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We provide a prompt, professional, personal one-on-one tax preparation service from the comfort of your home or office. We are competitively priced; in addition we offer a number of additional services as well as comprehensive information from our web site - <http://www.taxlogic.com>.

Last week we were talking about the injured spouse relief, and along with that topic there is the "innocent spouse" relief, which is very often confused. In either case, you need to determine if any of this applies and perhaps you can avoid having to file any injured spouse or an innocent spouse return. Perhaps, you may want to consider your filing status. If you have to file an amended return later, you cannot change your filing status from "married filing jointly" to "married filing separately".

What is an Innocent Spouse?

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due.

How can I get relief from joint and several liability?

Relief now falls into three categories: Innocent spouse relief, separation of liability, and equitable relief. To qualify for innocent spouse relief, you must meet all of the following conditions.

1. You must have filed a joint return, which has an understatement of tax.
2. The understatement of tax must be due to erroneous items of your spouse (or former spouse).
3. You must establish that at the time you signed the joint return, you did not know, and had no reason to know, that there was an understatement of tax.
4. Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
5. You must request relief within 2 years after the date on which the IRS first began collection activity against you after July 22, 1998, when the law for innocent spouse changed. For more information visit our website at <http://www.taxlogic.com>.

Erroneous items are any deductions, credits, or bases that are incorrectly stated on the return, and any income that is not reported on the return. An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return.

What are the rules for separation of liability?

Under this type of relief you divide (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse. The understatement of tax allocated to you is generally

the amount you are responsible for. To qualify for separation of liability you must have filed a joint return and meet either of the following requirement at the time you file Form 8857.

1. You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief.
2. You are not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Even if you meet the requirements listed earlier, a request for separation of liability will not be granted in the following situations.

1. The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
2. The IRS proves that at the time you signed your joint return, you had actual knowledge of any items giving rise to the deficiency that are allocated to your spouse.
3. Your spouse transferred property to you to avoid tax or the payment of tax.

What are the rules for equitable relief?

Equitable relief is only available if you meet all of the following conditions.

1. You do not qualify for innocent spouse relief or separation of liability.
2. The IRS determines that it is unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.
3. You and your spouse did not transfer assets to one another, as a part of a fraudulent scheme.
4. Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax.
5. You did not file your return with the intent to commit fraud.
6. You did not pay the tax.

Unlike innocent spouse relief or separation of liability, if you qualify for equitable relief, you can get relief from an understatement of tax or an underpayment of tax. An underpayment of tax is an amount properly shown on the return, but not paid.

File Form 8857, Request for Innocent Spouse Relief, to ask the IRS for relief. You only need to file one Form 8857 even if you are requesting relief for more than one year. If you applied for equitable relief and the IRS did not grant it, and you think you might qualify for the innocent spouse or separation of liability relief, you must file a new Form 8857.

If you would like more information about the Form 8857, please visit our website at <http://www.taxlogic.com>.