



## Publication 971

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# Innocent Spouse Relief



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## Introduction

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called joint and several liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for the taxes, and the IRS still can collect from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax.

In some cases, a spouse (or former spouse) will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available to married persons who filed joint returns.

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

Married persons who did not file joint returns, but who live in community property states, may also qualify for relief. See *Community Property Laws*, later.

This publication explains these types of relief, who may qualify for them, and how to get them. You can also use the Innocent Spouse Tax Relief Eligibility Explorer at [IRS.gov](http://IRS.gov) to see if you qualify for innocent spouse relief. Click on "Individuals," "Tax Information for Innocent Spouses," and "Explore if you are an Eligible Innocent Spouse."

**What this publication does not cover.** This publication does not discuss injured spouse relief. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied (offset) against your spouse's legally enforceable past-due federal

taxes, state income taxes, child or spousal support payments, or a federal nontax debt, such as a student loan. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For more information, see Form 8379, *Injured Spouse Allocation*.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service  
Individual Forms and Publications Branch  
SE:W:CAR:MP:T:I  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at [\\*taxforms@irs.gov](mailto:*taxforms@irs.gov). (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line. You can also send us comments from [www.irs.gov/formspubs/](http://www.irs.gov/formspubs/), select "Comment on Tax Forms and Publications" under "Information about."

Although we cannot respond individually to each email, we do appreciate your feedback and will consider your comments as we revise our tax products.

**Ordering forms and publications.** Visit [www.irs.gov/formspubs](http://www.irs.gov/formspubs) to download forms and publications, call 1-800-829-3676, or write to the address below and receive a response within 10 days after your request is received.

Internal Revenue Service  
1201 N. Mitsubishi Motorway  
Bloomington, IL 61705-6613

#### **Questions about innocent spouse relief.**



The IRS can help you with your request for innocent spouse relief. If you are working with an IRS employee, you can ask that employee, or you can call 866-897-4270.

#### **Useful Items**

You may want to see:

##### **Publications**

- 504** Divorced or Separated Individuals
- 555** Community Property
- 556** Examination of Returns, Appeal Rights, and Claims for Refund

##### **Forms (and Instructions)**

- 8857** Request for Innocent Spouse Relief

- 8857(SP)** Solicitud para Alivio del Cónyuge Inocente, in Spanish

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## **How To Request Relief**

File Form 8857 to ask the IRS for the types of relief discussed in this publication. If you are requesting relief for more than three tax years, you must file an additional Form 8857.

The IRS will review your Form 8857 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 responsible. The following are some of the ways you may become aware of such a liability.

- The IRS is examining your tax return and proposing to increase your tax liability.
- The IRS sends you a notice.

You must file Form 8857 no later than two years after the date on which the IRS first attempted to collect the tax from you that occurs after July 22, 1998. (But see the *Caution* below for an exception.) For this reason, do not delay filing because you do not have all the documentation.

Collection activities that may start the 2-year period are:

- The IRS offset your income tax refund against an amount you owed on a joint return for another year and the IRS informed you about your right to file Form 8857.
- The filing of a claim by the IRS in a court proceeding in which you were a party or the filing of a claim in a proceeding that involves your property. This includes the filing of a proof of claim in a bankruptcy proceeding.
- The filing of a suit by the United States against you to collect the joint liability.
- The issuance of a section 6330 notice, which notifies you of the IRS' intent to levy and your right to a collection due process (CDP) hearing. The collection-related notices include, but are not limited to, Letter 11 and Letter 1058.



*If you are requesting relief based on community property laws, a different filing deadline applies. For details, see Community Property Laws, later.*

**Form 8857 filed by or on behalf of a decedent.** An executor (including any other duly appointed representative) may pursue a Form 8857 filed during the decedent's lifetime. An executor (including any other duly appointed representative) may also file Form 8857 as long as the decedent satisfied the eligibility requirements while alive. For purposes of separation of liability relief (discussed

later), the decedent's marital status is determined on the earlier of the date relief was requested or the date of death.

**Situations in which you are not entitled to relief.** You are not entitled to innocent spouse relief for any tax year to which the following situations apply.

1. In a final decision dated after July 22, 1998, a court considered whether to grant you relief from joint liability and decided not to do so.
2. In a final decision dated after July 22, 1998, a court did not consider whether to grant you relief from joint liability, but you meaningfully participated in the proceeding and could have asked for relief.
3. You entered into an offer in compromise with the IRS.
4. You entered into a closing agreement with the IRS that disposed of the same liability for which you want to seek relief.

**Exception for agreements relating to TEFRA partnership proceedings.** You may be entitled to relief, discussed in (4) earlier, if you entered into a closing agreement for both partnership items and nonpartnership items, while you were a party to a pending TEFRA partnership proceeding. (*TEFRA* is an acronym that refers to the "Tax Equity and Fiscal Responsibility Act of 1982" that prescribed the tax treatment of partnership items.) You are not entitled to relief for the nonpartnership items, but you will be entitled to relief for the partnership items (if you otherwise qualify).

**Transferee liability not affected by innocent spouse relief provisions.** The innocent spouse relief provisions do not affect tax liabilities that arise under federal or state transferee liability or property laws. Therefore, even if you are relieved of the tax liability under the innocent spouse relief provisions, you may remain liable for the unpaid tax, interest, and penalties to the extent provided by these laws.

**Example.** Herb and Wanda timely filed their 2008 joint income tax return on April 15, 2009. Herb died in March 2010, and the executor of Herb's will transferred all of the estate's assets to Wanda. In August 2010, the IRS assessed a deficiency for the 2008 return. The items causing the deficiency belong to Herb. Wanda is relieved of the deficiency under the innocent spouse relief provisions, and Herb's estate remains solely liable for it. However, the IRS may collect the deficiency from Wanda to the extent permitted under federal or state transferee liability or property laws.

## The IRS Must Contact Your Spouse or Former Spouse

By law, the IRS must contact your spouse or former spouse. There are **no** exceptions, even for victims of spousal abuse or domestic violence.

We will inform your spouse or former spouse that you filed Form 8857 and will allow him or her to participate in the process. If you are requesting relief from joint and several liability on a joint return, the IRS must also inform him or her of its preliminary and final determinations regarding your request for relief.

However, to protect your privacy, the IRS will not disclose your personal information (for example, your current name, address, phone number(s), information about your employer, your income or assets) or any other information that does not relate to making a determination about your request for relief from liability.



*If you petition the Tax Court (explained below), your spouse or former spouse may see your personal information.*

## Tax Court Review of Request

After you file Form 8857, you may be able to petition (ask) the United States Tax Court to review your request for relief in the following two situations.

1. The IRS sends you a final determination letter regarding your request for relief.
2. You do not receive a final determination letter from the IRS within six months from the date you filed Form 8857.



*If you seek equitable relief for an underpaid tax, you will be able to get a Tax Court review of your request only if the tax arose or remained unpaid on or after December 20, 2006.*

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

Or you can visit the Tax Court's website at [www.us-taxcourt.gov](http://www.us-taxcourt.gov)

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## 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.

## Relief for Married Persons Who Did Not File Joint Returns

Married persons who live in community property states, but who did not file joint returns, have two ways to get relief.

### Relief From Liability Arising From Community Property Law

You are not responsible for the tax relating to an item of community income if all the following conditions exist.

1. You did not file a joint return for the tax year.
2. You did not include the item of community income in gross income.
3. The item of community income you did not include is one of the following:
  - a. Wages, salaries, and other compensation your spouse (or former spouse) received for services he or she performed as an employee.
  - b. Income your spouse (or former spouse) derived from a trade or business he or she operated as a sole proprietor.
  - c. Your spouse's (or former spouse's) distributive share of partnership income.
  - d. Income from your spouse's (or former spouse's) separate property (other than income described in (a), (b), or (c)). Use the appropriate community property law to determine what is separate property.
  - e. Any other income that belongs to your spouse (or former spouse) under community property law.
4. You establish that you did not know of, and had no reason to know of, that community income. See *Actual knowledge or reason to know*, below.
5. Under all facts and circumstances, it would not be fair to include the item of community income in your gross income. See *Indications of unfairness for liability arising from community property law*, later.

**Actual knowledge or reason to know.** You knew or had reason to know of an item of community income if:

- You actually knew of the item of community income, or
- A reasonable person in similar circumstances would have known of the item of community income.

**Amount of community income unknown.** If you are aware of the source of the item of community income or the income-producing activity, but are unaware of the specific amount, you are considered to know or have reason to know of the item of community income. Not knowing the specific amount is not a basis for relief.

**Reason to know.** The IRS will consider all facts and circumstances in determining whether you had reason to know of an item of community income. The facts and circumstances include:

- The nature of the item of community income and the amount of the item relative to other income items.
- The financial situation of you and your spouse (or former spouse).
- Your educational background and business experience.
- Whether the item of community income represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns).

**Indications of unfairness for liability arising from community property law.** 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 understated tax due to the item of community income.

The following are examples of factors the IRS will consider.

- Whether you received a benefit, either directly or indirectly, from the omitted item of community income (defined below).
- Whether your spouse (or former spouse) deserted you.
- Whether you and your spouse have been divorced or separated.

For other factors see *Factors for Determining Whether To Grant Equitable Relief* on page 8.

**Benefit from omitted item of community income.** A benefit includes normal support, but does not include de minimis (small) amounts. Evidence of a direct or indirect benefit may consist of transfers of property or rights to property, including transfers received several years after the filing of the return.

For example, if you receive property, including life insurance proceeds, from your spouse (or former spouse) and the property is traceable to omitted items of community income attributable to your spouse (or former spouse), you are considered to have benefitted from those omitted items of community income.

## Equitable Relief

If you do not qualify for the relief described above and are now liable for an underpaid or understated tax you believe should be paid only by your spouse (or former spouse), you may request equitable relief (discussed later).

## How and When To Request Relief

You request relief by filing Form 8857, as discussed earlier. Fill in Form 8857 according to the instructions.

For relief from liability arising from community property law, you must file Form 8857 no later than 6 months before the expiration of the period of limitations on assessment (including extensions) against your spouse for the tax year for which you are requesting relief. However, if the IRS begins an examination of your return during that 6-month period, the latest time for requesting relief is 30 days after the examination begins. The period of limitation on assessment is the amount of time, generally three years, that the IRS has from the date you filed the return to assess taxes that you owe.

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## Innocent Spouse Relief

By requesting innocent spouse relief, you can be relieved of responsibility for paying tax, interest, and penalties if your spouse (or former spouse) improperly reported items or omitted items on your tax return. Generally, the tax, interest, and penalties that qualify for relief can only be collected from your spouse (or former 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 (or former spouse).

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

1. You filed a joint return.
2. There is an understated tax on the return that is due to erroneous items (defined later) of your spouse (or former spouse).
3. You can show that when you signed the joint return you did not know, and had no reason to know, that the understated tax existed (or the extent to which the understated tax existed). See *Actual Knowledge or Reason To Know*, later.
4. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated tax. See *Indications of Unfairness for Innocent Spouse Relief*, later.

Innocent spouse relief will not be granted if the IRS proves that you and your spouse (or former spouse) transferred property to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, former spouse, or business partner.

## Understated Tax

You have an understated tax if the IRS determined that your total tax should be more than the amount that was actually shown on your return.

## Erroneous Items

Erroneous items are either of the following.

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

The following are examples of erroneous items.

- 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 of your joint Form 1040, but never paid for any advertising.
- 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.
- 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.

## Actual Knowledge or Reason To Know

You knew or had reason to know of an understated tax if:

- You actually knew of the understated tax, or
- A reasonable person in similar circumstances would have known of the understated tax.

**Actual knowledge.** If you actually knew about an erroneous item that belongs to your spouse (or former spouse), the relief discussed here does not apply to any part of the understated tax due to that item. You and your spouse (or former spouse) remain jointly liable for that part of the understated tax. For information about the criteria for determining whether you actually knew about an erroneous item, see *Actual Knowledge* later under *Separation of Liability Relief*.

**Reason to know.** If you had reason to know about an erroneous item that belongs to your spouse (or former spouse), the relief discussed here does not apply to any part of the understated tax due to that item. You and your spouse (or former spouse) remain jointly liable for that part of the understated tax.

The IRS will consider all facts and circumstances in determining whether you had reason to know of an understated tax due to an erroneous item. The facts and circumstances include:

- The nature of the erroneous item and the amount of the erroneous item relative to other items.
- The financial situation of you and your spouse (or former spouse).
- Your educational background and business experience.
- The extent of your participation in the activity that resulted in the erroneous item.
- Whether you failed to ask, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question.
- Whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns).

**Partial relief when a portion of erroneous item is unknown.** You may qualify for partial relief if, at the time you filed your return, you had no knowledge or reason to know of only a portion of an erroneous item. You will be relieved of the understated tax due to that portion of the item if all other requirements are met for that portion.

**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. 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 understated tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understated tax due to the \$5,000 of gambling winnings you knew about will not qualify for relief.

## 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 understated tax.

The following are examples of factors the IRS will consider.

- Whether you received a significant benefit (defined below), either directly or indirectly, from the understated tax.
- Whether your spouse (or former spouse) deserted you.
- Whether you and your spouse have been divorced or separated.

- Whether you received a benefit on the return from the understated tax.

For other factors, see *Factors for Determining Whether To Grant Equitable Relief* later under *Equitable Relief*.

**Significant benefit.** A significant benefit is any benefit in excess of normal support. Normal support depends on your particular circumstances. Evidence of a direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understated tax.

**Example.** You receive money from your spouse that is beyond normal support. The money can be traced to your spouse's lottery winnings that were not reported on your joint return. You will be considered to have received a significant benefit from that income. This is true even if your spouse gives you the money several years after he or she received it.

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## Separation of Liability Relief

Under this type of relief, the understated tax (plus interest and penalties) on your joint return is allocated between you and your spouse (or former spouse). The understated tax allocated to you is generally the amount you are responsible for.

This type of relief is available only for unpaid liabilities resulting from the understated tax. Refunds are not allowed.

To request separation of liability relief, 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 (explained below) 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.

**Members of the same household.** You and your spouse are not members of the same household if you are living apart and are estranged. However, you and your spouse are considered members of the same household if any of the following conditions are met.

1. You and your spouse reside in the same dwelling.
2. You and your spouse reside in separate dwellings but are not estranged, and one of you is temporarily absent from the other's household as explained in (3) below.
3. Either spouse is temporarily absent from the household and it is reasonable to assume that the absent

spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of the absent spouse's return. Examples of temporary absences include absence due to imprisonment, illness, business, vacation, military service, or education.

**Burden of proof.** You must be able to prove that you meet all of the requirements for separation of liability relief (except actual knowledge) and that you did not transfer property to avoid tax (discussed later). You must also establish the basis for allocating the erroneous items.

## Limitations on Relief

Even if you meet the requirements discussed previously, separation of liability relief will not be granted in the following situations.

- The IRS proves that you and your spouse (or former spouse) transferred assets to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, former spouse, or business partner.
- The IRS proves that at the time you signed your joint return, you had actual knowledge (explained below) of any erroneous items giving rise to the deficiency that were allocable to your spouse (or former spouse). For the definition of erroneous items, see *Erroneous Items* earlier under *Innocent Spouse Relief*.
- 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.

## Actual Knowledge

The relief discussed here does not apply to any part of the understated tax due to your spouse's (or former spouse's) erroneous items of which you had actual knowledge. You and your spouse (or former spouse) remain jointly and severally liable for this part of the understated tax.

If you had actual knowledge of only a portion of an erroneous item, the IRS will not grant relief for that portion of the item.

You had actual knowledge of an erroneous item if:

- You knew that an item of unreported income was received. (This rule applies whether or not there was a receipt of cash.)
- You knew of the facts that made an incorrect deduction or credit unallowable.
- For a false or inflated deduction, you knew that the expense was not incurred, or not incurred to the extent shown on the tax return.

Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. Also, your actual knowledge may not be inferred when you merely had a

reason to know of the erroneous item. Similarly, the IRS does not have to establish that you knew of the source of an erroneous item in order to establish that you had actual knowledge of the item itself.

Your actual knowledge of the proper tax treatment of an erroneous item is not relevant for purposes of demonstrating that you had actual knowledge of that item. Neither is your actual knowledge of how the erroneous item was treated on the tax return. For example, if you knew that your spouse received dividend income, relief is not available for that income even if you did not know it was taxable.

**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 understated tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed Form 8857 to request separation of liability relief. 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 understated tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understated 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 \$6,000 plus interest and penalties from either Karen or Bill because they are jointly and individually liable for it.

**Factors supporting actual knowledge.** The IRS may rely on all facts and circumstances in determining whether you actually knew of an erroneous item at the time you signed the return. The following are examples of factors the IRS may use.

- Whether you made a deliberate effort to avoid learning about the item in order to be shielded from liability.
- Whether you and your spouse (or former spouse) jointly owned the property that resulted in the erroneous item.

**Exception for spousal abuse or domestic violence.** Even if you had actual knowledge, you may still qualify for relief if you establish that:

- You were the victim of spousal abuse or domestic violence before signing the return, and
- Because of that abuse, you did not challenge the treatment of any items on the return because you were afraid your spouse (or former spouse) would retaliate against you.

If you establish that you signed your joint return under duress (threat of harm or other form of coercion), then it is not a joint return, and you are not liable for any tax shown on that return or any tax deficiency for that return. However, you may be required to file a separate return for that tax year. For more information about duress, see the instructions for Form 8857.

## Transfers of Property To Avoid Tax

If your spouse (or former spouse) transfers property (or the right to 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 fair market value of the property on the date of the transfer. The increase may not be more than the entire amount of the liability. 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. 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, or
- You establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

If the presumption does not apply, but the IRS can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the tax liability allocated to you will be increased as explained above.

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## Equitable Relief

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

Unlike innocent spouse relief or separation of liability relief, you can get equitable relief from an understated tax (defined earlier under *Innocent Spouse Relief*) or an underpaid tax. An underpaid tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 2009 return shows that you and your spouse owed \$5,000. You pay \$2,000 with the return. You have an underpaid tax of \$3,000.

## Conditions for Getting 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, separation of liability relief, or relief from liability arising from community property law.
2. You have an understated tax or an underpaid tax.
3. You did not pay the tax. However, see *Refunds*, later, for situations in which you are entitled to a refund of payments you made.
4. You establish that, taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated or underpaid tax. See *Factors for Determining Whether To Grant Equitable Relief*, later.

5. You and your spouse (or former spouse) did not transfer assets to one another as a part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, former spouse, or business partner.
6. Your spouse (or former spouse) did not transfer property to you for the main purpose of avoiding tax or the payment of tax. See *Transfers of Property To Avoid Tax*, earlier, under *Separation of Liability Relief*.
7. You did not file or fail to file your return with the intent to commit fraud.
8. The income tax liability from which you seek relief must be attributable to an item of the spouse (or former spouse) with whom you filed the joint return, unless one of the following exceptions applies:
  - a. The item is attributable or partially attributable to you solely due to the operation of community property law. If you meet this exception, that item will be considered attributable to your spouse (or former spouse) for purposes of equitable relief.
  - b. If the item is titled in your name, the item is presumed to be attributable to you. However, you can rebut this presumption based on the facts and circumstances.
  - c. You did not know, and had no reason to know, that funds intended for the payment of tax were misappropriated by your spouse (or former spouse) for his or her benefit. If you meet this exception, the IRS will consider granting equitable relief although the underpaid tax may be attributable in part or in full to your item, and only to the extent the funds intended for payment were taken by your spouse (or former spouse).
  - d. You establish that you were the victim of spousal abuse or domestic violence before signing the return, and that, as a result of the prior abuse, you did not challenge the treatment of any items on the return for fear of your spouse's (or former spouse's) retaliation. If you meet this exception, relief will be considered although the understated tax or underpaid tax may be attributable in part or in full to your item.

## Factors for Determining Whether To Grant 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 understated or underpaid tax. The following are examples of factors that the IRS will consider to determine whether to grant equitable relief. The IRS will consider all factors and weigh them appropriately.

## Relevant Factors

The following are examples of factors that may be relevant to whether the IRS will grant equitable relief.

- Whether you are separated (whether legally or not) or divorced from your spouse. A temporary absence, such as an absence due to imprisonment, illness, business, vacation, military service, or education, is not considered separation for this purpose. A temporary absence is one where it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of the absent spouse's return.
- Whether you would suffer a significant economic hardship if relief is not granted. (In other words, you would not be able to pay your reasonable basic living expenses.)
- Whether you have a legal obligation under a divorce decree or agreement to pay the tax. This factor will not weigh in favor of relief if you knew or had reason to know, when entering into the divorce decree or agreement, that your former spouse would not pay the income tax liability.
- Whether you received a significant benefit (beyond normal support) from the underpaid tax or item causing the understated tax. (For a definition of significant benefit, see *Indications of Unfairness for Innocent Spouse Relief* earlier.)
- Whether you have 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.
- Whether you knew or had reason to know about the items causing the understated tax or that the tax would not be paid, as explained next.

**Knowledge or reason to know.** In the case of an underpaid tax, the IRS will consider whether you did not know and had no reason to know that your spouse (or former spouse) would not pay the income tax liability.

In the case of an income tax liability that arose from an understated tax, the IRS will consider whether you did not know and had no reason to know of the item causing the understated tax. Reason to know of the item giving rise to the understated tax will not be weighed more heavily than other factors. Actual knowledge of the item giving rise to the understated tax, however, is a strong factor weighing against relief. This strong factor may be overcome if the factors in favor of equitable relief are particularly compelling.

**Reason to know.** In determining whether you had reason to know, the IRS will consider your level of education, any deceit or evasiveness of your spouse (or former spouse), your degree of involvement in the activity generating the income tax liability, your involvement in business and household financial matters, your business or financial

expertise, and any lavish or unusual expenditures compared with past spending levels.

**Example.** You and your spouse filed a joint 2009 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 2010. In addition, you had no knowledge or reason to know at the time you signed the return that the tax would not be paid. These facts indicate to the IRS that it may be unfair to hold you liable for the \$5,000 underpaid tax. 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 underpaid tax.

## Factors Weighing in Favor of Equitable Relief

The following are examples of factors that will weigh in favor of equitable relief, but will not weigh against equitable relief.

- Whether your spouse (or former spouse) abused you.
- Whether you were in poor mental or physical health on the date you signed the return or at the time you requested relief.

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## Refunds

If you are granted relief, refunds are:

- Permitted under innocent spouse relief as explained later under *Limit on Amount of Refund*.
- Not permitted under separation of liability relief.
- Permitted in limited circumstances under equitable relief, as explained under *Refunds Under Equitable Relief*.

## Proof Required

The IRS will only refund payments you made with your own money. However, you must provide proof that you made the payments with your own money. Examples of proof are a copy of your bank statement or a canceled check. No proof is required if your individual refund was used by the IRS to pay a tax you owed on a joint tax return for another year.

## Refunds Under Equitable Relief

In the following situations, you are eligible to receive a refund of certain payments you made.

**Underpaid tax.** If you are granted relief for an underpaid tax, you are eligible for a refund of separate payments that you made after July 22, 1998. However, you are not eligible for refunds of payments made with the joint return, joint payments, or payments that your spouse (or former spouse) made. For example, withholding tax and estimated tax payments cannot be refunded because they are considered made with the joint return.

The amount of the refund is subject to the limit discussed later under *Limit on Amount of Refund*.

**Understated tax.** If you are granted relief for an understated tax, you are eligible for a refund of certain payments made under an installment agreement that you entered into with the IRS, if you have not defaulted on the installment agreement. You are not in default if the IRS did not issue you a notice of default or take any action to end the installment agreement. Only installment payments made after the date you filed Form 8857 are eligible for a refund.

The amount of the refund is subject to the limit discussed next.

## Limit on Amount of Refund

The amount of your refund is limited. Read the following chart to find out the limit.

If you file Form 8857...	THEN the refund cannot be more than...
Within 3 years after filing your return	The part of the tax paid within 3 years (plus any extension of time for filing your return) before you file Form 8857.
After the 3-year period, but within 2 years from the time you paid the tax	The tax you paid within 2 years immediately before you filed Form 8857.

## 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 2007. They claimed one dependency exemption for their son Michael. Their return was adjusted by the IRS because Joe did not report a \$5,000 award he won that year. Janie did not know about the award when the return was filed. They agreed to the adjustment but could not pay the additional amount due of \$815 (\$650 tax + \$165 penalty and interest). Janie and Joe were divorced on May 13, 2009. In February 2010, Janie filed her 2009 federal income tax return as head of household. She expected a refund of \$1,203. In May 2010, she received a notice informing her that the IRS had offset her refund against the \$815 owed on her joint 2007 income tax return and that she had a right to file Form 8857.

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

1. Janie meets the first condition because the joint tax return they filed has an understated tax due to Joe's erroneous item.
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 first completes Part I of Form 8857 to determine if she should file the form. In Part I, she makes all entries under the Tax Year 1 column because she is requesting relief for only one year.

### Part I

**Line 1.** She enters "2007" on line 1 because this is the tax year for which she is requesting relief.

**Line 2.** She checks the box because she wants a refund.

**Note.** Because the IRS used her individual refund to pay the tax owed on the joint tax return, she does not need to provide proof of payment.

**Line 3.** She checks the "No" box because the IRS did not use her share of a joint refund to pay Joe's past-due debts.

**Line 4.** She checks the "Yes" box because she filed a joint tax return for tax year 2007.

**Line 5.** She skips this line because she checked the "Yes" box on line 4.

### Part II

**Line 6.** She enters her name, address, social security number, county, and best daytime phone number.

### Part III

**Line 7.** She enters Joe's name, address, social security number, and best daytime phone number.

**Line 8.** She checks the "divorced since" box and enters the date she was divorced as "05/13/2009." She attaches a copy of her entire divorce decree (not illustrated) to the form.

**Line 9.** She checks the box for "High school diploma, equivalent, or less," because she had completed high school when her 2007 joint tax return was filed.

**Line 10.** She checks the "No" box because she was not a victim of spousal abuse or domestic violence.

**Line 11.** She checks the "No" box because neither she nor Joe incurred any large expenses during the year for which she wants relief.

**Line 12.** She checks the "Yes" box because she signed the 2007 joint tax return.

**Line 13.** She checks the “No” box because she did not have a mental or physical condition when the return was filed and does not have one now.

#### **Part IV**

**Line 14.** Because she was not involved in preparing the return, she checks the box, “You were not involved in preparing the returns.”

**Line 15.** She checks the box, “You did not know anything was incorrect or missing” because she did not know that Joe had received a \$5,000 award. She explains this in the space provided.

**Line 16.** She checks the box, “You knew that person had income” because she knew Joe had income from wages. She also lists Joe’s income. Under “Type of Income” she enters “wages.” Under “Who paid it to that person,” she enters the name of Joe’s employer, “Allied.” Under “Tax Year 1” she enters the amount of Joe’s wages, “\$40,000.” Because she is only requesting relief for one tax year, she leaves the entry spaces for “Tax Year 2” and “Tax Year 3” blank.

**Line 17.** She checks the “No” box because she did not know any amount was owed to the IRS when the 2007 return was signed.

**Line 18.** She checks the “No” box because, when the return was signed, she was not having financial problems.

**Line 19.** She checks the box, “You were not involved in handling money for the household” because Joe handled all the money for the household. She provides additional information in the space provided.

**Line 20.** She checks the “No” box because Joe has never transferred money or property to her.

#### **Part V**

**Line 21.** She enters the number “1” on both the line for “Adults” and the line for “Children” because her current household consists of herself and her son.

**Line 22.** She enters her average monthly income for her entire household.

**Line 23.** She lists her assets, which are \$500 for the fair market value of a car, \$450 in her checking account, and \$100 in her savings account.

**Signing and mailing Form 8857.** Janie signs and dates the form. She attaches the copy of her divorce decree (not illustrated) required by line 8. Finally, she sends the form to the IRS address or fax number shown in the instructions for Form 8857.

## Request for Innocent Spouse Relief

▶ See separate instructions.

**Important things you should know**

- **Do not file this form with your tax return.** See *Where To File* in the instructions.
- Answer all the questions on this form that apply, attach any necessary documentation, and sign on page 4. Do not delay filing this form because of missing documentation. See instructions.
- By law, the IRS must contact the person who was your spouse for the years you want relief. There are no exceptions, even for victims of spousal abuse or domestic violence. Your personal information (such as your current name, address, and employer) will be protected. However, if you petition the Tax Court, your personal information may be released, unless you ask the Tax Court to withhold it. See instructions for details.
- If you need help, see *How To Get Help* in the instructions.

**Part I**    **Should you file this form? You must complete this part for each tax year.**

	Tax Year 1		Tax Year 2		Tax Year 3*	
<p><b>1</b>    <b>Enter each tax year you want relief.</b> It is important to enter the correct year. For example, if the IRS used your 2009 income tax refund to pay a 2007 tax amount you jointly owed, enter tax year 2007, not tax year 2009 . . . . . ▶</p> <p><b>Caution.</b> The IRS generally cannot collect the amount you owe until your request for each year is resolved. However, the time the IRS has to collect is extended. See <i>Collection Statute of Limitations</i> on page 3 of the instructions.</p>	2007					
<p><b>2</b>    <b>Check the box for each year you would like a refund if you qualify for relief.</b> You may be required to provide proof of payment. See instructions . . . . . ▶</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>3</b>    <b>Did the IRS use your share of the joint refund to pay any of the following past-due debts of your spouse: federal tax, state income tax, child support, spousal support, or federal non-tax debt such as a student loan?</b></p> <ul style="list-style-type: none"> <li>• If "Yes," <b>stop here;</b> do not file this form for that tax year. Instead, file Form 8379, Injured Spouse Allocation. See instructions.</li> <li>• If "No," go to line 4 . . . . . ▶</li> </ul>	Yes	No	Yes	No	Yes	No
<p><b>4</b>    <b>Was a return claiming married filing jointly status filed for the tax year listed on line 1? See instructions.</b></p> <ul style="list-style-type: none"> <li>• If "Yes," skip line 5 and go to line 6.</li> <li>• If "No," go to line 5 . . . . . ▶</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>5</b>    <b>If a joint return for that tax year was not filed, were you a resident of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin?</b></p> <ul style="list-style-type: none"> <li>• If "Yes," see <i>Community Property Laws</i> on page 2 of the instructions.</li> <li>• If "No" on both lines 4 and 5, <b>stop here.</b> Do not file this form for that tax year . . . . . ▶</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*If you want relief for more than 3 years, fill out an additional form.

**Part II**    **Tell us about yourself**

<p><b>6</b>    Your current name (see instructions)  <i>Janie Boulder</i></p> <p>Your current mailing address (number and street).  <i>5161 Old Farm Estates</i></p> <p>City, town or post office, state, and ZIP code. If a foreign address, see instructions.  <i>Hutchinson, IA 55555</i></p>	<p><b>Your social security number</b>  <i>123-00-9876</i></p> <p>Apt. no.    <b>County</b>  <i>Montgomery</i></p> <p>Best daytime phone number  <i>721-555-1023</i></p>
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**Part III**    **Tell us about you and your spouse for the tax years you want relief**

**7**    **Who was your spouse for the tax years you want relief?** File a separate Form 8857 for tax years involving different spouses or former spouses.

<p>That person's current name  <i>Joe E. Boulder</i></p> <p>Current home address (number and street) (if known). If a P.O. box, see instructions.  <i>3895 Timber Way</i></p> <p>City, town or post office, state, and ZIP code. If a foreign address, see instructions.  <i>Creekbed, WY 77777</i></p>	<p><b>Social security number</b> (if known)  <i>234-00-8765</i></p> <p>Apt. no.</p> <p>Best daytime phone number  <i>271-555-2345</i></p>
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**Note.** If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

**Part III** (Continued)

**8 What is the current marital status between you and the person on line 7?**

- Married and still living together
- Married and living apart since \_\_\_\_\_  
MM DD YYYY
- Widowed since \_\_\_\_\_  
MM DD YYYY Attach a photocopy of the death certificate and will (if one exists).
- Legally separated since \_\_\_\_\_  
MM DD YYYY Attach a photocopy of your entire separation agreement.
- Divorced since 05-13-2009  
MM DD YYYY Attach a photocopy of your entire divorce decree.

**Note.** A divorce decree stating that your former spouse must pay all taxes does not necessarily mean you qualify for relief.

**9 What was the highest level of education you had completed when the return(s) were filed?** If the answers are **not** the same for all tax years, explain.

- High school diploma, equivalent, or less
- Some college
- College degree or higher. List any degrees you have ► \_\_\_\_\_  
List any college-level business or tax-related courses you completed ► \_\_\_\_\_
- Explain ► \_\_\_\_\_

**10 Were you a victim of spousal abuse or domestic violence during any of the tax years you want relief?** If the answers are **not** the same for all tax years, explain.

- Yes. **Attach a statement** to explain the situation and **when** it started. Provide photocopies of any documentation, such as police reports, a restraining order, a doctor's report or letter, or a notarized statement from someone who was aware of the situation.
- No.

**11 Did you (or the person on line 7) incur any large expenses, such as trips, home improvements, or private schooling, or make any large purchases, such as automobiles, appliances, or jewelry, during any of the years you want relief or any later years?**

- Yes. **Attach a statement** describing (a) the types and amounts of the expenses and purchases and (b) the years they were incurred or made.
- No.

**12 Did you sign the return(s)?** If the answers are **not** the same for all tax years, explain.

- Yes. If you were forced to sign under duress (threat of harm or other form of coercion), check here ► . See instructions.
- No. Your signature was forged. See instructions.

**13 When any of the returns were signed, did you have a mental or physical health problem or do you have a mental or physical health problem now?** If the answers are **not** the same for all tax years, explain.

- Yes. **Attach a statement** to explain the problem and **when** it started. Provide photocopies of any documentation, such as medical bills or a doctor's report or letter.
- No.

**Part IV Tell us how you were involved with finances and preparing returns for those tax years**

**14 How were you involved with preparing the returns?** Check all that apply and explain, if necessary. If the answers are **not** the same for all tax years, explain.

- You filled out or helped fill out the returns.
- You gathered receipts and cancelled checks.
- You gave tax documents (such as Forms W-2, 1099, etc.) to the person who prepared the returns.
- You reviewed the returns before they were signed.
- You did not review the returns before they were signed. Explain below.
- You were not involved in preparing the returns.
- Other ► \_\_\_\_\_

Explain how you were involved ► \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note.** If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

**Part IV** (Continued)

**15 When the returns were signed, what did you know about any incorrect or missing information?** Check all that apply and explain, if necessary. If the answers are **not** the same for all tax years, explain.

- You knew something was incorrect or missing, but you said nothing.
- You knew something was incorrect or missing and asked about it.
- You did not know anything was incorrect or missing.

Explain ► I did not know about the \$5,000 award. My ex-husband was very secretive about the way he conducted his financial affairs.

**16 When any of the returns were signed, what did you know about the income of the person on line 7?** Check all that apply and explain, if necessary. If the answers are **not** the same for all tax years, explain.

- You knew that person had income.

List each type of income on a separate line. (Examples are wages, social security, gambling winnings, or self-employment business income.) Enter each tax year and the amount of income for each type you listed. If you do not know any details, enter "I don't know."

Type of income	Who paid it to that person	Tax Year 1	Tax Year 2	Tax Year 3
Wages	Allied	\$ 40,000	\$	\$
		\$	\$	\$
		\$	\$	\$

- You knew that person was self-employed and you helped with the books and records.
- You knew that person was self-employed and you did not help with the books and records.
- You knew that person had no income.
- You did not know if that person had income.

Explain ►

**17 When the returns were signed, did you know any amount was owed to the IRS for those tax years?** If the answers are **not** the same for all tax years, explain.

- Yes. Explain when and how you thought the amount of tax reported on the return would be paid ►

- No.

Explain ►

**18 When any of the returns were signed, were you having financial problems** (for example, bankruptcy or bills you could not pay)? If the answers are **not** the same for all tax years, explain.

- Yes. Explain ►

- No.

- Did not know.

Explain ►

**19 For the years you want relief, how were you involved in the household finances?** Check all that apply. If the answers are **not** the same for all tax years, explain.

- You knew the person on line 7 had separate accounts.
- You had joint accounts but you had limited use of them or did not use them. Explain below.
- You used joint accounts. You made deposits, paid bills, balanced the checkbook, or reviewed the monthly bank statements.
- You made decisions about how money was spent. For example, you paid bills or made decisions about household purchases.
- You were not involved in handling money for the household.

- Other ► My ex-husband handled the household finances. He didn't want me involved. He was so secretive about it, too.

Explain anything else you want to tell us about your household finances ►

**20 Has the person on line 7 ever transferred assets (money or property) to you?** (Property includes real estate, stocks, bonds, or other property that you own.) See instructions.

- Yes. List the assets, the dates they were transferred, and their fair market values on the dates transferred. Explain why the assets were transferred ►

- No.

**Part V Tell us about your current financial situation**

**21 Tell us the number of people currently in your household.** Adults 1 Children 1

**22 Tell us your current average monthly income and expenses for your entire household.** If family or friends are helping to support you, include the amount of support as gifts under **Monthly income**. Under **Monthly expenses**, enter all expenses, including expenses paid with income from gifts.

Monthly income	Amount	Monthly expenses	Amount
Gifts . . . . .		Federal, state, and local taxes deducted from your paycheck . . . . .	250
Wages (Gross pay) . . . . .	2000	Rent or mortgage . . . . .	620
Pensions . . . . .		Utilities . . . . .	100
Unemployment . . . . .		Telephone . . . . .	40
Social security . . . . .		Food . . . . .	568
Government assistance, such as housing, food stamps, grants . . . . .		Car expenses, payments, insurance, etc.	254
Alimony . . . . .		Medical expenses, including medical insurance . . . . .	200
Child support . . . . .	750	Life insurance . . . . .	10
Self-employment business income . . . . .		Clothing . . . . .	200
Rental income . . . . .		Child care . . . . .	455
Interest and dividends . . . . .		Public transportation . . . . .	
Other income, such as disability payments, gambling winnings, etc.		Other expenses, such as real estate taxes, child support, etc.	
List the type below:		List the type below:	
Type _____		Type _____	
Type _____		Type _____	
Type _____		Type _____	
<b>Total</b> . . . . . ▶	2,750	<b>Total</b> . . . . . ▶	2,697

**23 Tell us about your assets.** Your assets are your money and property. Property includes real estate, motor vehicles, stocks, bonds, and other property that you own. Tell us the amount of cash you have on hand and in your bank accounts. Also give a description of each item of property, the fair market value of each item, and the balance of any outstanding loans you used to acquire each item. Do not list any money or property you listed on line 20. If you need more room, attach more pages. Write your name and social security number on the top of all pages you attach.

*I have a car with a fair market value of \$500, \$450 in my checking account, and \$100 in a savings account.*

**24 Please provide any other information you want us to consider in determining whether it would be unfair to hold you liable for the tax.** If you need more room, attach more pages. Write your name and social security number on the top of all pages you attach.

**Caution**  
By signing this form, you understand that, by law, we must contact the person on line 7. See instructions for details.

**Sign Here**

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.

Keep a copy for your records.

Your signature Janie Boulder Date 8/01/2010

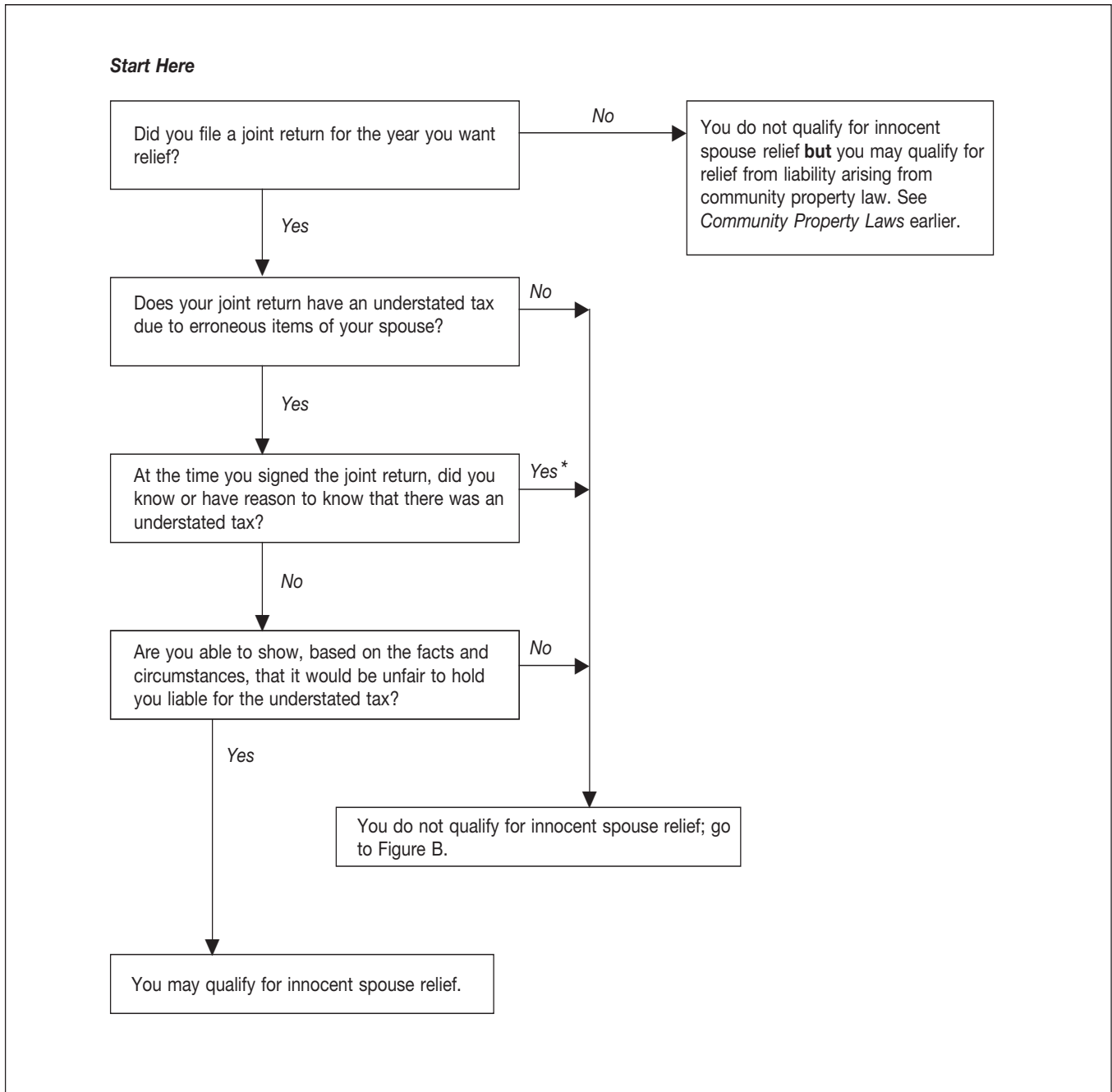
**Paid Preparer's Use Only**

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. \_\_\_\_\_

# 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 of only a portion of an erroneous item.

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

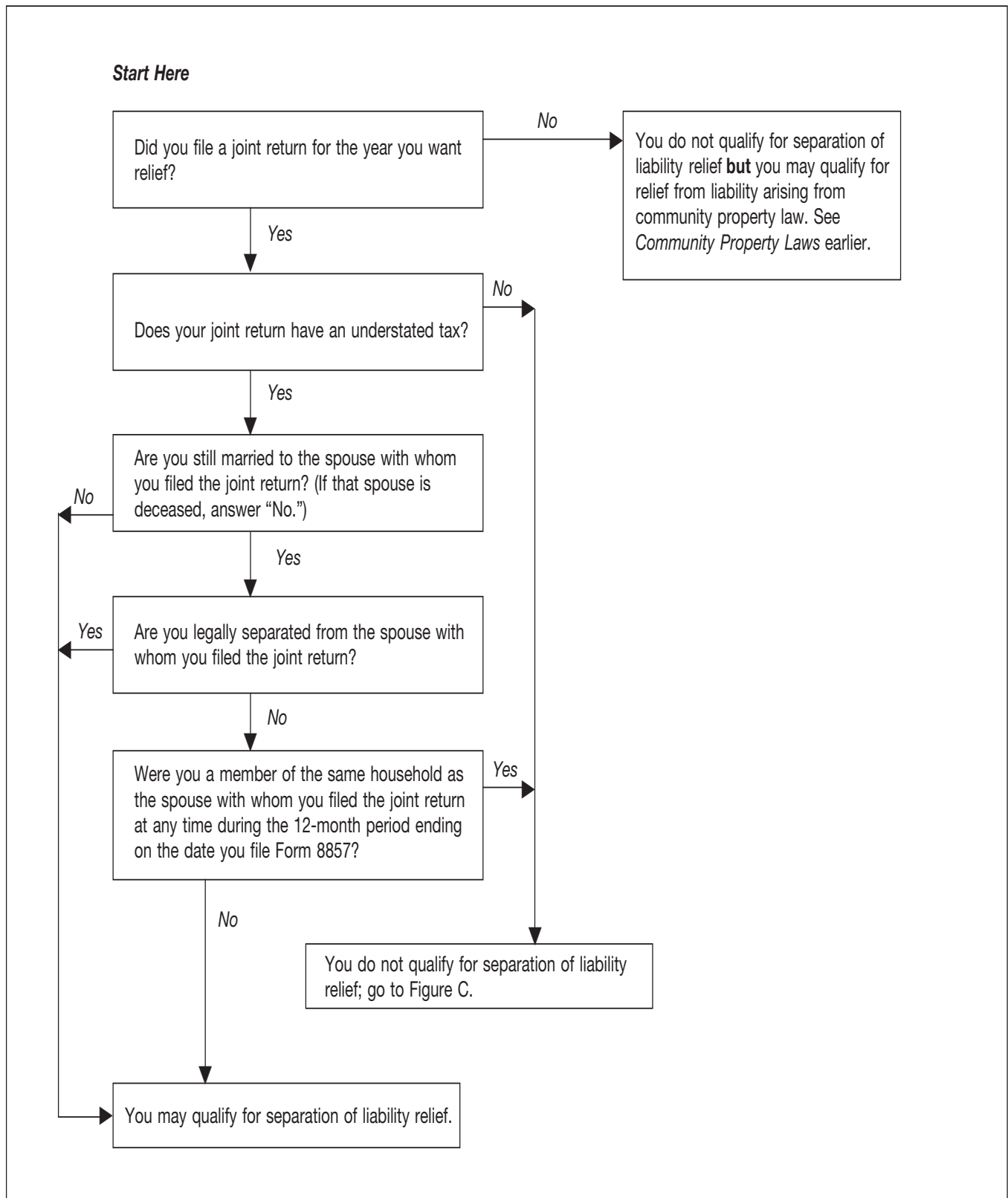
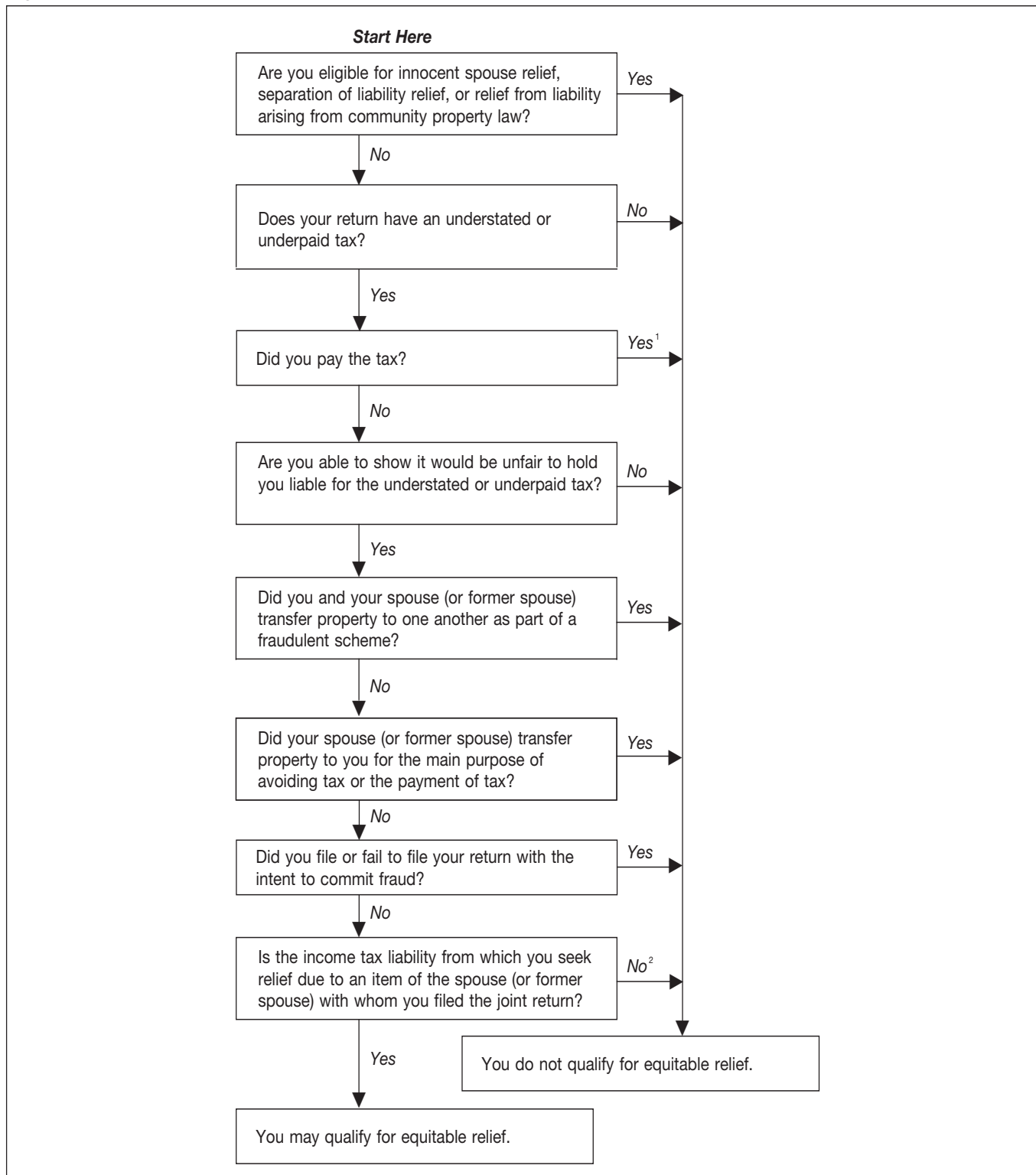


Figure C. Do You Qualify for Equitable Relief?



<sup>1</sup> You may qualify for equitable relief and receive a refund of certain payments made out of your own funds. See *Refunds* earlier.

<sup>2</sup> You may qualify for equitable relief if you meet any of the exceptions to condition (8) discussed earlier under *Conditions for Getting Equitable Relief*.

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# Questions & Answers

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

## What is joint and several liability?

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called joint and several liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to the income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for taxes, and the IRS still can collect from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax.

## How can I get relief from joint and several liability?

There are three types of relief for filers of joint returns: “innocent spouse relief,” “separation of liability relief,” and “equitable relief.” Each type has 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 understated tax.
- The understated 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 understated tax.
- Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the understated 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 properly reported on the return.

## What is an “understated tax”?

You have an understated tax if the IRS determined that your total tax should be more than the amount actually shown on your return. For example, you reported total tax on your 2008 return of \$2,500. IRS determined in an audit of your 2008 return that the total tax should be \$3,000. You have a \$500 understated tax.

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

No. There are many situations in which you may owe tax that is related to your spouse (or former 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 understated tax.

## What are the rules for separation of liability relief?

Under this type of relief, you allocate (separate) the understated tax (plus interest and penalties) on your joint return between you and your spouse (or former spouse). The understated tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability relief, 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 relief be denied?

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

- The IRS proves that you and your spouse (or former spouse) transferred assets to one another as part of a fraudulent scheme.
- The IRS proves that at the time you signed your joint return, you had actual knowledge of any erroneous items giving rise to the deficiency that are allocable to your spouse (or former 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, separation of liability relief, or relief from liability arising from community property law.
- You have an understated tax or underpaid tax. See *Note* later.
- You did not pay the tax. However, see *Refunds*, earlier, for exceptions.
- The IRS determines that it is unfair to hold you liable for the understated or underpaid tax taking into account all the facts and circumstances.

- You and your spouse (or former spouse) did not transfer assets to one another as a part of a fraudulent scheme.
- Your spouse (or former spouse) did not transfer property to you for the main purpose of avoiding tax or the payment of tax.
- You did not file or fail to file your return with the intent to commit fraud.
- The income tax liability for which you seek relief is attributable to your spouse (or former spouse) with whom you filed the joint return. For exceptions to this condition, see item (8) under *Conditions for Getting Equitable Relief*, earlier.

**Note.** Unlike innocent spouse relief or separation of liability relief, if you qualify for equitable relief, you can also get relief from an underpaid tax. (An underpaid tax is tax that is properly shown on the return, but has not been 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 must file an additional Form 8857

if you are requesting relief for more than three years.

### When should I file Form 8857?

If you are requesting innocent spouse relief, separation of liability relief, or equitable relief, file Form 8857 no later than two years after the date on which the IRS first began collection activities against you after July 22, 1998. If you are requesting relief from liability arising from community property law, see *How and When To Request Relief under Community Property Laws*, earlier, for when to file Form 8857.

### Where should I file Form 8857?

Use the address or fax number shown in the Instructions for Form 8857.

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

File Form 8857 at the address or send it to the fax number shown in the Instructions for Form 8857. Do not file it 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?

Generally, the IRS has 10 years to collect an amount you owe. This is the collection statute of limitations. By law, the IRS is not allowed to collect from you after the 10-year period ends.

If you request relief for any tax year, the IRS cannot collect from you for that year while your request is pending. But interest and penalties continue to accrue. Your request is generally considered pending from the date the IRS receives your Form 8857 until the date your request is resolved. This includes the time the Tax Court is considering your request.

After your case is resolved, the IRS can begin or resume collecting from you. The 10-year period will be increased by the amount of time your request for relief was pending plus 60 days.

### 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 federal tax, state income tax, child support, spousal support, or federal non-tax debt, such as a student loan, the other spouse may be considered an injured spouse. The injured spouse can get back his or her share of the joint overpayment using Form 8379, *Injured Spouse Allocation*.

You are considered an injured spouse if:

1. You are not legally obligated to pay the past-due amount, and
2. You meet any of the following conditions:
  - a. You made and reported tax payments (such as federal income tax withholding or estimated tax payments).
  - b. You had earned income (such as wages, salaries, or self-employment income) and claimed the earned income credit or the additional child tax credit.
  - c. You claimed a refundable tax credit, such as the health coverage tax credit or the refundable credit for prior year minimum tax.

**Note.** If your residence was in a community property state at any time during the year, you may file Form 8379 even if only item (1) above applies.

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# How To Get Tax Help

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You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get 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.** The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, such as not being able to provide necessities like housing, transportation, or food; taxpayers who are seeking help in resolving tax problems with the IRS; and those who believe that an IRS system or procedure is not working as it should.

Here are seven things every taxpayer should know about TAS:

- The Taxpayer Advocate Service is your voice at the IRS.
- Our service is free, confidential, and tailored to meet your needs.
- You may be eligible for our help if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should.
- We help taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation. This includes businesses as well as individuals.
- Our employees know the IRS and how to navigate it. If you qualify for our help, we'll assign your case to an advocate who will listen to your problem, help you understand what needs to be done to resolve it, and stay with you every step of the way until your problem is resolved.
- We have at least one local taxpayer advocate in every state, the District of Columbia, and Puerto Rico. You can call your

local advocate, whose number is in your phone book, in Pub. 1546, Taxpayer Advocate Service—Your Voice at the IRS, and on our website at [www.irs.gov/advocate](http://www.irs.gov/advocate). You can also call our toll-free line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

You can learn about your rights and responsibilities as a taxpayer by visiting our online tax toolkit at [www.taxtoolkit.irs.gov](http://www.taxtoolkit.irs.gov). You can get updates on hot tax topics by visiting our YouTube channel at [www.youtube.com/tasnta](http://www.youtube.com/tasnta) and our Facebook page at [www.facebook.com/YourVoiceAtIRS](http://www.facebook.com/YourVoiceAtIRS), or by following our tweets at [www.twitter.com/YourVoiceAtIRS](http://www.twitter.com/YourVoiceAtIRS).

## Low Income Taxpayer Clinics (LITCs).

The Low Income Taxpayer Clinic program serves individuals who have a problem with the IRS and whose income is below a certain level. LITCs are independent from the IRS. Most LITCs can provide representation before the IRS or in court on audits, tax collection disputes, and other issues for free or a small fee. If an individual's native language is not English, some clinics can provide multilingual information about taxpayer rights and responsibilities. For more information, see Publication 4134, Low Income Taxpayer Clinic List. This publication is available at [IRS.gov](http://IRS.gov), by calling 1-800-TAX-FORM (1-800-829-3676), or at your local IRS office.

## Free tax services.

Publication 910, IRS Guide to Free Tax Services, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

## Free help with your return.

Free help in preparing your return is available nationwide from IRS-trained volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at [www.aarp.org/money/taxaide](http://www.aarp.org/money/taxaide).

For more information on these programs, go to [IRS.gov](http://IRS.gov) and enter keyword "VITA" in the upper right-hand corner.



**Internet.** You can access the IRS website at [IRS.gov](http://IRS.gov) 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your refund. Click on *Where's My Refund*. Wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.

- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at [www.irs.gov/individuals](http://www.irs.gov/individuals).
- Determine if Form 6251 must be filed using our Alternative Minimum Tax (AMT) Assistant.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



**Phone.** Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to [www.irs.gov/localcontacts](http://www.irs.gov/localcontacts) or look in the phone book under *United States Government, Internal Revenue Service*.
- *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.
- *Refund information.* To check the status of your refund for your current return, call 1-800-829-1954 or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2010 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.
- *Other refund information.* To check the status of a prior-year refund or amended return refund, call 1-800-829-1040.

**Evaluating the quality of our telephone services.** To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



**Walk-in.** Many products and services are available on a walk-in basis.

- *Products.* 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 government offices, credit unions, and office supply stores have a collection of products available to print from a CD 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.

- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you're more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary, just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to [www.irs.gov/localcontacts](http://www.irs.gov/localcontacts) or look in the phone book under *United States Government, Internal Revenue Service*.



**Mail.** You can send your order for forms, instructions, and publications to the address below:

Internal Revenue Service  
1201 N. Mitsubishi Motorway  
Bloomington, IL 61705-6613



**DVD for tax products.** You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Internal Revenue Code — Title 26 of the U.S. Code.

- Tax Topics from the IRS telephone response system.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two during the year.
  - The first release will ship the beginning of January.

– The final release will ship the beginning of March.

Purchase the DVD from National Technical Information Service (NTIS) at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$35 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).



