



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.18.1

MAY 3, 2023

EFFECTIVE DATE

(05-03-2023)

PURPOSE

- (1) This transmits revised IRM 25.18.1, *Community Property, Basic Principles of Community Property Law*.

MATERIAL CHANGES

- (1) Minor editorial changes have been made throughout this IRM, including updating website and Knowledge Base addresses, legal references, and IRM references as necessary.
- (2) Significant changes to this IRM reflected in the table below.

Prior Reference	New Reference	Description
N/A	IRM 25.18.1.1 through IRM 25.18.1.1.5	Added content to provide internal controls including: background information, legal authority, responsibilities, terms, and related resources available to assist employees working cases involving community property.
IRM 25.18.1.3.28	IRM 25.18.1.2	Amplified guidance listing specific types of income and liabilities not taxed in accordance with state community property laws. Added the word “determined” to the last sentence which now reads: “Accordingly, federal tax is determined, assessed, and collected based upon a taxpayer’s state created rights and interest in property.”
IRM 25.18.1.2.2	IRM 25.18.1.2.3	Moved and revised content to list community property states in bullet format. Added South Dakota and Tennessee to the list of states that adopted an optional community property system. The U.S. Supreme Court ruled that a similar statute allowing spouses to elect a community property system under Oklahoma law would NOT be recognized for federal income tax reporting purposes. <i>Commissioner v. Harmon</i> . The Harmon decision should also apply to all elective community property systems (such as those in Alaska, South Dakota, and Tennessee) for income reporting purposes.

EFFECT ON OTHER DOCUMENTS

IRM 25.18.1, dated June 6, 2017 is superseded.

AUDIENCE

This IRM section is intended to address the needs of all IRS employees who are working on cases involving married taxpayers domiciled in community property states, or cases otherwise raising community property issues.

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25.18.1

Basic Principles of Community Property Law

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- 25.18.1-1 Comparison of State Law Differences in Community Property States

25.18.1.1
(05-03-2023)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides technical guidance on community property law affecting taxpayers domiciled in community property states, or cases otherwise raising community property issues.
- (2) **Audience.** This IRM is intended to address the needs of all IRS employees who are working on cases involving married taxpayers domiciled in community property states, or cases otherwise raising community property issues.
- (3) **Policy Owner.** The Director, Examination Field and Campus Policy, who reports to the Director, Examination Headquarters.
- (4) **Program Owner.** Field Examination General Processes (FEGP), which is under the Director, Examination Field and Campus Policy.
- (5) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, *Providing Feedback About an IRM Section - Outside of Clearance*.

25.18.1.1.1
(05-03-2023)
Background

- (1) This IRM addresses the basic theory and principles of community property law, and provides the proper method of analysis to use in determining if property is community property. It discusses some of the state law differences between the community property states. In addition, Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*, includes a table summarizing the most important differences. However, this IRM section is **not** a substitute for working with state law. Rather, this IRM must be read in conjunction with the laws of the applicable community property state. In addition, it may be necessary to consult with Counsel on particular issues.

25.18.1.1.2
(05-03-2023)
Authority

- (1) Federal law determines how property is taxed, but state law determines whether, and to what extent, a taxpayer has “property” or “rights to property” subject to taxation. *Aquilino v. United States*, 363 U.S. 509 (1960); *Morgan v. Commissioner*, 309 U.S. 78 (1940). Accordingly, federal tax is determined, assessed, and collected based upon a taxpayer’s state created rights and interest in property.

25.18.1.1.3
(05-03-2023)
Responsibilities

- (1) The Director, Examination Headquarters, is the executive responsible for providing policy and guidance for SB/SE Examination employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers’ rights. See IRM 1.1.16.5.5, *Examination Headquarters*, for additional information.
- (2) The Director, Examination Field and Campus Policy Director, reports to the Director, Examination Headquarters, and is responsible for the delivery of policy and guidance that impacts the examination process. See IRM 1.1.16.5.5.1, *Examination Field and Campus Policy*, for additional information.
- (3) Field Examination General Processes (FEGP), which is under the Director, Examination - Field and Campus Policy, is responsible for providing policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.5.5.1.1, *Field Examination General Processes*, for additional information.
- (4) Employees are responsible for properly applying the laws of the applicable community property state fairly and consistently.

- (5) Employees and their managers should thoroughly acquaint themselves with the information contained in this IRM, as well as other resources, such as those listed in IRM 25.18.1.1.5, *Related Resources*, below.

25.18.1.1.4
(05-03-2023)

- (1) The following table contains a list of terms used throughout this IRM:

Terms

Term	Definition
Common Law	The dominant property system in the United States adopted by the 41 states that are not community property states. Each spouse is treated as an individual with separate legal and property rights. Generally, each spouse owns and is taxed upon income that he or she earns. See IRM 25.18.1.2.1, <i>Common Law</i> , for more information.
Community Property	Generally, defined as all property acquired during marriage while the spouses are domiciled in a community property state and that is not established to be separate property. Community property is the default characterization of all marital assets. See IRM 25.18.1.3.10, <i>Definition of Community Property</i> , for additional information.
Community Property Income	Income earned by either or both spouses in a community property state that is not deemed separate property by other rules or agreements between the spouses to maintain a separate property ownership regime. Community property income is typically taxed 50% to each spouse. See IRM 25.18.1.2.5, <i>Tax Assessment and Collection under Community Property Laws</i> , and IRM 25.18.2.2, <i>Income Reporting Considerations of Community Property</i> , for more information.
Community Property Law	A property system where the presumption is that each spouse contributes income and assets to the “community” of the spouses, and shares equally in any earnings, assets, and debts of the community. See IRM 25.18.1.2.2, <i>Community Property Law</i> , for more information.
Community Property States	States that use community property law as their property system. Each state’s law can vary based on the individual state statutes. See IRM 25.18.1.2.2, <i>Community Property Law</i> , for more information.
Registered Domestic Partners	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. Registered domestic partners (RDP) are not married for federal tax purposes. Therefore, they may not file “married filing jointly” or “married filing separately” federal income tax returns. See IRM 25.18.1.3.3, <i>Registered Domestic Partners</i> , for more information.

Term	Definition
Separate Property	Generally all property acquired before the creation or after termination of the community property estate and property acquired by one spouse during marriage through gift, inheritance, or an award for personal injury damages. See IRM 25.15.5.5, <i>Community and Separate Property</i> , for additional guidance on property acquired by one spouse if purchased with separate funds and IRM 25.18.1.3.16, <i>Sale or Exchange of Separate Property</i> , for additional information on sale or exchange for separate property.

25.18.1.1.5
(05-03-2023)

Related Resources

- (1) The following IRMs provide additional information regarding community property:
 - IRM 25.18.2, *Income Reporting Considerations of Community Property*.
 - IRM 25.18.4, *Collection of Taxes in Community Property States*.
 - IRM 25.18.5, *Injured Spouse*.
 - IRM 25.15.5, *Relief from Community Property Laws*.
- (2) Helpful information can be found on the following Knowledge Management page: *Community Property, Exam Technical Services*.

25.18.1.2
(05-03-2023)

Property Rights and Federal Taxation

- (1) Federal law determines how property is taxed, but state law determines whether, and to what extent, a taxpayer has “property” or “rights to property” subject to taxation. *Aquilino v. United States*, 363 U.S. 509 (1960); *Morgan v. Commissioner*, 309 U.S. 78 (1940). Accordingly, federal tax is determined, assessed, and collected based upon a taxpayer’s state created rights and interest in property.
- (2) This interplay of federal and state law requires an understanding of relevant state property laws to properly analyze community property issues. There are two distinct property systems in the United States: common law and community property. Each system creates different rights and interests in property. There is a difference in the way that federal tax is assessed and collected under each system. Further, the appropriate method of analysis to employ is also different under each system.
- (3) In some circumstances, the federal interest is deemed more important than state property rights. Thus, specific types of income and liabilities are not taxed in accordance with state community property laws. See IRM 25.18.1.3.28, *Federal Preemption of State Community Property Characterization*. The following income interests are not treated in accordance with state community property laws:
 - IRA withdrawals;
 - Self-employment tax;
 - Earned income credit;
 - Railroad retirement benefits;
 - U.S. savings bonds; and,
 - Social security benefits.

25.18.1.2.1
(02-15-2005)

Common Law

- (1) Common law is the dominant property system in the United States and has been adopted by 41 states.
- (2) The theory underlying common law is that each spouse is a separate individual with separate legal and property rights. Thus, as a general rule, each spouse owns and is taxed upon the income that he or she earns.

25.18.1.2.2
(05-03-2023)

Community Property Law

- (1) The theory underlying community property is analogous to that of a partnership. Each spouse contributes labor (and in some states, capital) for the benefit of the community, and shares equally in the profits and income earned by the community. Thus, each spouse owns an automatic 50% interest in all community property, regardless of which spouse acquired the community property. Spouses may also hold separate property, which they solely own and control, but the law in the community property states does not favor treating property as separate.
- (2) Spouses are also considered to share debts. Depending on state law, creditors of spouses may be able to reach all or part of the community property, regardless of how it is titled, to satisfy debts incurred by either spouse. State laws vary greatly on what property can be reached.

25.18.1.2.3
(05-03-2023)

Community Property States

- (1) Nine states have adopted the community property system:
 - Arizona,
 - California,
 - Idaho,
 - Louisiana,
 - New Mexico,
 - Nevada,
 - Texas,
 - Washington and
 - Wisconsin.
- (2) The U.S. Territories of Guam and Puerto Rico are also community property jurisdictions.
- (3) Alaska, South Dakota, and Tennessee have adopted a community property system, but it is optional. In Alaska, spouses may create community property by entering into a community property agreement or by creating a community property trust. See Alaska Stat. §§ 34.77.020 - 34.77.995. Similarly in South Dakota, property held in a special spousal trust becomes community property if the trust expressly declares that property transferred is South Dakota special spousal property. SD. ST. § 55-17. Tennessee also has adopted an optional community property system. TN. ST. § 35-17. The U.S. Supreme Court ruled that a similar statute allowing spouses to elect a community property system under Oklahoma law would **NOT** be recognized for federal income tax reporting purposes. *Commissioner v. Harmon*, 323 U.S. 44 (1944). The Harmon decision should also apply to all elective community property systems (such as those in Alaska, South Dakota, and Tennessee) for income reporting purposes.

25.18.1.2.4

(06-06-2017)

Analysis of Community Property Cases

- (1) As common law is the dominant legal system in the United States, there has been a tendency for the courts, the government, and the public to apply common law principles and concepts to community property issues. Unfortunately, because community property and common law are based on different theories of property ownership, analyzing a community property case under a common law framework usually produces erroneous results. Additionally, the natural inclination to think in terms of spouses having separate ownership of property must be discarded with regard to community property. It is inaccurate to refer to community property acquired by a spouse as that spouse's income or to think of a spouse as a separate property owner of community property. Community property is simply property that both spouses share equally, just as partnership income is income that all partners share equally, regardless of which partner was responsible for acquiring the income on behalf of the partnership.

25.18.1.2.5

(03-04-2011)

Tax Assessment and Collection under Community Property Laws

- (1) For income tax purposes, if spouses file separate returns, each spouse is taxed on 50% of the total community property income regardless of which spouse acquired the income. *Poe v. Seaborn*, 282 U.S. 101 (1930). In addition, each spouse is taxed upon 100% of his or her separate property income. Community property may also affect basis in property.
- (2) For collection purposes, the IRS (depending on state law) may collect taxes owed by only one spouse entirely from that spouse's one-half interest in community assets. Additionally, state law may provide that the IRS may collect taxes owed by only one spouse from both the liable and nonliable spouses' interest in community assets. This includes community property earned by or titled in the name of the other spouse.
- (3) Whether property is characterized as community property becomes less important if a joint filing election is made. Spouses filing a joint return, as a matter of federal law, are jointly and severally liable for the tax on all of the income of both spouses reportable on the joint tax return, whether it is community property or separate property.
- (4) There are differences in the community property laws adopted in the nine community property states. Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*, is a table summarizing the differences. However, the table is not a substitute for consulting state law when appropriate. It may also be necessary to discuss an issue with Counsel. In addition, the local Counsel offices have created a Revenue Officer's Guide to Local Law for each of the fifty states. Each of the guides for the community property states contains a detailed discussion of the local community property law, including discussion of common community property tax issues. It is recommended that these guides be consulted. The guides are available on the Office of Chief Counsel SB/SE Division Counsel Website on the Intranet.
- (5) The guides can be accessed at: *Law Guides*

25.18.1.3

(02-15-2005)

Determining if Community Property Laws Apply

- (1) A preliminary but crucial step in working a federal tax case is determining if the community property laws from one of the nine community property states apply. This requires the existence of a legally valid marriage while domiciled in a community property state. It also requires an analysis of whether property was acquired while spouses were subject to community property laws (specifically, during the existence of a "community property estate").

25.18.1.3.1
(03-04-2011)
Domicile

- (1) For federal tax purposes, a taxpayer's rights and interest in property are determined under the laws of the taxpayer's state of domicile. *United States v. Mitchell*, 403 U.S. 190 (1971); *Morgan v. Commissioner*, 309 U.S. 78 (1940). Therefore, to determine how income should be reported, it may be necessary for the examiner to determine domicile at the time that property or the right to property was acquired. Since a taxpayer's domicile may change over the period being examined, it may be necessary to allocate property and determine tax consequences under the laws of more than one state. A similar situation can arise with regard to the collection of federal tax. It may be necessary to look to state law to determine collection remedies. Therefore, a revenue officer must determine domicile at the time that property subject to collection was acquired.
- (2) The words "residence" and "domicile" do not mean the same thing. A person may have several places of residence, but only one domicile. A temporary place of abode may be a residence, but domicile is based on where the taxpayer intends his or her permanent home to be located. Domicile is the place where a person has his or her true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning. *Smith v. Smith*, 206 Pa. Super. 310, 213 A.2d 94 (1965). In general, the taxpayer's residence may be treated as his or her domicile, unless the taxpayer asserts otherwise or this is contrary to other facts in the case. Where a question regarding domicile arises, objective facts reflecting the taxpayer's intention to maintain a permanent home should be examined, including, but not limited to:
 - Whether taxpayer is on temporary work detail, attending school or stationed in the military
 - Place of employment
 - Location of personal residence(s)
 - Location of family
 - Where vehicles are registered
 - Where taxpayer is registered to vote
 - Whether taxpayer files a state tax return
 - Other facts reflecting the taxpayer's involvement and ties to the community
- (3) Once domicile is established, it is presumed to continue unless it is proven to have changed. *Whitmore v. Commissioner*, 25 T.C. 293 (1955); *Myers v. Commissioner*, 11 T.C. 447 (1948), acq., 1949-2 C.B. 3. Therefore, if, after weighing the facts and evidence, doubt remains regarding the correct domicile, the domicile of origin prevails. *Whitmore v. Commissioner*, 25 T.C. 293 (1955), acq., 1956-2 C.B. 9; *Webb v. Commissioner*, T.C. Memo. 1996-550.
- (4) The domicile of a person does not change merely because of entry into the military and being stationed in another jurisdiction. 24 Am. Jur. 2d Divorce and Separation § 215 (2008). Physical residence in a new state must concur with the present intention to make that state his or her new domicile. It is not enough to intend to establish domicile in that state at some future date. The same guidelines also apply to determining the domicile of students and prisoners. 32A Am. Jur. 2d Federal Courts § 691 (2008); 28 C.J.S. Domicile § 33 (2008).
- (5) Occasionally, spouses reside in different states. Under traditional community property laws, the marital community, consisting of both spouses, could only have one place of domicile, which was determined by the domicile of the

husband. Today, if spouses have different domiciles, the interest of the spouses generally will be determined by the law of the state which has the most significant relationship to the spouses and the property. *Lane-Burslem v. Commissioner*, 659 F.2d 209 (D.C. Cir. 1981); *Siezer v. Sessions*, 132 Wash. 2d 642, 940 P.2d 261 (1997). If, for example, one spouse domiciles in a community property state and the other in a common law state, the wages of the spouse residing in the community property state would be community property, but those of the other spouse would be separate property under the law of the other state. See *Layman v. Commissioner*, T.C. Memo. 1999-218; *Commissioner v. Cavanaugh*, 125 F.2d 366 (9th Cir. 1942); cf. *Lane-Burslem v. Commissioner*, 659 F.2d 209 (D.C. Cir. 1981) (refusing to apply Louisiana community property law to the earnings of a spouse not domiciled in Louisiana). Wisconsin does not subject either spouse to community property unless both domicile in that state. Wis. Stat. § 766.01(5). Thus, if a spouse domiciles in Wisconsin and the other spouse domiciles elsewhere, the earnings of the Wisconsin spouse would likely be characterized under Wisconsin law, but would not be community property.

25.18.1.3.2
(06-06-2017)
Marriage

- (1) In addition to domicile in a community property state, there must also be a valid marriage between spouses. States generally will recognize a marriage performed in another state. Thus, spouses may be married in a common law state and later domicile in a community property state and become subject to that state's community property laws. See, e.g., La. Civ. Code Ann. 2401; Wis. Stat. 766.01(5).
- (2) **Same-sex marriage.** On June 26, 2015, in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), the Supreme Court held that:
 - a. State laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples, and
 - b. All states must recognize same-sex marriages performed in other states.

As a result, same-sex married couples receive the same state and federal benefits and burdens as opposite-sex married couples. Therefore, same-sex married couples who domicile in a community property state are subject to community property rules in the same manner as opposite-sex married couples.

- (3) Marriages are usually created by a legal ceremony. Some states, however, recognize common law marriage. A common law marriage may be defined as a non-ceremonial or informal marriage by agreement entered into by two individuals having capacity to marry, ordinarily without compliance with statutory formalities such as marriage licenses. A common law marriage established in a state recognizing this type of marriage satisfies the marriage element to make community property laws applicable to spouses. See *United States v. Raudry*, 82-1 U.S.T.C. ¶ 9231, 49 A.F.T.R.2d ¶ 82-595 (W.D. Tex. 1981); *Schmidt v. Commissioner*, T.C. Memo. 1981-38. Eight of the nine community property states presently do not allow common law marriages to be established in them. The only exception is Texas. Idaho abolished such marriages in 1996, but it still recognizes common law marriages established in Idaho before then. All nine community property states recognize common law marriages established in other states allowing such marriages, although some other states do not. If spouses establish a common law marriage in a state recognizing such marriages and subsequently domicile in a community property state, they

become subject to community property laws. See, e.g., *In re Estate of Lamb*, 99 N.M. 157, 655 P.2d 1001 (1982); *People v. Badgett*, 10 Cal. 4th 330, 41 Cal. Repr. 635, 895 P.2d 877 (1995). For a comparison of the treatment of common law marriage by the various community property states, see Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*.

- (4) In Texas, a valid common law marriage is not presumed under law, and the burden of proof is upon the party asserting that a valid common law marriage has been created. *White v. State Farm Mutual Auto Ins. Co.*, 907 F.Supp. 1012 (E.D. Texas 1995). The elements of a common law marriage in Texas are (1) an agreement to be married; (2) after the agreement, living together in Texas as a married couple; and (3) representing to others that they are married. See Texas Family Code Ann. 2.401(a). The elements of common law marriage in other states vary somewhat. See 52 Am. Jur. 2d Marriage 38 et seq. (2016).

25.18.1.3.3
(06-06-2017)
Registered Domestic Partners

- (1) Registered domestic partners are not married for federal tax purposes. Therefore, they may not file “married filing jointly” or “married filing separately” federal income tax returns. However, under the laws of California, Nevada, and Washington, registered domestic partners are subject to state community property laws in the same manner as married couples. See Cal. Fam. Code 297.5(a); Nev. Rev. Stat. 122A.200; Wash. Rev. Code 26.16.030. These laws are summarized in Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*. As a result, registered domestic partners in these states are required to split community property income on their individual federal income tax returns. In addition, community property owned by registered domestic partners may be subject to the same tax collection remedies as community property owned by married couples in these states. For the effect of this see IRM 25.18.4.7, *Premarital v. Post Marital Obligations*, IRM 25.18.4.8, *Collecting Premarital Liabilities*, and IRM 25.18.4, *Collection of Taxes in Community Property States*.
- (2) Wisconsin law allows couples to file a declaration of domestic partnership with the state and be recognized under state law as domestic partners (see Wis. Stat. § 770.01 et. seq.). However, this does not subject them to Wisconsin marital property statutes. Accordingly domestic partners in Wisconsin do not report income under community property principles and are not subject to tax collection under community property principles.

25.18.1.3.4
(03-04-2011)
Termination of the Community Estate

- (1) The community estate may be terminated in a number of ways including the following.
 - Death
 - Change of domicile
 - Divorce or legal separation
 - Physical separation (in a few states)
- (2) Death. A community property estate, having been created, is terminated on the date that one spouse dies.
- (3) Change in Domicile. A community property estate, having been created, is terminated when spouses change their domicile from a community property state to a common law state.

- (4) Divorce or Legal Separation. Seven of the nine community property states (all except Washington and California) hold that the community property estate is terminated by a final decree of divorce or legal separation. This is frequently referred to as dissolution. In these states, spouses living apart or even filing a petition for divorce will not result in a termination of the community property estate. Termination does not occur until the final decree of divorce or legal separation is entered. A final decree cannot be made retroactive to a prior completed tax year for federal income tax purposes. *Brent v. Commissioner*, 630 F.2d 356 (5th Cir. 1980) (State law that upon entry of divorce decree, income is retroactively reclassified as separate property from the date of the divorce petition, is not effective for federal income tax purposes); *Cf. Daine v. Commissioner*, 168 F.2d 449 (2d Cir. 1948) (Retroactive state court order attempting to recharacterize payments made between spouses as alimony not effective for federal income tax purposes).
- (5) Physical Separation. California and Washington hold that the community property estate is terminated when spouses physically separate and both spouses intend to permanently end the marriage. This mutual intent must be established through the actions and conduct of the spouses. This requires an examination of the facts and circumstances of each case, with the burden of proof on the party asserting that the community property estate was terminated. *Siezer v. Sessions*, 132 Wash. 2d 642, 940 P.2d 261 (1997), *citing* Wash. Rev. Code 26.16.140; *In re Marriage of Hardin*, 38 Cal. App. 4th 448, 45 Cal. Repr. 2d 308 (Ct. App. 1995), *citing* Cal. Fam. Code 771. In these states, the Service should continue to apply community property laws to separated spouses unless both spouses have affirmatively alleged that they do not intend to resume the marriage and community property rules do not apply, and their conduct supports this.
- (6) For a comparison of what constitutes a termination of the community property estate in the various community property states, see Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*.

25.18.1.3.5
(02-15-2005)
Annulment

- (1) An annulment means that the spouses were never subject to community property laws. Income should not be reported on a community property basis for the period of the putative marriage. *Barr v. Commissioner*, 10 T.C. 1288 (1948). Courts may impute "putative" community property rights to ensure an equitable division of property between the parties, but this does not create community property rights under state law.

25.18.1.3.6
(03-04-2011)
**Determining Which
State's Laws Apply in
Property
Characterization**

- (1) Given a property's physical location, questions can arise concerning which state's laws govern the categorization of a piece of property as separate or community property. The general rules on this issue are as follows:
 - a. Real Property. Generally, the law that applies to an interest in real property will be determined by the situs of the property. See, e.g., *Woods v. Naimy*, 69 F.2d 892, 894 (9th Cir. 1934); *Peters v. Haley*, 762 So. 2d 695 (Ct. App. La. 2000), writ denied, 766 So. 2d 547 (La. 2000). However, courts may apply community property principles to real property located in a common law state in an action solely between the spouses, if the property was acquired with community property funds. *Ford v. Ford*, 276 Cal. App. 2d 9, 80 Cal. Rptr. 435 (Ct. App. 1969); *Muckle v. Superior Court*, 102 Cal. App. 4th 218, 125 Cal. Rptr. 2d 303 (Ct. App. 2002). The theory is that the court does not have jurisdiction to determine title to the

property in another state, but the court does have jurisdiction to determine as between the parties before them what interest each party has in the property. *Noble v. Noble*, 26 Ariz. App. 89, 546 P.2d 358 (App. Ct. 1976) (involving property in a foreign country).

- b. Personal Property. Generally, the law that applies to personal property will be determined by the domicile of the spouses at the time of acquisition. See *Reeves v. Schulmeier*, 303 F.2d 802, 806 (5th Cir. 1962); *Peters v. Haley*, 762 So. 2d 695 (Ct. App. La. 2000), writ denied, 766 So. 2d 547 (La. 2000). If the spouses have different domiciles, the interests of the spouses will be determined by the law of the state which has the most significant relationship to the spouses and the property. *Siezer v. Sessions*, 132 Wash. 2d 642, 940 P.2d 261 (1997). Also see discussion in IRM 25.18.1.3.1 (5), *Domicile*.

- (2) The most common situation is, where spouses domicile in a community property state and earn wages in a common law state. In this circumstance, the wages are classified under the law of the community property state, because wages are personal property. If the spouses domicile in a common law state, but earn wages in a community property state, the wages would not be community property.

25.18.1.3.7
(03-04-2011)

Characterization of Property

- (1) After it is determined that community property laws apply (i.e., the taxpayers are married and domicile in a community property state), the next step is to determine the taxpayer's rights and interest in the property under state law. This process is known as characterization. Characterization of property is a crucial and necessary component of every community property tax case.
- (2) Characterization is important, because it will determine the tax consequences. As it relates to separate tax returns filed by married individuals domiciled in a community property state, federal income tax is assessed on 100% of a taxpayer's separate property income, and 50% of the total community property income acquired by either spouse. In some cases, property may be partially community property and partially separate property, requiring an allocation. In addition, the reach of the tax lien depends, in part, on the character of the taxpayer's property. As a result, the Service must characterize the taxpayer's property before it can correctly determine and collect tax.

25.18.1.3.8
(02-15-2005)

Forms of Ownership and Characteristics

- (1) Spouses living in community property states may own two distinct types of property: community property (also known as marital property in some states) or separate property (also known as individual property in some states). The characteristics of each type of property are as follows:
 - a. Separate property. This property is owned solely by one spouse or the other. In some community property states, spouses may own separate property as tenants in common or as joint tenants. In joint tenancy and tenancy in common, each tenant owns an undivided equal interest in the property. Where spouses subject to a community property regime hold property as joint tenants or tenants in common, each spouse's interest is separate property.
 - b. Community property. Each spouse has a half interest in each item of community property. Community property is created by operation of law, so no affirmative acts are required to create community property. Each spouse has a 50% interest in the community property regardless of which spouse earned the community property income or acquired the

community property asset. In most community property states, creditors may use community property to satisfy debts arising from the marriage, no matter which spouse incurred the liability or which spouse earned the community property income or acquired the community property asset.

25.18.1.3.9
(02-15-2005)
**Quasi-Community
Property**

- (1) For probate and other purposes, some states characterize certain separate property as quasi-community property. For example, some states treat property acquired during marriage but before spouses were subject to a community property regime as if it were community property for purposes of probate or dissolution of marriage. This gives the surviving spouse rights against the property that he or she would not otherwise have. This characterization of property has little or no impact on basic principles of income taxation of community property or collection, because quasi-community property is not community property. It is therefore not taxed as community property or subject to collection as community property.

25.18.1.3.10
(02-15-2005)
**Definition of Community
Property**

- (1) Community property is generally, and broadly, defined as all property acquired during marriage that is not established to be separate property. Community property is the default characterization of all marital assets. It is highly favored by the laws of the Community Property States. Community property typically includes salary, wages and other compensation for work performed during marriage, the fruits resulting from the labor and skills of each spouse, income derived from community property assets, and separate property that has been changed ("transmuted") into community property.

25.18.1.3.11
(02-15-2005)
**Definition of Separate
Property**

- (1) Separate property is all property acquired before the creation or after termination of the community property estate and property acquired by one spouse during marriage through gift, inheritance, or an award for personal injury damages.

25.18.1.3.12
(02-15-2005)
**Management and
Control**

- (1) Management and control is a community property concept referring to the right to manage, control, use or otherwise dispose of community property. In Texas, management and control is important for federal tax purposes, because it determines the Service's collection remedies against community property. In Texas, community property is either joint management property or the management property of one of the spouses. If property is classified as the "sole management" community property of a particular spouse, that spouse has the right to control or otherwise dispose of the property despite the other spouse's interest in the property. If community property is joint management property, both spouses must participate. Sole management property is the property the spouse would have owned if single. If one spouse incurs a tax liability, the Service may have different remedies against sole management community property as opposed to joint management community property. See IRM 25.18.4.6, *Management and Control and Collection*.
- (2) In addition, there is a presumption that community property titled or held in the name of a spouse is his or her sole management property. For example, a spouse's wages are his or her sole management property. All community property that is not sole management property of a spouse is joint management property.

25.18.1.3.13
(02-15-2005)

**When the Character of
Property Is Determined**

- (1) A basic principle of community property law is that the initial character of property is determined on the date of acquisition. Under the “inception of title” rule followed by most community property states, property is deemed acquired on the date that the right to interest, title and possession arises. See, e.g., *Estate of Cavanaugh v. Commissioner*, 51 F.3d 597 (5th Cir. 1995). As a result, the date that property is physically received is not relevant in determining character. Certain forms of income reflect delayed payment, such as pensions, lottery winnings, or installment sales. Under this rule, these are characterized when the right to receive them is earned, not when they are received. Additionally, when rights to property are acquired over a period of time, vested allocation issues can arise. For example, assume a person who is working and vested in a pension gets married. If the person continues to work at the same place and accrues additional pension benefits, the retirement income accrued before the marriage would be characterized as separate property, while retirement income accrued after marriage would be characterized as community property. For a discussion of the pension allocation rule See, IRM 25.18.1.3.16, *Sale or Exchange of Separate Property*.

25.18.1.3.14
(03-04-2011)

**Income from Separate
Property Received
During Marriage**

- (1) Income from separate property generally consists of dividends, interest, and rents. The community property states are not consistent in their characterization of this income. Some states follow the “American rule,” while others follow the “Spanish rule.” See Margaret Berger Strickland, Comment, What’s Mine is Mine: Reserving the Fruits of Separate Property, 51 Loy. L. Rev. 989, 996-99 (2005). Under the American rule, income generated during marriage from separate property is separate property, except to the extent that the income is generated from community property skills and labor. This rule is followed by Arizona, California, New Mexico, Nevada, and Washington. Ariz. Rev. Stat. 25-213; Cal. Fam. Code 770; N. M. Stat. Ann. Sec. 40-3-8(E); Nev. Rev. Stat. 123.130; and Wash. Rev. Code 26.16.010.
- (2) Under the Spanish rule, income derived from separate property, whether attributable to community labor or a return on separate property capital, is characterized as community property. States following this rule include Idaho, Louisiana, Wisconsin, and Texas. Idaho Code Ann. 32-906; La. Civ. Code Ann. 2339; Texas Fam. Code Ann. 3.001, 3.002 (under Texas law, this income is the sole management community property of the spouse who owns the separate property. *Tabassi v. NBC Bank-San Antonio*, 737 S.W.2d 612, 614 (Tex. App. 1987)); and Wis. Stat. 766.01(10). In all community property states, under state law presumptions, income from community property is community property.
- (3) In some cases, spouses operate businesses where the capital is separate property, while the labor is community property. This will usually occur where a person who owns and operates a capital-intensive sole proprietorship gets married. When the business is operated after marriage, it has the effect of mixing separate property (the assets of the business) with community property (the spouse’s labor). In American-rule states, where a portion of the rents, income, and profit derived from a separate property asset is based on community property time, efforts, and skill, it may be appropriate to allocate the sole proprietorship (i.e., schedule C) profit between separate property and community property. In Spanish-rule states, this is not as much of an issue, because only the increase in value of the assets is separate property. In any case, the presumption will be that the entire profit is community property. Cf. *Abraham v. Abraham*, 230 La. 78, 87 So. 2d 735 (1956). Normally, the Service

will not disturb an allocation made by spouses filing separate returns, as long as the income is reported consistently, and the allocation is not abusive. However, if an allocation has to be made, there are two main approaches:

- a. The Pereira Approach: A reasonable rate of return is applied to the value of the assets and the resulting amount is separate property. This amount is subtracted from the profit. Whatever is left over is assumed to be the value of the spouse's labor and is community property. *Pereira v. Pereira*, 103 P. 488 (1909); see also *Manning v. Commissioner*, 8 T.C. 537 (1947).
 - b. The Van Camp Approach: A reasonable value is assigned to the spouse's labor and is community property. This amount is subtracted from the profit. Whatever is left over is assumed to be return on the value of the assets and is separate property. *Van Camp v. Van Camp*, 199 P. 885 (1921); see also *Wilcox v. Commissioner*, 5 T.C.M. (CCH) 412 (1946).
- (4) These principles can also be applied to partnerships. *Wilcox v. Commissioner*, 5 T.C.M. (CCH) 412 (1946). Deciding which approach to follow probably depends on whether it is easier to determine compensation or return on investment and whether capital or labor is deemed more important. No apportionment will be made when the profits are attributable to the natural enhancement of separate property and the spouse has expended only a minimum of effort and that effort was of insignificant value; profits will therefore be considered separate property. See, e.g., *Weinberg v. Weinberg*, 432 P.2d 709 (1967); *Logan v. Forster*, 114 Cal. App. 2d 587, 601, 250 P.2d 730 (Ct. App. 1952). Correspondingly, where the income appears to be attributable to labor, as opposed to capital, profits will be considered community property. *Abraham v. Abraham*, 230 La. 78, 87 So. 2d 735 (1956).

25.18.1.3.15
(02-15-2005)
**Community Property
Presumption**

- (1) Community property states uniformly have laws creating a rebuttable presumption that property owned by spouses is community property. In many community property states, unless otherwise proven, property in the possession of spouses during the marriage is presumed acquired during marriage, thus triggering application of the community property presumption. See, e.g., *Mortenson v. Trammell*, 604 S.W.2d 269 (Tex. Civ. App. Corpus Christi 1980).

25.18.1.3.16
(02-15-2005)
**Sale or Exchange of
Separate Property**

- (1) Property received in exchange for separate property of a spouse is separate property. For example, if a spouse owns stock and sells the stock for cash and then uses the cash to buy different stock, the new stock is separate property.

25.18.1.3.17
(02-15-2005)
**Life Insurance and
Pensions**

- (1) Special rules apply to characterizing certain life insurance policies (e.g., whole life) and deferred employment benefits. Generally, they will be characterized based on the period of participation in the pension while subject to community property over the total period of participation in the pension. For example, a spouse works for 40 years and earns a pension. For 20 years she is married and subject to community property. Fifty percent of the pension is community property (20/40= 50%). See, e.g. Wis. Stat. 766.61 and 766.62 *Taggart v. Taggart*, 552 SW 2d, 422 (Tx 1977). These rules may vary somewhat between states, so it is important to consult the law of the applicable state or with local Counsel.

25.18.1.3.18
(02-15-2005)

**Joint Tenancy and
Tenancy in Common
Property**

- (1) Spouses sometimes acquire property and title it in a manner that suggests that they are trying to hold it as either joint tenants or tenants in common. All community property states except Louisiana allow property to be held in this manner. Some states, however, do not favor these estates and require specific language in the deed reflecting the intent of the spouses to create these estates. Some even require extrinsic proof that the spouses intended to hold the property in joint tenancy or tenancy in common instead of as community property. For example, if spouses wish to convert community property into joint tenancy property in Washington, they are both required to sign a document indicating a clear intent to make this conversion. See, e.g., *Rogers Walla Walla, Inc. v. Ballard*, 16 Wash. App. 81, 553 P.2d 1372 (Ct. App. 1977), *review denied* 88 Wash. 2d 1004 (1977). If the required proof is lacking, the property is characterized as community property. Texas requires a written agreement to partition. Other community property states recognize these forms of ownership and will treat the asset as separate property of the spouses held in joint tenancy. A summary of each of the community property states' treatment of property purportedly titled in joint tenancy or tenancy in common is shown in Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*. The rules vary greatly on this issue and it is important to consult the applicable state law or with local Counsel.

25.18.1.3.19
(02-15-2005)

Gifts to Spouses

- (1) Property acquired during marriage by gift or inheritance of one spouse is normally separate property of that spouse. Property gifted to both spouses is community property.

25.18.1.3.20
(02-15-2005)

Title

- (1) Under community property law, title to property generally carries relatively little weight in determining whether property is separate or community property. The property is presumed to be community property in spite of the form in which title is held. When property is acquired as community property, each spouse acquires an automatic half interest. No special acts are required to vest interest in the non-acquiring spouse, such as conveyance of title, or obtaining dominion and control over the property. Thus, the fact that title is held solely in the name of the spouse who acquired the property, by itself, is insufficient to rebut the community property presumption. The community property presumption could only be rebutted by evidence that the property was acquired with the separate property of the titled spouse with the specific intention of holding the property as separate. A notable exception to this rule exists in states where a joint tenancy presumption arises when title to real property is held in joint tenancy, such as California or Nevada. In addition, in New Mexico, property titled in the name of one spouse is presumed to be separate property. A comparison of the treatment of title by the various community property states is shown in Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*.
- (2) Although title generally does not determine whether property is held as community or separate property, title may establish whether property is sole management property of a spouse.

25.18.1.3.21
(02-15-2005)

**Capital Gains From
Separate Property**

- (1) In all of the community property states, appreciation in value of separate property is separate property, unless the appreciation in value is attributable to the personal services of one of the spouses or due to the application of community property funds. For example, market appreciation of publicly traded stocks held as separate property is also separate property. If, on the other

hand, a house is owned as separate property, and one of the spouses is a carpenter and builds an addition with materials acquired with community property, any increase in value due to the addition is either community property or creates a right to reimbursement of the community. The community property states vary in their treatment of these issues. A comparison of the treatment of this issue by the various community property states is shown in Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*.

25.18.1.3.22
(02-15-2005)
Transmutation

- (1) Transmutation is a term which refers to changing the character of property, usually from separate property to community property. As will be discussed below, transmutation can take place by specific agreement of the spouses or unintentionally.

25.18.1.3.23
(06-06-2017)
**Mixing or Commingling
Community Property
With Separate Property.**

- (1) Mixing or commingling separate property with community property will transmute the separate property into community property unless the separate property component can be traced. For example, assume a spouse owns a bank account as separate property, where multiple monthly transactions include withdrawals and deposits of community property. Because the separate property portion of the account would be difficult or impossible to trace, in most community property states the account would be transmuted into community property. See, e.g., *Fisher v. Fisher*, 86 Idaho 131, 383 P.2d 840 (1963).
- (2) In most cases, mixing community with separate real property will rarely convert the entire property to community property. Thus for example, a spouse owns real property as separate property, and the mortgage is paid down with community property earnings. The property is unlikely to be automatically transmuted into community property, because the amount of the mortgage and payments can easily be traced. See, e.g., *In re Estate of Kobylski*, 503 N.W.2d 369 (Wis. Ct. App. 1993). Mixing or commingling may also occur in any circumstance where a spouse owns real property as separate property and uses community property or the uncompensated labor of the other spouse to improve the property. This improvement is unlikely to convert the separate property to community property, because the separate property component can usually be traced.
- (3) If community property is used to assist in the purchase of a separate property asset, or if community property substantially benefits or improves separate property, a community property right to reimbursement is presumed. This can either take the form of an interest in the property or a claim for reimbursement depending on state law.
- (4) The issue of what happens when community property is mixed, commingled, or used to improve separate property can be important in the context of tax collection. See discussion in IRM 25.18.4.16, *Mortgage Reduction and Other Tracing Issues*.

25.18.1.3.24
(02-15-2005)
Tracing

- (1) As discussed above, commingled property becomes community property unless the separate property portion can be traced. Tracing is done by allocating withdrawals, deposits or payments between community property funds and separate property funds. The burden of proof is usually on the party attempting to rebut the community property presumption created under state law. See IRM 25.18.4.16, *Mortgage Reduction and Other Tracing Issues*.

25.18.1.3.25
(06-06-2017)
**Premarital and
Post-Marital Contracts
Between Spouses**

- (1) Community property states have created laws allowing spouses to contract out of the application of normal community property laws. The states have different rules concerning when this may occur and how notice of these agreements is given to affected third parties, such as creditors. These rules vary greatly between the community property states. A summary of the treatment of these contracts by the various community property states is shown in Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*. Refer to the applicable state law for each state for a more detailed discussion of these rules.
- (2) Validity of marital agreements is often an issue. Ensure compliance with state law formalities regarding writing, acknowledgment, and recording. If an agreement is received, the following factors should be considered:
 - a. **Writing.** The contract should be in writing. In most states this is a requirement. See, e.g., *Hardy v. Commissioner*, 181 F.3d 1002 (9th Cir. 1999) (interpreting Nevada law); Wis. Stat. 766.58. Some states recognize oral agreements, but will closely scrutinize a claim that one exists. See *Union Securities Co. v. Smith*, 93 Wash. 115, 160 P. 304 (1916), and *Beakley v. Bermerton*, 5 Wash. 2d 670, 105 P.2d 40 (1940) (both interpreting Washington law); *Herrera v. Herrera*, 126 N.M. 705, 974 P.2d 675 (N.M. App. 1999) (New Mexico law). For a summary of state laws in this area, see Exhibit 25.18.1-1, *Comparison of State Law Differences in Community Property States*.
 - b. **Contents.** The terms of the contract should be reviewed to see what is covered. Certain forms of income, such as wages, may not be covered by the contract.
 - c. **Abiding by Contract.** Determine whether the spouses are mutually observing the terms of the contract. In some states, if the agreement is not mutually observed the contract may be deemed rescinded by mutual conduct. See, e.g., *Kalmorgan v. Schaller*, 51 Wash. 2d 94, 316 P.2d 111 (1957).
 - d. **Economic Sense.** Consider whether the terms of the contract make sense and have an economic reality. For example, earnings of one spouse could not be characterized as separate property of the other spouse.
 - e. **Fraudulent Conveyance.** Determine whether the contract meets state law requirements for a fraudulent conveyance/nominee situation. Note, however, that some states do not apply fraudulent conveyance statutes to these contracts. Compare *State Board of Equalization v. Woo*, 98 Cal. Rptr. 2d 206, 82 Cal. App. 4th 481 (Ct. App. 2000) and *State ex rel. Indus. Comm'n v. Wright*, 202 Ariz. 255, 43 P.3d 203 (Ct. App. 2002) with *O'Kane v. United States*, 1989 U.S. Dist. LEXIS 15,631, 1989 WL 252397 (D. Idaho 1989) and *In re Pietri*, 59 B.R. 68, Bankr. L. Rep. P 71,086 (Bankr.M.D. La. 1986); see also IRM 25.18.4.15, *Effect of Marital Agreements on Collection*.
 - f. **Notice.** Some states require either actual or constructive notice to creditors before they are bound by a marital agreement. See IRM 25.18.4.15, *Effect of Marital Agreements on Collection*. In the context of tax collection, the Service will assert these statutes as a defense to a marital agreement if proper notice was not given. Notice is not usually required for income reporting purposes.

25.18.1.3.26
(02-15-2005)
Gift Presumption

- (1) If one spouse uses his or her separate property funds to purchase a community property asset, or substantially benefit the community, a gift to the community is presumed.

25.18.1.3.27
(02-15-2005)
Other Agreements to Transmute Property

- (1) Generally, spouses do not have to enter into a written marital agreement to transmute separate property into community property or community property into separate property. This can be done by deed. As discussed previously, some states recognize oral agreements. See, e.g., *Lucia v. Commissioner*, T.C. Memo 1991-77. Any claim of an oral agreement should be closely scrutinized.

25.18.1.3.28
(03-04-2011)
Federal Preemption of State Community Property Characterization

- (1) Sometimes there are conflicts between state and federal laws concerning the treatment of property. These conflicts occur frequently in the area of community property. For example, specific types of income and liabilities are designated as being the sole property of a spouse under federal law, even though under state law they would otherwise be community property. When this occurs, federal law preempts state law. Thus, IRA withdrawals, self-employment taxes, earned income credits, US savings bonds, railroad retirement benefits, and social security benefits are all deemed to be separate property. See, e.g., *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979) (railroad retirement benefits); *Bunney v. Commissioner*, 114 T.C. 259 (2000) (IRA withdrawals); *In re Marriage of Hillerman*, 109 Cal. App. 3d 334, 167 Cal. Rptr. 240 (1980) (social security benefits); *Free v. Bland*, 369 U.S. 663 (1962) (US savings bonds); Rev. Rul. 87-52, 1987-26 I.R.B. 28, 1987-1 C.B. 347 (earned income credit).
- (2) Sometimes the conflict occurs where federal law gives a spouse the ability to pass the property to heirs free from claims by the other spouse, where under state law the property would otherwise be held as community property in which the other spouse would have a half interest. In these cases, the property may still be community property, but subject to the federal law governing disposition. Compare *Boggs v. Boggs*, 520 U.S. 833 (1997) (federal ERISA disposition provisions with respect to a pension preempt contrary state community property laws) with *In re McIntyre*, 222 F.3d 655 (9th Cir. 2000) (Service can levy on ERISA pension plan as community property). This area of law is complex, as courts will strive to not find a conflict between a federal interest and state community property laws and carve out specific exceptions to federal preemption.

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Exhibit 25.18.1-1 (06-06-2017)

Comparison of State Law Differences in Community Property States

Question	Arizona	California	Idaho
1. When do spouses become subject to state community property laws?	When the spouses are married and domicile in the state.	When the spouses are married and domicile in the state.	When the spouses are married and domicile in the state.
2. Does the state recognize common law marriage?	No, but it recognizes a common law marriage legally established elsewhere.	No, but it recognizes a common law marriage legally established elsewhere.	No, but it did until 1/1/96. It recognizes common law marriages established in Idaho before 1/1/96 or legally established elsewhere.
3. Does the state recognize some form of domestic partnership as an alternative to marriage?	No.	Yes.	No.
4. Does a domestic partnership under state law create community property rights and obligations?	Not applicable.	Yes.	Not applicable.
5. When does the community property regime terminate (causing subsequently acquired assets or future income to no longer be characterized as community property)?	Change of domicile, death, decree of divorce or decree of legal separation. Also, property acquired after a petition for dissolution or separation or annulment is separate property, if the petition results in a final decree.	Change of domicile, death of spouse, living separate and apart before dissolution with no present intent to resume marital relations and conduct evidencing a complete and final break in the marital relationship, legal separation or judgment of dissolution.	Change of domicile, death or decree of divorce.
6. How is post marital income generated from separate property (e.g., rents, dividends, interest) characterized?	Separate property unless a portion is derived from CP time, effort and skills. If so, an allocation must be made.	Separate property unless a portion is derived from CP time effort and skills. If so, an allocation must be made.	Community property.

Exhibit 25.18.1-1 (Cont. 1) (06-06-2017)**Comparison of State Law Differences in Community Property States**

Question	Arizona	California	Idaho
7. How does the state characterize appreciation in the value of separate property? See paragraph 5 of IRM 25.18.4.16, <i>Mortgage Reduction and Other Tracing Issues</i> , for additional guidance.	Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, but this does not change the character of the asset.	Separate property where appreciation is a "natural enhancement of SP" and spouse has expended a minimum of effort or effort has insignificant value. If spouse's labor or CP funds are used to acquire or improve the SP, a right of reimbursement exists, and it creates a community property interest in the asset.	Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, but this does not change the character of the asset.
8. How does the state characterize property taken by spouses under a deed reflecting that the property is held in joint tenancy?	Strong presumption that it is community property. To be a joint tenancy, deed should have language negating the possibility that it is held as community property.	The property is rebuttably presumed to be a joint tenancy. Factors rebutting the presumption include: If acquired during marriage, if acquired with CP funds, if parties knew the legal consequences of JT vs. CP, if loan proceeds deposited into CP account.	Community property unless there is clear and convincing evidence that the spouses intended to hold the property in joint tenancy rather than as community property. Holding title in joint tenancy is not sufficient by itself to overcome CP presumption.
9. How does the state characterize property taken by spouses under a deed reflecting that the property is held in tenancy in common?	Strong presumption that it is community property. To be a tenancy in common, deed should have language negating the possibility that it is held as community property. Rare form of ownership between spouses.	The property is rebuttably presumed to be separate property. Very uncommon form of ownership between spouses.	As a tenancy in common, if deed uses specific language "as tenants in common." It may also create a tenancy in common if separate property of both spouses is used to acquire the property. Otherwise it is community property.
10. Does a deed taken in the name of one spouse as sole and separate property create separate property?	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.

Exhibit 25.18.1-1 (Cont. 2) (06-06-2017)**Comparison of State Law Differences in Community Property States**

Question	Arizona	California	Idaho
11. Does the state recognize pre or post marital property characterization agreements?	Yes.	Yes.	Yes.
12. What are the property characterization agreements called?	Premarital, post marital, prenuptial or postnuptial agreements.	Premarital, post-marital, prenuptial or postnuptial agreements.	Premarital agreements and marriage settlement agreements.
13. Are property characterizations agreements required to be in writing?	Premarital agreements must be in writing.	Premarital agreements must be in writing. Post-marital agreements need only be in writing if they involve real estate.	Agreements must be in writing.
14. Are property characterization agreements valid against creditors?	Yes, but fraudulent conveyance statutes can be applied.	Yes. Premarital contracts before 1986 required to be recorded. After 1986, no need for recording to be valid. Premarital not subject to fraudulent conveyance laws. Post-marital need not be recorded, but are subject to fraudulent conveyance laws.	Yes, no notice is required.
15. What property is available to satisfy a premarital federal tax obligation assessed against only one spouse?	All separate property of liable spouse. Also, 100% of community property traceable to or contributed by the liable spouse and 50% of all other community property.	100% of all community property and all separate property of the liable spouse.	100% of all community property and all separate property of liable spouse.
16. What property is available to satisfy a post marital federal tax obligation assessed against only one spouse?	100% of all community property and all separate property of the liable spouse.	100% of all community property and all separate property of the liable spouse.	100% of all community property and all separate property of liable spouse.

Exhibit 25.18.1-1 (Cont. 3) (06-06-2017)**Comparison of State Law Differences in Community Property States**

Question	Louisiana	Nevada	New Mexico
1. When do spouses become subject to state community property laws?	When the spouses are married and domicile in the state.	When the spouses are married and domicile in the state.	When the spouses are married and domicile in the state.
2. Does the state recognize common law marriage?	No, but it recognizes a common law marriage legally established elsewhere.	No, but it recognizes a common law marriage legally established elsewhere.	No, but it recognizes a common law marriage legally established elsewhere.
3. Does the state recognize some form of domestic partnership as an alternative to marriage?	No.	Yes.	No.
4. Does a domestic partnership under state law create community property rights and obligations?	Not applicable.	Yes.	Not applicable.
5. When does the community property regime terminate (causing subsequently acquired assets or future income to no longer be characterized as community property)?	Change of domicile, death or entry of a judgment of separation of property or judgment of divorce.	Change of domicile, death, decree of divorce or decree of legal separation.	Change of domicile, death, decree of divorce or decree of legal separation. Upon separation, spouses may also ask court for division of property, which may affect subsequently acquired property.
6. How is post marital income generated from separate property (e.g., rents, dividends, interest) characterized?	Community property.	Separate property unless derived from a spouse's labor or community property funds. If so, an allocation must be made.	Separate property unless derived from a spouse's labor or community property funds. If so, an allocation must be made.
7. How does the state characterize appreciation in the value of separate property? See paragraph 5 of IRM 25.18.4.16, <i>Mortgage Reduction and Other Tracing Issues</i> , for additional guidance.	Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, but this does not change the character of the asset.	Separate property. If a spouse's labor or CP funds are used to acquire or improve the SP, a right of reimbursement exists, and it creates a community property interest in the asset.	Separate property. If a spouse's labor or community property funds are used to acquire or improve the asset, a right to reimbursement exists, and it creates a community property interest in the asset.

Exhibit 25.18.1-1 (Cont. 4) (06-06-2017)**Comparison of State Law Differences in Community Property States**

Question	Louisiana	Nevada	New Mexico
8. How does the state characterize property taken by spouses under a deed reflecting that the property is held in joint tenancy?	Community property.	The property is rebuttably presumed to be a joint tenancy.	Community property unless the deed also specifically designates it as separate property.
9. How does the state characterize property taken by spouses under a deed reflecting that the property is held in tenancy in common?	Community property.	The property is presumed to be community property.	Community property unless the deed also specifically designates it as separate property.
10. Does a deed taken in the name of one spouse as sole and separate property create separate property?	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.	Yes. The property is rebuttably presumed to be separate property.
11. Does the state recognize pre or post marital property characterization agreements?	Yes.	Yes.	Yes.
12. What are the property characterization agreements called?	Matrimonial agreements. (But, post marital agreements require court approval.)	Premarital or antenuptial agreements or post marital contracts.	Premarital, post marital, prenuptial or postnuptial agreements.
13. Are property characterizations agreements required to be in writing?	Agreements must be in writing.	Agreements must be in writing to be effective against the Internal Revenue Service.	An oral agreement will be recognized, but the claim of one will be strictly scrutinized.

Exhibit 25.18.1-1 (Cont. 5) (06-06-2017)**Comparison of State Law Differences in Community Property States**

Question	Louisiana	Nevada	New Mexico
14. Are property characterization agreements valid against creditors?	Yes, but only if the agreement is recorded (As to real property, with parish registry where real property is located, and as to personal property, with parish registry where spouses domicile).	Yes, but case by case analysis required. Agreement must conform to required state law formalities, and terms of agreement must be mutually observed by parties. Fraudulent conveyance and nominee/alter ego laws can be applied.	Unknown. State law requires agreements to be in writing and be acknowledged. There is no case law on the effect of a valid agreement on creditors.
15. What property is available to satisfy a premarital federal tax obligation assessed against only one spouse?	100% of all community property and all separate property of liable spouse.	50% of community property and all separate property of liable spouse.	50% of all community property and all separate property of liable spouse.
16. What property is available to satisfy a post marital federal tax obligation assessed against only one spouse?	100% of all community property and all separate property of liable spouse.	100% of all community property and all separate property of liable spouse.	100% of community property and all separate property of liable spouse,

Question	Texas	Washington	Wisconsin*
1. When do spouses become subject to state community property laws?	When the spouses are married and domicile in the state.	When the spouses are married and domicile in the state.	On the determination date, which is the first day after marriage, both spouses domicile in Wisconsin and January 1, 1986 (the effective date of the Marital Property Act in Wisconsin).
2. Does the state recognize common law marriage?	Yes. To qualify, spouses must cohabit in Texas, agree to be married and represent that they are married. Parties to a common law marriage must obtain a divorce or annulment to terminate the marriage.	No, but it recognizes a common law marriage legally established elsewhere.	No, but it recognizes a common law marriage legally established elsewhere.

Exhibit 25.18.1-1 (Cont. 6) (06-06-2017)

Comparison of State Law Differences in Community Property States

Question	Texas	Washington	Wisconsin*
3. Does the state recognize some form of domestic partnership as an alternative to marriage?	No.	Yes.	Yes.
4. Does a domestic partnership under state law create community property rights and obligations?	Not applicable.	Yes.	No.
5. When does the community property regime terminate (causing subsequently acquired assets or future income to no longer be characterized as community property)?	Change of domicile, death, decree of divorce or annulment.	Change of domicile, death or a separation that is intended to be permanent.	Change of domicile, death, decree of divorce or decree of legal separation or decree of separate maintenance.
6. How is post marital income generated from separate property (e.g., rents, dividends, interest) characterized?	Community property.	Separate property unless derived from a spouse's labor or community property funds. If so, an allocation must be made.	Marital (community) property.
7. How does the state characterize appreciation in the value of separate property? See paragraph 5 of IRM 25.18.4.16, <i>Mortgage Reduction and Other Tracing Issues</i> , for additional guidance.	Separate property. If community property funds or labor are used to acquire or improve the asset, an equitable lien is imposed against the spouse's separate real property, but the character of the separate property is not changed.	Separate property. If community property funds or labor are used to acquire or improve the asset, an equitable lien is imposed against a spouse's separate real property to secure the other spouse's right of reimbursement for community property improvements to that property, but the character of the separate property is not changed.	Market appreciation is individual (separate) property. The Wisconsin Courts have not specifically addressed whether appreciation due to the efforts of either spouse or application of marital (community) property is marital (community) property, but based on Wisconsin statutes, this seems likely.

Exhibit 25.18.1-1 (Cont. 7) (06-06-2017)**Comparison of State Law Differences in Community Property States**

Question	Texas	Washington	Wisconsin*
8. How does the state characterize property taken by spouses under a deed reflecting that the property is held in joint tenancy?	Depends on source of funds used to acquire property. Community property remains CP unless a written agreement to partition is first executed. Otherwise property is CP with a right of survivorship. Property purchased with separate funds may be held as joint tenants, with undivided 1/2 interest being separate property.	Community property unless there is a written agreement between the spouses which clearly evidences the spouses' intent to hold the property in joint tenancy rather than as CP. Holding title in joint tenancy is not sufficient by itself to overcome CP presumption.	Marital (community) property with right of survivorship, which in Wisconsin is called survivorship marital property, unless the deed was executed before 1/1/86. If the deed predates 1/1/86 it is a joint tenancy.
9. How does the state characterize property taken by spouses under a deed reflecting that the property is held in tenancy in common?	Community property, unless a written agreement to partition is executed. Property purchased with separate and community funds is owned as tenants in common.	Community property unless there is clear and convincing evidence establishing the spouses' intent to hold the property in tenancy in common. Title in tenancy in common is not sufficient by itself to overcome CP presumption.	Marital (community) property unless the deed was executed before 1/1/86. If the deed predates 1/1/86, it is a tenancy in common.
10. Does a deed taken in the name of one spouse as sole and separate property create separate property?	Only if the deed also contains a recital that the consideration was paid from separate funds of that spouse. If so, the property is then presumed to be separate.	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.	No. Title does not determine the character of the property. It is rebuttably presumed to be community property.
11. Does the state recognize pre or post marital property characterization agreements?	Yes.	Yes.	Yes.
12. What are the property characterization agreements called?	Premarital and marital or post nuptial agreements.	Separate property agreements.	Marital property agreements.

Exhibit 25.18.1-1 (Cont. 8) (06-06-2017)

Comparison of State Law Differences in Community Property States

Question	Texas	Washington	Wisconsin*
13. Are property characterizations agreements required to be in writing?	Agreements must be in writing.	An oral agreement will be recognized, but the claim of one will be strictly scrutinized.	Marital property agreements must be in writing.
14. Are property characterization agreements valid against creditors?	Yes, unless existing creditor's rights are intended to be defrauded by agreement.	Not against existing creditors.	If incurred after the determination date, no, unless creditor has actual notice of the agreement before the obligation is incurred. If incurred before the determination date, yes as to future income or property.
15. What property is available to satisfy a premarital federal tax obligation assessed against only one spouse?	All separate property of liable spouse, 100% of joint management community property, 100% of liable spouse's sole management community property, and 50% of nonliable spouse's sole management community property. If a homestead is involved, contact counsel.	50% of community property and all separate property of liable spouse.	1. All individual (separate) property of the debtor spouse, 2. Half of marital (community) property and 3. all marital (community) property that would have been debtor spouse's individual (separate) property but for marital property law or the marriage.
16. What property is available to satisfy a post marital federal tax obligation assessed against only one spouse?	All separate property of liable spouse, 100% of joint management community property, 100% of liable spouse's sole management community property, and 50% of nonliable spouse's sole management community property. If a homestead is involved, contact counsel.	100% of community property and all separate property of liable spouse.	Assuming the obligation is incurred in the interest of the marriage and family, 100% of marital (community) property and all separate property of liable spouse.

*Wisconsin law refers to community property as "marital" property and separate property as "individual" property.

