



AMERICAN TAX RESCUE

SPOUSAL RELIEF

SPOUSAL RELIEF (INNOCENT SPOUSE)

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. In filing jointly, both taxpayers are jointly and severally liable for the tax and any additions to tax, interest, or penalties that arise as a result of the joint return even if they later divorce. Joint and several liability means that each taxpayer is legally responsible for the entire liability. Thus, both spouses are generally held responsible for all the tax due even if one spouse earned all the income or claimed improper deductions or credits. This is also true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. In some cases, however, a spouse can get relief from joint and several liability.

There are three types of relief from joint and sever liability for spouses who filed joint returns:

1. Innocent Spouse Relief provides you relief from additional tax you owe if your spouse or former spouse failed to report income, reported income improperly or claimed improper deductions or credits.
2. Separation of Liability Relief provides for the allocation of additional tax owed between you and your former spouse or your current spouse from whom you are separated because an item was not reported properly on a joint return. The tax allocated to you is the amount for which you are responsible.
3. Equitable Relief may apply when you do not qualify for innocent spouse relief or separation of liability relief for something not reported properly on a joint return and generally attributable to your spouse. You may also qualify for equitable relief if the correct amount of tax was reported on your joint return but the tax remains unpaid.

Note: You must request innocent spouse relief or separation of liability relief no later than 2 years after the date the IRS first attempted to collect the tax from you. For equitable relief, you must request relief during the time the IRS has to collect the tax from you. If you are looking for a refund of tax you paid, then your request must be made within the time period for seeking a refund, which is generally three years after the date the return is filed or two years following the payment of the tax, whichever is later.

You must meet all of the following conditions to qualify for "innocent spouse relief":

- You filed a joint return that has an understatement of tax (deficiency) that is solely attributable to your spouse's erroneous item. An "erroneous item" includes income received by your spouse but which was omitted from the joint return. Deductions, credits, and property basis are also erroneous



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AMERICAN TAX RESCUE

- items if they are incorrectly reported on the joint return
- You establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax and
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax

To qualify for "separation of liability relief" you must have filed a joint return and must meet one of the following requirements at the time you request relief:

- You are divorced or legally separated from the spouse with whom you filed the joint return
- You are widowed or
- You have not been a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857 (PDF), Request for Innocent Spouse Relief

If, at the time you signed the joint return, you had actual knowledge of the item that gave rise to the understatement of tax, you may not qualify for separation of liability relief.

You may qualify for "equitable relief." To qualify for equitable relief you must establish that, under all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. In addition, you must meet other requirements listed in Publication 971, Innocent Spouse Relief.

To seek innocent spouse relief, separation of liability relief, or equitable relief, you should submit to the IRS a completed Form 8857 (PDF), Request for Innocent Spouse Relief, or a written statement containing the same information required on Form 8857, which is signed under penalties of perjury. You may also refer to Publication 971, Innocent Spouse Relief, for more information. If you request relief from joint and several liability, the IRS is required to notify the spouse with whom you filed the joint return of your request and allow him or her to provide information for consideration regarding your claim. To learn more about innocent spouse relief, go to Explore if you are an Eligible Innocent Spouse found under Tax Information for Innocent Spouses at the IRS.gov website.

If you lived in a community property state and filed as "married filing separately" rather than "married filing jointly," you might still qualify for relief. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Refer to Publication 971 for more details.



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Relief from joint and sever liability should not be confused with an injured spouse claim. You are an "injured spouse" if you file a joint return and all or part of your share of the refund was, or will be, applied against the separate past-due federal tax, state tax, child support, or federal non-tax debt (such as a student loan) of your spouse with whom you filed the joint return. If you are an injured spouse, you may be entitled to recoup your share of the refund.



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