

Innocent spouse relief from joint and several liability on joint return

If you have some concerns about your personal liability for the taxes due on a joint income tax return that you filed with your spouse.

When a couple files a joint return, each spouse is jointly and severally liable for the full amount of tax on the couple's combined income, including any tax deficiency that IRS assesses after an audit. This means that IRS can come after either spouse to collect the entire tax, not just the portion attributable to that spouse's income. Joint and several liability also extends to any interest and penalties, except that the civil fraud penalty can only be imposed on a spouse who has actually committed fraud.

There are three provisions in the law that alleviate the harshness of the joint and several liability rule. One provision grants relief to "innocent spouses" who were unaware of a tax understatement attributable to the other spouse. A second provision allows joint return filers who are widowed, divorced, legally separated, or have lived apart for at least one year to limit their liability for deficiencies on the joint return. And a third provision allows joint return filers to avoid liability for unpaid amounts of tax shown on joint returns as filed, but not paid, or, in some cases, allows joint return filers to avoid liability for a deficiency that does not qualify for relief under either of the first two provisions.

Relief for innocent spouses. An innocent spouse can elect to seek relief from liability for a tax understatement attributable to the other spouse's erroneous tax items, such as unreported income or disallowed deductions. To qualify, you must show that you didn't know about the understatement *and* that there was nothing that should have made you suspicious. In addition, the circumstances must make it inequitable to hold you liable for the tax. This relief is available even if you are still married and living with your spouse.

Election to limit liability. In some cases, a spouse can elect to limit liability for any deficiency on the joint return to that spouse's allocable portion of the deficiency. The election can be made only if the spouses are no longer married (divorced or widowed), are legally separated, or lived apart for the 12 months before the election was made.

If you make the election, the tax items that gave rise to the deficiency will be allocated between you and your spouse as if you had filed separate returns. For example, you will generally be liable for the tax on any unreported wage income only to the extent that you earned the wages.

The election won't provide relief from your spouse's tax items to the extent that IRS proves that you actually knew about those items when you signed the return, unless you can show that you signed the return under duress. Also, the limitation on your liability is increased by the value of any assets that your spouse transferred to you for the purpose of avoiding paying the tax.

Equitable relief from liability. The first two types of relief apply to situations in which a deficiency arises after a return has been filed. The last type of relief is available either (1) when there is no deficiency, and the tax as shown on the return has not been paid through no fault of the spouse applying for the relief, or, (2) in some cases, when there is a deficiency, but the spouse doesn't qualify for innocent spouse or separate liability relief. To qualify for the relief, described in (1), from liability for tax shown on the return but not paid, you must show that when the return was filed, you didn't know and had no reason

to know that the tax wouldn't be paid, and that it was reasonable for you to have believed that the tax was paid by your spouse.

Electing relief. In order to obtain relief under any of the above provisions, you must make a timely election on IRS Form 8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief) and attach a statement to the return describing why you qualify for relief. You can make the election up to two years after IRS begins trying to collect the tax from you.

Whether, and to what extent, you can take advantage of the above relief provisions depends on your own particular facts and circumstances.