



STATE OF CALIFORNIA
Franchise Tax Board

FTB Publication **737**

2021 Tax Information for Registered Domestic Partners

Advance Draft
as of 03/04/22



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Purpose

This publication is primarily to assist registered domestic partners (RDPs), as defined in Family Code sections 297 *et seq.*, in filing their California income tax returns, if they have RDP adjustments.

Introduction

For purposes of California income tax, references to a spouse, husband, or wife also refer to a California RDP, unless otherwise specified. When we use the initials RDP they refer to both a California registered domestic “partner” and a California registered domestic “partnership,” as applicable.

In general, California affords the same rights and responsibilities to RDPs that previously were available only to married individuals. For California tax purposes, the same long-standing rules applicable to married individuals (relating to filing status, community property income, etc.) now apply to RDPs. However, because the federal government does not recognize domestic partners as married individuals for federal tax purposes, RDPs shall continue to file as unmarried individuals on their federal tax returns.

The Internal Revenue Service (IRS) in a May 5, 2010, Chief Counsel Advice (CCA) memorandum stated that California RDPs shall report one-half of their community income on his or her federal income tax return, unless the RDPs previously executed an agreement opting out of community property treatment. For more information, get federal Publication 555, Community Property.

The CCA only addresses the treatment of community income of RDPs; it does not change the RDP’s federal filing status. For federal purposes, an RDP shall continue to use the single or head of household filing status.

RDP adjustments may be required on the California tax return because the filing status of an RDP for California purposes is not the same as the filing status that the RDP uses for federal purposes. Under California law, RDPs must file their California income tax returns using either the married/RDP filing jointly or married/RDP filing separately filing status. RDPs are not allowed to use a married filing status on their federal tax returns. Frequently, the dollar limits for a single taxpayer and a married couple are the same and the dollar limit for a married person filing separately is one-half the amount for a single person or a married couple. To apply the correct dollar limits on the California tax return, an RDP might be required to reduce the amount of a deduction reflected on a federal tax return.

Another category of adjustment occurs when the substantive rule for a transaction is different for a married person. For example, no gain or loss is recognized when spouses transfer property among themselves. Since an RDP is treated as a spouse for California purposes, no gain or loss is recognized for California purposes when one RDP transfers property to his or her domestic partner. However, this transfer is not likely to get the same treatment for federal purposes and gain or loss might be recognized for federal purposes.

RDP adjustments include, but are not limited to the following:

- Division of community property
- Capital losses
- Transactions between RDPs
- Sale of residence
- Dependent care assistance
- Investment interest
- Qualified residence acquisition loan & equity loan interest
- Expense depreciation property limitations
- Individual Retirement Account
- Education loan interest
- Rental real estate passive loss
- Rollover of publicly traded securities gains into specialized small business investment companies

There are three possible methods to file if you are an RDP.

If you do not have any RDP adjustments:

1. Combine federal Form 1040, U.S. Individual Income Tax Return, line 11 from each individual federal Form 1040 filed with the IRS and transfer the combined amount to Form 540, California Resident Income Tax Return, or Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, line 13.

Note: RDPs who split their community income on their federal tax return and have no RDP adjustments may use this method.

If you have RDP adjustments, you will need to recalculate your federal adjusted gross income (AGI), before completing your California income tax return. You may use either one of the following methods:

2. Complete the California RDP Adjustments Worksheet – Recalculated Federal Adjusted Gross Income (included in this publication).
3. Complete a pro forma federal Form 1040 using the same filing status used on your California tax return.

A pro forma federal Form 1040, is a federal tax return completed in the same manner that a married couple would report income and expenses.

The pro forma federal Form 1040 is used only to assist you in completing your California tax return. **DO NOT file the pro forma federal Form 1040 with the IRS.**

To complete the pro forma federal Form 1040 or the worksheet, follow the federal Form 1040 instructions along with the instructions provided in this publication.

Do I Have to File a California Income Tax Return?

Filing Requirements for RDP Residents, Nonresidents, and Part-Year Residents

Residents – File a California tax return if either your gross income (which consists of all income you received from all sources in the form of money, goods, property, and services, that is not exempt from tax) or your adjusted gross income (AGI) (which consists of your federal AGI from all sources, reduced or increased by all California income adjustments) is more than the amounts shown on the chart below for your filing status, age, and number of dependents.

Nonresidents and Part-Year Residents – File a California tax return if you have any income from California sources and your gross income (which consists of all income you received from all sources in the form of money, goods, property, and services, that is not exempt from tax) or AGI (which consists of your federal AGI from all sources, reduced or increased by all California income adjustments) is more than the amounts shown on the chart below for your filing status, age, and number of dependents.

Note: If your gross income or adjusted gross income is less than the amounts listed on the chart, you may still have a filing requirement. For more information, get California Form 540 Personal Income Tax Booklet or California Form 540NR Nonresident or Part-Year Resident Booklet.

| On 12/31/21, my filing status was: | and on 12/31/21, my age was: (If your 65th birthday is on January 1, 2022, you are considered to be age 65 on December 31, 2021) | California Gross Income | | | California Adjusted Gross Income | | |
|---|--|--|----------------------------|----------------------------|----------------------------------|----------------------------|----------------------------|
| | | Dependents | | | Dependents | | |
| | | 0 | 1 | 2 or more | 0 | 1 | 2 or more |
| Head of household (Get FTB Pub. 1540, Tax Information for Head of Household Filing Status) | Under 65 65 or older | 19,310 25,760 | 32,643 35,760 | 42,643 43,760 | 15,448 21,898 | 28,781 31,898 | 38,781 39,898 |
| Married/RDP filing jointly Married/RDP filing separately (Combine the income of both spouses/ RDPs; both spouses/RDPs may be required to file a tax return even if only one spouse/ RDP had income over the amounts listed.) | Under 65 (both spouses/RDPs) 65 or older (one spouse/RDP) 65 or older (both spouses/RDPs) | 38,624 45,074 51,524 | 51,957 55,074 61,524 | 61,957 63,074 69,524 | 30,901 37,351 43,801 | 44,234 47,351 53,801 | 54,234 55,351 61,801 |
| Qualifying widow(er) | Under 65 65 or older | | 32,643 35,760 | 42,643 43,760 | | 28,781 31,898 | 38,781 39,898 |
| Dependent of another person – Any filing status | Any age | More than your standard deduction (Use the California Standard Deduction Worksheet for Dependents in the 540 or 540NR booklets to figure your standard deduction.) | | | | | |

Filing Status

Note: If you are filing as an RDP, be sure to check the box next to the question in the Filing Status section of the tax return that asks “If your California filing status is different from your federal status, check the box here.” Use the following guidelines in determining the proper filing status for your California tax return.

Married/RDP Filing Jointly – If any of the following is true, you may be able to file as Married/RDP Filing Jointly:

- You were an RDP as of December 31, 2021, even if you did not live with your RDP at the end of 2021.
- Your RDP died in 2021 and you did not re-register as an RDP or marry in 2021.
- Your RDP died in 2022 before you filed a 2021 tax return.

Married/RDP Filing Separately

- Community property rules apply to the division of income if you use the married/RDP filing separately status. For more information, get FTB Pub. 1031, Guidelines for Determining Resident Status, or FTB Pub. 1032, Tax Information for Military Personnel.
- You cannot claim a personal exemption credit for your RDP even if your RDP had no income, is not filing a tax return, and is not claimed as a dependent on another person's tax return.
- You may be able to file as head of household if your child lived with you and you lived apart from your RDP during the entire last six months of 2021.

Head of Household

For specific requirements to qualify for head of household filing status, get FTB Pub. 1540, Tax Information for Head of Household Filing Status. In general, head of household is for individuals who are unmarried and not in a registered domestic partnership and for certain married/RDP individuals living apart (considered unmarried or considered not in a registered domestic partnership) who provide a home for certain relatives. For more information, go to ftb.ca.gov and search for **hoh**.

Qualifying Widow(er)

RDPs qualify for this filing status if all five of the following apply:

- Your RDP died in 2019 or 2020 and you did not marry or enter into another registered domestic partnership in 2021.
- You have a child, stepchild, adopted child, or foster child whom you claim as a dependent.
- This child lived in your home for all of 2021. Temporary absences, such as for vacation or school, count as time lived in the home.
- You paid over half the cost of keeping up your home for this child.
- You could have filed a joint return with your RDP the year he or she died, even if you actually did not do so.

General Information

In general, for taxable years beginning on or after January 1, 2015, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2015. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540), California Adjustments - Residents, or Schedule CA (540NR), California Adjustments - Nonresidents or Part-Year Residents, and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the instructions. Taxpayers should not consider the instructions as authoritative law.

Filing Requirements – Under California law, RDPs file their California income tax returns using either the married/RDP filing jointly or married/RDP filing separately filing status. RDPs have the same legal benefits, protections, and responsibilities as married couples.

Substantially Equivalent – If you entered into a same-sex legal union in another state, other than a marriage, and that union has been determined to be substantially equivalent to a California registered domestic partnership, you are required to file a California income tax return using either the married/RDP filing jointly or married/RDP filing separately filing status.

Registered Domestic Partnership Requirements

A domestic partnership is established in California when both persons file a Declaration of Domestic Partnership with the California Secretary of State, and at the time of filing, both persons are members of the same sex, and meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals.

- Both persons have a common residence.
- Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
- The two persons are not related by blood in a way that would prevent them from being married to each other in California.
- Both persons are at least 18 years of age.
- Both persons are capable of consenting to the domestic partnership.

The definition of “common residence” means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

For additional domestic partner registration information, go to the California Secretary of State website at sos.ca.gov and search for **domestic partners registry** or call 916.653.3984. For more detailed information, go to ftb.ca.gov and search for **rdp** and view legislative history.

Married/RDP Filing Separately

Division of Income – The domicile of the RDP earning the income determines the division of income between the RDPs when separate returns are filed. Each RDP shall follow the laws of his or her state of domicile to determine if the income is separate or community property. California is a community property state. If the state of domicile is a community property state, when filing separate returns, each RDP reports half of the community property plus all separate income on his or her return. For California purposes, use federal Form 8958, Allocation of Tax Amounts Between Certain Individuals in Community Property States, to assist in the division of income.

If required to revise your federal AGI, have the following information available:

- Federal income tax return and supporting schedules for each RDP.
- Copy of federal Form 1040 instructions including worksheets, as needed.
- If filing separately, a copy of federal Form 8958.

California Community/Separate Property

Community property is the total of the following property acquired and earnings received:

- By an RDP during a registered domestic partnership while domiciled in a community property state.
- By an RDP that is not separate property.

Each RDP owns one-half of all community property.

Separate property is:

- All property owned separately by an RDP before entering into a registered domestic partnership.
- All property acquired separately after entering into a registered domestic partnership, such as gifts, inheritances, and property purchased with separate funds.
- Money earned while domiciled in a separate property state.
- All property declared separate property in a valid agreement entered into before or after registration of the domestic partnership.

Community income is all income from community property, wages, salaries, and other compensation for personal services of either RDP while in a registered domestic partnership. Community income is divided equally between RDPs.

Under California law, community status ends in any of the following situations:

- Upon the death of either RDP.
- When the decree of dissolution or termination of registered domestic partnership becomes final.
- When RDPs separate with no immediate intention of reconciliation.

Income from separate property is income of the RDP who owns the property.

When filing separate returns, the domicile of the RDP who earns the income determines the division of income between the RDPs. For income tax purposes, the income of RDPs domiciled in a community property state may be community income or separate income. When RDPs file separate returns, each RDP reports the following:

- One-half of the community income.
- All of his or her separate income.

For more information on community property, get federal Publication 555. RDPs will use the rules in federal Publication 555 for married people for California income tax purposes. The note in the "Introduction" section of the Publication 555 regarding California RDPs applies only to the filing of your federal return.

Pension Plans

For qualified pension plans, an RDP will not be treated as the spouse where such treatment would result in the disqualification for federal income tax purposes of a pension plan.

Anti-alienation provisions, applicable to qualified pension plans, prohibit assignment or transfer of plan assets except through a qualified domestic relations order (QDRO) or by certain survivor benefits. A QDRO is generally a court-ordered division of a qualified pension plan between spouses in relation to a divorce, a property division, or provision for child support. Because federal law does not recognize an RDP as a spouse, a plan will not be disqualified for California income tax purposes if a QDRO between RDPs is not recognized or if survivor benefits are not available to RDPs.

IRAs/Roth IRAs/Tax-Favored Accounts

An RDP will not be treated as a spouse where such treatment would result in a tax-favored account, such as a Achieving a Better Life Experience (ABLE) Account, Individual Retirement Account (IRA), Roth IRA, Coverdell Education Savings Account (ESA), Archer Medical Savings Account (MSA), or IRC Section 529 plan (Qualified Tuition Program), no longer being qualified as a tax-favored account for federal purposes.

For example, under federal law, the beneficiary of a Coverdell ESA may transfer the remaining balance in an ESA to a new beneficiary. This new beneficiary shall be "a member of the family," which is defined broadly to include the following relatives of the original beneficiary: spouse, child, brother, sister, stepbrother, stepsister, stepfather, stepmother, etc. Because federal law does not recognize an RDP as a spouse, the transfer of the balance in an ESA to a taxpayer's RDP or an RDP's child would result in the Coverdell ESA no longer being treated as a qualified tax-favored account for federal income tax purposes. Instead, the change in beneficiary would be considered a non-qualified distribution from the tax-favored account subject to additional tax of 10% for federal tax purposes and 2.5% for California tax purposes. Therefore, for California purposes, an RDP would not be treated as a spouse for purposes of changing the beneficiary of a Coverdell ESA.

In the event of a distribution from an IRA, Roth IRA, or other tax-favored account, because federal law does not recognize RDPs, a taxpayer whose RDP or RDP's child receives distributions from the taxpayer's IRA, Roth IRA, or other tax-favored account, may incur additional tax penalties for federal income tax purposes, but not for California income tax purposes.

For example, in an IRA, if you take an early distribution from your IRA to pay the higher education expenses of your RDP or the child of your RDP, for federal purposes you would probably owe an additional tax of 10%, but for California purposes you would not owe the additional tax of 2.5%. However, for both federal and California tax purposes, you would need to include in your taxable income the early distribution from your IRA, unless you have a basis in the IRA that may be recovered tax-free.

For California income tax purposes, if you and/or your RDP is covered by an employer-provided retirement plan, then your California deduction for an IRA contribution may be limited. See the example for line 20 in the instructions for California RDP Adjustments Worksheet (included in this publication). The amount of a nondeductible IRA contribution creates a California-only IRA basis that is recoverable from IRA distributions that would otherwise be taxable for California income tax purposes. Keep track of your California basis in your IRA. For general information about recovery of a California-only basis, get FTB Pub. 1005, Pension and Annuity Guidelines.

For California income tax purposes, if you or your RDP contributed to a Roth IRA in 2021 you need to review the income phase out limitations. The allowable Roth IRA contribution may be reduced based on you and your RDP's combined federal modified AGI.

| 2021 Filing Status | Federal Modified AGI |
|---|-----------------------|
| Married/RDP Filing Jointly or Qualifying Widow(er) | \$198,000 – \$208,000 |
| Single, Head of Household, or Married/RDP filing separately and you did not live with your spouse/RDP for all of 2021 | \$125,000 – \$140,000 |
| Married/RDP Filing Separately and you lived with your spouse/RDP at any time in 2021 | \$0 – \$10,000 |

Example:

Chris, Taxpayer One, and Pat, Taxpayer Two, are RDPs. Chris made a contribution to his Roth IRA of \$5,000. Chris's federal modified AGI is \$90,000. Pat made a contribution to his Roth IRA of \$5,000. Pat's federal modified AGI is \$150,000. Chris and Pat's combined federal AGI exceeds the \$208,000 limitation for an allowable Roth IRA contribution. Because their combined federal modified AGI exceeds the limitation, for California purposes the Roth IRA contributions of Chris and Pat are treated as "excess contributions." However, California does not impose the six percent excise tax that is imposed under federal law on excess contributions to Roth IRAs.

If Chris or Pat receives a "qualified distribution" from a Roth IRA, the "qualified distribution" is tax-free and is not includible in their California taxable income. This tax-free treatment applies even if the "qualified distribution" includes earnings attributable to a previous "excess contribution" for California purposes.

Related Parties

In applying the IRC for California purposes:

- The definition of related parties includes RDPs. (IRC Section 267)
- The definition of spouse includes RDPs. Therefore, no gain or loss will be allowed for any transfer of property between RDPs. (IRC Section 1041)
- An RDP will be treated as a spouse for purposes of determining ownership of stock. However, if the treatment of an RDP as a spouse will lead to the disqualification of the taxpayer's choice of business entity, then the RDP will not be treated as a spouse for California purposes. (IRC Section 318)

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Instructions for California RDP Adjustments Worksheet – Recalculated Federal Adjusted Gross Income

References to these instructions are to the Internal Revenue Code (IRC).

Registered domestic partners (RDP) may use the California RDP Adjustments Worksheet or a pro forma federal Form 1040 to make RDP adjustments to calculate federal AGI for California tax purposes.

To complete this worksheet, have the following information available:

- Federal income tax return and supporting schedules for each RDP.
- Copy of federal Form 1040 Instructions including worksheets, as needed.
- If filing separately, a copy of federal Publication 555.

Note: Attach a copy of either the California RDP Adjustments Worksheet or federal pro forma Form 1040, if used to complete your Form 540.

RDPs who file a California tax return and have no RDP adjustments between federal and California do not need to complete this worksheet. If you do not have any RDP adjustments, combine the amount on line 11 from each individual RDP's federal Form 1040 filed with the IRS and transfer the combined amount to Form 540 or Form 540NR, line 13.

RDP adjustments include but are not limited to the following:

- Division of community property, if not reported as community property on your federal tax return
- Capital losses
- Transactions between RDPs
- Sale of residence
- Dependent care assistance
- Investment interest
- Qualified residence acquisition loan & equity loan interest
- Expense depreciation property limitations
- Individual Retirement Account
- Education loan interest
- Rental real estate passive loss
- Rollover of publicly traded securities gain into specialized small business investment companies

RDPs filing as married/RDP filing jointly or married/RDP filing separately, and former RDPs filing single, with RDP adjustments will complete a pro forma federal Form 1040 using the same filing status as their California tax return or use this worksheet and instructions.

RDP adjustments occur when, for California purposes, you recalculate your federal tax return from a filing status of single or head of household to married/RDP filing jointly or married/RDP filing separately. RDP changes result in an increase or decrease to income or deductions. To complete this worksheet:

- Add column A and column B
- Add or subtract column C
- Enter the amount on column D
(column A + column B) ± column C = column D

Example:

Chris, Taxpayer One, and Pat, Taxpayer Two, each have a capital loss on their separate federal tax returns, as shown in the next column. Capital losses are limited to \$3,000.

When they recalculate their federal tax return as if married, they will make a \$2,000 filing status adjustment in Part I, Section A, line 7, column C, of this worksheet. (A \$3,000 loss plus a \$2,000 loss equals a \$5,000 loss; since they are limited to a \$3,000 loss, the adjustment will be \$2,000.)

| Part I Income Adjustments Worksheet | | | |
|--|--------------------------|-------------------------|--------------------------------------|
| Section A – Income | | | |
| 7 Capital gain or (loss) | | | |
| A Taxpayer One | B Taxpayer Two | C Adjustments | D Adjusted Federal Amounts |
| (\$3,000) | (\$2,000) | \$2,000 | (\$3,000) |

If Chris and Pat are filing separately, they are each limited to a \$1,500 loss. Therefore, Chris will make a \$1,500 filing status adjustment and Pat will make a \$500 filing status adjustment on their separately filed tax returns. Because Chris and Pat are filing separately, each one is considered Taxpayer One as shown below.

| Part I Income Adjustments Worksheet | | | |
|--|--------------------------|-------------------------|--------------------------------------|
| Section A – Income | | | |
| 7 Capital gain or (loss) | | | |
| A Taxpayer One | B Taxpayer Two | C Adjustments | D Adjusted Federal Amounts |
| (\$3,000) | | \$1,500 | (\$1,500) |
| A Taxpayer One | B Taxpayer Two | C Adjustments | D Adjusted Federal Amounts |
| (\$2,000) | | \$500 | (\$1,500) |

Transfer Between Registered Domestic Partners

California conforms to IRC Section 1041, which provides that no gain or loss is recognized on transfers of property between spouses. For federal tax purposes, because federal law does not recognize RDPs, transfers between RDPs are not treated as transfers between spouses. However, beginning January 1, 2007, for California tax purposes, because California treats RDPs the same as spouses, no gain or loss is recognized on transfers of property between RDPs. This also applies to transfers between former RDPs, if the transfer is related to termination of the registered domestic partnership. For more information on transfers to a spouse, see Property Settlements in federal Publication 504, Divorced or Separated Individuals.

Instructions for Column A, Column B, and Column C

Column A – Taxpayer One Federal Form 1040 and Federal Schedule 1 (Form 1040)

Taxpayer One, transfer the amounts from your federal Form 1040, line 1 through line 7 and line 1 through line 26 from federal Schedule 1 (Form 1040), Additional Income and Adjustments to Income, to column A of the worksheet.

Column B – Taxpayer Two Federal Form 1040 and Federal Schedule 1 (Form 1040)

For RDP filing jointly Taxpayer Two, transfer the amounts from your federal Form 1040, line 1 through line 7 and line 1 through line 26 from federal Schedule 1 (Form 1040) to column B of the worksheet.

For RDP filing separately or former RDP filing single, no amount will be shown in column B. All adjustments for community property will be made in column C.

For more information on community property, get federal Publication 555. RDPs will use the rules in federal Publication 555 for married people to determine how to apply those rules for California income tax purposes. The note in the “Introduction” section of the Publication 555 regarding California RDPs applies to the filing of your federal tax return.

Column C – Adjustments

Use column C to make California RDP adjustments in Part I, Section A, line 1 through line 7, and Section B, line 1 through line 8z and Section C, line 11 through line 24z following the specific line instructions below. For additional information, use the federal Form 1040 and federal Schedule 1 (Form 1040) instructions. If the amount is less than zero (negative), enter the result in parentheses. For example: (12,345).

Part I Income Adjustment Worksheet

Section A – Income, Columns A, B, and C

Line 1 – Wages, salaries, tips, etc.

Enter the total of your wages, salaries, tips, etc. For most people, the amount to enter on this line should be shown on box 1 of their federal Form(s) W-2, Wage and Tax Statement.

For additional information, get the federal Form 1040 instructions for line 1.

Adjustments:

Exclusion for medical expenses reimbursement

California allows an exclusion from gross income for employer-provided accident or health insurance, and medical expense reimbursement for RDPs and their partner’s dependents if they were not previously deducted. Enter the amount included in federal income as a negative number on line 1, column C.

Dependent care assistance programs (IRC Section 129)

The amount which may be excluded for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed \$10,500 (\$5,250 in the case of a separate tax return filed by a married/RDP individual).

For RDPs filing jointly, if you and your RDP excluded more than \$10,500 on your federal tax returns, your federal AGI for California purposes is increased by the amount which exceeds \$10,500. For RDPs filing separately, if you excluded more than \$5,250 on your federal tax return, your federal AGI for California purposes is increased by the amount which exceeds \$5,250.

Line 2a – Tax-exempt interest

If you received any tax-exempt interest, such as from municipal bonds, each payer should send you a federal Form 1099-INT, Interest Income. If you received any exempt-interest dividends from a mutual fund or other regulated investment company, each payer should send you a federal Form 1099-DIV, Dividends and Distributions. Enter the total on line 2a.

For additional information, get the federal Form 1040 instructions for line 2a.

Line 2b – Taxable interest

Each payer should send you a federal Form 1099-INT, or federal Form 1099-OID, Original Issue Discount. Enter your total taxable interest income on line 2b.

For additional information, get the federal Form 1040 instructions for line 2b.

Line 3a – Qualified dividends

Enter your total qualified dividends on line 3a.

For additional information, get the federal Form 1040 instructions for line 3a.

Line 3b – Ordinary dividends

Each payer should send you a federal Form 1099-DIV. Enter your total ordinary dividends on line 3b.

For additional information, get the federal Form 1040 instructions for line 3b.

Line 4a and Line 4b – IRA distributions

An RDP will not be treated as a spouse where such treatment would result in a tax-favored account not being qualified as a tax-favored account for federal income tax purposes.

Adjustment: An RDP may have an adjustment to line 4 if the RDP has a California-only basis in an IRA, which is recoverable from an IRA distribution. For example, an RDP may have a California-only basis in an IRA if the RDP’s partner is covered by an employer-provided retirement plan. Based on the RDPs’ combined adjusted gross income, the available deduction for an IRA contribution may be reduced for California income tax purposes. The amount disallowed for an IRA contribution on this worksheet creates a California-only basis in the IRA. RDPs shall keep track of their California-only basis in order to recover it tax-free from IRA distributions reported on line 4 in future years.

You should receive a federal Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing the amount of any distribution from your IRA before income tax or other deductions were withheld. Unless otherwise noted in the line 4a and line 4b instructions, an IRA includes a traditional IRA, Roth IRA, simplified employee pension (SEP) IRA, and a savings incentive match plan for employees (SIMPLE) IRA. Except as provided in the federal Form 1040 instructions for line 4a and line 4b, leave line 4a blank and enter the total distribution on line 4b.

For additional information, get the federal Form 1040 instructions for line 4a and line 4b.

Line 5a and Line 5b – Pensions and annuities

You should receive a federal Form 1099-R showing the amount of your pension and annuity payments before income tax or other deductions were withheld.

For additional information, get the federal Form 1040 instructions for line 5a and line 5b.

Line 6a and Line 6b – Social security benefits

You should receive a Form SSA-1099, Social Security Benefit Statement, showing in box 3 the total social security benefits paid to you.

For additional information, get the federal Form 1040 instructions for line 6a and line 6b.

Adjustment: A portion of your benefits may be taxable. How much is taxable depends on the total amount of your benefits and other income. Generally, the higher that total amount, the greater the taxable part of your benefits. To figure the total taxable amount of your social security benefits, calculate the taxable benefit amount using the Social Security Benefits Worksheet found in the federal Form 1040 instructions. Subtract that amount from the total of the amounts on line 6, combine column A and column B on your California RDP Adjustment Worksheet. Enter the result on line 6, column C.

Line 7 – Capital gain or (loss)

If you had a capital gain or loss, including any capital gain distributions or a capital loss carryover from 2020, complete and attach federal Form 8949, Sales and Other Dispositions of Capital Assets, and Schedule D (Form 1040), Capital Gains and Losses.

For additional information, get federal Form 1040 instructions for line 7.

Adjustments:

For California purposes, RDPs are treated as husband and wife in provisions where the husband and wife are treated as one person. RDPs are not treated as one person at the federal level.

If your capital losses are more than your capital gains, you can claim a capital loss deduction. The capital loss deduction for RDPs who file jointly is limited to \$3,000 (\$1,500 if you are an RDP filing separately).

Gain on the sale of a principal residence (IRC Section 121):

RDPs are allowed an exclusion of gain on the sale of their principal residence. RDPs filing jointly are able to exclude up to \$500,000 (\$250,000 if you file separately).

If you sold your principal residence and excluded a gain of \$250,000 on your federal tax return and are an RDP filing jointly, enter the difference between your total gain (up to \$500,000) and the amount you excluded from your federal income on line 7, column C, as a negative number.

Section B – Additional Income Columns A, B, and C

Line 1 – Taxable refunds, credits, or offsets of state and local income taxes

If you received a refund, credit, or offset of state or local income taxes in 2021, you may receive a federal Form 1099-G, Certain Government Payments.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 1.

Line 2a – Alimony received

Enter amounts received as alimony or separate maintenance.

Under federal law (TCJA), alimony and separate maintenance payments are not includable in the income

of the receiving spouse, if made under any divorce or separation agreement executed after December 31, 2018, or executed on or before December 31, 2018, and modified after that date (if the modification expressly provides that the amendments apply).

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 2a.

Adjustment: If you are an RDP receiving alimony not included in your federal income, enter the alimony amount on line 2a, column C.

Line 3 – Business income or (loss)

Enter your business income or loss.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 3.

Adjustments:

Election to treat certain depreciable business assets as an expense (IRC Section 179(b))

You may elect to treat the cost of any IRC Section 179 property as an expense, which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the IRC Section 179 property is placed in service.

If you are an RDP filing separately, your deduction is limited to 50% of the total allowable. Enter 50% of the total deduction as a positive number on line 3, column C.

Election to treat certain reforestation expenditures as an expense (IRC Section 194)

In the case of any qualified timber property with respect to which the taxpayer has made an election, the taxpayer shall treat reforestation expenditures that are paid or incurred during the taxable year with respect to such property as an expense that is not chargeable to capital account. The reforestation expenditures shall be allowed as a deduction. The aggregate amount of reforestation expenditures, with respect to each qualified timber property, shall not exceed \$10,000 (\$5,000 if you file as married/RDP filing separately).

If you claimed a reforestation expense deduction in the amount of \$5,000 on your federal tax return and you are an RDP filing jointly, enter the difference between your total reforestation expense (up to \$10,000 for each qualified timber property) and the amount you deducted on your federal tax return on line 3, column C, as a negative number.

Line 4 – Other gains or (losses)

If you sold or exchanged assets used in a trade or business, get the Instructions for federal Form 4797, Sale of Business Property.

Line 5 – Rental real estate, royalties, partnerships, S corporations, trust, etc.

Enter the amount from federal Schedule E (Form 1040), Supplemental Income and Loss, line 26 or line 41, here.

Adjustment: Get federal Form 8582, Passive Activity Loss Limitations, if your modified AGI is over \$100,000. If you or your RDP actively participated in a passive rental real estate activity, you can deduct up to \$25,000 of loss from the activity from your nonpassive income. This special allowance is an exception to the general rule disallowing losses in excess of income from passive activities. The maximum amount of the special allowance

is reduced if your modified AGI is more than \$100,000 (\$50,000 if you are an RDP filing separately).

If you have a loss, subtract the total allowable loss shown on your recalculated federal Form 8582 from the total of the amounts on line 5, column A and column B. Enter the result on line 5, column C, as a positive number.

Line 6 – Farm income or (loss)

Enter the amount from federal Schedule F (Form 1040), Profit or Loss From Farming, line 34 here.

Adjustment: Election to treat certain depreciable business assets as an expense (IRC Section 179(b))

You may elect to treat the cost of any IRC Section 179 property as an expense, which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the IRC Section 179 property is placed in service.

If you are an RDP filing separately, your deduction is limited to 50% of the total allowable. Enter 50% of the total deduction as a positive number on line 6, column C.

Line 7 – Unemployment compensation

You should receive a federal Form 1099-G showing the total unemployment compensation paid to you in 2021.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 7.

Line 8a – Federal net operating loss (NOL)

Enter on line 8a any NOL deduction from an earlier year.

For additional information, get federal Pub. 536, Net Operating Losses (NOLs) for Individuals, Estates, and Trusts.

Line 8b – Gambling income

Enter on line 8b any gambling winnings. Gambling winnings include lotteries, raffles, a lump-sum payment from the sale of a right to receive future lottery payments, etc.

For details on gambling losses, get the instructions for federal Schedule A (Form 1040), line 16.

Line 8c – Cancellation of debt

Enter on line 8c any canceled debt. Canceled debt may be shown on Form 1099-C, in box 2. However, part or all of your income from cancellation of debt may be nontaxable.

For additional information, get federal Pub. 4681, Canceled Debts, Foreclosures, Repossessions, and Abandonments.

Mortgage Forgiveness Debt Relief Act

Federal allows taxpayers to exclude from income up to \$750,000 (\$375,000 for married filing separately) of mortgage forgiveness debt. For RDPs filing jointly, if you and your RDP excluded more than \$750,000 on your federal tax returns, your federal AGI for California purposes is increased by the amount which exceeds \$750,000. For RDPs filing separately, if you excluded more than \$375,000 on your federal tax return, your federal AGI for California purposes is increased by the amount which exceeds \$375,000.

Certain employer payments of student loans

An employee currently may exclude \$5,250 from income for benefits from an employer-sponsored educational assistance program.

For RDPs filing jointly, if you and your RDP excluded more than \$10,500 on your federal tax returns, your federal AGI income for California purposes is increased by the amount

which exceeds \$10,500. For RDPs filing separately, if you excluded more than \$5,250 on your federal tax return, your federal AGI for California purposes is increased by the amount which exceeds \$5,250.

Line 8d – Foreign earned income exclusion from federal Form 2555

Enter the amount of your foreign earned income and housing exclusion from federal Form 2555, line 45.

Line 8e – Taxable health savings account distribution

Enter the taxable amount of distributions from a health savings account (HSA) or an Archer MSA. Distributions from these accounts may be taxable if (a) they are more than the unreimbursed qualified medical expenses of the account holder in 2021, and (b) they were not included in a qualified rollover.

For additional information, get federal Pub. 969, Health Savings Accounts and Other Tax-Favored Health Plans.

Line 8f – Alaska Permanent Fund dividends

Enter your Alaska Permanent Fund dividends.

Line 8g – Jury duty pay

Enter amounts for jury duty pay. Also see the instructions for line 24a.

Line 8h – Prizes and awards

Enter prizes and awards. Also, see the instructions for line 8l.

Line 8i – Activity not engaged in for profit income.

Enter amounts for activity not engaged in for profit income.

For additional information, get federal Pub. 535, Business Expenses.

Line 8j – Stock options

Enter on line 8j any income from the exercise of stock options not otherwise reported on your federal Form 1040 or 1040-SR, line 1.

Line 8k – Income from the rental of personal property if you engaged in the rental for profit but were not in the business of renting such property

Enter income from the rental of personal property as described above. Also, see the instructions for line 24b.

Line 8l – Olympic and Paralympic medals and USOC prize money

The value of Olympic and Paralympic medals and the amount of United States Olympic Committee (USOC) prize money you receive on account of your participation in the Olympic or Paralympic Games may be nontaxable. These amounts should be reported to you on Form 1099-MISC, box 3. To see if these amounts are nontaxable, first figure your adjusted gross income, including the amount of your medals and prize money.

If your adjusted gross income is not more than \$1,000,000 (\$500,000 if married filing separately), these amounts are nontaxable and you should include the amount from Form 1099-MISC, box 3, on line 8l, then subtract it by including it on line 24c.

Line 8m – IRC Section 951(a) inclusion

IRC Section 951 generally requires that a U.S. shareholder of a controlled foreign corporation include in income its pro rata share of the corporation's subpart F income and its amount determined under IRC Section 956.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 8m.

Line 8n – IRC Section 951A(a) inclusion

IRC Section 951A generally requires that a U.S. shareholder of a controlled foreign corporation include in income its global intangible low-taxed income (GILTI).

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 8n.

Line 8o – IRC Section 461(l) excess business loss adjustment

Enter the amount of your excess business loss from federal Form 461, line 16.

Line 8p – Taxable distributions from an ABLE account

Distributions from this type of account may be taxable if (a) they are more than the designated beneficiary's qualified disability expenses, and (b) they were not included in a qualified rollover.

For additional information, get federal Pub. 907, Tax Highlights for Persons With Disabilities.

Line 8z – Other income

Use line 8z to report any income not reported elsewhere on your tax return or other schedules.

For additional information, see the federal Schedule 1 (Form 1040) instructions for line 8z.

Section C – Adjustments to Income, Columns A, B, and C**Line 11 – Educator expenses**

If you were an eligible educator in 2021, you can deduct up to \$250 of qualified expense's you paid in 2021. If you and your RDP are filing jointly and both of you were eligible educators, the maximum deduction is \$500. However, neither RDP can deduct more than \$250 of his or her qualified expenses. An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year. For additional information, get federal Schedule 1 (Form 1040) instructions for line 11 and federal Pub 529, Miscellaneous Deductions.

Line 12 – Certain business expenses of reservists, performing artists, and fee-basis government officials

Include the following deductions on line 12:

- Certain business expenses of National Guard and reserve members who traveled more than 100 miles from home to perform services as a National Guard or reserve member.
- Performing-arts-related expenses as qualified performing artist.
- Business expenses of fee-basis state or local government officials.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 12.

Adjustment: RDPs may only claim expenses as a performing artist if they file jointly, unless they lived apart from their RDP for the entire year.

Line 13 – Health savings account (HSA) deduction

If contributions (other than employer contributions) were made to your HSA for 2021, you may be able to take this deduction. Get federal Form 8889, Health Savings Accounts (HSAs), for additional information.

A "tax-favored account" means an individual account, plan, or arrangement that is exempt from tax under federal law, including an HSA. Where the treatment of an RDP as a

spouse would result in a tax-favored account that would not be qualified as a tax-favored account for federal income tax purposes, the RDP will not be treated as a spouse for California tax purposes with respect to that account.

Line 14 – Moving expenses

You can deduct moving expenses if you are a member of the Armed Forces on active duty and due to a military order you move because of a permanent change of station.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 14.

Line 16 – Self-employed SEP, SIMPLE, and qualified plans

If you were self-employed or a partner, you may be able to take this deduction. Get federal Publication 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), or, if you were a minister, get federal Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers.

Line 17 – Self-employed health insurance deduction

You may be able to deduct the amount you paid for health insurance coverage (established under your business) for yourself, your RDP, your dependents, and your RDP's dependents. Your total California deduction cannot exceed the limitations explained in the federal instructions. Do not include health insurance costs for any month you were eligible to participate in any subsidized health plan maintained by your employer or your domestic partner's employer.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 17.

Adjustments:**Self-employed health insurance deduction**

Enter the amount of health insurance coverage for your RDP and their dependents on line 17, column C, as a positive amount.

Subsidized health plan maintained by your RDP's employer

Enter the amount of health insurance cost included for any month you were eligible to participate in any subsidized health plan maintained by your RDP's employer on line 17, column C, as a negative amount.

Line 18 – Penalty on early withdrawal of savings

The federal Form 1099-INT or Form 1099-OID you received will show the amount of any penalty you were charged.

Line 19a – Alimony paid

If you made payments to or for your spouse/RDP or former spouse/RDP under a divorce or separation instrument, you may be able to take this deduction. For additional information, get federal Publication 504.

Under federal law (TCJA), alimony and separate maintenance payments are not deductible by the payor spouse, if made under any divorce or separation agreement executed after December 31, 2018, or executed on or before December 31, 2018, and modified after that date (if the modification expressly provides that the amendments apply). California does not conform.

Adjustment: If you are an RDP paying alimony not included in your adjustment to income for federal purposes, enter the alimony amount on line 19a, column C, as a positive amount.

Line 20 – IRA deduction

If you made contributions to a traditional IRA for 2021, you may be able to take an IRA deduction.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 20.

Adjustment: If you are an RDP and your federal modified AGI exceeds the amounts in the charts on this page, your IRA deduction will be limited. To figure your adjustment, get federal Schedule 1 (Form 1040) instructions for line 20. Enter the adjustment amount on line 20, column C, as a positive amount.

A “tax-favored account” means an individual account, plan, or arrangement that is exempt from tax under federal law, including an IRA. Where the treatment of an RDP as a spouse would result in a tax-favored account that would not be qualified as a tax-favored account for federal income tax purposes, the RDP would not be treated as a spouse for California tax purposes with respect to that account.

Use the chart below if the RDP that contributed to an IRA was covered by an employer retirement plan.

| 2021 Filing Status | Federal modified AGI |
|---|-----------------------|
| Married/RDP Filing Jointly or Qualifying Widow(er) | \$105,000 – \$125,000 |
| Single, Head of Household, or Married/RDP filing separately and you did not live with your spouse/RDP for all of 2021 | \$66,000 – \$76,000 |
| Married/RDP Filing Separately and you lived with your spouse/RDP at any time in 2021 | \$0 – \$10,000 |

Use the chart below if the RDP that contributed to an IRA was **not** covered by an employer plan, but the partner of the RDP was covered by an employer retirement plan.

| 2021 Filing Status | Federal modified AGI |
|---|----------------------|
| Married/RDP Filing Jointly or Qualifying Widow(er) | \$198,000 – 208,000 |
| Single, Head of Household, or Married/RDP filing separately and you did not live with your spouse/RDP for all of 2021 | \$ no phase-out |
| Married/RDP Filing Separately and you lived with your spouse/RDP at any time in 2021 | \$0 – \$10,000 |

Example:

Chris, Taxpayer One, and Pat, Taxpayer Two, are RDPs. Chris made an IRA contribution of \$5,000 in 2021. Chris’s federal modified AGI is \$80,000, he is not covered by an employer-provided pension plan. On his separate federal tax return, Chris deducted his entire IRA contribution on line 20 of his federal Schedule 1 (Form 1040). Pat is covered by an employer-provided pension plan and he did not make an IRA contribution in 2021. Pat’s federal modified AGI is \$150,000. Chris and Pat’s combined federal modified AGI exceeds the \$208,000 limitation and they cannot deduct an IRA contribution. When they recalculate their federal modified AGI, as if married, they will make a \$5,000 filing status adjustment in column C, line 20 of this worksheet.

| Part I Income Adjustments Worksheet | | | |
|-------------------------------------|--------------|-------------|--------------------------|
| Section C – Adjustments to Income | | | |
| Line 20 IRA Deduction | | | |
| A | B | C | D |
| Taxpayer One | Taxpayer Two | Adjustments | Adjusted Federal Amounts |
| (\$5,000) | \$0 | \$5,000 | \$0 |

Line 21 – Student loan interest deduction

Use the Student Loan Interest Deduction Worksheet in the federal Schedule 1 (Form 1040) instructions to determine your student loan interest deduction.

For additional information, get the federal Schedule 1 (Form 1040) instructions for line 21.

Line 23 – Archer MSA Deduction

Enter amounts for Archer MSA deduction.

For additional information, get federal Form 8853, Archer MSAs and Long-Term Care Insurance Contracts.

Line 24a - Jury duty pay

Enter your jury duty pay if you gave the pay to your employer because your employer paid your salary while you served on the jury.

Line 24b

Enter the deductible expenses related to income reported on line 8k from the rental of personal property engaged in for profit.

Line 24c

Enter the nontaxable amount of the value of Olympic and Paralympic medals and USOC prize money reported on line 8l.

Line 24d

Enter reforestation amortization and expenses.

For additional information, get federal Pub. 535.

Adjustment: In the case of any qualified timber property with respect to which the taxpayer has made an election, the taxpayer shall treat reforestation expenditures that are paid or incurred during the taxable year with respect to such property as an expense that is not chargeable to a capital account. The reforestation expenditures shall be allowed as a deduction. The aggregate amount of reforestation expenditures, with respect to each qualified timber property, shall not exceed \$10,000 (\$5,000 if you file as married/RDP filing separately). If you claimed a reforestation expense deduction in the amount of \$5,000 on your federal tax return and you are an RDP filing jointly, enter the difference between your total reforestation expense (up to \$10,000 for each qualified timber property) and the amount you deducted on your federal tax return on line 24d, column C.

Line 24e

Enter repayment of supplemental unemployment benefits under the Trade Act of 1974.

For additional information, get federal Pub. 525, Taxable and Nontaxable Income.

Line 24f

Enter contributions to IRC Section 501(c)(18)(D) pension plans.

For additional information, get federal Pub. 525.

Line 24g

Enter contributions by certain chaplains to IRC Section 403(b) plans.

For additional information, get federal Pub. 517, Social Security and Other Information for Members of the Clergy and Religious Workers.

Line 24h

Enter attorney fees and court costs for actions involving certain unlawful discrimination claims, but only to the extent of gross income from such actions.

For additional information, get federal Pub. 525.

Line 24i

Enter attorney fees and court costs you paid in connection with an award from the IRS for information you provided that helped the IRS detect tax law violations, up to the amount of the award includible in your gross income.

Line 24j

Enter the housing deduction from federal Form 2555.

Line 24k

Enter excess deductions of IRC Section 67(e) expenses from federal Schedule K-1 (Form 1041), box 11, code A.

For additional information, get Instructions for Schedule K-1 (Form 1041).

Line 24z

Use line 24z to report any adjustments not reported elsewhere on your tax return or other schedules.

Instructions for Column D

Column D – Adjusted Federal Amounts

To calculate column D:

- Add column A and column B
 - Add or subtract column C
 - Enter the amount in column D
- (column A + column B) ± column C = column D

Line 10 – Total

Combine Section A, line 1 through line 7, and Section B, line 1 through line 7, and line 9a in column D.

Line 26

Add line 11 through line 23 and line 25 in column D. Enter the result on line 26, column D.

Line 27 – Total

Subtract line 26, column D from line 10, column D. Enter the amount here and on Form 540 or 540NR, line 13.

Transfer the amounts from column D, Section A, line 1 through line 7, and Sections B and C, line 1 through line 27 to Schedule CA (540), Part I, column A, Section A, line 1 through line 7, and Sections B and C, line 1 through line 27.

Part II Adjustments to Federal Itemized Deductions

Federal itemized deductions – Complete a federal Schedule A (Form 1040), Itemized Deductions, for each taxpayer. Combine the line items for both taxpayers to arrive at the amounts for Column A of the Schedule CA (540), Part II.

The following adjustments may be required for qualified residence interest (IRC Section 163(h)):

- **Acquisition indebtedness** – The aggregate amount treated as acquisition indebtedness for a period shall not exceed \$750,000 (\$375,000 in the case of a married individual or an RDP filing a separate tax return). If your combined acquisition indebtedness is over \$750,000, enter the amount of interest on your indebtedness (up to \$750,000) on your recalculated federal Schedule A (Form 1040), line 8a or line 8b.
- **Home equity indebtedness** – The aggregate amount treated as home equity indebtedness for any period shall not exceed \$100,000 (\$50,000 in the case of a married individual or an RDP filing a separate tax return) if the loan is used to buy, build, or substantially improve the taxpayer's home that secures the loan. If your combined home equity indebtedness is over \$100,000 enter the amount of interest on your indebtedness (up to \$100,000) on your recalculated federal Schedule A (Form 1040), line 8a or line 8b.

Medical and Dental Expenses

Taxpayer benefits are extended to include the taxpayer's RDP and their dependent(s) for medical expenses and health insurance benefits.

Combine your medical and dental expenses and apply the 7.5% limitation rule to your recalculated jointly adjusted gross income to arrive at the amount for line 4 of the federal Schedule A (Form 1040).

Job Expenses and Certain Miscellaneous Deductions

Combine your job expenses and miscellaneous deductions and apply the two percent limitation rule to your recalculated jointly AGI to arrive at the amount for Schedule CA (540), Part II, line 25.

Franchise Tax Board Privacy Notice on Collection

Our privacy notice can be found in annual tax booklets or online. Go to ftb.ca.gov/privacy to learn about our privacy policy statement, or go to ftb.ca.gov/forms and search for **1131** to locate FTB 1131 EN-SP, Franchise Tax Board Privacy Notice on Collection. To request this notice by mail, call 800.338.0505 and enter form code **948** when instructed.

Frequently Asked Questions

(For more RDP information, go to ftb.ca.gov and search for [rdp](#).)

1. Can I file a joint California tax return with my RDP for tax years prior to 2007?

No. Domestic partners **cannot** file a joint or separate tax return for tax years prior to 2007. Prior to tax year 2007, a domestic partner was required to use the same filing status for state income tax purposes that was used or would have been used for federal income tax purposes which were single or head of household. For taxable years beginning on or after January 1, 2007, registered domestic partners are required to use the same filing status available to married persons.

2. Is the earned income of registered domestic partners treated as community property for tax years prior to 2007?

No. Earned income is not treated as community property for state income tax purposes for tax years prior to 2007.

3. If one RDP dies, can the surviving RDP file a joint tax return?

You may file a joint tax return if any of the following is true:

- You were married or an RDP as of the end of the tax year in question, even if you did not live with your spouse/RDP at the end of that tax year.
- Your spouse/RDP died last year and you did not remarry or enter into another registered domestic partnership last year.
- Your spouse/RDP died this year before you filed last year's return.

4. Can the Franchise Tax Board (FTB) waive accuracy-related penalties for RDPs due to reasonable cause?

Yes, but there are no special rules to waive penalties for RDPs. "Reasonable cause" is a standard exception to most penalties imposed under the California Revenue and Taxation Code. Generally, reasonable cause exists where the failure to comply occurs despite the exercise of ordinary business care and prudence.

5. Do mortgage interest rules apply to RDPs filing California tax returns?

Yes, but only if the limitations applicable on a federal tax return for married individuals would limit your interest deduction on your California tax return. For more information about those limits, get federal Publication 936, Home Mortgage Interest Deduction.

6. Can RDPs who file a California joint tax return exclude up to \$500,000 of capital gain on the sale of a principal residence?

Yes, if they meet the capital gain exclusion rules that apply to a married individual filing a joint tax return. For more information, get federal Publication 523, Selling Your Home.

7. Can an RDP who filed a joint tax return apply for relief under California's innocent joint filer provisions?

Yes, California innocent joint filer provisions apply to anyone who files a valid joint tax return. For more information, get form FTB 705, Innocent Joint Filer Relief Request.

8. If a court orders termination of a registered domestic partnership and a California Family Law Court awards spousal support (alimony), what is the tax treatment of these payments?

For California, if the payment satisfies the requirements under state tax law for alimony, it would be deducted by the payor and included as income by the payee. However, federal treatment of these payments is uncertain.

9. If a court with jurisdiction over a dissolution proceeding for a registered domestic partnership assigns a tax debt owing to the FTB to one of the partners, is the FTB bound by the court order?

The parties to a dissolution can stipulate to any payment arrangement of taxes that they wish, and the court could order one party to satisfy outstanding tax liabilities. However, the FTB is not generally bound by such a court order. There are some circumstances where the FTB will follow a court order revising tax liability between the parties to a dissolution proceeding. For more information, get [FTB Pub. 705](#).

10. Can an RDP file as "head of household" (HOH) on a California tax return?

Yes, an RDP can file as HOH on a California tax return if he or she maintains the main home for his or her birth child, stepchild, adopted child, or eligible foster child and are "considered not in a registered domestic partnership."

To be "considered not in a registered domestic partnership" you shall meet **all** of the following requirements:

- Your RDP did not live in your home during the last six months of the tax year.
- You file a separate tax return.
- You pay more than half the cost of keeping up your home for the tax year.
- Your home was the main home of your birth child, stepchild, adopted child, or eligible foster child for more than half the year.
- You are able to claim an exemption for the child.

For more information on filing HOH, get [FTB Pub. 1540, Tax Information for Head of Household Filing Status](#).

Definitions

Registered Domestic Partnership – Two persons who filed a Declaration of Domestic Partnership with the California Secretary of State.

Marriage – A legal union of two persons that is denominated as a marriage.

Married – United in a legally recognized marriage.

Spouse – A married person or a person who is part of a lawful marriage.

Former Spouse – A former married person or a person who was previously part of a legal marriage.

Married/RDP Filing Jointly Filing Status – A filing status for married couples who were married as of the last day of the tax year. Beginning in 2007, this filing status may also be used by RDPs who have registered as domestic partners with the California Secretary of State by the last day of the tax year.

Married/RDP Filing Separately Filing Status – A filing status for married couples and RDPs who choose to report their respective incomes, exemptions, and deductions on separate tax returns.

Unmarried/Not in a Registered Domestic Partnership – A taxpayer is unmarried and not in a registered domestic partnership if on the last day of the tax year, one of the following applies:

- The taxpayer has never been married and never entered into a registered domestic partnership.
- The taxpayer is legally divorced from his or her spouse/RDP under a final decree of divorce or a final decree of dissolution of an RDP. A petition for divorce or dissolution of an RDP **or** an interlocutory decree of divorce or interlocutory decree of an RDP is **not** the same as a final decree. A married/RDP taxpayer remains married or an RDP until the final decree is issued.
- The taxpayer is legally separated from his or her spouse/RDP under a final decree of legal separation. A petition for legal separation or an informal separation agreement is **not** the same as a final decree of legal separation. Also, simply living apart from a spouse/RDP is **not** the same as being legally separated under a final decree of legal separation.

A married/RDP taxpayer is unmarried or not in an RDP for head of household purposes if the taxpayer's spouse/RDP was a nonresident alien at any time during the year. However, if the taxpayer filed a joint tax return in a previous year by choosing to treat the spouse/RDP as a resident, the choice continues in subsequent tax years until it is revoked. If the taxpayer has not revoked the choice by the extended due date for filing a tax return in the current year, the nonresident alien spouse/RDP is still a resident for tax purposes in the current year and the taxpayer remains married or an RDP.

Considered Unmarried (Head of Household) – To qualify for head of household filing status, a married taxpayer or RDP shall meet the requirements to be considered unmarried or considered not in a registered domestic partnership. One of those requirements is that the taxpayer's spouse or partner has not have lived in the home at any time during the last six months of the tax year.

Divorce – The legal termination of a marriage.

Decree of Dissolution – The Final Judgment of Divorce (also referred to as a Decree of Dissolution or Decree of Divorce); the court order that terminates a marriage and certain registered domestic partnerships. The marriage or registered domestic partnership is not officially terminated until a final decree is issued by the court.

Legal Separation – To be legally separated, a person receives a final decree of legal separation issued by a court. A petition for legal separation, an informal separation agreement, or simply living apart from a spouse/RDP is not the same as being legally separated under a final decree of legal separation.

Termination/Dissolution of RDP – Depending on the circumstances, registered domestic partnerships may be terminated either by court order following a dissolution proceeding in the Superior Court or by filing a Notice of Termination of Domestic Partnership with the California Secretary of State.

Mother – A female parent that has born an offspring, has adopted a child, or otherwise established a maternal relationship with another person.

Father – A male parent who functions in a paternal capacity with regard to another.

Parent – A father or mother.

Additional Information

How to Get California Tax Information

By Internet – You can download, view, and print California tax forms and publications at ftb.ca.gov/forms.

By phone – To order California tax forms, call our automated phone service at 800.338.0505.

In person – Many libraries and post offices provide free California tax booklets during the filing season.

Employees at libraries and post offices cannot provide tax information or assistance.

By mail – We will send you two copies of each tax form and one copy of each set of instructions. Allow two weeks to receive your order. If you live outside California allow three weeks to receive your order. Write to:

TAX FORMS REQUEST UNIT MS D120
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

Letters

If you write to us, be sure your letter includes your social security number (SSN) or Individual Taxpayer Identification Number (ITIN), and your daytime and evening telephone numbers. Send your letter to:

FRANCHISE TAX BOARD
PO BOX 942840
SACRAMENTO CA 94240-0040

We will respond to your letter within ten weeks. In some cases, we may need to call you for additional information.

General Phone Service

Telephone assistance is available year-round from 7 a.m. until 5 p.m. Monday through Friday, except holidays. Hours are subject to change.

Telephone: 800.852.5711 from within the United States
916.845.6500 from outside the United States

California

Relay

Service: 711 or 800.735.2929 for persons with hearing or speaking limitations.

IRS: 800.829.1040 for federal tax questions

Asistencia En Español

Asistencia telefónica está disponible durante todo el año desde las 7 a.m. hasta las 5 p.m. de lunes a viernes, excepto días feriados. Las horas están sujetas a cambios.

Teléfono: 800.852.5711 dentro de los Estados Unidos
916.845.6500 fuera de los Estados Unidos

Servicio de

Retransmisión

de California: 711 o 800.735.2929 para personas con limitaciones auditivas o del habla.

IRS: 800.829.1040 para preguntas sobre impuestos federales