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Innocent Spouse Relief

(And Separation of Liability and Equitable Relief)



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Important Changes

This publication has been revised to reflect changes made by Revenue Procedure 2003-61, which provides guidance for requesting equitable relief, **and** by final regulations relating to the relief discussed under *Community Property Laws*.

Introduction

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse.

In some cases, a spouse (or former spouse) will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

- 1) Innocent spouse relief.
- 2) Relief by separation of liability.
- 3) Equitable relief.

This publication explains these types of relief, who may qualify for them, and how to get them. You can also use the Innocent Spouse Tax Relief Eligibility Explorer at www.irs.gov to see if you qualify for innocent spouse relief. Click on "Individuals," "Innocent Spouses," and "Explore if you are an Eligible Innocent Spouse."

Married persons who did not file joint returns, but who live in community property states, may also qualify for relief. See *Community Property Laws*, later.

What this publication does not cover. This publication does *not* discuss filing an *injured spouse* claim. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied against your spouse's past-due federal debts, state taxes, or child or spousal support payments. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For more information, get Form 8379, *Injured Spouse Claim and Allocation*.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can e-mail us at [*taxforms@irs.gov](mailto:taxforms@irs.gov). Please put "Publications Comment" on the subject line.

You can write to us at the following address:

Internal Revenue Service
Individual Forms and Publications Branch
SE:W:CAR:MP:T:I
1111 Constitution Ave. NW
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

Useful Items

You may want to see:

Forms (and instructions)

- 8857** Request for Innocent Spouse Relief
- 12510** Questionnaire for Requesting Spouse

How To Request Relief

File Form 8857 or similar statement signed under penalties of perjury to ask the IRS for the types of relief discussed in this publication. You only need to file one Form 8857 even if you are requesting relief for more than one tax year.

You must attach a statement to Form 8857 explaining why you believe you qualify for relief. You must also provide certain information for each type of relief you are requesting. See the instructions for Form 8857 for more information.

You can help the processing of your request by completing **Form 12510**, *Questionnaire for Requesting Spouse*, and attaching it to Form 8857. To get Form 12510, go to www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

The IRS will review your Form 8857, figure the understatement or underpayment of tax and related interest and penalties, and let you know if you qualify.

A completed Form 8857 is shown later.

When to file Form 8857. You should file Form 8857 as soon as you become aware of a tax liability for which you believe only your spouse or former spouse should be held liable. The following are some of the ways you may become aware of such a liability.

- The IRS is examining your tax return and proposing a deficiency.
- The IRS sends you a notice.

You must file Form 8857 no later than 2 years after the date on which the IRS first attempted to collect the tax from you after July 22, 1998. Examples of attempts to collect the tax from you are garnishment of your wages and applying your refund in a later year to the tax due for a previous year.



If you are requesting relief from liability arising from community property laws, a different filing deadline applies. For details, see Community Property Laws, later.

IRS spousal notification. The IRS informs your spouse (or former spouse) if you request relief and allows your spouse (or former spouse) to participate in the determination of the amount of relief from liability. This applies to requests for relief from joint and several liability on a joint return and from liability arising from community property laws. If you are requesting relief from joint and several liability on a joint return, the IRS must also inform your spouse of its preliminary and final determination regarding your request for relief.

Form 8857 filed by or on behalf of a decedent. An executor (including any other duly appointed representative) may pursue a Form 8857 filed during the decedent's lifetime. An executor (including any other duly appointed representative) may also file Form 8857 as long as the decedent satisfied the eligibility requirements while alive. For purposes of relief by separation of liability (discussed later), the decedent's marital status is determined on the earlier of the date relief was requested or the date of death.

Situations in which you are not entitled to relief. You are not entitled to innocent spouse relief for any tax year to which the following situations apply.

- 1) A court of competent jurisdiction has issued, after July 22, 1998, a final decision on your tax liability in a prior proceeding and relief from joint and several liability was an issue in that proceeding, or you meaningfully participated in that proceeding and could have requested relief from joint and several liability.
- 2) You entered into an offer in compromise with the IRS.
- 3) You entered into a closing agreement with the IRS that disposed of the same liability for which you want to seek relief.

Exception for agreements relating to TEFRA partnership proceedings. You may be entitled to relief in (3)

if you entered into a closing agreement for both partnership items and nonpartnership items, while you were a party to a pending TEFRA partnership proceeding. (TEFRA is an acronym that refers to the “Tax Equity and Fiscal Responsibility Act of 1982” that prescribed the tax treatment of partnership items.) You are not entitled to relief for the nonpartnership items, but you will be entitled to relief for the partnership items (if you otherwise qualify).

Transferee liability not affected by innocent spouse relief provisions. The innocent spouse relief provisions do not affect tax liabilities that arise under federal or state transferee liability or property laws. Therefore, even if you are relieved of the tax liability under the innocent spouse relief provisions, you may remain liable for the unpaid tax, interest, and penalties to the extent provided by these laws.

Example. Herb and Wanda timely filed their 2001 joint income tax return on April 15, 2002. Herb died in March 2003, and the executor of Herb’s will transferred all of the estate’s assets to Wanda. In February 2004, the IRS assessed a deficiency for the 2001 return. The items causing the deficiency belong to Herb. Wanda is relieved of the deficiency under the innocent spouse relief provisions, and Herb’s estate remains solely liable for it. However, the IRS may collect the deficiency from Wanda to the extent permitted under federal or state transferee liability or property laws.

Tax Court Review of Request

After you file Form 8857, you can ask the United States Tax Court to review your request for relief in the following two situations.

- 1) You disagree with the IRS’ final determination notice telling you the extent to which your request for relief has been denied.
- 2) You do not receive a final determination notice from the IRS within 6 months from the date you filed Form 8857.

The United States Tax Court is an independent judicial body and is not part of the IRS.

You must file a petition with the United States Tax Court in order for it to review your request for relief. You must file the petition **no later than the 90th day after** the date the IRS mails its final determination notice to you. If you do not file a petition, or you file it late, the Tax Court cannot review your request for relief.



You can get a copy of the rules for filing a petition by writing to the Tax Court at the following address.

United States Tax Court
400 Second Street, NW
Washington, DC 20217

Or you can visit the Tax Court’s website at www.ustaxcourt.gov.

Community Property Laws

You must generally follow community property laws when filing a tax return if you are married and live in a community property state. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.

Relief for Married Persons Who Did Not File Joint Returns

Married persons who live in community property states, but who did not file joint returns, have two ways to get relief.

Relief From Liability Arising From Community Property Law

You are not responsible for the tax relating to an item of community income if **all** the following conditions exist.

- 1) You did not file a joint return for the tax year.
- 2) You did not include an item of community income in gross income.
- 3) The item of community income you did not include is one of the following:
 - a) Wages, salaries, and other compensation your spouse (or former spouse) received for services he or she performed as an employee.
 - b) Income your spouse (or former spouse) derived from a trade or business he or she operated as a sole proprietor.
 - c) Your spouse’s (or former spouse’s) distributive share of partnership income.
 - d) Income from your spouse’s (or former spouse’s) separate property (other than income described in (a), (b), or (c)). Use the appropriate community property law to determine what is separate property.
 - e) Any other income that belongs to your spouse (or former spouse) under community property law.
- 4) You establish that you did not know of, and had no reason to know of, that community income. See *Actual knowledge or reason to know*, next.
- 5) Under all facts and circumstances, it would not be fair to include the item of community income in your gross income. See *Indications of unfairness for liability arising from community property law*, later.

Actual knowledge or reason to know. You knew or had reason to know of an item of community income if:

- You actually knew of the item of community income, or
- A reasonable person in similar circumstances would have known of the item of community income.

Amount of community income unknown. If you are aware of the source of the item of community income or the income-producing activity, but are unaware of the specific amount, you are considered to know or have reason to know of the item of community income. Not knowing the specific amount is not a basis for relief.

Reason to know. The IRS will consider all facts and circumstances in determining whether you had reason to know of an item of community income. The facts and circumstances include:

- The nature of the item of community income and the amount of the item relative to other income items.
- The financial situation of you and your spouse (or former spouse).
- Your educational background and business experience.
- Whether the item of community income represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns).

Indications of unfairness for liability arising from community property law. The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you responsible for the understatement of tax due to the item of community income.

The following are examples of factors the IRS will consider.

- Whether you received a benefit, either directly or indirectly, from the omitted item of community income (defined below).
- Whether your spouse (or former spouse) deserted you.
- Whether you and your spouse have been divorced or separated.

For other factors see *Factors for Determining Whether To Grant Equitable Relief* on page 8.

Benefit from omitted item of community income. A benefit includes normal support, but does not include de minimis (small) amounts. Evidence of a direct or indirect benefit may consist of transfers of property or rights to property, including transfers received several years after the filing of the return.

For example, if you receive property, including life insurance proceeds, from your spouse (or former spouse) and the property is traceable to omitted items of community

income attributable to your spouse (or former spouse), you are considered to have benefitted from those omitted items of community income.

Equitable Relief

If you do not qualify for the relief described above and are now liable for an underpayment or understatement of tax you believe should be paid only by your spouse (or former spouse), you may request equitable relief (discussed later).

How and When To Request Relief

You request relief by filing Form 8857, as discussed earlier. Fill in Form 8857 according to the instructions.

For relief from liability arising from community property law, you must file Form 8857 no later than 6 months before the expiration of the period of limitations on assessment (including extensions) against your spouse for the tax year for which you are requesting relief. **However**, if the IRS begins an examination of your return during that 6-month period, the latest time for requesting relief is 30 days after the examination begins.

Innocent Spouse Relief

By requesting innocent spouse relief, you can be relieved of responsibility for paying tax, interest, and penalties if your spouse (or former spouse) improperly reported items or omitted items on your tax return. Generally, the tax, interest, and penalties that qualify for relief can only be collected from your spouse (or former spouse). However, you are jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The IRS can collect these amounts from either you or your spouse (or former spouse).

The IRS will figure the tax you are responsible for after you file Form 8857. You are not required to figure this amount. But if you wish, you can figure it yourself. See *How To Allocate the Understatement of Tax*, later.

You must meet **all** of the following conditions to qualify for innocent spouse relief.

- 1) You filed a joint return which has an **understatement of tax** due to **erroneous items** (defined later) of your spouse (or former spouse).
- 2) You establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax. (See *Actual Knowledge or Reason To Know*, later.)
- 3) Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax. (See *Indications of Unfairness for Innocent Spouse Relief*, later.)

A request for innocent spouse relief will **not** be granted if the IRS proves that you and your spouse (or former spouse) transferred property to one another as part of a

fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, ex-spouse, or business partner.

Understatement of Tax

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return.

Erroneous Items

Erroneous items are either of the following.

- 1) **Unreported income.** This is any gross income item received by your spouse (or former spouse) that is not reported.
- 2) **Incorrect deduction, credit, or basis.** This is any improper deduction, credit, or property basis claimed by your spouse (or former spouse).

The following are examples of erroneous items.

- 1) The expense for which the deduction is taken was never paid or incurred. For example, your spouse, a cash-basis taxpayer, deducted \$10,000 of advertising expenses on Schedule C of your joint Form 1040, but never paid for any advertising.
- 2) The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of \$10,000 that was for the payment of state fines. Fines are not deductible.
- 3) No factual argument can be made to support the deductibility of the expense. For example, your spouse claimed \$4,000 for security costs related to a home office, which were actually veterinary and food costs for your family's two dogs.

Actual Knowledge or Reason To Know

You knew or had reason to know of an understatement if:

- You actually knew of the understatement, or
- A reasonable person in similar circumstances would have known of the understatement.

Actual knowledge. If you actually knew about an erroneous item that belongs to your spouse (or former spouse), the relief discussed here does not apply to any part of the understatement of tax due to that item. You and your spouse (or former spouse) remain jointly liable for that part of the understatement. For information about the criteria for determining whether you actually knew about an erroneous item, see *Actual Knowledge* later under *Relief by Separation of Liability*.

Reason to know. If you had reason to know about an erroneous item that belongs to your spouse (or former spouse), the relief discussed here does not apply to any part of the understatement of tax due to that item. You and your spouse (or former spouse) remain jointly liable for that part of the understatement.

The IRS will consider all facts and circumstances in determining whether you had reason to know of an understatement of tax due to an erroneous item. The facts and circumstances include:

- The nature of the erroneous item and the amount of the erroneous item relative to other items.
- The financial situation of you and your spouse (or former spouse).
- Your educational background and business experience.
- The extent of your participation in the activity that resulted in the erroneous item.
- Whether you failed to ask, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question.
- Whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns).

Partial relief when portion of erroneous item is unknown. You may qualify for partial relief if, at the time you filed your return, you had no knowledge or reason to know of only a portion of an erroneous item. You will be relieved of the understatement due to that portion of the item if all other requirements are met for that portion.

Example. At the time you signed your joint return, you knew that your spouse did not report \$5,000 of gambling winnings. The IRS examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually \$25,000. You established that you did not know about, and had no reason to know about, the additional \$20,000 because of the way your spouse handled gambling winnings. The understatement of tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understatement of tax due to the \$5,000 of gambling winnings will not qualify for relief.

Indications of Unfairness for Innocent Spouse Relief

The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you responsible for the understatement.

The following are examples of factors the IRS will consider.

- Whether you received a significant benefit (defined next), either directly or indirectly, from the understatement.
- Whether your spouse (or former spouse) deserted you.
- Whether you and your spouse have been divorced or separated.
- Whether you received a benefit on the return from the understatement.

For other factors, see *Factors for Determining Whether To Grant Equitable Relief* later under *Equitable Relief*.

Significant benefit. A significant benefit is any benefit in excess of normal support. Normal support depends on your particular circumstances. Evidence of a direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement.

Example. You receive money from your spouse that is beyond normal support. The money can be traced to your spouse's lottery winnings that were not reported on your joint return. You will be considered to have received a significant benefit from that income. This is true even if your spouse gives you the money several years after he or she received it.

Relief by Separation of Liability

Under this type of relief, you allocate (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse (or former spouse). The understatement of tax allocated to you is generally the amount you are responsible for. See *How To Allocate the Understatement of Tax*, later.

This type of relief is available only for **unpaid** liabilities resulting from understatements of tax. Refunds are not allowed.

To request relief by separation of liability, you must have filed a joint return and meet **either** of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household (explained next) as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Members of the same household. You and your spouse are **not** members of the same household if you are living apart and are estranged. However, you and your spouse **are** considered members of the same household if any of the following conditions are met.

- 1) You and your spouse reside in the same dwelling.
- 2) You and your spouse reside in separate dwellings but are not estranged, and one of you is temporarily absent from the other's household as explained in (3) below.
- 3) Either spouse is temporarily absent from the household and it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of the absent spouse's return. Examples of temporary absences include absence due to imprisonment, illness, business, vacation, military service, or education.

Burden of proof. You must be able to prove that you meet all of the requirements for separation of liability (except actual knowledge) and that you did not transfer property to avoid tax (discussed later). You must also establish the basis for allocating the erroneous items.

Limitations on Relief

Even if you meet the requirements discussed previously, a request for relief by separation of liability will **not** be granted in the following situations.

- 1) The IRS proves that you and your spouse (or former spouse) transferred assets to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, ex-spouse, or business partner.
- 2) The IRS proves that at the time you signed your joint return, you had actual knowledge (explained next) of any erroneous items giving rise to the deficiency that were allocable to your spouse (or former spouse). For the definition of erroneous items, see *Erroneous Items* earlier under *Innocent Spouse Relief*.
- 3) Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax. See *Transfers of Property To Avoid Tax*, later.

Actual Knowledge

The relief discussed here does not apply to any part of the understatement of tax due to your spouse's erroneous items of which you had actual knowledge. You and your spouse remain jointly and severally liable for this part of the understatement.

If you had actual knowledge of only a portion of an erroneous item, the IRS will not grant relief for that portion of the item.

You had actual knowledge of an erroneous item if:

- You knew that an item of unreported income was received. (This rule applies whether or not there was a receipt of cash.)
- You knew of the facts that made an incorrect deduction or credit unallowable.

- For a false or inflated deduction, you knew that the expense was not incurred, or not incurred to the extent shown on the tax return.

Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. Also, your actual knowledge may not be inferred when you merely had a reason to know of the erroneous item. Similarly, the IRS does not have to establish that you knew of the source of an erroneous item in order to establish that you had actual knowledge of the item itself.

Your actual knowledge of the proper tax treatment of an erroneous item is not relevant for purposes of demonstrating that you had actual knowledge of that item. Neither is your actual knowledge of how the erroneous item was treated on the tax return. For example, if you knew that your spouse received dividend income, relief is not available for that income even if you did not know it was taxable.

Example. Bill and Karen Green filed a joint return showing Karen's wages of \$50,000 and Bill's self-employment income of \$10,000. The IRS audited their return and found that Bill did not report \$20,000 of self-employment income. The additional income resulted in a \$6,000 understatement of tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed Form 8857 to request relief by separation of liability. The IRS proved that Karen actually knew about the \$20,000 of additional income at the time she signed the joint return. Bill is liable for all of the understatement of tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understatement of tax, interest, and penalties due to the \$20,000 of unreported income because she actually knew of the item. The IRS can collect the entire deficiency from either Karen or Bill because they are jointly and individually liable for it.

Factors supporting actual knowledge. The IRS may rely on all facts and circumstances in determining whether you actually knew of an erroneous item at the time you signed the return. The following are examples of factors the IRS may use.

- Whether you made a deliberate effort to avoid learning about the item in order to be shielded from liability.
- Whether you and your spouse (or former spouse) jointly owned the property that resulted in the erroneous item.

Domestic abuse exception. Even if you had actual knowledge, you may still qualify for relief if you establish that:

- You were the victim of domestic abuse before signing the return, and
- Because of that abuse, you did not challenge the treatment of any items on the return because you were afraid your spouse (or former spouse) would retaliate against you.

If you establish that you signed your joint return under duress, then it is not a joint return, and you are not liable for any tax shown on that return or any tax deficiency for that return. However, you may be required to file a separate return for that tax year.

Transfers of Property To Avoid Tax

If your spouse transfers property (or the right to property) to you for the main purpose of avoiding tax or payment of tax, the tax liability allocated to you will be increased by the fair market value of the property on the date of the transfer. The increase may not be more than the entire amount of the liability. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made after the date that is 1 year before the date on which the IRS sent its first letter of proposed deficiency. This presumption will not apply if the transfer was made under a divorce decree, separate maintenance agreement, or a written instrument incident to such an agreement. The presumption will also not apply if you establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

If the presumption does not apply, but the IRS can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the tax liability allocated to you will be increased as explained above.

Equitable Relief

If you do not qualify for innocent spouse relief, relief by separation of liability, or relief from liability arising from community property law, you may still be relieved of responsibility for tax, interest, and penalties through equitable relief. If you request any of these types of relief, and the IRS determines you do not qualify for any of them, the IRS will consider whether equitable relief is appropriate.

Unlike innocent spouse relief or separation of liability, you can get equitable relief from an **understatement of tax** (defined earlier under *Innocent Spouse Relief*) or an **underpayment of tax**. An underpayment of tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 2001 return shows that you and your spouse owed \$5,000. You pay \$2,000 with the return. You have an underpayment of \$3,000.

Conditions for Getting Equitable Relief

You may qualify for equitable relief if you meet all of the following conditions.

- 1) You are not eligible for innocent spouse relief, relief by separation of liability, or relief from liability arising from community property law.
- 2) You and your spouse (or former spouse) did not transfer assets to one another as a part of a fraudulent scheme. A fraudulent scheme includes a

scheme to defraud the IRS or another third party, such as a creditor, ex-spouse, or business partner.

- 3) Your spouse (or former spouse) did not transfer property to you for the main purpose of avoiding tax or the payment of tax. See *Transfers of Property To Avoid Tax*, earlier, under *Relief by Separation of Liability*.
- 4) You did not file or fail to file your return with the intent to commit fraud.
- 5) You did not pay the tax. However, see *Refunds*, later, for situations in which you are entitled to a refund of payments you made.
- 6) You establish that, taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. See *Factors for Determining Whether To Grant Equitable Relief*, later.
- 7) The income tax liability from which you seek relief must be attributable to an item of the spouse (or former spouse) with whom you filed the joint return, unless one of the following exceptions applies:
 - a) The item is attributable or partially attributable to you solely due to the operation of community property law. If you meet this exception, that item will be considered attributable to your spouse (or former spouse) for purposes of equitable relief.
 - b) If the item is titled in your name, the item is presumed to be attributable to you. However, you can rebut this presumption based on the facts and circumstances.
 - c) You did not know, and had no reason to know that funds intended for the payment of tax were misappropriated by your spouse (or former spouse) for his or her benefit. If you meet this exception, the IRS will consider granting equitable relief although the underpayment may be attributable in part or in full to your item, and only to the extent the funds intended for payment were taken by your spouse (or former spouse).
 - d) You establish that you were the victim of abuse before signing the return, and that, as a result of the prior abuse, you did not challenge the treatment of any items on the return for fear of your spouse's retaliation. If you meet this exception, relief will be considered although the deficiency or underpayment may be attributable in part or in full to your item.

Refunds

In the following situations, you are eligible to receive a refund of certain payments you made.

Understatement of tax. If you are granted relief for an understatement of tax, you are eligible for a refund of

certain payments made under an installment agreement that you entered into with the IRS, if you have not defaulted on the installment agreement. Only installment payments made after the date you filed Form 8857 are eligible for a refund. Additionally, you must establish that you provided the funds for which you seek a refund. You are not in default if the IRS did not issue you a notice of default or take any action to end the installment agreement.

The amount of the refund is subject to the limit discussed later under *Limit on amount of refund*.

Underpayment of tax. If you are granted relief for an underpayment of tax, you are eligible for a refund of separate payments that you made after July 22, 1998, if you establish that you provided the funds used to make the payment for which you seek a refund. You are not eligible for refunds of payments made with the joint return, joint payments, or payments that your spouse (or former spouse) made.

The amount of the refund is subject to the limit discussed next.

Limit on amount of refund. If you request relief within 3 years after filing your return, the refund cannot be more than the part of the tax paid within the 3 years (plus any extension of time for filing your return) before you filed your request for relief.

If you request relief after the 3-year period, but within 2 years from the time you paid the tax, the refund cannot be more than the tax you paid within the 2 years immediately before you filed your request for relief.

Factors for Determining Whether To Grant Equitable Relief

The IRS will consider all of the facts and circumstances in order to determine whether it is unfair to hold you responsible for the understatement or underpayment of tax. The following are examples of factors that the IRS will consider to determine whether to grant equitable relief. The IRS will consider all factors and weigh them appropriately.

Relevant Factors

The following are examples of factors that may be relevant to whether the IRS will grant equitable relief.

- Whether you are separated (whether legally or not) or divorced from your spouse. A temporary absence, such as an absence due to imprisonment, illness, business, vacation, military service, or education, is not considered separation for this purpose. A temporary absence is one where it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of the absent spouse's return.
- Whether you would suffer a significant economic hardship if relief is not granted. (In other words, you would not be able to pay your reasonable basic living expenses.)

- Whether you have a legal obligation under a divorce decree or agreement to pay the tax. This factor will not weigh in favor of relief if you knew or had reason to know, when entering into the divorce decree or agreement, that your former spouse would not pay the income tax liability.
- Whether you received a significant benefit (beyond normal support) from the unpaid tax or item causing the understatement of tax. (For a definition of significant benefit, see *Indications of Unfairness for Innocent Spouse Relief* on page 5.)
- Whether you have made a good faith effort to comply with federal income tax laws for the tax year for which you are requesting relief or the following years.
- Whether you **knew** or had **reason to know** about the items causing the understatement or that the tax would not be paid, as explained next.

Knowledge or reason to know. In the case of an underpayment of tax, the IRS will consider whether you did not know and had no reason to know that your spouse (or former spouse) would not pay the income tax liability.

In the case of an income tax liability that arose from an understatement of tax, the IRS will consider whether you did not know and had no reason to know of the item causing the understatement. Reason to know of the item giving rise to the understatement will not be weighed more heavily than other factors. Actual knowledge of the item giving rise to the understatement, however, is a strong factor weighing against relief. This strong factor may be overcome if the factors in favor of equitable relief are particularly compelling.

Reason to know. In determining whether you had reason to know, the IRS will consider your level of education, any deceit or evasiveness of your spouse (or former spouse), your degree of involvement in the activity generating the income tax liability, your involvement in business and household financial matters, your business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

Example. You and your spouse filed a joint 2001 return. That return showed you owed \$10,000. You had \$5,000 of your own money and you took out a loan to pay the other \$5,000. You gave 2 checks for \$5,000 each to your spouse to pay the \$10,000 liability. Without telling you, your spouse took the \$5,000 loan and spent it on himself. You and your spouse were divorced in 2002. In addition, you had no knowledge or reason to know at the time you signed the return that the tax would not be paid. These facts indicate to the IRS that it may be unfair to hold you liable for the \$5,000 underpayment. The IRS will consider these facts, together with all of the other facts and circumstances, to determine whether to grant you equitable relief from the \$5,000 underpayment.

Factors Weighing in Favor of Equitable Relief

The following are examples of factors that will weigh in favor of equitable relief, but will not weigh against equitable relief.

- Whether your spouse (or former spouse) abused you.
- Whether you were in poor mental or physical health on the date you signed the return or at the time you requested relief.

How To Allocate the Understatement of Tax

The IRS will figure your portion of the tax, interest, and penalties after you file a completed Form 8857 with the required attachment. **You are not required to figure these amounts.** But if you wish, you can figure your portion of the tax using Worksheet A and the instructions that follow.

Instructions for Completing Worksheet A

Use the following instructions to complete Worksheet A.

Line 1, Column (a)

When allocating income and deductions taken into account in computing the understatement of tax, you generally allocate them in the same manner you would have allocated them if you and your spouse had filed separate returns. Enter the items allocable to you in column (a). However, see the instructions for line 1, column (b), later for items that must be entered in that column instead of in column (a).

Income. Allocate wages and salaries to the spouse who performed the services and received the Form W-2. You generally allocate business or investment income according to which spouse owned the business or investment that produced the income. This rule also applies to capital gains, but see *Allocating items subject to different tax rates* next. If both spouses owned an interest in the business or investment, allocate the income in proportion to each spouse's ownership interest. Income from jointly-owned property should be allocated equally between you and your spouse unless there is evidence that shows a different allocation is appropriate. If you knew about the income from jointly-owned property, enter the income in column (b) to the extent you knew about it.

Allocating items subject to different tax rates. You must use an alternative allocation method if the understatement of tax arises from two or more erroneous items that are subject to tax at different rates. This situation will occur, for example, if you have ordinary income (such as

Worksheet A. Allocating the Understatement of Tax

(Note: This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)



	(a) Your Items	(b) Joint Items
1. Enter the net amount of income and deductions that are (1) taken into account in computing the understatement of tax and (2) allocated to you or allocated jointly to you and your spouse. See instructions	1. _____	1. _____
2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax*	2. _____	
3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least 3 places)	3. _____	3. _____
4. Enter the understatement of tax*	4. _____	
5. Enter the credits and other taxes taken into account in computing the understatement of tax. See instructions	5. _____	
6. Subtract line 5 from line 4	6. _____	
7. Multiply line 6 by line 3	7. _____	7. _____
8. Enter the credits and other taxes that are (1) taken into account in computing the understatement of tax and (2) allocated to you or allocated jointly to you and your spouse. See instructions	8. _____	8. _____
9. Add lines 7 and 8. The total of columns (a) and (b) is the understatement of tax you are responsible for	9. _____	9. _____
Note: Subtract this total from line 4 to get the understatement of tax that qualifies for relief.		

*This should be shown on the IRS notice or audit report.

wages or interest) and capital gains or qualified dividends. First separate the erroneous items into categories according to their applicable tax rate. Then make a separate allocation for each tax rate category using a separate Worksheet A for each category.

Example. Wendy and Hal filed a joint return for 2000. They divorced in 2001. In August 2002, the IRS audited their 2000 return and determined that they owe an additional \$5,100 in income tax. Of this amount, \$2,000 is attributable to an unreported net capital gain of \$10,000 that is subject to a 20% tax rate. The remaining \$3,100 is attributable to unreported interest and dividend income of \$10,000 subject to a 31% marginal tax rate. Neither Wendy nor Hal had actual knowledge of the other spouse's erroneous items.

A breakdown of erroneous items by tax rates and ownership is shown next.

	20% rate		31% rate	
Wendy	Capital gain	\$4,000	Interest	\$7,000
Hal	Capital gain	\$6,000	Dividends	\$3,000

Hal decides to request relief by separation of liability. He must complete two Worksheets A because each item that belongs to him is subject to different tax rates. On Worksheet A for the 20% rate category, Hal enters \$6,000 on line 1 in column (a); \$10,000 on line 2; .60 on line 3 in column (a); and \$2,000 on line 4. He completes the rest of Worksheet A as appropriate. On Worksheet A for the 31% rate category, he enters \$3,000 on line 1, column (a); \$10,000 on line 2; .30 on line 3 in column (a); and \$3,100 on line 4. He completes the rest of Worksheet A as appropriate.

Income subject to special limits on separate returns.

If the income (such as taxable social security benefits) is subject to special limits on a separate return, figure the income as you would on a joint return and allocate it between you and your spouse.

Example. Charles and Mary filed a joint return for 2001. Charles received social security benefits in 2001, but none of the benefits were taxable because his and Mary's total income was less than the base amount (\$32,000) for joint returns. Several months after filing their return, Charles and Mary received a notice from the IRS for additional tax because they did not report some interest and dividend income. The notice also showed that half of Charles' social

security benefits were taxable because the additional interest and dividend income increased their total income so that it was more than the \$32,000 base amount. If Charles had filed a separate return, 85% of his social security benefits would have been taxable. When figuring his separation of liability, Charles allocates only half of his social security benefits. This is true even though 85% of his benefits would have been taxable if he and Mary had filed separate returns.

Deductions. Allocate deductions related to a business or investment according to the same allocation rules that apply to income. Allocate deductions unrelated to a business or investment (such as itemized deductions for mortgage interest and taxes) equally between you and your spouse unless there is evidence that shows a different allocation is appropriate.

Deductions that are limited or not allowed on a separate return. If a deduction would not be allowed if you had filed a separate return, figure the deduction as you would on a joint return and allocate that amount between you and your spouse.

A similar rule applies to deductions (such as the IRA deduction) that are subject to special limits on a separate return. Figure these items as you would on a joint return and allocate them between you and your spouse.

Line 1, Column (b)

Enter in column (b) the income and deductions allocated jointly to you and your spouse. Do **not** enter them in column (a). For example, enter the following items in column (b).

- Items allocable to your spouse that create a tax benefit for you.
- Erroneous items you knew about.

Items allocable to your spouse that create a tax benefit for you. An item that is otherwise allocable to your spouse must be allocated to you to the extent the item created a tax benefit on the return for you. This does not relieve your spouse of liability. Rather, both spouses will be jointly and severally liable for the item to the extent of the benefit received.

Example. Your joint return shows \$50,000 of wages allocable to you and \$15,000 of self-employment income allocable to your spouse. The IRS audited your return and disallowed a \$20,000 business deduction allocable to your spouse. Only \$15,000 of the disallowed deduction offset your spouse's self-employment income. The remaining \$5,000 must be allocated to you because that amount offset your income.

Erroneous items you knew about. Include in column (b) any erroneous items relating to jointly-owned property and erroneous items allocable to your spouse to the extent you actually knew about them. If you are requesting innocent spouse relief (discussed on page 4), also include these erroneous items to the extent you had reason to know

about them. You and your spouse are jointly and severally liable for the tax on these items.

Example 1. You and your spouse received \$4,000 of interest income from a joint bank account that was not reported on your joint return. You must include \$4,000 in column (b). Do not include it in column (a).

Example 2. Your spouse received \$3,000 in gambling winnings that were not reported on your joint return. You actually knew about \$1,000 of those winnings. You must include \$1,000 in column (b). Do not include any of these winnings in column (a).

Line 5

Enter the part of the understatement of tax that resulted from an adjustment to a credit. Also enter any adjustments to your child's tax liability that you elected to report on your joint return and any tax **other than the income tax**. For example, enter any adjustments to the following taxes.

- Alternative minimum tax.
- Household employment taxes.
- Recapture of the investment credit, low-income housing credit, qualified electric vehicle credit, Indian employment credit, and new markets credit.
- Recapture of federal mortgage subsidy.
- Section 72(m)(5) excess benefits tax.
- Self-employment tax.
- Social security and Medicare tax on tip income not reported to employer.
- Additional tax on early distributions from an IRA, qualified retirement plan, annuity, or modified endowment contract entered into after June 20, 1988.
- Additional tax on taxable distributions from Coverdell education savings accounts (formerly Ed IRAs) or qualified tuition programs.
- Tax on excess contributions to IRAs, Coverdell education savings accounts (formerly Ed IRAs), or Archer MSAs (formerly medical savings accounts).
- Tax on excess accumulation in qualified retirement plans.
- Tax on golden parachute payments.
- Tax on accumulation distribution of trusts.
- Uncollected social security and Medicare or RRTA tax on tips or group-term life insurance.

Line 8, Column (a)

You generally allocate credits and other taxes in the same manner you would have allocated them if you and your spouse had filed separate returns. Enter the items allocable to you in column (a). However, see the instructions for

line 8, column (b), later for items that must be entered in that column instead of in column (a).

Example. You reported \$750 in self-employment tax on your return. The IRS audited your return and determined that your self-employment tax should have been \$1,100. All of this tax is allocable to you. In column (a), you enter the \$350 increase in self-employment tax (\$1,100–\$750).

Child's tax liability reported on your joint return. If you elected to report your child's tax liability on your joint return by filing Form 8814, include this liability in column (a) **only if** the child is your child only and was not legally adopted by the spouse with whom you filed the joint return. Otherwise, see the instructions for line 8, column (b), to see if you must include your child's tax liability in that column.

Alternative minimum tax. Enter your share of the understatement of tax that is due to alternative minimum tax (AMT), if any. Figure your share of AMT by using the following formula.

$$\frac{\text{Your Share of the Alternative Minimum Taxable Income as Recomputed by the IRS}}{\text{Total Alternative Minimum Taxable Income as Recomputed by the IRS}} \times \text{Understatement of Tax Due to AMT}$$

Credits that are not allowed on separate returns. If a credit would not be allowed if you had filed a separate return, figure the credit as you would on a joint return and allocate it between you and your spouse. Examples of credits that are generally not allowed on a separate return are the child and dependent care credit, the credit for the elderly or the disabled, the adoption credit, the education credits, and the earned income credit.

Example. You claimed a credit of \$860 for child and dependent care expenses on your joint tax return. The IRS audited your return and allowed you only \$500. The remaining \$360 was disallowed. Even though none of the credit would have been allowed on separate returns, you are entitled to a \$500 credit for purposes of figuring your separation of liability. You allocate the \$360 disallowance (rather than the full \$860) between you and your spouse (or former spouse).

Line 8, Column (b)

Enter in column (b) the credits and other taxes allocated jointly to you and your spouse. Do **not** enter them in column (a). For example, enter the following items in column (b).

- Credits allocable to your spouse that create a tax benefit for you.
- Erroneous items you knew about.
- Your child's tax liability that you elected to report on your joint return by filing Form 8814. However, if one of you is the child's stepparent, enter this liability in

column (b) **only if** the stepparent legally adopted the child.

- Household employment taxes.

Credits allocable to your spouse that create a tax benefit for you. A credit that is otherwise allocable to your spouse must be allocated to you to the extent the item created a tax benefit on the return for you. This does not relieve your spouse of the liability. Rather, both spouses will be jointly and severally liable for the item to the extent of the benefit received.

Example. Tom and Donna filed a joint return that showed \$30,000 of wages attributable to Tom and a \$1,000 lifetime learning credit attributable to Donna. The lifetime learning credit was for Donna's graduate tuition expenses. Since Donna had no income, the entire credit offset \$1,000 of Tom's income tax on the return. Tom received the tax benefit on the return from the entire credit. The IRS audited their return and disallowed \$400 of the credit. Tom and Donna remain jointly and severally liable for the \$400 deficiency. It was Donna's item and Tom received a \$400 tax benefit.

Erroneous items you knew about. Include in column (b) any erroneous items allocable to your spouse to the extent you actually knew about them. If you are requesting innocent spouse relief (discussed on page 4), also include erroneous items allocable to your spouse to the extent you had reason to know about them. You and your spouse are jointly and severally liable for the tax on these items.

Example. Your spouse prepared your joint return and claimed a credit for child and dependent care expenses. The IRS audited your return and disallowed the credit because your spouse never paid any child or dependent care expenses. In fact, the expenses were actually for kennel fees for boarding your dogs during a family vacation. At the time you signed the return, you actually knew that the expenses were for kennel fees. You must include the disallowed credit in column (b). Do not include it in column (a).

Worksheet A Example

Cindy and Clarence Brown filed a joint return for 2001. They divorced in 2002. On April 30, 2003, the IRS issued a Notice of Deficiency to the Browns relating to their 2001 return. There were four items listed on the notice.

- 1) \$2,378 is nonemployee compensation that Clarence received for some consulting work and did not report.
- 2) \$336 is self-employment tax related to the \$2,378 nonemployee compensation.
- 3) \$168 is the deduction for half of the self-employment tax.
- 4) \$500 is interest income from Cindy's bank account.

Cindy decides to file Form 8857 (not illustrated) to request relief under separation of liability. She allocates

the items between her and Clarence as follows and attaches this allocation to Form 8857.

Items to allocate	Cindy	Clarence
Nonemployee compensation		\$ 2,378
Interest income	\$ 500	
Deduction for 1/2 of self-employment tax		168
Self-employment tax		336

Although not required, Cindy uses Worksheet A to determine the understatement of tax that is allocable to her. She fills out the worksheet (shown below) as follows.

Line 1. Cindy enters the interest income from her bank account in column (a).

Line 2. The net amount of income and deductions taken into account in computing the understatement of tax is \$2,710. This is the sum of the nonemployee compensation, \$2,378, and interest income, \$500, minus the deduction for one-half of self-employment tax, \$168.

Line 3. Cindy divides line 1, column (a) by line 2 to get .185. She enters this amount on line 3 in column (a).

Line 4. Cindy enters the \$743 understatement of tax. This is shown on the Notice of Deficiency.

Line 5. Cindy enters Clarence's self-employment tax of \$336.

Lines 6–9. Cindy completes lines 6 through 9. Line 9 shows that she is responsible for \$75 of the understatement of tax.

Worksheet A. Allocating the Understatement of Tax—Illustration for Cindy and Clarence Brown's Example

(Note: This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)



	(a) Your Items	(b) Joint Items
1. Enter the net amount of income and deductions that are (1) taken into account in computing the understatement of tax and (2) allocated to you or allocated jointly to you and your spouse. See instructions	1. <u>500</u>	1. <u>0</u>
2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax*	2. <u>2,710</u>	
3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least 3 places)	3. <u>.185</u>	3. <u>0</u>
4. Enter the understatement of tax*	4. <u>743</u>	
5. Enter the credits and other taxes taken into account in computing the understatement of tax. See instructions	5. <u>336</u>	
6. Subtract line 5 from line 4	6. <u>407</u>	
7. Multiply line 6 by line 3	7. <u>75</u>	7. <u>0</u>
8. Enter the credits and other taxes that are (1) taken into account in computing the understatement of tax and (2) allocated to you or allocated jointly to you and your spouse. See instructions	8. <u>0</u>	8. <u>0</u>
9. Add lines 7 and 8. The total of columns (a) and (b) is the understatement of tax you are responsible for	9. <u>75</u>	9. <u>0</u>
Note: Subtract this total from line 4 to get the understatement of tax that qualifies for relief.		

*This should be shown on the IRS notice or audit report.

Filled-in Form 8857

This part explains how Janie Boulder fills out Form 8857 to request innocent spouse relief.

Janie and Joe Boulder filed a joint tax return for 2001. Joe did not report a \$5,000 award he won that year. They received a first letter of proposed deficiency (30-day letter) for additional tax of \$650 and penalties and interest of \$165.

Janie applies the conditions listed under *Innocent Spouse Relief* on page 4 to see if she qualifies for relief.

- 1) Janie meets the first condition because the joint tax return they filed has an understatement of tax due to Joe's erroneous item.
- 2) Janie believes she meets the second condition. She did not know about the award and had no reason to know about it because of the secretive way Joe conducted his financial affairs.
- 3) Janie believes she meets the third condition. She believes it would be unfair to be held liable for the tax because she did not benefit from the award. Joe spent it on personal items for his use only.

Because Janie believes she qualifies for innocent spouse relief, she files Form 8857 with the IRS. She fills in her name, address, social security number, and daytime phone number. She fills out the rest of the form as follows:

Line 1. Janie enters "2001" because this is the tax year for which she is requesting relief.

Line 2. She enters the name, address, social security number, and daytime phone number of her spouse.

Line 3. She checks the **Yes** box because she received an IRS Notice of Deficiency for additional tax.

Lines 4–6. Janie checks the **No** box on each of these lines because she and Joe were not divorced, separated, or living apart at all times during the last 12 months.

Line 7. Janie does not check the box on this line because she checked the **No** boxes on lines 4, 5, and 6.

Line 8. Janie checks the **Yes** box on this line because the income items all belonged to her husband. She writes a statement (not illustrated) explaining why she believes she qualifies for innocent spouse relief.

Line 9. Janie checks the **No** box on this line because she does not have an underpayment of tax.

Signing and mailing Form 8857. Janie signs and dates the form. She attaches the explanatory statement (not illustrated) required by the Form 8857 instructions. Finally, she mails the form to the IRS employee named in the 30-day letter.

Request for Innocent Spouse Relief
(And Separation of Liability and Equitable Relief)

OMB No. 1545-1596

▶ Do not file with your tax return. ▶ See instructions.

Do not file this form if:

- You did not file a joint return for the year(s) for which you are requesting relief. However, if you lived in a community property state, see instructions.
- All or part of your overpayment was (or is expected to be) applied against your spouse's past-due debt (such as child support). Instead, file **Form 8379**, Injured Spouse Claim and Allocation, to apply to have your share of the overpayment refunded to you.



To see if you may qualify for **Innocent Spouse Relief**, go to **www.irs.gov**, click on "Individuals," "Innocent Spouses," and "Explore if you are an Eligible Innocent Spouse"; or see **Pub. 971**, **Innocent Spouse Relief**.

Part I See Spousal Notification in the instructions.	Your current name (see instructions) Janie Boulder	Your social security number 1 2 3 : 0 0 : 9 8 7 6	
	Your current home address (number and street). If a P.O. box, see instructions. 5161 Old Farm Estates	Apt. no.	
	City, town or post office, state, and ZIP code. If a foreign address, see instructions. Hutchinson, IA 55555	Daytime phone number (7 2 1) 5 5 5 - 1 0 2 3	

If you have been a victim of domestic abuse and fear that filing a claim for innocent spouse relief will result in retaliation, check here ▶

Part II

1 Enter the year(s) for which you are requesting relief from liability of tax ▶ 2 0 0 1

2 Information about the person to whom you were married as of the end of the year(s) on line 1.

Name Joe E. Boulder	Social security number 2 3 4 : 0 0 : 8 7 6 5
Current home address (number and street). If a P.O. box, see instructions. 3898 Timber Way	Apt. no.
City, town or post office, state, and ZIP code. If a foreign address, see instructions. Creekbed, WY 77777	Daytime phone number (2 7 1) 5 5 5 - 2 3 4 5

3 Do you have an **Understatement of Tax** (that is, the IRS has determined there is a difference between the tax shown on your return and the tax that should have been shown)?
 Yes. Go to Part III. **No.** Go to Part V.

Part III

4 Are you divorced from the person listed on line 2 or has that person died?
 Yes. Go to line 7. **No.** Go to line 5.

5 Are you legally separated from the person listed on line 2?
 Yes. Go to line 7. **No.** Go to line 6.

6 Have you lived apart from the person listed on line 2 at all times during the 12-month period prior to filing this form?
 Yes. Go to line 7. **No.** Go to Part IV.

7 If line 4, 5, or 6 is **Yes**, you may request **Separation of Liability** by **attaching a statement** (see instructions). Check here ▶ and go to Part IV.

Part IV

8 Is the understatement of tax due to the **Erroneous Items** of your spouse (see instructions)?
 Yes. You may request **Innocent Spouse Relief** by **attaching a statement** (see instructions). Go to Part V. **No.** You may request **Equitable Relief** for the understatement of tax. Check **Yes** in Part V.

Part V

9 Do you have an **Underpayment of Tax** (that is, tax that is properly shown on your return but not paid) or another tax liability that qualifies for **Equitable Relief** (see instructions)?
 Yes. You may request **Equitable Relief** by **attaching a statement** (see instructions). **No.** You cannot file this form unless line 3 is **Yes**.

Under penalties of perjury, I declare that I have examined this form and any accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

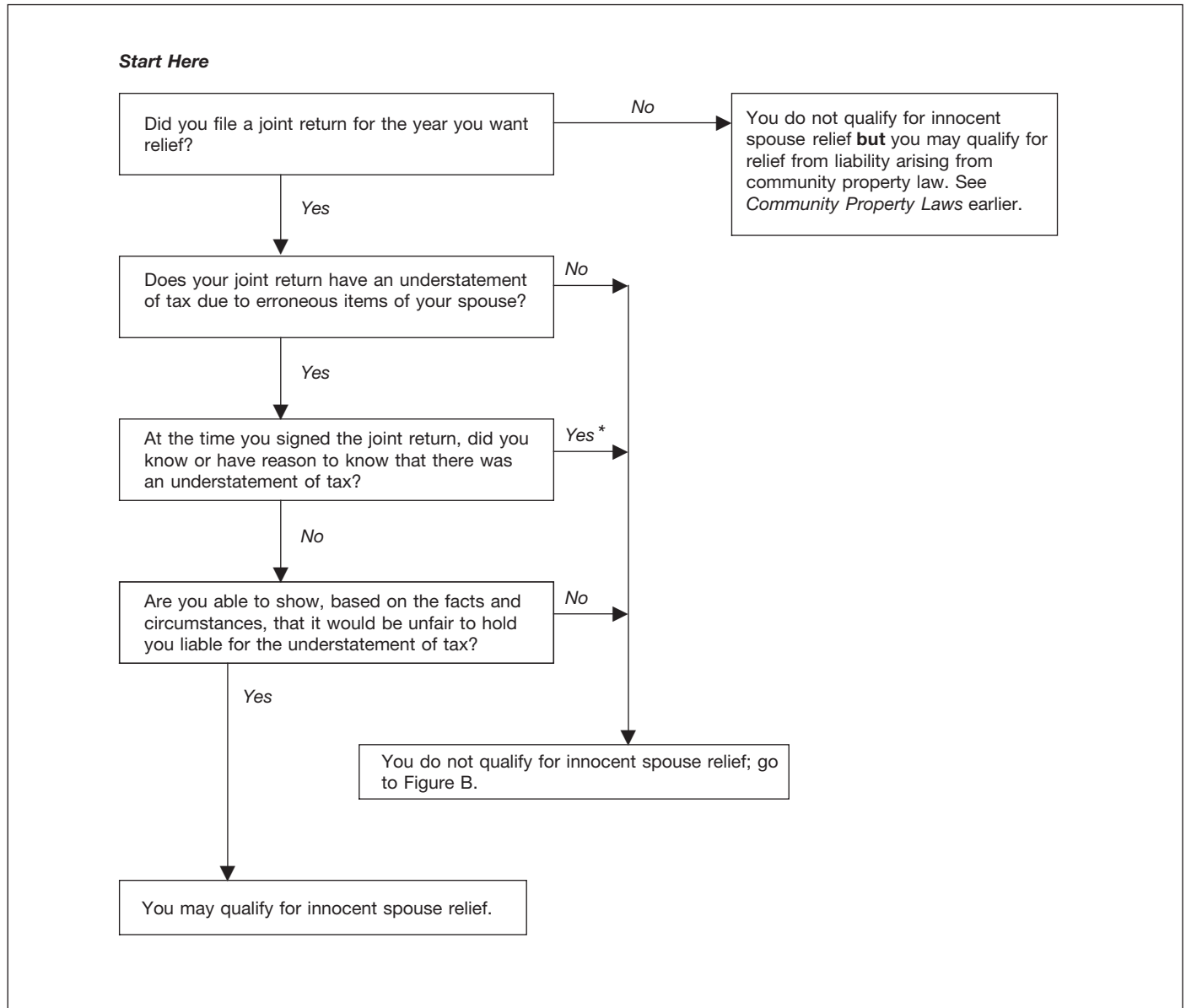
Sign Here Your signature: Janie Boulder Date: 2/28/2004

Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no. ()	

Flowcharts

The following flowcharts provide a quick way for determining whether you may qualify for relief. But do not rely on these flowcharts alone. Also read the earlier discussions.

Figure A. **Do You Qualify for Innocent Spouse Relief?**



* You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know of only a portion of an erroneous item.

Figure B. Do You Qualify for Relief by Separation of Liability?

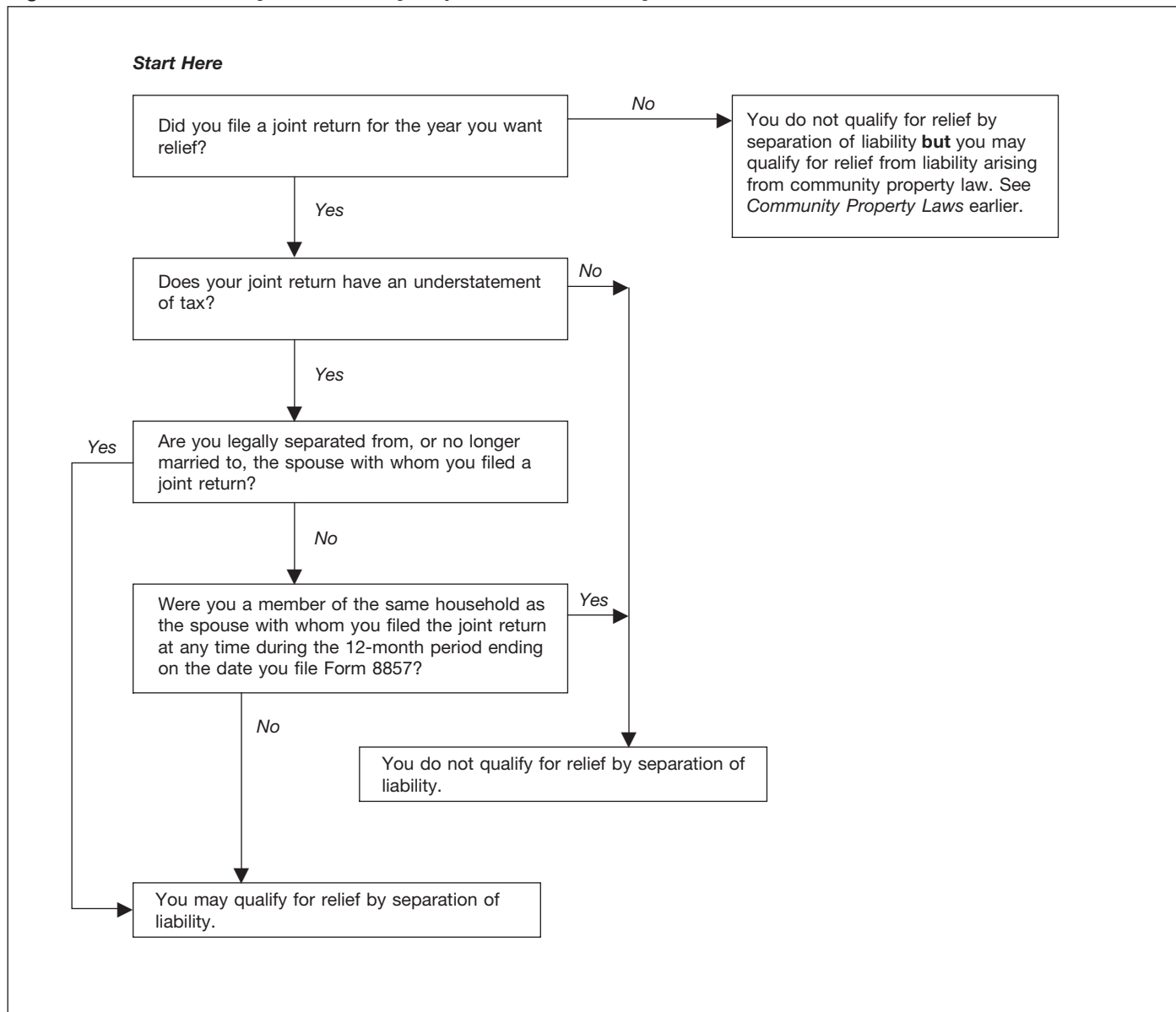
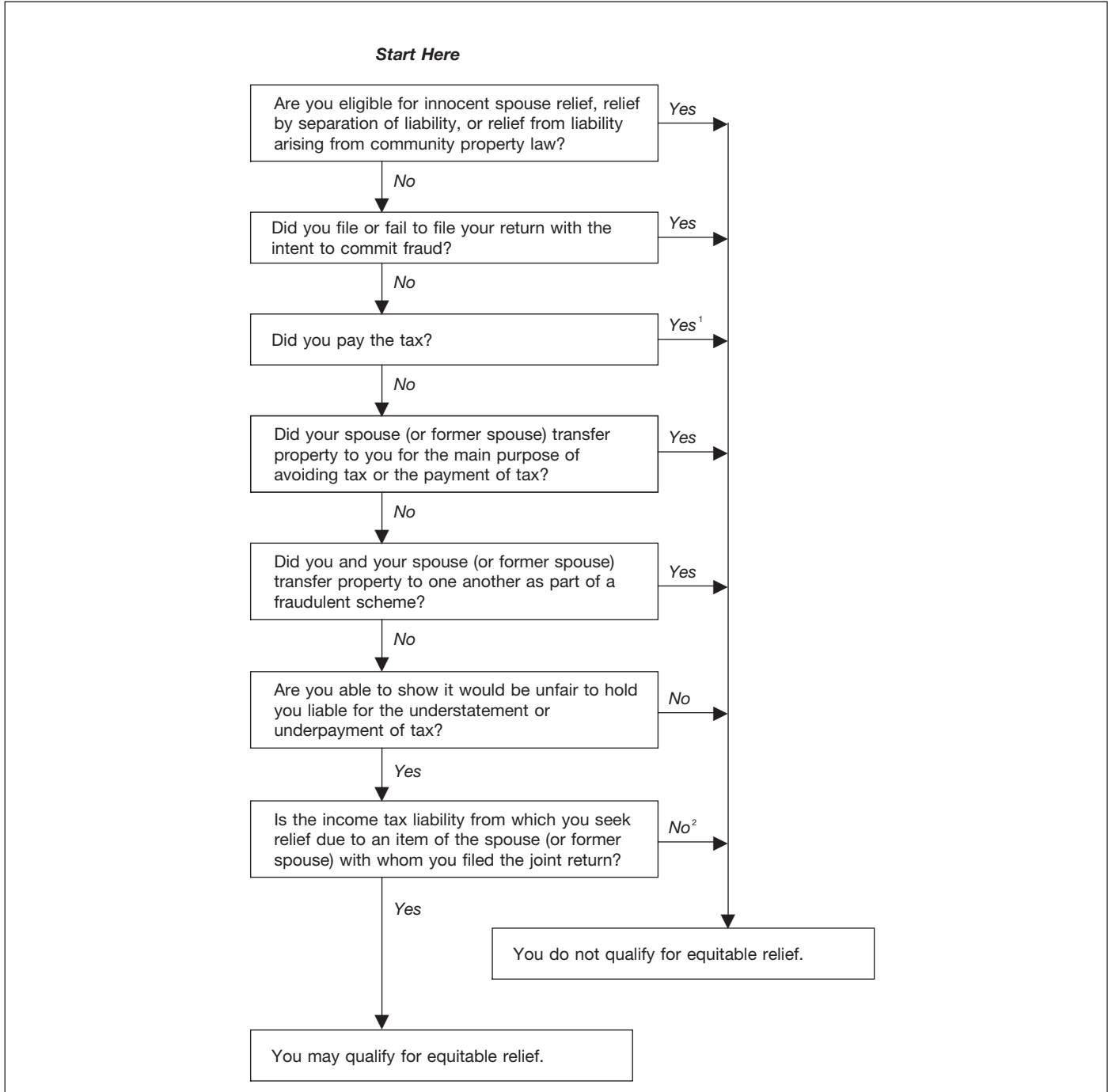


Figure C. Do You Qualify for Equitable Relief?



¹ You may qualify for equitable relief and receive a refund of certain payments made out of your own funds.

² You may qualify for equitable relief if you meet any of the exceptions to condition (7) discussed earlier under *Conditions for Getting Equitable Relief*.

Questions & Answers

This section answers questions commonly asked by taxpayers about innocent spouse relief.

What is joint and several liability?

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due.

How can I get relief from joint and several liability?

Relief falls into three categories: “innocent spouse relief,” “separation of liability,” and “equitable relief.” Each of these types of relief have different requirements. They are explained separately below.

What are the rules for innocent spouse relief?

To qualify for innocent spouse relief, you must meet **all** of the following conditions.

- You must have filed a joint return which has an understatement of tax.
- The understatement of tax must be due to erroneous items of your spouse (or former spouse).
- You must establish that at the time you signed the joint return, you did not know, and had no reason to know, that there was an understatement of tax.
- Taking into account all of the facts and circumstances, it would

be unfair to hold you liable for the understatement of tax.

- You must request relief within 2 years after the date on which the IRS first began collection activity against you after July 22, 1998.

What are “erroneous items”?

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

What is an “understatement of tax”?

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return. For example, you reported total tax on your 2001 return of \$2,500. IRS determined in an audit of your 2001 return that the total tax should be \$3,000. You have a \$500 understatement of tax.

Will I qualify for innocent spouse relief in any situation where there is an understatement of tax?

No. There are many situations in which you may owe tax that is related to your spouse, but not be eligible for innocent spouse relief. For example, you and your spouse file a joint return on which you report \$10,000 of income and deductions, but you knew that your spouse was not reporting \$5,000 of dividends. You are **not** eligible for innocent spouse relief because you have knowledge of the understatement.

What are the rules for separation of liability?

Under this type of relief, you allocate (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse. The understatement of tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability, you must have filed a joint return and meet **either** of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Why would a request for separation of liability be denied?

Even if you meet the requirements listed earlier, a request for separation of liability will not be granted in the following situations.

- The IRS proves that you and your spouse transferred assets to one another as part of a fraudulent scheme.
- The IRS proves that at the time you signed your joint return, you had actual knowledge of any erroneous items giving rise to the deficiency that are allocable to your spouse.

- Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax.

What are the rules for equitable relief?

Equitable relief is only available if you meet **all** of the following conditions.

- You do not qualify for innocent spouse relief, relief by separation of liability, or relief from liability arising from community property law.
- The IRS determines that it is unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.
- You and your spouse (or former spouse) did not transfer assets to one another as a part of a fraudulent scheme.
- Your spouse (or former spouse) did not transfer assets to you for the main purpose of avoiding tax or the payment of tax.
- You did not file or fail to file your return with the intent to commit fraud.
- You did not pay the tax. However, see *Refunds*, earlier under *Equitable Relief*, for exceptions.
- The income tax liability for which you seek relief is attributable to your spouse (or former spouse) with whom you filed the joint return. See exceptions to this condition under *Conditions for Getting Equitable Relief*, earlier.

Note. Unlike innocent spouse relief or separation of liability, if you qualify for equitable relief, you can also get relief from an underpayment of tax. (An underpayment of tax is an amount properly shown on the return, but not paid.)

How do state community property laws affect my ability to qualify for relief?

Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.

How do I request relief?

File Form 8857, *Request for Innocent Spouse Relief*, to ask the IRS for relief. You only need to file one Form 8857 even if you are requesting relief for more than one year.

If I am denied innocent spouse relief, must I reapply if I believe I might qualify under one of the other two provisions?

No. Generally once you receive a final determination of relief for a tax year, you may not reapply. When you file Form 8857, you should request all of the types of relief for which you think you may be eligible. Also, if you request innocent spouse relief or separation of liability, the IRS will consider whether any of the other provisions would apply.

When should I file Form 8857?

If you are requesting innocent spouse relief, separation of liability, or equitable relief, file Form 8857 no later than 2 years after the date on which the IRS first began collection activities against you after July 22, 1998. If you are requesting relief from liability arising from community property law, see *How and When To Request Relief under Community Property Laws*, earlier, for when to file Form 8857.

Where should I file Form 8857?

Follow the instructions on Form 8857.

I am currently undergoing an examination of my return. How do I request innocent spouse relief?

File Form 8857 with the employee assigned to examine your return.

What if the IRS has given me notice that it will levy my account for the tax liability and I decide to request relief?

Generally, collection activity is suspended from the date the request is received by the Service until the final determination is made.

What is “injured spouse relief”?

Injured spouse relief is different from innocent spouse relief. When a joint return is filed and the refund is used to pay one spouse’s past-due child and/or spousal support, a past-due federal debt, or past-due state income tax, the other spouse may be considered an injured spouse. The injured spouse can claim his or her share of the refund using Form 8379, *Injured Spouse Claim and Allocation*. To be considered an injured spouse, you must have:

- Filed a joint return,
- Received income (such as wages, interest, etc.),
- Made tax payments (such as withholding or estimated tax payments), or claimed the earned income credit or other refundable credit,
- Reported the income and tax payments on the joint return, and
- An overpayment, all or part of which was applied to the past-due amount of the other spouse.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate independently represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate toll free at **1-877-777-4778**.
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1-800-829-4059** if you are a TTY/TDD user.
- Visit the website at **www.irs.gov/advocate**.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS*.

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services*. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.



Internet. You can access the IRS website 24 hours a day, 7 days a week at **www.irs.gov** to:

- **E-file.** Access commercial tax preparation and *e-file* services available for free to eligible taxpayers.
- Check the amount of advance child tax credit payments you received in 2003.
- Check the status of your 2003 refund. Click on “Where’s My Refund” and then on “Go Get My Refund Status.” Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically) and have your 2003 tax return available because you will need to know your filing status and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products on-line.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Figure your withholding allowances using our Form W-4 calculator.
- Send us comments or request help by e-mail.
- Sign up to receive local and national tax news by e-mail.
- Get information on starting and operating a small business.

You can also reach us using File Transfer Protocol at **ftp.irs.gov**.



Fax. You can get over 100 of the most requested forms and instructions 24 hours a day, 7 days a week, by fax. Just call **703-368-9694** from your fax machine. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call **703-487-4608**.

Long-distance charges may apply.



Phone. Many services are available by phone.

- **Ordering forms, instructions, and publications.** Call **1-800-829-3676** to order current-year forms, instructions, and publications and prior-year forms and instructions. You should receive your order within 10 days.
- **Asking tax questions.** Call the IRS with your tax questions at **1-800-829-1040**.
- **Solving problems.** You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to **www.irs.gov** or look in the phone book under “United States Government, Internal Revenue Service.”
- **TTY/TDD equipment.** If you have access to TTY/TDD equipment, call **1-800-829-4059** to ask tax or account questions or to order forms and publications.
- **TeleTax topics.** Call **1-800-829-4477** to listen to pre-recorded messages covering various tax topics.
- **Refund information.** If you would like to check the status of your 2003 refund, call **1-800-829-4477** for automated refund information and follow the recorded instructions or call **1-800-829-1954**. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically) and have your 2003 tax return available because you will need to know your filing status and the exact whole dollar amount of your refund.

Evaluating the quality of our telephone services. To ensure that IRS

representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to sometimes listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Many products and services are available on a walk-in basis.

- **Products.** You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD-ROM or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- **Services.** You can walk in to your local Taxpayer Assistance Center every business day to ask tax questions or get help with a tax problem. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. You can set up an appointment by calling your local Center and,

at the prompt, leaving a message requesting Everyday Tax Solutions help. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to www.irs.gov or look in the phone book under "United States Government, Internal Revenue Service."



Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response within 10 workdays after your request is received. Use the address that applies to your part of the country.

- **Western part of U.S.:**
Western Area Distribution Center
Rancho Cordova, CA
95743-0001
- **Central part of U.S.:**
Central Area Distribution Center
P.O. Box 8903
Bloomington, IL 61702-8903
- **Eastern part of U.S. and foreign addresses:**
Eastern Area Distribution Center
P.O. Box 85074
Richmond, VA 23261-5074



CD-ROM for tax products. You can order IRS Publication 1796, *Federal Tax Products on CD-ROM*, and obtain:

- Current-year forms, instructions, and publications.

- Prior-year forms and instructions.
- Frequently requested tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

Buy the CD-ROM from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders for \$22 (no handling fee) or call **1-877-233-6767** toll free to buy the CD-ROM for \$22 (plus a \$5 handling fee). The first release is available in early January and the final release is available in late February.



CD-ROM for small businesses. IRS Publication 3207, *Small Business Resource Guide*, is a must for every small business owner or any taxpayer about to start a business. This handy, interactive CD contains all the business tax forms, instructions and publications needed to successfully manage a business. In addition, the CD provides an abundance of other helpful information, such as how to prepare a business plan, finding financing for your business, and much more. The design of the CD makes finding information easy and quick and incorporates file formats and browsers that can be run on virtually any desktop or laptop computer.

It is available in early April. You can get a free copy by calling **1-800-829-3676** or by visiting the website at www.irs.gov/smallbiz.



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