

General Instructions

Purpose of Form

Use Form 8857 to request relief from liability for tax, plus related penalties and interest, for which you believe only your spouse (or former spouse) should be held liable. Generally, you must have filed a joint return for the year(s) for which you are requesting relief (but see **Community Property Laws** on page 3). The IRS will evaluate your request and tell you if you qualify.

You may be allowed one or more of these three types of relief (see pages 3 and 4):

- Separation of liability,
- Innocent spouse relief, or
- Equitable relief.

Statement To Attach

You must attach a statement to Form 8857 explaining why you qualify for relief. Complete the statement using the best information you have available. Include your name and social security number (SSN) on the statement.

If you are requesting relief for more than 1 tax year, you only need to file one Form 8857. However, you must include a separate statement for each year. Clearly indicate in the statement(s) the type(s) of relief you are requesting for each year.

See the specific instructions for each part for details on the information to be included with the statement(s). The IRS will ask you for additional information if needed, or you may provide additional information at any time.

Additional Information

See **Pub. 971**, Innocent Spouse Relief, for more details. You can get Pub. 971 by calling 1-800-TAX-FORM (1-800-829-3676).

When To File

Generally, 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 has examined your tax return.
- The IRS sends you a notice.

You generally must file Form 8857 no later than 2 years after the first IRS attempt to collect the tax from you. However, you may file it any time up to 2 years after the first IRS attempt to collect the tax from you that occurs after July 22, 1998. An example of an attempt to collect the tax from you is garnishment of your wages.

Note: *The time that the IRS will be allowed to collect taxes, interest, and penalties will be extended while your request for relief is being considered.*

Where To File

Do not file Form 8857 with your tax return or fax it to the IRS. Instead, see below.

IF . . .	THEN file Form 8857 with . . .
You are meeting with an IRS employee for an examination, examination appeal, or collection	That IRS employee.
You received an IRS notice of deficiency, and the 90-day period specified in the notice has not expired*	The IRS employee named in the notice. Attach a copy of the notice. Do not file Form 8857 with the Tax Court.
Neither situation above applies to you	Internal Revenue Service Center Cincinnati, OH 45999-0857

*Before the end of the 90-day period, you should file a petition with the Tax Court, as explained in the notice. By doing so, you preserve your rights if the IRS is unable to properly consider your request before the end of the 90-day period. Include the information that supports your position, including when and why you filed Form 8857 with the IRS, in your petition to the Tax Court. The time for filing with the Tax Court is **not** extended while the IRS is considering your request.

Definitions

Understatement of Tax

An understatement of tax, or deficiency, is generally the difference between the total amount of tax that the IRS determines should have been shown on the return, and the amount that actually was shown on the return.

Example. You and your spouse filed a joint return showing \$5,000 of tax, which was fully paid. The IRS later examines the return and finds \$10,000 of income that your spouse earned but did not report. With the additional income, the total tax becomes \$6,500. The understatement of tax is \$1,500, for which you and your spouse are both liable.

Underpayment of Tax

An underpayment is tax that is properly shown on your return but has not been paid.

Example. You and your former spouse filed a joint return that properly reflects your income and deductions but showed an unpaid balance due of \$5,000. The underpayment of tax is \$5,000. You gave your former spouse \$2,500 and he or she promised to pay the full \$5,000, but did not. There is still an underpayment of tax of \$5,000, for which you and your spouse are both liable.

Note: *If you have both an underpayment and understatement of tax, you may have to request different types of relief. You may only request equitable relief for the underpayment of tax. Complete Parts II and III on page 1 to see which type of relief you can request for the understatement of tax.*

Joint and Several Liability

Generally, joint and several liability applies to all joint returns. This means that both you and your spouse (or former spouse) are liable for any underpayment of tax plus any understatement of tax that may become due later. This is true even if a divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns.

Community Property Laws

Generally, you must 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 provide that you and your spouse are both entitled to one-half of your total community income and expenses. If you and your spouse filed separate returns, each of you must report one-half of your total community income and expenses on your separate returns. See **Pub. 555**, Community Property, for details.

If you and your spouse filed a joint return in a community property state, you are both jointly and severally liable for the total liability on the return. If you request relief from joint and several liability, state community property laws are not taken into account in determining whether an item belongs to you or your spouse (or former spouse).

Note: *If you were married and filed a separate return in a community property state and are now liable for an underpayment or understatement of tax, you may request equitable relief if you believe it is unfair for you to be held liable for the unpaid tax.*

Tax Court Review of Request

You may petition (ask) the Tax Court to review your request for innocent spouse relief or separation of liability (but not equitable relief) if:

- The IRS sends you a determination notice denying, in whole or in part, your request for relief, **or**
- You do not receive a determination notice from the IRS within 6 months from the date you filed Form 8857.

You may petition the Tax Court to review your case no later than the end of the 90-day period that begins on the date the IRS mails you a determination notice. See **Pub. 971** for details on petitioning the Tax Court to review your request.

Specific Instructions

Foreign address. Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. **Do not** abbreviate the country name.

Part I

Line 2

Enter the current name and SSN of the person to whom you were married at the end of the year(s) listed on line 1. If the name of the person shown on that year's tax return(s) is different from the current name, enter it in parentheses after the current name. For example, enter "Jane Maple (formerly Jane Oak)." Also enter the current address and phone number if you know it.

P.O. box. Enter the box number instead of the street address **only** if you do not know the street address.

Spousal Notification

The IRS will inform the person listed on line 2 of your request for relief, and allow the person listed on line 2 to participate in the determination of the amount of relief from liability. The IRS will not inform the person listed on line 2 of your current address. If your name has changed, the IRS will not inform the person listed on line 2 of your new name.

Part II—Separation of Liability

You may request separation of liability for any understatement of tax shown on the joint return(s) you filed with the person listed on line 2 if you and that person:

- Are no longer married, or
- Are legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file Form 8857.

See **Pub. 504**, Divorced or Separated Individuals, for details on divorce and separation.

Separation of liability applies only to amounts owed that are not paid. It cannot give you a refund of amounts already paid.

Requesting Separation of Liability

You must attach a statement to Form 8857. Show the total amount of the understatement of tax. For each item that resulted in an understatement of tax, explain whether the item is attributable to you, the person listed on line 2, or both of you. For example, unreported income earned by the person listed on line 2, plus any related self-employment tax, would be allocated to that person. See **Pub. 971** for more details.

Exception. If, at the time you signed the joint return, you knew about any item that resulted in part or all of the understatement, then your request will not apply to that part of the understatement.

Part III—Innocent Spouse Relief

You may be allowed innocent spouse relief only if **all** of the following apply.

- You filed a joint return for the year(s) entered on line 1.
- There is an understatement of tax on the return(s) that is due to erroneous items (defined below) of the person listed on line 2.
- You can show that when you signed the return(s) you did not know and had no reason to know that the understatement of tax existed (or the extent to which the understatement existed).
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

Erroneous Items

Any income, deduction, credit, or basis is an erroneous item if it is omitted from or incorrectly reported on the joint return.

Partial Innocent Spouse Relief

If you knew about any of the erroneous items, but not the full extent of the item(s), you may be allowed relief for the part of the understatement you did not know about. Explain in the statement you attach to Form 8857 how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

Requesting Innocent Spouse Relief

You must attach a statement to Form 8857 explaining why you believe you qualify. The statement will vary depending on your circumstances, but should include **all** of the following.

- The amount of the understatement of tax for which you are liable and are seeking relief.
- The amount and a detailed description of each erroneous item, including why you had no reason to know about the item or the extent to which you knew about the item.
- Why you believe it would be unfair to hold you liable for the understatement of tax.

For relief of liability of amounts paid as of July 22, 1998, check the **“Yes”** box on line 8 and attach the statement as described above. See Pub. 971 for details.

Part IV—Equitable Relief

You may be allowed equitable relief if, taking into account all the facts and circumstances, the IRS determines you should not be held liable for any understatement or underpayment of tax.

Equitable relief generally applies only to:

- An underpayment of tax, or
- Part or all of any understatement of tax that does not qualify for both separation of liability and innocent spouse relief.

You should request separation of liability or innocent spouse relief for any understatement of tax if you are eligible. The IRS will consider equitable relief for any understatement of tax if it determines that innocent spouse relief and separation of liability do not apply.

Equitable relief is generally available only for liabilities that are unpaid. However, you may be able to receive a refund of:

- Amounts paid after July 22, 1998, and before April 16, 1999, and
- Certain installment payments made after you file Form 8857.

For additional information on equitable relief, see Pub. 971 and Notice 98-61, 1998-51 I.R.B. 13.

Requesting Equitable Relief

You must attach an explanation of why you believe it would be unfair to hold **you** liable for the tax instead of the person listed on line 2. If you are attaching a statement for separation of liability or innocent spouse relief, only include any additional information you believe supports your request for equitable relief.

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to determine the amount of liability, if any, of which you may be relieved. Internal Revenue Code section 6015 allows relief from liability. If you request relief of liability, you must give us the information requested on this form. Code section 6109 requires you to provide your social security number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. If you do not provide all the information in a timely manner, we may not be able to process your request.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form**, 17 min.; **Preparing the form**, 22 min.; and **Copying, assembling, and sending the form to the IRS**, 20 min.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this address. Instead, see **Where To File** on page 2.

