

Introduction

Has the Internal Revenue Service (IRS) sent you a bill for taxes listed on a joint tax return? Do you believe it would be unfair to hold you liable for these taxes?

Depending on your circumstances, knowledge of the tax debt, and other factors, you may qualify for relief as an innocent spouse.

The Rhode Island Legal Services Low Income Taxpayer Clinic can help you apply for innocent spouse relief. We may also be able to represent you if the IRS has denied your request for relief.

What Is Innocent Spouse Relief?

Innocent spouse relief is relief from a joint tax debt. If you qualify for innocent spouse relief, you may not be responsible for all or part of the tax debt.

When you sign a joint income tax return, you and your spouse are agreeing to be responsible for any tax debt listed on the return. This means that you could be responsible for the entire tax debt, even if you did not earn any money that year or the debt belongs to your spouse.

Most married couples refuse to file a separate tax return since filing a separate tax return makes you ineligible for the earned income tax credit (EITC) or other tax benefits.

Also, if you receive Social Security benefits and file a separate tax return, up to 85% of the Social Security benefits may become taxable. If you file a joint tax return, none of the Social Security benefits may be taxable.

How Do I Request Innocent Spouse Relief?

Fill out tax form 8857 and attach a statement explaining why you qualify for innocent spouse relief. Include your name and Social Security number (SSN) on the statement.

If you are requesting innocent spouse relief for more than one year, you should file one petition, but list a separate statement for each year explaining why you qualify.

Do not file form 8857 with your income tax return.

When Can I File?

You should file form 8857 as soon as you become aware of the tax debt.

You will become aware of the tax debt when:

1. The IRS examines or audits your income tax return; OR,
2. The IRS sends you a notice; OR,
3. Your tax refund is withheld by the IRS to pay the debt.

You must file form 8857 no later than two years from the first IRS attempt to collect the tax debt.

How to Get Help

Call us for a confidential consultation.
(401) 274-2652
or toll free 1-800-662-5034

NOTE: This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation on a tax matter or if you have questions.

The Rhode Island Legal Services Low Income Taxpayer Clinic is funded by a grant from Internal Revenue Service.

Innocent Spouse Relief

“Get Relief From Your Joint Tax Debt”



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How Do I Qualify for Innocent Spouse Relief?

There are three ways to qualify for innocent spouse relief:

1. Separation of Liability

If you qualify, you may not have to pay the tax debt, but you will not get a refund of taxes already paid. You may request that the IRS separate your tax liability from your spouse's tax liability even though you filed a joint income tax return. If the innocent spouse has very little or no income, the innocent spouse may not have a tax liability.

If your spouse was self-employed and failed to report income or overstated his business expenses, then you may not be liable for his tax liability.

You can qualify for separation of liability if :

- ✓ You are divorced; OR,
- ✓ You are legally separated;
- ✓ You have lived apart at all times during the 12-month period prior to filing for innocent spouse relief.

The tax debt must be from an understatement. This means the IRS changed your return or the tax owed is different from the tax owed on the return.

You cannot qualify for separation of liability if:

- ✓ You paid the tax debt; OR,
- ✓ You *knew* about the item resulting in an understatement *at the time you signed the tax return*; OR,
- ✓ The tax debt was listed on the return.

2. Pure Innocent Spouse Relief

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

You may be allowed to file for pure innocent spouse relief if all of the following apply:

- ✓ During the year of the tax debt you filed a joint income tax return; AND,
- ✓ There was an *understatement* (IRS changed your return) 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 joint tax return; AND,
- ✓ It would be unfair to hold you liable for the tax.

Partial Innocent Spouse Relief

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

3. Equitable Relief

If you qualify, you will not have to pay the tax. Most people cannot get a refund of taxes already paid.

You may qualify for equitable relief if, after taking into account all the facts and circumstances, 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. This means you can request equitable spouse relief when the tax debt was listed on the tax return. The IRS does not have to change the tax refund.

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

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

The IRS also considers other facts.