

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.**

Do not file this form if:

- You did not file a joint return for the year(s) for which you are requesting relief. However, if you lived in a community property state, see instructions.
- All or part of your overpayment was (or is expected to be) applied against your spouse's past-due debt (such as child support). Instead, file **Form 8379**, Injured Spouse Claim and Allocation, to apply to have your share of the overpayment refunded to you.



To see if you may qualify for **Innocent Spouse Relief**, go to www.irs.gov, click on "Individuals," "Innocent Spouses," and "Explore if you are an Eligible Innocent Spouse"; or see **Pub. 971**, *Innocent Spouse Relief*.

Part I

See **Spousal Notification** in the instructions.

Your current name (see instructions)	Your social security number
Your 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 number ()

If you have been a victim of domestic abuse and fear that filing a claim for innocent spouse relief will result in retaliation, check here

Part II

- 1** Enter the year(s) for which you are requesting relief from liability of tax ▶
2 Information about the person to whom you were married as of 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 number ()

- 3** Do you have an **Understatement of Tax** (that is, the IRS has determined there is a difference between the tax shown on your return and the tax that should have been shown)?
 Yes. Go to Part III. **No.** Go to Part V.

Part III

- 4** Are you divorced from the person listed on line 2 or has that person died?
 Yes. Go to line 7. **No.** Go to line 5.
5 Are you legally separated from the person listed on line 2?
 Yes. Go to line 7. **No.** Go to line 6.
6 Have you lived apart from the person listed on line 2 at all times during the 12-month period prior to filing this form?
 Yes. Go to line 7. **No.** Go to Part IV.
7 If line **4, 5, or 6** is **Yes**, you may request **Separation of Liability** by **attaching a statement** (see instructions). Check here and go to Part IV.

Part IV

- 8** Is the understatement of tax due to the **Erroneous Items** of your spouse (see instructions)?
 Yes. You may request **Innocent Spouse Relief** by **attaching a statement** (see instructions). Go to Part V.
 No. You may request **Equitable Relief** for the understatement of tax. Check **Yes** in Part V.

Part V

- 9** Do you have an **Underpayment of Tax** (that is, tax that is properly shown on your return but not paid) or another tax liability that qualifies for **Equitable Relief** (see instructions)?
 Yes. You may request **Equitable Relief** by **attaching a statement** (see instructions).
 No. You cannot file this form unless line 3 is **Yes**.

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

Sign Here

Keep a copy for your records. ▶

Your signature

Date

Paid Preparer's Use Only

Preparer's signature ▶

Date

Check if self-employed

Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code ▶

EIN
 Phone no. ()

General Instructions

Purpose of Form

Use Form 8857 to request relief from liability for tax, plus related penalties and interest, for which you believe only your spouse or former spouse should be held liable. Generally, you must have filed a joint return for the year(s) for which you are requesting relief (but see **Community Property Laws**). 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,
- Innocent spouse relief, or
- Equitable relief.

Statement To Attach

You must attach a statement to Form 8857 explaining why you qualify for relief. Complete the statement using the best information you have available. Include your name and social security number (SSN) on the statement.

If you are requesting relief for more than 1 tax year, you only need to file one Form 8857. However, you must include a separate statement for each year. Clearly indicate in the statement(s) the type(s) of relief you are requesting for each year. You must provide certain information for each type of relief you are requesting. See the specific instructions for Parts III, IV, and V for details on the information to include with your statement(s).

Generally, the IRS will request additional information from you. You can help the processing of your request for relief by completing and attaching **Form 12510**, Questionnaire for Requesting Spouse. To get Form 12510, go to www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

Additional Information

See **Pub. 971**, Innocent Spouse Relief. To get Pub. 971, go to www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

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.

When To File

You should file Form 8857 as soon as you become aware of a tax liability for which you believe only your spouse or former spouse should be held liable. The following are some of the ways you may become aware of such a liability.

- The IRS is examining your tax return and proposing a deficiency.
- The IRS sends you a notice.

You generally must file Form 8857 no later than 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 are garnishment of your wages or applying your income tax refund to the tax due.



If you are requesting relief based on community property laws, a different filing deadline applies. See **Relief from liability arising from community property law** on page 3.

Note: *The time that the IRS will be allowed to collect taxes, interest, and penalties does not include the time that your request for relief is being considered.*

Where To File

Do not file Form 8857 with your tax return or fax it to the IRS. 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. Do not file Form 8857 with the Tax Court.
Neither situation above applies to you	Internal Revenue Service Stop 840F, P.O. Box 120053 Covington, KY 41012

*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 with the IRS, 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.

Definitions

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 former spouse filed a joint return showing \$5,000 of tax, which was fully paid. The IRS later examines the return and finds \$10,000 of income that your former spouse earned but did not report. With the additional income, the total tax becomes \$6,500. The understatement of tax is \$1,500, for which you and your former spouse are both liable.

Underpayment of Tax

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

Example. You and your former spouse filed a joint return that properly reflects your income and deductions but showed an unpaid balance due of \$5,000. The underpayment of tax is \$5,000. You gave your former spouse \$2,500 and he or she promised to pay the full \$5,000, but did not. There is still an underpayment of tax of \$5,000, for which you and your former spouse are both liable.

Note: *If you have both an underpayment and understatement of tax, you may have to request different types of relief. If you have an underpayment of tax, you may only request equitable relief. Complete Parts III and IV to see which type(s) of relief you can request for the understatement of tax.*

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 jointly and individually responsible for any underpayment of tax plus any understatement of tax 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.

Community Property Laws

Generally, you must 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 provide that you and your spouse are both entitled to one-half of your total community income and expenses. If you and your spouse filed a joint return in a community property state, you are both jointly and severally liable for the total liability on the return. If you request relief from joint and several liability, state community property laws are not taken into account in determining whether an item belongs to you or your spouse or former spouse.

If you and your spouse filed separate returns, each of you must report one-half of your total community income and expenses on your separate returns. See **Pub. 555**, Community Property, for details.

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 have two ways to get relief.

1. Relief from liability arising from community property law. You are not responsible for the tax related to an item of community income if *all* the following conditions exist.

- You did not file a joint return for the tax year.
- You did not include the item in gross income on your separate return.
- Under Internal Revenue Code section 879(a), the item was income that belonged to your spouse or former spouse. For details, see **Community Property Laws** in Pub. 971.
- You establish that you did not know of, and had no reason to know of, that item.
- Under all facts and circumstances, it would not be fair to include the item in your gross income.

If you meet the above conditions, write "Innocent Spouse Relief Under IRC 66(c)" across the top of Form 8857. Complete Parts I, II, and IV. Attach a statement to the form explaining why you believe you qualify for relief.

You must file Form 8857 no later than 6 months before the expiration of the period of limitations on assessment (including extensions) against your spouse or former spouse for the tax year for which you are requesting relief. **However**, if the IRS begins an examination of your return during that 6-month period, the latest time for requesting relief is 30 days after the examination begins.

2. Equitable relief. If you do not qualify for the relief described above 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 request equitable relief (see the instructions for Part V).

Tax Court Review of Request

You may petition (ask) the Tax Court to review your request for relief if:

- The IRS sends you a final determination notice regarding your request for relief or
- You do not receive a final determination notice from the IRS within 6 months from the date you filed Form 8857.

The petition must be made no later than the 90th day after the date the IRS mails you a final determination notice. If you do not file a petition, or if you file it late, the Tax Court cannot review your request for relief. See Pub. 971 for details on petitioning the Tax Court.

Specific Instructions

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. **Do not** abbreviate the country name.

Part I

Name. Enter your current name. If your current name is different from your name as shown on your tax return for any year for which you are requesting relief, enter it in parentheses after your current name. For example, enter "Jane Maple (formerly Jane Oak)."

P.O. box. Enter your box number **only** if your post office does not deliver mail to your home.

Spousal Notification

The law requires the IRS to inform your spouse or former spouse of the request for relief from liability. The IRS is also required to allow your spouse or former spouse to provide information that may assist in determining the amount of relief from liability. The IRS will **not** provide information to your spouse or former spouse that could infringe on your privacy. The IRS will not provide your current name, address, information about your employer, phone number, or any other information that does not relate to making a determination about your request for relief from liability.

Victim of Domestic Abuse

If you have been a victim of domestic abuse and fear that filing a request for relief of liability will result in retaliation, check the box in Part I. Checking this box will alert us to the sensitivity of your situation. It does not grant you special consideration when we make our decision. However, evidence of abuse is one factor that the IRS may consider for certain types of relief. You should fully explain to us your concerns in the statement attached to your request.

Part II

Line 1

Enter the tax year(s) for which you have an understatement or underpayment. **Do not** enter any year(s) that the IRS used your refund to offset the understatement or underpayment.

Example. You were due a refund for tax year 2002 on your single return but the IRS applied the refund to unpaid joint taxes for tax year 2000. You enter "2000" on line 1.

Line 2

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

P.O. box. Enter the box number **only** if:

- You do not know the street address or
- The post office does not deliver mail to the street address.

Part III—Separation of Liability

You may request separation of liability for any understatement of tax shown on the joint return(s) you filed with the person listed on line 2 if that person died or you and that person:

- Are divorced, or
- Are legally separated, or

- Have lived apart at all times during the 12-month period prior to the date you file Form 8857.

See **Pub. 504**, Divorced or Separated Individuals, for details on divorce and separation.

Separation of liability applies only to amounts owed that are not paid. The IRS cannot give you a refund of amounts already paid.

Requesting separation of liability. You **must** 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, the person listed on line 2, or both of you. For example, unreported income earned by the person listed on line 2, plus any related self-employment tax, would be allocated to that person. See Pub. 971 for more details.

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

Part IV—Innocent Spouse Relief

You may be allowed innocent spouse relief only if **all** of the following apply.

- 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 (defined below) of the person listed on line 2.
- 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).
- 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, credit, or basis is an erroneous item if it is omitted from or incorrectly reported on the joint return.

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 the part of the understatement you did not know about. 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. You **must** attach a statement to Form 8857 explaining why you believe you qualify. The statement will vary depending on your circumstances, but should include **all** of the following.

- The amount of the understatement of tax for which you are liable and are seeking relief.
- 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.
- Why you believe it would be unfair to hold you liable for the understatement of tax.

For additional information on innocent spouse relief, see Pub. 971.

Part V—Equitable Relief

You may be allowed equitable relief if, taking into account all the facts and circumstances, the IRS determines you should not be held liable for any understatement or underpayment of tax.

Equitable relief generally applies only to:

- An underpayment of tax or

- Part or all of any understatement of tax that does not qualify for separation of liability, innocent spouse relief, or relief from liability arising from community property law.

You should request separation of liability, innocent spouse relief, or relief from liability arising from community property law for any understatement of tax, if you are eligible. The IRS will consider equitable relief for any understatement of tax if it determines that the type of relief you requested does not apply.

Refunds. Equitable relief is generally available only for amounts owed that are not paid. However, you may be eligible for a refund of:

- Separate payments you made after July 22, 1998, on an **underpayment** of tax, or
- Certain installment payments you made on an **understatement** of tax after you filed Form 8857.

Limit on amount of refund. If you request relief within 3 years after filing your return, the refund cannot be more than the part of the tax paid within the 3 years (plus any extension of time for filing your return) before you filed your request for relief. If you request relief after the 3-year period, but within 2 years from the time you paid the tax, the refund cannot be more than the tax you paid within the 2 years immediately before you filed your request for relief.

Additional information. For additional information on equitable relief, see Pub. 971 and Rev. Proc. 2003-61. You can find Rev. Proc. 2003-61 on page 296 of Internal Revenue Bulletin 2003-32 at www.irs.gov/pub/irs-irbs/irb03-32.pdf.

Requesting equitable relief. You **must** attach an explanation of why you believe it would be unfair to hold you liable for the tax instead of the person listed on line 2. If you are attaching a statement for separation of liability or innocent spouse relief, only include 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 from 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. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to investigate and/or enforce Federal nontax criminal 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, 16 min.; **Preparing the form**, 22 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 Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **Where To File** on page 2.

