by H to Arizona is determined as follows;

½ of community property wages earned by H during the taxable year	\$20,000	
Total wage income reportable to Arizona by H		\$20,000
H's separate interest income		\$10,000
½ of the total community property interest income		\$ 2,500
Total interest income reportable to Arizona by H		\$12,500
Total income reportable to Arizona by H		\$32,500

The above income reportable by W to Arizona is determined as follows;

½ of community property wages earned by H during the taxable year	\$20,000	
Total wage income reportable to Arizona by W		\$20,000
½ of the total community property interest income		\$ 2,500
Total interest income reportable to Arizona by W		\$ 2,500
Total income reportable to Arizona by W		\$22,500

Amounts Reported by both H and W on Form 140PY			
	H	W	Total Reported on AZ Form 140PY
Wages	\$ 20,000	\$ 20,000	\$40,000
Interest Income	\$ 12,500	\$ 2,500	\$15,000
Form 140NR Arizona Gross income			\$55,000

INCOME TAX ISSUES AFFECTING MARRIED AND DIVORCED TAXPAYERS

FILING FOR THE YEAR OF THE DIVORCE

Q20. If my spouse and I divorced during the year, how do we treat our income, deductions, exemptions, and withholding for that year?

A20. To figure how to treat items on your respective returns filed for the year of divorce, you must first figure what items are community and what items are separate. To do this, you must figure what items apply to the period of the year before the divorce and what items apply to the period after the divorce. For the most part, the income earned during the year by both you and your spouse while still married is community income. Except income received after service of the petition for the divorce is the separate income of the person who earned it or owns the property producing it. Also, income received after the divorce is the separate income of the person who earned it or owns the property producing it.

On the returns filed for the year of divorce, you must each report one-half of community income and any separate income. You may each claim one-half of the deductions and credits related to items of community property. This includes one-half of the Arizona income tax withheld from community income. If you have any dependents, the person who is allowed to claim the dependent on his or her federal return is the person who may claim the dependent on the Arizona return. Each of you will claim your own personal exemption.

Applying Estimated Payments When Change in Filing Status

Applying Joint Estimated Payments to Separate Returns

Q21. My spouse and I made joint estimated payments, but if we file separate returns, how should we allocate those payments?

A21. If you and your spouse made joint estimated tax payments, but later file separate returns, you may split those payments between you in any way you agree. You do this by claiming the payments on your respective returns. If you and your spouse cannot agree on the split, you must use the following formula to figure how much of those payments you may claim.

Tax imposed on husband's

OR wife's return X The estimated payment
Total tax imposed on both returns

Example: H and W made joint estimated payments of \$19,500 for the taxable year. The amount of tax shown on H's return is \$12,000. The amount of tax shown on W's return is \$8,000. Using the above formula, H would be allowed to claim \$11,700 ($\$12,000/\$20,000 \times \$19,500$). W would be allowed to claim \$7,800 ($\$8,000/\$20,000 \times \$19,500$).

Applying Separate Estimated Payments to a Joint Return

Q22. My spouse and I made separate estimated payments, but if we file a joint return, how should we claim those payments?

A22. If you and your spouse make separate estimated payments, but file a joint return, add all of your payments together and report the total on your joint return.

LIABILITY

Joint and Several Liability

Q23. What is joint and several liability?

A23. When the income tax liability is joint and several, that means that we may proceed against either spouse or both spouses for the whole liability. There are no restrictions with respect to when we may proceed separately against only one spouse. We do not have to establish that the other spouse cannot be located or that the other spouse is unable to pay the tax.

Q24. When is the Arizona income tax liability of a husband and wife joint and several?

A24. If you file a **joint** return, the whole income tax liability from that return is joint and several.

If you file **separate** returns, you are each liable for:

1. The tax on your separate income;
2. The tax on your share of community income; and
3. The tax on your spouse's share of community income, to the extent you receive, control, or spend that income.

The following examples will show joint and several liability incurred when separate returns are filed.

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Example 1:

H and W live and work in Arizona. Both H and W earn wages. Wages are their only source of income. Both H and W receive, control, and spend the wage income.

H and W file separate returns for the tax year. Both H's and W's Arizona return properly reports one-half of H's wages and one-half of W's wages since all of the wages in this case are community income.

H is liable for the tax from his separate return since H is taxable on the income reported on that return. H is also jointly and severally liable for the tax from W's separate return since he also receives, controls, and spends the income reported on W's separate income tax return.

W is liable for the tax from her separate return since W is taxable on the income reported on that return. W is also jointly and severally liable for the tax from H's separate return since she also receives, controls, and spends the income reported on H's separate income tax return.

In this example, both H and W are jointly and severally liable on the total tax liability from both separate returns.

Example 2:

H and W live and work in Arizona. Both H and W earn wages. Wages are their only source of income. W sends all of her wages to her mother who lives in another country. H does not receive, control, or spend any of W's wages. Both H and W receive, control, and spend H's wages.

H and W file separate returns for the tax year. Both H's and W's Arizona return properly reports one-half of H's wages and one-half of W's wages since all of the wages in this case are community income.

H is liable for the tax from his separate return since H is taxable on the income reported on that return. H is also jointly and severally liable for the portion of W's tax that relates to W's share of community income earned by H, since H shared in receiving, controlling, and spending those wages. However, H is not liable for the portion of W's tax that relates to W's share of community income earned by W since H did not receive, control, or spend that income.

W is liable for the tax from her separate return since W is taxable on the income reported on that return. W is also jointly and severally liable for the tax liability from H's separate return since she receives, controls, and spends the income reported on H's separate return.

In this example, W is subject to joint and several liability on the total tax liability from both separate returns. H is jointly and severally liable for the total liability from his

separate return and for the portion of W's tax that relates to W's share of community income earned by him.

Relief from Joint and Several Liability

Q25. Can a spouse ever be relieved of joint and several liability?

A25. Yes. In some cases, a spouse may be relieved of joint and several liability. Three types of relief are available.

1. Innocent spouse relief.
2. Separation of liability.
3. Equitable relief.

Q26. What is innocent spouse relief?

A26. This is a tax provision that allows an eligible person to avoid paying their spouse's tax bill in the event of error or fraud. This provision is meant to protect people from evasive or dishonest financial behavior by their spouse.

Q27. How does a spouse qualify for innocent spouse relief?

A27. A spouse may qualify for innocent spouse relief when all of the following conditions are met:

1. A joint Arizona income tax return was filed for the tax year for which relief is requested.
2. There is an understatement of tax attributable to erroneous items of the other spouse.
3. The innocent spouse did not know, and had no reason to know, that there was an understatement of tax when he or she signed the joint return.
4. Under the circumstances it would be inequitable to hold the innocent spouse liable for the deficiency resulting from the understatement of tax.

Q28. What is separation of liability relief?

A28. You must have filed a joint return to qualify for this type of relief. Under this relief, liability for an understatement of tax may be allocated between the spouse asking for relief and his or her spouse or former spouse.

Q29. How does a person qualify for separation of liability relief?

A29. A person may qualify for this type of relief when he or she meets **either** of the following conditions.

1. The person is no longer married to, or is legally separated from, the spouse with whom the person filed the joint return.
2. The person was not a member of the same household as the spouse with whom the joint return was filed at any time during the 12

INCOME TAX ISSUES AFFECTING MARRIED AND DIVORCED TAXPAYERS

month period ending on the date the person files the request for relief.

Q30. What is equitable relief?

A30. Unlike innocent spouse relief or separation of liability, you can get equitable relief from an understatement of tax or an underpayment of tax. An underpayment of tax is an amount of tax you properly reported on your return but you have not paid.

Q31. How do I request relief from joint and several liability?

A31. Use Form 200 to request relief from liability for tax, plus related penalties and interest, that you think only your spouse (or former spouse) should pay. You may access this form through our website.

Liability of Divorced Persons

Q32. May the department levy on a divorced person's property to collect tax due on a separate income tax return filed by a former spouse for a tax year in which the parties were married?

A32. When there is a divorce, the general rule is that community debts remain joint obligations of both parties. A divorce decree may specifically allocate a community debt, such as liability for income tax, to one of the parties. While this may be binding on the parties, it is not binding on the department. We may levy on the property of either of the former spouses to collect taxes imposed on community income for which they are jointly and severally liable.

Liability for Spouse's Premarital Taxes

Q33. To what extent can the department levy on the property of a married couple to satisfy a premarital income tax liability of one spouse?

A33. We may levy on the separate property of a debtor spouse to satisfy that spouse's premarital tax obligations.

We may levy on community property, to satisfy one spouse's premarital tax obligations, but only to the extent of the value of the debtor spouse's contribution to the community property which would have been that spouse's separate property if single.

We may not levy on the separate property of a non-debtor spouse to satisfy the other (debtor) spouse's premarital tax obligations.

Q34. What should I do if my refund has been held to apply to my spouse's pre-marital debt?

A34. You are an injured spouse if your share of an **overpayment** shown on your joint return was, or is expected to be, applied against your spouse's past-due liabilities. These may include state taxes, child support or spousal maintenance, or debts owed to another Arizona state agency. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For information about amounts held for:

1. Past-due state taxes, call the Department of Revenue.
2. Child support or spousal maintenance, contact the Arizona Department of Economic Security.
3. Another Arizona state agency, contact that agency.
4. The IRS, contact the IRS.
5. A court, contact that court.
6. An Arizona city or town, contact that city or town.

FOR ADDITIONAL INFORMATION:

~ Call ~

(602) 255-3381

Toll-free within AZ: 1-800-352-4090

~ Write ~

Arizona Department of Revenue
Taxpayer Information & Assistance
PO Box 29086
Phoenix AZ 85038-9086

~ Browse ~

www.azdor.gov

www.AZTaxes.gov

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