



The Invalid Tax Return: Fraud, Identity Theft, and Lack of Consent

THE INVALID TAX RETURN

Sometimes a survivor will discover, often after getting a notice of tax due from IRS, that a joint return has been filed by their abuser, **without the survivor's knowledge or consent**. Fortunately, there are remedies available to the survivor. These remedies involve persuading IRS that the joint return was a not a valid return.

The determination of whether a joint return is valid is based on the facts and circumstances surrounding the filing of the return. There are many factors to consider when determining whether a joint return is a valid return.

Practice Tip

A survivor can treat the situation as a form of identity theft and use IRS procedures for resolving cases of identity theft.

Or the survivor can raise the invalidity of a purported joint tax return with the IRS unit responsible for resolving claims for Innocent Spouse relief, even though, as discussed below, Innocent Spouse relief is only available to taxpayers who have actually filed joint tax returns.

Duress

A tax return signed under duress or coercion does not constitute a valid tax return. It is up to the taxpayer to establish the existence of duress; if successful, they will not be responsible for the tax shown on the return or later imposed by IRS.

To show the return was signed under duress, the taxpayer must show that they were unable to resist their spouse's demands and that they would not have signed but for such constraint on

their will. IRS will consider the following as possible indicators of coercion:

- Physical, sexual or emotional abuse;
- Financial exploitation;
- Threatened or actual harm to children;
- A threat of separation from the children.
- Threats related to immigration status;
- Isolation from family and friends;
- Surveillance;
- Shaming;
- Control over access to necessities.

Practice Tip

A survivor who disputes the validity of a joint return should file their own tax return in that year, even if they had no income for that year. By filing their own tax return, they are showing they did not intend to file a joint return with their abuser.

If the taxpayer learns of the invalid return prior to its due date, the taxpayer has the right to file their own return using a different filing status than married filing jointly without having to establish the invalidity of the originally filed joint return.

The determination of whether a return was the result of duress is made initially by the Cincinnati Centralized Innocent Spouse Operation which also makes the determination of whether a survivor is entitled to innocent spouse relief, discussed later in this chapter.

Duress is defined more narrowly than abuse and, unlike abuse, is determined at the moment that return was signed. Particularly where multiple years of returns are involved, survivors face an uphill challenge asserting duress.

An experienced tax professional can help survivors like Leah determine whether to pursue invalidating returns based on duress is the best strategy.

From our example of Leah's story, it is possible that Leah may be able to convince IRS that the joint returns with John were invalid because she signed them under duress.

Forgery

A forged signature does NOT give rise to a valid decision to file a joint return. The burden is on the taxpayer to prove forgery and no intent to file.

If the return was forged, IRS will determine if there was tacit consent, i.e. implied or understood consent. IRS will look to the following as indication of tacit consent:

- Lack of reason to refuse a joint return;
- Past history of filing jointly;

- Absence of objections;
 - Delivery of tax information to spouse;
 - Whether the joint return provided advantages to both spouses.
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Challenging an invalid return

In addition to raising the invalidity of a joint return through IRS Identity Theft procedures and/or IRS Innocent Spouse Relief procedures, there is another avenue available to survivors who are receiving collection notices from IRS but who have not had the opportunity to contest the validity of their tax debt.

Dealing with IRS Collections can be daunting, but there are protections for taxpayers. Taxpayers who are facing the levy (garnishment) of property, such as wages, Social Security benefits, and bank accounts, have the right to pre-levy Collection Due Process hearing before the IRS Office of Appeals. These appeal hearings generally take place by telephone unless a taxpayer specifically requests a face to face hearing.

Although the purpose of the Collection Due Process hearing is to give the taxpayer an opportunity to get into an IRS collection alternative instead of the levy, the Appeals Office will consider underlying liability issues if the taxpayer has not had the opportunity to previously contest the tax debt.

Practice Tip

There are a number of situations in which a survivor would not have had the opportunity to contest

Some survivors are denied access to mail by their abusers and never see notices from IRS contain
may not have had a reliable address at which to receive mail.

Sometimes IRS continues to send mail to the address shared by the survivor and abuser even after

The ILS Low Income Taxpayer Clinic is proud to partner with the Center for Survivor Agency & Justice. Together, we seek to provide education, represent
taxes. The content of this page is adapted from a chapter to an upcoming guidebook for survivors published by the CSAJ, the Guidebook on Consumer and

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