

So I think I qualify. Where do I go from here?

If you think that you may qualify for one of the types of innocent spouse relief mentioned in this brochure, the Washington & Lee Tax Clinic is here to help. We provide free, high-quality tax advice to income-qualified persons. To get started on the road to tax relief, contact us today!

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Innocent Spouse Relief

Tax relief for joint filers





What is Innocent Spouse Relief?

Every year, many married couples jointly file their federal tax return. When a couple does this, each spouse becomes jointly and individually liable if a tax debt results from the return, regardless of whether part or all of the tax debt is the result of the income of just one of the spouses.

Sometimes, one spouse is surprised by something he or she learns after the joint return is filed. This may happen if one spouse handles the finances and keeps the other spouse in the dark or if one spouse pressures the other spouse into signing a tax return. Under these circumstances and others, it may seem unfair to hold one spouse liable for the tax debt of the other spouse. Innocent spouse relief may be available to such spouses.

The Internal Revenue Service (IRS) offers three types of innocent spouse relief:

- Traditional Innocent Spouse Relief
- Separation of Liability Relief
- Equitable Relief

Innocent Spouse Relief

Innocent spouse relief involves cases in which the joint tax return omits income which should have been included on the return (i.e., income was “understated”). When this happens, the tax liability appears lower than it actually is. If the IRS determines that the joint tax return erroneously failed to include income, or overstated deductions or credits, it will assess a joint liability. However, in certain circumstances, it may be unfair to hold both spouses liable for an understatement of income. If the following is true, you *may* qualify for relief:

- You filed a joint income tax return for the tax year in question
- An understatement resulted that was solely attributable to the income of your spouse
- You didn’t know, and had no reason to know, of the understatement
- Looking at all of the circumstances, it would be unfair to hold you liable
- Less than two years have passed since the IRS took its first collection action against you with respect to the tax year in question

Separation of Liability Relief

Separation of liability relief allocates income tax liability between spouses. This can be particularly helpful if most of the tax liability for a particular year didn’t result from your income. If the following is true, you *may* qualify for relief:

- You’re widowed, legally separated, divorced, or not a member of the same household as your spouse or ex-spouse at any time over the last 12 months

- You didn’t transfer assets with your spouse as part of fraudulent scheme
 - You didn’t have knowledge of the item that understated the tax liability
 - Less than two years have passed since the IRS took its first collection action against you with respect to the tax year in question
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Equitable Relief

Even if you don’t qualify for other types of relief, you may still qualify for equitable relief. While the two prior types of relief are only available in situations involving an understatement of tax liability, equitable relief is available for both understatements and underpayments of tax liability. If the following is true, you *may* qualify for relief:

- You filed a joint tax return for the tax year in question
- You don’t qualify for the other types of relief
- You’re filing in a timely fashion (generally within 10 years of the assessment of the tax)
- You didn’t transfer assets with your spouse or ex-spouse as part of a fraudulent scheme and your spouse or ex-spouse did not transfer assets to you in order to avoid tax liability
- You didn’t knowingly participate in the filing of a fraudulent joint return
- The income tax liability from which you desire relief is the result of, in full or in part, your spouse’s or ex-spouse’s income
- The factors for equitable relief weigh in your favor

