There are 3 kinds of Innocent Spouse Relief

1. Innocent spouse relief

You can get this kind IF all these things are true:

- You filed a joint tax return.
- The IRS says you owe more than it shows on your joint tax return. For example, your return did not show all your income. Or your return showed more expenses than you had. Or there was a mistake on your return.

AND

- You didn't know you owed more than the tax return said.

AND

- It would not be fair to make you pay the tax.

AND

- The amount owed is due to your spouse's mistake, income or expenses.

What if you knew the tax amount was wrong but did not know the amount? Then you might get partial spouse relief. This means you only have to pay part of the tax.

2. Separation of liability

This means the IRS divides up the taxes you and your spouse owe. You have to pay your part. Your husband or wife has to pay their part.

What if you did not work or made only a little money? Then you may not have to pay any taxes for your part.

Was your spouse self-employed? Self-employed means working for yourself. This can be things like yard work, cutting hair or odd jobs. Did your spouse show the wrong income or expenses? Then you may not have to pay, even if your spouse does.

You can get separation of liability IF these things are true:

- You divorced, are legally separated; OR
- You have not lived together for the last 12 months AND
- The IRS says you owe more than it shows on your joint tax return.

You can NOT get separation of liability if:

- You have already paid the taxes; OR
- You knew the tax return was wrong when you signed it.
3. Equitable relief

Equitable means fair. You may get equitable relief if it would not be fair to make you pay the tax.

The IRS may decide it is not fair to make you pay the tax IF:

• Your husband or wife abused you; OR
• You can’t pay your bills; OR
• English is your second language; OR
• You divorced or legally separate or lived apart the last 12 months; OR
• You are in poor health; OR
• Your divorce papers say your spouse must pay the back taxes; OR
• The back taxes are all on money your spouse earned; OR
• Anything else that shoes it is unfair for the IRS to make you pay the tax.

How do I ask for Innocent Spouse Relief?


Do you want Innocent Spouse Relief for more than one tax year? You can list 3 years on one Form 8857. If you have more than 3 years, you will need more 8857 forms. The IRS could take 6 to 15 months to decide your case.

When should I file for Innocent Spouse Relief?

File as soon as you know you owe the taxes. You only have 2 years to file IRS Form 8857 after the IRS tries to collect the money.

How will I find out if I owe back taxes?

• The IRS may send you a letter, OR
• The IRS may keep your tax refund to pay the debt, OR
• The IRS may audit your tax return.

How can I get help?

Call Wisconsin Judiccare’s Low Income Taxpayer Clinic. We can help you apply for Innocent Spouse Relief. We also may be able to represent you if the IRS will not give you relief.

To find if we can help you, call 1-800-472-1638.

Why do so many married couples file joint tax returns?

To save money. Also, they have to file jointly to get the Earned Income Credit (EIC).

Do you get a Social Security check? If you file jointly, you usually pay NO taxes on your Social Security checks. What if you file separate tax returns? Then you might have to pay taxes on 85% of your Social Security check.

Information was gathered from the Tennessee Taxpayer Project also a Low Income Taxpayer Clinic (LITC).

Wisconsin Judiccare’s LITC is not the IRS and completely independent of and not associated with the federal government.

Wisconsin Judiccare’s LITC does not do current year tax preparation.