Innocent Spouse Relief

Since 1918, married couples have been able to file one joint return and compute their tax on their aggregate income. However, in 1938 spouses became jointly and severally liable for the tax owed. Joint and several liability means that the IRS may collect the entire liability from either spouse, or may collect a portion of the liability from each spouse.

You may find that you have been unfairly stuck with a tax bill from a failed marriage. Perhaps you found out that your former spouse was embezzling money from her business, or your former spouse did not pay your joint tax liabilities as he said. After the divorce you find yourself with large tax bills for prior years.

What Kinds of Relief are Available?

There are four kinds of relief from joint and several liability that are available. The relief available depends on whether or not a joint tax return has been filed by the spouses. The kinds of relief are:

- Innocent Spouse Relief
- Allocation of Liability Relief
- Equitable Relief
- Relief from Tax Liability arising from Community Property Income

If a joint tax return has been filed by spouses, a spouse may elect to seek relief from joint and several liability on such return under Internal Revenue Code section 6015. Relief is available if the IRS has determined that the tax was understated on the tax return, the spouse did not know, or have reason to know, of the understatement, and it is inequitable to hold the spouse liable for the tax.

If spouses are no longer married, legally separated, or have not been members of the same household for the last twelve months, it may be possible to obtain an allocation of an understatement of tax attributable to one of spouse's incomes.

If spouses did not file a joint tax return, relief may still be available. Under Internal Revenue Code section 66(c), an individual who lives in a community property state, such as Washington State, may be able to obtain relief if he or she did not know about the income attributable to the other spouse.

Innocent Spouse Relief under IRC Section 6015

Background

I.R.C. section 6015 was enacted as part of the IRS Restructuring and Reform Act of 1998. As we discussed in the last section, when spouses file a joint tax return, they become jointly and severally liable for the tax owed for that tax year.

To be eligible for relief from joint and several liability under section 6015, spouses must file a joint income tax return for the year in issue. Generally, a joint income tax return must be signed by both spouses. However, an income tax return may qualify as a joint return if the spouses intended to file a joint return. For instance, the fact that spouses have a history of filing jointly for many years may show an intent to file a joint tax return.

Three Kinds of Relief Available

If a joint return has been filed, there are three kinds of relief which may be available under I.R.C. section 6015.

1) The first is **innocent spouse relief** and provides relief from additional tax the IRS has determined that you owe because your spouse (from whom you are separated) or your former spouse failed to report income, reported income improperly, or claimed improper deductions or credits.

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

An understatement of tax is generally the difference between the total amount of tax that should have been shown and the amount of tax actually shown on your return. E.g., $2,500 total tax reported and total tax of $3,000 determined due in an IRS audit results in a $500 understatement.

2) The second is **separation of liability relief** and provides for an allocation of the additional tax owed because an item attributable to your spouse or former spouse was not properly reported on the joint return.

3) The third is **equitable relief** and provides for relief from an item attributable to your spouse or former spouse if the tax liability is understated or if the tax is not paid and taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

Innocent Spouse Relief

There are three requirements to qualify for innocent spouse relief.

First, you must have filed a joint tax return which the IRS has determined understated your joint tax liability. An understatement of tax is generally the difference between the total amount of tax that should have been shown on your tax return and the amount of tax actually shown on your return. This understatement must be due to an erroneous item of your spouse or former spouse. An "erroneous item" can be income your spouse received and failed to report on the joint return, or any deductions or credits that were incorrectly reported on the joint return.

Second, you must establish that at the time you signed the joint return you did not know, or have reason to know, of the understatement of tax.

Third, in light of all the facts and circumstances it would be unfair to hold you liable for the understatement of tax.

To obtain relief, you must file a Form 8857, Request for Innocent Spouse Relief, with the IRS within two years after the IRS takes collection action.

Separation of Liability Relief

There are also three requirements to qualify for separation of liability relief.

First, you must have filed a joint tax return which the IRS has determined understated your joint tax liability.

Second, at the time you request relief, you must be divorced, legally separated, or have not been members of the same household as your spouse or former spouse for the past twelve months.

Third, you must not have had actual knowledge of the item causing the understatement of tax when you signed the joint tax return.

Equitable Relief

The IRS may grant equitable relief from joint and several liability if your joint tax liability is understated or the tax is not paid, and after considering all the facts and circumstances, it would be unfair to hold you liable for the tax.

Threshold Requirements

To qualify for equitable relief, you must first meet the threshold requirements. You must (1) file a joint tax return, (2) not qualify for "Innocent Spouse Relief" or "Separation of Liability Relief," (3) timely file a claim for relief before the expiration of the collection statute or the period for credit or refund, (4) not transfer assets to your spouse as part of a fraudulent scheme, (5) not transfer assets to your spouse to avoid taxes, (6) not knowingly participate in filing a fraudulent tax return, and (7) (with a few exceptions) the tax liability must be attributable to your spouse's unreported income or erroneous deduction. If a portion of the tax liability is attributable to the requesting spouse's income, the IRS may only grant partial relief – for the portion of the liability attributable to the other spouse's income.

Equitable Factors

The IRS looks at a number of factors when determining whether or not to grant equitable relief. These factors are listed in IRS Revenue Procedure 2013-34. The factors are:

(1) the spouses' marital status;

The spouses must be:

a. Divorced;
b. Legally Separated;
c. Spouse is a widow or widower and not an heir to the other spouse's estate if the estate has sufficient assets to pay the liability; or
d. Spouses are not members of the same household at any time during the 12 months before requesting relief.

(2) whether the spouse requesting relief will suffer economic hardship so as to be unable to pay his or her reasonable living expenses if relief is not granted;

a. The IRS will compares the requesting spouses' income to the Federal poverty guidelines in making this determination.
b. If the denial of equitable relief will cause an economic hardship, this factor will favor relief, but it will not weigh against relief if denying relief will not cause the requesting spouse to suffer economic hardship.

(3) whether the spouse had knowledge or reason to know of the unreported income or the erroneous deduction or that the other spouse would not pay the liability on the tax return;

This factor will weigh in favor of relief even if the requesting spouse knew or had reason to know of the item or nonpayment if:

a. The other spouse abused the requesting spouse or maintained control over the household finances by restricting access to financial information, and
b. this caused the requesting spouse to be unable to challenge the treatment of any items on the joint return, or to question the assurance that the taxes were paid for fear of retaliation.

(4) whether a divorce decree makes one spouse liable to pay the taxes;

a. The IRS is not bound by any written agreements between the spouses, but a spouse who is not to be held responsible pursuant to a court agreement can sue the former spouse.
b. The IRS can collect from either spouse since they are jointly and severally liable for the tax.

(5) whether the spouse significantly benefited by not paying the tax;

a. A significant benefit is something beyond normal support, such as owning luxury assets and taking expensive vacations.
b. The presence of abuse will mitigate this factor so that it is neutral.

(6) whether the spouse has made a good faith effort to comply with Federal income tax laws in later years; and

(7) whether the spouse was in poor mental or physical health when he or she signed the tax return.

The IRS also considers whether or not the spouse requesting relief was abused by the other spouse or denied access to the couple's finances when evaluating these factors. In addition, the IRS may look at other factors it considers to be relevant to a specific case.

Community Property Income

In community property states, such as Washington State, a spouse is taxable on half of the community income, including the other spouse's income. However, a spouse may be relieved of liability for taxes on their spouse's income if they did not file a tax return, the spouse did not include the income attributable to the other spouse on their own return, they did not know, and had no reason to know of, the income, and it would be unfair to tax them on their spouse's income in light of all the facts and circumstances.

Furthermore, if a spouse fails to meet these requirements, it is still possible for the Internal Revenue Service to grant equitable relief from joint and several liability to prevent an unfair result. The IRS will use the equitable factors in Revenue Procedure 2013-34, that were discussed in the last section, to make this determination.

Injured Spouse

You may be entitled to relief as an injured spouse if

a) you filed a joint tax return;

b) you and your spouse were entitled to a refund;

c) you made and reported tax payments, such as federal income tax withholding or estimated tax payments, or you claimed a refundable tax credit on the joint return, such as the earned income credit or additional child tax credit;

d) the IRS used the refund to pay a legally enforceable past-due debt(s) owed only by your spouse such as:

   a. Federal tax
   b. State income tax
   c. State unemployment compensation
   d. Child support
   e. Spousal support, or
   f. Federal nontax debt (such as a student loan); and

e) you are not legally obligated to pay this past-due debt.

To claim injured spouse relief, you must file a Form 8379, Injured Spouse Allocation, with the Internal Revenue Service.

How Do I Get Relief?

To get innocent spouse relief, you must file a Form 8857, Request for Innocent Spouse Relief, with the Internal Revenue Service. Generally, the IRS will make a determination as to whether or not you qualify for relief within 6 months. However, if the IRS does not respond to your request within 6 months, you can file a petition with the United States Tax Court to ask the Tax Court to determine that you qualify for relief from joint and several liability.

You can also make your claim that you are entitled to innocent spouse relief in response to a notice of deficiency from the IRS asserting that you owe additional taxes or in response to a notice of lien or levy. You will still need to submit a Request for Innocent Spouse Relief to enable the Internal Revenue Service to evaluate your case.

To claim injured spouse relief, to claim your proper share of a tax refund, you must file a Form 8379, Injured Spouse Allocation, with the Internal Revenue Service.

When Must I Request Relief?

For "Innocent Spouse Relief" and "Separation of Liability Relief" you must request relief within two years after the IRS takes action to collect the tax liability. For "Equitable Relief" you must file a claim for relief before the expiration of the collection statute. To get a refund you must file before the expiration of the period for credit or refund.

What happens if the IRS rejects my claim?

When you file a Form 8857, it will be reviewed by IRS Cincinnati Centralized Innocent Spouse Operation, also known as "CCISO." If the IRS rejects your innocent spouse claim, you will have the opportunity to dispute the disallowance with the IRS Appeals Office. If Appeals also rejects your claim, you can then file a petition with the United States Tax Court to dispute this. The Tax Court will review the evidence you presented to the IRS, as well as your testimony, and any additional evidence you submit at trial.

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