

CHAPTER 8038
DEPARTMENT OF REVENUE
RETURNS

8038.0100 INCOME TAX RETURNS FOR HUSBAND
AND WIFE.

8038.2000 FORM OF RETURN.

8038.0100 INCOME TAX RETURNS FOR HUSBAND AND WIFE.

Subpart 1. **Definition of married.** The determination of whether an individual is married shall be made as of the close of the taxable year; except that if a surviving spouse does not remarry during the taxable year such determination shall be made as of the date of death. An individual shall not be considered to be married if the marriage has been dissolved or if they are legally separated or if they do not live together, unless the spouse is only temporarily away from home. No joint or combined return can be made if the husband and wife have different taxable years. In the case where one spouse dies, a joint or combined return may be filed if the surviving spouse has not remarried before the close of their taxable year.

Subp. 2. **Types of filing.** A husband and wife may elect to file:

- A. a single return jointly (joint return);
- B. separate returns; or
- C. separately on one return (combined return).

Subp. 3. **Determination of income and deductions on separate and combined forms.** If a husband and wife elect to each file a separate income tax return, or if they elect to file a combined return, each spouse must report that spouse's own federal adjusted gross income. On separate or combined returns, each spouse may claim only those deductions and credits that spouse is separately entitled to claim except that on separate or combined returns the married credit, or on a combined return, itemized deductions, may be claimed in full by one spouse or may be divided between them in any manner. On separate or combined returns, deductions for which each spouse is equally liable and which are paid from a joint account may be considered as being paid by either spouse. Income and losses from jointly held property must be divided based on percentage of ownership in the property.

Income and losses from a partnership which operates a business must be reported on the basis of the partnership agreement. Income and losses from a business that is not governed by a partnership agreement must be reported on the basis of participation in and contributions to the partnership or joint business venture and this is determined according to the:

- A. percentage of contribution to the capital assets;
- B. percentage of labor performed; and
- C. percentage of participation in management decisions.

Interest income from a joint bank account or jointly held bonds and dividends on jointly held stocks shall be divided equally unless it can be shown that a different allocation is more appropriate. A gain or a loss from the sale or exchange of a capital asset shall be reported by the spouse owning the capital asset. A gain or a loss from the sale or exchange of a capital asset owned jointly by the spouses shall be divided equally unless it can be shown that a different allocation is more appropriate.

Subp. 4. **Community property.** If both husband and wife are residents of a community property state or nation, it is permissible for them to split their income and losses based on the law of their residence. Otherwise, it is not permissible for a husband and wife to split their income and losses or to assign it to the other spouse unless there is a business relationship or unless it is required under the provisions of the Internal Revenue Code.

Subp. 5. **Liability of each spouse.** The liability of each spouse on a separate return is limited to the tax liability on that return. If a combined return is filed and if later an adjustment is made to an item of income, or modification to income, which is attributable solely to one spouse, only that spouse is liable for any additional tax.

Subp. 6. **Amended returns, refunds when no longer married.** Where a husband and wife filed joint or combined returns and subsequently are no longer married within the definition of subpart 1, an amended return, claim for refund, or net operating loss or farm loss carryback claim filed by one of the former spouses shall be allowed if the item is attributable to that spouse to the extent of that spouse's tax liability. Where a joint return was filed, the spouse's tax liability shall be determined according to the following formula: to that spouse to the extent of that spouse's tax liability. Where a joint return was filed, the spouse's tax liability shall be determined according to the following formula:

$$\frac{\text{Spouse's recomputed separate tax liability}}{\text{Both spouses' recomputed separate tax liability}} \times \text{Recomputed joint tax liability} = \text{Spouse's share of joint tax liability}$$

The spouse's share of the joint liability is then subtracted from the spouse's contributions through withholding or estimated tax or other payments which were made to pay that joint liability. The amount of the refund to be made to the spouse cannot exceed the amount of the joint overpayment shown on the amended return or claim for refund. Where a combined return was filed, the spouse's tax liability shall be determined as if an amended combined return was filed.

When an amended joint or combined return is filed, items paid out of joint funds of the husband and wife shall be divided between the spouses to provide the greatest tax benefit to both spouses unless both spouses had previously elected another method. Joint estimated tax declarations shall be divided according to the provisions of part 8093.0200. Where credits are not paid out of joint funds, the credit shall belong to the spouse who made the payment on which the credit is based. The homemaker credit and the married credit may be divided equally between the spouses. The homemaker credit and the dependent care credit are not allowed to be claimed on separate returns filed by a married couple.

When an amended joint or combined return or a claim for refund is filed under this part, no refund will be given to a spouse unless an amended return or claim for refund is filed by that spouse. No additional tax liability may be created and assessed against a spouse unless an amended return is filed by that spouse or there is an audit done by the department.

Subp. 7. **Close of taxable year determines status.** Persons who become married during the taxable year may file a joint, combined, or a separate return if they are married and living together at the close of the taxable year. Married persons who were legally separated or living apart during any part of the taxable year may file a joint, combined, or a separate return if they were living together at the close of the taxable year.

Subp. 8. **Signing of returns.** Except as provided by law in the case of a death of a spouse, a joint or combined return must be signed by both the husband and wife unless the return is made by an agent of both the husband and wife, or one spouse signs as the agent of the other. Any spouse who makes a joint or a combined return through an agent assumes the responsibility for making the return and incurs liability for the penalty provided for erroneous, false, or fraudulent returns. One spouse cannot sign as the agent of the other unless the return is accompanied by a power of attorney authorizing such action by the spouse not signing the return. Other agents must also submit their power of attorney with the return.

Subp. 9. **Changing method of filing.** The election of a husband and wife to file joint, combined, or separate returns may be changed by the husband and wife if they both sign and file an amended return reflecting the change of election to file a joint or combined return, or each spouse signs and files an amended return reflecting the change of election to file a separate return. The change in the election may be made at any time within the period provided for the assessment of additional taxes.

Subp. 10. **Joint federal returns; effect on state return.** When a husband and wife file a joint federal income tax return and file a separate or combined Minnesota income tax return, they shall determine their Minnesota gross income separately as if their federal adjusted gross income had been determined separately. Any income exclusion or adjustment to income (such as the disability income exclusion), allowed in arriving at federal adjusted gross income which requires them to file a joint federal return will be allowed in determining Minnesota gross income even though they elect to file separate or combined returns for Minnesota. However, if a deduction allowed or a loss limitation provided in computing federal adjusted gross income (such as the capital loss limitation) is reduced by one half if separate federal returns had been filed, the Minnesota gross income of each spouse reflected on a separate or combined Minnesota return will be computed as though separate federal returns had been filed including the reduced deduction or loss limitation. As a result a spouse may have a different capital loss carryover for Minnesota than was allowed on the federal return.

Statutory Authority: *MS s 290.52*

8038.2000 FORM OF RETURN.

Income tax forms shall be prescribed by the commissioner and shall be executed and filed in accordance with these regulations and the instructions on the form or issued therewith. Copies of the prescribed return forms will so far as possible be furnished to taxpayers. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to the taxpayer. Taxpayers not supplied with the proper forms should make application therefor to the Income Tax Division of the Department of Revenue, Saint Paul, Minnesota, in ample time to have their returns prepared, sworn to, and filed on or before the due date. Each taxpayer should carefully prepare a return so as to fully and clearly set forth the data called for. Only returns which have been so prepared will be accepted as meeting the requirements of this act and will start the period of limitations in favor of the taxpayer.

Since Minnesota Statutes, section 290.01, subdivision 19, provides that the term "net income" shall mean gross income as defined in Minnesota Statutes, sections 290.01, subdivision 20, and 290.08, less deductions allowed by Minnesota Statutes, section 290.09, and since Minnesota Statutes, section 290.01, subdivision 22, provides that the term "taxable net income" shall mean net income assignable to this state, the return must reflect total gross income, total deductions, and the resulting net income, and then the allocation or assignment of the net income or its component gross income and deductions, in accordance with the assignment of income in Minnesota Statutes, sections 290.17, 290.18, 290.19 and 290.20. For example, a taxpayer filing a return on the separate accounting method must include as a part of the return, gross income and deductions for the corporation in its entirety and balance sheets of the corporation's entire assets, together with the appropriate surplus reconciliation, as well as gross income and deductions assigned as Minnesota items in the determination of Minnesota taxable net income.

An individual taxpayer having income from a trade or business carried on partly within and partly without this state must reflect in the return total gross income and deductions, and the resulting net income, and then the allocation or assignment of the net income or its component gross income and deductions, in accordance with the assignment of income in Minnesota Statutes, sections 290.17, 290.18, 290.19 and 290.20.

The same rule applies with respect to partnership and fiduciary returns.

Statutory Authority: *MS s 290.52*

History: *17 SR 1279*

8038.3000 [Repealed, 26 SR 435]