

What Is Innocent Spouse Relief?

Innocent Spouse Relief means you do not have to pay a joint tax debt.

When you sign a joint tax return, you and your spouse both become responsible for any tax debt resulting from the return. That means you could be responsible for the whole tax debt even if you didn't earn any money that year or the debt is your spouse's fault.

If you qualify, you may not be responsible for all or part of that tax debt.

You May Qualify As An Innocent Spouse

If you answer yes to the following questions you may want to apply for Innocent Spouse Relief.

- ◆ Did you file a **joint** income tax return with your husband or wife?
- AND**
- ◆ Do you owe back taxes on money your husband or wife earned?
- AND**
- ◆ Does it seem unfair to make you pay the taxes?

Here Are Three Ways To Qualify for Relief

There are three ways to qualify for Innocent Spouse Relief: separation of liability, pure innocent spouse relief or equitable relief.

Separation of Liability

You may request that IRS separate your tax liability from your spouse's liability even though you filed a joint return.

The tax debt must result from an understatement of income or overstatement of deductions for a separation of liability.

You may qualify if:

- ◆ You are divorced; **OR**
- ◆ You are legally separated; **OR**
- ◆ You have lived apart at all times during the 12 months prior to filing for Innocent Spouse Relief.

You may **not** qualify if:

- ◆ You already paid the tax debt; **OR**
- ◆ You knew the tax return was wrong *at the time you signed it*; **OR**
- ◆ The tax debt was listed on the return.

Pure Innocent Spouse Relief

You may qualify if:

- ◆ During the year of the tax debt you filed a joint income tax return; **AND**
- ◆ There was an understatement of tax on the tax return due to unreported income, overstated deductions or an erroneous item; **AND**
- ◆ You *did not know* that there was an understatement of tax when you signed the return; **AND**
- ◆ It would be unfair to hold you liable for the tax.

If you qualify, you may be able to ask for a refund of taxes paid **AND** may not have to pay the debt.

If you knew about the understatement of tax, but not the full extent of the understatement, you may qualify for partial innocent spouse relief.

Equitable Relief

You may qualify for equitable relief if, after taking into account all of the facts and circumstances, the IRS determines it would be *unfair* to hold you liable for the tax.

You can request equitable relief if the tax debt is from an understatement or underpayment and even if the tax debt was listed on the tax return.

The IRS may decide that it is unfair to hold you liable for the tax if:

- ◆ You were abused by your spouse;
- ◆ You are unable to pay your bills;
- ◆ English is your second language;
- ◆ You are divorced, legally separated or were physically separated for 12 months;
- ◆ Your spouse has a higher education level than you;
- ◆ Your divorce decree requires your spouse to pay the tax debt;
- ◆ The liability is due solely to your spouse's income.

How To Request Tax Debt Relief?

Fill out IRS Form No. 8857. If you need more room to explain your answers to questions, attach a statement as well as copies of any documents that support your claim. Include your name and Social Security number on any attachments.

One of the questions on the form asks if you were a victim of spousal abuse or domestic violence during the relevant tax years. The IRS must inform your spouse or former spouse that you have filed for relief, but will not give your spouse or ex-spouse any of your personal

information. However, should your case eventually be appealed to the Tax Court, he or she may see your personal information.

If you are requesting innocent spouse relief for more than one year, you should file one form but include a separate statement for each year explaining why you qualify. ***Do not file IRS Form 8857 with your income tax return.***

You should file as soon as your return is audited or IRS sends you a notice or your tax refund is withheld by the IRS to pay the debt. You must file no later than two years from the first IRS attempt to collect the tax debt.

Do not confuse innocent spouse relief with injured spouse relief. *Injured spouse relief* is granted when your share of a tax refund is taken to pay your spouse's debts such as child support, student loans or other non-marital tax debts.

If your request for innocent spouse relief is denied and if you are a low-income person in Cuyahoga County call The Legal Aid Society of Cleveland at 216-687-1900 or toll free 888-817-3777. In Lake or Geauga County, call 440-951-7240 or 440-352-6200 or toll free 888-808-2800; in Lorain County, 440-323-8240 or toll free 800-444-7348; in Ashtabula County, 440-576-8120 or toll free 866-873-9665. Our Low Income Taxpayer Clinic will try to help you or may refer you to someone who can.

DOES IRS CLAIM YOU OWE YOUR SPOUSE'S TAX DEBT?



The
Legal Aid Society
Since 1905