

What is Innocent Spouse Relief?

Innocent spouse relief is when the IRS removes your responsibility for all or part of your former spouse's tax debts, interest, and penalties.

When you sign a joint income tax return, both you and your spouse agree to be responsible for any tax debt related to the tax return. This means that you could be responsible for the entire tax debt for that tax year, even if you did not earn any money that year. If you qualify, innocent spouse relief can help relieve you of that responsibility.

How can Innocent Spouse Relief help me?

1. Separation of Liability

Under separation of liability, the IRS may separate your tax debt from your spouse's tax debt even though you filed a joint tax return. After the liability is separated, you are no longer responsible for your spouse's portion of the tax debt.

2. Innocent Spouse Relief

Innocent spouse relief provides you with relief from taxes you owe because your spouse did not report all of his or her income or improperly claimed deductions or credits.

3. Equitable Relief

Even if you do not qualify for innocent spouse relief or separation of liability, you may qualify for equitable relief. You may

get equitable relief if, after considering all the facts and circumstances, it would be unfair to hold you liable for the tax.

Do I qualify for Innocent Spouse Relief?

In deciding whether to grant relief from taxes, the IRS may consider whether:

- You were abused by your spouse;
- Your spouse controlled your family's finances;
- You were involved in preparing your taxes;
- You are unable to pay your bills;
- English is your second language;
- You are divorced, legally separated, or have been physically separated for 12 months;
- Your spouse has a higher education level than you;
- Your divorce decree requires your spouse to pay the tax debt; and
- The debt is due solely to your spouse's income.

The IRS may also consider other factors.

How do I request this relief?

You can ask for innocent spouse relief by filling out IRS Form 8857 and attaching a statement explaining why you qualify for innocent spouse relief. You can find Form 8857 at www.irs.gov.

If you are requesting innocent spouse relief for more than one year, you should file one petition, but list a separate statement for each year explaining why you qualify.

Do not file Form 8857 with your income tax return. It should be filed separately.

When can I file for Innocent Spouse Relief?

You should file Form 8857 as soon as you become aware of the tax debt. You may become aware of the tax debt when:

- The IRS examines or audits your income tax return;
- The IRS sends you a notice; or
- Your tax refund is withheld by the IRS to pay the debt.

Can my ex file for Innocent Spouse Relief?

Yes. Both spouses may apply for innocent spouse relief, and the IRS will review both applications. If you submit an application for innocent spouse relief, your former spouse will be notified of your application. If your former spouse submits an innocent spouse relief application, you will be notified.

What if I owe state taxes to the Montana Department of Revenue?

The Department of Revenue may also provide innocent spouse relief. For more

information, contact the Montana Department of Revenue at 1-866-859-2254.

What is **Injured Spouse Relief**?

Injured spouse relief is different than innocent spouse relief. You should apply for injured spouse relief if you are married and file jointly with your spouse and your tax refund is seized to pay your spouse's separate debts, like your spouse's back child support. If you file IRS Form 8379 with your tax return, you may receive your portion of the refund.

Need Tax Help?

- Volunteer Income Tax Assistance (VITA) provides free tax preparation services: 1-800-906-9887 or www.MontanaFreeFile.org
- MLSA provides low-income taxpayers with legal assistance on tax matters: 1-800-666-6899
- www.MontanaFreeFile.org helps you find free tax assistance and free tax filing options
- IRS Tax Information for Individuals: <http://www.irs.gov/individuals/index.html>
- State of Montana Tax Information: <http://revenue.mt.gov/default.mcp>

How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at mtlsa.org;
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

www.MontanaLawHelp.org

Need legal information or forms? Visit www.MontanaLawHelp.org.

Can't find what you want? Use LiveHelp. Click on the LiveHelp picture and get help finding the information you need.

www.MTLSA.org

Find copies of all our brochures online. They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.

Montana Legal Services Association

Low Income Taxpayer Clinic: Innocent Spouse Relief



The clinic listed herein is partially funded through matching grants provided by the Internal Revenue Service pursuant to the Internal Revenue Service Restructuring and Reform Act of 1998. The partial funding by the IRS does not imply that the clinics have a preferential relationship with the IRS. The decision of whether to use these clinics is your own and their use will not affect your rights before the IRS.

Rev. 12/2016