

**ARIZONA INDIVIDUAL INCOME TAX RULING**  
**ITR 93-22**

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

**ISSUE:**

Does Arizona follow the provisions of Internal Revenue Code § 66 under which, for federal income tax purposes, community income may be treated as the separate income of the spouse earning the income when separate income tax returns are filed?

**APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 25-211 provides that all property acquired by either husband or wife during marriage is community property, except that which is acquired by gift or by inheritance.

A.R.S. § 25-213 provides that all property owned by each spouse before marriage, and the property acquired after marriage by gift or by inheritance, is the separate property of such spouse.

Former A.R.S. § 43-1021.20 required a taxpayer to add to Arizona gross income the amount of community income exclusion allowed under § 66 of the Internal Revenue Code (repealed effective for taxable years beginning from and after December 31, 1989).

Former A.R.S. § 43-1022.26 required a taxpayer to subtract from Arizona gross income the amount of community income inclusion required by § 66 of the Internal Revenue Code (repealed effective for taxable years beginning from and after December 31, 1989).

Internal Revenue Code (I.R.C.) § 66 contains provisions under which, for federal income tax purposes, community property laws may be disregarded and community income treated as the income of the spouse earning the income.

**DISCUSSION:**

For federal income tax purposes, I.R.C. § 66 contains three provisions under which state community property laws are disregarded and community income is taxed to the spouse earning the income when separate returns are filed. Community income may be treated as separate income when, under certain circumstances, it is inequitable to one of the spouses to treat income as community property (I.R.C. § 66[c]) or when one

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spouse does not notify the other spouse of the community income (I.R.C. § 66[b]). Additionally, when the spouses are separated for the entire year, and various requirements are met, certain community income may be treated as separate income (I.R.C. § 66[a]).

For Arizona purposes, income earned by each spouse during marriage is generally considered to be community income. When separate Arizona income tax returns are filed, each spouse must report one-half of the total community income. Separation of the spouses generally will not change the character of such earnings until a final divorce decree is entered. When separate Arizona income tax returns are filed, each spouse remains taxable on one-half of the total community income even though the spouses may be separated. However, due to a change in Arizona law, certain community income, depending on the tax year, may be treated as separate income for Arizona income tax purposes when spouses file separate Arizona returns.

For **tax years beginning prior to January 1, 1990**, former A.R.S. § 43-1021.20 required a taxpayer to add to Arizona gross income the amount of community income excluded from federal gross income under I.R.C. § 66. Former A.R.S. § 43-1022.26 required a taxpayer to subtract from Arizona gross income the amount of community income included in federal gross income under I.R.C. § 66. Therefore, for tax years beginning prior to January 1, 1990, Arizona did not follow the tax treatment afforded community income under I.R.C. § 66.

Former A.R.S. §§ 43-1021.20 and 43-1022.26 were repealed effective for tax years beginning from and after December 31, 1989. Therefore, for **tax years beginning on or after January 1, 1990**, Arizona will follow the tax treatment afforded community income under I.R.C. § 66. When community income is treated as separate income for federal income tax purposes under I.R.C. § 66, such community income is treated as separate income for Arizona income tax purposes when separate Arizona returns are filed.

### **RULING:**

For tax years beginning prior to January 1, 1990, Arizona did not follow the tax treatment afforded community income under I.R.C. § 66 when separate Arizona income tax returns were filed.

For tax years beginning on or after January 1, 1990, Arizona will follow the tax treatment afforded community income under I.R.C. § 66 when separate Arizona income tax returns are filed.

Harold Scott, Director

Signed: December 8, 1993

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## Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.

**APPENDIX TO ARIZONA INDIVIDUAL INCOME TAX RULING - ITR 93-22**  
**(Appendix Amended 4/15/2011)**

For more information concerning the application of Arizona's community property provisions to Arizona income taxation, see the following income tax rulings:

- ITR 93-18     Income Reporting Requirements for Married Arizona Residents Who File Separate Arizona Individual Income Tax Returns
- ITR 93-19     Deductions, Exemptions, and Credits for Married Taxpayers Who File Separate Arizona Individual Income Tax Returns
- ITR 93-20     Income Reporting Requirements of Resident and Nonresident Spouses Who File Separate Arizona Individual Income Tax Returns
- ITR 95-2       Filing a Joint Tax Return When a Resident Spouse is Married to a Part-Year Resident or Nonresident
- ITR 93-23     Reporting Income, Deductions, Exemptions, and Withholding for Divorced Individuals for the Year of Divorce
- ITR 97-2       Joint and Several Income Tax Liability
- ITR 93-25     Tax Collection from a Divorced Individual for Tax Due on a Separate Return Filed by the Former Spouse
- ITR 93-26     Tax Collection from Married Individuals for Premarital Income Tax Liabilities