

# IRS Notice 2012-8 Has Revamped “Innocent Spouse” Equitable Relief Requests

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*Practitioners And Applicants Should Consider Revised Standards In Preparing (or Resubmitting) Innocent Spouse Submissions Especially in Cases With Abuse or Intimidation, Economic Hardship, Health Problems, Or Any Unusual Factors*

When spouses sign joint tax returns, they are jointly and severally liable for any unpaid taxes shown on the returns, and for any obligations (including additional taxes, penalties and interest) that may arise from a later audit or examination of that return.

Joint and several liability can result in some nasty surprises, frequently years later when a spouse (the so-called “innocent spouse”) first learns that the other spouse has omitted income or grossly overstated deductions belonging to the other spouse from the tax return, resulting in an unexpected tax bill. The Internal Revenue Service will look to both spouses for payment of the tax bill and will generally collect from the easiest or most readily available source. This can be extremely painful when the spouses have since divorced and the potential “Innocent Spouse” is facing collection action (with the other spouse typically uncollectable or otherwise beyond the reach of the tax authorities.)

There is an administrative process known as “Innocent Spouse Relief” to have the joint and several responsibility for the tax bill limited or terminated. The relief has been somewhere between difficult and very difficult to obtain; cases can turn on a number of factors and the burden to show that relief should be granted is upon the Requesting Spouse. Depending on various circumstances, the matter can ultimately be litigated in United States Tax Court.

Many tax practitioners are aware that the Internal Revenue Service announced changes to its prior policies on “innocent spouse” relief with respect to requests for relief under 26 U.S.C. Section 6015(f) (so-called “equitable relief”) in January 2012. The guidelines can be found at Internal Revenue Bulletin 2012-4, Notice 2012-8, available on the IRS website. More formal materials should be forthcoming from the Internal Revenue Service.

Notice 2012-8 does not come out and state that equitable relief requests have been granted too stingily or that the IRS has been too harsh in evaluating requests. Rather, the Notice indicates that “the Internal Revenue Service’s experience...has grown significantly.” The purpose of the Notice is to:

“ensure that requests for innocent spouse relief are granted under Section 6015(f) when the facts and circumstances warrant and that, when appropriate, requests are granted in the initial stage of the administrative process.”

This preamble, combined with the substantive revisions to the 6015(f) standards, strongly suggests that requests that previously would have been denied now might be granted, especially requests that touch upon the factors that are revised by the Notice. Accordingly, practitioners should consider re-visiting certain previously denied claims and evaluate existing and future matters in light of the revised factors.

The IRS refers to the spouse requesting relief from joint and several liability as the “Requesting Spouse.” The other spouse is called the “Non Requesting Spouse” or “NRS.”

What types of Requesting Spouses are likely to benefit from the new guidelines?

- A Requesting Spouse that did not meet the prior 2-year statute of limitations for applying for relief but has a potentially meritorious application (and still has time left on the ten-year collection statute of limitations or the two-year claim for refund);
- A Requesting Spouse that would benefit from the revisions to the equitable factors, for example, a Requesting Spouse that:
  - remains married to the Non Requesting Spouse (“NRS”);
  - might *now* be able to show economic hardship from paying the tax, as the economic hardship standards are (slightly) easier and reflect the economic condition at the time of evaluation and/or trial (as opposed to the time of application);
  - cannot show economic hardship, as that is no longer a negative factor;
  - can show abuse or intimidation by the NRS;

- lacked financial control or influence;
  - was the victim of certain types of fraudulent conduct by the NRS;
  - has complied with the tax laws subsequent to the years in question.
- A Requesting Spouse that would benefit from a “weighing” instead of a “counting” of factors; and,
- A Requesting Spouse with extreme circumstances in any of the categories that might outweigh negative factors.

(This is not an exhaustive list)

Applicants and practitioners should keep in mind that Section 6015(f) relief is only available if Section 6015(b) or (c) relief is not available. Section 6015(f) can be a sort of “last resort” for difficult or challenging applications or unusual circumstances.

Because the operative standard is no longer “counting” but “weighing,” the thorough documentation of factors (and their degree or severity) can substantially affect the administrative or judicial evaluation of an innocent spouse application.

Careful attention should be given to the 6015(f) factors and applicable law, regulation, and precedent bearing upon those factors. Merely checking boxes on Form 8857 and completing a few lines of text in explanation is unlikely to persuade a processing center reviewer, Appeals Officer, or the United States Tax Court, to grant relief.

The IRS’ overview can be found at

<http://www.youtube.com/watch?v=41HhCiqMB64> and  
<http://www.irs.gov/newsroom/article/0,,id=252036,00.html>

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