



## Innocent Spouse Relief for Survivors

### Innocent Spouse Relief

Many married taxpayers are not aware that they are not legally required to file a joint tax return with their spouse. Filing a joint tax return is often financially advantageous for the couple.

However, spouses who file a joint tax return are “jointly and severally liable” for any tax shown on the return, or for any tax, penalty, and interest assessed by IRS. That means that each spouse is individually liable for the entire tax, penalty, and interest even if only one of the spouses earned all of the income or only one of the spouses made a reporting error that caused additional tax to be assessed.

IRS does not distinguish between the spouses when attempting to collect tax arising from a joint return. While IRS has a variety of collection tools at its disposal, including levying wages, benefits, and bank accounts, **the most common collection tool is to take refunds that would otherwise be due a taxpayer in the future and apply those refunds to a prior year’s tax debt.**

#### Leah’s story

This is precisely what happened in Leah’s case when she filed her own tax return for tax year 2013. IRS took her refund and applied it to a joint tax debt that arose because John misstated his income and deductions on joint tax returns filed while they were living together. IRS is also threatening Leah with further collection action, including levy of her wages and bank accounts.

Many survivors are not in a position to obtain advice about whether to file a joint return with their abuser, nor are they safely able to decline to file a joint return. Consequently, like Leah, they may find themselves in debt to IRS for thousands of dollars without having done anything to cause the debt or having had any way to avoid it.

IRS offers survivors and other taxpayers the opportunity to request “innocent spouse relief” which, if granted, can relieve the survivor from some or all of the joint tax debt. Survivors who believe, taking into account all of the facts and circumstances, that only their spouse (or ex-spouse) should be held responsible for all or part of the tax should request relief from the tax, including penalties and interest.

---

### Types of Relief Available

There are four different types of relief available. Although “innocent spouse relief” is technically a term for one type of relief from joint and several liability, it is also the term that many people use to describe all four kinds. Generally, people who are not tax professionals have a difficult time

understanding the differences between the types of relief. The four types of relief are:

1. **Innocent spouse relief.** It is only available when the joint tax return understated the amount of tax due. To qualify, you must show that when you signed the return you did not know and had no reason to know that the tax return understated the amount of tax due. Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the full amount of tax due. This type of relief must be requested within two years of the date that IRS took its first collection action against you.
2. **Separation of Liability Relief.** It is only available when the joint tax return understated the amount of tax due. It is only available when the requesting spouse is divorced, legally separated, or has lived apart from the other spouse for at least 12 months before requesting relief. It is also available if the other spouse is deceased. IRS can separate spouses' liability for the understated amount so that each spouse is responsible for only the amount of tax that would have been theirs, had the spouses filed joint returns. This type of relief must be requested within two years of the date that IRS took its first collection action against you. Taxpayers granted this type of relief are not entitled to a refund of any amounts paid toward the tax liability from which relief has been sought.
3. **Equitable relief.** It is available when the tax return understated the amount of tax due as well as when the amount was correctly stated, but the total tax due has not been paid (known as an understatement.) It is only available when the taxpayer is not entitled to Innocent Spouse Relief or Separation of Liability Relief described above. It requires IRS to take into account all relevant facts and circumstances in deciding whether to grant relief. A list of factors is discussed below.
4. **Relief from liability for tax attributable to an item of community income.** There are special rules for spouses living in the 9 community property states. An overview of the rules related to seeking innocent spouse relief in community property states is contained in the instructions to IRS Form 8857, available on the IRS website.

---

## Factors IRS Considers

IRS has issued guidelines for how it will handle equitable relief innocent spouse claims including a list of nonexclusive factors that it will take into account when resolving claims for innocent spouse relief. These factors include:

- What is the requesting spouse's current marital status? If, at the time innocent spouse relief is sought, the requesting spouse is widowed, divorced, legally separated, or living apart for at least 12 months from the other spouse, this factor favors granting relief.
- Would paying the tax cause the requesting spouse economic hardship? Economic hardship is presumed for those taxpayers whose household income is below 250% of the federal poverty guidelines. The existence of economic hardship favors granting relief.
- If the tax debt is due to an understatement of tax on the return, did the requesting spouse know or have reason to know of the item giving rise to the understatement? Typically, the item would be unreported income or an incorrect deduction. If the requesting spouse did not know or have reason to know, this factor favors granting relief.
- If the tax debt is due to a failure to pay, did the requesting spouse know or have reason to know at the time the return was filed that the other spouse would not pay the tax due? If

the requesting spouse did not know or have reason to know, this factor favors granting relief.

- Was the requesting spouse a victim of abuse? If abuse is present, it changes how IRS will view other factors including the knowledge factors. The non-requesting spouse's alcohol and drug abuse can be considered abuse of the requesting spouse. Abuse of the requesting spouse's child is considered as part of the abuse determination.
  - Has the requesting spouse complied with the tax laws in the years since the joint returns were filed? If so, this factor favors granting relief.
  - Who has the legal obligation to pay the tax? If a divorce or separation agreement places sole responsibility for paying the tax on the non-requesting spouse, this factor favors granting relief, although it does NOT guarantee it. However, it is still important that attorneys representing survivors in family court ask the judge to hold the abuser solely responsible for the debt.
  - If the requesting spouse received a significant benefit from the unpaid tax or from the deficiency, this factor will favor denying relief. A significant benefit must be a benefit beyond normal support.
  - The existence of the requesting spouse's mental or physical health issues favors granting relief.
- 

## How to request relief

Requests for innocent spouse relief are most often made on IRS Form 8857, Request for Innocent Spouse Relief, and are sent along with any attachments or letters of explanation to the IRS Cincinnati Centralized Innocent Spouse Operation. Because of the complexity of the rules governing innocent spouse relief, survivors are well-advised to obtain assistance from an experienced tax professional to prepare their request. In general, a taxpayer should request innocent spouse relief as soon as it is apparent that this kind of relief from a joint tax liability is needed.

- *Practice Tip* : Many survivors have no idea why their joint tax return has resulted in tax liability. Like Leah, they have been denied access to information about household finances by their abusers and have not been permitted to review returns before signing them. It is vitally important for a survivor to find out the source of the tax liability before submitting a request for innocent spouse relief. Some information can be gained by requesting account transcripts for the tax years in issue directly from IRS. In addition, formal requests made to IRS by the survivor under the Freedom of Information Act for the relevant IRS file can yield vital information, particularly where the liability is the result of an audit of the joint tax return.
- 

## IRS Contact with the Abuser

By law, when IRS receives a request for innocent spouse relief, it must contact the requesting taxpayer's spouse or former spouse. There are no exceptions, even for survivors of abuse. Thus, if Leah requests innocent spouse relief from the tax debts arising from the joint returns with John, IRS will notify John that she has filed Form 8857 and will allow him to participate in the

process. IRS will not disclose personal information (current name, address, telephone number, employer, income, assets) to the spouse. Other information that is given to IRS may be shared with the other spouse, but the requesting spouse can black-out information that they do not want disclosed.

### **Consider...**

For many survivors, the prospect of IRS notifying the abusive spouse or ex-spouse that innocent spouse relief has been requested raises significant safety issues. Some survivors may choose to delay requesting innocent spouse relief until safety concerns are alleviated. Others may decide to forego requesting innocent spouse relief. For some survivors who choose not to pursue innocent spouse relief at all, there may be IRS collection alternatives available to them under which little or no payment on the joint tax debt will have to be made.

## **Timeframe for resolution**

It usually takes IRS at least six months, and often much longer, to make a preliminary determination on a request for innocent spouse relief. During the time a request for innocent spouse relief is pending, IRS will take no collection action against the requesting spouse. Once IRS has reviewed the request for relief and given the other spouse the opportunity to participate, it will issue a preliminary decision, a copy of which will be sent to each spouse. If neither appeals, IRS will issue a final determination. A survivor may appeal an unfavorable decision to Tax Court. A survivor can also file a case in Tax Court requesting innocent spouse relief if IRS has not issued a final determination notice within six months of receiving a request for relief on Form 8857.

## **What happens if a request is denied?**

IRS denies thousands of claims for innocent spouse relief each year, frequently because the taxpayer requesting relief has failed to provide sufficient information or has not responded to requests for additional information. Most of those denied relief do not file timely petitions in the U.S. Tax Court. A taxpayer denied innocent spouse relief has only 90 days from the date of the final determination to file an appeal in Tax Court.

Fortunately, IRS now has a reconsideration process. The requesting spouse is required to submit additional information beyond what was submitted initially.

Often, the process of requesting relief, or reconsideration where relief has been denied, can be overwhelming for survivors. Survivors should consider contacting a tax professional for assistance. Many organizations exist that can provide free legal service, such as Indiana Legal Services' Low Income Taxpayer Clinic.

---

The ILS Low Income Taxpayer Clinic is proud to partner with the Center for Survivor Agency & Justice. Together, we seek to provide education, represent survivors, and assist with tax issues. 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 Financial Rights.

---

Printed: August 14, 2022

<http://www.indianalegalservices.org/Survivors-innocent-spouse-relief>

©Indiana Legal Services, Inc