

2008 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, they may file separate returns 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 2008 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 2008. His wife, Marlene, lives in another state and does not plan to move to Utah. Doug and Marlene **do not qualify** to use Special Instructions until tax year 2009 because Doug was only a part-year resident in 2008. They must use the same filing status on both their federal and Utah tax returns. They will qualify for Special Instructions in 2009 if Doug is a full-year Utah resident and Marlene remains a nonresident during the entire calendar year 2009.

Example 3:

Sally moved to Utah in 2007. Her husband, Brian, did not move to Utah until June 2008. Sally and Brian **do not qualify** to use Special Instructions for calendar year 2008 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 (even years in certain situations);
2. Is domiciled in Utah for any period of time during the taxable year, but only for the duration of that period;
3. Even though domiciled outside Utah, maintains a permanent place of abode in Utah and spends 183 or more days of the taxable year in Utah. This does not apply to military personnel or their spouses who are in Utah on military assignment, unless they are also domiciled in Utah.

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

Part-Year Resident

A part-year resident is an individual who is domiciled in Utah for part of the year and outside Utah 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. Income from Utah sources is taxable in Utah during the period of nonresidency.

Nonresident

A nonresident individual is one who was not 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

For Utah tax purposes, the spouse of a person in active military service is generally considered to have their military spouse's domicile and is subject to the same income tax laws and rules that apply to the military person.

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 and members of their family 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.)

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 for a married separate special instructions return. Failure to enter this 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 each spouse. Enter the "as if" income calculated for the taxpayer on line 2 of the Worksheet.

- b. Divide the "as if" federal adjusted gross income for the taxpayer (line 2 of Worksheet) by the actual federal adjusted gross income as shown on the federal joint return (line 1 of Worksheet), and enter the result on line 3 of Worksheet. Round the result to four decimal places. This is the percentage allocation used to complete your Utah return.

4. Allocate a portion of each Utah addition to income and deduction from income to each 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 deduction from income by the percentage calculated on line 3 of the Worksheet and enter on TC-40A, Part 2.
5. Complete the 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 each 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 each 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 TC-40 following the instructions on the return.

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

Example: If the husband has 80 percent of the federal adjusted gross income, he may add-back or deduct 80% of each item listed in "4" above, but he may use 100% of his personal exemption to calculate his taxpayer tax credit. The wife would add-back or deduct 20 percent of each item listed in "3" 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.

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

NOTE: Couples who qualify to use Special Instructions may use a different method of allocating add-back items and deductions than outlined in this publication, if that method more accurately reflects each spouse's separate Utah taxable income. If you use a different method to allocate items on your Utah 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 2008:

Becky was a full-year resident of Utah before marrying Alex in December 2008. 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 2009. 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. Dividing \$30,000 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 deductions from income	(300)	
9. Multiply line 8 by allocation percentage on line 3 (TC-40, line 7) (Each deduction 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 8 of TC-40.		\$29,960
11. Utah tax (multiply line 10 by 5%)		1,498
12. Full-year Utah resident spouse only exemption amount	2,625 *	
13. Dependent(s) exemption (multiply number of exemptions by 2625)	2,625 *	
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)		1,050
15. Standard or itemized deductions from joint federal return	10,900	
16. State income tax deducted on joint federal Schedule A, line 5 (if itemized)	0	
17. Subtract line 16 from line 15	10,900	
18. Multiply line 17 by allocation percentage on line 3		4,360
19. Add lines 12, 14 and 18		8,035
20. Initial taxpayer tax credit (multiply line 19 by 6%)		482
21. Base phase-out amount (married filing separately)	12,000	
22. Subtract line 21 from line 10	17,960	
23. Multiply line 22 by 1.3%		233
24. Taxpayer tax credit (subtract line 23 from line 20)		249
25. Utah income tax (subtract line 24 from line 11) (This is line 21 of TC-40)		1,249

* Utah exemption amount for 2008 is \$2,625 (75% of federal exemption of \$3,500), unless limited on federal return.

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 the 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,
- deductions 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, and
- 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 \$3,650

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.