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THE TAX LAWYER

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### Kinder Gentler IRS Lifts Innocent Spouse Barrier

The IRS rarely changes its policy and goes back on something it's been fighting about for years in court. But despite years of brutal tax litigation, that's what the IRS did here, announcing a marked easing of its strict policy on [innocent spouse claims](#). The winds of change were blowing when the IRS launched a [review](#) earlier this year.

But who knew it would blow into a tornado. Why care about innocence? Most taxpayers file returns [jointly](#), and don't think about a lying, cheating or disappearing spouse until the IRS asserts joint liability. My response: [Consider Tax Filing Status Carefully](#). After all, breaking the joint liability presumption is tough and often requires going to court.

Even then, you'll lose if you don't act [in time](#). Up until now, the IRS required claims for innocent spouse relief within two years of first IRS collection activity. But you might have no idea the IRS was trying to collect if your spouse was concealing it! Previously, the IRS said that was too bad: two years is two years. It was too late to bring an innocent spouse claim and have it considered on the merits.

Taxpayers tried to get around the two-year rule with "equitable relief" claims, but the IRS said these too had to be brought within two years. But now the IRS says its rigid two-year rule for equitable relief is out the window. (The two-year rule for innocent spouse claims under other provisions continues to apply.)

This change doesn't mean you'll be labeled innocent or let off the tax hook, but it does mean you'll be one step closer. What's more, the IRS is fixing this retroactively. Here are five points:

1. The IRS will no longer apply the two-year limit to new equitable relief requests or requests the IRS is currently considering.
2. If your equitable relief request was previously denied just because of the two-year limit, you can reapply as long as the tax statute of limitations is still open. See [IRS Form 8857](#).
3. The IRS will not apply the two-year limit in any pending litigation involving equitable relief innocent spouse claims.
4. Even if IRS litigation over innocent spouse relief is final, the IRS may suspend its collection activity in certain cases.
5. The change to the two-year limit is effective immediately, and details are in [Notice 2011-70](#).

In considering who is innocent, the IRS and the courts look at a number of factors including whether:

- You are still married;
- You'll endure economic hardship;
- You knew that the IRS wasn't paid;
- You have subsequently complied with income tax laws;
- You enjoyed significant economic benefits because taxes weren't paid;
- You have been the victim of spousal abuse; and
- Whether you are in poor health.

For more, see:

[Publication 971](#)

[Read Innocent Spouse Expose Now!](#)

[More Timing Disputes Over Innocent Spouse Relief](#)

[IRS Tougher On “Innocent” Spouse Relief](#)

[IRS To Give Innocent Spouse A Facelift](#)

[The Marriage Trap](#)

[Tax Court To IRS: “Stop Denying Innocent Spouse Relief!”](#)

[IRS Accused Of Unfeeling Treatment Of Abused Spouses](#)

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