

## FILING STATUS DEFINITIONS FOR VOLUNTEERS

**Marriage:** For federal [tax](#) purposes, the terms spouse, husband, and wife mean an individual lawfully married to another individual. The term husband and wife means two individuals lawfully married to each other.

**Legal Separation:** Your filing status can be single if you are unmarried or legally separated from your spouse under a divorce or separate maintenance decree.

**Idaho does not recognize legal separations. Your decree of divorce must be final before being considered single.** The following states DO NOT recognize the legal documentation of separation:

Delaware	Georgia	Mississippi
Florida	Idaho	Pennsylvania

(Source: [wiki.answers.com/Q/What\\_do\\_you\\_need\\_to\\_do\\_for\\_a\\_legal\\_separation](http://wiki.answers.com/Q/What_do_you_need_to_do_for_a_legal_separation))

**Common Law:** Recognized if you live together in a common law marriage that is recognized by the state where you now live or in the state where the common law marriage began. See States that continue to recognize new common law marriages in another section of this “How To” instruction.

**Innocent Spouse:** Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. This topic is beyond the scope of the VITA/TCE Program. Refer the taxpayer to a professional tax preparer or to Publication 971.

Idaho has not adopted the “Innocent Spouse Provisions” set forth by the Internal Revenue Code. Rather the relevant code section of Idaho tax law, Idaho Code § 63-3031(b)(3) states that if a joint return is filed the tax shall be computed on the aggregate income and the liability with respect to the tax shall be a joint and several liability. Under the Idaho statutes, the taxpayer is responsible for the entire amount of tax due.

**Community Property:** Community property is all property acquired after marriage by either the husband or the wife. Property not specifically identified as separate property by written agreement is considered community property. Community property states include:

Arizona	Louisiana	Texas
California	Nevada	Washington
Idaho	New Mexico	Wisconsin

For Idaho, generally community property laws do not apply if:

- You lived apart all year.
- You did not file a joint return.
- You did not transfer, directly or indirectly, any of the wages, salaries, or professional fees between you during any part of the year.

For Idaho, you don't have to report an item of community income if *all* of the following conditions exist:

- You file a separate return for the tax year.
- You did not include an item of community income in gross income on your separate return.
- You establish that you didn't know, and had no reason to know, about that item of community income.
- Under any circumstances, it wouldn't be fair to include the item of community income in your gross income

(Source: [http://www.tax.idaho.gov/pdf/publications/EBR00175\\_CommProp\\_12-21-05.pdf](http://www.tax.idaho.gov/pdf/publications/EBR00175_CommProp_12-21-05.pdf))

Generally volunteers should not be filing a Married Filing Separately return because of the complexity of the community property split. Refer them to a paid preparer.

You may file a Married Filing Separate return if any of the following conditions exist:

- The taxpayers did not live together all year and did not co-mingle funds, or
- They have no way to contact the other spouse to gather the necessary information to do the community property split, or
- The taxpayer's spouse lives in a foreign country and they are unable to get a Taxpayer Identification Number (TIN) for the spouse.

Note: If you do not have a TIN for the spouse, you will not be able to file electronically. The return must be mailed in for both federal and state. Attach a statement to the state return as to why a community property split was not done.

**Injured Spouse:** The taxpayer may be an injured spouse if they file a joint tax return and all or part of their portion of the overpayment was, or is expected to be, applied (offset) to their spouse's legally enforceable past-due federal tax, state income tax, child or spousal support, or a federal nontax debt, such as a student loan. Rather than file a MFS return, consider filing a Form 8379, Injured Spouse Allocation.

Idaho's income tax law does not have an injured spouse provision. Under circumstances where an Idaho refund is seized by the Department of Health and Welfare for back child support, there may be an opportunity for an injured spouse to receive one-half of a "married filing joint" tax refund. When a refund is seized by the Department of Health and Welfare the refund (or a portion of it, if the refund is more than the taxpayer owes in child support) is transferred to a state suspense fund. The refund stays in the suspense fund for 25 days. During that time the Department of Health and Welfare sends a letter and a hearing form to the absent spouse (the person who owes child support) by certified mail. The injured spouse, not the absent spouse, has 14 days to return the hearing form to the Department of Health and Welfare.

**Cost of Keeping up a Home:** To qualify for Head of Household or Qualifying Widow(er) you must pay more than half of the cost of keeping up a home for the year. See the table "Cost of Keeping up a Home" in the filing status section of Pub 4012 for more information. Generally it includes home expenses, such as rent, mortgage interest, real estate taxes, insurance on the home, repairs, utilities, and food eaten in the home. It does not include the costs of clothing, education, medical treatment, vacations, life insurance, or transportation.

**Temporary Absence:** The taxpayer and the qualifying person for head of household are considered to live together even if one or both are temporarily absent from the home due to special circumstances such as illness, education, business, vacation, military service, or incarceration. It must be reasonable to assume that the absent person will return to the home after the temporary absence. You must continue to keep up the home during the absence.