

How Do I Request Innocent Spouse Relief?

Fill out IRS Form 8857 and attach a statement explaining why you qualify for innocent spouse relief. Include your name and Social Security number (SSN) on the statement.

If you are requesting innocent spouse relief for more than one year, you should file one request, but include a separate statement for each year explaining why you qualify. The IRS could take six to fifteen months to decide your case.

Do not file Form 8857 with your income tax return.

When Can I File?

You should file IRS Form 8857 as soon as you become aware of the tax debt. You become aware of the tax debt when:

1. The IRS examines or audits your income tax return; **OR**
2. The IRS sends you a notice; **OR**
3. Your tax refund is captured by the IRS to pay the tax debt.

Office Hours:
Monday - Friday 8:30am to 5:00pm

1431 Elizabeth Avenue
Charlotte, North Carolina 28204
www.lssp.org

Telephone: 704.971.2622
Fax: 704.376.8627
Email: info@lssp.org

Client Help Lines
Mecklenburg County: 704.376.1600
Outside Mecklenburg: 800.438.1254
Spanish Language Line: 800.247.1931

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**Western North Carolina
Low Income Taxpayer Clinic**

What Is Innocent Spouse Relief?



Introduction to Innocent Spouse Relief

Has the Internal Revenue Service (IRS) sent you a bill for tax debt arising from the filing of a joint tax return? Do you believe it would be unfair to hold you responsible for the tax debt?

Depending on your circumstances, knowledge of the tax debt, and other factors, you may qualify for relief as an innocent spouse.

What Is Innocent Spouse Relief?

Innocent spouse relief is relief from a joint tax debt. If you qualify for innocent spouse relief, you may be found not to be responsible for all or part of the tax debt.

When you sign a joint income tax return, you and your spouse are each agreeing to be responsible for the tax debt shown on the return. This means that you could be responsible for the entire tax debt, even if you did not earn any money that year or the debt belongs to your spouse.

There Are Three Types of Innocent Spouse Relief

1. *Pure Innocent Spouse Relief*

You may get this type of relief if you are not responsible for the mistake, income or expense that caused the tax debt.

You can get this kind of relief **IF** all of these things are true:

- You filed a joint tax return.

AND

- The IRS says you owe more than it shows on your joint tax return.

AND

- You didn't know you owed more than the tax return stated.

AND

- It would not be fair to make you pay the tax debt.

AND

- The amount owed is due to your spouse's mistake, income, or expenses.

If you knew the tax amount was wrong but did not know the amount, then you may get **partial spouse relief**. This means you only have to pay part of the tax debt.

2. *Separation of Liability*

This means the IRS will divide the taxes you and your spouse owe. You have to pay your part. Your spouse has to pay their part.

If you did not work or made only a little money, then you may not have to pay any taxes for your part.

If your spouse was self-employed and failed to report income or overstated his business expenses, then you may not be responsible for his taxes.

You can get separation of liability **IF** these things are true:

- You are divorced or legally separated;

OR

- You have not lived together for the last 12 months;

AND

- The IRS says you owe more than it shows on your joint tax return.

You can **NOT** get separation of liability **IF**:

- You have already paid the taxes; **OR**
- You knew the tax return was wrong when you signed it.

3. *Equitable Relief*

Equitable means fair. You may get equitable relief if it would not be fair to make you pay the tax debt.

The IRS may decide it is not fair to make you pay the tax debt **IF** at least one of these things is true:

- Your spouse abused you;
- You can't pay your bills;
- English is your second language;
- You divorced or legally separated or lived apart the last 12 months;
- You are in poor health;
- Your divorce papers say your spouse must pay the tax debt;
- The tax debt resulted from money your spouse earned;
- Anything else that shows it is unfair for the IRS to make you pay the tax debt.

The more of these factors that are true, the greater your chances are of getting relief.