



	1 Total Income (Community/Separate)	2 Allocated to Spouse, RDP, or California Same-Sex Spouse SSN ____ - ____ - ____	3 Allocated to Spouse, RDP, or California Same-Sex Spouse SSN ____ - ____ - ____
<b>9</b> Deductible part of Self-Employment Tax (See instructions)			
<b>10</b> Self-Employment Tax (See instructions)			
<b>11</b> Taxes Withheld			
<b>12</b> Other items such as: Social Security Benefits, Unemployment Compensation, Deductions, Credits, etc.			

## General Instructions

### IRS.gov

Should any unforeseen developments arise with respect to this form after it is published, the IRS will create a page on IRS.gov at [www.irs.gov/form8958](http://www.irs.gov/form8958) to alert filers to the development and provide any necessary additional instructions.

### Purpose of Form

Use Form 8958 to determine the allocation of tax amounts between married filing separate spouses, California same-sex spouses, or registered domestic partners (RDPs) with community property rights. If you need more room, attach a statement listing the source of the item and the total plus the allocated amounts. Be sure to put your name and social security number (SSN) on the statements and attach them at the end of your return.

Community property laws affect how you figure your income on your federal income tax return if you are married, live in a community property state or country, and file separate returns. For federal tax purposes, a marriage means only a legal union between a man and a woman as husband and wife and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

This form is used for married spouses in community property states who choose to file married filing separately. This form is also for RDPs who are domiciled in Nevada, Washington, or California and for individuals in California who, for state law purposes, are married to an individual of the same sex. For 2010 and following years, a RDP in Nevada, Washington, or California (or a California same-sex spouse) generally must follow state community property laws and report half the combined community income of the individual and his or her RDP (or California same-sex spouse).



*RDPs (and California same-sex spouses) are not married for federal tax purposes. They can only use the single filing status, or if they qualify, the head of household filing status.*

### Community or Separate Income

In a community property state, if you file a federal tax return separately from your spouse, you must report half of all community income and all of your separate income. Likewise, a RDP (and a California same-sex spouse) must report half of all community income and all of his or her separate income on his or her federal tax return. Generally, the laws of the state in which you are domiciled govern whether you have community income or separate income for federal tax purposes.

Generally, community income is income from:

- Community property.
- Salaries, wages, or pay for services of you, your spouse (or RDP/California same-sex spouse), or both during your marriage (or registered domestic partnership/same-sex marriage in California).
- Real estate that is treated as community property under the laws of the state where the property is located.

Generally, income from separate property is the separate income of the spouse (or RDP/California same-sex spouse) who owns the property.

For more information, see Pub. 555, Community Property.

### Identifying Income and Deductions

You and your spouse (or RDP/California same-sex spouse) must be able to identify your community and separate income, deductions, credits, and other return amounts according to the laws of your state.

### Income

The following is a discussion of the general effect of community property laws on the federal income tax treatment of certain items of income.

**Wages and self-employment income from sole proprietorship.** A spouse's (or RDP's/California same-sex spouse's) wages and self-employment income from a sole proprietorship are community income and must be evenly split.



*For RDPs/California same-sex spouses, the self-employment income from a sole proprietorship is also split for self-employment tax purposes. See Self-employment tax, later.*

**Interest, dividends, and rents.** Dividends, interest, and rents from community property are community income and must be evenly split.

**Gains and losses.** Gains and losses are classified as community or separate depending on how the property is held.

**Withdrawals from individual retirement arrangements (IRAs).** There are several kinds of individual retirement arrangements (IRAs). Distributions of IRAs by law are deemed to be separate property, even if the funds in the account would otherwise be community property. These distributions are wholly taxable to the spouse (or RDP/California same-sex spouse) whose name is on the account. That spouse (or RDP/California same-sex spouse) is also liable for any penalties and additional taxes on the distributions.

**Pensions.** Generally, distributions from pensions will be characterized as community or separate income depending on the respective periods of participation in the pension while married (or during the registered domestic partnership/same-sex marriage in California) and domiciled in a community property state or in a noncommunity property state during the total period of participation in the pension. These rules may vary between states.

**Partnership income.** If an interest is held in a partnership, and income from the partnership is attributable to the efforts of either spouse (or RDP/California same-sex spouse), the partnership income is community property.



*For RDPs/California same-sex spouses, the self-employment income from a partnership is also split for self-employment tax purposes. See Self-employment tax, later.*

**Tax-exempt income.** For spouses, community income exempt from federal tax generally keeps its exempt status for both spouses. For example, under certain circumstances, income earned outside the United States is tax exempt. If you earned income and met the conditions that made it exempt, the income is also exempt for your spouse even though he or she may not have met the conditions. RDPs and same-sex married couples in California should consult the particular exclusion provision to see if the exempt status applies to both.

**Income from separate property.** In some states, income from separate property is separate income. Other states characterize income from separate property as community income.

For more information, see Pub. 555. For specific information that pertains to your situation, check with the laws of your state.

## Deductions

If you file separate returns, your deductions generally depend on whether the expenses involve community or separate income.

**Business and investment expenses.** If you file separate returns, expenses incurred to earn or produce community business or investment income are generally divided equally between you and your spouse (or RDP/California same-sex spouse). Each of you is entitled to deduct one-half of the expenses on your separate returns. Separate business or investment income are deductible by the spouse (RDP/California same-sex spouse) who earns the income.

Other limits may also apply to business and investment expenses. For more information, see Pub. 535, Business Expenses, Pub. 550, Investment Income and Expenses, and Pub. 555.

**IRA deduction.** Deductions for IRA contributions cannot be split between spouses (or RDPs/California same-sex spouses). The deduction for each spouse (or RDP/California same-sex spouse) is figured separately and without regard to community property laws.

**Personal expenses.** Expenses that are paid out of separate funds, such as medical expenses, are deductible by the spouse (or RDP/California same-sex spouse) who pays for them. If these expenses are paid from community funds, divide the deduction equally between you and your spouse (or RDP/California same-sex spouse).

**Deductible portion of self-employment tax.** The deductible portion of the self-employment tax is split only when the self-employment tax is split by the spouses (or RDPs/California same-sex spouses). See *Self-employment tax*, later.

## Credits, Taxes, and Payments

**Self-employment tax.** Although the self-employment tax rules contain a provision that overrides community income treatment in the case of spouses (IRC 1402(a)(5)), this provision does not apply to RDPs or California same-sex spouses. RDPs and California same-sex spouses split self-employment income from sole proprietorships and partnerships for self-employment tax purposes.

The following rules apply only to persons married for federal tax purposes.

**Sole proprietorship.** With regard to net income from a trade or business (other than a partnership) that is community income, self-employment tax is imposed on the spouse carrying on the trade or business.

**Partnerships.** All of the distributive share of a married partner's income or loss from a partnership trade or business is attributable to the partner for computing any self-employment tax, even if a portion of the partner's distributive share of income or loss is community income or loss that is attributable to the partner's spouse for income tax purposes. If both spouses are partners, any self-employment tax is allocated based on their distributive shares.

**Federal income tax withheld.** If you and your spouse file separate returns on which each of you reports half the community wages, each of you is entitled to credit for half the income tax withheld on those wages. Likewise, each RDP/California same-sex spouse is entitled to credit for half the income tax withheld on those wages.

To determine estimated tax payments, earned income credit, and overpayments, see Pub. 555 for more information. For specific information that pertains to your situation, check with the laws of your state.

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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.