



# Divorce Taxation: Retirement Benefits and Innocent Spouse Relief

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Course #3124B

Taxes

2 Credit Hours

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# DIVORCE TAXATION: RETIREMENT BENEFITS AND INNOCENT SPOUSE RELIEF

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This course covers the various forms of relief that may be available to a spouse or former spouse. It also includes information of the distribution and tax rules that govern the division of retirement plans associated with divorce.

## LEARNING ASSIGNMENTS AND OBJECTIVES

*As a result of studying each assignment, you should be able to meet the objectives listed below each individual assignment.*

### SUBJECTS

#### **Innocent Spouse Relief Divorce and Retirement Benefits**

Study the course materials from pages 1 to 73

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

#### **Objectives:**

- Identify the various forms of relief that may be available to a spouse or former spouse.
- Recall the distribution and tax rules that govern the division of retirement plans associated with divorce.

## **NOTICE**

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## EXAM OUTLINE

- **TEST FORMAT:** The final exam for this course consists of 10 multiple-choice questions and is based specifically on the information covered in the course materials.
- **ACCESS FINAL EXAM:** Log in to your account and click Take Exam. A copy of the final exam is provided at the end of these course materials for your convenience, however you must submit your answers online to receive credit for the course.
- **LICENSE RENEWAL INFORMATION:** This course qualifies for **2** CPE hours.
- **PROCESSING:** You will receive the score for your final exam immediately after it is submitted. A score of 70% or better is required to pass.
- **CERTIFICATE OF COMPLETION:** Will be available in your account to view online or print. If you do not pass an exam, it can be retaken free of charge.

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# CHAPTER 1: INNOCENT SPOUSE RELIEF

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## Chapter Objective

### After completing this chapter, you should be able to:

- Identify the various forms of relief that may be available to a spouse or former spouse.

## I. INTRODUCTION AND OVERVIEW

By requesting innocent spouse relief, a taxpayer can be relieved of responsibility for paying tax, interest, and penalties if his or her spouse (or former spouse) improperly reported items or omitted items on his or her tax return. This type of relief is authorized by Internal Revenue Code § 6015, later.

Generally, the tax, interest, and penalties that qualify for relief can only be collected from the taxpayer's spouse (or former spouse). However, the individual seeking relief remains jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The IRS can collect these amounts from either the taxpayer seeking relief or his or her spouse (or former spouse).

An applicant must meet all of the following conditions to qualify for innocent spouse relief: (1) the applicant filed a joint return which has an understatement of tax due to erroneous items of his or her spouse or former spouse; (2) the applicant establishes that at the time he or she signed the joint return he or she did not know, and had no reason to know, that there was an understatement of tax; and (3) taking into account all the facts and circumstances, it would be unfair to hold the applicant liable for the understatement of tax.

If innocent spouse relief is granted under section 6015(b), refunds are allowable for amounts paid on or after July 22, 1998. Note that all refunds are subject to Internal Revenue Code section 6511.

A request for innocent spouse relief will not be granted if the IRS proves that the taxpayer and his or her spouse (or former spouse) transferred property to one another as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, ex-spouse, or business partner.

If a taxpayer does not qualify for innocent spouse relief, he or she may qualify for one of two other types of relief:

- Relief by separation of liability; or
- Equitable relief.

Under relief by separation of liability, a taxpayer allocates (separates) the understatement of tax (plus interest and penalties) on the joint return between the taxpayer and his or her spouse (or former spouse). The understatement of tax allocated to the applicant for relief is generally the amount for which he or she

is responsible.

This type of relief is available only for unpaid liabilities resulting from understatements of tax. Refunds are not allowed. To request relief by separation of liability, the taxpayer must have filed a joint return and meet either of the following requirements at the time he or she files Form 8857: (1) the taxpayer is no longer married to, or is legally separated from, the spouse with whom he or she filed the joint return for which he or she is requesting relief (under this rule, a person is no longer married if he or she is widowed); or (2) the taxpayer was not a member of the same household as the spouse with whom he or she filed the joint return at any time during the 12-month period ending on the date he or she filed Form 8857.

If an individual does not qualify for innocent spouse relief, relief by separation of liability, or relief from liability arising from community property law, he or she may still be relieved of responsibility for tax, interest, and penalties through equitable relief. If a taxpayer requests any of these types of relief, and the IRS determines he or she does not qualify for any of them, the IRS will consider whether equitable relief is appropriate.

Unlike innocent spouse relief or separation of liability, a taxpayer can get equitable relief from an understatement of tax or an underpayment of tax. An underpayment of tax is an amount of tax an individual properly reported on his or her return but he or she has not paid.

This chapter discusses these three types of relief, who may qualify for them, and how to get them. Married persons who did not file joint returns, but who live in community property states, may also qualify for relief. IRS Form 8857, Request for Innocent Spouse Relief, as well as IRS instructions for Form 8857, are provided for reference at the end of the chapter.

## **§ 6015. Relief from joint and several liability on joint return**

**(a) In general.** – *Notwithstanding section 6013(d)(3) –*

*(1) an individual who has made a joint return may elect to seek relief under the procedures prescribed under subsection (b); and*

*(2) if such individual is eligible to elect the application of subsection (c), such individual may, in addition to any election under paragraph (1), elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c).*

*Any determination under this section shall be made without regard to community property laws.*

**(b) Procedures for relief from liability applicable to all joint filers.** –

**(1) In general.** – *Under procedures prescribed by the Secretary, if –*

*(A) a joint return has been made for a taxable year;*



*(B) on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;*

*(C) the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement;*

*(D) taking into account all the facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for such taxable year attributable to such understatement; and*

*(E) the other individual elects (in such form as the Secretary may prescribe) the benefits of this subsection not later than the date which is 2 years after the date the Secretary has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement.*

**(2) Apportionment of relief.** – *If an individual who, but for paragraph (1)(C), would be relieved of liability under paragraph (1), establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, then such individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.*

**(3) Understatement.** – *For purposes of this subsection, the term “understatement” has the meaning given to such term by section 6662(d)(2)(A).*

**(c) Procedures to limit liability for taxpayers no longer married or taxpayers legally separated or not living together. –**

**(1) In general.** – *Except as provided in this subsection, if an individual who has made a joint return for any taxable year elects the application of this subsection, the individual’s liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d).*

**(2) Burden of proof.** – *Except as provided in subparagraph (A)(ii) or (C) of paragraph (3), each individual who elects the application of this subsection shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.*

**(3) Election.** –

**(A) Individuals eligible to make election. –**

**(i) In general.** – *An individual shall only be eligible to elect the application of this subsection if –*