

TAX RELIEF

FOR DIVORCED AND SEPARATED TAXPAYERS

➔ Filing a joint tax return = joint and several liability!

When you sign and file a joint tax return, you are telling the IRS that you agree to pay any tax due on that return – even if your spouse does not pay, and even if the tax is not caused by your own income or mistakes. You and your spouse are jointly responsible for the entire tax liability, including any additional taxes that the IRS may determine later. The IRS may also offset any refund to pay one spouse's individual debt (such as child support, student loans, or other federal debt).

➔ How can I avoid joint and several liability?

The easiest way to avoid joint and several liability is to file as "married filing separately". However, if you file "married filing separately", you will not be able to claim the Earned Income Tax Credit, a special tax credit for working families. You might also end up paying more tax than you would if you filed jointly with your spouse. Therefore, many couples choose to file jointly, rather than separately. The important thing to know is that you have the right to file a separate return!

➔ My spouse forced me to sign a joint return. What now?

If you signed a joint return under force or duress, you did not "voluntarily" sign the return. So, you actually have not filed a return for that year. In this case, you will have to show the IRS that you signed this return under force or duress, and you may not have to file another return as married filing separately. In some cases, where your income is very low, you may not owe any taxes at all and are just filing to set the records straight.

➔ My spouse forged my signature on a joint return. What now?

A forged signature is not a voluntary signature. So, you actually have not filed a return for that year. You will have to show the IRS that the signature on the return is not yours. In most cases you can get a copy of your return from the IRS. You may have to file another return as married filing separately. Again, depending on your income, you may not owe any taxes at all.

➔ I filed a joint return and believe it is unfair to hold me responsible for the joint tax debt. What now?

The IRS has created three types of relief for "innocent spouses" to alleviate the unfair results of holding a spouse liable for all or part of the tax debt in certain circumstances. File **Form 8857, Request for Innocent Spouse Relief**, if you fit into one of these situations:

Relief #1: "Innocent Spouse" Relief

Your spouse did not report income or claimed too many deductions on a joint return. The IRS has corrected the joint tax return because of these errors. At the time of signing the joint return, you did not know and had no reason to know of his/her mistake. You did not receive any benefit from this mistake (for example, your spouse did not take you on a long, expensive vacation with the money he/she hid from the IRS). You can ask for "innocent spouse" relief.

Relief #2: "Separate Liability" Relief

You are legally separated, divorced or widowed, or you lived separately from your spouse for at least 12 months. Your spouse did not report income or claimed too many deductions on a joint return. The IRS has corrected the joint tax return because of these errors. At the time of signing the joint return, you did not actually know about his mistake. You can ask the IRS to separate the corrections and allocate the tax according to which spouse earned the income or claimed the deductions.

Relief #3: Other "Equitable" Relief

Equitable means fair. You can ask the IRS not to make you pay taxes from a joint return if you don't fit into either of the above categories and yet you think it would be unfair if you had to pay the tax. The IRS will consider all the facts and circumstances in order to determine whether it is unfair to hold a spouse responsible for the liability. Some factors that the IRS will consider include: (1) whether you would suffer a significant economic hardship if relief was not granted; (2) whether you received a significant economic benefit from the understated tax; (3) whether you made a good faith effort to comply with the tax laws; (4) whether you were a victim of domestic violence; and (5) whether you were in poor mental or physical health on the date you signed the return or at the time relief was requested.

If the IRS denies your claim for relief, you can appeal to an IRS Appeals Officer or even petition the United States Tax Court.

➔ My spouse forged my signature on an income tax refund check. What now?

If you suspect that your spouse forged your signature to an income tax refund, contact the IRS and report that you did not receive your refund. **File Form 3911, Taxpayer Statement Regarding Refund**, and attach a statement describing why you believe the refund check was forged and by whom. The IRS will investigate whether your refund check was forged.

➔ What if another agency is taking my refund due to a debt owed solely by my spouse?

The IRS is authorized to take refunds and apply them to debts owed to other government agencies. If the IRS is taking your joint income tax refund and applying it to a debt owed solely by your spouse, such as child support, student loans, or other federal debt, you may qualify for “injured spouse” relief. **File Form 8379, Injured Spouse Allocation**, and the IRS will determine how much of the refund belongs to you by comparing your income to your spouse’s income. It will return the portion of the refund attributable to your income to you. If you are the only spouse who worked, the IRS will return your entire refund.

➔ I’m recently separated from my spouse. Who gets to claim the children as dependents?

IRS Publication 17 provides that, as a general rule, the parent with custody for the greater part of the year is the parent eligible to claim the children as dependents. Custody is determined by the most recent divorce decree, decree of separate maintenance, or custody decree. If the decree does not specify which parent has custody, then the parent with physical custody for the greater part of the year may claim the children as dependents. Child support payments are treated as support provided by the custodial parent. However, a noncustodial parent may claim the children as dependents if the custodial parent signs IRS Form 8332 and agrees not to claim dependency exemptions for the children, or the parents have an agreement that became effective after 1984 that allows the noncustodial parent to claim the children as dependents.



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