

**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	Your social security number : : :
Your current address	Apt. no.
City, town or post office, state, and ZIP code. If a foreign address, see instructions.	Daytime phone no. (optional) ( )

**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) . ▶ .....

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

Name	Social security number : : :
Current home address (number and street). If a P.O. box, see instructions.	Apt. no.
City, town or post office, state, and ZIP code. If a foreign address, see instructions.	Daytime phone no. (if known) ( )



*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.

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



## General Instructions

### A Change To Note

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 made it easier to be relieved from liability of tax related to your spouse (or former spouse). You can now request innocent spouse relief for an understatement of tax no matter how small the amount. If you are divorced, separated, or no longer living with your spouse, you may now request separation of liability between you and your spouse (or former spouse) for an understatement of tax on a joint return. Also, the IRS will consider your request for equitable relief in situations where it would be unfair to hold you liable for tax that should be paid only by your spouse (or former spouse).

The new law applies to any tax liability arising after July 22, 1998, or any tax liability that was unpaid as of that date. For relief of liability for amounts that were paid as of that date, check the box on line 4 and attach the requested statement.

### Purpose of Form

Use Form 8857 to request relief from liability for tax, plus related penalties and interest, that you believe should be paid only by your spouse (or former spouse). You generally must have filed a joint return for the year(s) for which you are requesting relief (but see **Community Property Laws** on page 3). The IRS will evaluate your request and tell you if you qualify.

You may be allowed one or more of these three types of relief:

- Separation of liability (see page 3),
- Innocent spouse relief (see page 4), or
- Equitable relief (see page 4).

Attach a statement to Form 8857 explaining why you qualify for relief. Complete the statement using the best information you have available. The IRS will ask you for additional information if needed, or you may provide additional information at any time.

### Additional Information

See Pub. 971 for more details.

### When and Where To File

**When to file.** Generally, you should file Form 8857 as soon as you become aware of an unpaid tax liability that you believe should be paid only by your spouse (or former spouse). The following are some of the ways you may become aware of such a liability.

- The IRS has examined your tax return.
- The IRS sends you a notice.

You must file Form 8857 no later than 2 years after the first IRS attempt to collect the tax from you. However, you may file it any time up to 2 years after the first IRS attempt to collect the tax from you that occurs after July 22, 1998. Examples of attempts to collect the tax from you include garnishment of your wages or a notice of intent to levy against your wages or property you own.

**Where to file.** Do not file Form 8857 with your tax return. Instead, see below.

IF . . .	THEN file Form 8857 with . . .
You are meeting with an IRS employee for an examination, examination appeal, or collection,	That IRS employee.
You received an IRS notice of deficiency, and the 90-day period specified in the notice has not expired,*	The IRS employee named in the notice. Attach a copy of the notice.
None of the situations above apply to you,	<b>Internal Revenue Service Center Cincinnati, OH 45999-0857</b>

\*Before the end of the 90-day period, you should file a petition with the Tax Court, as explained in the notice. By doing so, you preserve your rights if the IRS is unable to properly consider your request before the end of the 90-day period. Include the information that supports your position, including when and why you filed Form 8857, in your petition to the Tax Court. The time for filing with the Tax Court is **not** extended while the IRS is considering your request.

### Tax Court Review of Request

You may petition (ask) the Tax Court to review your request for innocent spouse relief or separation of liability (but not equitable relief) if:

- The IRS sends you a determination notice denying, in whole or in part, your request for relief, **or**
- You do not receive a determination notice from the IRS within 6 months from the date you filed Form 8857.

You may petition the Tax Court to review your case no later than the end of the 90-day period that begins on the date the IRS mails you a determination notice. See Pub. 971 for details on petitioning the Tax Court to review your request.

### Joint and Several Liability

Generally, joint and several liability applies to all joint returns. This means that both you and your spouse (or former spouse) are liable for any **underpayment of tax** (tax shown on a return but not paid) plus any **understatement of tax** (defined next) that may become due later. This is true even if a divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns. Form 8857 allows you to request that joint and several liability not apply to part or all of any unpaid tax.

## Understatement of Tax

An understatement of tax, or deficiency, is generally the difference between the total amount of tax that the IRS determines should have been shown on the return, and the amount that actually was shown on the return.

**Example.** You and your spouse (or former spouse) file a joint return showing \$5,000 of tax, which was fully paid. The IRS later audits the return and finds \$10,000 of income that your spouse earned but did not report. With the additional income, the total tax becomes \$6,500. You and your spouse are both liable for the \$1,500 understatement of tax.

## Underpayment of Tax

An underpayment is tax that is properly shown on the return, but has not been paid.

**Example.** You filed a joint return that properly reflects your income and deductions, but showed an unpaid balance due of \$5,000. You and your spouse were getting divorced. You gave your spouse \$2,500 and your spouse promised to pay the full \$5,000, but did not. You and your spouse are both liable for the \$5,000 underpayment of tax.

## 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, state 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.

**Note:** *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 be paid only by your spouse (or former spouse), you may be allowed equitable relief.*

## Specific Instructions

### Your Current Home Address

**Foreign address.** Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please do not abbreviate the country name.

### Line 1

If you want to request relief for more than one tax year, you only need to file one Form 8857. If you are filing Form 8857 for multiple years, clearly indicate in the statement(s) you attach the type(s) of relief you are requesting for each year.

## Line 2—Information About Your Spouse (or Former Spouse)

Enter the current name and social security number (SSN) of the person to whom you were married at the end of the year(s) listed on line 1. If the name of your spouse (or former spouse) shown on that year's tax return(s) is different from the current name, enter it in parentheses after the current name. For example: Jane Maple (formerly Jane Oak). Enter the current address and phone number if you know it.

**P.O. box.** Enter the box number instead of the street address **only** if you do not know the street address.

**Foreign address.** Enter the information as explained under **Your Current Home Address**.

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

## Line 3—Separation of Liability

If you filed a joint return for the year(s) entered on line 1, you may be able to separate liability for any understatement of tax on the return(s) between you and your spouse (or former spouse). Generally, you can request to do so if you and that person:

- 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 Form 8857.

**Note:** *A widow or widower is considered no longer married.*

## Requesting Separation of Liability

Check the box on line 3 and attach a statement to Form 8857. Show the total amount of the understatement of tax. For each item that resulted in an understatement of tax, explain whether the item is attributable to you, your spouse (or former spouse), or both of you. For example, unreported income earned by your spouse (or former spouse), plus any related self-employment tax, would be allocated to that person. An overstated deduction of home mortgage interest on a home you owned jointly that was paid from a joint checking account would generally be allocated equally between both of you. See Pub. 971 for more details.

**Exception.** If, at the time you signed the joint return, you knew about any item that would result in part or all of the understatement, then your request will not apply to that part of the understatement.

## Line 4—Innocent Spouse Relief



*If you qualify for separation of liability, you may not need to request innocent spouse relief. The amount of relief allowed by requesting separation of liability will usually be equal to or greater than the amount allowed by requesting innocent spouse relief. However, you may still request innocent spouse relief if you wish.*

You may be allowed innocent spouse relief if:

- You filed a joint return for the year(s) entered on line 1,
- There is an understatement of tax on the return(s) that is due to erroneous items of your spouse (or former spouse),
- You can show that when you signed the return(s) you did not know and had no reason to know that the understatement of tax existed (or the extent to which the understatement existed), and
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

### Erroneous Items

Any income, deduction, or credit is an erroneous item if:

- It is omitted from or incorrectly reported on the joint return,
- It is attributable to your spouse (or former spouse),
- It results in an understatement of tax, **and**
- You either did not know and had no reason to know about the understatement or the extent of it (see **Partial Innocent Spouse Relief** next).

### Partial Innocent Spouse Relief

If you knew about any of the erroneous items, but not the full extent of the item(s), you may be allowed relief for part of the understatement. Explain in the statement you attach to Form 8857 how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

### Requesting Innocent Spouse Relief

Check the box on line 4 and attach a statement to Form 8857 explaining why you believe you qualify. The statement will vary depending on your circumstances, but should include the following:

- The amount and a detailed description of each erroneous item, including why you had no reason to know about the item or the extent to which you knew about the item,
- The amount of the understatement of tax for which you are liable and are seeking relief, **and**
- Why you believe it would be unfair to hold you liable for the understatement of tax.

## Line 5—Equitable Relief

You may be allowed equitable relief if, taking into account all the facts and circumstances, it would be unfair to hold you liable for any understatement or underpayment of tax that should be paid only by your spouse (or former spouse).

You can only be allowed equitable relief for an underpayment of tax, or part or all of any understatement of tax, that does not qualify for either separation of liability or innocent spouse relief. You should request separation of liability or innocent spouse relief for any understatement of tax, unless you are sure you are not eligible. The IRS will consider equitable relief if it determines that innocent spouse relief and separation of liability do not apply.

### Requesting Equitable Relief

Attach an explanation of why you believe it would be unfair to hold **you** liable for the tax instead of your spouse (or former spouse). If you are attaching a statement for separation of liability or innocent spouse relief, include only any additional information you believe supports your request for equitable relief.

### Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to determine the amount of liability, if any, of which you may be relieved. Internal Revenue Code section 6015 allows relief of liability. If you request relief of liability, you must give us the information requested on this form. Code section 6109 requires you to provide your social security number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. If you do not provide all the information in a timely manner, we may not be able to process your request.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form**, 17 min.; **Preparing the form**, 17 min.; and **Copying, assembling, and sending the form to the IRS**, 20 min.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this address. Instead, see **When and Where To File** on page 2.

