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Innocent Spouse Relief (And Separation of Liability and Equitable Relief)



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Contents

| | |
|---|----|
| Important Change | 1 |
| Introduction | 1 |
| How To Request Relief | 2 |
| Community Property Laws | 2 |
| Innocent Spouse Relief | 2 |
| Relief by Separation of Liability | 5 |
| Equitable Relief | 7 |
| Filled-in Form 8857 | 8 |
| Questions & Answers | 10 |
| How To Get More Information | 11 |

Important Change

New tax law made it easier to qualify for innocent spouse relief. You can now request innocent spouse relief for an understatement of tax (defined on page 3) no matter how small the amount. (Previously the understatement of tax had to be more than \$500.) See *Questions & Answers*, near the end of this publication for a list of questions and answers about innocent spouse relief.

The new law also added two other ways for you to get relief. If you are divorced, separated, or no longer living with your spouse, you can request relief by separating the liability for an understatement of tax between you and your spouse. If you do not qualify for innocent spouse relief or relief by separation of liability, the IRS may grant you equitable relief. Equitable relief may be granted if it would be unfair to hold you liable for the tax that should be paid only by your spouse.

The changes apply to tax liabilities arising after July 22, 1998, and tax liabilities arising on or before that date that remained unpaid on that date.

Introduction

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

- 1) Innocent spouse relief.
- 2) Separation of liability.
- 3) Equitable relief.

Table 1 compares the rules for these three types of relief. This publication explains these types of relief, who may qualify for them, and how to get them.

Each type of relief has different requirements. They are explained separately in different parts of this publication. Read each part to see if you qualify for that type of relief.



You are not required to figure the tax, interest, and penalties that qualify for relief. The IRS will figure these amounts after you file Form 8857, Request for Innocent Spouse Relief.



You can only qualify for equitable relief if you do not qualify for innocent spouse relief or relief by separation of liability.

What this publication does not cover. This publication does **not** discuss filing an **injured spouse** claim. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied against your spouse's past-due federal debts, state taxes, or child or spousal support payments. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For more information, get Form 8379, *Injured Spouse Claim and Allocation*.

How To Request Relief

File Form 8857, *Request for Innocent Spouse Relief*, to ask the IRS for the types of relief discussed in this publication. You only need to file one Form 8857 even if you are requesting relief for more than one tax year.

The IRS will review your Form 8857, figure the understatement or underpayment of tax and related interest and penalties, and let you know if you qualify.

A completed Form 8857 is shown later.

When to file Form 8857. You must file Form 8857 no later than 2 years after the date on which the IRS first attempted to collect the tax from you (such as a levy or seizure) after July 22, 1998.

IRS spousal notification. The IRS is required to inform your spouse (or former spouse) if you request innocent spouse relief or separation of liability, and to allow your spouse (or former spouse) to participate in the determination of the amount of relief from liability.

Tax Court Review of Request

After you file Form 8857 to request innocent spouse relief or relief by separation of liability, you can ask the United States Tax Court to review your request. You can ask the United States Tax Court to review your request in the following two situations.

1) You disagree with the IRS' determination notice telling you the extent to which your request for relief has been denied.

2) You have not received a determination notice from the IRS within 6 months from the date you filed Form 8857.

The United States Tax Court is an independent judicial body and has no connection with the IRS.

You must file a petition with the United States Tax Court in order for it to review your request for relief. You must file the petition **no later than 90 days** from the date the IRS mails its determination notice to you. If you do not file a petition, or you file it late, the Tax Court cannot review your request for relief.

You can get a copy of the rules for filing a petition by writing to the Tax Court at the following address.

United States Tax Court
400 Second Street, NW
Washington, DC 20217

Community Property Laws

You must generally follow community property laws when filing a tax return if you are married and live in a community property state. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.



If you were married and filed a separate return in a community property state and are now liable for an underpayment or understatement of tax you believe should belong only to your spouse (or former spouse), you may request equitable relief (discussed later).

In addition to equitable relief, you may request relief from liability for community income. For details about this type of relief, see Publication 555, Community Property.

Innocent Spouse Relief

By requesting innocent spouse relief, you can be relieved of responsibility for paying tax, interest, and penalties if your spouse did something wrong on your tax return. The tax, interest, and penalties that qualify for relief can only be collected from your spouse. However, you are jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The IRS can collect these amounts from either you or your spouse.

You must meet **all** of the following conditions to qualify for innocent spouse relief.

1) You filed a joint return which has an **understatement of tax** due to **erroneous items** (defined later) of your spouse.

Table 1. **Three Types of Relief at a Glance**

| Factors | Rules for Innocent Spouse Relief | Rules for Separation of Liability | Rules for Equitable Relief |
|-----------------------------|---|--|---|
| Type of Liability | You must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse. | You must have filed a joint return that has an understatement of tax due, in part, to an item of your spouse. | You must have filed a return that has either an understatement or an underpayment of tax. |
| Marital Status | | You must be no longer married, legally separated, or have not lived with your spouse in the same house for an entire year before you file for relief. | |
| Knowledge | You must 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. | If IRS establishes that you actually knew of the item giving rise to the understatement, then you are not entitled to make the election to the extent of the actual knowledge. | |
| Other Qualifications | | | You do not qualify for innocent spouse relief or separation of liability. |
| Unfairness | It must be unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances. | | It must be unfair to hold you liable for the underpayment or understatement of tax taking into account all the facts and circumstances. |
| Refunds | Yes, your request can generate a refund. | No, your request cannot generate a refund. | Yes, for amounts paid between July 22, 1998, and April 15, 1999, and for amounts paid pursuant to an installment agreement after the date the request for relief is made. |

- 2) 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.
- 3) Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax. (See *Indications of Unfairness*, later.)

Erroneous Items

Erroneous items are either of the following.

- 1) **Unreported income.** This is any gross income item received by your spouse that is not reported.
- 2) **Incorrect deduction, credit, or basis.** This is any improper deduction, credit, or property basis claimed by your spouse.

The following are examples of erroneous items.

- 1) The expense for which the deduction is taken was never made. For example, your spouse deducted \$10,000 of advertising expenses on Schedule C (Form 1040), but never paid for any advertising.
- 2) The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of \$10,000 that was for the payment of state fines; fines are not deductible.
- 3) No legal argument can be made to support the deductibility of the expense. For example, your spouse claimed \$4,000 for security costs related to

a home office, which were actually veterinary and food costs for your family's two dogs.

Understatement of Tax

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return.



The IRS will figure the understatement of tax due to erroneous items of your spouse after you file Form 8857. You are not required to do this computation. But if you wish, you can do the computation yourself. See Worksheet 1, under How To Figure the Understatement of Tax, later.

Partial relief when extent of understatement is unknown. You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know, that there was an understatement of tax due to your spouse's erroneous items, but you did not know how large the understatement was. You will be relieved of the understatement to the extent you did not know about it and had no reason to know about it.

Example. At the time you signed your joint return, you knew that your spouse did not report \$5,000 of gambling winnings. The IRS examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually \$25,000. This resulted in a much larger understatement of tax than you knew about at the time you signed your return. You established that you did not

know about, and had no reason to know about, the additional \$20,000 because of the way your spouse handled gambling winnings. The understatement of tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understatement of tax due to the \$5,000 of gambling winnings will not qualify for relief.

Indications of Unfairness

The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you responsible for the understatement. Two indicators the IRS may use to decide that it is unfair to hold you responsible for the tax are whether you:

- 1) Received any significant benefit from the understatement of tax, or
- 2) Were later divorced from or deserted by your spouse.

Significant benefit. You can receive significant benefit either directly or indirectly. For example, if your spouse did not report \$10,000 of income on your joint return, you can benefit directly if your spouse shares that \$10,000 with you. You can benefit indirectly from the unreported income if your spouse uses it to pay extraordinary household expenses.

You do not have to receive a benefit immediately for it to be significant. For example, money your spouse gives you several years after he or she received it or amounts inherited from your spouse (or former spouse) can be a significant benefit.

TIP Support payments that you receive as a result of a divorce proceeding are not a significant benefit.

How To Figure the Understatement of Tax

The IRS will figure the tax, interest, and penalties that qualify for relief after you file a completed Form 8857 with all the required attachments. **You are not required to figure these amounts.** But if you wish, you can figure the understatement of tax yourself by using Worksheet 1. If you want to use Worksheet 1, you will need the following items.

- A copy of your tax return for the year(s) you are requesting relief.
- The tax return instructions for the year(s) you are requesting relief. The instructions have the tax table or tax rate schedule you will need.

Worksheet 1 asks you to refigure the total tax for the year(s) you are requesting innocent spouse relief. The following table shows where to find the total tax line on your return.

| Form | Year | | |
|--------|---------|---------|---------|
| | 1995 | 1996 | 1997 |
| 1040 | Line 54 | Line 51 | Line 53 |
| 1040A | Line 28 | Line 28 | Line 28 |
| 1040EZ | Line 10 | Line 10 | Line 10 |

TIP You may find it easier to fill out Worksheet 1 if you complete a second copy of the relevant forms and schedules of the return for which you are requesting innocent spouse relief.

Worksheet 1. Worksheet for Figuring Tax That Qualifies for Innocent Spouse Relief

(Note. This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

1. Enter your total tax including all changed items. 1. _____
Note. This should be shown on the IRS notice or audit report.
2. Refigure your total tax by including all items except your spouse's erroneous items. Include items you knew about or had reason to know about. 2. _____
3. **Tax eligible for innocent spouse relief.** Subtract line 2 from line 1. 3. _____

Example. Mark and Carol Smith filed a joint 1996 tax return (Form 1040) in 1997. The total tax on the return was \$2,734. In 1998, the IRS audited their return and discovered that Carol did not report \$7,500 in wages. On August 10, 1998, the IRS mailed the Smiths a Notice of Deficiency showing additional tax of \$1,125 plus \$300 in interest and penalties.

At the time Mark signed the return, he knew about \$2,500 of Carol's wages. He did not know about, and had no reason to know about, the other \$5,000. He believes it would be unfair for the IRS to hold him responsible for the understatement of tax due to the \$5,000 of wages because he did not benefit from them. He uses Worksheet 1 to figure the tax that qualifies for innocent spouse relief. He fills out Worksheet 1 as follows.

Line 1. Mark enters \$3,859. This is the total tax as refigured by the IRS in the Notice of Deficiency.

Line 2. \$3,109 is what the total tax would be by including only the unreported income that Mark knew about. He figured this amount as follows:

| | |
|--|----------|
| 1. Taxable income shown on the joint return | \$18,200 |
| 2. Plus: Carol's unreported income that Mark knew about | 2,500 |
| 3. Refigured taxable income | \$20,700 |
| 4. Refigured tax on \$20,700 from Tax Table in 1996 Form 1040 instructions | \$3,109 |

The Smiths did not claim any tax credits and were not liable for other taxes (Form 1040, lines 45-50). Ac-

cordingly, \$3,109 is their total tax for purposes of line 2.

Line 3. Mark subtracts line 2 from line 1 to get the understatement of tax (\$750) due to the unreported wages that Mark did not know about, and had no reason to know about. This is the tax that is eligible for innocent spouse relief.

Filled-in Worksheet 1. **Worksheet for Figuring Tax That Qualifies for Innocent Spouse Relief**

(**Note.** This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

| | | |
|---|----|----------------|
| 1. Enter your total tax including all changed items. | 1. | <u>\$3,859</u> |
| Note. This should be shown on the IRS notice or audit report. | | |
| 2. Refigure your total tax by including all items except your spouse's erroneous items. Include items you knew about or had reason to know about. | 2. | <u>\$3,109</u> |
| 3. Tax eligible for innocent spouse relief. Subtract line 2 from line 1. | 3. | <u>\$750</u> |

Relief by Separation of Liability

Under this type of relief, you allocate (divide) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse (or former spouse). The understatement of tax allocated to you is generally the amount you are responsible for. See *How To Figure Your Separation of Liability*, later.

TIP You can request this type of relief whether or not you request innocent spouse relief.

To request relief by separation of liability, you must have filed a joint return and meet **either** of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not 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.

Burden of proof. You have the burden of proof in establishing the basis for separating your liability.

Invalid request. Even if you meet the requirements discussed previously, a request for separation of liability will **not** be granted in the following situations.

- 1) The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
- 2) The IRS proves that at the time you signed your joint return, you had actual knowledge that any

items giving rise to the deficiency and allocable to your spouse were incorrect.

- 3) You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax. See *Transfers of property to avoid tax*, later.

In situations (2) and (3), a request will be denied only for the part of the deficiency due to the incorrect items about which you had actual knowledge, or to the extent of the value of the property transferred. If you establish that you signed your joint return under duress, then it is not a joint return, and you are not liable for amounts from that return. However, you may be required to file a separate return for that tax year.

Example. Bill and Karen Green filed a joint return showing Karen's wages of \$50,000 and Bill's self-employment income of \$10,000. The IRS audited their return and found that Bill did not report \$20,000 of self-employment income. The additional income resulted in a \$6,000 understatement of tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed Form 8857 to request relief by separation of liability. The IRS proved that Karen actually knew about \$5,000 of the additional income at the time she signed the joint return. Bill is liable for all of the understatement of tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understatement of tax, interest, and penalties due to the \$5,000 of additional income that she actually knew about. The IRS can collect that part from either Karen or Bill. The IRS can collect the remainder only from Bill.

Transfers of property to avoid tax. If your spouse transfers property to you for the main purpose of avoiding tax or payment of tax, the tax liability allocated to you will be increased by the value of the property transferred. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made after the date that is 1 year before the date on which the IRS sent its first letter of proposed deficiency allowing you an opportunity for a meeting in the IRS Appeals Office. This presumption will not apply if the transfer was made under a divorce decree, separate maintenance decree, or a written instrument incident to such a decree.

Exception. The above rule will not apply if you establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

How To Figure Your Separation of Liability

The IRS will figure your separation of liability and figure any related interest and penalties after you file a completed Form 8857 with the required attachment. **You are not required to figure these amounts.** But if you wish, you can figure your separation of liability yourself by using Worksheet 2 and instructions that follow. However, if you filed Form 8814 to report your child's tax liability on your joint return, do not include that liability when figuring your separation of liability. Allocate it as appropriate between you and your spouse.

Instructions for Completing Worksheet 2

Use the following instructions to complete Worksheet 2.

Line 1. When allocating income and deductions taken into account in computing the understatement of tax, allocate them in the same manner you would have allocated them if you and your spouse had filed separate returns.

Allocate wages and salaries to the spouse who performed the job and received the Form W-2. You generally allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Income from a jointly owned business or investment should be allocated equally between you and your spouse unless there is clear and convincing evidence that supports a different allocation.

Allocate business deductions according to the ownership of the business. Allocate personal deductions (such as itemized deductions for mortgage interest and taxes) equally between you and your spouse unless there is evidence that shows a different allocation is appropriate.

Items that are limited or not allowed on separate returns. If a deduction would not be allowed if you had filed a separate return, figure the deduction as you would on a joint return and allocate that amount between you and your spouse.

A similar rule applies to income and deductions (such as taxable social security benefits and the IRA deduction) that are subject to special limits on a separate return. Figure these items as you would on a joint return and allocate them between you and your spouse.

Example. Charles and Mary filed a joint return for 1997. Charles received social security benefits in 1997, but none of them were taxable because his and Mary's total income was less than the base amount (\$32,000) for joint returns. Several months after filing their return, Charles and Mary received a notice from the IRS for additional tax because they did not report some interest and dividend income. The notice also showed that half of Charles' social security benefits were taxable because the additional interest and dividend income increased their total income so that it was more than the \$32,000 base amount. If Charles had filed a separate return, 85% of his social security benefits would have been taxable. When figuring his separation of liability, Charles allocates only half of his social security benefits. This is true even though 85% of his benefits would have been taxable if he and Mary had filed separate returns.

Items allocable to one spouse that benefit the other spouse. A deduction that is otherwise allocable to one spouse must be allocated to the other spouse to the extent the item created a tax benefit for the other spouse.

Example. Your joint return shows \$50,000 of wages allocable to you and \$15,000 of self-employment income allocable to your spouse. The IRS audited your return and disallowed a \$20,000 deduction allocable to your spouse. Only \$15,000 of the disallowed deduction

is allocated to your spouse because that is the amount that offset your spouse's self-employment income. The remaining \$5,000 must be allocated to you because that amount offset your income.

Lines 5 and 6. Enter the part of the understatement of tax that is due to the disallowance of a credit or to the increase in any tax **other than the income tax or alternative minimum tax**. Allocate credits and other taxes in the same manner you would have allocated them if you and your spouse had filed separate returns.

Example. You reported \$750 in self-employment tax on your return. All of this tax is allocable to you. The IRS audited your return and determined that your self-employment tax should have been \$1,100. On line 6, you enter the \$350 increase in self-employment tax (\$1,100 – \$750).

Credits that are not allowed on separate returns. If a credit would not be allowed if you had filed a separate return, figure the credit as you would on a joint return and allocate it between you and your spouse. Examples of credits that are generally not allowed on a separate return are the child and dependent care credit, the credit for the elderly, the adoption credit, the Hope and lifetime learning credits, and the earned income credit.

Example. You claimed a credit of \$860 for child and dependent care expenses on your tax return. The IRS audited your return and allowed you only \$500. The remaining \$360 was disallowed. Even though none of the credit would have been allowed on separate returns, you are entitled to a \$500 credit for purposes of figuring your separation of liability. You allocate the \$360 disallowance (rather than the full \$860) between you and your spouse (or former spouse) on lines 5 and 6 of Worksheet 2.

Credits allocable to one spouse that benefit the other spouse. A credit that is otherwise allocated to one spouse must be allocated to the other spouse to the extent the item created a tax benefit for the other spouse.

Worksheet 2 Example

Cindy and Clarence Brown filed a joint return for 1996. They divorced in 1997. On July 27, 1998, the IRS issued a Notice of Deficiency to the Browns relating to their 1996 return. There were four items listed on the notice.

- 1) \$2,378 is nonemployee compensation that Clarence got for some consulting work and did not report.
- 2) \$336 is self-employment tax related to the \$2,378 nonemployee compensation.
- 3) \$168 is the deduction for half of the self-employment tax.
- 4) \$500 is interest income from an account that belonged entirely to Cindy.

Cindy decides to file Form 8857 (not illustrated) to request relief under separation of liability. She allocates

Worksheet 2. **Worksheet for Figuring Your Separation of Liability**

(Note: This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)



| | |
|--|-----------|
| 1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you* | 1. _____ |
| 2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax* | 2. _____ |
| 3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least 3 places) | 3. _____ |
| 4. Enter the understatement of tax* | 4. _____ |
| 5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse* | 5. _____ |
| 6. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to you* | 6. _____ |
| 7. Add lines 5 and 6 | 7. _____ |
| 8. Subtract line 7 from line 4 | 8. _____ |
| 9. Multiply line 8 by line 3 | 9. _____ |
| 10. Add lines 9 and 6. This is the understatement of tax you are responsible for | 10. _____ |

*This should be shown on the IRS notice or audit report.

the items between her and Clarence as follows. (She attaches this allocation to Form 8857.)

| Items to allocate | Cindy | Clarence |
|--|--------|----------|
| Nonemployee compensation | | \$ 2,378 |
| Interest income | \$ 500 | |
| Deduction for 1/2 of self-employment tax | | 168 |
| Self-employment tax | | 336 |

Although not required, Cindy uses Worksheet 2 to determine the understatement of tax that is allocable to her. She fills out the worksheet (shown on page 8) as follows.

Line 1. Cindy enters the interest income from her bank account.

Line 2. The net amount of income and deductions taken into account in computing the understatement of tax is \$2,710. This is the sum of the nonemployee compensation (\$2,378) and interest income (\$500), minus the deduction for one-half of self-employment tax (\$168).

Line 3. Cindy divides line 1 by line 2 to get .184.

Line 4. Cindy enters the \$743 understatement of tax. This is shown on the Notice of Deficiency.

Line 5. Cindy enters Clarence's self-employment tax of \$336.

Line 6. Cindy enters -0- because there are no credits or other taxes to be allocated to her.

Lines 7 – 10. Cindy completes lines 7 through 10. Line 10 shows that she is responsible for \$75 of the understatement of tax. Clarence is responsible for the remaining amount (\$668).

Equitable Relief

You may not be able to qualify for innocent spouse relief or separation of liability. You may still, however, be relieved of responsibility for tax, interest, and penalties through equitable relief. You may qualify for equitable relief if you meet all of the following conditions.

- 1) Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. (See *Indications of Unfairness*, under *Innocent Spouse Relief*, earlier.)
- 2) You are not eligible for innocent spouse relief.
- 3) You are not eligible for separation of liability.

Unlike innocent spouse relief or separation of liability, you can get relief from an understatement of tax (defined earlier) or an **underpayment of tax** through equitable relief.

Underpayment of tax. An underpayment of tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 1996 return shows that you and your spouse owed \$5,000. You pay \$2,000 with the return. You have an underpayment of \$3,000.

Examples. The following examples show situations that may qualify for equitable relief.

Example 1. You and your spouse file a joint 1996 return. That return shows you owe \$10,000. You pay \$5,000 with the return. You take out a loan to pay the other \$5,000 and without telling you, your spouse takes the \$5,000 and spends it on himself. You may be able to get equitable relief for the \$5,000 underpayment.

Filled-in Worksheet 2. **Worksheet for Figuring Your Separation of Liability**

(Note: This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

| | | |
|--|-----|-------|
| 1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you* | 1. | 500 |
| 2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax* | 2. | 2,710 |
| 3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least 3 places) | 3. | .184 |
| 4. Enter the understatement of tax* | 4. | 743 |
| 5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse* | 5. | 336 |
| 6. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to you* | 6. | 0 |
| 7. Add lines 5 and 6 | 7. | 336 |
| 8. Subtract line 7 from line 4 | 8. | 407 |
| 9. Multiply line 8 by line 3 | 9. | 75 |
| 10. Add lines 9 and 6. This is the understatement of tax you are responsible for | 10. | 75 |

*This should be shown on the IRS notice or audit report.

Example 2. You request innocent spouse relief or separation of liability, but the IRS determines you do not qualify for either one. The IRS automatically will consider whether equitable relief would apply.

3) Janie believes she meets the third condition. She believes it would be unfair to be held liable for the tax because she did not benefit from the award. Joe spent it on personal items for his use only.

Filled-in Form 8857

This part explains how Janie Boulder fills out Form 8857 to request innocent spouse relief.

Janie and Joe Boulder filed a joint tax return for 1996. Joe did not report a \$5,000 award he won that year. They received an IRS Notice of Deficiency for additional tax of \$650 and penalties and interest of \$165.

Janie applies the conditions listed under *Innocent Spouse Relief* to see if she qualifies for relief.

- 1) Janie meets the first condition because the joint tax return they filed has an understatement of tax.
- 2) Janie believes she meets the second condition. She did not know about the award and had no reason to know about it because of the secretive way Joe conducted his financial affairs.

Because Janie believes she qualifies for innocent spouse relief, she files Form 8857 with the IRS. She fills in her name, address, social security number, and daytime phone number. She fills out the rest of the form as follows:

Line 1. Janie enters "1996" because this is the tax year for which she is requesting relief.

Line 2. She enters the name, address, social security number, and daytime phone number of her spouse.

Line 4. Janie checks the box on this line because she believes she qualifies for innocent spouse relief.

Janie signs and dates the form. She attaches the explanatory statement (not illustrated) required by the Form 8857 instructions. Finally, she mails the form to the IRS employee named in the Notice of Deficiency before the end of the 90-day period specified in the Notice.

**Request for Innocent Spouse Relief
 (And Separation of Liability and Equitable Relief)**

OMB No. 1545-1596

▶ **Do not file with your tax return.** ▶ **See instructions.**

| | | |
|---|--|---|
| Your name Janie Boulder | | Your social security number 1 2 3 : 0 0 : 9 8 7 6 |
| Your current address 5161 Old Farm Estates | | Apt. no. |
| City, town or post office, state, and ZIP code. If a foreign address, see instructions. Hutchinson, IA 55555 | | Daytime phone no. (optional) (7 2 0) 5 5 5 - 1 0 2 3 |

Before you begin, you need to understand the following terms. See instructions for descriptions.

- Separation of Liability
- Joint and Several Liability
- Innocent Spouse Relief
- Understatement of Tax
- Equitable Relief
- Underpayment of Tax



The IRS can help you with your request. If you are working with an IRS employee, you can ask that employee, or you can call 1-800-829-1040.

1 Enter the year(s) for which you are requesting relief from liability of tax (see instructions) . ▶1996.....

2 Information about your spouse (or former spouse) to whom you were married at the end of the year(s) on line 1.

| | | |
|---|--|---|
| Name Joe E. Boulder | | Social security number 2 3 4 : 0 0 : 8 7 6 5 |
| Current home address (number and street). If a P.O. box, see instructions. 3898 Timber Way | | Apt. no. |
| City, town or post office, state, and ZIP code. If a foreign address, see instructions. Creekbed, MS 77777 | | Daytime phone no. (if known) (2 7 0) 5 5 5 - 2 3 4 5 |



*If you only have an **underpayment of tax** (tax shown on your joint return that was not paid), you may only request **equitable relief**. Skip lines 3 and 4 and see line 5 and its instructions.*

3 If you have an **understatement of tax**, you may request **Separation of Liability**. You may be relieved of liability for your spouse's (or former spouse's) part of the liability. However, this relief is available only if you and your spouse (or former spouse):

- Are no longer married, or
- Are legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file this form.

If one of the above conditions apply, attach a statement as explained on page 3 and check here . . . ▶

4 If you have an **understatement of tax** due to erroneous items of your spouse (or former spouse), you may be allowed **Innocent Spouse Relief**. Attach a statement as explained on page 4 and check here ▶

5 If you have an **underpayment of tax** or you do not qualify for relief under 3 or 4 above, we will automatically consider whether you qualify for **Equitable Relief**. Attach a statement as explained on page 4 and check here ▶

Where To File: Generally, send this form to: **Internal Revenue Service Center, Cincinnati, OH 45999-0857**. But if you are meeting with an IRS employee or you received an IRS notice of deficiency, see page 2.

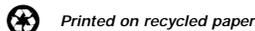
Under penalties of perjury, I declare that I have examined this form and any accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

| | | | |
|--|---|---|--------------------------------|
| Sign Here Keep a copy of this form for your records. | Your signature Janie Boulder | Date 11/12/98 | |
| | Paid Preparer's Use Only Preparer's signature | Date | Preparer's social security no. |
| | Firm's name (or yours if self-employed) and address | Check if self-employed <input type="checkbox"/> | EIN |
| | | | ZIP code |

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Cat. No. 24647V

Form **8857** (Rev. 12-98)



Questions & Answers

This section answers questions commonly asked by taxpayers about innocent spouse relief.

What is joint and several liability?

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due.

How can I get relief from joint and several liability?

Relief now falls into three categories: “innocent spouse relief,” “separation of liability,” and “equitable relief.” Each of these types of relief have different requirements. They are explained separately below.

What are the rules for innocent spouse relief?

To qualify for innocent spouse relief, you must meet **all** of the following conditions.

- You must have filed a joint return which has an understatement of tax.
- The understatement of tax must be due to erroneous items of your spouse (or former spouse).
- You must 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.
- Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
- You must request relief within 2 years after the date on which

the IRS first began collection activity against you after July 22, 1998.

What are “erroneous items”?

Erroneous items are any deductions, credits, or bases that are incorrectly stated on the return, and any income that is not reported on the return.

What is an “understatement of tax”?

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return. For example, you reported total tax on your 1996 return of \$2,500. IRS determined in an audit of your 1996 return that the total tax should be \$3,000. You have a \$500 understatement of tax.

Will I qualify for innocent spouse relief in any situation where there is an understatement of tax?

No. There are many situations in which you may owe tax that is related to your spouse, but not be eligible for innocent spouse relief. For example, you and your spouse file a joint return that reports \$10,000 of income and deductions, but you knew that your spouse was not reporting \$5,000 of dividends. You are **not** eligible for innocent spouse relief when you have knowledge of the understatement.

What are the rules for separation of liability?

Under this type of relief, you divide (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse. The understatement of tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability, you must have filed a joint return and meet **either** of the following

requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not 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.

Why would a request for separation of liability be denied?

Even if you meet the requirements listed earlier, a request for separation of liability will not be granted in the following situations.

- The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
- The IRS proves that at the time you signed your joint return, you had actual knowledge that any items giving rise to the deficiency and that can be allocated to your spouse were incorrect.
- You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax.

What are the rules for equitable relief?

Equitable relief is only available if you meet **all** of the following conditions.

- You do not qualify for innocent spouse relief or separation of liability.
- The IRS determines that it is unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.

Note. Unlike innocent spouse relief or separation of liability, if you qualify for equitable relief, you can

get relief from an understatement of tax or an underpayment of tax. (An underpayment of tax is an amount properly shown on the return, but not paid.)

How do state community property laws affect my ability to qualify for relief?

Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.

How do I request relief?

File Form 8857, *Request for Innocent Spouse Relief*, to ask the IRS for relief. You only need to file one Form 8857 even if you are requesting relief for more than one year.

If I am denied innocent spouse relief, must I reapply if I believe I might qualify under one of the other two provisions?

No. The IRS automatically will consider whether any of the other provisions would apply.

I applied for innocent spouse relief before the law changed (July 22, 1998). Do I need to re-apply?

No. The Service will consider your request under the new law as long as the liability was unpaid as of July 22, 1998.

When should I file Form 8857?

If you are requesting innocent spouse relief, separation of liability, or equitable relief, file Form 8857 no later than 2 years after the date on which the IRS first began collection activities against you after July 22, 1998.

Where should I file Form 8857?

Follow the instructions on Form 8857.

I am currently undergoing an examination of my return. How do I request innocent spouse relief?

File Form 8857 with the employee assigned to examine your return.

What if the IRS has levied my account for the tax liability and I decide to request relief?

All collection activity is suspended from the date the request is received by the Service until the final determination is made.

What is "injured spouse relief"?

Injured spouse relief is different from innocent spouse relief. When a joint return is filed and the refund is used to pay one spouse's past-due child and/or spousal support, a past-due federal debt, or past-due state income tax, the other spouse may be considered an injured spouse. The injured spouse can claim his or her share of the refund using Form 8379, *Injured Spouse Claim and Allocation*. To be considered an injured spouse, you must have:

- Filed a joint return,
- Received income (such as wages, interest, etc.),
- Made tax payments (such as withholding or estimated tax payments),
- Reported the income and tax payments on the joint return, and
- An overpayment, all or part of which was applied to the past-due amount of the other spouse.

How To Get More Information

You can order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services*. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.



Personal computer. With your personal computer and modem, you can access the IRS on the Internet at www.irs.ustreas.gov. While visiting our Web Site, you can select:

- *Frequently Asked Tax Questions* to find answers to questions you may have.
- *Fill-in Forms* to complete tax forms on-line.
- *Forms and Publications* to download forms and publications or search publications by topic or keyword.

- *Comments & Help* to e-mail us with comments about the site or with tax questions.
- *Digital Dispatch* and *IRS Local News Net* to receive our electronic newsletters on hot tax issues and news.

You can also reach us with your computer using any of the following.

- Telnet at iris.irs.ustreas.gov
- File Transfer Protocol at ftp.irs.ustreas.gov

- Direct dial (by modem)
703-321-8020



TaxFax Service. Using the phone attached to your fax machine, you can receive forms, instructions, and tax information by calling **703-368-9694**. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call **1-800-829-3676** to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at **1-800-829-1040**.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1-800-829-4059** to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call **1-800-829-4477** to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give ac-

curate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.



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The CD-ROM can be purchased from National Technical Information Service (NTIS) for \$25.00 by calling 1-877-233-6767 or for \$18.00 on the Internet at **www.irs.ustreas.gov/cdorders**. The first release is available in mid-December and the final release is available in late January.