

INNOCENT SPOUSE RELIEF

Many married couples file a joint tax return because of the benefits it allows. But doing so means that both people are responsible for the tax and any interest or penalties, even if they later divorce.

It doesn't matter whether a divorce decree states that a former spouse is responsible for any amounts due on previously filed returns. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse. People who believe they should not be responsible for the taxes, interest and penalties of their spouse or a former spouse can ask the Internal Revenue Service for innocent spouse relief.

Qualifying as an Innocent Spouse

In 1971, Congress set the conditions for relieving one spouse of liability for a joint return. All of the conditions must be met for innocent spouse relief to apply.

These conditions are:

- the spouses filed a joint return that substantially understated the tax because of a grossly erroneous item of one spouse;
- the other spouse did not know, and had no reason to know, of this understatement; and
- taking all the facts and circumstances into account, it would be unfair to hold the other spouse liable for the additional tax.

More details, including specific definitions of a substantial understatement of tax and grossly erroneous items, are in the instructions to Form 8857 and IRS Publication 971, "Innocent Spouse Relief."

Initiatives to Provide Relief to Innocent Spouses

The Treasury Department and the IRS are working to solve the tax liability issues affecting innocent spouses. "It is imperative that we protect taxpayers whose

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spouses violate the tax laws without their knowledge and Treasury and the IRS are taking steps to achieve this goal," said Treasury Secretary Robert E. Rubin. "Many in Congress have been focused on addressing this issue, and we are committed to working with them to find a solution."

Administrative Actions from Treasury and IRS

Treasury and the IRS are implementing new initiatives to expand and protect taxpayer rights:

1. New IRS Form 8857, "Request for Innocent Spouse Relief," is available to assist taxpayers in preparing claims for relief under the innocent spouse provisions. This form is processed in one central location to ensure the technical expertise of the IRS examiners and consistent treatment for taxpayers.
2. The IRS will review current training materials to ensure that they stress the IRS employee's responsibility to identify situations where the innocent spouse provisions might apply, even if the taxpayer does not know about the provisions. When appropriate, the employee will give these taxpayers Form 8857 and help them prepare it.
3. Special training courses on the innocent spouse provisions will be given to IRS collection and examination personnel in both basic training as well as annual continuing professional education. Telephone assistants specially trained in the innocent spouse provisions will be available to answer questions from taxpayers who call the IRS' toll-free tax help number.
4. The IRS will revise its federal income tax packages and other publications to alert couples who file joint returns of the legal consequences of joint filing and make innocent spouses aware of the relief provisions available to them.
5. To help identify those who might qualify for relief under the innocent spouse provisions, the IRS will reach out at both the national and local levels to community organizations that serve abused or battered spouses.
6. The IRS has strengthened the authority of the Taxpayer Advocate to intervene in innocent spouse cases. Taxpayers who feel they have nowhere to turn should be aware that they can seek assistance from the IRS' Taxpayer Advocate.

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Legislative Proposals for Fiscal Year 1999

Some initiatives cannot simply be implemented, but must be enacted by Congress. President Clinton proposed several legislative initiatives last October that were included in the Fiscal Year 1999 budget.

If enacted, these initiatives would include:

- automatically suspending collection efforts against one spouse when the other is contesting a proposed joint assessment in Tax Court;
- giving more taxpayers who are denied innocent spouse relief by the IRS an opportunity to appeal the IRS decision to Tax Court; and
- automatically suspending collection while the Tax Court considers the appeal.

Another initiative would make innocent spouse relief easier to obtain by changing statutory standards to help additional taxpayers, including those with smaller tax bills, who are presently ineligible for relief in many cases.

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