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INNOCENT SPOUSE TAX RELIEF

BY: CARLEY F. MEALEY, CPA

You got “everything” in the divorce (*Three years ago!*), and now the IRS wants it (*How did this happen?!*).

Whether your divorce was final 3 years ago, last fall, or is still pending, the IRS doesn't care. If you have ever filed a joint tax return with your spouse, you could still be responsible for any taxes or penalties the IRS assesses against those jointly-filed tax years. *How is that fair?!?* It may not be “fair,” but by filing jointly, you agreed to each be liable (together and separately) for the accuracy of the returns and any taxes related to your income.

When! My lawyer protected me! My divorce papers say my spouse is responsible for all the taxes for those years! The IRS doesn't care about divorce agreements either and these documents carry no weight in restricting the IRS from collecting unpaid taxes from one or both spouses. Since you got “everything” in the divorce, the IRS is now **very** interested in **you**. *Oh no! Now what?* There are three types of tax relief available under the Innocent Spouse rules: General Relief, Separate Liability Relief, and Equitable Relief. ¹

General Relief

You can seek relief under this rule even if you are still married, separated, or divorced from your spouse. To qualify for General Relief, you must have filed a joint tax return for the year in question. The tax deficiency must be the result of erroneous tax items attributable to your spouse. Typical understatements occur from omissions of income, understatements of income, and overstatements of deductions. The misstatement must be intentional. Tax liabilities resulting from errors and omissions due to innocent oversights and harmless errors do not qualify for relief. Just proving that your spouse lied to the IRS isn't enough. You have to show that you didn't know, and had no reason to know, about the deceit when you signed the return. For example, if your spouse owns a business but you weren't actively involved with the operations, you may not have been aware of any financial manipulations related to the business.

In determining whether you should have been aware of the understatement, the IRS takes into consideration (among other things) your educational level, your involvement in the questionable transactions, and sudden changes in your standard of living that should have alerted you.

Proving that you didn't know about the omission is only half the battle. You also have to show that you did not benefit – directly or indirectly – from the understatement of tax. You must be able to demonstrate that it would be inequitable (unfair) to make you responsible for the tax deficiency when you didn't receive a material benefit from the understatement.

If you qualify for General Relief, you must file Form 8857, Request For Innocent Spouse Relief, no later than two years after the IRS begins collection activities. The two-year period begins when the collection activity is accompanied by a notice of your right to pursue innocent spouse relief. ²

Separate Liability Relief

If you are widowed, divorced, legally separated, or have lived apart from your spouse for at least 12 months, you may file for Separate Liability Relief regardless of whether you suspect any problems. Under Separate Liability, the burden of proof is on the IRS and you cannot be held responsible for what you could have or should have known, but only what you actually knew regarding questionable transactions or deficiencies. Under this rule, you would only be responsible for tax deficiencies resulting from your own omissions or erroneous items you knew about.

If you qualify for Separate Liability Relief, you must file Form 8857, Request For Innocent Spouse Relief, within the same time frame as General Relief.



Equitable Innocent Spouse Relief

If you filed a joint tax return for the year(s) in question but are ineligible for General Relief or Separate Liability Relief, you may be able to file for Innocent Spouse Tax Relief under the Equitable Relief rule. You can seek relief under this section for the underpayment of taxes as well as the understatement of taxes.

Relief related to underpayment of taxes is for when you filed an accurate return but the entire tax amount was not paid. For example, if your spouse was responsible for making tax payments and you later found out that he/she had used the money for his/her own benefit, you may be eligible for relief under this code section. You must demonstrate that you did not know and had no reason to know that the funds that your spouse misappropriated the tax payments.

When filing for relief under this section, you must meet the following qualifications:

- You are not eligible for relief under General Relief or Separate Liability Relief
- You and your spouse did not transfer assets to one another as part of a fraudulent scheme to avoid tax or the payment of tax
- You did not file your return with the intention to commit fraud
- You establish that, based on the facts and circumstances, it would be unfair to hold you liable for the understatement
- The tax liability was the result of your spouse's actions

In certain circumstances, the IRS will also provide relief to you if you can demonstrate that although you knew about the deceit, you signed the returns and did not challenge the treatment of any items on the return because you were under the duress of an abusive relationship. You must establish that you were a victim of abuse before signing the return and that, because of the abuse, you feared your spouse's retaliation.

If you qualify for Separate Liability Relief, you must file Form 8857, Request For Innocent Spouse Relief, however, the two-year time frame may not apply. A recent tax court case held that imposing a two-year limitation period on equitable relief was inconsistent with the Court's interpretation of IRS Code Sec. 6015(f).³ However, the IRS has expressed its intention to continue to litigate under the assertion that the two-year period applies to Equitable Relief.

Filing For Innocent Spouse Relief

Once you've determined that you qualify for relief, you must file Form 8857. It is strongly recommended that you seek assistance from you attorney and/or accountant before submitting the form to the IRS. The answers you provide will have a significant impact on the determination of your eligibility for relief!



¹ IRC 6015

² N.W. McGee, 123 TC 314, Dec. 55,781

³ C.M. Lantz, 132 TC ___, No. 8, Dec. 57,784