Department of the Treasury
Internal Revenue Service

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(Rev. June 2002)
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Innocent Spouse Relief

(And Separation of Liability and Equitable Relief)

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Contents

Introduction

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on 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 all the income was earned by the other spouse.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

1) Innocent spouse relief.
2) Separation of liability.
3) Equitable relief.

This publication explains these types of relief, who may qualify for them, and how to get them. Each type of relief has different requirements. They are explained separately in different parts of this publication. Read each part to see if you qualify for that type of relief. You can also use the Innocent Spouse Tax Relief Eligibility Explorer at **www.irs.gov** to see if you qualify for innocent spouse relief. Click on “Individuals”, “Innocent Spouses”, and “Explore if you are an Eligible Innocent Spouse”.

You can use the flowcharts at the end of this publication to see if you qualify for innocent spouse relief, relief by separation of liability, or equitable relief. You may also want to see *Questions & Answers,* near the end of this publication for a list of questions and answers about these types of relief.

TIP *You are not required to figure the tax, interest, and penalties that qualify for relief. The IRS will figure these amounts after you file Form 8857,* Request for Innocent Spouse Relief*.*

You can only qualify for equitable relief if you do not qualify for innocent spouse relief or relief by separation of liability.

Married persons who file separate returns in community property states may also qualify for relief. See *Community Property Laws,* later.

What this publication does not cover. This publication does ***not*** discuss filing an ***injured spouse*** claim. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied against your spouse's past-due federal debts, state taxes, or child or spousal support payments. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For more information, get Form 8379, *Injured Spouse Claim and Allocation.*

Useful Items

You may want to see:

Forms (and instructions)

- ❑ **8857** Request for Innocent Spouse Relief
- ❑ **12510** Questionnaire for Requesting Spouse

How To Request Relief

File Form 8857 to ask the IRS for the types of relief discussed in this publication. You only need to file one Form 8857 even if you are requesting relief for more than one tax year.

You must attach a statement to Form 8857 explaining why you believe you qualify for relief. You must also provide certain information for each type of relief you are requesting. See the instructions for Form 8857 for more information.

You can help the processing of your request by completing Form 12510, and attaching it to Form 8857. To get Form 12510, go to **www.irs.gov** or call 1–800–TAX-FORM (1–800–829–3676).

The IRS will review your Form 8857, figure the understatement or underpayment of tax and related interest and penalties, and let you know if you qualify.

A completed Form 8857 is shown later.

When to file Form 8857. 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. However, you must file Form 8857 no later than 2 years after the date on which the IRS first attempted to collect the tax from you after July 22, 1998. Examples of attempts to collect the tax from you are garnishment of your wages and applying your refund in a later year to the tax due.

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

Tax Court Review of Request

After you file Form 8857 you can ask the United States Tax Court to review your request. You can ask the United States Tax Court to review your request in the following two situations.

1) You disagree with the IRS' final determination notice telling you the extent to which your request for relief has been denied.
2) You have not received a final determination notice from the IRS within 6 months from the date you filed Form 8857.

The United States Tax Court is an independent judicial body and is not part of the IRS.

You must file a petition with the United States Tax Court in order for it to review your request for relief. You must file the petition ***no later than the 90th day after*** the date the IRS mails its final determination notice to you. If you do not file a petition, or you file it late, the Tax Court cannot review your request for relief.

You can get a copy of the rules for filing a petition by writing to the Tax Court at the following address.

United States Tax Court
400 Second Street, NW
Washington, DC 20217

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, 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.

Married persons who filed separate returns in community property states have two ways to get relief.

Relief from separate return liability for community income. You are not responsible for reporting an item of community income if ***all*** the following conditions exist.

- You filed a separate return for the tax year.
- You did not include an item of community income in gross income on your separate return.
- You establish that you did not know of, and had no reason to know of, that community income.
- Under all facts and circumstances, it would not be fair to include the item of community income in your gross income.

Requesting relief. You request relief from separate return liability for community income by filing Form 8857, as discussed earlier. Write "Innocent Spouse Relief Under IRC 66(c)" across the top of Form 8857. Fill in Parts I, II and V. Leave Parts III and IV blank. Attach a statement to the form explaining why you believe you qualify for relief. Mail the form to the address listed in the Form 8857 instructions.

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 (discussed later).

Innocent Spouse Relief

By requesting innocent spouse relief, you can be relieved of responsibility for paying tax, interest, and penalties if your spouse did something wrong on your tax return. The tax, interest, and penalties that qualify for relief can only be collected from your spouse. However, you are jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The IRS can collect these amounts from either you or your spouse.

CAUTION *You cannot be granted relief from household employment taxes that are reported on Form 1040.*

You must meet ***all*** of the following conditions to qualify for innocent spouse relief.

1) You filed a joint return which has an ***understatement of tax*** due to ***erroneous items*** (defined later) of your spouse.
2) You establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax.
3) Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax. (See *Indications of Unfairness for Innocent Spouse Relief,* later.)

Understatement of Tax

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return.

TIP *The IRS will figure the understatement of tax due to erroneous items of your spouse after you file Form 8857.* ***You are not required to do this computation.***

Partial relief when extent of understatement is unknown. You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know, that there was an understatement of tax due to your spouse's erroneous items, but you did not know how large the understatement was. You will be relieved of the understatement to the extent you did not know about it and had no reason to know about it.

Example. At the time you signed your joint return, you knew that your spouse did not report $5,000 of gambling winnings. The IRS examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually $25,000. This resulted in a much larger understatement of tax than you knew about at the time you signed your return. You established that you did not know about, and had no reason to know about, the additional $20,000 because of the way your spouse handled gambling winnings. The understatement of tax due to the $20,000 will qualify for innocent spouse relief if you meet the other requirements. The understatement of tax due to the $5,000 of gambling winnings will not qualify for relief.

Erroneous Items

Erroneous items are either of the following.

1) **Unreported income.** This is any gross income item received by your spouse that is not reported.
2) **Incorrect deduction, credit, or basis.** This is any improper deduction, credit, or property basis claimed by your spouse.

The following are examples of erroneous items.

1) The expense for which the deduction is taken was never paid or incurred. For example, your spouse, a cash-basis taxpayer, deducted $10,000 of advertising expenses on Schedule C (Form 1040), but never paid for any advertising.
2) The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of $10,000 that was for the payment of state fines. Fines are not deductible.
3) No factual argument can be made to support the deductibility of the expense. For example, your spouse claimed $4,000 for security costs related to a home office, which were actually veterinary and food costs for your family's two dogs.

Indications of Unfairness for Innocent Spouse Relief

The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you responsible for the understatement. Two indicators the IRS may use to decide that it is unfair to hold you responsible for the tax are whether you:

1) Received any significant benefit from the understatement of tax, or

2) Were later divorced from or deserted by your spouse.

Significant benefit. You can receive significant benefit either directly or indirectly. For example, if your spouse did not report $10,000 of income on your joint return, you can benefit directly if your spouse shares that $10,000 with you. You can benefit indirectly from the unreported income if your spouse uses it to pay extraordinary household expenses.

You do not have to receive a benefit immediately for it to be significant. For example, money your spouse gives you several years after he or she received it or amounts inherited from your spouse (or former spouse) can be a significant benefit.

TIP *Support payments that you receive as a result of a divorce proceeding are not a significant benefit.*

Relief by Separation of Liability

Under this type of relief, you allocate (divide) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse (or former spouse). The understatement of tax allocated to you is generally the amount you are responsible for. See *How To Figure Your Separation of Liability,* later.

TIP *You can request this type of relief whether or not you request innocent spouse relief.*

To request relief by separation of liability, you must have filed a joint return and meet ***either*** of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12–month period ending on the date you file Form 8857.

Burden of proof. You have the burden of proof in establishing the basis for separating your liability.

Invalid request. Even if you meet the requirements discussed previously, a request for separation of liability will ***not*** be granted in the following situations.

1) The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
2) The IRS proves that at the time you signed your joint return, you had actual knowledge of any items giving rise to the deficiency that were allocable to your spouse.
3) Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax. See *Transfers of property to avoid tax,* later.

In situations (2) and (3), a request will be denied only for the part of the deficiency due to the incorrect items about which you had actual knowledge, or to the extent of the value of the property transferred. If you establish that you signed your joint return under duress, then it is not a joint return, and you are not liable for amounts from that return. However, you may be required to file a separate return for that tax year.

Example. Bill and Karen Green filed a joint return showing Karen's wages of $50,000 and Bill's self-employment income of $10,000. The IRS audited their return and found that Bill did not report $20,000 of self-employment income. The additional income resulted in a $6,000 understatement of tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed Form 8857 to request relief by separation of liability. The IRS proved that Karen actually knew about the $20,000 of additional income at the time she signed the joint return. Bill is liable for all of the understatement of tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understatement of tax, interest, and penalties due to the $20,000 of unreported income because she actually knew of the item. The IRS can collect the entire deficiency from either Karen or Bill.

Transfers of property to avoid tax. If your spouse transfers property to you for the main purpose of avoiding tax or payment of tax, the tax liability allocated to you will be increased by the value of the property transferred. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made after the date that is 1 year before the date on which the IRS sent its first letter of proposed deficiency allowing you an opportunity for a meeting in the IRS Appeals Office. This presumption will not apply if the transfer was made under a divorce decree, separate maintenance agreement, or a written instrument incident to such an agreement. The presumption will also not apply if you establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

How To Figure Your Separation of Liability

The IRS will figure your separation of liability and figure any related interest and penalties after you file a completed Form 8857 with the required attachment. ***You are not required to figure these amounts.*** But if you wish, you can figure your separation of liability yourself by using Worksheet 1 and instructions that follow. However, if you filed Form 8814 to report your child's tax liability on your joint return, do not include that liability when figuring your separation of liability. Allocate it as appropriate between you and your spouse. Also do not include household employment taxes that are reported on Form 1040.

Worksheet 1.**Worksheet for Figuring Your Separation of Liability**
(Note: This worksheet is optional. Keep it for your records. Do not mail to the IRS.)

1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you*			**1.** ________
2. Enter the net amount of **all** income and deductions taken into account in computing the understatement of tax*			**2.** ________
3. Divide line 1 by 2. Enter the result as a decimal (rounded to at least 3 places)			**3.** ________
4. Enter the understatement of tax*		**4.** ________	
5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse*	**5.** ________		
6. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to you*	**6.** ________		
7. Add lines 5 and 6		**7.** ________	
8. Subtract line 7 from line 4			**8.** ________
9. Multiply line 8 by line 3			**9.** ________
10. Add lines 9 and 6. This is the understatement of tax you are responsible for			**10.** ________

*This should be shown on the IRS notice or audit report.

Instructions for Completing Worksheet 1

Use the following instructions to complete Worksheet 1.

Line 1. When allocating income and deductions taken into account in computing the understatement of tax, allocate them in the same manner you would have allocated them if you and your spouse had filed separate returns.

Allocate wages and salaries to the spouse who performed the services and received the Form W-2. You generally allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Income from a jointly owned business or investment should be allocated equally between you and your spouse unless there is evidence that shows a different allocation is appropriate.

Allocate business deductions according to the ownership of the business. Allocate personal deductions (such as itemized deductions for mortgage interest and taxes) equally between you and your spouse unless there is evidence that shows a different allocation is appropriate, or the IRS establishes that you had actual knowledge of the joint items.

Items that are limited or not allowed on separate returns. If a deduction would not be allowed if you had filed a separate return, figure the deduction as you would on a joint return and allocate that amount between you and your spouse.

A similar rule applies to income and deductions (such as taxable social security benefits and the IRA deduction) that are subject to special limits on a separate return. Figure these items as you would on a joint return and allocate them between you and your spouse.

Example. Charles and Mary filed a joint return for 2000. Charles received social security benefits in 2000, but none of them were taxable because his and Mary's total income was less than the base amount ($32,000) for joint returns. Several months after filing their return, Charles and Mary received a notice from the IRS for additional tax because they did not report some interest and dividend income. The notice also showed that half of Charles' social security benefits were taxable because the additional interest and dividend income increased their total income so that it was more than the $32,000 base amount. If Charles had filed a separate return, 85% of his social security benefits would have been taxable. When figuring his separation of liability, Charles allocates only half of his social security benefits. This is true even though 85% of his benefits would have been taxable if he and Mary had filed separate returns.

Items allocable to one spouse that benefit the other spouse. An item that is otherwise allocable to one spouse must be allocated to the other spouse to the extent the item created a tax benefit on the return for the other spouse. This does not relieve the first spouse of liability. Rather, both spouses will be jointly and severally liable for the item to the extent of the benefit received.

Example. Your joint return shows $50,000 of wages allocable to you and $15,000 of self-employment income allocable to your spouse. The IRS audited your return and disallowed a $20,000 business deduction allocable to your spouse. Only $15,000 of the disallowed deduction offset your spouse's self-employment income. The remaining $5,000 must be allocated to you because that amount offset your income.

Lines 5 and 6. Enter the part of the understatement of tax that is due to the disallowance of a credit or to the increase in any tax ***other than the income tax or alternative minimum tax.*** Allocate credits and other taxes in the same manner you would have allocated them if you and your spouse had filed separate returns.

Example. You reported $750 in self-employment tax on your return. All of this tax is allocable to you. The IRS audited your return and determined that your self-employment tax should have been $1,100. On line 6, you enter the $350 increase in self-employment tax ($1,100 – $750).

Credits that are not allowed on separate returns. If a credit would not be allowed if you had filed a separate return, figure the credit as you would on a joint return and allocate it between you and your spouse. Examples of credits that are generally not allowed on a separate return are the child and dependent care credit, the credit for the elderly, the adoption credit, the education credits, and the earned income credit.

Example. You claimed a credit of $860 for child and dependent care expenses on your tax return. The IRS audited your return and allowed you only $500. The remaining $360 was disallowed. Even though none of the credit would have been allowed on separate returns, you are entitled to a $500 credit for purposes of figuring your separation of liability. You allocate the $360 disallowance (rather than the full $860) between you and your spouse (or former spouse) on lines 5 and 6 of Worksheet 1.

Credits allocable to one spouse that benefit the other spouse. A credit that is otherwise allocable to one spouse must be allocated to the other spouse to the extent the item created a tax benefit on the return for the other spouse. This does not relieve the first spouse of the liability. Rather, both spouses will be jointly and severally liable for the item to the extent of the benefit received.

Example. Tom and Donna filed a joint return that showed $30,000 of wages attributable to Tom and a $1,000 lifetime learning credit attributable to Donna. The lifetime learning credit was for Donna's graduate tuition expenses. Since Donna had no income, the entire credit offset $1,000 of Tom's income tax on the return. Tom received the tax benefit on the return from the entire credit. The IRS audited their return and disallowed $400 of the credit. Tom and Donna remain jointly and severally liable for the $400 deficiency. It was Donna's item and Tom received a $400 tax benefit.

Worksheet 1 Example

Cindy and Clarence Brown filed a joint return for 2000. They divorced in 2001. On April 30, 2002, the IRS issued a Notice of Deficiency to the Browns relating to their 2000 return. There were four items listed on the notice.

1) $2,378 is nonemployee compensation that Clarence got for some consulting work and did not report.
2) $336 is self-employment tax related to the $2,378 nonemployee compensation.
3) $168 is the deduction for half of the self-employment tax.
4) $500 is interest income from Cindy's bank account.

Cindy decides to file Form 8857 (not illustrated) to request relief under separation of liability. She allocates the items between her and Clarence as follows and attaches this allocation to Form 8857.

Although not required, Cindy uses Worksheet 1 to determine the understatement of tax that is allocable to her. She fills out the worksheet (shown on page 8) as follows.

Line 1. Cindy enters the interest income from her bank account.

Line 2. The net amount of income and deductions taken into account in computing the understatement of tax is $2,710. This is the sum of the nonemployee compensation, $2,378, and interest income, $500, minus the deduction for one-half of self-employment tax, $168.

Line 3. Cindy divides line 1 by line 2 to get .185.

Line 4. Cindy enters the $743 understatement of tax. This is shown on the Notice of Deficiency.

Line 5. Cindy enters Clarence's self-employment tax of $336.

Line 6. Cindy enters –0– because there are no credits or other taxes to be allocated to her.

Lines 7–10. Cindy completes lines 7 through 10. Line 10 shows that she is responsible for $75 of the understatement of tax. Clarence is responsible for the remaining amount ($668).

Items to allocate	Cindy	Clarence
Nonemployee compensation		$ 2,378
Interest income	$ 500	
Deduction for 1/2 of self-employment tax		168
Self-employment tax		336

Worksheet 1. **Worksheet for Figuring Your Separation of Liability**
(Note: This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

1.	Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you*			**1.** 500
2.	Enter the net amount of **all** income and deductions taken into account in computing the understatement of tax*			**2.** 2,710
3.	Divide line 1 by 2. Enter the result as a decimal (rounded to at least 3 places)			**3.** .185
4.	Enter the understatement of tax*		**4.** 743	
5.	Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse*	**5.** 336		
6.	Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to you*	**6.** 0		
7.	Add lines 5 and 6		**7.** 336	
8.	Subtract line 7 from line 4			**8.** 407
9.	Multiply line 8 by line 3			**9.** 75
10.	Add lines 9 and 6. This is the understatement of tax you are responsible for			**10.** 75

*This should be shown on the IRS notice or audit report.

Equitable Relief

If you do not qualify for innocent spouse relief, relief by separation of liability, or relief from separate return liability for community income, you may still be relieved of responsibility for tax, interest, and penalties through equitable relief.

You may qualify for equitable relief if you meet all of the following conditions.

1) You are not eligible for innocent spouse relief, relief by separation of liability, or relief from separate return liability for community income.
2) You and your spouse did not transfer assets to one another as a part of a fraudulent scheme.
3) Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax. See *Transfers of property to avoid tax,* earlier, under, *Relief by Separation of Liability.*
4) You did not file your return with the intent to commit fraud.
5) You did not pay the tax. However, you may be able to receive a refund of:
   a) Amounts paid after July 21, 1998, and before April 16, 1999, and
   b) Certain installment payments made after you file Form 8857.
6) You establish that, taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. See *Indications of unfairness for equitable relief,* later.

Unlike innocent spouse relief or separation of liability, you can get equitable relief from an ***understatement of tax*** (defined earlier under *Innocent Spouse Relief*) or an ***underpayment of tax*** (defined next).

Underpayment of tax. An underpayment of tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 2000 return shows that you and your spouse owed $5,000. You pay $2,000 with the return. You have an underpayment of $3,000.

Indications of unfairness for equitable relief. The IRS will consider all of the facts and circumstances in order to determine whether it is unfair to hold you responsible for the understatement or underpayment of tax. The following are examples of positive and negative factors that the IRS will consider to determine whether to grant equitable relief. The IRS will consider all factors and weigh them appropriately.

Positive factors. The following are examples of factors that weigh ***in favor*** of equitable relief.

- You are separated (whether legally or not) or divorced from your spouse.
- You would suffer economic hardship if relief is not granted. (In other words, you would not be able to pay your reasonable basic living expenses.)
- You were abused by your spouse, but the abuse did not amount to duress.
- You did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

- Your spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This will ***not*** be a positive factor if you knew or had reason to know, at the time the divorce decree or agreement was entered into, that your spouse would not pay the tax.)
- The tax for which you are requesting relief is attributable to your spouse.

Negative factors. The following are examples of factors that weigh ***against*** equitable relief.

- You will not suffer economic hardship if relief is not granted.
- You knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time you signed the return.
- You received a significant benefit from the unpaid tax or items causing the understatement. (For a definition of significant benefit, see *Indications of Unfairness for Innocent Spouse Relief,* on page 4.)
- You have not made a good faith effort to comply with federal income tax laws for the tax year for which you are requesting relief or the following years.
- You have a legal obligation under a divorce decree or agreement to pay the tax.
- The tax for which you are requesting relief is attributable to you.

Examples. The following examples show situations that may qualify for equitable relief.

Example 1. You and your spouse filed a joint 2000 return. That return showed you owed $10,000. You had $5,000 of your own money and you took out a loan to pay the other $5,000. You gave 2 checks for $5,000 each to your spouse to pay the $10,000 liability. Without telling you, your spouse took the $5,000 loan and spent it on himself. You and your spouse were divorced in 2001. In addition, you had no knowledge or reason to know at the time you signed the return that the tax would not be paid. Both of these facts indicate to the IRS that it may be unfair to hold you liable for the $5,000 underpayment. The IRS will consider these facts, together with all of the other facts and circumstances, to determine whether to grant you equitable relief from the $5,000 underpayment.

Example 2. You request innocent spouse relief or separation of liability, but the IRS determines you do not qualify for either one. The IRS automatically will consider whether equitable relief is appropriate.

Filled-in Form 8857

This part explains how Janie Boulder fills out Form 8857 to request innocent spouse relief.

Janie and Joe Boulder filed a joint tax return for 2000. Joe did not report a $5,000 award he won that year. They received an IRS Notice of Deficiency for additional tax of $650 and penalties and interest of $165.

Janie applies the conditions listed under *Innocent Spouse Relief* on page 3 to see if she qualifies for relief.

1) Janie meets the first condition because the joint tax return they filed has an understatement of tax.
2) Janie believes she meets the second condition. She did not know about the award and had no reason to know about it because of the secretive way Joe conducted his financial affairs.
3) Janie believes she meets the third condition. She believes it would be unfair to be held liable for the tax because she did not benefit from the award. Joe spent it on personal items for his use only.

Because Janie believes she qualifies for innocent spouse relief, she files Form 8857 with the IRS. She fills in her name, address, social security number, and daytime phone number. She fills out the rest of the form as follows:

Line 1. Janie enters “2000” because this is the tax year for which she is requesting relief.

Line 2. She enters the name, address, social security number, and daytime phone number of her spouse.

Line 3. She checks the ***Yes*** box because she received an IRS Notice of Deficiency for additional tax.

Lines 4–6. Janie checks the ***No*** box on each of these lines because she and Joe were not divorced, separated, or living apart at all times during the last 12 months.

Line 7. Janie does not check the box on this line because she checked the ***No*** boxes on lines 4, 5, and 6.

Line 8. Janie checks the ***Yes*** box on this line because the income items all belonged to her husband. She writes a statement (not illustrated) explaining why she feels she qualifies for innocent spouse relief.

Line 9. Janie checks the ***No*** box on this line because she does not have an underpayment of tax.

Signing and mailing Form 8857. Janie signs and dates the form. She attaches the explanatory statement (not illustrated) required by the Form 8857 instructions. Finally, she mails the form to the IRS employee named in the Notice of Deficiency before the end of the 90-day period specified in the Notice.

Form **8857** (Rev. May 2002) Department of the Treasury Internal Revenue Service

Request for Innocent Spouse Relief

(And Separation of Liability and Equitable Relief)

▶ **Do not file with your tax return.** ▶ **See instructions.**

OMB No. 1545-1596

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.

TIP *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): Janie Boulder

Your social security number: 123 00 9876

Your current home address (number and street). If a P.O. box, see instructions.: 5161 Old Farm Estates

Apt. no.:

City, town or post office, state, and ZIP code. If a foreign address, see instructions.: Hutchinson, IA 55555

Daytime phone number: (721) 555-1023

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 ▶ 2000

2 Information about the person to whom you were married as of the end of the year(s) on line 1.

Name: Joe E. Boulder

Social security number: 234 00 8765

Current home address (number and street). If a P.O. box, see instructions.: 3898 Timber Way

Apt. no.:

City, town or post office, state, and ZIP code. If a foreign address, see instructions.: Creekbed, WY 77777

Daytime phone number: (271) 555-2345

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: Janie Boulder

Date: 5/28/2002

Paid Preparer's Use Only

Preparer's signature ▶ | Date | Check if self-employed ☐ | Preparer's SSN or PTIN

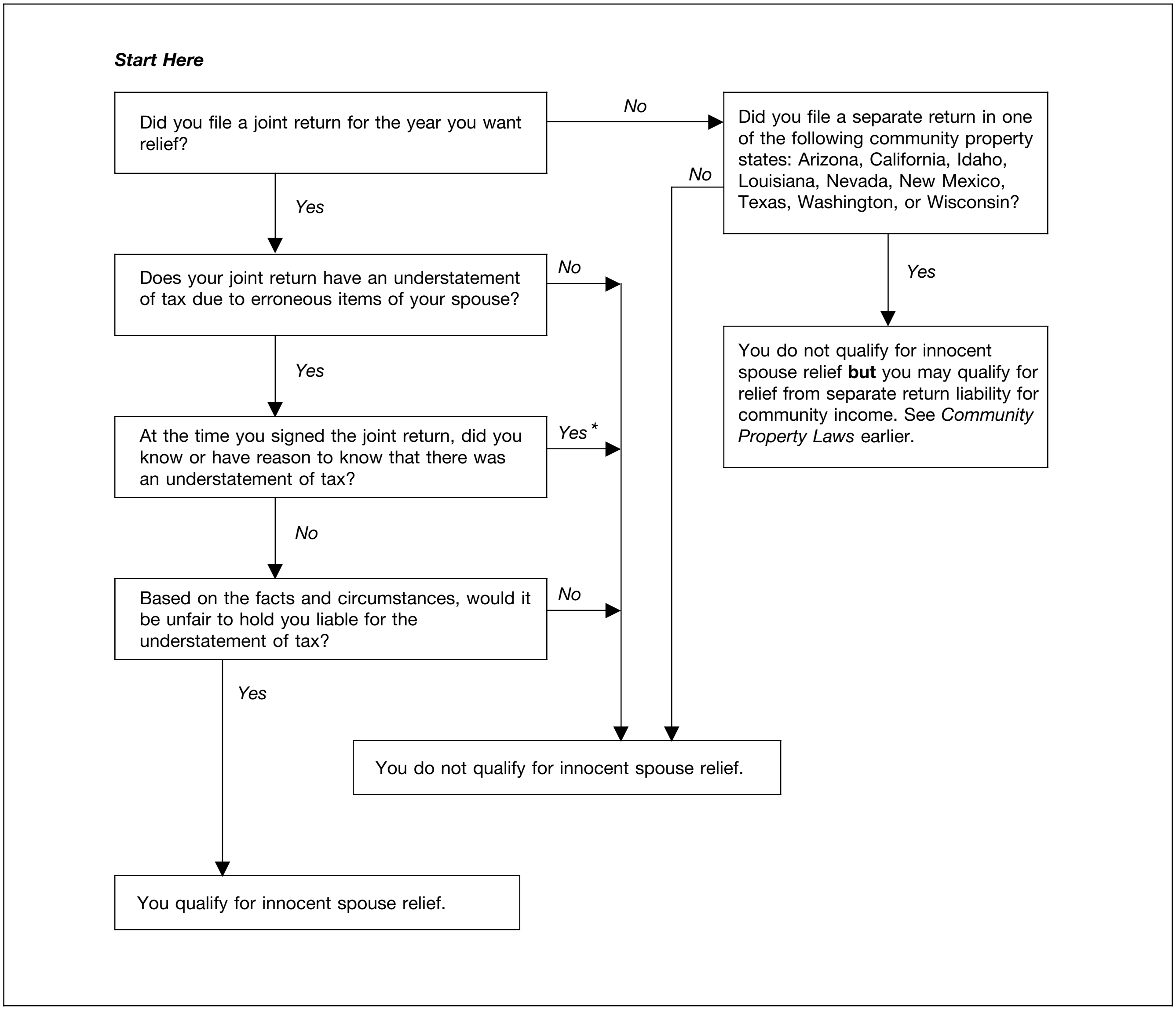
Firm's name (or yours if self-employed), address, and ZIP code ▶ | EIN | Phone no. ( )

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 24647V Form **8857** (Rev. 5-2002)

Flowcharts

The following flowcharts provide a quick way for determining whether you may qualify for relief. But do not rely on these flowcharts alone. Also read the earlier discussions.

Figure A. **Do You Qualify for Innocent Spouse Relief?**



* You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know, that there was an understatement of tax but you did not know how large the understatement was.

Figure B. **Do You Qualify for Relief by Separation of Liability?**

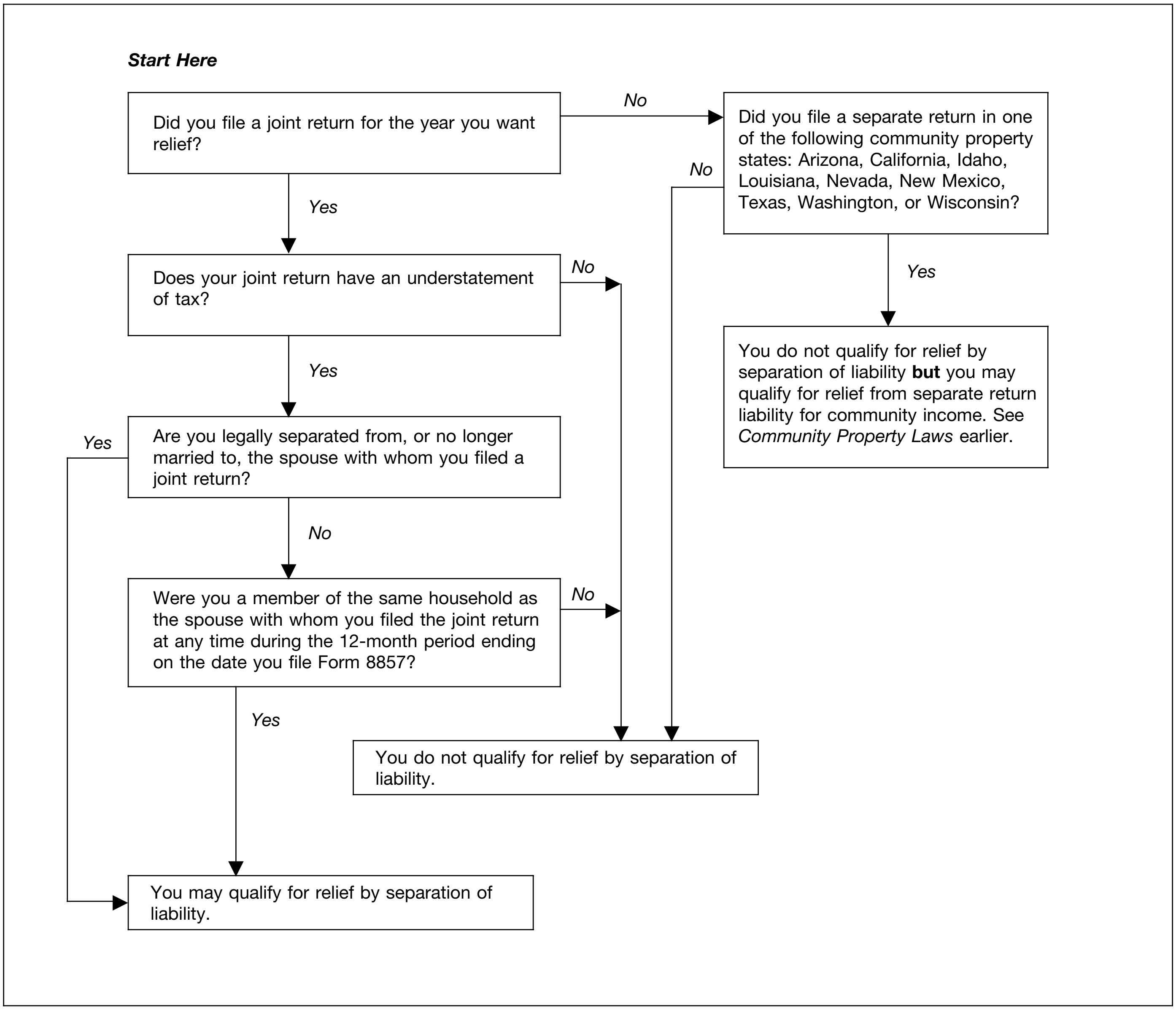
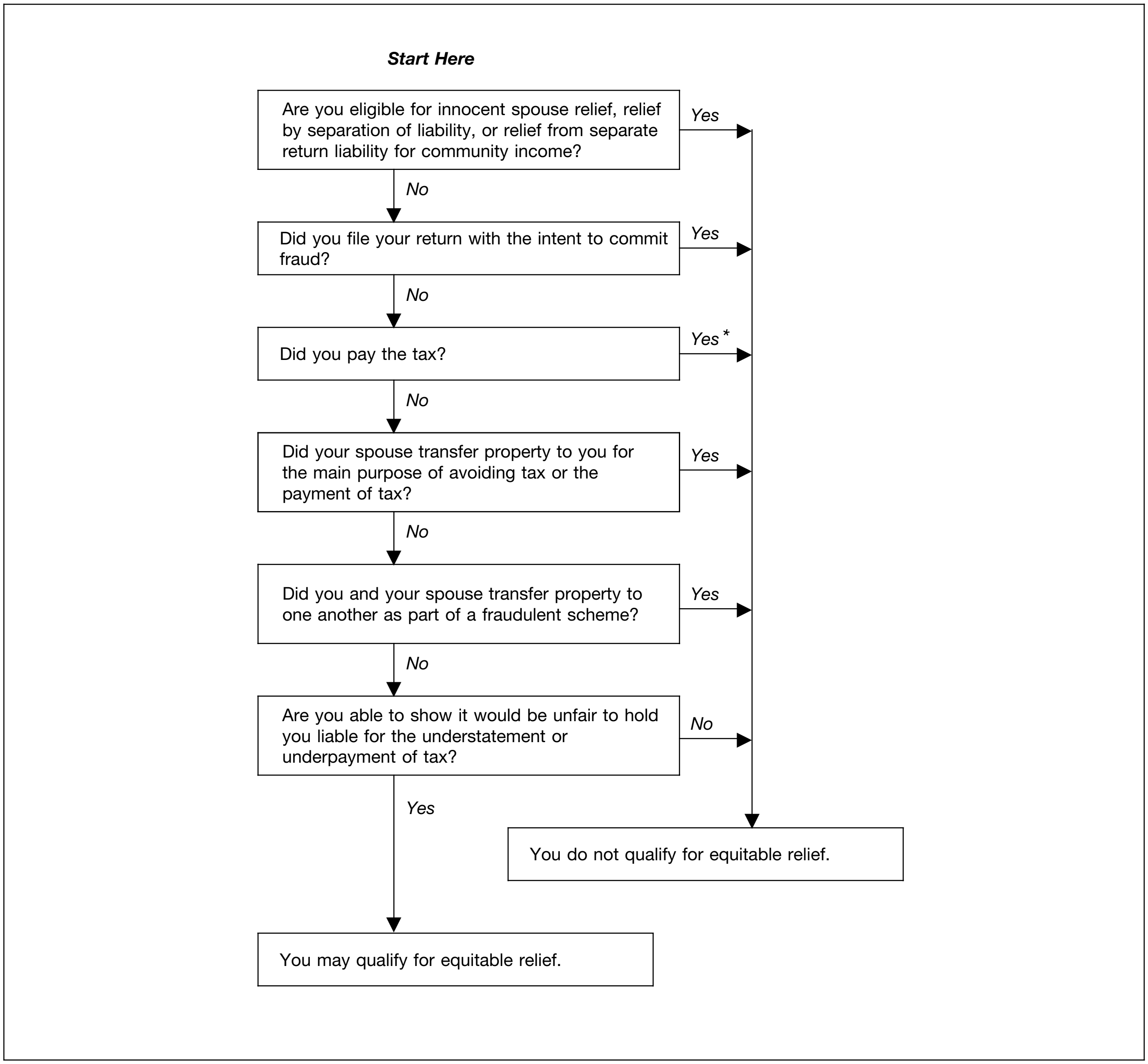


Figure C. **Do You Qualify for Equitable Relief?**



* You may qualify for equitable relief and receive a refund of (1) amounts paid after July 21, 1998, and before April 16, 1999, and (2) certain installment payments made after you file Form 8857.

Questions & Answers

This section answers questions commonly asked by taxpayers about innocent spouse relief.

What is joint and several liability?

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on 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.

How can I get relief from joint and several liability?

Relief now falls into three categories: "innocent spouse relief," "separation of liability," and "equitable relief." Each of these types of relief have different requirements. They are explained separately below.

What are the rules for innocent spouse relief?

To qualify for innocent spouse relief, you must meet ***all*** of the following conditions.

- You must have filed a joint return which has an understatement of tax.
- The understatement of tax must be due to erroneous items of your spouse (or former spouse).
- You must establish that at the time you signed the joint return, you did not know, and had no reason to know, that there was an understatement of tax.
- Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
- You must request relief within 2 years after the date on which the IRS first began collection activity against you after July 22, 1998.

What are "erroneous items"?

Erroneous items are any deductions, credits, or bases that are incorrectly stated on the return, and any income that is not reported on the return.

What is an "understatement of tax"?

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return. For example, you reported total tax on your 2000 return of $2,500. IRS determined in an audit of your 2000 return that the total tax should be $3,000. You have a $500 understatement of tax.

Will I qualify for innocent spouse relief in any situation where there is an understatement of tax?

No. There are many situations in which you may owe tax that is related to your spouse, but not be eligible for innocent spouse relief. For example, you and your spouse file a joint return on which you report $10,000 of income and deductions, but you knew that your spouse was not reporting $5,000 of dividends. You are ***not*** eligible for innocent spouse relief because you have knowledge of the understatement.

What are the rules for separation of liability?

Under this type of relief, you divide (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse. The understatement of tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability, you must have filed a joint return and meet ***either*** of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Why would a request for separation of liability be denied?

Even if you meet the requirements listed earlier, a request for separation of liability will not be granted in the following situations.

- The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
- The IRS proves that at the time you signed your joint return, you had actual knowledge of any items giving rise to the deficiency that are allocable to your spouse.
- Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax.

What are the rules for equitable relief?

Equitable relief is only available if you meet ***all*** of the following conditions.

- You do not qualify for innocent spouse relief, or relief by separation of liability, or relief from separate return liability for community income.
- The IRS determines that it is unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.
- You and your spouse did not transfer assets to one another as a part of a fraudulent scheme.
- Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax.
- You did not file your return with the intent to commit fraud.
- You did not pay the tax.

Note. Unlike innocent spouse relief or separation of liability, if you qualify for equitable relief, you can get relief from an understatement of tax or an underpayment of tax. (An underpayment of tax is an amount properly shown on the return, but not paid.)

How do state community property laws affect my ability to qualify for relief?

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, 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.

How do I request relief?

File Form 8857, *Request for Innocent Spouse Relief,* to ask the IRS for relief. You only need to file one Form 8857 even if you are requesting relief for more than one year.

If I am denied innocent spouse relief, must I reapply if I believe I might qualify under one of the other two provisions?

No. The IRS automatically will consider whether any of the other provisions would apply.

I only requested equitable relief but the IRS did not grant it. Must I reapply if I believe I might qualify under one of the other two provisions?

Yes. You must affirmatively choose innocent spouse relief or separation of liability in order for the IRS to determine whether or not you qualify for those types of relief.

I applied for innocent spouse relief before the law changed (July 22, 1998). Do I need to reapply?

No. The Service will consider your request under the new law as long as the liability was unpaid as of July 22, 1998. However, if you filed a claim prior to July 22, 1998, and you have not heard from the IRS, contact the IRS office where you sent your claim.

When should I file Form 8857?

If you are requesting innocent spouse relief, separation of liability, or equitable relief, file Form 8857 no later than 2 years after the date on which the IRS first began collection activities against you after July 22, 1998.

Where should I file Form 8857?

Follow the instructions on Form 8857.

I am currently undergoing an examination of my return. How do I request innocent spouse relief?

File Form 8857 with the employee assigned to examine your return.

What if the IRS has given me notice that it will levy my account for the tax liability and I decide to request relief?

All collection activity is suspended from the date the request is received by the Service until the final determination is made.

What is “injured spouse relief”?

Injured spouse relief is different from innocent spouse relief. When a joint return is filed and the refund is used to pay one spouse’s past-due child and/or spousal support, a past-due federal debt, or past-due state income tax, the other spouse may be considered an injured spouse. The injured spouse can claim his or her share of the refund using Form 8379, *Injured Spouse Claim and Allocation.* To be considered an injured spouse, you must have:

- Filed a joint return,
- Received income (such as wages, interest, etc.),
- Made tax payments (such as withholding or estimated tax payments), or claimed the earned income credit or other refundable credit,
- Reported the income and tax payments on the joint return, and
- An overpayment, all or part of which was applied to the past-due amount of the other spouse.

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How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate at **1–877–777–4778.**
- Call the IRS at **1–800–829–1040.**
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1–800–829–4059** if you are a TTY/TDD user.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS.*

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services.* It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Personal computer. With your personal computer and modem, you can access the IRS on the Internet at **www.irs.gov**. While visiting our web site, you can:

- Find answers to questions you may have.
- Download forms and publications or search for forms and publications by topic or keyword.
- View forms that may be filled in electronically, print the completed form, and then save the form for recordkeeping.
- View Internal Revenue Bulletins published in the last few years.
- Search regulations and the Internal Revenue Code.
- Receive our electronic newsletters on hot tax issues and news.
- Get information on starting and operating a small business.

You can also reach us with your computer using File Transfer Protocol at **ftp.irs.gov.**

TaxFax Service. Using the phone attached to your fax machine, you can receive forms and instructions by calling **703–368–9694.** Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call the FedWorld Help Desk at **703–487–4608.**

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call **1–800–829–3676** to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at **1–800–829–1040.**
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1–800–829–4059** to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call **1–800–829–4477** to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give accurate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.

Walk-in. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county governments, credit unions, and office supply stores have an extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Find the address that applies to your part of the country.

- **Western part of U.S.:**
  Western Area Distribution Center
  Rancho Cordova, CA
  95743–0001

- **Central part of U.S.:**
  Central Area Distribution Center
  P.O. Box 8903
  Bloomington, IL 61702–8903
- **Eastern part of U.S. and foreign addresses:**
  Eastern Area Distribution Center
  P.O. Box 85074
  Richmond, VA 23261–5074

CD-ROM. You can order IRS Publication 1796, *Federal Tax Products on CD-ROM,* and obtain:

- Current tax forms, instructions, and publications.
- Prior-year tax forms and instructions.
- Popular tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) by calling **1–877–233–6767** or on the Internet at **www.irs.gov.** The first release is available in mid-December and the final release is available in late January.

IRS Publication 3207, *Small Business Resource Guide,* is an interactive CD-ROM that contains information important to small businesses. It is available in mid-February. You can get one free copy by calling **1–800–829–3676** or visiting the IRS web site at **www.irs.gov.**