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Married Filing Joint Tax Returns? IRS Helps Some Couples With Offshore Accounts

Amazingly, 95% of married people file joint tax returns, making each spouse liable for everything on the return—and anything that might *not* be on the return. Filing a joint tax return is one of the more dubious perks of being married. Yes, joint filing can be more convenient, and can save a few dollars too. However, a joint return means that both spouses are on the hook for any mistakes. True, you could be innocent.

Yet claiming that you are an ‘innocent spouse’ (say, you didn’t know your spouse was gambling or hiding income) is often fraught with problems and risks. No one likes to have to fix IRS problems. Yet fixing them is usually better than ignoring them and hoping that the IRS will too. One especially worrisome IRS problem in recent years is offshore accounts. The IRS can be harsh on undisclosed accounts, including criminal prosecution in extreme cases.



Even if your offshore account case stays civil, the penalties can be big, and fears are often well-founded. In some cases, account holders have lost more in civil penalties than the total of their offshore account balance. In light of that bad news, you might be surprised to find that the IRS is easing up on one particular aspect.

New guidance for the Offshore Account Streamlined programs is good news for some married taxpayers who were previously forced into the OVDP because their marital status had changed. The OVDP demands eight years of both tax returns and FBARs. You pay taxes on any unreported income, interest, and a 20% penalty. Then, you add a big penalty that ranges from 27.5% to 50% of your account balance. The 50% is mainly if you bank with an [ever-expanding list of cooperating financial institutions](#).

The OVDP is meant for taxpayers who were willful, and face penalties of [up to 100%](#) outside of the program. The Streamlined programs are merciful in comparison: only three years of tax returns and six of FBARs; a 5% penalty for Domestic filers, and no penalty at all for expats living abroad. But there is a big and important catch. To participate in the Streamlined program, you must be non-willful.

But for some filers, being non-willful was still not enough. Most married couples file jointly. All joint filers should know that both spouses have to sign the return. And when you amend a joint return, both spouses must sign. But what if you are separated or divorced? It can be awfully tricky to get that second signature.

That posed a problem for Streamlined filers who needed their spouse's signature in order to file one or more returns. Previously, the IRS was forcing the taxpayers into the OVDP; there, the IRS can authorize a closing agreement and overlook the missing signature. Many found this rule to be punitive and expensive. On January 7, 2016, the IRS eased up. The new rules are found in [Domestic Streamlined FAQ #14](#), and [Foreign Streamlined FAQ #7](#).

They create a procedure to allow the IRS to accept and process amended joint returns, even without your (former) spouse's signature. There is one important limit, however: you cannot use this new procedure if your amended *joint* return shows a net decrease in tax or increase in credit. Presumably, this limitation is intended to prevent one spouse from making off with a jointly-owned refund. If you must claim a joint refund, you either have to reconcile (if only for taxes), or embrace the OVDP.

The new joint return procedure has two main requirements: First, the certification statement must explain why you could not secure the second signature. Remember, this statement is signed under penalties of perjury, so be careful. Second, in place of the missing spouse's signature, you write "SDO FAQ 14" (for Domestic) or "SFO FAQ 7" (for Foreign) in red ink. You can then send in your amended returns and FBARs along with any other materials needed to correct your past filings. But these two steps are not the end of the process.

The IRS plans to follow up with filers to see if they have been able to obtain the second signature. If you have reconciled, or at least gotten your former partner to cooperate, then you can send in new amended returns. If not, you must respond to the IRS inquiry. The IRS can ask additional questions about your filing, and follow up on other details contained in your certification statement.

The new rules are a welcome change. But they should still underscore the importance of deciding [which disclosure program is right for you](#). The guaranteed follow-up alone should put taxpayers on alert that their Streamlined filings need to be a full and frank correction of past mistakes.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.