

My Spouse Did What and I Owe How Much in Taxes?

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Filing a joint tax return seems like an innocuous and pre-determined action for most married couples. It is important to understand what obligations come with signing a joint return and what options are available for the years when you blindly signed a joint tax return and are now blind-sided.

Many married individuals file joint tax returns without giving any second thoughts to the resulting obligations that arise, only assuming that the benefits allowed

outweigh any consequences. What they may not realize is that filing a joint tax return obligates each spouse for the full amount of any tax due on the joint return, including any deficiency, penalties, or interest. Each spouse becomes jointly and severally liable for any tax due whether or not the taxes resulted from that spouse's actions. The Internal Revenue Service ("IRS") can collect the full amount from either spouse.

Recognizing that enforcement of joint and several liability in all situations may cause inequitable results, Congress enacted the IRS Restructuring Reform Act of 1998 which granted authority under the Internal Revenue Code ("IRC") for relief where it would be inequitable to hold a spouse liable for an unpaid tax or deficiency.

The IRC authorizes three types of relief for spouses who filed a joint tax return:

- Innocent Spouse Relief - IRC 6015(b) excuses a qualifying spouse from liability for a tax deficiency related to understatement of tax due or an erroneous item, such as unreported income or an incorrect deduction, on a joint return if that spouse did not know or have reason to know of the understatement of tax due when the joint return was signed and it would be unfair to hold the spouse requesting relief liable for the understatement of tax.
- Separation of Liability Relief - IRC 6015(c) permits separated or divorced spouses to sever joint and several liability or a deficiency on a return such that each spouse will be liable only for the amount of the deficiency attributable to that spouse's income, reductions, or credits.
- Equitable Relief - IRC 6015(f) grants the IRS discretion to relieve a spouse of liability for a deficiency or unpaid taxes where it would be inequitable to hold otherwise.

Innocent Spouse Relief

Innocent Spouse Relief under IRC 6015(b) provides that an innocent spouse will be relieved of an understated tax liability on a joint return if that spouse did not know or have reason to know of the understatement of tax, and it would be inequitable to hold that spouse responsible. In order to qualify for Innocent Spouse Relief under IRC 6015(b), the spouse requesting relief must meet all of the following conditions:

- A joint tax return was filed which contains an understatement of tax as the result of actions of the other spouse or former spouse in failing to report income, reporting income improperly, or claiming improper deductions or credits;
- At the time the requesting spouse signed the joint return, that spouse had no reason to know that there was an understatement of tax; and,
- Taking into consideration all the facts and circumstances, it would be unfair to hold the requesting spouse liable for the understatement of tax.

Factors that the IRS may consider when determining whether to grant Innocent Spouse Relief include:

- Whether the requesting spouse actually knew or a reasonable person in similar circumstances would have known of the understatement or erroneous item;
- The financial circumstances, educational background, and business experience of the requesting spouse;
- Whether the requesting spouse received a significant benefit from the understatement or erroneous item; and,
- Whether the spouses are separated or divorced.

Separation of Liability Relief

For Separation of Liability Relief under IRC 6015(c), the understated tax (plus interest and penalties) on the joint return is allocated between both spouses and is calculated based on the amounts for which each spouse is responsible. This type of relief is available only for unpaid liabilities resulting from the understated tax.

Refunds are not allowed.

To request Separation of Liability Relief, the requesting spouse must have filed a joint return and meet either of the following requirements:

- The requesting spouse is no longer married to, or is legally separated from, the spouse with whom the joint return was filed; or,
- The requesting spouse was not a member of the same household as the spouse with whom the joint return was filed at any time during the prior 12-month period.

Equitable Relief

If a requesting spouse does not qualify for Innocent Spouse Relief or Separation of Liability Relief, that spouse still may be relieved of tax liability through Equitable Relief under IRC 6015(f). Unlike Innocent Spouse Relief or Separation of Liability Relief, a requesting spouse can get Equitable Relief from an understated tax or an underpaid tax.

Equitable Relief under IRC 6015(f) requires the IRS to consider numerous factors to determine the equities of holding a spouse responsible for payment of the deficiency or unpaid tax. Those factors include the following:

- Whether the spouses are legally separated or divorced;
- Whether the requesting spouse would suffer economic hardship if the requested relief is not granted;
- Whether the requesting spouse knew or had reason to know about the deficiency or unpaid tax;
- Whether the non-requesting spouse has a legal obligation to pay the tax liability under a court order or settlement agreement;
- Whether the requesting spouse received significant benefit (such as a lavish lifestyle) from the unpaid tax liability or from an item giving rise to the deficiency;
- Whether the requesting spouse has been compliant with income tax laws in the years following the

liability which gave rise to the petition for relief;

- Whether there is any history of abuse between the spouses; and,
- The physical and mental health of the requesting spouse at the time the joint tax return was signed.

In order to be eligible for Innocent Spouse Relief, Separation of Liability Relief, or Equitable Relief discussed above, the requesting spouse must not have engaged in any type of fraud to avoid tax liability.

Since 2012, the IRS has proposed reformation to the strict guidelines imposed under I.R.C. 6015 by eliminating the deadline for requesting Equitable Relief (two years after the date the IRS first attempted to collect the tax from the requesting spouse), broadening a requesting spouse's ability to satisfy the factors considered by the IRS under IRC 6015(f), and acknowledging that each request should be considered on a case-by-case basis with weight given to factors that take into account the circumstances involved. The revisions removing the two-year time limit for Equitable Relief apply to new claims, pending claims, and claims for Equitable Relief previously denied due to the two-year limitation.

Conclusion

It is not uncommon for a spouse, upon dissolution of the marriage, to discover that there are unreported or unpaid taxes for which that spouse may be held one hundred percent accountable. The IRS has recognized the inequities in these situations and has provided a tool for seeking relief. That being said, make sure you take a hard look at that joint tax return before signing it.

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