

## Innocent Spouse Relief

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are responsible (liable) for the tax and any additions to tax, interest, or penalties that come from the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if the other spouse earned all the income or claimed incorrect deductions or credits. In some cases, a spouse can get relief from this “joint and individual” liability.

There are three types of relief from joint and individual liability for spouses who filed joint returns:

1. ***Innocent Spouse Relief*** for tax you owe because your spouse or former spouse failed to report income or claimed improper deductions or credits.
2. ***Relief by Separation of Liability*** allows you to split the tax owed between you and your spouse or former spouse because an item was not reported properly on a joint return. The tax allocated to you is generally the amount you are personally responsible for.
3. ***Equitable Relief*** may apply when you cannot get innocent spouse relief or separation of liability relief. You may also qualify for equitable relief if the correct amount of tax was reported on your joint return but the tax was never paid.

You must meet all of the following conditions to qualify for “*innocent spouse relief*”:

1. You filed a joint return, which said you owed less tax than you actually did, because your spouse made mistakes or lied. This includes income that your spouse did not report on the joint return. Deductions, credits, and property values are erroneous items if they are incorrectly reported on the joint return.
2. You establish that when you signed the joint return you did not know, and had no reason to know, that the amount of tax was too low.
3. The facts and circumstances make it unfair to hold you responsible for reporting less tax than you were supposed to.
4. You ask the IRS for relief less than 2 years after the date the IRS first attempted to collect the tax from you.

To qualify under “*relief by separation of liability*” you must have filed a joint return and must meet *one* of the following requirements when you ask the IRS for relief:

1. You are divorced or legally separated from the spouse you filed the joint return with; or
2. You are widowed; or
3. You have not been a member of the same household as the spouse at any time during the 12-month period ending on the date you file Form 8857 (<http://www.irs.gov/pub/irs-pdf/f8857.pdf>), *Request for Innocent Spouse Relief*.

You must ask the IRS for relief less than 2 years after the date the IRS first tried to make you pay the tax. If you knew of the item that caused your spouse to report too little tax, you may not get relief by separation of liability.

You may qualify for "*equitable relief*" if you do not qualify for innocent spouse relief or relief by separation of liability because of a reporting error or you correctly reported the tax on your return, but you did not pay it. To qualify for equitable relief, you must do all of the following:

1. Show it would be unfair to hold you responsible for the tax on your joint return;
2. Meet other requirements listed in Publication 971 (<http://www.irs.gov/pub/irs-pdf/p971.pdf>); and
3. Ask the IRS for equitable relief less than 2 years after the date the IRS first tried to make you pay the tax.

Form 8857 (<http://www.irs.gov/pub/irs-pdf/f8857.pdf>), *Request for Innocent Spouse Relief*, or a written statement with the same information required on Form 8857, which is signed under penalties of perjury, must be filed in order to request innocent spouse relief, separation of liability, or equitable relief. You may also refer to Publication 971 (<http://www.irs.gov/pub/irs-pdf/p971.pdf>), *Innocent Spouse Relief*, for more information. If you ask for relief from joint liability, the IRS is required to tell the spouse you filed the joint return with and allow him or her to give information about the situation.

Relief from joint and individual liability is not the same as an injured spouse claim. You are an "injured spouse" if you file a joint return and all or part of *your share of the refund* will be taken by the government to pay the government money *your spouse* owes. If you are an injured spouse, you may still be able to get your share of the refund. For more information, look at Form 8379 (<http://www.irs.gov/pub/irs-pdf/f8379.pdf>), *Injured Spouse Allocation*.