

**CHAPTER 8038
DEPARTMENT OF REVENUE
INCOME AND FRANCHISE TAXES
RETURNS**

8038.0100 INCOME TAX RETURNS FOR HUSBAND AND WIFE.

8038.0100 INCOME TAX RETURNS FOR HUSBAND AND WIFE.

Subpart 1. [Repealed, 27 SR 1664]

Subp. 2. [Repealed, 27 SR 1664]

Subp. 3. [Repealed, 27 SR 1664]

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 it is required under the provisions of the Internal Revenue Code.

Subp. 5. [Repealed 27 SR 1664]

Subp. 6. **Amended returns, refunds when no longer married.** Where a husband and wife filed a joint return and subsequently are no longer married, an amended return or claim for refund 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:

Spouse's recomputed separate tax liability	X	Recomputed joint tax liability	=	Spouse's share of joint tax liability
Both spouse's recomputed separate 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 credits which were used 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.

Joint estimated tax payments 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. Where credits are attributable to, earned by, or paid to both spouses jointly, or paid from joint funds of both spouses, they shall be divided equally between the spouses.

When an amended joint 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 an order of assessment is issued by the department.

Subp. 7. [Repealed, 27 SR 1664]

Subp. 8. Signing of returns.

A. A joint 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 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.

B. Notwithstanding item A, if one spouse is unable to sign the return because of disease or injury, the other spouse may sign the incapacitated spouse's name to the return with the oral consent of the incapacitated spouse. Any return signed under this exception must contain a statement indicating the reason for the inability of the spouse who is incapacitated to sign the return and that the incapacitated person consented to the signing.

Subp. 9. [Repealed, 27 SR 1664]

Subp. 10. [Repealed, 27 SR 1664]

Statutory Authority: *MS s 270.06; 270C.06; 290.52*

History: *27 SR 1664; L 2005 c 151 art 1 s 114*

Published Electronically: *November 14, 2006*

8038.2000 [Repealed, 27 SR 1664]

Published Electronically: *November 14, 2006*

8038.3000 [Repealed, 26 SR 435]

Published Electronically: *November 14, 2006*