



Innocent Spouse - Do I Qualify?

September 28, 2022

Highlights



- **Liability for taxes on a joint tax return is “joint and several” - see last post**
- **IRS will pursue 100% of the tax from each spouse until paid**
- **Innocent Spouse program is designed to provide relief**
- **Not automatic - application required - similar to Offer In Compromise**

Example 1



- Continuing from last post - Larry and Martha
- Larry - employee - withholding more than individual liability
- Martha - self employed - required to pay estimates
- 2021 they file joint return - Martha paid no estimates so liability on return
- Larry is responsible for 100% of the tax due - even though on an individual basis he's covered his tax
- He may qualify for the Innocent Spouse program

Innocent Spouse Program



- Provides for relief from joint and several liability
- Similar to Offer In Compromise relief is not automatic - subject to the discretion of the IRS
- General view of the IRS is that each spouse made the election to be included in a joint tax return - therefore any resulting debt is joint and several
- Relief granted could be either an apportionment of the tax liability or treatment as filing separate

Types Of Relief



- **3 types of relief available:**
 - **Innocent Spouse Relief**
 - **Separation of Liability Relief**
 - **Equitable Relief**

Innocent Spouse Relief



- Tax debt related to “erroneous item” - understatement of income or overstatement of deductions - not failure to pay amount due on return
- Spouse did not know or have reason to know
- IRS determines holding spouse liable would be “inequitable”
- Relief request - within 2 years of collections
- Relief - allocation of liability
- May result in spouse owing or refund

Separation Of Liability



- Spouses divorced or legally separated for twelve months
- Debt arose due to erroneous item
- Spouse had no knowledge
- Relief request - within 2 years of collections
- Relief - treatment as having filed separate
- No refunds available

Equitable Relief



- All “facts and circumstances” considered
- Debt arose from either erroneous item or underpayment of tax due on return
- Must be requested before expiration of collection statute of limitations - generally 10 years
- Relief - allocation of liability
- May result in spouse owing or refund

Factors Considered



- **Guidelines published for Equitable Relief - considered in other relief provisions**
- **Marital Status**
- **Economic Hardship**
- **Knowledge or Reason to Know**
- **Non-requesting spouse's legal obligation - i.e. divorce agreement**

Factors Considered (continued)



- **Significant Benefit**
- **Compliance With Tax Laws**
- **Physical or Mental Health - when filing return or when relief requested**
- **RCP is evaluated for Economic Hardship**
- **Same concept as Offer In Compromise**

Injured Spouse



- **Opposite of Innocent Spouse**
- **When overpayment on joint return is applied against individual debt of one spouse**
- **Relief needs to be requested**

Conclusion



- **Filing obligation is individual**
- **After filing individual - can elect joint**
- **Can't elect individual once filed as joint**
- **If joint filing - Innocent Spouse relief may be requested - not automatic but could be beneficial**