

You and Your Former Spouse Filed a Joint Return. Do You Have to Pay the Entire Amount Due?

Maybe not. In general, when a joint income tax return is filed, both spouses are legally responsible for paying the entire tax on that return. The phrase used is "jointly and severally liable," and that means that the total tax can be collected from either or both of the individuals who filed the joint return. (No more than 100% of the tax can be collected.)

This pamphlet will help you decide whether you qualify for innocent spouse relief, which may relieve you from paying taxes, penalties, and interest.

How Do You Find Out if You Qualify For Innocent Spouse Relief?

Read about the types of relief in this pamphlet. If any of the circumstances fit you, you may request relief by writing a letter to the Franchise Tax Board.

Your request should include:

- your name,
- your social security number,
- the year or years in question,
- a statement explaining why you believe you qualify for relief, and
- if applicable, a copy of your court order.

Send your request to the mailing address on the back of this pamphlet.

Is This Request For Relief Connected in Any Way to the Internal Revenue Service?

You don't have to apply to the Internal Revenue Service before applying to the California Franchise Tax Board for innocent spouse relief.

However, you must apply to the Franchise Tax Board even if the Internal Revenue Service has already granted you innocent spouse relief for your joint **federal** taxes.

SPOUSAL NOTIFICATION

The Franchise Tax Board is required to inform your spouse (or former spouse) if you request any one of the following types of relief:

- Relief from Return Tax
- Relief from Additional Tax
- Relief by Allocation of Liability

Where Do You Submit Your Request?

**Analysis & Legal G-08
Franchise Tax Board
PO Box 2952
Sacramento CA 95812-2952**

For more information about innocent spouse issues, call:

(916) 845-7072

Innocent Spouse

*Relief From Paying
California Personal
Income Taxes*

Divorce Decree



Are You Eligible?

California Franchise Tax Board

Ways to Qualify For Innocent Spouse Relief

BASIC REQUIREMENTS: To qualify, you must meet these three tests. First, you must have filed a joint tax return for any year that you are seeking innocent spouse treatment. Second, you must prove your eligibility for relief based on one of the methods described below. Third, you must request the relief in writing. Your written request should include your name, address, social security number, the years in question, a statement explaining why you believe you qualify for relief, and if applicable, a copy of your court order.

Relief by Court Order

Revenue and Taxation Code Section 19006(b)

The court may have issued an order relieving you of tax shown on the return as well as tax resulting from an amended return or audit. For a court order to be effective, **ALL** the following requirements must be met:

- The court order must have been entered after January 1, 1977.
- The court order must specify which California income tax years you have been relieved from paying.
- The tax due on the income that **you** earned, managed, or controlled is paid.
- The tax due for which you are requesting relief is **not** already paid. (If it is already paid, there is nothing to be relieved.)
- The Franchise Tax Board issued a Tax Revision Clearance Certificate* if, for the tax years you are requesting relief:
 - Your joint gross income was more than \$50,000, or
 - You jointly owe more than \$2,500 in state tax.

* A Tax Revision Clearance Certificate, form FTB 2572, can be obtained from the Franchise Tax Board upon written request. Once issued, the Certificate must be filed with the court and incorporated into your court order for divorce. A conformed copy of the certificate and your decree must be returned to the Franchise Tax Board to obtain relief.

Relief From Return Tax

Revenue and Taxation Code Section 19006(c)

To be relieved from payment of taxes that were reported due when you and your spouse or former spouse filed a joint tax return, **ALL** the following requirements must be met:

- Your debt must be an unpaid tax that was reported on your joint California income tax return. (If the tax is already paid, there is nothing to be relieved.)
- You had no knowledge of, or reason to know about, the nonpayment of the tax shown on the return.

Relief From Additional Tax

Revenue and Taxation Code Section 18533(b)

To be relieved from payment of additional taxes resulting from an audit or from an amended tax return reporting federal changes to your joint return, **ALL** the following must be met:

- You had no knowledge of, or reason to know about, the incorrect tax deductions and/or the unreported income.
- The incorrect tax deductions and/or the unreported income must be due to the actions of your spouse or former spouse.
- You did not receive significant benefit from the incorrect tax deductions and/or unreported income.
- Your request is being made within the statute of limitations.*

*For information on this requirement contact the Franchise Tax Board.

Relief by Allocation of Liability

Revenue and Taxation Code Section 18533(c)

To limit your liability to taxes due on the income you earned, and be relieved from payment of additional taxes resulting from an audit or an amended tax return reporting federal changes to your joint return, **ALL** the following must be met:

- The liability is due to the actions of your spouse.
- You did not have knowledge of the item giving rise to the deficiency.
- You are no longer married to, or are legally separated from, the person who filed the joint return in question with you **or** You have been living apart from the person who filed the joint return with you for 12 months prior to asking for innocent spouse relief.
- Your request is being made within the statute of limitations.*

Equitable Relief

Revenue and Taxation Code Section 18533(f)

To be relieved from payment of taxes determined from an audit or from the nonpayment of tax due on the return because it is inequitable to hold you liable, **ALL** the following requirements must be met:

- The liability is attributable to your spouse.
- Relief is not available to you under Revenue and Taxation Code Sections 18533(b) or (c).
- Requesting spouse had a reasonable belief that the tax was going to be paid at the time the return was filed.
- It is inequitable to hold you liable considering all facts and circumstances.

*For information on this requirement contact the Franchise Tax Board.