

Community Property MFS and HoH in Pacific Region

MFS is complicated in community property states, because there is often some income that must be allocated between the spouses. Unfortunately, state community property laws vary, and some, like California, depend on something almost impossible for a Tax-Aide Counselor to assess, the *intent* of a separated couple to reconcile.

Furthermore, while the IRS allows HoH filing status for couples living apart the last 6 months of the year (“considered unmarried”), this does not alleviate the requirement to allocate community income, at least for the part of the year that the couple lived together.

We will not perform community property income allocation for any taxpayer in Pacific Region.

However, IRS Code § 66 - Treatment of community income provides for a limited exception to state community property laws -- only for a couple separated and living apart. Because of the complexities of allocating income, Tax-Aide Counselors in a community property state may prepare an MFS or a HoH “considered unmarried” return only for a married taxpayer that meets all of the conditions below.

Furthermore, Each Pacific Region community property State/Split State or District may also elect to not prepare MFS or full year “considered unmarried” HoH returns, regardless of taxpayer separation status. If the State or District Coordinator makes this decision, then **no** sites in that State/Split State or District may prepare a MFS return.

For Tax Year 2019, the following will be allowed:

State/ Split State	MFS or HoH married but living apart <i>full year</i>	HoH living apart only part year
AZ	Yes, follow criteria below	No
CA1	Yes, follow criteria below	No
CA2	Yes, follow criteria below	No
CA3	DC discretion, follow criteria below	No
CA4	DC discretion; counselor certified by TRS; follow criteria below	No
CA5	No MFS. No HoH if married (no “considered unmarried”)	No
NV	No MFS. No HoH if married (no “considered unmarried”)	No

If allowed by the SC and DC, all **six** conditions below must be true before a Counselor may prepare an MFS or HoH return in a community property state for a married taxpayer: (use as a checklist):

- The taxpayer and spouse lived apart the entire year
- The taxpayer and spouse have not communicated about, or agreed to, an allocation of any community income.
- If taxpayer has earned income, taxpayer and spouse have not transferred, directly or indirectly, any of this earned income before the end of the year (do not take into account transfers satisfying child support obligations or transfers of under \$100). Taxpayer reports all of this earned income on his/her MFS or HoH return.
- The taxpayer reports all of his/her social security payments in full.
- The taxpayer reports all of his/her 1099R payments in full.
- The taxpayer is willing to report, and does report, all separate and community property interest, dividends, and capital gains on his/her return, with nothing allocated to spouse.