



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.15.6

APRIL 30, 2024

EFFECTIVE DATE

(04-30-2024)

PURPOSE

- (1) This transmits revised procedures for IRM 25.15.6, Relief From Joint and Several Liability, Field Examination Procedures.

MATERIAL CHANGES

- (1) Changes to this IRM are listed below:

Reference	Description of Change
Throughout the IRM	Editorial: Reviewed and updated IRM and Knowledge Base links.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 25.15.6 dated September 15, 2022.

AUDIENCE

Small Business/Self-Employed (SB/SE) Field Examiners and Large Business & International (LB&I) Examiners

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25.15.6
Field Examination Procedures

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25.15.6.1
(06-10-2019)
Program Scope and Objectives

- (1) *Purpose*- This IRM provides technical and procedural guidance for examining and processing claims for relief from joint and several liability, also referred to as innocent spouse (IS) claims, when taxpayers file a joint tax return. In addition, it provides guidance on relief provisions under IRC 66(c) on IS claims when taxpayers reside in a community property state and file separate returns.
- (2) *Audience*- These procedures apply to examiners and managers in Small Business/Self-Employed (SB/SE) Field Examination and Large Business and International (LB&I).
- (3) *Policy Owner*- The Director, Examination - Field and Campus Policy, who is under the Director, Headquarters Examination.
- (4) *Program Owner*- Field Examination General Processes (FEGP), which is under the Director, Examination - Field and Campus Policy.
- (5) *Primary Stakeholders*- SB/SE Field Examination, LB&I, Appeals, and Office of Chief Counsel.
- (6) *Contact Information*- To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

25.15.6.1.1
(06-19-2017)
Background

- (1) Taxpayers filing joint returns can request relief under IRC 6015. Married taxpayers filing separate returns in community property states can also request relief under certain circumstances under IRC 66(c). It is the Service's responsibility to ensure the provisions of IRC 6015 and IRC 66(c) are implemented fairly and that each claim receives timely and consistent treatment in accordance with the law. See IRM 25.15.1, Introduction, for a more in-depth introduction to relief from joint and several liability. See IRM 25.15.5, Relief from Community Property Laws, for a more in-depth introduction regarding relief from the application of community property laws.

25.15.6.1.2
(06-10-2019)
Authority

- (1) By law, the IRS has the authority to determine the correct tax liability as prescribed by the IRC. The information in this section is based upon the following authorities under IRC 6015, which provides three types of relief from joint and several liability to spouses who filed a **joint** return. The three types of relief under IRC 6015 are:
 - Innocent Spouse Relief - IRC 6015(b)
 - Election to Allocate a Deficiency - IRC 6015(c)
 - Equitable Relief - IRC 6015(f)

Note: The existence of community property does not impact IRC 6015 determinations when a joint return is filed. Under IRC 6015 a spouse may be eligible for relief from joint and several liabilities attributable to a joint return. Determinations under IRC 6015 are made without regard to community property.

- (2) IRC 66(c) provides two exceptions to the general rule that community income is taxed one-half to each spouse. Unlike IRC 6015, IRC 66(c) provides relief for items of income only, as defined in IRM 25.18.2.2, Income Reporting Considerations of Community Property, not relief from disallowed deductions as defined in IRM 25.18.2.5, Claiming of Deductions.

25.15.6.1.3
(06-10-2019)

Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for SB/SE Examination employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.5.5, Headquarters Examination, for additional information.
- (2) The Director, Examination - Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the examination process. See IRM 1.1.16.5.5.1, Field and Campus Policy, for additional information.
- (3) FEGP, which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.5.5.1.1, Field Exam General Processes, for additional information.
- (4) All examiners must perform their professional responsibilities in a way that supports the *IRS Mission*. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (5) SB/SE Field Examination and LB&I examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM, as well as other resources, such as those listed in IRM 25.15.6.1.8, Related Resources, below.

25.15.6.1.4
(04-30-2024)

Program Reports

- (1) Reports to monitor the Innocent Spouse Program are derived from a variety of sources including the Audit Information Management System (AIMS), Examination Returns Control System (ERCS) databases, and the Innocent Spouse Tracking System (ISTS). These reports provide management with timely and reliable information to account for cases within the operation, and measure program effectiveness.

25.15.6.1.5
(04-30-2024)

Program Controls

- (1) The Centralized Innocent Spouse review function in Technical Services provides support to examiners and managers.
- (2) All returns under examination in the field with an innocent spouse request are sent to Technical Services for mandatory review. The Technical Services reviewer ensures consistency of determinations made by examiners based on the facts, circumstances, and law of each case and issues the final determination letters.

25.15.6.1.6
(09-15-2022)

Terms

- (1) The following table contains a list of terms and some acronyms used throughout this IRM. Additional acronyms can be found at IRM 25.15.6.1.7.

Term	Definition
Appeals	The IRS Independent Office of Appeals
Innocent Spouse (IS) Claim	A request for innocent spouse relief filed on Form 8857, Request for Innocent Spouse Relief, or a written statement containing the same information required on Form 8857, which is signed under penalties of perjury.
Community Property	Generally all property acquired during a marriage while spouses are domiciled in a community property state. See IRM 25.15.5.5, Community and Separate Property, and IRM 25.18.1.3.10, Definition of Community Property, for more information.
Community Property Law	A property system where the presumption is that each spouse contributes income and assets to the "community" of the spouses, and share equally in any earnings, assets, and debts of the community. See IRM 25.18.1.2.2, Community Property Law, for more information.
Community Property State	States that use community property law as their property system. Each state's law can vary based on the individual state statutes. See IRM 25.15.5.2, Community Property States, for more information.
Innocent Spouse Coordinator (ISC)	Individual in Planning and Special Programs (PSP) assigned responsibility to conduct initial review of all incoming innocent spouse cases, including a review of Form 8857 and the tax return; assign IS claims to field groups; and act as a resource for field groups. For additional information see IRM 4.1.1.6.12.1, Innocent Spouse Coordinator.
Innocent Spouse Reviewer (ISR)	Individual in Technical Services (TS) assigned responsibility for mandatory review of IS claim cases, issuing post-assessment determination letters and statutory notices of deficiency, preparing cases for disposition to Centralized Case Processing (CCP) and Appeals, and acting as resource for field groups. For additional information, refer to IRM 25.15.6.18.1.
Cincinnati Centralized Innocent Spouse Operation (CCISO)	Centralized group at Cincinnati campus that handles IS claims not assigned to or worked by Examination-Field.
Innocent Spouse Tracking System (ISTS)	System designed to track an IS claim from receipt to closing. An employee with access to the Integrated Data Retrieval System (IDRS) command code (CC) ISTS series can retrieve current claim status information

Term	Definition
MFT 31 Account	May be established due to an IS claim and used when an assessment is required against an individual taxpayer on a joint module. In cases where innocent spouse relief is granted in full or in part, MFT 31 is used to assess the liable spouse. Refer to IRM 4.10.8.12.3, Separate Assessment on Joint Taxpayers, for additional information.
Requesting Spouse (RS)	Spouse requesting innocent spouse relief.
Non-requesting Spouse (NRS)	Spouse of taxpayer that filed an IS claim. Note: It is possible that each spouse may file a request for innocent spouse relief, thereby making each spouse a RS and a NRS. In these cases, each spouse's claim must be considered separately and simultaneously and include separate determination workpapers. It is possible to have a portion of the liability attributed jointly and assessed on MFT 30, a portion attributed to the NRS for one claim and assessed on that respective spouse's individual MFT 31 account, and a portion attributed to the NRS on the other claim and assessed on that respective spouse's individual MFT 31 account.
Underpayment (UP)	An underpayment is a balance due from either an original filed return or an amended return when a statutory notice of deficiency was not issued. With the exception of community property states (see below), relief from an underpayment may only be considered under IRC 6015(f) . See IRM 25.15.3.1.4, Terms, for additional information. For taxpayers filing MFS residing in community property states, equitable relief under IRC 66(c) is generally available for underpayment cases. See IRM 25.15.5, Relief from Community Property Laws.

Term	Definition
Understatement (US)	<p>An understatement is the excess amount of tax required to be shown on a return for a taxable year over the amount of tax imposed, which was reported on the return, reduced by any rebate. For purposes of IRC 6015, an understatement and a deficiency are the same. Relief from an understatement can be considered under IRC 6015(b), IRC 6015(c), and IRC 6015(f).</p> <p>For taxpayers filing MFS residing in community property states, equitable relief under IRC 66(c) is generally available for deficiency (understatement) cases.</p>

25.15.6.1.7
(06-10-2019)

(1) The following table lists commonly used acronyms and their definitions used throughout this IRM:

Acronyms

Acronym	Definition
AC	Action code
ASED	Assessment statute expiration date
CCP	Centralized Case Processing
CSED	Collection statute expiration date
IS	Innocent spouse
MFS	Married filing separately
PSP	Planning and Special Programs
RA	Revenue agent
RSED	Refund statute expiration date
TC	Transaction code
TCO	Tax compliance officer
TS	Technical Services
TS ISR	Technical Services Innocent Spouse Reviewer
TAS	Taxpayer Advocate Service

25.15.6.1.8
(04-30-2024)

(1) The following IRMs provide additional information regarding innocent spouse and community property:

Related Resources

- IRM 25.15.1, Introduction, provides a basic overview of relief from joint and several liabilities.

- IRM 25.15.2, General Procedures/Employees With Taxpayer Contact, provides miscellaneous general guidance.
 - IRM 25.15.3, Technical Provisions of IRC 6015, provides detailed information regarding the application of the law pertaining to the request for relief from joint and several liability.
 - IRM 25.15.5, Relief from Community Property Laws, provides technical guidance on various relief provisions of IRC 66, Treatment of Community Income, and how to determine relief under this code section.
 - IRM 25.15.19, Non-Qualifying Requests for Relief & Complex Account Issues, provides guidance on non-qualifying requests.
- (2) Exam Procedures Knowledge Base for Innocent Spouse at *Innocent Spouse Knowledge Base*.
 - (3) Exam Procedures Knowledge Base for Technical Services IS/Contacts for TS ISR at *Exam Procedures Knowledge Base - Technical Services Innocent Spouse Coordinators Listing*.
 - (4) Exam Procedures Knowledge Base for Technical Services IS at *Innocent Spouse - Exam Technical Services*.
 - (5) Exam Procedures Knowledge Base for area PSP ISC at *Exam Procedures Knowledge Base - PSP - Innocent Spouse Coordinators by Area*.
 - (6) Rev. Proc. 2013-34 provides guidance for a requesting spouse seeking equitable relief from income tax liability under IRC 66(c) or IRC 6015(f).

25.15.6.2
(09-15-2022)

General Information

- (1) Taxpayers filing joint returns request relief from joint and several liability on Form 8857, Request for Innocent Spouse Relief, or a similar statement containing the same information signed under the penalties of perjury.
- (2) A duly authorized representative may sign Form 8857 on behalf of a taxpayer. A representative becomes authorized to represent a taxpayer for innocent spouse relief by submitting a properly completed Form 2848, Power of Attorney and Declaration of Representative, or equivalent documentation to the IRS that includes the following:
 - Line 3, Description of Matter, is “Innocent Spouse Relief”. A POA can also represent a taxpayer for both income matters and IS by specifying “Income and Innocent Spouse Relief” in the Description of Matter section.
 - Line 3, Tax Form Number, is “8857”. If the POA is representing a taxpayer for both income and IS, the Tax Form Number is “1040 and 8857”.
 - Line 3, Year(s) or Period(s), list all applicable tax years.

Note: The IDRS Command Code CFINK does not show issue specific representation such as for an innocent spouse relief request. Inspection of the Form 2848 will confirm whether or not the POA can represent the taxpayer for the innocent spouse tax matter. See IRM 21.3.7.5.3.1(1), Form 2848 and Form 8821- Processing Joint Filers, for additional information.

Caution: The examiner must ensure each spouse properly receives their rights to relief and appeal in any IS request case when the spouses have the same representative. See IRM 25.15.3.12.6, When RS and NRS Have the Same POA.

- (3) Both taxpayers are jointly and severally responsible for the tax, interest and penalties due on the joint return even if they later divorce. If, however, relief under section 6015 is granted, a spouse can be relieved of all, or part, of the joint liability.
- (4) Given the implications of joint and several liability, each spouse is responsible for:
 - a. The accuracy and completeness of the joint return; and
 - b. The payment of the tax liability as reported on the return, as well as any additional tax, penalties and interest that may be assessed.
- (5) Married taxpayers living in community property states filing **separate** returns may still be liable for income tax on items attributable to their spouse under community property law. Form 8857 (or a similar statement) is used to make an innocent spouse claim in these cases. See IRM 25.15.5, Relief from Community Property Laws, for additional guidance.

Caution: Unlike IRC 6015, IRC 66(c) provides relief for items of income only, as defined in IRM 25.18.2.2, Income Reporting Considerations of Community Property, not relief from disallowed deductions as defined in IRM 25.18.2.5, Claiming of Deductions. See IRM 25.15.5, Relief from Community Property Laws, for additional information.

Caution: Requests for relief under IRM 66(c), except for equitable relief, usually are required to be filed before the statute of limitations on assessment expires for the NRS's year subject to the request. See IRM 25.15.5.10, Transfer of Liability.

- (6) All requests for relief cases are priority cases and require prompt consideration.
- (7) Examiners will consider and make a determination on an IS claim received during the examination, and include all years reflected on Form 8857.
- (8) Some IS claims including Collection Referrals, Collection Due Process, and TAS cases, are worked by CCISO at the Cincinnati Campus, however, field examiners will receive IS claims:
 - From PSP, see IRM 25.15.6.5.2, for guidance.
 - Directly from the taxpayer during an open examination, see IRM 25.15.6.5.3, for guidance.

Reminder: When IS claims are received directly from the taxpayer, the examiner must follow the guidance in IRM 25.15.6.5.3 to ensure a TC 971 with an AC 065 is input to suspend collection activity, while the claim is being examined. See IRM 25.15.6.5.3 for more information.

Note: Generally, a post-assessment IS claim will be sent to the examiner when a related year is under examination. A taxpayer may file a claim directly with the examiner or with the campus for the year under examination and/or a prior or subsequent year.

- (9) IS claims can be stand-alone claims (post-assessment) and/or related to an open examination (pre-assessment). Pre-assessment and post-assessment claims have different procedures to consider, including how to communicate the claim determination to the taxpayer. Certain procedures, such as notifying the NRS and giving full consideration to all applicable relief provisions, must be followed in both pre-assessment and post-assessment cases.
- (10) A pre-assessment claim occurs when a claim is filed during an open examination, prior to an assessment of a tax liability. The IS claim is considered an additional examination issue and must be worked concurrently with other examination issue(s). The examiner will generally communicate the determination in the examination report that must be issued to each taxpayer.
- (11) A post-assessment claim occurs when a claim is filed on a liability that is already assessed. The liability may relate to an underpayment, an understatement, or both. The claim may relate to a year under examination or a prior or subsequent year where a liability remains unpaid from an original filed return or from an additional assessment. In post-assessment cases, the IS claim may be the only issue examined. The post-assessment determination will be communicated to the taxpayer by TS with a preliminary determination letter.

Note: Because the collection statute is 10 years, requests for relief can relate to very old years. See IRM 25.15.1.8, Statute of Limitations on Collection, for information on post-assessment statutes.

- (12) **All** requests for relief from joint and several liability that are examined **must** be established on Audit Information Management System (AIMS).

25.15.6.3
(06-19-2017)

**Examiner
Responsibilities**

- (1) This section provides a summary of actions the examiner must take for an IS claim. These actions are discussed in further detail in the referenced IRM cites provided.
 - a. Confirm taxpayers have received their rights. See IRM 25.15.6.4.
 - b. Review Form 8857, or similar statement, and determine if the claim is processable. See IRM 25.15.6.5, for additional guidance.
 - c. Ensure claim does not relate to a non-innocent spouse issue. See IRM 25.15.6.6, for information regarding non-innocent spouse issues.
 - d. Review the taxpayer's account on IDRS for each year listed on the claim for items that must be considered. See IRM 25.15.6.7, for additional guidance.
 - e. Determine for each claim year that will be examined whether the claim is timely filed. The examiner must determine the time period for making the request and identify the date of first collection activity. See IRM 25.15.3.5.1, Collection Activity, for details regarding what actions constitute collection activity and IRM 25.15.1.6.2, Time Period for Making the Request.

Note: See IRM 25.15.5.16, Time Period for Filing a Request for Relief, for information for a request for relief resulting from the operation of community property law under IRC 66(c).

- f. Initiate contact regarding the IS claim, see IRM 25.15.6.8.
- g. Give full and objective consideration of the IS claim and address all available relief provisions. The facts, law, taxpayer's position, and conclusion must be documented on the IS Lead Sheet, see IRM 25.15.6.11 (2), or on the job aids and supporting workpapers indexed to the lead sheet. Refer to IRM 25.15.3, Relief from Joint and Several Liability, Technical Provisions of IRC 6015, regarding the application of the law and IRM 25.15.6.9, for additional guidance. Each year must be considered and documented separately on its own merits.

Reminder: If the RS did not file a joint return but resides in a community property state, relief under IRC 66(c) may be considered. See IRM 25.15.5, Relief from Community Property Laws, for more information. Additional community property guidance can be found in IRM 25.18.2, Income Reporting Considerations of Community Property, for IRC 66(a) and IRM 25.18.4, Collection of Taxes in Community Property States, for IRC 66(b).

- h. Communicate the pre-assessment determination under IRC 6015 to both taxpayers and/or their representative(s). In post-assessment determinations examiners are responsible for informing each spouse that the determination will be communicated in a forthcoming letter (issued by TS). See IRM 25.15.6.10 for guidance on how to communicate the determination to each spouse. In all cases involving relief from joint and several liability, correspondence must be sent separately to each spouse, see IRM 25.15.6.12 for guidance.

Caution: The presence of the same representative for both parties in any IS claim may be considered a conflict of interest for the representative under Circular 230. The examiner should advise the parties of this potential conflict. The examiner should also confirm that each spouse has properly received their rights to relief and appeal regarding the claim. Circular 230, 31 CFR 10.29, *Conflicting interests*, provides additional guidance.

- i. Prepare case for closing to TS. When closing an IS claim case, the examiner must complete Form 3198, Special Handling Notice for Examination Case Processing, and Form 5344, Examination Closing Record, to indicate the case includes an IS claim determination and specific details regarding assessment. See IRM 25.15.6.18 for additional guidance.
- j. Forward all pre-assessment and post-assessment IS cases through the designated *TS ISR* for mandatory review whether agreed, unagreed, or appealed. For your designated TS ISR's name(s) and address, see Knowledge Management Technical Services Innocent Spouse/Contacts for *TS ISR*. The TS ISR is responsible for sending the case forward to Appeals when necessary, issuing a statutory notice of deficiency, issuing post-assessment determination letters, or closing to CCP. See IRM 25.15.6.18.1 for TS responsibilities.

25.15.6.4
(06-19-2017)
Taxpayer's Rights

- (1) In every examination involving a joint return or where spouses domiciled in a community property state have filed separately, the examiner **must** explain that relief may be available under IRC 6015 or IRC 66(c), respectively. Pub 1, Your Rights as a Taxpayer, provides a brief description of IS relief. See IRM 25.15.1.9, Notification Requirements, for additional guidance.

- (2) The examiner may provide the taxpayers or representative(s) with the following:
 - Form 8857, Request for Innocent Spouse Relief
 - Pub 504, Divorced or Separated Individuals
 - Pub 555, Community Property
 - Pub 971, Innocent Spouse Relief
- (3) The examiner **must** fully document the discussion(s) regarding IS relief. SB/SE Field Examination revenue agents (RAs) document the discussion on Lead Sheet 100-3_RA_Initial_Discussion, or a workpaper indexed to Lead Sheet 100-3. SB/SE Field Examination tax compliance officers (TCOs) document the discussion on Lead Sheet 100-3_TCO_Initial_Discussion, or a workpaper indexed to Lead Sheet 100-3. See IRM 25.15.6.11, Workpaper Documentation, for LB&I documentation procedures. The documentation must contain the following:
 - Date of discussion,
 - Persons present during the discussion,
 - Actions taken to explain IRC 6015 or IRC 66(c), and
 - If the taxpayer indicates that relief will be requested.

25.15.6.5
(06-19-2017)
**Request for Innocent
Spouse Relief**

- (1) Taxpayers may request IS relief on Form 8857, or by providing a similar statement (containing the same information required in Form 8857) signed under penalties of perjury.
- (2) Any claim for relief filed on or after December 20, 2006, regardless of the revision date of Form 8857 used by the RS, will be treated as a claim for relief under all subsections of IRC 6015 and will prohibit collection action against the RS and suspend the CSED on the RS from the date the claim is received until the expiration of the 90-day period for filing a Tax Court petition or if a Tax Court petition is filed, until the date a Tax Court decision becomes final.
- (3) One Form 8857 (or similar statement) may be used to request relief for multiple years. See IRM 25.15.1.6, Form 8857, Request for Innocent Spouse Relief.
- (4) When Form 8857 (or similar statement) is filed by a taxpayer, the receiving office will date stamp the form upon receipt.
- (5) In any case where the taxpayer is currently under examination for at least one year listed on the Form 8857 (or similar statement), the claim will be worked for all years listed.
- (6) If a taxpayer only requests relief for one year on Form 8857 (or similar statement), but an additional year could be considered; work the year on Form 8857 and advise the RS via Letter 3659, Requesting Spouse Initial/Follow-up Contact, that there is another year the Service could consider. For relief requested under IRC 66(c), use Letter 3662, Requesting Spouse Initial/Follow-up Contact IRC Section 66(c).

Note: Do not solicit a Form 8857 for a year that is non-qualified. See IRM 25.15.6.6 and IRM 25.15.3.6, Special Considerations, for more information on non-qualifying requests for relief.

- (7) If the research shows an additional tax year could be considered for relief, but the relief year requested was disallowed or did not qualify, advise the RS another year could be considered. Use Letter 3657, No Consideration Innocent Spouse, or Letter 3658, Unprocessable Innocent Spouse Claim. For relief requested under IRC 66(c), use Letter 3666, IRC section 66(c) Unprocessable/ Transferred Claim.

Note: Do not solicit a Form 8857 for a year that is non-qualified. See IRM 25.15.6.6 and IRM 25.15.3.6 for more information on non-qualifying requests for relief.

- (8) A processable Form 8857 (or similar statement) must contain all of the following:
- A valid signature signed under penalties of perjury,
 - Tax period(s),
 - Taxpayer identification numbers (TINs), and
 - Information to explain the request for relief.

Note: A valid signature means the Form 8857 (or similar statement) contains an original signature of the RS or their duly authorized Power of Attorney. The IRS accepts photocopy signatures and fax signatures in some situations. See IRM 4.19.13.11.5 , Specific Guidance on Use of Faxes in Tax Administration Processes, for additional guidance.

- (9) A Form 8857 (or similar statement) missing any of these items is not processable. See IRM 25.15.6.5.1 for additional guidance.

25.15.6.5.1
(06-19-2017)
**Form 8857 - Not
Processable**

- (1) The examiner will take the following action(s) within ten business days of receipt to perfect the Form 8857 (or similar statement) if it is not processable:
- Contact the RS and request the Form 8857 or equivalent request for relief be corrected to make it processable, and
 - Return the original form with the received date circled in red along with Letter 3658, Unprocessable Innocent Spouse Claim Letter, explaining the reason for the return. Letter 3658 has selectable paragraphs that explain what is needed for the form to be processable. For relief requested under IRC 66(c), use Letter 3666, IRC section 66(c) Unprocessable/ Transferred Claim. Letter 3666 has selectable paragraphs that explain what is needed for the form to be processable.
- Note:** Retain a photocopy of the original, date-stamped request for relief and fully document the actions taken in the case file before returning the original.
- Allow a minimum of 15 calendar days (includes time for mailing) for the taxpayer to perfect the claim for relief.
 - If the claim cannot be perfected or RS does not respond within 15 calendar days, notate in the case file why the claim could not be considered, and notify the PSP ISC that the claim has been received and has been determined as not processable. If the taxpayer submits a new or revised claim after the original claim has been updated as not processable, the examiner must notify PSP ISC of the new or revised claim. The examiner must determine if the new or revised Form 8857 is processable, see IRM 25.15.6.5.

25.15.6.5.2
(06-19-2017)
**Form 8857 - Received
from PSP**

- (1) When a claim is forwarded from PSP, the PSP ISC will have established AIMS controls on all years listed on the claim **that are not already open for examination.**
- (2) For years that controls were established by PSP, the examiner will ensure the following exists on the account:
 - Source Code "73",
 - Project Code "0014" (unless the current project code has greater priority),
 - Freeze Code "12",
 - Transaction Code (TC) 971 with Action Code (AC) 065. See IRM 25.15.2.4.2, Innocent Spouse Indicator Transaction Code (TC) 971/972, for information regarding the IDRS transaction codes for IS claims,
 - TC 130 on entity module for the NRS. Use command code ENMOD to review. See IRM 25.15.2.4.3, TC 130 Entire Account Frozen From Refunding, for guidance on TC 130.
 - An updated statute alpha code, if applicable.
- (3) If any of the items listed in (2) do not exist on the account, the examiner should contact the PSP ISC to request assistance.

25.15.6.5.3
(06-19-2017)
**Form 8857 - Received
from Taxpayer**

- (1) If the taxpayer raises the issue of relief from joint and several liability during an audit, the examiner will secure a completed Form 8857, or a similar statement containing the same information, signed under penalties of perjury. In addition, the following must be completed:
 - a. Date stamp Form 8857 (or similar statement) upon receipt,
 - b. Determine if the request is processable within 10 days of receipt. For additional guidance to determine if the claim is processable, see IRM 25.15.6.5, and
 - c. Identify all years shown on Form 8857 and determine **for each year** whether the claim needs to be examined (e.g., any tax year that has a balance due or a potential liability or RS is potentially eligible for a refund). All years listed on the form must be addressed. See IRM 25.15.6.5.

Note: If the examiner determines a claim year will not be examined (e.g., no balance due and no potential deficiency or RS is not eligible for any refund), the examiner must document the case file as to why the claim year will not be examined and notify the taxpayer using Letter 3657. For relief requested under IRC 66(c), use Letter 3666 , IRC section 66(c) Unprocessable/ Transferred Claim. Letter 3666 has selectable paragraphs that explain what is needed for the form to be processable. The examiner should contact the PSP ISC or the local TS ISR if unsure whether the claim year needs to be examined.

- (2) To establish additional claim years on AIMS, the examiner must:
 - a. Identify the statute of limitations for each year listed on Form 8857 and determine if the examination will be opened solely for the IS issue (no additional tax will be assessed) or if the statute is sufficient for a full examination.

Note: If the statute is expired or is imminent, refer to IRM 25.6.23, Examination Process-Assessment Statute of Limitations Controls, for additional guidance.

- b. Prepare and submit Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, and request Source Code “73” and Project Code “0014”.
- (3) When the claim for relief year(s) is already open on AIMS the examiner must update the Project Code to “0014” (unless the current project code has greater priority) using Form 5348, AIMS/ERCS Update (Examination Update).
- (4) Examiners must send a copy of Form 8857 to the PSP ISC to notify that a processable IS claim has been received and to request input of all applicable IS codes (i.e., TC 971, AC 065, TC 130 for the NRS (See IRM 25.15.2.4.3 for TC 130 guidance), freeze code and ISTS updates). See IRM 25.15.6.1.8(4), which provides a link to identify the appropriate PSP ISC.

Note: Examiners are responsible for verifying all of the appropriate codes are entered on the taxpayer’s account(s) before closing the case from the group. If the freeze code, and/or TC 971, AC 065 and TC 130 codes (See IRM 25.15.2.4.3 for TC 130 guidance) have not been entered or are incorrect, the examiner should contact the PSP ISC and ensure the codes are entered/corrected.

25.15.6.6
(06-19-2017)
Non-Innocent Spouse Issues

- (1) Relief from joint and several liability should not be confused with other provisions that provide relief to joint filers. The Service has the responsibility to inform taxpayers of relief provisions even if the taxpayers do not specifically raise them due to their own limited knowledge of the law.
- (2) If a joint return is invalid, it cannot be considered for IS relief. There are three situations where a joint return is invalid:
 - a. Invalid election - One spouse did not elect to file a joint return. See IRM 25.15.19.2.4.2, Determining if Joint Election is Valid, for additional information.
 - b. Forgery - One spouse did not sign the return. See IRM 25.15.19.2.5, Forgery, for additional information.
 - c. Unlawful - Taxpayers had no legal right to file jointly. See IRM 25.15.19.2.6, Unlawful, for additional information.

Note: Tacit consent is a factor to consider for invalid elections and forgery allegations. See IRM 25.15.19.2.4.1, Tacit Consent Factors, for additional guidance.

- (3) The following issues should not be confused with IS relief:

Issue	Explanation and IRM Reference
Injured Spouse Claims (Claim to recover part or all of a joint refund transferred to pay the separate liabilities of the other spouse.)	If the taxpayer mistakenly files Form 8857 instead of an injured spouse claim, see IRM 25.15.1.2.5, Injured Spouse Claims.

Issue	Explanation and IRM Reference
Offer in Compromise	If the taxpayer filed an offer in compromise, see IRM 25.15.1.2.7, Offer in Compromise (OIC).
Tax Equity and Fiscal Responsibility Act (TEFRA) Settlement Agreements	For TEFRA issues, see IRM 25.15.1.2.8, Tax Equity and Fiscal Responsibility Act (TEFRA) Settlement Agreements.
Fraud Penalty	Where the fraud penalty is assessed against a spouse without appropriate development and documentation, that spouse should be relieved of such assessment pursuant to IRC 6663(c) and not IRC 6015. IRC 6015 does not provide for relief from penalties and interest separate from tax. See IRM 4.8.11.9.3.5, Documentation of Culpable Spouse, for additional information.

- (4) There are additional situations that may prevent filing a claim for relief or result in a non-qualifying claim. See IRM 25.15.3.6 for additional details.

25.15.6.7
(06-19-2017)
IDRS Review

- (1) A thorough review of the taxpayers' account on IDRS is required for every IS claim to determine the relevant factors that may affect processing the claim and/or making a determination on the request for relief.

Note: Notify the PSP ISC of missing or incorrect items and/or take steps to have the appropriate codes input. See IRM 25.15.6.5.2, for appropriate codes.

- (2) The examiner must review IDRS for each claim year for the following:

- The existence of any unpaid balance due, whether from an original filed return (underpayment), an amended return (underpayment or understatement), or an additional assessment (understatement) made by the Service,
- Payments made to determine if the RS is eligible for a refund, and

- (3) The examiner must pay special attention to **statute of limitations** implications.

- In pre-assessment cases, as in all open examination cases, the assessment statute expiration date (ASED) is important. A claim that cannot be fully worked before the statute expires (because one or both taxpayers have not agreed to extend the statute under normal examination procedures) must be postponed and considered under post-assessment procedures. See IRM 25.15.6.10.1, for additional guidance.
- In post-assessment cases, both the refund statute expiration date (RSED) and the collection statute expiration date (CSED) are important. See IRM 25.15.1.6.2, Time Period for Making the Request, and IRM 25.15.1.8, Statute of Limitations on Collection.

Note: In post-assessment cases where the assessment statute is expired or imminent, refer to IRM 25.6.23 regarding the use of alpha codes for statute control purposes.

- (4) For each claim year, the examiner must review IDRS of the joint MFT 30 account and of the individual MFT 31 account when an MFT 31 account is present (review IMFOLI for each spouse for MFT 31 account information).

Note: For relief under IRC 66(c), review IDRS on the individual MFT 30 accounts for each claim year.

25.15.6.8
(06-19-2017)
**Initial Contact Regarding
the Innocent Spouse
Claim**

- (1) Initial contact for all examinations must be made by mail using approved form letters and not by telephone. When the taxpayer requests relief under IRC 6015, Letter 3659, Requesting Spouse Initial/Follow-up Contact, is used to make initial contact and notify the RS of receipt of the IS claim or to request additional information from the RS. For relief requested under IRC 66(c), use Letter 3662, Requesting Spouse Initial/Follow-up Contact, IRC Section 66(c).

Caution: Refer to IRM 25.15.6.13, if the RS has indicated alleged abuse on Form 8857 or by some other means during the course of the examination.

- (2) When an IS claim is received and determined to be processable, the examiner **must** notify the NRS. When the taxpayer requests relief under IRC 6015, issue Letter 3284, Notification to Non-Requesting Spouse – Initial Contact Letter, and allow 30 days for the NRS to respond (see IRM 25.15.3.4, Notification to NRS). For relief requested under IRC 66(c), use Letter 3665, Nonrequesting Spouse Initial Contact, IRC section 66(c).
- (3) Examiners must not release one spouse's personal information to the other spouse. For example, do not release either spouse's new name, home address, telephone number, place of employment, etc., to the other spouse.
- (4) Information with respect to the joint return account module, such as balance due, may be released to both spouses. If in doubt as to what may or may not be disclosed, follow IRM 11.3.2.4.1.1, Disclosure of Collection Activities with Respect to Joint Returns, established guidelines or check with the local disclosure officer at: *Disclosure Knowledge Base*.

25.15.6.9
(06-19-2017)
**Full and Objective
Consideration of All
Relief Provisions**

- (1) The examiner must fully develop the facts, analyze the evidence for each claim year and apply the IS law objectively, using the guidance provided in IRM 25.15.3 to determine if relief from joint and several liability applies. This includes contacting both spouses to obtain information and their positions. See IRM 25.15.3.12, Case Development, for additional guidance on case development.

Note: Examiners must follow IRM 25.15.5, Relief from Community Property Laws, for claims received from taxpayers living in community property states who have filed separate returns.

- (2) Examiners must base the determination for **each** claim year on the facts and circumstances specific to the respective tax year. A separate determination may be necessary for each year if the facts and circumstances differ. In addition, it may be necessary to make a separate determination for an understatement (pre-assessment), an understatement (post-assessment), and/or underpayment (post-assessment) in the same tax year.

Caution: Generally, pre-assessment and post-assessment determinations should not be documented on the same workpaper and multiple years should not be combined on the same workpaper **unless** the exact same facts and circumstances, and the same area of law under IRC 6015 apply.

Reminder: Review of the taxpayer's account on IDRS is necessary to determine if a liability exists in addition to a proposed deficiency that must be considered under IRC 6015.

(3) The examiner must consider all possible relief provisions that apply.

Example: If the RS requests relief under IRC 6015(b) and this relief provision does not apply, the examiner must consider IRC 6015(c), election to allocate a deficiency, and IRC 6015(f), equitable relief, provisions.

Caution: Underpayments may only be considered under IRC 6015(f).

(4) Once a determination is made on a **pre-assessment** claim, the examiner must fully document the determination by completing the Innocent Spouse Lead Sheet (see IRM 25.15.6.11 (2)) and/or Form 886-A, Explanation of Items, and prepare an examination report that includes the IS determination in the "Other Information" section of the report. See IRM 25.15.6.10.1 for rules regarding the examination report and the pre-assessment IS determination.

(5) Once a determination is made on a **post-assessment** claim, the examiner must fully document the determination by completing the Innocent Spouse Lead Sheet (see IRM 25.15.6.11 (2)) and/or Form 886-A and enclose it in the case file. TS is responsible for issuing the determination on all post-assessment cases. See IRM 25.15.6.10.2 for post-assessment guidance.

Note: If there is both a pre-assessment and post-assessment claim, the examiner will complete the separate determination on each liability, but will only issue the pre-assessment determination on the examination report. TS is responsible for issuing the post-assessment determination.

25.15.6.10
(06-10-2019)
**Communicate the
Determination**

(1) The IS determination must be fully developed, properly documented in the case file, and communicated to both the RS and NRS. Communicating the determination is different for a pre-assessment determination and a post-assessment determination:

- a. Pre-Assessment - The examiner should verbally discuss the determination with both spouses to determine if the case will be agreed, partially agreed or unagreed. Based on the agreement status, the examiner will follow the report writing procedures in IRM 25.15.6.10.1.
- b. Post-Assessment - The examiner must inform the taxpayers the determination will be communicated in a forthcoming letter, however the determination can be verbally communicated by the examiner, see IRM 25.15.6.10.2. TS will issue the determination letters.

25.15.6.10.1
(09-15-2022)
**Pre-Assessment
Determination and
Report Writing**

(1) The examiner will include the IS preliminary determination in the examination report for all pre-assessment cases **when sufficient time remains on the statute** to provide appeal rights to both spouses regardless of whether the taxpayers indicate they are going to agree, partially agree or disagree with the IS determination. The examination report must be hand delivered or mailed to the taxpayers separately with the appropriate 30-day letter.

Reminder: Rev. Proc. 2003-19 gives the NRS the right to appeal the preliminary determination when full or partial relief is granted. This is the only op-

portunity for the NRS to appeal the IS determination. The RS has the right to appeal the preliminary determination when relief is granted or denied (partially or fully), refer to IRM 25.15.6.10.3, Appeals Rights of RS and NRS. Therefore, the examiner must issue a 30 day letter notifying both taxpayers of their right to appeal when the report containing the IS preliminary determination is issued.

Note: If there is not sufficient time remaining on the statute to provide appeal rights, the examiner must **not** include the IS determination on the examination report. Refer to IRM 25.15.6.10.1.2 (4), for guidance that must be followed.

(2) If there is sufficient time on the statute to provide appeal rights, the examiner prepares the examination report for only pre-assessment years using report writing procedures found in IRM 4.10.8, Report Writing, with the following additions:

- Special language regarding appeal rights as well as the relief determination must be included in the “Other Information” section of the examination report as shown in (3) below.

Note: The IS determination will not appear as an adjustment on the examination report.

- Form 886-A or the taxpayer’s copy of the redacted Innocent Spouse Lead Sheet explaining the determination must be attached to the examination report. The explanation detailed on the Form 886-A or lead sheet should contain sufficient information to allow either spouse the ability to provide an adequate protest to the determination.

Caution: The explanation provided should not contain personal information that is prohibited from disclosure to the other spouse.

- When a partial relief determination is made, a computation of the allocation of adjustments must be attached to the examination report. The examiner will prepare separate computations for joint liability amounts and individual liabilities when a deficiency is allocated under IRC 6015(c) or apportioned under IRC 6015(b) or IRC 6015(f). When partial relief is allowed, the RS remains liable for a portion of the liability. For example, if the RS had actual knowledge regarding two of the three adjustments displayed on the examination report, the examiner may deny relief for those adjustments and grant relief for the adjustment due to an item the RS did not know about. See the procedures for allocating a deficiency under IRC 6015(c) at IRM 25.15.3.8.3, Allocating a Deficiency. See IRM 25.15.3, Technical Provisions of IRC 6015, for granting relief in full or in part under IRC 6015(b) and IRC 6015(f).

(3) The examiner **must include both of the following statements** in the “Other Information” section of the examination report:

- a. This examination includes a claim for Innocent Spouse Relief. If either the Requesting Spouse or the Non-Requesting Spouse disagree with the relief determined, the decision can be appealed. Follow the instructions in Letter ____ (insert the 30-day letter issued, e.g., Letter 950, Letter 915, etc.) to request an appeal. For additional information, consult Publication 556 and Publication 971, **and**

25.15 Relief from Joint and Several Liability

- b. (RS's Name), TIN (XXX-XX-XXXX), requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c) or IRC 6015(f) for the tax year(s) ending December 31, 20XX. (Additional language must be added based on the relief determination to communicate the liability to both the RS and NRS (as bolded and reflected in the examples below.))

Note: Married taxpayers residing in community property states who file MFS returns, or who are nonfilers and the Service has filed substitute returns for both taxpayers under IRC 6020(b), using married filing separate status and tax rates, may request relief from community property laws, see IRM 25.15.5, Relief from Community Property Laws. In this situation, the determination language statement above must reference IRC 66(c) instead of IRC 6015(b), IRC 6015(c) or IRC 6015(f), and all references to **joint and severally liable** must be removed, see examples in the table below.

Note: Married taxpayers residing in community property states who elect to file a joint return are both jointly and severally liable for the total liability on the return and IRC 66(c) does not apply, therefore, the determination language referencing IRC 6015 is applicable.

Relief Determination	Example	Appeals Language	Determination Language for IRC 6015(b), 6015(c) and IRC 6015(f)	Determination Language for IRC 66(c)
Full	Jennifer Oak (RS) has been granted full relief of the \$10,000 deficiency.	This examination includes a claim for Innocent Spouse Relief. If either the Requesting Spouse or the Non-Requesting Spouse disagree with the relief determined, the decision can be appealed. Follow the instructions in Letter ____ (insert the 30-day letter) issued to request an appeal. For additional information, consult Pub 556 and Pub 971.	Jennifer Oak, TIN XXX-XX-XXX, requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c) or IRC 6015(f) for the tax year ending December 31, 2020. Relief has been granted. Jennifer Oak is jointly and severally liable for \$ 0.00 including any penalties or interest. Jack Oak, TIN XXX-XX-XXXX, is individually liable for \$10,000 plus penalties and interest.	Jennifer Oak, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 66(c) for the tax year ending December 31, 2020. Jennifer Oak has been granted relief from reporting the allocated community property income. (This same determination language must be entered on the examination reports for the RS and NRS.)

Relief Determination	Example	Appeals Language	Determination Language for IRC 6015(b), 6015(c) and IRC 6015(f)	Determination Language for IRC 66(c)
Partial	Sally Trout (RS) has been granted partial relief for \$7,000 of the total deficiency of \$12,000.	This examination includes a claim for Innocent Spouse Relief. If either the Requesting Spouse or the Non-Requesting Spouse disagree with the relief determined, the decision can be appealed. Follow the instructions in Letter ____ (insert the 30-day letter) to request an appeal. For additional information, consult Pub 556 and Pub 971.	Sally Trout, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c) or IRC 6015(f) for the tax year ending December 31, 2020. Relief has been granted in part. Sally Trout is jointly and severally liable for \$5,000 plus penalties and interest. See attached statement. Sam Trout, TIN XXX-XX-XXXX is jointly and severally liable for \$5,000 plus penalties and interest and individually liable for \$7,000 plus penalties and interest. See attached statement. <i>Note: (The examiner must provide each spouse with an allocation statement to show how the deficiency was allocated. See IRM 25.15.6.11(12) for additional information on allocating.)</i>	Sally Trout, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 66(c) for the tax year ending December 31, 2020. Sally Trout has been granted partial relief from reporting the allocated community property income. <i>Note:</i> The examiner must provide each spouse with a statement to show how the community property income was allocated between the spouses. (This same determination language must be on the examination reports for the RS and NRS.)
Denied	Betty Birch (RS) has been denied relief for the total deficiency of \$15,000.	This examination includes a claim for Innocent Spouse Relief. If the Requesting Spouse disagrees with the relief determined, the decision can be appealed. Follow the instructions in Letter ____ (insert the 30-day letter) to request an appeal. For additional information, consult Pub 556 and Pub 971.	Betty Birch, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c) or IRC 6015(f) for the tax year ending December 31, 2020. Relief has been denied. Robert Birch and Betty Birch are jointly and severally liable for the deficiency of \$15,000.00 including any penalties and interest.	Betty Birch, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 66(c) for the tax year ending December 31, 2020. Betty Birch has been denied relief from reporting the allocated community property income. (This same determination language will be entered on the examination reports for the RS and NRS.)

25.15.6.10.1.1
(06-19-2017)

Pre-Assessment Agreed

- (1) Examiners should follow IRM guidelines to solicit an agreement to an examination report that includes an IS claim relief determination.
- (2) Agreement to income tax adjustments and the IS claim relief determination is secured on the following forms:
 - Form 4549, Income Tax Examination Changes Report - See IRM 25.15.6.10.1, or
 - Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment - A statement regarding the relief determination similar to the statement required on Form 4549 should be included on this form. See IRM 25.15.6.10.1.
- (3) The agreement status of each taxpayer (agreed or unagreed), relief type (full, partial, or denied), and applicable code section (IRC 6015 or IRC 66(c)) determines the additional procedures required. The examiner must request assessment of any agreed portion of the liability. For example, for IRC 6015 determinations when both spouses agree to a joint liability, the assessment will be requested on the **joint MFT 30** account. When relief is requested under IRC 6015 and the agreed liability is determined to be an individual liability, assessment on MFT 31 will be required, see IRM 4.10.8.12.3, Separate Assessments on Joint Taxpayers. This also includes cases where one spouse agrees to a liability and one does not.

Note: Examiners may contact their local TS ISR for procedural guidance when requesting assessment on an **MFT 31** account to ensure assessment is not delayed due to error.

Note: When relief is requested under 66(c) the assessment will be on one or both MFT 30 account(s) depending on the determination.

- (4) In an agreed case where relief is granted in full for the entire deficiency, a signed agreement is not required from the RS; only the NRS must sign the agreement.
- (5) In an agreed case where relief is granted in part or denied, a signed agreement is required from both spouses.

Reminder: Partial agreement does not mean partial relief. If the case is partially agreed, meaning a spouse has agreed to some adjustments but remains unagreed on other adjustments or unagreed with the IS claim determination, use established guidelines for partial agreements. See IRM 4.10.8.6, Partially Agreed Cases, for additional guidance. In cases where a partial agreement is obtained, the relief determination will be made under post-assessment procedures. See IRM 25.15.6.10.2 for guidance on post-assessment determinations. The examiner is responsible for notifying both spouses that a relief determination will not be made under pre-assessment procedures.

- (6) The examiner must close all IS cases to the designated *TS ISR* for review in status 21. See IRM 25.15.6.18.1 for a list of TS responsibilities.

Reminder: If there will be 60 days or less remaining on the statute when an agreed case is received in TS, the examiner must complete quick assessment procedures, see IRM 4.4.25, AIMS Procedures and Process-

ing Instructions, Quick Assessments, and close the case to the designated *TS ISR* not CCP. For IRC 6015 relief, the examiner must always request assessment on an individual MFT 31 account when only one spouse is to be assessed all or a portion of the agreed liability. Some IRC 6015 relief cases will require assessment on both MFT 30 and MFT 31 accounts when a portion of the liability is joint and a portion of the liability is individual. See IRM 4.10.8.12.3, Separate Assessments on Joint Taxpayers, for guidance on completing the partial assessment documents.

25.15.6.10.1.2
(09-15-2022)
**Pre-Assessment
Unagreed**

- (1) When the examiner determines the case will be unagreed and there is sufficient time remaining on the statute to provide appeal rights to both spouses, the examiner must prepare an unagreed report following the procedures in IRM 25.15.6.10.1, issue the report with the appropriate 30-day letter and suspend the case for 45 days as required by Rev. Proc. 2003-19.
- (2) When no protest is received in response to the 30-day letter, the examiner must forward the case to the designated *TS ISR* in status 21, for statutory notice of deficiency procedures.
- (3) If a valid protest is received within 45 days:
 - a. The examiner must consider new information and arguments raised in the protest and prepare (if warranted) a rebuttal to the protest.

Reminder: If a rebuttal is prepared, a copy must be provided to both spouses.
 - b. If the initial determination of the IS claim changes due to additional information, the examiner must issue revised examination reports to the RS and NRS allowing an additional 30 days to appeal the revised determination.
 - c. The case must be closed to the designated *TS ISR* in status 21 and flagged, "Expedite—Innocent Spouse Case—Appeal Requested".
 - d. TS will update the ISTS, perform mandatory review of the relief determination and forward the case to Appeals.
- (4) When there is **not** enough time on the statute to provide appeal rights to both spouses, the examiner must issue the unagreed report by following the normal unagreed procedures for all other examination adjustments. The IS determination must not be included on the examination report. The examiner will verbally inform the taxpayers the relief determination will be completed separately under post-assessment procedures following completion of the statutory notice of deficiency procedures and notify the RS that no collection action will be taken against the RS while the claim is pending. The examiner must check the "Innocent Spouse" box on Form 3198 and write "Post-assessment IS procedures apply" in the **Other Information** section of Form 3198, and forward the case to the designated *TS ISR* in status 21 for issuance of a statutory notice of deficiency.

Note: The case will be returned to the group after assessment if the relief determination was not developed and documented prior to closure, **unless the taxpayer petitions Tax Court and the innocent spouse issues are resolved in Tax Court.** The innocent spouse determination for all post-assessment cases will be issued by TS.

- (5) If the only unagreed issue is the IS determination, the examiner should solicit agreement to the other examination issue(s) and notify both spouses that the relief determination will be processed under post-assessment procedures.

25.15.6.10.2
(06-19-2017)

**Post-Assessment
Determination**

- (1) For post-assessment determinations, TS is responsible for communicating the examiner's determination to each spouse; however, the examiner is responsible for making the determination and informing each spouse that the determination will be communicated in a forthcoming letter issued by TS.

Note: All post-assessment determinations must be established on AIMS. The examiner is responsible for ensuring AIMS controls are established. If AIMS controls are not established, the examiner must take appropriate actions to establish them for all applicable year(s). See IRM 25.15.6.5.3, for guidance on establishing an IS claim on AIMS.

- (2) An examination report is not issued to the taxpayers for a post-assessment determination.
- (3) For post-assessment determinations, the examiner must follow all procedures for making a claim determination. See IRM 25.15.6.3 for a basic summary of examiner responsibilities.

Note: Claims for refund, subject to limitations, can be made under IRC 6015(b), and IRC 6015(f). See IRM 25.15.3 for help in determining if a payment made by the RS is eligible for relief. Examiners must verify any payment made by the RS to determine if the payment is eligible for refund.

Note: Payments made from community property are not eligible for refund. See IRM 25.15.5.7, Effect of Innocent Spouse Relief, and *Ordlock v. Commissioner*, 126 T.C. 47(2006), for additional information on payments made from community property.

- (4) The examiner must complete the Innocent Spouse Lead Sheet (see IRM 25.15.6.11 (2)) for a post-assessment determination. A separate Innocent Spouse Lead Sheet must be prepared for each post-assessment determination, even if the same claim year has a pre-assessment determination.
- (5) Once a determination is made, the examiner must prepare the required closing documents, see IRM 25.15.6.18, for guidance. Examiners must use disposal code 01 for all post-assessment claim cases.

Exception: If a claim year includes both a pre-assessment and a post-assessment determination, the examiner must use the disposal code applicable to the pre-assessment claim. The examiner must clearly notate the Form 3198, Special Handling Notice, that the case file includes both a pre-assessment and a post-assessment determination.

- (6) The examiner must forward the closed case to the designated *TS ISR* in status 21. The *TS ISR* will review the case, and prepare and issue the preliminary (30 day) and final (90 day) determination letters to the RS and NRS.

25.15.6.10.3
(09-15-2022)

Appeal Rights of RS and NRS

- (1) Spouses have appeal rights with respect to the relief determination in all pre-assessment and post-assessment cases, as follows:
 - a. The RS has administrative appeal rights if the request for relief from liability under the IS provisions is **denied** in whole or in part.
 - b. The RS also has the right to appeal if they are granted partial or full relief under one IRC section (e.g., 6015(c)) but they believe they are entitled to relief under another IRC section (e.g., 6015(b)), which could result in a refund.
 - c. The NRS has administrative appeal rights if the request for relief from liability under the IS provisions is **granted** in whole or in part.

Note: Appeals will notify the non-appealing spouse of proposed changes to the preliminary determination. If Appeals proposes to change the preliminary determination, the non-appealing spouse will be allowed to participate in the appeal.

- (2) Examiners must consider the statute of limitations to determine if a pre-assessment case is eligible for an Appeals conference.

Reminder: When a case is initially received in Appeals, there must be at least 365 days remaining on the statute. The group must allow a minimum of 30 days for shipping and processing a case through TS. Therefore, a case should have a minimum of 395 days on the statute when it is closed from the group.

Note: If a pre-assessment case is unagreed and there is not enough time remaining on the statute for the case to go to Appeals, the examiner **cannot** include the relief determination on the examination report, unless both spouses consent to extend the statute of limitations. If both spouses do not consent to extend the statute of limitations, the examiner must close the case to the designated *TS ISR* for issuance of the notice of deficiency and notate the Form 3198 (the case will be returned and worked as a post-assessment IS case). See IRM 25.15.6.10.1.2 (4) for additional guidance on completing Form 3198.

- If the notice of deficiency defaults, TS will issue the post determination letters if the IS issue was developed and documented; however, the case will be returned to the field after assessment, if the IS claim was not developed and documented, and the examiner will complete the IS determination and process it as a post-assessment claim. (See IRM 25.15.6.10.2). The taxpayers will be provided appeal rights for the post-assessment relief determination (See IRM 25.15.6.10.3(1)).
- If the taxpayer petitions tax court, Counsel or Appeals may contact the examiner for assistance with the IS determination.

Reminder: The IS determination must be developed and documented in the workpapers, even if the determination cannot be communicated to the spouses on the examination report, see IRM 25.15.6.10.2.

- (3) If either spouse requests an Appeals conference and there's enough time on the statute, the case will be forwarded to Appeals following mandatory review by the TS ISR.

- (4) The Appeals decision is final for the NRS. The NRS does not have the right to petition Tax Court.
- (5) The RS may petition the Tax Court (IRC 6015(e)(1)(A)) to determine the appropriate relief available if such petition is filed:
 - a. During the 90 day period beginning on the day after the IRS's final determination for 6015 relief is mailed, or
 - b. After 6 months of filing the request, if the IRS has not issued a determination.
- (6) If the RS petitions the Tax Court for innocent spouse relief, the NRS will have an opportunity to intervene in the Tax Court proceeding.

25.15.6.11
(09-15-2022)
**Workpaper
Documentation**

- (1) The IS request for relief is an issue and must be indexed to Form 4318, Examination Workpapers Index. For instructions on how to add the IS issue to the RGS case file, refer to the **OTHER ISSUES** section of the *RGS Issue Reference Guides (1040)*.

Note: For LB&I IMS users, a lead sheet should be created for the innocent spouse issue using IMF code 699999, Impact of DeMinimus Issues, see IRM 4.46.6.2, Standard Audit Index Number (SAIN).

- (2) SB/SE Examiners must create an IS issue lead sheet by adding the Innocent Spouse audit steps from *the Lead Sheet Issue Reference Guide (LSIRG)*. The generic lead sheet title and file name must be changed to identify the innocent spouse issue in accordance with established file naming conventions specified in IRM 4.10.15.
- (3) The audit steps for the innocent spouse issue are located in the "MISCELLANEOUS" section of *the Lead Sheet Issue Reference Guide*. They should be added to the innocent spouse lead sheet.
- (4) Examiners must save a copy of Form 8857 in the electronic case file. The examiner may need to scan a paper Form 8857 to create a PDF.
- (5) RGS users must save Form 8857 with the IS issue in Office Documents using the naming format: "Reference Code - Document Number - Descriptive Name." See IRM 4.10.15.7.19(4), Office Documents and Case File Documents.

Example: If the Innocent Spouse lead sheet is: "520-01-Innocent Spouse Lead Sheet," Form 8857 is named "520-02-Form 8857 Request for Innocent Spouse Relief," "520" is the issue reference code; "02" is the document number, and "Form 8857 Request for Innocent Spouse Relief" is the descriptive name. The descriptive name for Form 8857 should always include "Form 8857," for easy identification by subsequent users of the electronic file.

Reminder: To safeguard Form 8857, RGS should be backed up to CEAS on the same workday Form 8857 is saved to RGS.

- (6) LB&I IMS users must follow the Mandatory Standard Naming Convention as described in IRM 4.46.6.2(3), Workpaper Organization and Considerations.

- (7) The examiner's consideration of all relevant code sections (i.e., IRC 6015(b), IRC 6015(c), IRC 6015(f) and IRC 66(c)) must be fully documented in the case file. For IRC 6015 relief cases, refer to IRM 25.15.3 for detailed information regarding the relevant factors that must be addressed under each section. IS job aids for all relevant code sections are linked to the Innocent Spouse Lead Sheet in the "Audit Steps" section of the lead sheet. The job aids can also be found at: *Exam Procedures Knowledge Base for Innocent Spouse*.

Reminder: If the RS did not file a joint return but resides in a community property state, relief under IRC 66(c) may be considered. See IRM 25.15.5, Relief from Community Property Laws, for more information.

- (8) Examiners must complete all IS job aids and save them in RGS Office Documents as supporting workpapers using proper naming conventions as described in the example above. If not saved separately, the examiner's work within the job aid will be lost.
- (9) The Innocent Spouse Lead Sheet supporting the IS determination is needed for each determination (e.g., pre-assessment, post-assessment, underpayment and/or understatement) made.
- (10) The Tax Court's scope of review under IRC 6015(e)(7) is limited to the workpapers and documents established at the time of the final determination, and any newly discovered or previously unavailable evidence. Therefore, examiners must ensure the administrative case file is properly maintained and complete. For the IS issue, the case file must include:
- The RS's Form 8857
 - Statement of determination for each year
 - All documents provided by the RS and NRS
 - All documents obtained from third parties related to the IS determination
 - All documents the Service produced during the consideration of the IS request, such as job aids, letters, workpapers, lead sheets, and any other records considered before the final determination was issued.
 - Summary of pertinent facts; cross-referenced as needed
 - Basis for determination; including the development and analysis of all relevant factors and the code section(s) addressed
 - Federal tax transcripts
 - Taxpayer's position if case is unagreed
- (11) The Innocent Spouse Lead Sheet should contain an index reference to all supporting workpapers associated with or regarding the IS claim issue.
- (12) There must be documentation supporting how the liability was allocated or apportioned if relief is partially allowed. A computational worksheet for underpayment or understatement is required. The computational worksheet detailing the allocation or apportionment must be provided to the RS and NRS by attaching a copy to the examination report.

25.15.6.12
(06-19-2017)
**Addressing and Issuing
Correspondence**

- (1) In all examinations of a joint return, the examiner must verify the last known mailing address for each spouse. Form 8857 may indicate a different address than shown on IDRS. The examiner must verify the current address and document the actions taken in the activity record. See IRM 4.10.2.8.1, Making Initial Contact, for additional information.

- (2) Examiners **must send all** correspondence separately to each spouse, at each spouse's last known address, in every case involving a claim for relief from joint and several liability whether or not the spouses reside at the same address.
- (3) The examiner must not update an address for the NRS based on information provided on Form 8857 by the RS, without clear and concise notification from the NRS, as the NRS is not the one completing the Form 8857. Examiners must follow the guidance in IRM 4.10.2.11, Taxpayer Change of Address, when determining if the taxpayer has provided clear and concise notification of a new address.
- (4) Letters should be addressed to the name (separately) as it appears on IDRS, however examiners should confirm the taxpayer's current name as it may differ from that shown on IDRS. Refer to Form 8857, "current name" to confirm if the RS spouse's name has changed and address the correspondence accordingly.

Caution: Do not disclose the RS's new name to the NRS.

- (5) When a taxpayer is deceased, additional care must be taken when addressing correspondence. See IRM 25.15.6.14 for guidance on how to address correspondence for a deceased spouse.
- (6) If mail is returned undeliverable, follow the guidance provided in IRM 4.10.2.8.4, Undeliverable Initial Contact Letters. If a new address is located, re-issue the correspondence to the new address. If a new address cannot be located, the correspondence must be mailed to the last known address.

25.15.6.13
(06-19-2017)
Alleged Abuse

- (1) Form 8857 and instructions inform the RS that the NRS will be notified and given an opportunity to participate. If the RS alleges abuse by the NRS, or fears retaliation or harassment, the examiner should remind the RS the NRS will be notified, to allow the RS the option to proceed or withdraw the claim. See IRM 25.15.3.12.1, Alleged Abuse, for additional guidance.
- (2) If abuse is alleged, the examiner should attempt to contact the RS to determine if it is necessary to take additional precautions to conceal the location of the RS and document any actions taken in the activity record.

Caution: If abuse is alleged on Form 8857, select the applicable paragraph when issuing Letter 3659 or Letter 3662.

25.15.6.14
(06-19-2017)
Deceased NRS

- (1) In any case when the NRS is deceased, the relief determination must still be completed.
- (2) The examiner may be told the NRS is deceased by the RS or IDRS may identify the NRS as deceased. If there is no indication on IDRS that the NRS is deceased, request the following information from the RS or representative:
 - a. Date of death and copy of death certificate,
 - b. County in which the taxpayer died,
 - c. County in which the taxpayer resided at time of death,
 - d. A will or letters of testamentary, validated through the court, and
 - e. Name, address and telephone number of the fiduciary (executor, executrix, heirs or administrator of the taxpayer's estate), if any.

- (3) It is important to determine the proper person to contact on behalf of the NRS because that person is responsible for protecting the rights of the deceased NRS by providing relevant information and presenting the NRS's position.
- (4) There may be an estate or a fiduciary for the deceased NRS. Ask the RS if they know whether the NRS has an estate or heirs as dictated by state law. In addition, research IDRS using CC INOLE with definer G, to determine if the Service is aware of an estate. If yes, research using CC CFINK for POA information under the EIN of the estate.
- (5) A fiduciary (trustee, executor, administrator, receiver, personal representative, or guardian) stands in the position of and acts as the taxpayer, not as an appointee or authorized representative. A fiduciary does not need to complete a third party authorization unless the fiduciary wishes to authorize someone else to act in place of the decedent. If necessary, obtain the following:
 - a. Form 56, Notice Concerning Fiduciary Relationship, when necessary to prove the creation or termination of a fiduciary relationship,
 - b. Court papers naming the person as the court-appointed or court certified personal representative for the deceased taxpayer, and
 - c. Authorized representative forms, when necessary to verify an authorized representative

Caution: Use caution when determining the NRS's authorized representative from CFINK. A third party authorization expires with the death of the taxpayer.

- (6) See IRM 8.7.12.6.2(5), Deceased Non-Requesting Spouse, for guidance on how to address correspondence to the deceased NRS.
- (7) All actions and discussions with affected taxpayers and/or personal or authorized representatives must be noted on the activity record and fully documented in the case file.

25.15.6.15
(06-19-2017)
**Claims for Refund with
Innocent Spouse Issue**

- (1) If a taxpayer's claim for refund (or request for abatement) includes an IS claim, follow normal claim/abatement procedures with regard to the preparation of the report, forms and letters but do not issue them to the taxpayer. Include any claim for refund/abatement comments as required in the "Other Information" section of the examination report in addition to the statement that conveys the IS determination as shown in IRM 25.15.6.10.1.
- (2) Forward the case to the designated *TS ISR* for mandatory review. TS will issue the claim for refund or abatement report, forms or letters, and the IS claim determination letters.

25.15.6.16
(06-19-2017)
**Installment Agreement
in Effect when Innocent
Spouse Claim is Filed**

- (1) If the RS has an installment agreement in effect when an IS claim is filed, they must decide whether or not to continue making payments while the request for relief is considered. Inform the taxpayer of the following consequences:
 - a. If the taxpayers default on the installment agreement, the Service may terminate it. If the request for relief is denied, the Service may resort to other collection actions to collect the liability in full.
 - b. If the RS makes installment payments and relief is granted under IRC 6015(b) or IRC 6015(f), the RS may be entitled to a refund of the payments.

- c. If the RS makes payments and the request for relief is granted under IRC 6015(c), the RS will **not** be entitled to a refund of the payments. IRC 6015(g)(3) prohibits credits or refunds for an election under IRC 6015(c).

25.15.6.17
(06-19-2017)
Account Problems

- (1) Before a case is forwarded to the designated *TS ISR* for review, all account problems must be resolved. Account problems are problems with the account not related to the request for relief.
- (2) The function with jurisdiction over the issue has the responsibility to resolve any account problems that affect the determination of relief by Examination. Field Examination is not to resolve the account problems of issues under the jurisdiction of another function unless local agreements are reached with the functions. See IRM 4.10.1.4.6, Problem Solving, for additional guidance.

25.15.6.18
(06-19-2017)
Closing Procedures

- (1) When a request for relief is considered in an examination, additional information is required on Form 3198 and Form 5344:
 - Form 3198, Special Handling Notice - Examiners must check the box for "Innocent Spouse" and annotate in the "Other" box the applicable IRC section (IRC 6015(b), IRC 6015(c), IRC 6015(f) or IRC 66(c)), relief granted in whole, part, or denied to the RS and/or NRS, for example "IRC 6015(b) Relief Case – Relief granted in whole to the RS". In addition, the examiner must check other applicable boxes, for example in the "Special Features" section check the "MFT 31 Adjustment" box, when applicable.
 - Form 5344, Examination Closing - This form is used to direct the AIMS closing and provide adjustment information to be made to the Master File account, including whether the assessment should be assessed on MFT 30, MFT 31, or split between the spouse's accounts, for a pre-assessment case. See IRM 4.10.8.12.3, Separate Assessments on Joint Taxpayers, for additional guidance on preparing the Form 3198 and Form 5344 when making separate assessments.
- (2) Examiners must follow the guidance in IRM 4.10.9.9, Case File Assembly for Closing. Form 8857 and attachments should be placed behind and indexed to the IS issue section.

25.15.6.18.1
(06-19-2017)
**Technical Services
Responsibilities**

- (1) TS is responsible for:
 - a. mandatory review of the claim determination,
 - b. necessary deficiency procedures,
 - c. updating ISTS,
 - d. issuing required determination letters,
 - e. forwarding cases to Appeals when appropriate, and
 - f. closing cases to CCP with special closing instructions.
- (2) The reviewer will take the following actions on pre-assessment cases:
 - Ensure the closing instructions for all agreed cases are correct and close to CCP,
 - Issue the Statutory Notice of Deficiency, when the case is unagreed (not appealed),

- Input the appropriate closing codes and then forward to Appeals, when the case is appealed, and
- Make all necessary updates to the ISTS.

(3) The reviewer will take the following actions for post-assessment cases:

- Prepare and issue the preliminary and/or final determination letters as necessary,
- Retain the case for the 30/90 day period,
- Send the case to Appeals, or CCP as necessary, and
- Make all necessary updates to the ISTS.

(4) The reviewer will return a case to the group when:

- Facts and circumstances do not support the examiner's determination
- Law does not support the examiner's determination, or
- Account problems are not resolved. See IRM 25.15.6.17 for additional guidance.

25.15.6.18.2
(06-19-2017)

**IDRS Innocent Spouse
Tracking System (ISTS)**

- (1) The ISTS is designed to track an IS claim from receipt to closing. When IS claims are received they must be put on the ISTS by the PSP ISC and a TC 971 with an AC 065 **must be input to suspend collection activity** while the claim is being examined. Therefore, examiners must promptly notify the PSP ISC upon receipt of an IS claim directly from the taxpayer in order that the claim be input timely in the ISTS. See IRM 25.15.14.2, Introduction, for additional information on the ISTS.
- (2) If the tracking system is not updated timely, Collection suspensions may not get input and released timely. This is why it is **extremely important** the system be updated timely and validated for accuracy.

