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### IRS Tougher On “Innocent” Spouse Relief

If your spouse—current or ex—squirreled money away in Switzerland or didn’t report consulting fees or gambling winnings, is it your tax problem too? If you filed joint tax returns the answer is yes, and that can be painful financially and otherwise. Who’s innocent or guilty may seem irrelevant in today’s no-fault divorce world, but when it comes to the IRS, it counts big-time.

If you’re married, you don’t **have** to file joint tax returns, but most people do. In fact, only about 5% of married taxpayers file separately. By filing jointly, you are both *fully* liable, even if your spouse earned 100% of the income and handled all the finances. If your spouse dies, goes to prison, flees the country, or simply divorces you and disappears with no forwarding address, you can be left holding the bag.

**War of the Roses?** Innocent spouse claims are most common when a couple was married at tax time but is later divorced. However, you can make an innocent spouse claim while you’re still married. Start by filing an IRS [Form 8857](#), Request for Innocent Spouse Relief. Unfortunately, the innocence label is not easy to get.

You must show that the understated tax on your joint return was due to your spouse, and that when you signed the return you didn’t know (and had no reason to know) of the problem. You must show that taking into account all the facts and circumstances it would be unfair to hold you liable. Much of the IRS’s focus is on just how innocent you seem. You won’t fare well if you were an active participant in the problems.

Timing matters too. You must generally claim innocent spouse relief within two years after the IRS first tries to collect a tax debt. This timing issue has become very controversial. The statute states a two year rule and IRS regulations echo it.

But there's a broader "equitable relief" provision in the tax code, and the U.S. Tax Court has given some late-filing spouses a ticket to innocence that way. The IRS hates this, and got the Seventh Circuit Court of Appeals to reverse the Tax Court in [Lantz v. Commissioner](#), 607 F.3d 479 (7th Cir. 2010). But the Tax Court recently held another late filing but putatively innocent spouse to be innocent in [Hall v. Commissioner](#), 135 T.C. No. 19 (2010). The IRS has vowed to keep fighting. See IRS Chief Counsel Notice [CC-2009-012](#).

There will be additional jockeying over timing and what claims are barred. If possible, avoid the timing fuss and stick to the two-year deadline. And where appropriate, consider keeping assets and tax returns separate.

For more about innocent spouse relief see:

[When An Innocent Spouse Seeks Tax Relief](#)

[IRS Publication 971, Innocent Spouse Relief](#)

[IRS Innocent Spouse Questions & Answers](#)

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