

Instructions for Form 8857

(Rev. September 2010)

Request for Innocent Spouse Relief



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Note. In these instructions, the term “your spouse or former spouse” means the person who was your spouse for the year(s) you want relief. This is the person whose name you enter on line 7.

What’s New

- The IRS now accepts Form 8857 by fax. See *Where To File* on this page.
- New questions 11 and 23 have been added to the form.

Purpose of Form

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called joint and several liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due, even if the additional tax is due to the income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for taxes, and the IRS can still collect them from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax.

If you believe that only your spouse or former spouse should be held responsible for all or part of the tax, you can request relief from the tax liability, plus related penalties and interest. To request relief, you must file Form 8857. The IRS will use the information you provide on the form and any attachments to determine if you are eligible for relief. If the IRS needs additional information, you will be contacted.

Married people who did not file joint returns, but who live in community property states may also request relief. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin. See *Community Property Laws* on page 2.

Note. We recognize that some of the questions on the form involve sensitive subjects. However, we need this information to evaluate the circumstances of your case and properly determine whether you qualify for relief.

Situations in Which You Should Not File Form 8857

Do not file Form 8857 for any tax year to which the following situations apply. Do not file the form even if you check “Yes” on line 4 or 5 for that year.

- In a final decision dated after July 22, 1998, a court considered whether to grant you relief from joint liability and decided not to do so.
- In a final decision dated after July 22, 1998, a court did not consider whether to grant you relief from joint liability, but you meaningfully participated in the proceeding and could have asked for relief.
- You entered into an offer in compromise with the IRS.
- You entered into a closing agreement with the IRS that disposed of the same liability for which you want to seek relief. However, see Pub. 971, *Innocent Spouse Relief*, for an exception that applies to TEFRA partnership proceedings.
- You check “Yes” on line 3. See instructions for line 3 on page 4.

When To File

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 responsible. The following are some of the ways you may become aware of such a liability.

- The IRS is examining your tax return and proposing to increase your tax liability.
- The IRS sends you a notice.

However, you must file Form 8857 no later than 2 years after the first IRS attempt to collect the tax from you that occurs after July 22, 1998. (But see *Caution* below for an exception.) For this reason, do not delay filing because you do not have all the required documentation.

Collection activities that may start the 2-year period are:

- The IRS offset your income tax refund against an amount you owed on a joint return for another year and the IRS informed you about your right to file Form 8857.
- The filing of a claim by the IRS in a court proceeding in which you were a party or the filing of a claim in a proceeding that involves your property. This includes the filing of a proof of claim in a bankruptcy proceeding.
- The filing of a suit by the United States against you to collect the joint liability.
- The issuance of a section 6330 notice, which notifies you of the IRS’ intent to levy and your right to a collection due process (CDP) hearing. The collection-related notices include but are not limited to Letter 11 and Letter 1058.



If you are requesting relief based on community property laws, a different filing deadline applies. See Relief from liability arising from community property law on page 2.

Where To File

Do not file Form 8857 with your tax return or the Tax Court. Instead, send it to:

Internal Revenue Service
Stop 840F, P.O. Box 120053
Covington, KY 41012

OR

Fax the form and attachments to the IRS at (859) 669-5256 or (859) 669-7187.

Write your name and social security number on any attachments.

Send it to the above address or fax it to the above number even if you are communicating with an IRS employee because of an examination, examination appeal, or collection.

If you received an IRS notice of deficiency, you also should file a petition with the Tax Court before the end of the 90-day period, as explained in the notice. In your petition, you should raise innocent spouse relief as a defense to the deficiency. 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.

The IRS Must Contact Your Spouse or Former Spouse

By law, the IRS must contact your spouse or former spouse. There are **no** exceptions, even for victims of spousal abuse or domestic violence.

We will inform your spouse or former spouse that you filed Form 8857 and will allow him or her to participate in the process. If you are requesting relief from joint and several liability on a joint return, the IRS must also inform him or her of

its preliminary and final determinations regarding your request for relief.

However, to protect your privacy, the IRS will not disclose your personal information (for example, your current name, address, phone number(s), information about your employer, your income or assets) or any other information that does not relate to making a determination about your request for relief from liability.



If you petition the Tax Court (explained on page 3), your spouse or former spouse may see your personal information, unless you ask the Tax Court to withhold it.

Types of Relief

Four types of relief are available. They are:

1. Innocent spouse relief.
2. Separation of liability relief.
3. Equitable relief.
4. Relief from liability arising from community property law.

(See *Community Property Laws* later).

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

Understated tax. You have an understated tax if the IRS determined that your total tax should be more than the amount actually shown on the return.

Example. You and your former 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 former spouse earned but did not report. With the additional income, the total tax becomes \$6,500. The understated tax is \$1,500, for which you and your former spouse are both liable.

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.

Additional information. For additional information on innocent spouse relief, see Pub. 971.

Separation of Liability Relief

You may be allowed separation of liability relief for any understated tax (defined above) shown on the joint return(s) if the person with whom you filed the joint return is deceased or you and that person:

- Are now divorced,
- Are now 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.

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

Additional information. For additional information on separation of liability relief, see Pub. 971.

Equitable Relief

You may be allowed equitable relief if both of the following conditions are met.

- You have an understated tax (defined earlier) or underpaid tax (defined next), and

- Taking into account all the facts and circumstances, the IRS determines it would be unfair to hold you liable for the understated or underpaid tax.

Equitable relief is the only type of relief available for an underpaid tax.

Underpaid tax. An underpaid tax 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 underpaid tax is \$5,000. You gave your former spouse \$2,500 and he or she promised to pay the full \$5,000, but paid nothing. There is still an underpaid tax of \$5,000, for which you and your former spouse are both liable.

Additional information. For additional information on equitable relief, see Pub. 971 and Rev. Proc. 2003-61. You can find Rev. Proc. 2003-61 on page 296 of Internal Revenue Bulletin 2003-32 at www.irs.gov/pub/irs-irbs/irb03-32.pdf.

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 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.

If you were a married resident of a community property state, but did not file a joint return and are now liable for an underpaid or understated tax, check "Yes" on line 5; you have the following two ways to get relief.

1. Relief from liability arising from community property law.

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

- You did not file a joint return for the tax year.
- You did not include the item in gross income on your separate return.
- Under section 879(a), the item was income that belonged to your spouse or former spouse. For details, see *Community Property Laws* in Pub. 971.
- You establish that you did not know of, and had no reason to know of, that item.
- Under all facts and circumstances, it would not be fair to include the item in your gross income.

If you meet the above conditions, complete this form.

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 or former 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. The period of limitations on assessment is the amount of time, generally 3 years, that the IRS has from the date you filed the return to assess taxes that you owe.

2. Equitable relief. If you do not qualify for the relief described above and are now liable for an underpaid or understated tax you believe should be paid only by your spouse or former spouse, you may request equitable relief. See *Equitable Relief* on this page.

What Happens After You File Form 8857

We will review your form for completeness and contact your spouse or former spouse to ask if he or she wants to participate in the process. Generally, once we have all of the necessary information to make a decision, we will send a preliminary determination letter to you and your spouse or former spouse. If neither of you appeals the decision, we will issue a final determination letter to both of you. If either or both of you

appeal to the IRS Office of Appeals, Appeals will issue a final determination letter to both of you after consideration of your appeal.

Note. If you did not file a joint return for the year you are requesting relief, we will send the determination letters only to you.

Tax Court review of request. You may be able to petition (ask) the Tax Court to review your request for relief if:

- The IRS sends you a final determination letter regarding your request for relief, or
- You do not receive a final determination letter from the IRS within 6 months from the date you filed Form 8857.



If you seek equitable relief for an underpayment of tax, you will be able to get Tax Court review of your claim only if the tax arose or remained unpaid on or after December 20, 2006.

The petition must be filed **no later than the 90th day after** the date the IRS mails you a final determination letter. If you do not file a petition, or if you file it late, the Tax Court cannot review your request for relief. See Pub. 971 for details on petitioning the Tax Court.

How To Get Help

See Pub. 971, Innocent Spouse Relief. To get Pub. 971 and other IRS forms and publications, go to IRS.gov or call 1-800-TAX-FORM (1-800-829-3676).



The IRS can help you with your request. If you are working with an IRS employee, you can ask that employee, or you can call 1-866-897-4270.



You can use the Innocent Spouse Tax Relief Eligibility Explorer at IRS.gov. Click on "Individuals," "Tax Information for Innocent Spouses," and "Explore if you are an Eligible Innocent Spouse."

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service is an independent organization within the IRS. We help taxpayers who are experiencing economic harm, such as not being able to provide necessities like housing, transportation, or food; taxpayers who are seeking help in resolving tax problems with the IRS; and those who believe that an IRS system or procedure is not working as it should.

You can contact the Taxpayer Advocate Service by calling your local advocate, whose number is in your phone book, in Pub. 1546, Taxpayer Advocate Service - Your Voice at the IRS, and at IRS.gov/advocate. You can also call toll-free 1-877-777-4778 or TTY/TDD 1-800-829-4059. You can file Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or ask an IRS employee to complete it on your behalf. For more information, go to IRS.gov/advocate.

Low Income Taxpayer Clinics (LITCs). The Low Income Taxpayer Clinic program serves individuals who have a problem with the IRS and whose income is below a certain level. LITCs are independent from the IRS. Most LITCs can provide representation before the IRS or in court on audits, tax collection disputes, and other issues for free or a small fee. If an individual's native language is not English, some clinics can provide multilingual information about taxpayer rights and responsibilities. For more information, see Publication 4134, Low Income Taxpayer Clinic List. This publication is available at IRS.gov, by calling 1-800-TAX-FORM (1-800-829-3676), or at your local IRS office.

Representation. You may either represent yourself or, with proper written authorization, have someone else represent you. Your representative must be someone who is allowed to practice before the IRS, such as an attorney, certified public accountant, or enrolled agent (a person enrolled to practice before the IRS). Use Form 2848, Power of Attorney and Declaration of Representative, to authorize someone else to represent you before the IRS.

Specific Instructions

Note. If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Also write your name and social security number on the top of the documents and statements required by lines 2, 8, 10, 11, 12, and 13.

Lines 1 through 5

You **must** complete lines 1 through 5 to determine if you should file Form 8857.

Collection Statute of Limitations

Generally, the IRS has 10 years to collect an amount you owe. This is the collection statute of limitations. By law, the IRS is not allowed to collect from you after the 10-year period ends.

If you request relief for any tax year, the IRS cannot collect from you for that year while your request is pending. But interest and penalties continue to accrue. Your request is generally considered pending from the date the IRS receives your Form 8857 until the date your request is resolved. This includes the time the Tax Court is considering your request.

After your case is resolved, the IRS can begin or resume collecting from you. The 10-year period will be increased by the amount of time your request for relief was pending plus 60 days.

Line 2

You must indicate that you want a refund in order for the IRS to consider whether you are entitled to it. If you are granted relief, refunds are:

- Permitted under innocent spouse relief as explained later under *Limit on Amount of Refund*.
- Not permitted under separation of liability relief.
- Permitted in limited circumstances under equitable relief, as explained under *Refunds Under Equitable Relief*.

Proof Required

The IRS will only refund payments you made with your own money. However, you must provide proof that you made the payments with your own money. Examples of proof are a copy of your bank statement or a canceled check. No proof is required if your individual refund was used by the IRS to pay a tax you owed on a joint tax return for another year.

Refunds Under Equitable Relief

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

Underpaid tax. If you are granted relief for an underpaid tax, you are eligible for a refund of separate payments that you made after July 22, 1998. However, you are not eligible for refunds of payments made with the joint return, joint payments, or payments that your spouse (or former spouse) made. For example, withholding tax and estimated tax payments cannot be refunded because they are considered made with the joint return.

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

Understated tax. If you are granted relief for an understated 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. 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. Only installment payments made after the date you filed Form 8857 are eligible for a refund.

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

Limit on Amount of Refund

The amount of your refund is limited. Read the following chart to find out the limit.

IF you file Form 8857 . . .	THEN the refund cannot be more than . . .
Within 3 years after filing your return	The part of the tax paid within the 3 years (plus any extension of time for filing your return) before you filed Form 8857.
After the 3-year period, but within 2 years from the time you paid the tax	The tax you paid within the 2 years immediately before you filed Form 8857.

Line 3

Check "Yes" for any tax year to which all of the following apply.

- You filed a joint return for the year listed on line 1.
- At the time you filed the joint return, your spouse owed past-due federal tax, state income tax, child support, spousal support, or federal nontax debt, such as a student loan.
- The IRS used (offset) the refund to pay your spouse's past-due amount.

If all three of the above apply, do not file Form 8857 for that tax year. However, you may be able to get back your share of the refund for that tax year if you file Form 8379, Injured Spouse Allocation.

If all three of the above do not apply, check "No" and go to line 4.

Line 4

Check "Yes" if a return claiming married filing jointly status was filed for the tax year listed on line 1. Check "Yes" even if you signed the return under duress or your signature was forged.

Line 6

Enter your current name, social security number, current mailing address, and best daytime phone number to call you if we need more information. Also enter your county.

If your current name is different from your name as shown on your tax return for any year for which you are requesting relief, enter your former name in parentheses after your current name. For example, enter "Jane Maple (formerly Jane Oak)."

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.

Change of address. If you move after you file Form 8857, please use Form 8822, Change of Address, to notify the IRS of your new address.

Line 7

Enter the current name and SSN (if known) of the person to whom you were married at the end of the year(s) listed on line 1.

P.O. box. Enter the box number **only** if:

- You do not know the street address, or
- The post office does not deliver mail to the street address.

Foreign address. See the instructions for line 6 on this page.

Line 12

By law, if a person's name is signed to a return, it is presumed to be signed by that person. You must prove that your signature on the joint return was forged or that you signed under duress (threat of harm or other form of coercion). Attach a statement explaining why you believe your signature was forged or you signed under duress.

Forged signature. Your signature on the joint return is considered to be forged if it was not signed by you and you did not authorize (give tacit consent) the signing of your name to the return.

Tacit consent. Tacit consent means that, based on your actions at the time the joint return was filed, you agreed to the filing of the joint return even if you now claim the signature on the return is not yours. Whether you have tacitly consented to the filing of the joint return is based on an examination of all the

facts of your case. Factors that may support a finding that you consented to the filing of the joint return include the following.

- You gave tax information (such as Forms W-2 and 1099) to your spouse.
- You did not object to the filing.
- There was an apparent advantage to you in filing a joint return.
- You filed joint returns with your spouse or former spouse in prior years.
- You failed to file a married filing separate return and you had a filing requirement.

Sign under duress. You are considered to have signed under duress (threat of harm or other form of coercion) if you were unable to resist demands to sign the return and you would not have signed the return except for the constraint applied by your spouse or former spouse. The duress must be directly connected with the signing of the joint return.

Line 20

You may not be entitled to relief if either of the following applies.

- Your spouse (or former spouse) transferred property (or the right to property) to you for the main purpose of avoiding tax or payment of tax. A transfer will be presumed to meet this condition 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.
- 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, former spouse, or business partner.

For more information about transfers of property, see Pub. 971.

Fair market value. Fair market value is the price at which property would change hands between a willing buyer and a willing seller when both have reasonable knowledge of the relevant facts and neither has to buy or sell.

Line 23

See the instructions for line 20 above for the definition of fair market value.

Sign Form 8857

The IRS cannot consider your Form 8857 if you do not sign it. If you do not sign it, we will return it to you. Also be sure to date it.

Keep a copy of the completed form for your records.

Paid Preparer Must Sign

Generally, anyone you pay to prepare Form 8857 must sign it in the space provided. The preparer must give you a copy of Form 8857 for your records. Someone who prepares Form 8857 but does not charge you should not sign it.

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 sections 66(c) and 6015 allow 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. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. 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, 1 hr., 9 min.; Preparing the form, 2 hr., 36 min.; and Copying, assembling, and sending the form to the IRS, 1 hr., 3 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 email us at *taxforms@irs.gov. (The asterisk must be included in the address.) Enter "Forms Comment" on the subject line. Or you can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the form to this address. Instead, see *Where To File* on page 1.