

(k) *Anti-abuse provision.* If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of section 62(c) and this section, all payments made under the arrangement will be treated as made under a nonaccountable plan.

(l) *Cross references.* For employment tax regulations relating to reimbursement and expense allowance arrangements, see §§ 31.3121(a)-3, 31.3231(e)-(3), 31.3306(b)-2, and 31.3401(a)-4, which generally apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. For reporting requirements, see § 1.6041-3(i), which generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1989 with respect to expenses paid or incurred on or after January 1, 1989.

(m) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee in taxable years of the employee beginning on or after January 1, 1989, with respect to expenses paid or incurred in taxable years beginning on or after January 1, 1989. Paragraph (h) of this section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. Paragraphs (d)(3)(ii) and (h)(2)(i)(B) of this section apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991 with respect to expenses paid or incurred on or after January 1, 1991. Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred after December 31, 1997.

[T.D. 8324, 55 FR 51691, Dec. 17, 1990; 56 FR 8911, Mar. 4, 1991, as amended by T.D. 8451, 57 FR 57668, Dec. 7, 1992; T.D. 8666, 61 FR 27005, May 30, 1996; T.D. 8784, 63 FR 52600, Oct. 1, 1998; T.D. 8864, 65 FR 4122, Jan. 26, 2000; T.D. 9064, 68 FR 39011, July 1, 2003]

§ 1.63-1 Change of treatment with respect to the zero bracket amount and itemized deductions.

(a) *In general.* An individual who files a return on which the individual itemizes deductions in accordance with section 63(g) may later make a change of treatment by recomputing taxable income for the taxable year to which that return relates without itemizing deductions. Similarly, an individual who files a return on which the individual computes taxable income without itemizing deductions may later make a change of treatment by itemizing deductions in accordance with section 63(g) in recomputing taxable income for the taxable year to which that return relates.

(b) *No extension of time for claiming credit or refund.* A change of treatment described in paragraph (a) of this section does not extend the period of time prescribed in section 6511 within which the taxpayer may make a claim for credit or refund of tax.

(c) *Special requirements if spouse filed separate return—(1) Requirements.* If the spouse of the taxpayer filed a separate return for a taxable year corresponding to the taxable year of the taxpayer, the taxpayer may not make a change of treatment described in paragraph (a) of this section for that year unless—

(i) The spouse makes a change of treatment on the separate return consistent with the change of treatment sought by the taxpayer; and

(ii) The taxpayer and the taxpayer's spouse file a consent in writing to the assessment of any deficiency of either spouse to the extent attributable to the change of treatment, even though the assessment of the deficiency would otherwise be prevented by the operation of any law or rule of law. The consent must be filed with the district director for the district in which the taxpayer applies for the change of treatment, and the period during which a deficiency may be assessed shall be established by agreement of the spouses and the district director.

(2) *Corresponding taxable year.* A taxable year of one spouse corresponds to a taxable year of the other spouse if both taxable years end in the same calendar year. If the taxable year of one spouse ends with death, however, the

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corresponding taxable year of the surviving spouse is that in which the death occurs.

(d) *Inapplicable if tax liability has been compromised.* The taxpayer may not make a change of treatment described in paragraph (a) of this section for any taxable year if—

(1) The tax liability of the taxpayer for the taxable year has been compromised under section 7122; or

(2) The tax liability of the taxpayer's spouse for a taxable year corresponding to the taxable year of the taxpayer has been compromised under section 7122. See paragraph (c)(2) of this section for the determination of a corresponding taxable year.

(e) *Effective date.* This section applies to taxable years beginning after 1976.

[T.D. 7585, 44 FR 1105, Jan. 4, 1979]

§ 1.63-2 Cross reference.

For rules with respect to charitable contribution deductions for nonitemizing taxpayers, see section 63 (b)(1)(C) and (i) and section 170(i) of the Internal Revenue Code of 1954.

(Secs. 170(a)(1) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 58, 26 U.S.C. 170(a)(1); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 8002, 49 FR 50666, Dec. 31, 1984]

§ 1.66-1 Treatment of community income.

(a) *In general.* Married individuals domiciled in a community property state who do not elect to file a joint individual Federal income tax return under section 6013 generally must report half of the total community income earned by the spouses during the taxable year except at times when one of the following exceptions applies:

(1) The spouses live apart and meet the qualifications of § 1.66-2.

(2) The Secretary denies a spouse the Federal income tax benefits resulting from community property law under § 1.66-3, because that spouse acted as if solely entitled to the income and failed to notify his or her spouse of the nature and amount of the income prior to the due date for the filing of his or her spouse's return.

(3) A requesting spouse qualifies for traditional relief from the Federal income tax liability resulting from the

operation of community property law under § 1.66-4(a).

(4) A requesting spouse qualifies for equitable relief from the Federal income tax liability resulting from the operation of community property law under § 1.66-4(b).

(b) *Applicability.* (1) The rules of this section apply only to community income, as defined by state law. The rules of this section do not apply to income that is not community income. Thus, the rules of this section do not apply to income from property that was formerly community property, but in accordance with state law, has ceased to be community property, becoming, e.g., separate property or property held by joint tenancy or tenancy in common.

(2) When taxpayers report income under paragraph (a) of this section, *all* community income for the calendar year is treated in accordance with the rules provided by section 879(a). Unlike the other provisions under section 66, section 66(a) does not permit inclusion on an item-by-item basis.

(c) *Transferee liability.* The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to Federal income tax on community income may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

[T.D. 9074, 68 FR 41070, July 10, 2003]

§ 1.66-2 Treatment of community income where spouses live apart.

(a) Community income of spouses domiciled in a community property state will be treated in accordance with the rules provided by section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married to each other at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;