



Innocent Spouse Relief, Separation of Liability and Equitable Relief

Purpose: This Policy Statement gives taxpayers guidance on how to request Innocent Spouse Relief, Separation of Liability and Equitable Relief, and the standards applied by the Department of Revenue Services (DRS) in determining whether to grant the requested relief.

Effective Date: Upon issuance and applicable to all open requests for relief.

Statutory Authority: Conn. Gen. Stat. § 12-702a.

Background: When you file a joint Connecticut income tax return you are jointly and severally liable for the income tax, interest, and penalties due (in the rest of this document references to "tax" include tax, interest, and penalties), as a result of your joint return. You may be liable for the entire amount of tax due on your joint return even if you did not earn any income for the taxable year of the return or were unaware of errors (intentional or otherwise) reported on the return. This is true even if you have subsequently become divorced from the other joint filer.

You may request relief from joint and several liability. There are three types of relief available:

1. Innocent spouse relief
2. Separation of liability
3. Equitable relief

As long as you timely file your request for relief from joint and several liability, DRS will generally follow the federal guidelines, standards and criteria applicable to federal requests for relief under section 6015 of the Internal Revenue Code. Refer to Internal Revenue Service's **Publication 971, *Innocent Spouse Relief***, for more information on the federal guidelines, standards, and criteria.

Definitions Used in This Policy Statement:

Collection Activity. The following actions constitute collection activity:

- *30 Day Collection Notice.* This notice informs you of enforcement actions DRS will take against you to collect your overdue tax obligation. These actions include issuance of tax warrants to attach wages, bank accounts, or other assets.
- *Refund offsets.* The application of an overpayment of the requesting spouse against the joint liability of the requesting and non-requesting spouse. The offset notice will notify the requesting spouse of his or her right to file an Innocent Spouse Relief claim.
- *Claims in judicial proceedings.* The filing of a claim by DRS in a court proceeding in which you, the requesting spouse, are a party, or a claim in a proceeding that involves your property.
- The filing of a suit by DRS against you to collect the joint liability.

Deficiency. Is the amount by which the assessed tax exceeds the sum of the amount reported by the taxpayer on the return filed with DRS.

Disqualified asset. Means any property or right to property transferred to you by your spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax.

Erroneous items. Erroneous items are either of the following:

- **Unreported income.** This is any gross income item received by your spouse that is not reported on the joint return and that affects the joint Connecticut income tax liability.

- Incorrect deduction, credit, or basis. This is any improper deduction, credit, or property basis claimed by the other spouse and that affects the Connecticut income tax liability of the spouses.

Understatement of tax. There is an understatement of tax if DRS determined that your total tax liability should be more than the amount that was reported on the return. For purposes of the innocent spouse relief claim, a deficiency and understatement are treated the same.

Underpayment of tax. Is tax that was properly shown on the original or amended return, but has not been paid. For purposes of equitable relief, an underpayment of tax is the balance due shown on the joint return, reduced by the tax paid with the joint return.

How to Request Relief: To request relief, you must use **Form CT-8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)**. When DRS receives the request, collection activities for the specified taxable year(s) will cease until we make a determination regarding your request.

DRS will consider whether you qualify for innocent spouse, separation of liability or equitable relief.

To be considered for innocent spouse or separation of liability relief, you must file **Form CT-8857** no later than two years after the date of the first collection activity by DRS against you. To be considered for equitable relief, you must file **Form CT-8857** no later than ten years after the date DRS assessed the tax liability for which you seek relief, or, if you are seeking a credit or refund, you must apply for relief no later than 3 years after the original joint return was filed or no later than 2 years after the date the tax was paid, whichever is later.

DRS is required to notify your spouse (former spouse) that you filed **Form CT-8857** requesting innocent spouse relief, separation of liability, or equitable relief and will allow him or her to participate in any administrative proceeding relating to the determination of your request. To protect your privacy, DRS will not disclose your personal information (such as your current name, address, phone number(s), or information about your employer, your income, or your assets). However, any other information you provide and used by DRS to make a determination about your request for relief from liability could be disclosed to your spouse

(former spouse). If you have concerns about your privacy or the privacy of others, you should redact or black out personal information in the material you submit.

Federal Requests and Determinations: If you reported on **Form CT-8857** that you filed a federal Form 8857, *Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)*, for the same taxable year, DRS will wait for the Internal Revenue Service (IRS) to make a determination regarding the request. However, do **not** wait to receive a determination from the IRS in order to submit a request for relief from DRS. Failure to timely submit a request to DRS will result in a denial, regardless of whether or not the IRS has granted relief.

After an IRS determination, DRS will review the federal determination and calculate the understatement or underpayment of tax (if any) for Connecticut income tax purposes.

If you did not request federal relief for the same taxable year, DRS will make an independent determination of relief based on the factors outlined below and calculate the understatement or underpayment of tax (if any) for Connecticut income tax purposes.

Descriptions of the Different Types of Relief Available:

Innocent Spouse Relief: Innocent spouse relief would allow you, the requesting individual, to be relieved of a deficiency if the liability is attributable to an understatement of tax caused by an erroneous item that belongs to your spouse, the non-requesting individual. If this relief were granted, DRS would collect the outstanding liability from your spouse.

To qualify for innocent spouse relief, you must meet all of the following requirements:

1. You filed a joint return with your spouse for the taxable year for which you are requesting relief;
2. There is an understatement of tax attributable to erroneous items that belong to your spouse;
3. When you signed the return, you did not know, and had no reason to know, that there was an understatement of tax (If you fail to meet this condition, you may still qualify for partial innocent spouse relief. See *Partial Innocent Spouse Relief* below);

4. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax or portion of the understatement; **and**
5. You apply for relief no later than two years after the date of the first collection activity by DRS against you.

Partial Innocent Spouse Relief: If you meet all of the requirements except that you knew, or had reason to know, that there was an understatement of tax, but did not know the *extent* of the understatement, then you may be eligible for relief for the portion of the understatement you did not know and had no reason to know about.

Example. At the time you signed your joint return, you knew that your spouse had gambling winnings of \$5,000 that were not reported on your joint tax return. DRS examined your tax return and determined that your spouse's unreported gambling winnings were actually \$25,000. This resulted in a much larger understatement of tax than you were aware of at the time you signed the return. If you establish that because of the way your spouse handled gambling winnings, you did not know about, and had no reason to know about, the additional \$20,000 in gambling winnings, the understatement of tax due to \$20,000 of gambling winnings could qualify for innocent spouse relief if you meet the other requirements. However, the understatement of tax due to the \$5,000 of gambling winnings that you were aware of will not qualify for relief. You and your spouse would remain jointly and individually liable for the tax due on the \$5,000 understatement you knew about, and DRS could collect this amount from either you or your spouse.

Facts and Circumstances Used to Determine Whether it is Unfair to Hold you Liable for the Understatement: DRS will consider all of the facts and circumstances to determine whether it is unfair to hold you responsible for the understatement of tax, including the following:

- Whether you received any significant benefit, either directly or indirectly, from the understated tax;
- Whether you were later divorced from, separated from, or abandoned by, your spouse; **and**
- Whether you received a benefit on the return from the erroneous item or understated tax.

Example. If your spouse did not report \$10,000 of income on the joint return, and shared the money with you, then you directly received a significant benefit from the erroneous item that caused the understatement of tax. If your spouse did not report \$10,000 of income on the joint return, and used such income to pay household expenses, then you indirectly received a benefit from the unreported income.

Innocent spouse relief may generate a refund. See **Limit on Amount of Refund** below.

SEPARATION OF LIABILITY: Separation of liability allows you, the requesting individual, to request for an understatement of tax to be allocated (divided) between you and your spouse to the extent the understatement of tax is caused, in part, by an erroneous item of your spouse. Separation of liability applies to amounts owed that have not been paid.

To qualify for separation of liability, you must meet all of the following requirements:

1. You filed a joint return with your spouse for the taxable year for which you are requesting relief;
2. There is an understatement of tax caused, in part, by an erroneous item belonging to your spouse;
3. At the time you request the relief, you are divorced or legally separated from your spouse, or have not been a member of the same household as your spouse for at least the twelve-month period ending on the date you file the request;
4. You applied for relief no later than two years after the date of the first collection activity by DRS against you; **and**
5. There is an unpaid liability at the time you request the relief.

If separation of liability is granted, DRS will allocate the understatement of tax on the joint return between you and your spouse. Any item, giving rise to the understatement of tax, shall be allocated as if you and your spouse had filed separate returns for the taxable year. You have the burden of proof in establishing the portion of any understatement of tax allocable to you. You will generally be responsible for the amount allocated to you.

If an exemption under Conn. Gen. Stat. § 12-702 or a credit under Conn. Gen. Stat. § 12-703 would be disallowed in its entirety solely because a separate return is filed, the disallowance will be disregarded

and the item will be computed as if a joint return had been filed and then allocated between you and your spouse appropriately. In addition, if the liability of a child of a taxpayer is included on a joint return, the liability will be disregarded in computing the separate liability of either joint filer and such liability will be allocated appropriately between the joint filers.

Separation of liability is subject to three limitations:

1. Relief is not available if assets were transferred between you and your spouse as part of a fraudulent scheme.
2. Relief is not available if you had actual knowledge, at the time you signed the return, of any item giving rise to the understatement of tax or portion thereof which is not allocable to you (unless you signed under duress).
3. The portion of the understatement of tax for which you are liable will be increased by the value of any "disqualified asset" transferred to you by your spouse.

Example. You and your spouse filed a joint return showing your wages of \$50,000 and your spouse's self-employment income of \$10,000. DRS audited the return and found that you and your spouse did not report an additional \$20,000 of self-employment income on the return. The additional income resulted in a \$1,500 understatement of tax, plus penalty and interest. After obtaining a legal separation from your spouse, you timely file Form CT-8857 to request relief by separation of liability. At the time you signed the joint return, you actually knew about \$5,000 of the additional income because your spouse deposited the \$5,000 into your joint bank account. Your spouse is liable for all of the understatement of tax, interest and penalties due to your spouse's \$20,000 of unreported self-employment income. You are liable only for the understatement of tax, interest and penalties due to the \$5,000 of additional income that you actually knew about.

Separation of liability relief will not generate a refund.

EQUITABLE RELIEF: Equitable relief allows you, the requesting individual, to be relieved of liability for an understatement of tax, an underpayment of tax, or any portion of either. It is the only provision that provides relief from self-assessed tax (tax you reported on an income tax return).

You qualify for a request of equitable relief if you meet all of the following requirements:

1. You filed a joint return with your spouse for the taxable year for which you are requesting relief;
2. You do not qualify for relief under the *innocent spouse* or *separation of liability* provisions;
3. You apply for relief no later than ten years after the date DRS assessed the tax liability for which you seek relief. If you are seeking a credit or refund, you must apply for relief no later than 3 years after the original joint return was filed or no later than 2 years after the date the tax was paid, whichever is later.
4. No assets were transferred between you and your spouse as part of a fraudulent scheme;
5. There were no "disqualified assets" transferred to you by your spouse; **and**
6. You did not file the joint return with fraudulent intent.

If you satisfy all of the requirements set forth above, you may be relieved of all or part of the liability if, taking into account all the facts and circumstances, it is unfair to hold you liable for all or part of the liability.

Equitable relief may generate a refund. See **Limit on Amount of Refund** below.

Circumstances Under Which Equitable Relief Will Ordinarily be Granted: If a liability reported on a joint return is unpaid, and all of the conditions set forth above are met, then equitable relief will ordinarily be granted if all of the following conditions are met:

1. At the time you request the relief, you are divorced or legally separated from your spouse, or you have not been a member of the same household as your spouse at any time during the twelve-month period ending on the date you request the relief;
2. At the time you signed the return, you did not know, or have reason to know, that the tax would not be paid. You must establish that it was reasonable for you to believe that your spouse would pay the reported liability. If you would otherwise qualify for relief except for the fact that you had no knowledge or reason to know of only a portion of the unpaid liability, then you may be granted relief only to the extent that the liability is attributable to such portion; **and**

3. You will suffer economic hardship if relief is not granted.

Relief will only be available to the extent that the liability is allocable to your spouse. If the joint return is or has been adjusted to reflect an understatement of tax, relief will only be available for the liability shown on the return prior to any adjustment.

Factors Used in Determining Whether to Grant Equitable Relief Where Requesting Individual is Eligible to be Considered for Equitable Relief but the Circumstances Under Which Equitable Relief Will Ordinarily be Granted are Not Present:

The following is a partial list of the factors that will be taken into account in determining whether to grant full or partial equitable relief. No single factor will be determinative of whether equitable relief will or will not be granted in any particular case. Rather, all factors will be considered and weighed appropriately.

Examples of factors weighing in favor of granting equitable relief:

- You are separated (whether legally separated or living apart) or divorced from the your spouse (former spouse);
- You would suffer economic hardship if relief from the liability is not granted;
- You were abused by your spouse (former spouse), but such abuse did not amount to duress;
- In the case of a liability that was properly reported but not paid, you did not know and had no reason to know that the liability would not be paid. In the case of a liability that arose from an understatement, you did not know and had no reason to know of the items giving rise to the understatement of tax;
- Your spouse (former spouse) has a legal obligation pursuant to a divorce decree or agreement to pay the outstanding liability. However, this will not be a factor weighing in favor of granting relief if you knew or had reason to know, at the time the divorce decree or agreement was entered into, that your spouse (former spouse) would not pay the liability;
- The liability for which you are requesting relief is solely attributable to your spouse (former spouse); **and**
- The Internal Revenue Service (IRS) has previously granted you relief for the same liability.

Factors weighing against granting equitable relief include:

- The unpaid liability or item giving rise to the understatement of tax is attributable to you;
- You knew or had reason to know of the item giving rise to the understatement of tax or that the reported liability would be unpaid at the time you signed the return;
- You have significantly benefited (beyond normal support) from the unpaid liability or from the items giving rise to the understatement of tax;
- You will not experience economic hardship if relief from the liability is not granted;
- You have not made a good faith effort to comply with Connecticut income tax laws in the taxable years following the taxable year or years to which the request for relief relates;
- You have a legal obligation pursuant to a divorce decree or agreement to pay the liability; **and**
- The IRS has previously denied relief to you for the same liability.

Example. You and your spouse filed a joint 2012 income tax return showing tax due of \$10,000. You and your spouse agree that you will each pay \$5,000 towards the tax due. Because you and your spouse maintain separate checking accounts, you give your spouse a check for \$5,000 to deposit into his or her checking account so your spouse can write one check for \$10,000 to pay the tax due. Without your knowledge, your spouse pays only \$5,000 towards the tax liability and spends \$5,000 to pay his personal credit card bill. You establish that you had no knowledge, or reason to know, that at the time you signed the return your spouse would not pay the tax. In addition, you and your spouse divorced in 2013. Both these facts indicate to DRS that it may be unfair to hold you liable for the \$5,000 underpayment. DRS will consider these facts, together with all the other facts and circumstances, to determine whether to grant you equitable relief from the \$5,000 underpayment.

LIMIT ON AMOUNT OF REFUNDS: DRS will not refund payments made with the joint return, joint payments, or payments that your spouse (or former spouse) made. For example, withholding tax and estimated tax payments cannot be refunded because they are considered made with the joint return. However, you may be entitled to a refund of your portion of a joint overpayment from another year that was applied to the joint tax for a different year. You will need to show your portion of the joint overpayment.

Your refund may be further limited as follows:

If you file Form CT-8857...	THEN the refund cannot be more than...
Within 3 years after filing your return	The part of the tax paid within 3 years (plus any extension of time for filing your return) before you filed Form CT-8857.
After the 3-year period, but within 2 years from the time you paid the tax	The tax you paid within 2 years immediately before you filed Form CT-8857

PROTESTS: After making a determination, DRS will mail you a notice of the proposed decision. The proposed decision will become final, unless you file a written protest with the DRS Appellate Division within sixty days from the date of the notice. Your written protest must specify the reasons for the protest. If you file a protest, DRS will reconsider the proposed decision and, if requested, may grant or deny you or your authorized representative an oral hearing.

After reconsideration, the Appellate Division will mail you a letter containing the final determination of DRS. This determination will become final, unless you seek judicial review of the DRS determination pursuant to Conn. Gen. Stat. § 12-730 within one month from the date of the letter.

Effect on Other Documents: SN 99(15), *Innocent Spouse Relief, Separation of Liability, and Equitable Relief*, is superseded and can no longer be relied upon.

Effect of This Document: A Policy Statement explains in depth a current Department of Revenue Services (DRS) position, policy, or practice affecting the tax liability of taxpayers.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

TTY, TDD, and Text Telephone users only may transmit inquiries anytime by calling 860-297-4911.

Forms and Publications: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms and publications.

Paperless Filing/Payment Methods (fast, easy, free, and confidential): Business and individual Taxpayers can use the **Taxpayer Service Center (TSC)** at www.ct.gov/TSC to file a variety of tax returns, update account information, and make payments online.

File Electronically: You can choose first-time filer information and filing assistance or log directly into the **TSC** to file returns and pay taxes.

Pay Electronically: You can pay taxes for tax returns that cannot be filed through the **TSC**. Log in and select the *Make Payment Only* option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

DRS E-Alerts Service: Get connected to the latest news from DRS. Receive notification by email of changes to legislation, policies, and procedures. **DRS E-Alerts** provide information for employer's withholding tax, News – Press Releases, and Top 100 Delinquency List. Visit the DRS website at www.ct.gov/DRS and select *Sign up for e-alerts* under *How Do I?* on the gold navigation bar.