

Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions

The following questions and answers provide information to individuals of the same sex and opposite sex who are in registered domestic partnerships, civil unions, or other similar formal relationships that are not marriages under state law. These individuals are not considered as married or spouses for federal tax purposes. For convenience, these individuals are referred to as “registered domestic partners” in these Questions and Answers. Questions and Answers 9 through 27 concern registered domestic partners who reside in community property states and who are subject to their state’s community property laws. These questions and answers have been updated since the Supreme Court issued its decision in United States v. Windsor. As a result of the Court’s decision, the Service has ruled that same-sex couples who are married under state law are married for federal tax purposes. Revenue Ruling 2013-17, 2013-38 IRB.

Q1. Can registered domestic partners file federal tax returns using a married filing jointly or married filing separately status?

A1. No. Registered domestic partners may not file a federal return using a married filing separately or jointly filing status. Registered domestic partners are not married under state law. Therefore, these taxpayers are not married for federal tax purposes.

Q2. Can a taxpayer use the head-of-household filing status if the taxpayer’s only dependent is his or her registered domestic partner?

A2. No. A taxpayer cannot file as head of household if the taxpayer’s only dependent is his or her registered domestic partner. A taxpayer’s registered domestic partner is not one of the specified related individuals in section 152(c) or (d) that qualifies the taxpayer to file as head of household, even if the registered domestic partner is the taxpayer’s dependent.

Q3. If registered domestic partners have a child, which parent may claim the child as a dependent?

A3. If a child is a qualifying child under section 152(c) of both parents who are registered domestic partners, either parent, but not both, may claim a dependency deduction for the qualifying child. If both parents claim a dependency deduction for the child on their income tax returns, the IRS will treat the child as the qualifying child of the parent with whom the child resides for the longer period of time during the taxable year. If the child resides with each parent for the same amount of time during the taxable year, the IRS will treat the child as the qualifying child of the parent with the higher adjusted gross income.

Q4. Can a registered domestic partner itemize deductions if his or her partner claims a standard deduction?

A4. Yes. A registered domestic partner may itemize or claim the standard deduction regardless of whether his or her partner itemizes or claims the standard deduction. Although the law prohibits a taxpayer from itemizing deductions if the taxpayer's spouse claims the standard deduction (section 63(c)(6)(A)), this provision does not apply to registered domestic partners, because registered domestic partners are not spouses for federal tax purposes.

Q5. If registered domestic partners adopt a child together, can one or both of the registered domestic partners qualify for the adoption credit?

A5. Yes. Each registered domestic partner may qualify to claim the adoption credit for the amount of the qualified adoption expenses paid for the adoption. The partners may not both claim a credit for the same qualified adoption expenses, and the sum of the credit taken by each registered domestic partner may not exceed the total amount paid. The adoption credit is limited to \$12,970 per child in 2013. Thus, if both registered domestic partners paid qualified adoption expenses to adopt the same child, and the total of those expenses exceeds \$12,970, the maximum credit available for the adoption is \$12,970. The registered domestic partners may allocate this maximum between them in any way they agree, and the amount of credit claimed by one registered domestic partner can exceed the adoption expenses paid by that person, as long as the total credit claimed by both registered domestic partners does not exceed the total amount paid by them. The same rules generally apply in the case of a special needs adoption.

Q6. If a taxpayer adopts the child of his or her registered domestic partner as a second parent or co-parent, may the taxpayer ("adopting parent") claim the adoption credit for the qualifying adoption expenses he or she pays to adopt the child?

A6. Yes. The adopting parent may be eligible to claim an adoption credit. A taxpayer may not claim an adoption credit for the expenses of adopting the child of the taxpayer's spouse (section 23). However, this limitation does not apply to adoptions by registered domestic partners because registered domestic partners are not spouses for federal tax purposes.

Q7. Do provisions of the federal tax law such as section 66 (treatment of community income) and section 469(i)(5) (\$25,000 offset for passive activity losses for rental real estate activities) that apply to married taxpayers apply to registered domestic partners?

A7. No. Like other provisions of the federal tax law that apply only to married taxpayers, section 66 and section 469(i)(5) do not apply to registered domestic partners because registered domestic partners are not married for federal tax purposes.

Q8. Is a registered domestic partner the stepparent of his or her partner's child?

A8. If a registered domestic partner is the stepparent of his or her partner's child under state law, the registered domestic partner is the stepparent of the child for federal income tax purposes.

Publication 555, *Community Property*, provides general information for taxpayers, including registered domestic partners, who reside in community property states. The following questions and answers provide additional information to registered domestic partners (including same-sex and opposite-sex registered domestic partners) who reside in community property states and are subject to community property laws.

Q9. How do registered domestic partners determine their gross income?

A9. Registered domestic partners must each report half the combined community income earned by the partners. In addition to half of the community income, a partner who has income that is not community income must report that separate income.

Q10. Can a registered domestic partner qualify to file his or her tax return using head-of-household filing status?

A10. Generally, to qualify as a head-of-household, a taxpayer must provide more than half the cost of maintaining his or her household during the taxable year, and that household must be the principal place of abode of the taxpayer's dependent for more than half of the taxable year (section 2(b)). If registered domestic partners pay all of the costs of maintaining the household from community funds, each partner is considered to have incurred half the cost and neither can qualify as head of household. Even if one of the partners pays more than half by contributing separate funds, that partner cannot file as head of household if the only dependent is his or her registered domestic partner. A taxpayer's registered domestic partner is not one of the specified related individuals in section 152(c) or (d) that qualifies the taxpayer to file as head of household, even if the partner is the taxpayer's dependent.

Q11. Can a registered domestic partner be a dependent of his or her partner for purposes of the dependency deduction under section 151?

A.11. A registered domestic partner can be a dependent of his or her partner if the requirements of sections 151 and 152 are met. However, it is unlikely that registered domestic partners will satisfy the gross income requirement of section 152(d)(1)(B) and the support requirement of section 152(d)(1)(C). To satisfy the gross income requirement, the gross income of the individual claimed as a dependent must be less than the exemption amount (\$3,900 for 2013). Because registered domestic partners each report half the combined community income earned by both partners, it is unlikely that a registered domestic partner will have gross income that is less than the exemption amount.

To satisfy the support requirement, more than half of an individual's support for the year must be provided by the person seeking the dependency deduction. If a registered domestic partner's (Partner A's) support comes entirely from community funds, that partner is considered to have provided half of his or her own support and cannot be claimed as a dependent by another. However, if the

other registered domestic partner (Partner B) pays more than half of the support of Partner A by contributing separate funds, Partner A may be a dependent of Partner B for purposes of section 151, provided the other requirements of sections 151 and 152 are satisfied.

Q12. Can a registered domestic partner be a dependent of his or her partner for purposes of the exclusion in section 105(b) for reimbursements of expenses for medical care?

A12. A registered domestic partner (Partner A) may be a dependent of his or her partner (Partner B) for purposes of the exclusion in section 105(b) only if the support requirement (discussed in Question 11, above) is satisfied. Unlike the requirements for section 152(d) (dependency deduction for a qualifying relative), section 105(b) does not require that Partner A's gross income be less than the exemption amount in order for Partner A to qualify as a dependent.

Q13. How should registered domestic partners report wages, other income items, and deductions on their federal income tax returns?

A13. Registered domestic partners should report wages, other income items, and deductions according to the instructions to Form 1040, *U.S. Individual Income Tax Return*, and related schedules, and Form 8958, *Allocation of Tax Amounts Between Certain Individuals in Community Property States*. Form 8958 is used to determine the allocation of tax amounts between registered domestic partners. Each partner must complete and attach Form 8958 to his or her Form 1040.

Q14. Should registered domestic partners report social security benefits as community income for federal tax purposes?

A14. Generally, state law determines whether an item of income constitutes community income. Accordingly, if social security benefits are community income under state law, then they are also community income for federal income tax purposes. If social security benefits are not community income under state law, then they are not community income for federal income tax purposes.

Q15. How should registered domestic partners report community income from a business on Schedule C, *Profit or Loss From Business*?

A15. Half of the income, deductions, and net earnings of a business operated by a registered domestic partner must be reported by each registered domestic partner on a Schedule C (or Schedule C-EZ). In addition, each registered domestic partner owes self-employment tax on half of the net earnings of the business. The self-employment tax rule under section 1402(a)(5) that overrides community income treatment and attributes the income, deductions, and net earnings to the spouse who carries on the trade or business does not apply to registered domestic partners.

Q16. Are registered domestic partners each entitled to half of the credits for *income tax withholding* from the combined wages of the registered domestic partners?

A16. Yes. Because each registered domestic partner is taxed on half the combined community income earned by the partners, each is entitled to a credit for half of the income tax withheld on the combined wages.

Q17. Are registered domestic partners each entitled to take credit for half of the total *estimated tax payments* paid by the partners?

A17. No. Unlike withholding credits, which are allowed to the person who is taxed on the income from which the tax is withheld, a registered domestic partner can take credit only for the estimated tax payments that he or she made.

Q18. Are community property laws taken into account in determining earned income for purposes of the dependent care credit, the refundable portion of the child tax credit, the earned income credit, and the making work pay credit?

A18. No. The federal tax laws governing these credits specifically provide that earned income is computed without regard to community property laws in determining the earned income amounts described in section 21(d) (dependent care credit), section 24(d) (the refundable portion of the child tax credit), section 32(a) (earned income credit), and section 36A(d) (making work pay credit).

Q19. Are community property laws taken into account in determining adjusted gross income (or modified adjusted gross income) for purposes of the dependent care credit, the child tax credit, the earned income credit, and the making work pay credit?

A19. Yes. Community property laws must be taken into account in determining the adjusted gross income (or modified adjusted gross income) amounts in section 21(a) (dependent care credit), section 24(b) (child tax credit), section 32(a) (earned income credit), and section 36A(b) (making work pay credit).

Q20. Are amounts a registered domestic partner receives for education expenses that cannot be excluded from the partner's gross income (includible education benefits) considered to be community income?

A20. Generally, state law determines whether an item of income constitutes community income. Accordingly, whether includible education benefits are community income for federal income tax purposes depends on whether they are community income under state law. If the includible education benefits are community income under state law, then they are community income for federal income tax purposes. If not community income under state law, they are not community income for federal income tax purposes.

Q21. If only one registered domestic partner is a teacher and pays qualified out-of-pocket educator expenses from community funds, do the registered domestic partners split the educator expense deduction?

A21. No. Section 62(a)(2)(D) allows only eligible educators to take a deduction for qualified out-of-pocket educator expenses. If only one registered domestic partner is an eligible educator (the eligible partner), then only the eligible partner may claim a section 62(a)(2)(D) deduction. If the eligible partner uses community funds to pay educator expenses, the eligible partner may determine the deduction as if he or she made the entire expenditure. In that case, the eligible partner has received a gift from his or her partner equal to one-half of the expenditure.

Q22. If a registered domestic partner incurs indebtedness for his or her qualified education expenses or the expenses of a dependent and pays interest on the indebtedness out of community funds, do the registered domestic partners split the interest deduction?

A22. No. To be a qualified education loan, the indebtedness must be incurred by a taxpayer to pay the qualified education expenses of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer (section 221(d)(1)). Thus, only the partner who incurs debt to pay his or her own education expenses or the expenses of a dependent may deduct interest on a qualified education loan (the student partner). If the student partner uses community funds to pay the interest on the qualified education loan, the student partner may determine the deduction as if he or she made the entire expenditure. In that case, the student partner has received a gift from his or her partner equal to one-half of the expenditure.

Q23. If registered domestic partners pay the qualified educational expenses of one of the partners or a dependent of one of the partners with community funds, do the registered domestic partners split the section 25A credits (education credits)?

A23. No. Only the partner who pays his or her own education expenses or the expenses of his or her dependent is eligible for an education credit (the student partner). If the student partner uses community funds to pay the education expenses, the student partner may determine the credit as if he or she made the entire expenditure. In that case, the student partner has received a gift from his or her partner equal to one-half of the expenditure. Similarly, if the student partner is allowed a deduction under section 222 (deduction for qualified tuition and related expenses), and uses community funds to pay the education expenses, the student partner may determine the qualified tuition expense deduction as if he or she made the entire expenditure. In that case, the student partner has received a gift from his or her partner equal to one-half of the expenditure.

Q24. Are community property laws taken into account in determining compensation for purposes of the IRA deduction?

A24. No. The federal tax laws governing the IRA deduction (section 219(f)(2)) specifically provide that the maximum IRA deduction (under section 219(b)) is computed separately for each individual, and that these IRA deduction rules are applied without regard to any community property laws. Thus, each individual

determines whether he or she is eligible for an IRA deduction by computing his or her individual compensation (determined without application of community property laws).

Q25. If a registered domestic partner is self-employed and pays health insurance premiums for both partners out of community property funds, are both partners allowed a deduction under section 162(l) (deduction for self-employed health insurance)?

A25. If one of the registered domestic partners is a self-employed individual treated as an employee within the meaning of section 401(c)(1) (the employee partner) and the other partner is not (the non-employee partner), the employee partner may be allowed a deduction under section 162(l) for the cost of the employee partner's health insurance paid out of community funds. If the non-employee partner is also covered by the health insurance, the portion of the cost attributable to the non-employee partner's coverage is not deductible by either the employee partner or the non-employee partner under section 162(l).

Q26. If a registered domestic partner has a dependent and incurs employment-related expenses that are paid out of community funds, how does the registered domestic partner calculate the dependent care credit? How about the child tax credit?

A26. If a registered domestic partner has a qualifying individual as defined in section 21(b)(1) and incurs employment-related expenses as defined in section 21(b)(2) for the care of the qualifying individual that are paid with community funds, the partner (employee partner) may determine the dependent care credit as if he or she made the entire expenditure. In that case, the employee partner has received a gift from his or her partner equal to one-half of the expenditure. In computing the dependent care credit, the following rules apply:

- The employee partner must reduce the employment-related expenses by any amounts he or she excludes from income under section 129 (exclusion for employees for dependent care assistance furnished pursuant to a program described in section 129(d));
- The earned income limitation described in section 21(d) is determined without regard to community property laws; and
- The adjusted gross income of the employee partner is determined by taking into account community property laws.

A child tax credit is allowed for each qualifying child of a taxpayer for whom the taxpayer is allowed a personal exemption deduction. Thus, if a registered domestic partner has one or more dependents who is a qualifying child, the registered domestic partner may be allowed a child tax credit for each qualifying child. In determining the amount of the allowable credit, the modified adjusted gross income of the registered domestic partner with the qualifying child is

determined by taking into account community property laws. Community property laws are ignored, however, in determining the refundable portion of the child tax credit.

Q27: Does Rev. Proc. 2002-69, 2002-2 C.B. 831, apply to registered domestic partners?

A27. No. Rev. Proc. 2002-69 allows spouses to classify certain entities solely owned by the spouses as community property, as either a disregarded entity or a partnership for federal tax purposes. Rev. Proc. 2002-69 applies only to spouses. Because registered domestic partners are not spouses for federal tax purposes, Rev. Proc. 2002-69 does not apply to registered domestic partners.