

How Other States Prevent the Costly Tax Loophole in the Millionaire's Tax

Massachusetts is the only state enabling such opportunity for tax avoidance

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The 2022 passage of the Fair Share surtax on income over \$1 million, also known as the “millionaire’s tax,” promises new revenue to support education and transportation investments across the Commonwealth. However, the new surtax also brings a new opportunity [for high-income residents to exploit a tax loophole](#). Under current Massachusetts law, the highest-income tax filers can give themselves a substantial tax cut by declaring themselves single on state taxes, even while reaping the benefits of filing jointly on their federal income taxes. By doing so, each tax filer receives a separate \$1 million exemption from the 4 percent income tax surcharge: a tax reduction worth up to \$40,000. As a result of this loophole, Massachusetts could lose out on as much as one-fifth of expected revenue from the new “millionaire’s tax.”

- **Problem:** Currently, Massachusetts is the only state that has a separate income tax rate for high-income filers without either designating lower tax rate thresholds for single filers than married filers or requiring federal joint filers to file jointly on their state taxes.
- **Solution:** Follow other states in requiring that Massachusetts taxpayers who file jointly on their federal taxes be consistent and file their state income taxes with the same joint status.

Other states show how Massachusetts can easily fix this problem.

Among the 41 states with general income taxes (income taxes that apply to more than just interest and dividends or capital gains), 29 require tax filers who file jointly on their federal income tax returns to also file jointly on their state income tax returns.

What about the other 12 states? Among the remaining 12 states that do have a general income tax but do not explicitly require consistent filing status, none enables the opportunity for federal joint filers to avoid state taxes as Massachusetts does. For these 12 states, the lack of rules requiring consistent filing status is largely irrelevant because the state has no tax brackets, or no tax brackets above a low-income threshold, or separate filing at the state level is discouraged by different tax brackets for single filers that apply higher tax rates at lower income levels than for joint filers

Other states with a “millionaire’s tax” strongly protect against the selective use of single filing status as a tax avoidance strategy. Most other states with top tax rates near 9 percent or higher on high incomes require federal joint filers to also file jointly on state taxes. California, New Jersey, New York, Minnesota, Oregon, and Vermont have such rules. Hawaii does not require state tax filers to be consistent with their federal status, but the separate rate schedules for separate and joint tax filers ensure that there is no advantage to separate filing. For instance, Hawaii tax filers pay an 11 percent income tax rate on all income over \$200,000 if they file separately and pay this rate on all income over \$400,000 if they file jointly. Splitting income into two does not reduce the amount of income subject to higher rates. The other millionaire tax states also apply higher tax rates at lower thresholds to single filers to varying degrees, thus reducing or eliminating the benefit of filing singly. Massachusetts alone in this group does not apply separate tax rate schedules for different filing statuses.

Wisconsin is the closest any state comes to Massachusetts in offering the opportunity for tax avoidance by using a single filing status inconsistent with federal status. In Wisconsin, a couple that file jointly on their federal taxes and each earn high incomes can gain some advantage by filing separately at the state level, although the benefit is limited by the separate rate schedules for single and married filers.¹ At most this strategy would enable \$4,808 in tax avoidance, less than one-eighth the maximum amount of tax avoidance enabled by the existence of the single filing loophole in Massachusetts.

Why now? Before the new surtax, income had been taxed at the same rate at all income levels. Only with the higher surtax rate on income over \$1 million does requiring consistency with federal tax return status prevent tax avoidance in Massachusetts.

Below is a summary table showing which states require filers to be consistent with their federal and state filing status (joint vs. separate). The table also includes states where such rules are not relevant because there is no income tax, no tax brackets, or separate single/joint brackets to discourage such tax avoidance strategies. Below the table are the rules for the 29 states that explicitly mandate that those who choose to file jointly at the federal level must also do so on their state taxes. Many states apply some limited exceptions when one or both members of a married couple does not reside in the state.

Only Massachusetts Enables Major Revenue Losses Due to a Separate Filing Tax Loophole

Other states with graduated taxes on high-income filers protect revenue with separate rate thresholds or require federal joint filers to also file jointly on state taxes

State	Income Tax?	Graduated rates?	Lower single filing thresholds?	State conformity for joint federal filers?
Alabama	Yes	flat above \$3,000 or \$6,000	Yes	No
Alaska	none	N/A	N/A	N/A
Arizona	Yes	flat	N/A	No
Arkansas	Yes	flat above \$8,500	No	No
California	Yes	Yes	Yes	Yes
Colorado	Yes	flat	N/A	Yes
Connecticut	Yes	Yes	Yes	Yes
Delaware	Yes	flat above \$60,000	No	No
Florida	none	N/A	N/A	N/A
Georgia	Yes	Yes	Yes	Yes
Hawaii	Yes	Yes	Yes	No
Idaho	Yes	flat	N/A	Yes
Illinois	Yes	flat	N/A	Yes
Indiana	Yes	flat	N/A	Yes
Iowa	Yes	Yes	Yes	No
Kansas	Yes	flat above \$30,000/ \$60,000	Yes	Yes
Kentucky	Yes	flat	N/A	No
Louisiana	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	Yes
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	No	No
Michigan	Yes	flat	N/A	Yes
Minnesota	Yes	Yes	Yes	Yes
Mississippi	Yes	flat	No	No
Missouri	Yes	flat above \$7,847	No	Yes
Montana	Yes	flat above \$21,600	No	Yes
Nebraska	Yes	Yes	Yes	Yes
Nevada	none	N/A	N/A	N/A
New Hampshire	none	N/A	N/A	N/A
New Jersey	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes	Yes
North Carolina	Yes	flat	N/A	Yes
North Dakota	Yes	No	Yes	Yes
Ohio	Yes	Yes	No	Yes
Oklahoma	Yes	flat above \$7,200/\$12,200	Yes	Yes
Oregon	Yes	Yes	Yes	Yes
Pennsylvania	Yes	flat	N/A	No
Rhode Island	Yes	Yes	No	Yes

State	Income Tax?	Graduated rates?	Lower single filing thresholds?	State conformity for joint federal filers?
South Carolina	Yes	flat over \$16,040	No	Yes
South Dakota	none	N/A	N/A	N/A
Tennessee	none	N/A	N/A	No
Texas	none	N/A	N/A	No
Utah	Yes	flat	N/A	Yes
Vermont	Yes	Yes	Yes	Yes
Virginia	Yes	flat over \$17,000	No	No
Washington	none	N/A	N/A	N/A
West Virginia	Yes	flat over \$60,000	No	Yes
Wisconsin	Yes	Yes	Yes	No
Wyoming	none	N/A	N/A	N/A

States with high top tax rates on very high incomes in **bold**

Rules Requiring Joint State Tax Filing for Federal Joint Filers in 29 States

CALIFORNIA

If a taxpayer and his or her spouse use the filing status “married filing joint” on federal return for the same tax year, they must use the same filing status on their California return. When a joint federal return is filed, if one spouse was a California resident for the entire year and the other spouse was a nonresident for any part of the year, a joint nonresident return must be filed for the year, unless: • the nonresident spouse was a nonresident for the entire taxable year and had no California-source income for the year; or • either spouse was an active member of the U.S. Armed Forces. Cal. Rev. & Tax. Code § 18521(a)(3), (c).

Except for taxpayers described in the two bulleted paragraphs above, for any taxable year with respect to which a joint return has been filed, a separate return shall not be made by either spouse after the period for either to file a separate return has expired. Cal. Rev. & Tax. Code § 18521(d). A joint return may not be filed if the husband and wife have different taxable years, unless the difference is due to the death of either or both spouses. Cal. Rev. & Tax. Code § 18521(e), as amended by 2016 Cal. S.B. 1005, effective July 1, 2016. For special rules for filing a joint return for a year after separate returns have been filed for that year, see Cal. Rev. & Tax. Code §§ 18522 through 18531.

Taxpayers filing as a registered domestic partner should check the box next to the question in the Filing Status section of the tax return that asks, “If your California filing status is different from your federal status, check the box here.” California Tax Publication 737.

COLORADO

If a taxpayer and his or her spouse use the filing status “Married Filing Joint” on federal return for the same tax year, they must use the same filing status on their Colorado return. 39 Colo. Code Regs. § 22-104(1.7); Colorado Form 104: Instructions for Individual Income Tax Return.

CONNECTICUT

If a taxpayer and his or her spouse use the filing status “married filing joint” on federal return for the same tax year, they must use the same filing status on their Connecticut return. Conn. Gen. Stat. § 12-702(c); Conn. Agencies Regs. § 12-702(c)(1)-1. This mandatory conformity applies to both residents and nonresidents, with the following exceptions:• if spouses have different residential statuses, the couple must file separately, unless both elect to file jointly as if they were both residents for the entire year; Conn. Gen. Stat. § 12-702(c); Conn. Agencies Regs. § 12-702(c)(1)-1. and• if only one of two nonresident spouses has income from Connecticut sources, only that spouse is required to file a Connecticut return, but the couple may elect to file a joint return, however, this exposes both to joint and several liability for the amount due. Conn. Gen. Stat. § 12-702(c)(1)(A); Conn. Agencies Regs. § 12-702(c)(1)-1(c).

When both spouses are part-year residents of Connecticut and have the same period of residency, they may choose married filing jointly or married filing separately as their Connecticut income tax filing status. When one spouse is a nonresident alien and the other is a citizen or resident of the United States, each spouse who is required to file a Connecticut return must file as married filing jointly if:• an election is made by the nonresident alien and his or her spouse to file a joint federal return;• a married filing a joint return is filed for federal income tax purposes; and• the spouses are otherwise required or permitted to file a joint Connecticut return. See Connecticut Form CT-1040: Instructions for Individual Income Tax Return.

GEORGIA

If a taxpayer and his or her spouse use the filing status “married filing joint” on federal return for the same tax year, they must use the same filing status on their Georgia return. However, if either of the taxpayer is a resident and the other is a nonresident (without any Georgia-source income), they may file a joint or a separate Georgia return. Georgia Form 500: Instructions for Individual Income Tax Return.

IDAHO

"If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Idaho return. Idaho Code § 63-3031.

A taxpayer and his or her spouse cannot file a joint return in the following situations:• where either the husband or the wife is a nonresident alien of the United States, unless they elect to file a joint return for federal purposes.• if husband and wife have different taxable years, unless the difference in taxable years is the result of the death of either or both of them; except that if either spouse changes his annual accounting period during the taxable year, or if the surviving spouse remarries within the taxable year no such return shall be filed. Idaho Code § 63-3031.

ILLINOIS

If a married couple files a joint federal income tax return for a taxable year ending on or after Dec. 31, 2009, the couple must file a joint Illinois return unless they timely elect to file separate returns for such taxable year. 35 ILCS 5/502(c)(1)(B).

If making an election to file separate returns, which is irrevocable, the couple must do so on or before the due date of the return. 35 ILCS 5/502(c)(1)(B).

Effective Jan. 1, 2021, **spouses who file a joint federal income tax return for a taxable year ending before Dec. 31, 2009 or ending on or after Dec. 31, 2021, must also file a joint Illinois return.** The option to make an election to file separately will be foreclosed to spouses for taxable years ending on or after Dec. 31, 2021. 35 ILCS 5/502(c)(1), as amended by 2019 Ill. S.B. 687, effective upon approval of the Joint Resolution Constitutional Amendment No. 1 of the 101st General Assembly by the voters of Illinois.

INDIANA

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on their federal return for the same tax year, they must use the same filing status on their Indiana return. Ind. Code Ann. § 6-3-4-2; Indiana Form IT-40: Instructions for Indiana Income Tax Return.

KANSAS

The filing status of a married couple for Kansas income tax purposes is the same as the married couple's federal filing status. Kan. Stat. Ann. § 79-32,121.

If a taxpayer uses the filing status “married filing a separate return” on federal return for the same tax year, he or she must use the same filing status on the Kansas return. Kan. Stat. Ann. § 79-32,115.

LOUISIANA

If a taxpayer and spouse use the filing status “married filing a joint return” on federal return for the same tax year, the taxpayers must use the same filing status on their Louisiana return.

Louisiana Form IT-540, Instructions to Individual Income Tax Return.

MAINE

If a taxpayer (including part-year resident, nonresident or safe harbor resident) and spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Maine return. They must complete Form 1040ME and Schedule NR (if not all income is taxable to Maine). If one spouse is a full-year Maine resident and the other spouse is not, and a joint federal return was filed, the taxpayers may file a joint Maine return as if both were full-year Maine residents; or each taxpayer can file a Maine return as a single individual using Form 1040ME with Schedule NRH. If the nonresident or safe harbor resident spouse has no Maine-source income, then no return is required. Me. Rev. Stat Ann. tit. 36, § 5221; Maine Rev. Svcs., Guidance Document for Individual Income Tax Schedule NRH for Part-Year Residents/Nonresidents/“Safe Harbor” Residents.

MARYLAND

A taxpayer can use the filing status “married filing a separate return” if he or she is married and has:

- filed the same filing status on federal return;
- filed the same filing status on federal return but had different tax years;
- filed the same filing status on federal return but were domiciled in different counties, cities, towns, or taxing areas on the last of the tax year;
- filed the same filing status on federal return but were domiciled in different states on the last day of the tax year.

Md. Code Ann., Tax-Gen. § 10-807(a); Md. Regs. Code §03.04.02.02(C); Md. Regs. Code §03.04.02.03(C); Maryland Form 502: Instructions to Resident Income Tax Return.

MICHIGAN

A taxpayer not using the filing status of a joint federal return may use the filing status of “married filing a separate return” on their Michigan return depending on their marital status at the end of the tax year. Michigan Form MI-1040, Instructions to Individual Income Tax Return.

MINNESOTA

Generally, if a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Minnesota return. Minn. Stat. § 289A.08(6), as amended by 2019 Minn. H.F. 5, effective May 31, 2019 (updating gender-specific language for spouses); Minnesota Dept. of Rev., Filing Status for Individuals. Minnesota individuals are married for individual income tax purposes according to I.R.C. § 7703.

A nonresident alien who used any of the “married” filing statuses on their federal income tax return must use the “married filing separately” filing status on their Minnesota income tax return. This requirement applies even if the nonresident alien is allowed to claim an exemption for their spouse. Minnesota Individual Income Tax Fact Sheet 16.

MISSOURI

If a taxpayer files a separate federal return from his or her spouse, or use the filing status of head of household or qualifying widow(er) with dependent child, and did not claim his or her spouse as an exemption on their respective federal returns for the same tax year, he or she must use the filing status “married filing a separate return” on the Missouri return. Missouri Form MO-1040: Instructions to Individual Income Tax Return.

A taxpayer can use the filing status “married filing a separate return (spouse not filing)” on the Missouri return if a taxpayer:• files a separate federal return from his or her spouse, or• uses the filing status of head of household or qualifying widow(er) with dependent child, and• did not claim his or her spouse as an exemption on their respective federal returns for the same tax year, or• his or her spouse has no income and has claimed his or her spouse as an exemption on federal return for the same tax year. Missouri Form MO-1040: Instructions to Individual Income Tax Return; Missouri Form MO-1040A: Individual Income Tax Return Single/Married (One Income).

If a taxpayer uses the filing status “head of household” on federal return for the same tax year, he or she must use the same filing status on the Missouri return. Missouri Form MO-1040: Instructions to Individual Income Tax Return.

If a taxpayer uses the filing status “single” on federal return for the same tax year, he or she must use the same filing status on the Missouri return. Missouri Form MO-1040: Instructions to Individual Income Tax Return; Missouri Form MO-1040A: Individual Income Tax Return Single/Married (One Income).

MONTANA

Married couples who file their Montana return claiming an itemized deduction that is allowed only to a specific filing status under the Internal Revenue Code or regulations must use the federally specified filing status on the Montana return. Mont. Admin. R. 42.15.524.

Effective for tax years beginning on and after Jan. 1, 2024, the determination of marital status, dependent status, status as an association, partnership, or individual, and any other status must be made as provided in the Internal Revenue Code. Further, the status that a taxpayer claims, elects, or is determined to have for federal income tax purposes conclusively determines the status of that individual for Montana income tax purposes. Mont. Code Ann. § 15-30-2113, as amended by 2021 Mont. S.B. 399, effective Jan. 1, 2024.

Also effective for tax years beginning on and after Jan. 1, 2024, a joint Montana individual income tax return must be filed for any tax year for which a joint federal income tax return is filed unless one of the individuals is a nonresident for any part of the tax year. Mont. Code Ann. § 15-30-2113(3), as amended by 2021 Mont. S.B. 399, effective Jan. 1, 2024.

NEBRASKA

In Nebraska, the filing status of married individuals is determined according to the filing status chosen on federal returns. Married individuals that file separate or joint ON federal income tax returns must file in the same manner for Nebraska income tax purposes. Neb. Rev. Stat. § 77-2732(1); Neb. Rev. Stat. § 77-2732(2).

However, where one spouse is a Nebraska resident and the other spouse is a nonresident or partial-year resident of Nebraska, a taxpayer and his or her spouse may elect to file either as a married filing a joint Nebraska return (treating both spouses as residents) or married filing a separate Nebraska returns. Neb. Rev. Stat. § 77-2732(3).

NEW JERSEY

If a taxpayer and his or her spouse are married and file a joint federal return for the same tax year, they must use the filing status “married/CU couple, filing joint return” on their New Jersey return. If such taxpayer is a civil union couple and files a separate federal return from his or her partner, then the filing status of such taxpayer for New Jersey return may or may not match federal return. New Jersey Technical Bulletin TB-GIT-4.

In New Jersey, when one spouse is a resident and the other spouse is a nonresident for the entire tax year, and both spouses had income from New Jersey sources, the spouses may file separate returns or they may elect to file a joint return. If the couple files a joint return, they are taxed as if both spouses were New Jersey residents and the spouses are jointly and severally liable for the tax. N.J. Rev. Stat. § 54A:8-3.1(d). When neither spouse is a New Jersey resident and only one spouse earns, receives, or acquires income from sources within New Jersey, the couple is entitled to file separately or they may elect to file a joint return, including the couple's joint income in the denominator of the apportionment formula, to determine that portion of their income as fairly and equitably represents income derived from sources within New Jersey. N.J. Rev. Stat. § 54A:8-3.1(f).

NEW MEXICO

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status. N.M. Stat. Ann. § 7-2-2(F).

NEW YORK

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on their federal return, they must use the same filing status on their New York State return for that tax year. N.Y. Tax Law § 651(b); N.Y. Comp. Codes R. & Regs. tit. 20, § 151.10(a); New York Form IT-201, Instructions to Individual Income Tax Return. See also New York, Publication 88, General Income Tax Information for New York State Nonresidents and Part-Year Residents.

Generally, the filing status of a husband and wife for New York purposes must be the same as their filing status (separate or joint) for federal tax purposes. N.Y. Tax Law § 651(b); N.Y. Comp. Codes R. & Regs. tit. 20, § 151.10(a); see also New York, Publication 88, General Income Tax Information for New York State Nonresidents and Part-Year Residents. This mandatory conformity applies to both residents and nonresidents, with following exceptions: • if one spouse is a New York state resident for the entire year and the other is a part-year or a nonresident for the entire year, the couple must file separate New York returns, unless both elect to file a joint New York return as if they were both residents for the entire year; N.Y. Tax Law § 651(b)(4); N.Y. Comp. Codes R. & Regs. tit. 20, § 151.10(c)(1). • a husband and wife who have a change of residence status must file separate returns if they change residence at different times; N.Y. Tax Law § 651(b)(4); N.Y. Comp. Codes R. & Regs. tit. 20, § 154.2. • if a taxpayer is unable to file a joint New York return because of the address or whereabouts of the taxpayer's spouse is unknown; New York Form IT-201, Instructions to Individual Income Tax Return. and • if a taxpayer's spouse refuses to sign a joint New York return. New York Form IT-201, Instructions to Individual Income Tax Return.

If neither spouse files a federal return, the couple may elect to file jointly or separately in New York. N.Y. Tax Law § 651(b)(3); N.Y. Comp. Codes R. & Regs. tit. 20, § 151.10(b)(1).

NORTH CAROLINA

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their North Carolina return. N.C. Gen. Stat. § 105-153.7(a); North Carolina Form D-400, Instructions to Individual Income Tax Return

If a joint federal return has been filed and taxpayer's spouse is a nonresident of North Carolina with no North Carolina taxable income, then such taxpayer may file a married filing a joint return or a married filing a separate return. If a taxpayer files a joint return, such taxpayer cannot choose to file separate returns for that tax year after the due date of the return. North Carolina Form D-400, Instructions to Individual Income Tax Return.

NORTH DAKOTA

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their North Dakota return. N.D. Cent. Code § 57-38-30.3; North Dakota Form ND-1, Instructions to Individual Income Tax Return.

OHIO

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Ohio return. Even if they are nonresidents, they must file a joint Ohio return, and can claim nonresident credit for the income neither earned nor received in Ohio. Ohio Form IT-1040: Instructions for Filing Original and Amended Individual Income Tax Returns.

OKLAHOMA

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Oklahoma return. Okla. Admin. Code § 710:50-3-35.

However, there is an exception applicable to married taxpayers who file a joint federal return, where one spouse is a full-year Oklahoma resident (either civilian or military), and the other is a full-year nonresident civilian (nonmilitary). In this case, the taxpayer and his or her spouse will file a joint Oklahoma return if they elect to file as if both the taxpayers are Oklahoma residents. Okla. Admin. Code § 710:50-3-40.

If an Oklahoma resident (either civilian or military) files a joint federal return with a nonresident military spouse, they shall use the same filing status as on federal return. If they file a joint federal return, they shall complete Form 511NR and include in the Oklahoma amount column, all Oklahoma source income of both the resident and the nonresident. Okla. Admin. Code § 710:50-3-40.

OREGON

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Oregon return. Or. Admin. R. 150-316-0150; Oregon Publication OR-17.

However, there is an exception to the taxpayers required to file joint Oregon return, where the taxpayers have filed a joint federal return and they has a different residency status, then such taxpayers may file a joint Oregon return a separate Oregon returns. Or. Admin. R. 150-316-0150.

RHODE ISLAND

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their Rhode Island return. They will be jointly and severally liable for all tax liabilities in Rhode Island. R.I. Gen. Laws § 44-30-51(b); R.I. Gen. Laws § 44-30-11(b).

If either taxpayer or taxpayer's spouse is a resident and the other is a nonresident, they both can elect to file joint Rhode Island return as if they both were residents. R.I. Gen. Laws § 44-30-31; R.I. Gen. Laws § 44-30-51(b).

SOUTH CAROLINA

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their South Carolina return. S.C. Code Ann. § 12-6-5000(B).

If both husband and wife are nonresidents, or if the husband or wife is a resident and the other is a nonresident, and if their federal taxable income is determined on a joint federal return, their South Carolina taxable income must be reported and taxed on the basis of a joint South Carolina return, except where the nonresident's residence state does not allow a resident of South Carolina to file a joint return with a spouse in such state, then such taxpayer will file a separate South Carolina return. S.C. Code Ann. § 12-6-5000(C)(1).

UTAH

Married taxpayers may file separately or jointly, but they must use the same filing status that they used on their federal return. Utah Code Ann. § 59-10-503(1); Utah Code Ann. § 59-10-119(1); Utah Code Ann. § 59-10-119(2). Utah follows a general rule that separate state returns are required if one spouse is a Utah resident and the other is a nonresident. Utah Code Ann. § 59-10-503(2); Utah Code Ann. § 59-10-119(3). See also Utah Admin. Code § R865-91-6 (providing rules for spouses who file a joint federal return but separate state returns because one spouse is a Utah nonresident). However, an individual that filed a federal return as married filing jointly is considered a domiciled in Utah, and thus a Utah resident, if the individual's spouse is domiciled in Utah. Utah Code Ann. § 59-10-136(5); Utah Tax Comn., Filing Status. Taxpayers can elect to file a joint state tax return and treat both spouses as Utah residents. Utah Code Ann. § 59-10-503(2); Utah Code Ann. § 59-10-119(3)(b). Taxpayers may not make this election in the year in which one spouse dies. Utah Admin. Code § R865-91-19.

VERMONT

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on the Vermont return. Vt. Stat. Ann. tit. 32, § 5822(b)(1); Vermont Form IN-111: Income Tax Return, Instructions, and Schedules.

However, there is an exception to the conformity with the federal filing status in case of married individuals where only one of married taxpayers has a sufficient nexus with Vermont, i.e., one spouse is a nonresident of Vermont with no Vermont income, and the other spouse is a full-year resident of Vermont. Vermont Technical Bulletin TB-55.

WEST VIRGINIA

If a taxpayer and his or her spouse use the filing status “married filing a joint return” on federal return for the same tax year, they must use the same filing status on their West Virginia return. W. Va. Code § 11-21-22a(e)(2).

Endnote

¹ For two married Wisconsin residents splitting their income and filing taxes separately, each could pay rates of 5.3 percent and less on a total of \$304,170 of income, a joint total of \$608,340 before paying the higher 7.65 percent rate that would apply to joint filers on all income over \$405,550.