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Advocating for Innocent Spouse Relief and Injured Spouse Relief



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Innocent Spouse Relief



Joint & Several Liability

- IRC 6013(a): Married taxpayers may file joint returns
- Each spouse **individually** responsible for
 - Accuracy and completeness of the return
 - Payment of the tax



IRC § 6015: Types of Relief

- § 6015(b): understatement relief
- § 6015(c): understatement relief
 - no longer married
 - legally separated
 - not living together
- § 6015(f): understatement **or** underpayment relief



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IRC § 66(c) Relief (Community Property)

- Poe v. Seaborn: Each spouse taxed on half of community income
- Relief from operation of community property laws
- Similar to § 6015, but important differences
- Publication 971

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6015(b) “Traditional Relief”

- Erroneous item(s) of non-requesting spouse (NRS)
- Requesting Spouse (RS) did not know and had no reason to know of the understatement when return was signed
- Inequitable to hold the RS liable
- Timely request - 2 year rule
- Refund available



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IRC 6015(c)

- Erroneous item(s) of NRS
- Divorced, widowed, legally separated, or living apart from NRS for the past 12 months
- Timely request – 2 year rule
- No refunds



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6015(f) “Equitable Relief”

- Inequitable to hold the RS liable for unpaid tax **or** deficiency
- Relief not available under 6015(b) or (c)
- Rev. Proc. 2013-34
- No two-year rule



Rev. Proc. 2013-34 Streamlined Approval

- Spouses no longer married;
- Economic hardship of RS; and
- No knowledge or reason to know:
 - of item giving rise to understatement, or
 - that NRS would not pay



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Additional Rev. Proc. 2013-34 Factors

- Legal obligations of the spouses;
- Significant benefit to the RS;
- RS compliance with income tax laws;
- RS mental or physical health

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Effect of Abuse

- Knowledge factor
- Significant benefit factor
- May overcome attribution

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Effect of requesting Innocent Spouse Relief

- IRS collection action suspended
- Period of limitations on collection suspended

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Excerpt - Form 8857

Part I Should you file this form?

Generally, both you and your spouse are responsible, jointly and individually, for paying any tax, interest, or penalties from your joint return. If you believe your current or former spouse should be solely responsible for an erroneous item or an underpayment of tax from your joint tax return, you may be eligible for innocent spouse relief.

Innocent spouse relief may also be available if you were a resident of a community property state (see list of community property states in the instructions) and did not file a joint federal income tax return and you believe you should not be held responsible for the tax attributable to an item of community income.

1 Do either of the paragraphs above describe your situation?

- Yes. You should file this Form 8857. Go to question 2.
- No. Do not file this Form 8857, but go to question 2 to see if you need to file a different form.

2 Did the IRS take your share of a joint refund from any tax year to pay any of the following past-due debt(s) owed ONLY by your spouse? • Child support • Spousal support • Student loan (or other federal nontax debt) • Federal or state taxes

- Yes. You may be able to get back your share of the refund. See Form 8379, Injured Spouse Allocation, and the instructions to that form. Go to question 3 if you answered "Yes" to question 1.

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Assisting Your Client



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If client is the RS

- Verify appropriateness of filing
- Verify that claim can be processed

If client is NRS

- Can participate in admin proceedings
- Can intervene in Tax Court case



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Injured Spouse Relief



Offsets - IRC § 6402

Requires the IRS to apply tax refunds to past-due:

- Child and spousal support;
- Certain non-tax federal debts (e.g., student loans);
- State tax debts; and
- Unemployment compensation debts owed to states.



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Repayment of Offset

- 31 C.F.R. § 285.2(f): IRS must repay nondebtor spouse's share of refund, where offset was to nontax debts
- Rev. Rul. 74-611, Rev. Rul. 80-7: IRS cannot offset joint refund to separate tax debt of one spouse

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Time Limits for Requesting Injured Spouse Relief

- 2 years – for offsets to pay tax debt
- 6 years – for offsets to pay other debts

IRM 21.4.6.5.8.9 – contains time limits and examples



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Additional Issues

- IRM 25.18.5: procedures for injured spouse claims in community property states
- IRM 21.4.6.5.10.2: allocating EITC

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Practice Tips

- Retain “one name only” default: IRM 21.4.1.4.9.2
- Request manual refund



How TAS Can Help

- Determine the status of claim and whether timeframes are being met
- Ask IRS to reconsider a denial or to review at a higher level

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Contact TAS



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- Visit www.IRS.gov/advocate
- Call 1.877.777.4778
- Jill MacNabb, Senior Attorney Advisor
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- LITC – www.taxpayeradvocate.irs.gov/litcmap