

Innocent Spouse Relief

26 U.S.C. § 6015(b)

Feb 8, 2022

Overview of presentation (1/2)

- Background of joint and several liability
- History of Innocent Spouse Relief (ISR)
- Avenues for Relief
- Conditions of Innocent Spouse Relief
- Tax Court decision exploring solely attributable element of ISR
- What is an understated tax?

Overview of presentation (2/2)

- What is actual knowledge or reason to know?
- Three Tax Court decisions exploring reason to know element of ISR
- What is unfairness?
- Unfairness explored more
- Form 8857
- Situations in which you're not entitled to relief
- Important info
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- END!

Background: what is joint and several Liability?

26 U.S.C. § 6013(d)(3)



- When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability.
- Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability the IRS determines to be due
- You remain jointly and severally liable for taxes, and the IRS can still collect them from you, **even if** you later divorce and **the divorce decree states that your former spouse will be solely responsible for the tax**
 - IRS not privy to those agreements so not bound by them*****

Source:

<https://www.irs.gov/taxtopics/tc205#:~:text=Joint%20and%20several%20liability%20means,claimed%20improper%20deductions%20or%20credits.>



History of Innocent Spouse Relief

- In the first five decades of the income tax, the only means for overcoming joint and several liability was for a spouse to prove that he or she signed the return under duress. In addition, courts have held that the victim spouse must prove not just abuse but that the joint tax return was signed under duress.
- Judges felt like this was too harsh; called for congressional action
- In 1971, innocent spouse relief introduced as a hardship provision in 26 U.S.C. 6013(e); included very strict provisions to gain relief
- Congress repealed section 6013(e) and enacted section 6015 in 1998 in response to a larger movement to restructure IRS and expand innocent spouse relief

Source: Stephanie Hunter McMahon, An Empirical Study of Innocent Spouse Relief: Do Courts Implement Congress's Legislative Intent?, 12 Fla. Tax Rev. 629 (2012)

Background: avenues for relief

In some cases, a spouse (or former spouse) will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available to married persons who filed joint returns.

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



Source:
<https://www.irs.gov/taxtopics/tc205#:~:text=Joint%20and%20several%20liability%20means,claimed%20improper%20deductions%20or%20credits.>

Innocent Spouse Relief - 5 conditions

Under section 6015(b), a taxpayer requesting relief from joint and several liability must meet five conditions:

- (1) a joint return was filed for the taxable year;
- (2) there was an understatement of tax [**solely**] attributable to an erroneous item of the non-requesting spouse;
- (3) at the time of signing the return, the requesting spouse did not know and did not have reason to know of the understatement;
- (4) taking into account all the facts and circumstances, it is [unfair] to hold the requesting spouse liable for the deficiency in tax attributable to the understatement; and
- (5) the requesting spouse sought relief within two years of the first collection activity relating to the liability. The requesting spouse must satisfy all five requirements to qualify for relief.

Blappert v. Comm'r of Internal Revenue, No. 10417-18, 2021 WL 6331856, at *3 (T.C. Dec. 9, 2021)

Recent interesting tax court decision:
What does solely attributable mean?

Farmer v. Comm'r of Internal Revenue, No. 1117-20S, 2021 WL 6549913
(T.C. Dec. 17, 2021)

- **Husband (Petitioner) and wife married in Arizona and divorced in 2018**
- **Ms. Farmer (wife) applied for relief from joint and several liability under section 6015 for 2015 and 2016. IRS granted wife the relief requested.**
- **In March of 2019 petitioner submitted a form to IRS opposing Ms. Farmer's request for relief**

Farmer v. Comm'r of Internal Revenue, No. 1117-20S, 2021 WL 6549913 (T.C. Dec. 17, 2021)

- On March 27, 2019, IRS received petitioner's Form 8857, requesting relief from joint and several liability for 2015 and 2016. *Petitioner's focus on the form appears to be directed to disputing Ms. Farmer's entitlement to the relief granted to her by the IRS rather than the relief he, himself was seeking.*
- IRS determined that petitioner was not entitled to relief from joint and several liability under section 6015(b), (c), or (f) for the years at issue primarily on the undisputed ground that the items of omitted income giving rise to the tax liabilities were attributable to him.

**It's your
responsibility.**



What is understated tax?

You have an understated tax if the IRS determined that your total tax should be more than the amount that was actually shown on your return. Erroneous items are either of the following.

1. Unreported income. This is any gross income item received by your spouse (or former spouse) that is not reported.
2. Incorrect deduction, credit, or basis. This is any improper deduction, credit, or property basis claimed by your spouse (or former spouse).

Source: <https://www.irs.gov/businesses/small-businesses-self-employed/innocent-spouse-questions-and-answers>

“You must show that when you signed the joint return **you did not know, and had no reason to know**, that the understated tax existed (or the extent to which the understated tax existed).”

What is actual knowledge or reason to know?

Actual Knowledge:

- **You actually knew** of the understated tax, or **a reasonable person in similar circumstances** would have known of the understated tax.

Reason to know:

- If you had reason to know about an erroneous item that belongs to your spouse (or former spouse), the relief doesn't apply. The IRS will consider all facts and circumstances in determining whether you had reason to know of an understated tax due to an erroneous item.

Recent interesting tax court decision re: 'reason to know' element

Blappert v. Comm'r of Internal Revenue, No. 10417-18, 2021 WL 6331856 (T.C. Dec. 9, 2021)

- Catherine Blappert met Bradley Blappert, a physician, when she was working as a medical sales representative. The Blapperts married in 2005. In early 2013, Dr. Blappert opened a medical practice, Peak Medical Partners LLC (Peak Medical). They divorced in June 2020.
- Ms. Blappert filed for innocent spouse relief after IRS determined unreported income from Peak Medical for over \$100,000. **The issue was whether Ms. Blappert knew about the income or had reason to know.**

Blappert v. Comm'r of Internal Revenue, No. 10417-18, 2021 WL 6331856 (T.C. Dec. 9, 2021)

- Court found that Ms. Blappert did not have actual knowledge of the omitted income. Actual knowledge requires knowledge of the receipt of the income; **knowledge of the source alone is not sufficient.** . . . Ms. Blappert believed that Dr. Blappert properly reported his income.
- Court found that **Ms. Blappert did not have reason to know about the omitted income.** Although the omitted income of \$108,318 was significant, Ms. Blappert did not have information that would call into question the accuracy of the \$650,000 of income actually reported. Ms. Blappert worked as a medical sales representative and **had no meaningful financial expertise** or **education.** She did not participate in bookkeeping or accounting for Dr. Blappert's business. And the Blapperts led a lifestyle consistent with the income they reported.

Recent interesting tax court decision re: 'reason to know' element

(2)

Todisco v. Comm'r of Internal Revenue, No. 15657-18S, 2021 WL 4593437 (T.C. Oct. 6, 2021)

- Mr. Todisco and Ms. Gonzales married in 2010, and divorced in 2016. Mr. Todisco was employed in construction. In 2013, IRS issued a joint notice of deficiency of \$5,963 in petitioners' 2010 Federal income tax, disallowing deductions for unreimbursed employee business expenses and tax preparation fees claimed for 2010. Ms. Gonzales subsequently amended the petition to assert, as an affirmative defense, her entitlement to relief from joint and several liability on their joint return for 2010 pursuant to section 6015(b), (c), or (f).
- **The issue: whether Ms. Gonzales knew about the deduction?**

Todisco v. Comm'r of Internal Revenue, No. 15657-18S, 2021 WL 4593437 (T.C. Oct. 6, 2021)

- Ms. Gonzales is a high school graduate with no education in business, accounting, or finance and no experience in business.
- She was involved in the financial activities of the family; however, Mr. Todisco maintained financial control over the household and **was evasive or deceitful with respect to the family's finances.**
- **When Ms. Gonzales asked Mr. Todisco to explain the 2010 notice of deficiency, he told her that she was too stupid to understand.**

Recent appellate decision re: 'reason to know' element (3)

Rogers v. Comm'r of Internal Revenue, 9 F.4th 576, 578–79 (7th Cir. 2021)

- Married since 1967, John and Frances Rogers filed joint federal income tax returns for many years. They underreported their tax obligations many times over, and the misreporting was the product of a fraudulent tax scheme designed by John, a Harvard-trained tax attorney. The fraud did not elude the Internal Revenue Service, though, and the many subsequent collection and enforcement proceedings in the U.S. Tax Court have not gone well for the Rogerses.
- Did Frances Rogers know or have reason to know of the fraudulent tax schemes from her husband? Court said yes.

Rogers v. Comm'r of Internal Revenue, 9 F.4th 576, 578–79 (7th Cir. 2021)

Court determined no clear error in the Tax Court's finding that Frances [Petitioner] meaningfully participated in the tax deficiency trial for the 2003 tax year, in part because she was represented by counsel (her husband John), attended the entire trial, and sat at the table reserved for petitioners and their counsel. **Nor can we overlook that Frances—herself the holder of a law degree and an M.B.A.—is highly educated, a fact that adds to the Tax Court's finding that she understood the proceedings and the implications of the court's decision.** We also see no clear error in the Tax Court's discrediting of Frances's claim that she had no knowledge of her husband's business activities or the tax shelter he promoted. (Court used *Resser* reasonably prudent person test)



“Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax”

What is unfairness?

The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you responsible for the understated tax. The following are examples of factors the IRS will consider:

1. Whether you received a significant benefit (defined below), either directly or indirectly, from the understated tax.
2. Whether your spouse (or former spouse) deserted you.
3. Whether you and your spouse have been divorced or separated.
4. Whether you received a benefit on the return from the understated tax

'Unfairness' explored more:

Commissioner provided a list of nonexclusive factors to take into account when determining whether to grant equitable relief under section 6015(f):

(1) marital status;

(2) economic hardship;

*Economic hardship exists if satisfaction of the tax liability, in whole or in part, will cause the requesting spouse to be unable to pay reasonable basic living expenses.

(3) in the case of an understatement, knowledge or reason to know of the item giving rise to the understatement;

(4) legal obligation;

(5) significant benefit;

(6) compliance with tax laws; and

(7) mental or physical health.

Source: Todisco v. Comm'r of Internal Revenue, No. 15657-18S, 2021 WL 4593437, at *11 (T.C. Oct. 6, 2021)

Tax Court Review of Request: **Form 8857**

You should file Form 8857 as soon as you become aware of a tax liability for which you believe only your spouse or former spouse should be held responsible. The following are some of the ways you may become aware of such a liability:

- 1) The IRS is examining your tax return and proposing to increase your tax liability or
- 2) The IRS sends you a notice

Generally, you must file Form 8857 no later than **two years** after the date on which the IRS first attempted to collect the tax from you.

Situations in which you are not entitled to relief

You are not entitled to innocent spouse relief for any tax year to which the following situations apply:

1. In a final decision, a court considered whether to grant you relief from joint liability and decided not to do so.
2. In a final decision, a court did not consider whether to grant you relief from joint liability, but you meaningfully participated in the proceeding and could have asked for relief.
3. You entered into an offer in compromise with the IRS.
4. You entered into a closing agreement with the IRS that disposed of the same liability for which you want to seek relief.

IMPORTANT: The IRS Must Contact Your Spouse or Former Spouse

By law, the IRS must contact your spouse or former spouse. **There are no exceptions, even for victims of spousal abuse or domestic violence.** IRS will inform your spouse or former spouse that you filed Form 8857 and will allow him or her to participate in the process. If you are requesting relief from joint and several liability on a joint return, the IRS must also inform him or her of its preliminary and final determinations regarding your request for relief. To protect your privacy, the IRS 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).

Additional resource

Publication 971, Innocent Spouse Relief

Contact information

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Thank you!