

October 20, 1998

**ADVANCE COPY OF INTERNAL REVENUE BULLETIN ITEM**

Attached is an advance copy of Announcement 98-95, asking for comments on the revised Form 8857.

It will appear in Internal Revenue Bulletin 1998-44, dated November 2, 1998.

You may release this announcement immediately.

Communications Division

## Items of General Interest

### Announcement 98-95

#### Revisions to Form 8857

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##### **Purpose**

The purpose of this announcement is to request public comments on the revised Form 8857, Request for Innocent Spouse Relief (And Allocation of Liability and Equitable Relief). Form 8857 is being revised to reflect section 3201 of the IRS Restructuring and Reform Act of 1998.

**Note:** *The revised Form 8857 in this announcement is subject to change and OMB approval before final release.*

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##### **Revisions to Form 8857**

The revisions include the following:

- The requirement that filers need to have over \$500 of additional tax due in order to request relief is eliminated.
  - Procedures are provided for requesting innocent spouse relief, allocation of liability, and equitable relief.
  - Explanations of the law changes and types of relief are added to the instructions.
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##### **Benefits of the revisions**

The revised Form 8857 will:

- Help filers become aware of the new tax law.
  - Provide filers a means to request the various types of relief.
  - Help filers by providing simple explanations of the new tax law and guidance for completing the form.
  - Allow the IRS to improve control and processing of the requests by highlighting the Cincinnati Service Center filing address.
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**Comments  
requested**

The IRS would like to receive comments on the proposed revisions to Form 8857 from interested parties by November 30, 1998. Send written comments to:

Chairman, Tax Forms Coordinating Committee  
Internal Revenue Service, OP:FS:FP, Room 5577  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Alternatively, you may send comments to the Chairman, TFCC, by fax at (202) 622-5025, or e-mail to [tfpmail@publish.no.irs.gov](mailto:tfpmail@publish.no.irs.gov)

After the end of the comment period, the IRS will evaluate the documents received and announce the final changes to Form 8857. Although we will not be able to respond to each comment, we will carefully consider all of them.

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***Caution: DRAFT FORM***

This is an advance proof copy of an IRS tax form. It is subject to change and OMB approval before it is officially released. You can check the scheduled release date on our web site ([www.irs.ustreas.gov](http://www.irs.ustreas.gov)).

If you have any comments on this draft form, you can submit them to us on our web site. Include the word DRAFT in your response. You may make comments anonymously, or you may include your name and e-mail address or phone number. We will be unable to respond to all comments due to the high volume we receive. However, we will carefully consider each suggestion. So that we can properly consider your comments, please send them to us within 30 days from the date the draft was posted.

**Request for Innocent Spouse Relief**  
**(And Allocation of Liability and Equitable Relief)**

OMB No. 1545-1596

▶ **Do not file with your tax return.** ▶ **See instructions.**

Your name	Your social security number
Your current home address (number and street). If a P.O. box, see instructions.	Apt. no.
City, town or post office, state, and ZIP code. If a foreign address, see instructions.	Daytime phone no. (optional) ( )

**Before you begin, you need to understand the following terms. See instructions for descriptions.**

- Allocation of Liability
- Joint and Several Liability
- Underpayment of Tax
- Innocent Spouse Relief
- Understatement of Tax
- Erroneous Items
- Equitable Relief



*The IRS can help you with your request. If you are working with an IRS employee, you can ask that employee or you can call 1-800-829-1040.*

- 1 Enter the year for which you are requesting relief from liability of tax . . . . . ▶
- 2 Information about your spouse (or former spouse) to whom you were married at the end of the year on line 1.

Name	Social security number
Current home address (number and street). If a P.O. box, see instructions.	Apt. no.
City, town or post office, state, and ZIP code. If a foreign address, see instructions.	Daytime phone no. (if known) ( )

**3 Allocation of Liability**

You may be relieved of liability for the portion of an understatement of tax that is allocable to your spouse (or former spouse) if you and your spouse (or former spouse):

- Are no longer married,
- Are legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file this form.

To elect allocation of liability, attach a statement as explained in the instructions and check here . . . ▶

**4 Innocent Spouse Relief**



*You may not need to request innocent spouse relief if you qualify for allocation of liability. However, you may still request innocent spouse relief if you wish.*

You may be allowed relief for an understatement of tax due to erroneous items of your spouse (or former spouse).

To request innocent spouse relief, attach a statement as explained in the instructions and check here . . . ▶

**5 Equitable Relief**

If you do not qualify for relief under **3** or **4** above, you may request equitable relief. If you want to request equitable relief, attach a statement as explained in the instructions and check here . . . . . ▶

**Where To File:** Generally, send this form to: **Internal Revenue Service Center, Cincinnati, OH 45999-0857.** But if you are meeting with an IRS employee or you received an IRS notice of deficiency, see page 2.

Under penalties of perjury, I declare that I have examined this form and any accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

<b>Sign Here</b>	Your signature	Date	
Keep a copy of this form for your records. ▶  <b>Paid Preparer's Use Only</b>	Preparer's signature	Date	Preparer's social security no.
	Firm's name (or yours if self-employed) and address	Check if self-employed <input type="checkbox"/>	EIN
			ZIP code



## General Instructions

### A Change To Note

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 simplified innocent spouse relief. You can now request innocent spouse relief for an understatement of tax no matter how small the amount. If you are divorced, separated, or no longer living with your spouse, you may now elect to allocate liability for an understatement of tax on a joint return between you and your spouse (or former spouse). Also, the IRS will consider your request for equitable relief in situations where it would be unfair to hold you liable for tax that should be paid only by your spouse (or former spouse).

The new law applies to any tax liability arising after July 22, 1998, or any tax liability that was unpaid as of that date. For relief of liability for amounts that were paid as of that date, check the box on line 4 and attach the requested statement (see **Pub. 971, Innocent Spouse Relief**, for limits that may apply).

### Purpose of Form

Use Form 8857 to request relief from liability for tax you owe, plus related penalties and interest, that you believe should be paid only by your spouse (or former spouse). You generally must have filed a joint return for the year for which you owe tax (but see **Community Property Laws** on page 3). If you owe tax for more than 1 year, file a separate Form 8857 for each year. The IRS will evaluate your request and tell you if you qualify.

You can request one or more of these three types of relief:

- Innocent spouse relief (see page 3),
- Allocation of liability (see page 3), or
- Equitable relief (see page 4).

**Additional information.** See Pub. 971 for more details.

### When and Where To File

**When to file.** Generally, you should file Form 8857 as soon as you become aware of an unpaid tax liability that you believe should be paid only by your spouse (or former spouse). The following are some of the ways you may become aware of such a liability.

- The tax return is examined by the IRS.
- You receive an IRS notice.

You must file Form 8857 no later than 2 years after the first IRS attempt to collect the tax. However, you may file it any time up to 2 years after the first IRS attempt to collect the tax that occurs after July 22, 1998.

**Where to file.** Do not file Form 8857 with your tax return. Instead, see below.

IF . . .	THEN file Form 8857 with . . .
You are meeting with an IRS employee for an examination, examination appeal, or collection,	That IRS employee.
You received an IRS notice of deficiency, and the 90-day period specified in the notice has not expired.*	The IRS employee named in the notice. Attach a copy of the notice.
None of the situations above apply to you,	<b>Internal Revenue Service Center Cincinnati, OH 45999-0857</b>

\*Before the end of the 90-day period, you should file a petition with the Tax Court, as explained in the notice. By doing so, you preserve your rights if the IRS is unable to properly consider your request before the end of the 90-day period. Include the information that supports your position, including when and why you filed Form 8857, in your petition to the Tax Court. The time for filing with the Tax Court is **not** extended while the IRS is considering your request.

### Tax Court Review of Request

You may petition (ask) the Tax Court to review your request for innocent spouse relief or your election to allocate liability if:

- The IRS sends you a determination notice denying, in whole or in part, your request for or election of relief, **or**
- You have not received a determination notice from the IRS within 6 months from the date you filed Form 8857.

You may petition the Tax Court to review your request no later than the end of the 90-day period that begins on the date the IRS mails you a determination notice. See Pub. 971 for details on petitioning the Tax Court to review your request.

### Joint and Several Liability

Generally, joint and several liability applies to all joint returns. This means that both you and your spouse (or former spouse) are liable for any tax shown on a joint return plus any **understatement of tax** (defined below) that may become due later. This is true even if a divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns. Form 8857 allows you to request that joint and several liability not apply to part or all of any unpaid tax.

## Understatement of Tax

An understatement of tax, or deficiency, is generally the difference between the total amount of tax that should have been shown on the return and the amount that actually was shown on the return. This amount can be reduced by an abatement, credit, refund, or other payment.

**Example.** You and your spouse (or former spouse) file a joint return showing \$5,000 of tax, which was fully paid. The return is later audited by the IRS. The IRS finds \$10,000 of income that your spouse earned but did not report on the tax return. With the additional income, the total tax becomes \$6,500. You and your spouse are both liable for the \$1,500 understatement of tax. You could request innocent spouse relief or elect allocation of liability for the understatement of tax. If you are not eligible for either type of relief, you could request equitable relief.

## Underpayment of Tax

An underpayment is tax that is properly shown on the return, but has not been paid.

**Example.** You filed a joint return that properly reflects your income and deductions, but showed an unpaid balance due of \$5,000. You and your spouse were getting divorced. You gave your spouse \$2,500 and your spouse promised to pay the full \$5,000, but did not. You would not be eligible for innocent spouse relief or allocation of liability because there is no understatement of tax. However, you may request equitable relief for the underpayment of tax.

## Community Property Laws

You must generally follow community property laws when filing a tax return if you are married and live in a community property state. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.

**Note:** *If you were married and filed a separate return in a community property state and are now liable for an underpayment or understatement of tax you believe should be paid only by your spouse (or former spouse), you may request equitable relief.*

## Specific Instructions

### Your Current Home Address

**P.O. box.** Enter the box number instead of your street address **only** if the post office does not deliver mail to your home.

**Foreign address.** Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please do not abbreviate the country name.

## Line 2—Information About Your Spouse (or Former Spouse)

Enter the current name and social security number (SSN) of the person to whom you were married at the end of the year listed on line 1. If the name of your spouse (or former spouse) shown on that year's tax return is different from the current name, enter it in parentheses after the current name. For example: Jane Maple (formerly Jane Oak). Enter the current address and phone number if you know it.

**P.O. box.** Enter the box number instead of the street address **only** if you do not know the street address.

**Foreign address.** Enter the information as explained above.

## Line 3—Allocation of Liability

If you filed a joint return for the year entered on line 1, you may be able to allocate liability for any understatement of tax on that return between you and your spouse (or former spouse). Generally, you can elect to do so if you and that person:

- Are no longer married,
- Are legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file Form 8857.

**Note:** *A widow or widower is considered no longer married.*

You must show which items that caused the understatement are allocable to you and which are allocable to your spouse (or former spouse).

**Exception.** If, at the time you signed the joint return, you knew about any item not allocable to you that resulted in part or all of the understatement, then your election will not apply to that part of the understatement.

## Electing Allocation of Liability

Check the box on line 3 and attach a statement to Form 8857. Show the total amount of the understatement of tax for which you are liable. For each item that resulted in an understatement of tax, explain whether the item is attributable to you, your spouse (or former spouse), or both of you. Generally, allocate the items as if you had filed separate returns. You may wish to complete, as worksheets, separate tax returns for yourself and your spouse (or former spouse) to show the allocation. For example, unreported income earned by your spouse (or former spouse), plus any related self-employment tax, would be allocated to that person. An overstated deduction of home mortgage interest on a home you owned jointly that was paid from a joint checking account would generally be allocated equally between both of you. See Pub. 971 for more details.

## Line 4—Innocent Spouse Relief



*If you qualify for allocation of liability, you may not need to request innocent spouse relief. The amount of relief allowed by electing allocation of liability may be equal to or greater than the amount allowed by requesting innocent spouse relief. However, you may still request innocent spouse relief if you wish.*

You may be allowed innocent spouse relief if:

- You filed a joint return for the year entered on line 1,
- There is an understatement of tax on that return that is due to erroneous items of your spouse (or former spouse),
- You can show that when you signed the return you did not know and had no reason to know that the understatement of tax existed (or the extent of the understatement), and
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

### Erroneous Items

Any income, deduction, or credit is an erroneous item if:

- It is omitted from or incorrectly reported on the joint return,
- It is attributable to your spouse (or former spouse),
- It results in an understatement of tax, **and**
- You either did not know and had no reason to know about the understatement or the extent of it (see **Partial Innocent Spouse Relief** below).

Erroneous items can include the following:

- Income received by your spouse that is not reported on the joint return, or
- A deduction or credit incorrectly claimed on the joint return by your spouse.

### Partial Innocent Spouse Relief

If you knew about any of the erroneous items, but not the full extent of the item(s), you may be allowed relief for part of the understatement. Explain in the statement you attach to Form 8857 how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

### Requesting Innocent Spouse Relief

To request innocent spouse relief, check the box on line 4 and attach a statement to Form 8857 explaining why you believe you qualify. The contents of the statement will vary depending on your circumstances, but should include the following:

- The amount and a detailed description of each erroneous item, including the extent, if any, to which you knew about it and why you had no reason to know about the item or know the extent of the item,
- The amount of the understatement of tax for which you are liable and are seeking relief, and
- Why you believe it would be unfair to hold you liable for the understatement of tax.

## Line 5—Equitable Relief

You may be allowed equitable relief if, taking into account all the facts and circumstances, it would be unfair to hold you liable for any understatement or underpayment of tax that should be paid only by your spouse (or former spouse).

You can only be allowed equitable relief for part or all of any liability that does not qualify for either allocation of liability or innocent spouse relief. You should request allocation of liability or innocent spouse relief first, unless you are sure you are not eligible. The IRS cannot consider requests for equitable relief until it has been determined that innocent spouse relief and allocation of liability do not apply.

### Requesting Equitable Relief

Attach an explanation of why you believe it would be unfair to hold **you** liable for the tax instead of your spouse (or former spouse).

### Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to determine the amount of liability, if any, of which you may be relieved. Internal Revenue Code section 6015 allows relief of liability. If you request or elect relief of liability, you must give us the information requested on this form. Code section 6109 requires you to provide your social security number. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. If you do not provide all the information in a timely manner, we may not be able to process your request or election.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Learning about the law or the form, 17 min.; Preparing the form, 17 min.; and Copying, assembling, and sending the form to the IRS, 20 min.**

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the form to this address. Instead, see **When and Where To File** on page 2.

