



Innocent Spouse

If you are married, it is very likely that you will file a joint tax return to minimize your tax liability. However, by filing a joint return, you are agreeing to be held jointly and severally liable for any and all taxes, penalties, and interest due on the joint return. This is true even if a divorce decree or other agreement states that your spouse or former spouse will be responsible for the tax liabilities. However, there are provisions that may protect one spouse from the mistakes of another.

If you find that the IRS is attempting to collect on a tax that was incurred jointly with a spouse or former spouse, you may qualify for one or more of the following types of relief:

Innocent spouse relief — This type of relief is available if there is an understatement of tax or a deficiency on a tax return due to erroneous items of the spouse or former spouse of the requesting taxpayer. A deficiency would result when the IRS assesses an additional liability on unreported income or disallowed deductions. The taxpayer must demonstrate that when the tax return was signed, the taxpayer did not know and had no reason to know that the understatement of tax existed. The IRS will take into account all the surrounding facts and circumstances in order to determine whether it would be unfair to hold the requesting taxpayer liable for the understatement of tax.

Separation of liability — This relief is similarly available if there is an understatement of tax or a deficiency on a tax return. The liability for the understated tax may be separated such that the requesting taxpayer is granted relief from the liability. In order to qualify for this relief, the requesting taxpayer must be divorced, legally separated, or living apart from the spouse or former spouse at all time during the 12 months prior to the filing of the request. Separation of liability applies only to amounts owed that are not paid, and the IRS will not refund amounts that have already been paid.

Equitable relief — If the taxpayer does not qualify for separation of liability or innocent spouse relief, equitable relief may be requested in which case the IRS may determine that the taxpayer should not be held liable for any understatement or underpayment of tax after taking into account all of the facts and circumstances.