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THE TAX LAWYER

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### More Timing Disputes Over Innocent Spouse Relief

There's been plenty of press about innocent spouse relief from the [IRS](#). You want to be labeled "innocent," but the IRS may not agree. If you filed joint tax returns with your spouse, the presumption is that you're **each fully** liable. You're a likely target if your spouse is in jail, disappears, lies about gambling winnings, or otherwise leaves you holding the bag.

This is a messy part of the tax law. Disputes often erupt over timing: To claim you're innocent, the IRS requires you to speak up within two years after IRS first tries to [collect](#). When you fail to reach agreement with the IRS over innocent spouse status, you can go to Tax Court, right? Only if you act in time, and that was the rub for [Pamela R. Terrell](#).

**Poor Pamela.** After getting a whopping assessment for \$660,000 in unpaid taxes, Pamela filed a Request for Innocent Spouse Relief ([Form 8857](#)) with the IRS on Sept. 20, 2006. Her address (Address One) appeared on her Request. A few weeks later, she moved (Address Two). She claimed she filed a change of address form with the Post Office, but could not prove it.

On Dec. 13, 2006, the IRS mailed a receipt for her Form 8857 to Address One, which the Post Office returned as undeliverable. Next the IRS mailed (also to Address One) two preliminary notices denying Pamela innocent spouse relief. Since Pamela didn't respond, the IRS mailed a

Notice of Final Determination on Apr. 6, 2007 (to Address One), giving Pamela 90 days to file in Tax Court. It too was returned to the IRS as undeliverable.

On Apr. 11, 2007, Pamela filed her 2006 tax return, now using Address Two. Seeing the glitch, the IRS re-mailed the Determination to Address Two on May 14, 2007. Although mailed five weeks late, this one still listed Apr. 6, 2007 as the date of Determination. Pamela received it in mid-May and petitioned the Tax Court on July 13, 2007.

**Too Late.** The Tax Court dismissed her case saying it was too late! Pamela had to file by July 5, 2007, it said, and she didn't file until July 13th. Pamela appealed and the Fifth Circuit said she was right. The IRS usually considers the address on your most recently filed tax return as your last known address. But that doesn't relieve the IRS from using reasonable diligence.

The IRS was on ***notice*** about Pamela's address problem but wasn't diligent, said the Appeals Court. The IRS could have done a computer search, contacted Pamela's employer, searched her social security number, or taken other steps. Because the IRS failed to send the original Determination to Pamela's last known address and it was returned as undeliverable, it was null and void!

That meant Pamela's 90 days started only ***after*** the IRS re-sent the Determination to her correct address on May 14, 2007. Pamela filed her petition within 90 days of ***that*** date, so the Tax Court should have heard her case.

**Address Your Address!** You might be surprised how often these glitches occur. That's true throughout the tax law, not just with innocent spouse claims. Tax mailings are important, and the best dispute is one you can avoid. Here's how the IRS likes to be notified when you move: [Revenue Procedure 2010-16](#).

**Timing Caution:** If you find yourself in timing trouble, there's a split in the federal courts. Courts in the First, Second, Third, Sixth, Ninth, and Eleventh Circuits say that even if the IRS fails to mail a notice to the taxpayer's "last known address," it's still valid if the taxpayer ***actually***

receives the notice without delay that prejudices their ability to petition the Tax Court. This “no prejudice” rule ***doesn’t*** mean you get the full 90 days to petition the Tax Court. It only means you must have sufficient time to be able to file (which might be as little as a few weeks).

Courts in the Fourth, Seventh, and D.C. Circuits say that where the IRS fails to send the notice to the taxpayer’s “last known address,” but the taxpayer receives subsequent ***actual*** notice, the 90 days begins to run anew on the date the taxpayer ***actually*** gets the notice.

For more about innocent spouse relief see:

[How To Make Divorce Less Taxing](#)

[Taxing Innocent Spouses: 10 Things You Should Know](#)

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

[Mothers Don’t Let Your Daughters Grow Up To Be Innocent Spouses](#)

For more about timing and filing in Tax Court, see:

[About The Tax Court](#)

[Starting a Case in Tax Court](#)

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