

2011 Special Instructions for Married Couples Where One Spouse is a Utah Non-resident



Utah State Tax Commission

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General Information

When a husband and wife file a joint federal return, they would normally be required to file a joint Utah return. However, when one spouse is a full-year Utah resident and the other spouse is a full-year nonresident of Utah, the Utah resident may file a separate return using these Special Instructions.

If either spouse is a part-year Utah resident, the couple **cannot** file using these Special Instructions, but must prepare their Utah return using the same filing status as on their federal return.

Who May Use Special Instructions

A married person and his or her spouse may only use these Special Instructions if one of them is a full-year Utah resident and the other is a full-year nonresident of Utah.

Example 1:

Tom and Susan married in June of 2011 and live in Utah. Tom is a full-year Utah resident, but Susan lived in Arizona prior to their wedding. Both Tom and Susan have income from Utah sources. Tom and Susan **do not qualify** to use these Special Instructions because Susan was a part-year Utah resident during the tax year. They must use the same filing status on their Utah tax return as they use on their federal tax return.

Example 2:

Doug moved to Utah in May of 2011. His wife, Marlene, lives in another state and does not plan to move to Utah. Doug and Marlene **do not qualify** to use these Special Instructions until tax year 2012 because Doug was only a part-year resident in 2011. They must use the same filing status on both their federal and Utah tax returns. They will qualify to use these Special Instructions in 2012 if Doug is a full-year Utah resident and Marlene remains a nonresident during the entire calendar year 2012.

Example 3:

Sally moved to Utah in 2010. Her husband, Brian, did not move to Utah until June 2011. Sally and Brian **do not qualify** to use these Special Instructions for calendar year 2011 because Sally was a full-year resident but Brian was a part-year resident during the tax year.

Definitions

Domicile

Domicile is the place where an individual has a permanent home and where he or she intends to return after being absent. It is the place where an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home. A domicile, once established, is not lost until all of the following three conditions are met:

1. a specific intent to abandon the former domicile,
2. the actual physical presence in a new domicile, and
3. the intent to remain in the new domicile permanently.

See Tax Commission rules R865-91-2 and R884-24P-52 at tax.utah.gov/research/search.html for more information.

Resident

A Utah resident is an individual who:

1. is domiciled in Utah for the entire year, even if temporarily outside of Utah for an extended period of time;
2. is domiciled in Utah for any period of time during the taxable year, but only for the duration of that period; or
3. even though domiciled outside Utah, maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah. In determining whether an individual spends 183 or more days in Utah, a "day" means a day in which the individual spends more time in Utah than in any other state.

These rules do not apply to military personnel or their spouses who are in Utah on military assignment, unless they are Utah residents.

All income received during the period of Utah residency is taxable in Utah, regardless of where that income is earned, unless specifically exempted.

Part-Year Resident

A part-year resident is an individual who is a Utah resident for part of the year and a nonresident for part of the year. All income received during the period of Utah residency is taxable in Utah, regardless of where that income is earned, unless specifically exempted. Income from Utah sources is taxable in Utah during the period of nonresidency.

Nonresident

A nonresident individual is one who was not domiciled in Utah or was in Utah for temporary purposes for less than 183 days during the taxable year or does not maintain a permanent place of abode in Utah. Income received by a nonresident from Utah sources is taxable in Utah.

When Military Personnel and Their Families are Subject to Utah Income Tax

Nonresidents who are stationed in Utah solely due to military orders are not subject to Utah tax on their military pay. However, nonresident military personnel who have earned income from Utah sources, other than active duty military service pay, are required to file a Utah tax return and pay any taxes due. (See additional instructions for military personnel in Pub 57.)

The nonresident spouse of a nonresident active military service member may be exempt from Utah tax on income received in Utah if certain conditions are met. To qualify for this exemption, the nonresident spouse:

1. must have had the same domicile as the nonresident service member prior to moving to Utah, and
2. is in Utah to be with their nonresident active duty service member spouse who is in Utah under military orders. (See instructions for TC-40, Schedule A, Part 2.)

Because of this provision, it may not be advantageous for military couples to file using these Special Instructions.

A military person and his or her spouse may only use these Special Instructions if one spouse is a full-year Utah resident and the other spouse is a full-year nonresident of Utah.

How to File a Utah Return Using Special Instructions

Married couples who qualify to use these Special Instructions and file their federal return as married filing joint may file Utah returns as married filing separate. If they file a joint federal return, both spouses must compute Utah taxable income "as if" their federal income had been computed separately, as follows. Use the worksheet at the end of this publication to assist in your calculations. Retain documentation of all computations with your records.

1. Enter on TC-40, line 1, a filing status code of "9". This code is not listed on the return, but it identifies a return as belonging to a married taxpayer filing separately under these Special Instructions. Failure to enter "9" as the filing status code will result in a disallowance of the Special Instructions provisions.

2. Complete the TC-40 through line 4.
3. Complete the calculation in Part 1 of the worksheet at the end of this publication.
 - a. Determine the "as if" federal adjusted gross income separately for the Utah resident spouse. Enter the "as if" income calculated for the resident taxpayer on line 2 of the worksheet.
 - b. Divide the "as if" federal adjusted gross income for the resident taxpayer (line 2 of the worksheet) by the actual federal adjusted gross income as shown on the federal joint return (line 1 of the worksheet), and enter the result on line 3 of the worksheet. Round the result to four decimal places. This is the allocation percentage used to complete your Utah resident separate return.
4. Allocate a portion of each Utah addition to income and subtraction from income to the resident spouse. Multiply each addition to income by the percentage calculated on line 3 of the worksheet and enter on TC-40A, Part 1. Multiply each subtraction from income by the percentage calculated on line 3 of the worksheet and enter on TC-40A, Part 2.
5. Complete the resident separate TC-40 through line 10.
6. Calculate Part 2 of the worksheet. Carry the amount from line 11 of the worksheet to the TC-40, line 11.
7. Allocate a portion of the standard or itemized deductions from the federal return to the resident spouse. Allocate this amount by multiplying the standard or itemized deductions by the percentage calculated on line 3 of the worksheet. Enter this amount on TC-40, line 12.
8. Allocate a portion of the state income tax deducted on federal Schedule A, line 5, to the resident spouse only if you itemized deductions on your federal return. Allocate this amount by multiplying the state income tax deducted on federal Schedule A, line 5, by the percentage calculated on line 3 of the worksheet. Enter this amount on TC-40, line 14.
9. Complete the balance of the calculations on your resident separate TC-40 following the instructions on the return.

The only items on the resident separate Utah return not allocated between the spouses is his or her own personal exemption.

Example: If the resident husband has 80 percent of the federal adjusted gross income, he may add-back or subtract 80% of each item listed in "4" above, but he may use 100% of his personal exemption to calculate his taxpayer tax credit. If the wife was the resident, she would add-back or subtract 20 percent of each item listed in "4" above and use 100 percent of her personal exemption to calculate her taxpayer tax credit.

REMINDER: You must enter a "9" as the filing status code in box 1 of the TC-40 to claim the benefits of these Special Instructions.

Note: A nonresident spouse with no Utah source income is not required to file a Utah return.

If you qualify to use these Special Instructions, you may use a different method of allocating add-back items and subtractions than outlined in this publication, if that method more accurately reflects your separate Utah taxable income. If you use a different method to allocate items on your Utah separate return, submit a copy of your calculations with your return. Also, keep a copy in your files along with a copy of your tax return.

Example for Tax Year 2011:

Becky was a full-year resident of Utah before marrying Alex in December 2011. Becky had a dependent son by a previous marriage. Alex was a resident of Wyoming prior to the wedding. After their honeymoon, they returned to Utah and established residence in January 2012. They qualify to use Special Instructions because Becky was a full-year Utah resident and Alex was a full-year nonresident. Their

combined federal adjusted gross income reported on their federal joint return was \$75,000, consisting of \$45,000 earned by Alex in Wyoming and \$30,000 earned by Becky in Utah. \$30,000 divided by \$75,000 equals .4000 or 40% to be used by Becky to allocate the different items on her married separate Special Instructions Utah resident return.

| | | |
|--|----------|----------|
| 1. Adjusted gross income on joint federal return for both taxpayers | \$75,000 | |
| 2. Federal "as if" adjusted gross income of full-year Utah resident spouse only | 30,000 | |
| 3. Allocation percentage (line 2 divided by line 1) (Lines 1 through 3 are the same as Part 1 of the worksheet) | | .4000 |
| 4. Federal adjusted gross income of full-year Utah resident spouse only (from line 2) | | \$30,000 |
| 5. Total joint additions to income | 200 | |
| 6. Multiply line 5 by allocation percentage on line 3 (TC-40, line 5) (Each addition would be entered on TC-40A, Part 1 after applying the percentage) | | 80 |
| 7. Add line 4 and line 6 | | \$30,080 |
| 8. Total joint subtractions from income | (300) | |
| 9. Multiply line 8 by allocation percentage on line 3 (TC-40, line 8) (Each subtraction would be entered on TC-40A, Part 2 after applying the percentage) | | (120) |
| 10. Utah taxable income (subtract line 9 from line 7). This is line 9 of TC-40. | | \$29,960 |
| 11. Utah tax (multiply line 10 by 5%) | | 1,498 |
| 12. Full-year Utah resident spouse only exemption amount | 2,775 * | |
| 13. Dependent(s) exemption (multiply number of exemptions by 2,775) | 2,775 * | |
| 14. Multiply line 13 by allocation percentage on line 3 (The total of line 12 and line 14 would agree with line 11 of the worksheet) | | 1,110 |
| 15. Standard or itemized deductions from joint federal return | 11,600 | |
| 16. State income tax deducted on joint federal Schedule A, line 5 (if itemized) | 0 | |
| 17. Subtract line 16 from line 15 | 11,600 | |
| 18. Multiply line 17 by allocation percentage on line 3 | | 4,640 |
| 19. Add lines 12, 14 and 18 | | 8,525 |
| 20. Initial taxpayer tax credit (multiply line 19 by 6%) | | 512 |
| 21. Base phase-out amount (married filing separately) | 12,720 | |
| 22. Subtract line 21 from line 10 | 17,240 | |
| 23. Multiply line 22 by 1.3% | | 224 |
| 24. Taxpayer tax credit (subtract line 23 from line 20) | | 288 |
| 25. Utah income tax (subtract line 24 from line 11) (This is line 22 of TC-40) | | 1,210 |

* The Utah exemption amount for 2011 is \$2,775 (75% of the federal exemption of \$3,700), unless limited on the federal return.

2011 Worksheet for the Calculation of Utah Tax Using Special Instructions

Use the following worksheet to assist in completing your Utah income tax return.

NOTE: If you file your married separate return using these Special Instructions, you cannot file the return electronically. You must submit your return on paper with this worksheet attached.

Worksheet for the Calculation of Utah Tax Using Special Instructions

PART 1 - Allocation Percentage

| | | | |
|---|---|--|-------|
| 1. Adjusted gross income on joint federal return for both taxpayers | 1 | | |
| 2. Federal "as if" adjusted gross income of full-year Utah resident spouse only | 2 | | |
| 3. Allocation percentage - divide line 2 by line 1 (carry to four decimal places) | 3 | | _____ |

Use the percentage calculated on line 3 above to allocate the following on your Utah return:

- Additions to income - enter only the allocated amount on TC-40A, Part 1.
- Subtractions from income - enter only the allocated amount on TC-40A, Part 2.
- Standard or itemized deductions - enter only the allocated amount on TC-40, line 12.
- State income tax deducted as an itemized deduction on federal form 1040, Schedule A, line 5 - enter only the allocated amount on TC-40, line 14.

PART 2 - Utah Exemption Amount

| | | | |
|--|----|--|--|
| 4. Total exemption amount deducted on your "as if" federal return ¹ | 4 | | |
| 5. Number of exemptions claimed on your "as if" federal 1040 return ² | 5 | | |
| 6. Full-year Utah resident spouse exemption amount - divide line 4 by line 5 | 6 | | |
| 7. Number of dependent(s) entered on TC-40, line 2c | 7 | | |
| 8. Multiply number of dependents on line 7 by the amount on line 6 | 8 | | |
| 9. Multiply line 8 by allocation percentage on line 3 | 9 | | |
| 10. Add lines 6 and 9 | 10 | | |
| 11. Multiply the amount on line 10 by 75% (.75). Enter this amount on TC-40, line 11 | 11 | | |

¹ Form 1040, line 42
 Form 1040A, line 26
 Form 1040EZ - if you checked either box on line 5, enter the amount from line F on the back of your Form 1040EZ. If you did not check a box on line 5, enter \$3,700

² Form 1040, line 6d
 Form 1040A, line 6d
 Form 1040EZ - enter "1" minus the number of boxes checked on line 5 of your form 1040EZ

NONRESIDENT SPOUSE INSTRUCTIONS: If the nonresident spouse has Utah income and must file a Utah return, make these changes to the above worksheet:

1. Change the reference on line 2 to: Federal adjusted gross income of nonresident spouse only.
2. Change the reference on line 4 to: Nonresident spouse only "as if" exemption amount.

IMPORTANT: Be sure to enter on TC-40, line 1, your filing status code as "9" to identify you are filing using Pub 49 Special Instructions for Married Couples.