2
Filing Requirements

OVERVIEW

Not every taxpayer with gross income must file a tax return. Some taxpayers who meet certain requirements do not have to file a tax return. However, those who do not have a filing requirement may benefit from filing a tax return in order to get a refund.

This chapter discusses the preliminary information of a tax return. The first step in preparing an income tax return is to determine if the taxpayer is required to file a return. In this chapter, you will study the filing requirements for federal income tax purposes.

OBJECTIVES

At the conclusion of this chapter, you will be able to:

- Determine whether a tax return must be filed based on the taxpayer's filing requirements.
- Identify the taxpayer's standard deduction and personal exemption amount.
- Recognize whether a taxpayer may use the single, married filing jointly, or married filing separately filing statuses.
- Explain the differences between the injured spouse allocation and the innocent spouse relief.

TAX TERMS

Look up the definitions of the following terms in the glossary:

- Community income.
- Community property.
- Dependent.
- Gross income.
- Joint return.
- Married filing jointly (MFJ).
- Married filing separately (MFS).
- Standard deduction.

FILING REQUIREMENTS

Filing requirements differ among the following:

- Nondependent.
- Dependents.
- Certain children under age 19 or full-time students under age 24.
- Self-employed individuals.
- Aliens.

This chapter focuses on the first three categories. We will also briefly cover the filing requirements for the self-employed. The filing requirements for aliens are covered in IRS Publication 519, *U.S. Tax Guide for Aliens*.

> **Tax Tip:** A thorough client interview begins with questions about the following:
>
> - Marital status.
> - Age.
> - Gross income.
> - Dependent status.
>
> This important information is a part of every accurate and complete return. This information also helps to determine the taxpayer's filing status, standard deduction, and personal exemption amount.

NONDEPENDENTS

Nondependent taxpayers are individuals who can't be claimed as dependents on another taxpayer's return. The following three factors determine the filing requirement for nondependent:

- Filing status.
- Age.
- Gross income.

See the chart in Illustration 2.2 on page 2.7 for the filing requirements guidelines that apply to nondependents.

Filing Status

For federal income tax purposes, there are five filing statuses:

- Single.
- Married filing jointly.
- Married filing separately.
- Head of household.
- Qualifying widow (er).

Specific requirements must be met in order to qualify for each filing status. We will discuss the first three filing statuses later in this chapter. Filing statuses 4 and 5 are a bit more involved, and are discussed in Chapter 4.

Marital Status

The first step in identifying a taxpayer's filing status is to determine the taxpayer's marital status. Marital status (married or unmarried) is determined on the last day of the tax year. The marital status of a person who died during the year, as well as that of the surviving spouse, is determined as of the date of death.

Examples: Bob and Carol were married on December 31, 2016. They are considered married for the 2016 tax year.

Ted and Alice's divorce became final on December 31, 2016. They are considered unmarried for the 2016 tax year.

Russell and Dawn have been married for several years. Russell died on March 27, 2016. Russell and Dawn are considered married for the 2016 tax year.

If a taxpayer is considered unmarried on the last day of the tax year, the taxpayer may be eligible to file as single, head of household, or qualifying widow (er). If a taxpayer is considered married on the last day of the tax year, the taxpayer may file as married filing jointly or married filing separately.

Common-Law Marriages

A taxpayer is considered married if, at the end of the tax year, they are in a common-law marriage that is recognized in the state where the couple is residing, or was recognized by the state where the common-law marriage began.

While specific requirements vary by state, a common-law marriage generally must meet four legal standards:

1. The parties must have the legal capacity to marry.
2. Single parties must have the current intent to marry. That is, they must intend to be married and must communicate that intent to one another.
3. The couple must live together.
4. The parties must publicly present themselves to others as a married couple.

It is a common misconception that a couple must live together for a set number of years to have a common-law marriage. In reality, there is no time limit if the four conditions listed above are met.

While some states allow common-law marriages, there is no such thing as a common-law divorce. If the partners decide to go their separate ways, they must petition the state court for a decree of divorce just like any other married couple.

Tax Tip: It is not the job of a Tax Professional to determine whether a relationship constitutes a common-law marriage. If a couple is in doubt as to their legal marital status, they should seek the advice of an attorney.

Same-Sex Marriages

For federal tax purposes, individuals of the same sex are considered married if they were lawfully married in a state (or foreign country) whose laws authorize the marriage of two individuals of the same sex. Following a landmark Supreme Court ruling in 2015 legalizing same-sex marriages in every state, married individuals who are members of the same sex must follow the same guidelines as other married couples.

For federal tax purposes, the term "spouse" includes an individual married to a person of the same sex if the couple is lawfully married under state (or foreign) law. However, individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that is not considered a marriage under state (or foreign) law, are not considered married for federal tax purposes. For more details, see Publication 501, *Exemptions, Standard Deduction, and Filing Information*.

Age

For general tax purposes, a person is considered to have attained any given age on the first moment of the last day of that year of their life—that is to say, the day before their birthday.

Example: Deanna Shoenburger was born on January 1, 1976. For general tax purposes, she is considered to be age 41 for the 2016 tax year, even though her 41st birthday does not occur until January 1, 2017.m

A taxpayer is considered to have attained the age of 65 on the day *before* their 65th birthday.

Example: Jane McGuire's 65th birthday is January 1, 2017; for tax purposes, she is considered age 65 for the 2016 tax year.

The age of a person who dies during the year is determined as of the date of death.

Example: Shelly Burrows died on September 21, 2016, a month before her 65th birthday. She is age 64 for purposes of her 2016 tax return.

Tax Tip: Although you may be aware that "normal retirement age" for social security purposes is increasing to age 67, the age of 65 retains its significance for general tax purposes. You will learn more about the change in retirement age later, when you learn about social security benefits.

As you will discover throughout this course, some special rules apply to children with regard to age. For several specific tax purposes, children are considered to have attained a certain age on their birthday, rather than on the preceding day.

Example: Jared Peterson, dependent son of Beverly Peterson, was born on January 1, 2000; his 17th birthday is January 1, 2017. When determining whether Beverly may claim the Child Tax Credit (which you will learn about in Chapter 3), Jared is considered to be 16 years old on December 31, 2016. However, for general tax purposes, Jared is considered to have attained the age of 17 as of December 31, 2016.m

Gross Income

As discussed in the last chapter, gross income is total worldwide income subject to tax. There are two aspects to determining gross income:

- Who owns the income.
- What income should be reported on a tax return.

Ownership of income, in the case of a married couple, is determined by state law. The laws in most states regarding the ownership of income and property are based on British common law. These states are called separate property states. In separate property states, income received belongs to the spouse who earned it or who owns the property that produced the income.

Nine states are community property states. See the chart in Illustration 2.1, below, for a list of these nine community property states. With the exception of Wisconsin, the laws of community property states are based on Spanish civil law. Generally, in community property states, income received for services performed is considered to belong half to the spouse and half to the other spouse, regardless of which spouse earned it. The laws regarding the ownership of income from property vary among these states. Generally, ownership of income needs to be determined only if the couple files separate returns.

Illustration 2.1

COMMUNITY PROPERTY STATES	
Arizona	New Mexico
California	Texas
Idaho	Washington
Louisiana	Wisconsin
Nevada	

When determining if a taxpayer is required to file, remember that, generally, the nondependent taxpayer is required to file an income tax return if their gross income equals or exceeds a gross income threshold amount. This gross income threshold amount changes based on the taxpayer's filing status and age (see the chart in Illustration 2.2 on page 2.7). The gross income threshold amount generally consists of the sum of the taxpayer's standard deduction and personal exemption amount. These two separate items reduce the taxpayer's income subject to income tax on their return. If a taxpayer has gross income less than the sum of their standard deduction or personal exemption, then it is generally safe to say that their gross income is reduced to zero, and the taxpayer may not be required to file a tax return. The standard deduction and personal exemption amounts will be discussed next in this chapter.

Illustration 2.2

GROSS INCOME FILING REQUIREMENTS FOR 2016 (NONDEPENDENTS)			
Individuals Who Are:	**Are Required to File If Gross Income Is:**	**Individuals Who Are:**	**Are Required to File If Gross Income Is:**
Single		**Married Filing Jointly**	
Under age 65	$10,350	Both under age 65	$20,700
Age 65 or older	$11,900	One spouse age 65 or older	$21,950
Head of Household		Both age 65 or older	$23,200
Under age 65	$13,350	**Married Filing Separately**	
Age 65 or older	$14,900	Regardless of age	$4,050
Qualifying Widow (er)			
Under age 65	$16,650		
Age 65 or older	$17,900		

Tax Tip: As a general rule, a nondependent taxpayer is required to file a tax return when their gross income is equal to or greater than the sum of the taxpayer's standard deduction and personal exemption amount. However, a married taxpayer using the married filing separately status must file a return when their gross income equals or exceeds the personal exemption amount ($4,050 for 2016).

Standard Deductions

The standard deduction reduces the amount of income that is subject to tax. This amount varies according to the taxpayer's filing status. The following are the regular standard deductions for 2016:

- $6,300 – Single or married filing separately.
- $12,600 – Married filing jointly or qualifying widow (er).
- $9,300 – Head of household.

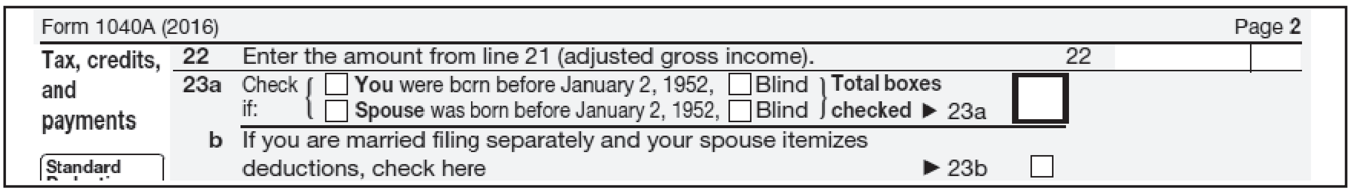
Increased Standard Deductions

Taxpayers who are age 65 or older and/or blind are entitled to the following increased standard deduction amounts:

- $1,550 (per condition) for singles and heads of households.
- $1,250 (per condition) for all married taxpayers and qualifying widow (err).

The increased amounts are calculated per the boxes checked on line 23a, Form 1040A (see Illustration 2.3, below).

Illustration 2.3



Form 1040A (2016) Page **2**

Tax, credits, and payments	22	Enter the amount from line 21 (adjusted gross income).	22
	23a	Check if: ☐ **You** were born before January 2, 1952, ☐ Blind / ☐ **Spouse** was born before January 2, 1952, ☐ Blind	**Total boxes checked** ▶ 23a ☐
Standard	b	If you are married filing separately and your spouse itemizes deductions, check here	▶ 23b ☐

The filing requirement computation for taxpayers age 65 and over includes the extra amount for age, but the extra amount allowed for blindness is *not* included in the computation.

Blindness

A taxpayer may claim the additional standard deduction for blindness if they are totally or partly blind at the close of the tax year. *Partly blind* means that the person is able to see no better than 20/200 in the better eye with corrective lenses, or the person has a field of vision not more than 20 degrees.

A taxpayer who is partly blind, and whose sight will never improve beyond these limits, must obtain a certified statement from their eye doctor or registered optometrist. The statement must be retained by the taxpayer with their records; but does not need to be attached to the return or sent to the IRS.

Tax Tip: If vision can be corrected beyond the limits by contact lenses that can only be worn briefly because of pain, infection, or ulcers, the higher standard deduction for blindness still applies.

Personal Exemption Amount

An *exemption* is a dollar amount ($4,050 for 2016) allowed by law as a reduction of income that would otherwise be taxed. The exemption is in addition to the taxpayer's standard deduction. Every taxpayer, except those who may be claimed as a dependent on another taxpayer's return, may claim their own personal exemption. Thus, most tax returns will show one personal exemption, or two in the case of a married couple filing jointly.

Example: Matthew (42) and Sue (41) Calendo will file a joint return. Their standard deduction is $12,600. Their gross income filing requirement is $20,700 [$12,600 + $8,100 personal exemptions = $20,700].

Example: Larry White (66) uses the single filing status. His standard deduction is $7,850 [$6,300 + $1,550 = $7,850]. His gross income-filing requirement is $11,900 [$6,300 + $1,550 + $4,050 personal exemption = $11,900].

Example: Larry's brother, Jeff White (56), is blind and uses the single filing status. His standard deduction is also $7,850 [$6,300 + $1,550 = $7,850]. His gross income-filing requirement is $10,350 [$6,300 + $4,050 personal exemption = $10,350]. Notice that the extra $1,550 standard deduction for blindness does not count in the computation of his gross income-filing requirement.

One spouse is never the dependent of the other spouse. However, when the married filing separately status is used, a taxpayer may claim their spouse's personal exemption only when the spouse meets all of the following qualifications:

- Has no gross income.
- Is not filing a return.
- Is not a dependent of another person?

If the taxpayer's spouse is a nonresident alien, the taxpayer may also claim an exemption for their spouse if the nonresident alien spouse meets the three requirements listed above.

Example: Raúl and Leah Martinez are married. Leah has no income of any kind and does not receive any other support, but she does not wish to file a joint return with Raúl. Raúl may claim Leah's exemption on his married filing separately return.

Personal Exemption Phase-out

High-income taxpayers who have an adjusted gross income (AGI) that exceeds a specific amount, based on their filing status, will be required to reduce their personal exemption claimed on their return. This phase-out is called the Personal Exemption Phase-out (PEP). The PEP will reduce the tax- payer's personal exemption by 2% for every $2,500 ($1,250 for married filing separately) that exceeds certain AGI thresholds. The exemption deduction begins to phase out when the taxpayer's 2016 AGI exceeds the following amounts:

- $311,300 – Married filing jointly and qualifying widow (er).
- $285,350 – Head of household.
- $259,400 – Single.
- $155,650 – Married filing separately.

For more information on PEP, see IRS Publication 17, page 36.

Tax Tip: An exemption is also allowed for each person who qualifies to be claimed as a dependent on a tax return. Dependent exemptions (which will be discussed in Chapter 3) are not to be confused with personal exemptions.

Dependent Taxpayers

A taxpayer who *may* be claimed as a dependent on another taxpayer's return is considered a dependent taxpayer. A taxpayer becomes a qualifying dependent on another taxpayer's return because the taxpayer meets the qualifying child or qualifying relative tests. These tests are discussed in more detail in Chapter 4. Taxpayers, who *may* be claimed, as a dependent on another taxpayer's return *may not,* under any circumstances, take their own personal exemption. This is true even if the taxpayer entitled to claim the dependent's exemption chooses not to for any reason.

Example: Mark and Janice Hall may claim their daughter, Linda (18), as a dependent. Because Linda holds a part-time job and must file a return, they decide not to claim Linda in the mistaken belief that she may then take her own exemption on her return. This tactic does not work. The fact that Linda *may* be claimed on her parents' return precludes her from claiming her own personal exemption. If Mark and Janice do not claim Linda's exemption, no one will benefit from the $4,050 reduction in taxable income.

The nondependent filing requirements do not apply to dependent taxpayers. Whether a dependent taxpayer must file a return depends on the dependent taxpayer's unearned income, earned income, gross income, marital status, age, and whether the dependent taxpayer is blind. See the flowchart in Illustration 2.4 on page 2.11 for details on determining if a dependent taxpayer must file a return. This flowchart is also available in IRS Publication 17, page 7.

When determining if a dependent taxpayer is required to file:

1. First, look at their amount of unearned income received during the year. If the dependent taxpayer's unearned income is greater than $1,050, then the taxpayer must file.
2. Next, look at the dependent taxpayer's earned income. If the dependent taxpayer's earned income exceeds a specific threshold amount based on the taxpayer's marital status, age, and whether the taxpayer is blind, then the dependent taxpayer is required to file a return.
3. Next, determine if the dependent taxpayer is married and if their spouse is filing a separate return and itemizing deductions. If this is true and the dependent taxpayer has at least $5 of gross income, then the married dependent taxpayer must file a return.
4. Last, determine if the dependent taxpayer's gross income exceeds a specific threshold amount. If the dependent taxpayer's gross income exceeds a specific threshold amount based on the taxpayer's marital status, age, and whether the taxpayer is blind, then the dependent taxpayer is required to file a return.

Illustration 2.4

If your parents (or someone else) can claim you as a dependent, use this table to see if you must file a return. (See Table 1-3 for other situations when you must file.)

In this table, unearned income includes taxable interest, ordinary dividends, and capital gain distributions. It also includes unemployment compensation, taxable social security benefits, pensions, annuities, and distributions of unearned income from a trust. Earned income includes salaries, wages, tips, professional fees, and taxable scholarship and fellowship grants. (See *Scholarships and fellowships* in chapter 12.) Gross income is the total of your earned and unearned income.

CAUTION

If your gross income was $4,050 or more, you usually can't be claimed as a dependent unless you are a qualifying child. For details, see Exemptions for Dependents, *in chapter 3.*

Single dependents—Were you **either** age 65 or older or blind?

☐ **No.** You must file a return if **any** of the following apply.

- Your unearned income was more than $1,050.
- Your earned income was more than $6,300.
- Your gross income was more than the **larger** of:
  - $1,050, or
  - Your earned income (up to $5,950) plus $350.

☐ **Yes.** You must file a return if **any** of the following apply.

- Your unearned income was more than $2,600 ($4,150 if 65 or older **and** blind).
- Your earned income was more than $7,850 ($9,400 if 65 or older **and** blind).
- Your gross income was more than the **larger** of:
  - $2,600 ($4,150 if 65 or older **and** blind), or
  - Your earned income (up to $5,950) plus $1,900 ($3,450 if 65 or older **and** blind).

Married dependents—Were you **either** age 65 or older or blind?

☐ **No.** You must file a return if **any** of the following apply.

- Your unearned income was more than $1,050.
- Your earned income was more than $6,300.
- Your gross income was at least $5 and your spouse files a separate return and itemizes deductions.
- Your gross income was more than the **larger** of:
  - $1,050, or
  - Your earned income (up to $5,950) plus $350.

☐ **Yes.** You must file a return if **any** of the following apply.

- Your unearned income was more than $2,300 ($3,550 if 65 or older **and** blind).
- Your earned income was more than $7,550 ($8,800 if 65 or older **and** blind).
- Your gross income was at least $5 and your spouse files a separate return and itemizes deductions.
- Your gross income was more than the **larger** of:
  - $2,300 ($3,550 if 65 or older **and** blind), or
  - Your earned income (up to $5,950) plus $1,600 ($2,850 if 65 or older **and** blind).

For dependent taxpayers, the earned income and gross income filing requirement thresholds are based on the dependent's standard deduction. These threshold amounts change based on the dependent taxpayer's marital status, age, and whether they are blind.

Example: Markus Kleen (16) is a dependent on his parents' return. He is single, not legally blind, and his gross income for the year is $1,400 [$900 earned income + $500 unearned income]. When determining if Markus is required to file a return, his unearned income is below the $1,050 threshold amount, and his earned income is also below the $6,300 threshold amount. When applying the gross income threshold, first determine if the maximum threshold amount is the greatest of $1,050 or Markus' earned income plus $350. Because Markus' earned income is $900, his gross income threshold amount is set at $1,250 [$900 + $350 = $1,250]. Markus is required to file a return because his gross income of $1,400 is greater than his gross income threshold amount of $1,250.m

> **Tax Tip:** When a married taxpayer wishes to file a married filing separately return and their spouse itemizes deductions on their return, the taxpayer should also itemize deductions on their return, because their standard deduction is reduced to $0.

A dependent's standard deduction is generally equal to the greater of the following:

- $1,050.
- Their earned income plus $350.

A dependent taxpayer's standard deduction may not exceed the regular standard deduction for their filing status, which is $6,300 for the single filing status. Dependent taxpayers are also entitled to increase their standard deduction by additional amounts ($1,550 if single or $1,250 if married) if they are age 65 or older and/or if they are legally blind. Review Illustration 2.4 and see how the $1,050 gross income threshold amount increased if the dependent taxpayer was age 65 or older or blind.

It is interesting to note that, while blindness is not a factor in determining the gross income filing requirements for nondependent (as mentioned in the Larry and Jeff White examples earlier on page 2.8), it *is* a factor in determining the gross income filing requirements for dependents.

Certain Children Under Age 19 or Full-Time Students

If a child is under the age of 19, or a full-time student under the age of 24, at the end of the tax year, and the child's only income is interest and dividends, a parent may be eligible to elect to include the child's income on the parent's return, which in turn releases the child from filing an income tax return.

A parent can make this election if the following conditions are met:

- The child is under the age of 19 or under the age of 24 if a full-time student at the end of the tax year.
- The child had income only from interest and dividends.
- The child's gross income was less than $10,500.
- The child is required to file a return, unless the parent makes this election.
- The child does not file a joint return for the year.
- No federal income tax was withheld from the child's current-year income, no current-year estimated tax payments were made by or for the child, or no previous year overpayments were applied against the child's current-year tax liability.

For more information about a parent claiming their child's interest and dividends income, see IRS Publication 17, pages 209–210.

Taxpayers Should File

Even if a taxpayer is not required to file, they should file a return to get money back or a refund if they had federal income tax withheld, made estimated tax payments, or they qualify for the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), premium tax credit (PTC), or American Opportunity Tax Credit (AOTC).

Others Who Must File

There are circumstances under which a return must be filed, even if the taxpayer(s) does not meet the gross income filing requirements. The most common situations are when an individual:

- Owes uncollected social security or Medicare tax on tips not reported to the employer, or on wages the taxpayer received from an employer who did not withhold these taxes.
- The taxpayer received HSA, Archer MSA, or Medicare Advantage MSA distributions during the tax year.
- Has net profit from self-employment of $400 or more. Self-employment income is generally income earned by a taxpayer who owns a business and files a Schedule C, *Profit or Loss From Business*.
- Received an advanced premium tax credit (APTC) during the tax year. The taxpayer is required to file a tax return and attach Form 8962, *Premium Tax Credit*, even if they did not otherwise have a filing requirement for the year. This topic is covered in Chapter 15.

A more detailed list of other situations when a taxpayer must file a 2016 tax return can be found in IRS Publication 17, page 8.

STOP **Complete Exercise 2.1 before continuing to read.**

FILING RETURN PENALTIES

Taxpayers who are required to file a 2016 return are generally required to file their annual return by April 18, 2017. A taxpayer who has a tax balance due and fails to file their return by the due date of their return may be subject to a failure to file penalty. The penalty is based on the tax not paid by the due date (without regard to extensions). The penalty is generally 5% for each month or part of a month that a return is late, but not more than 25%. If the taxpayer's failure to file is found to be due to fraud, the penalty may increase substantially.

If the taxpayer is not able to file their return by the original due date, the taxpayer may have the option to file for a six-month extension by filing Form 4868, *Application For Automatic Extension of Time To File U.S. Individual Tax Return*, by the regular due date of their return. By filing this form, the taxpayer would need to file their return by October 15 to avoid the failure to file penalty. However, the automatic extension to file does not release the taxpayer from paying their tax liability by the original due date of their return.

If the taxpayer fails to pay their tax liability due, the taxpayer will have to pay a failure to pay penalty of 0.5% of the unpaid taxes for each month or part of a month after the due date that the tax is not paid. This penalty cannot be more than 25% of the unpaid tax. However, this penalty does not apply during the automatic six-month extension of time to file period, if the taxpayer paid at least 90% of the actual tax liability on or before the due date of the return and the balance was paid when the return was filed. For more information on these two penalties, see IRS Publication 17, page 18.

FILING STATUS

The first step in determining filing status is to determine the taxpayer's marital status on the last day of the tax year, as you learned earlier in this chapter. If a taxpayer is married, they may be treated as unmarried for tax purposes if they qualify. You will learn more about this in Chapter 4.

Single

Taxpayers who are unmarried and who do not qualify to use the head of household or qualifying widow (er) filing status must use the single filing status. For the remainder of this chapter, unless otherwise stated, you may presume that all unmarried taxpayers are using the single filing status. The other filing statuses available to unmarried taxpayers will be covered in Chapter 4.

Married Filing Jointly and Married Filing Separately

Individuals are considered married if they were legally married and not legally separated under a decree of divorce or separate maintenance as of the last day of the tax year. This provision includes common-law marriages, if such marriages are recognized by the state in which the marriage began or by the state where the couple resides.

A married couple may choose to file a joint return or separate returns. A joint return often results in a lower federal tax. If separate returns are filed, the effective tax rates are generally higher and several deductions and credits are reduced, limited, or not allowed at all. If one spouse files separately, the other must file separately, unless they qualify as unmarried for tax purposes (covered in Chapter 4). Additionally, if both spouses choose to file married filing separately and one spouse itemizes, the other spouse must either itemize or use the standard deduction of zero ($0).

Whether the couple files jointly or separately, each spouse must report the social security number of the other spouse in the heading of Form 1040A, Form 1040, or Form 1040EZ. On a joint return, the spouse's name is entered in the heading; on a separate return, the spouse's name is entered next to line 3.

The total income, exemptions, and deductions of both spouses must be included on a joint return, and they must use the same accounting period. Usually, the spouses can be held liable, together or individually, for the entire tax plus any penalties on a joint return.

Tax Tip: The advantages and disadvantages of filing separate returns should be weighed carefully. Generally, a married couple who files separately will pay higher taxes and be ineligible to claim tax credits that may help to reduce their income tax liability. You will learn more about this as you progress through the course.

As you have already learned, a married person who dies during the year is considered married for that tax year. The surviving spouse is also considered married for that tax year. If the surviving spouse does not remarry before the end of the year, a joint return or separate returns may be filed.

A surviving spouse who *does* remarry may file a joint return with the new spouse, or they may file separate returns. The filing status of the deceased taxpayer in such a case must be married filing separately.

Example: Jerry and Betsy were married. Jerry died on January 27, 2016. On December 1, 2016, Betsy married John. Betsy and John may file a joint return, or they may file separately, whichever they choose. Jerry's filing status is married filing separately.

The most common reason married couples choose to file separate returns is that they do not wish to be liable for each other's taxes. Some couples prefer to keep all their financial matters, including tax returns, separate. Once in a while, separate returns can result in a lower tax, but most couples would not find the small tax savings worth the effort of filing two returns.

Tax Tip: In many states, the filing status on the state return generally must follow that on the federal return. If state tax rates are less for the married filing separately status in your state, the larger federal tax liability may be more than offset by a smaller state tax liability.

Nonresident Alien Spouse

A nonresident alien may file a joint return only if they are married to a U.S. citizen or resident alien at the end of the year, and both spouses agree to report their total worldwide income for the entire year on their joint U.S. return. You will want to do some additional research if you encounter this situation. IRS Publication 519 would be a good place to start.

Complete Exercise 2.2 before continuing to read.

INJURED SPOUSE ALLOCATION

All income tax refunds are subject to offset against past due debts. These debts might include past due federal income tax, student loans, or child and spousal support payments. When taxpayers file jointly and only one spouse owes a past due amount, the other spouse can be considered an injured spouse.

Form 8379, *Injured Spouse Allocation* (see Illustrations 2.5 and 2.6), is filed when the injured spouse wants their share of the refund shown on the return and both of the following apply:

1. The injured spouse is not legally obligated to pay the past due debt.
2. The injured spouse made or reported tax payments (income tax withholding or estimated tax payments) or claimed a refundable tax credit.

Note: In community property states, the injured spouse only needs to meet the first qualification.

Form 8379 is filed by itself if the refund has already been offset. If the taxpayer expects that a refund will be offset, Form 8379 can be filed with a return. A separate Form 8379 must be filed for each tax year for which injured spouse allocation should be considered. If you think you have a situation where Form 8379 should be filed, consult with an experienced Tax Professional before filing the return.

REQUEST FOR INNOCENT SPOUSE RELIEF

As discussed earlier, when taxpayers file a joint return, both spouses are held responsible for the tax, interest, and any penalties due on a return. Form 8857, *Request for Innocent Spouse Relief,* can provide three types of relief from joint responsibility:

- Innocent spouse relief.
- Separation of liability.
- Equitable relief.

Innocent spouse relief can be requested after a joint return has been filed and it is discovered that one spouse has understated the income (or overstated a deduction or credit). For more information, see IRS Publication 971, *Innocent Spouse Relief.* Form 8857 is shown in Illustrations 2.7–2.13. This is a complex form; if you identify a taxpayer who may qualify for innocent spouse relief, please consult with an experienced Tax Professional.

STOP **Complete Exercise 2.3 before continuing to read.**

CHAPTER SUMMARY

In this chapter, you learned that:

- Nondependent taxpayers' requirements to file a tax return are based on their filing status, age, and gross income. Most nondependent taxpayers must file a return when their gross income equals or exceeds the sum of the standard deduction and personal exemption amount, which changes due to the taxpayer's filing status and age.
- Dependent taxpayers are taxpayers who may be claimed as a dependent on another taxpayer's return. In turn, the dependent taxpayer is not able to claim their own personal exemption on their tax return. This is true even if the other taxpayer does not claim the dependency exemption. The dependent taxpayer's requirement to file is based on their unearned income, earned income, gross income, marital status, age, and whether the dependent taxpayer is blind.
- Nondependent and dependent taxpayers may be required to file a return due to specific circumstances, regardless of whether their income is less than their filing requirement thresholds. These circumstances include, but are not limited to, receipt of self-employment income, unreported tips to employer, distributions from an HSA or MSA, or the receipt of the advanced premium tax credit.
- Married taxpayers may choose to file jointly or separately. In most cases, filing jointly is more beneficial than filing separately. If a taxpayer is considered unmarried at the end of the tax year, then the taxpayer may file single, head of household, or qualifying widow (er), assuming the taxpayer is eligible to claim the filing status.

- The IRS provides an injured spouse allocation for the taxpayer, in order to protect their portion of the refund from their spouse's past due federal income tax, unpaid student loans, or unpaid child and spousal support payments. The IRS also provides innocent spouse relief to taxpayers who file a joint return and later learn that their spouse has understated the income (or overstated a deduction or credit) on the return.

Suggested Reading

For further information on the topics discussed in this chapter, you may wish to read the following sections in IRS Publication 17:

- Chapter 1, Subchapter, "Do I Have To File a Return?"
- Chapter 1, Subtopic, "Joint Return and Injured Spouse."
- Chapter 2, "Filing Status."