



## Robert W. Wood

THE TAX LAWYER

---

Jan. 14 2011 – 12:07 pm

### Consider Tax Filing Status Carefully

You might think your filing status is about the most pedestrian detail on your tax return. Who thinks about which box to check at the top of your return, saying single, married filing joint, or married filing separately? Most of us don't.

If we're married, we file, jointly; if not, we file single. And head of household is a term most don't understand (see point 6 below to see if you qualify). But for many who haven't thought about it, now's a good time—before the panic of the filing season descends. Your filing status is used to determine standard deductions, eligibility for certain credits and deductions, and even the amount of tax.

**Five Choices.** There are [five choices](#): Single, Married Filing Jointly, Married Filing Separately, Head of Household and Qualifying Widow(er) with Dependent Child.

In IRS [Tax Tip 2011-09](#), the IRS listed pointers about these filing status options. Here are some IRS thoughts and some from my tax lawyer's perspective:

- 1. Last day of the year.** This one is easy. Your marital status on the last day of the year determines your marital status for the entire year. So to be **eligible** to file a married filing joint return, you must be married on December 31st.

**2. Legal Separation.** If you are legally separated under state law you can file single status. Of course, if you are legally divorced you can also file single. But if you are still married on December 31st and **not** legally separated, you'll need to file married (presumably filing separate), not single.

**3. Doubling Up.** If more than one filing status applies, you can pick the one giving you the lowest tax. For most people, if you and your spouse pay lower taxes by filing married filing joint, you should. But sometimes that may not make sense.

**4. Innocent Spouse?** Keep in mind that by filing jointly with your spouse, each of you is 100% liable, regardless of who had the income. If you later learn your spouse had unreported gambling winnings, watch out. See [IRS Tougher On "Innocent" Spouse Relief](#) and [When An Innocent Spouse Seeks Tax Relief](#). If you're worried about liabilities between spouses and are concerned about your spouse's tax debts, think carefully and get some advice. See [Innocent Spouse Tax Relief Eligibility Explorer](#).

If you file jointly with your spouse and are later caught in a tax debt pickle, you may be able to claim innocent spouse relief. See [More Timing Disputes Over Innocent Spouse Relief](#). However, you might avoid these issues entirely by filing married filing separate. See [Married Filing Jointly, or Separate? How to Decide](#).

**5. Death of Spouse.** If your spouse died during the year and you did not remarry during that year, usually you may still file a joint return with that spouse for the year of death.

**6. Head of Household?** This status generally applies to taxpayers who are unmarried. You must also have paid more than half the cost of maintaining a home for you and a qualifying person.

**7. Qualifying Widow(er) with Dependent Child.** You may be able to choose this as your filing status for 2010 if your spouse died during 2008 or 2009, you have a dependent child and you meet certain other conditions.

**Get More:** Most people don't devote any thought to their filing status, and that can be a mistake. To learn more, check out IRS [Publication 501](#), Exemptions, Standard Deduction, and Filing Information.

You can also use the [Interactive Tax Assistant](#) on the IRS website to determine your filing status. The ITA tool takes you through a series of questions and provides you with responses.

*Robert W. Wood practices law with [Wood & Porter](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009, [Tax Institute](#)), he can be reached at [wood@woodporter.com](mailto:wood@woodporter.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*