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UTAH BANKRUPTCY LAWYERS FORUM

**Those Pesky Tax Issues In Bankruptcy
What Are They And How Are They Solved**

September 15, 2009

Applicable Utah Rules of Professional Conduct

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

IRS Taxpayer Advocate Information



Contact a Local Taxpayer Advocate (LTA) in Utah

How Do I Reach A Taxpayer Advocate?

Call Your Local Taxpayer Advocate in **Utah**.

City	Address	Phone	Fax
Salt Lake City	50 south 200 East, Stop 1005 SLC, Salt Lake City, UT 84111	801-799-6958	801-799-6957

or, Call the Taxpayer Advocate Service toll-free phone number: **1-877-777-4778**

For TTY/TTD help call **1-800-829-4059**

or, Complete **Form 911**. Fax or mail this form to a Taxpayer Advocate, fax number listed above. This form may also be obtained (via U.S. Mail) by calling the IRS at 1-800-829-3676.

Form 911 requires the Taxpayer Advocate Service to determine if significant hardship exists and what actions can be taken to relieve the hardship.

We offer free, independent, and confidential tax assistance to taxpayers unable to resolve their tax problems through normal channels or individuals experiencing a hardship. The Taxpayer Advocate Service helps individual and business taxpayers resolve problems with the IRS.

- Ensuring taxpayer problems which are not resolved through normal IRS channels are promptly and impartially handled;
- Assisting taxpayers who are facing hardships;
- Identifying issues that compromise taxpayer rights, increase taxpayer burden or create problems; and bringing these issues to the attention of IRS management;
- Recommending administrative and legislative changes through the National Taxpayer Advocate's Annual Report to Congress.

Page Last Reviewed or Updated: December 09, 2005

Department of the Treasury - Internal Revenue Service

Request for Taxpayer Advocate Service Assistance

(And Application for Taxpayer Assistance Order)

Form **911**
(Rev. 6-2007)**Section I – Taxpayer Information** (See Pages 3 and 4 for Form 911 Filing Requirements and Instructions for Completing this Form.)

1a. Your name as shown on tax return		2a. Your Social Security Number	
1b. Spouse's name as shown on tax return		2b. Spouse's Social Security Number	
3a. Your current street address (Number, Street, & Apt. Number)			
3b. City		3c. State (or Foreign Country)	3d. ZIP code
4. Fax number (if applicable)	5. E-mail address		
6. Employer Identification Number (EIN) (if applicable)		7. Tax form(s)	8. Tax period(s)
9. Person to contact		10. Daytime phone number <input type="checkbox"/> Check if Cell Phone	11. Best time to call
12. Indicate the special communication needs you require (if applicable) <input type="checkbox"/> TTY/TDD Line <input type="checkbox"/> Interpreter - Specify language other than English (including sign language) _____ <input type="checkbox"/> Other (please specify) _____			
13a. Please describe the tax problem you are experiencing (If more space is needed, attach additional sheets.)			
13b. Please describe the relief/assistance you are requesting (If more space is needed, attach additional sheets.)			

I understand that Taxpayer Advocate Service employees may contact third parties in order to respond to this request and I authorize such contacts to be made. Further, by authorizing the Taxpayer Advocate Service to contact third parties, I understand that I will not receive notice, pursuant to section 7602(c) of the Internal Revenue Code, of third parties contacted in connection with this request.

14a. Signature of Taxpayer or Corporate Officer, and title, if applicable		14b. Date signed
15a. Signature of spouse		15b. Date signed

Section II – Representative Information (Attach Form 2848 if not already on file with the IRS.)

1. Name of authorized representative		2. Centralized Authorization File (CAF) number	
3. Current mailing address		4. Daytime phone number <input type="checkbox"/> Check if Cell Phone	
		5. Fax number	
6. Signature of representative		7. Date signed	

Section III is to be completed by the IRS only

Section III – Initiating Employee Information

Taxpayer name			Taxpayer Identification Number (TIN)	
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1. Name of employee	2. Phone number	3a. Function	3b. Operating division	4. Organization code no.
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5. How identified and received (Check the appropriate box) IRS Function identified issue as meeting Taxpayer Advocate Service (TAS) criteria <input type="checkbox"/> (r) Functional referral (Function identified taxpayer issue as meeting TAS criteria). <input type="checkbox"/> (x) Congressional correspondence/inquiry not addressed to TAS but referred for TAS handling. Name of Congressional Representative _____ Taxpayer or Representative requested TAS assistance <input type="checkbox"/> (n) Taxpayer or representative called into a National Taxpayer Advocate (NTA) Toll-Free site. <input type="checkbox"/> (s) Functional referral (taxpayer or representative specifically requested TAS assistance).	6. IRS received date
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7. TAS criteria (Check the appropriate box. **NOTE: Checkbox 9 is for TAS Use Only**)

- (1) The taxpayer is experiencing economic harm or is about to suffer economic harm.
- (2) The taxpayer is facing an immediate threat of adverse action.
- (3) The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
- (4) The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
- (5) The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
- (6) The taxpayer did not receive a response or resolution to their problem or inquiry by the date promised.
- (7) A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
- (8) The manner in which the tax laws are being administered raise considerations of equity, or have impaired or will impair the taxpayer's rights.
- (9) The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers (**TAS Use Only**).

8. What action(s) did you take to help resolve the problem (Must be completed by the initiating employee)

9. State the reason(s) why the problem was not resolved (Must be completed by the initiating employee)

10. How did the taxpayer learn about the Taxpayer Advocate Service

Instructions for completing Form 911 (Rev. 6-2007)

Form 911 Filing Requirements

When to Use this Form: Use this form if any of the following apply to you:

1. You are experiencing economic harm or are about to suffer economic harm.
2. You are facing an immediate threat of adverse action.
3. You will incur significant costs if relief is not granted (including fees for professional representation).
4. You will suffer irreparable injury or long-term adverse impact if relief is not granted.
5. You have experienced a delay of more than 30 days to resolve a tax account problem.
6. You have not received a response or resolution to your problem or inquiry by the date promised.
7. A system or procedure has either failed to operate as intended, or failed to resolve your problem or dispute within the IRS.
8. The manner in which the tax laws are being administered raise considerations of equity, or have impaired or will impair your rights.
9. The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers.

If an IRS office will not grant the assistance requested or will not grant the assistance in time, you may submit this form. The Taxpayer Advocate Service will generally request that certain activities be stopped while your request for assistance is pending (e.g., lien filings, levies, and seizures).

Where to FAX or Mail this Form: Submit this request to the Taxpayer Advocate office located in the city or state where you reside. For the address of the Taxpayer Advocate office near you or for additional information, call the National Taxpayer Advocate Toll-Free Number: 1-877-777-4778. You can also find the address, phone and fax number of your local Taxpayer Advocate office in the government listings in your local telephone directory. Information can also be found on the IRS website, www.irs.gov, under Taxpayer Advocate.

Third Party Contact: You should understand that in order to respond to this request you are authorizing the Taxpayer Advocate Service to contact third parties when necessary, and that you will not receive further notice regarding contacted parties. See IRC 7602(c).

Overseas Taxpayers: Taxpayers residing overseas can submit this application by mail to the Taxpayer Advocate Service, Internal Revenue Service, PO Box 193479, San Juan, Puerto Rico 00919-3479, or in person at San Patricio Office Center, #7 Tabonuco Street, Room 202, Guaynabo, PR 00966. The application can also be faxed to 1-787-622-8933.

Caution: Incomplete information or requests submitted to a Taxpayer Advocate office outside of your geographical location may result in delays. If you do not hear from us within one week of submitting Form 911, please contact the Taxpayer Advocate office where you originally submitted your request. The Taxpayer Advocate Service will not consider frivolous arguments raised on this form, such as those listed in Notice 2007-30. Frivolous arguments may include arguments that the income tax is illegal or that the IRS has no authority to assess and collect tax. You can find additional examples of frivolous arguments in *Publication 2105, Why do I have to Pay Taxes?* If you use this form to raise frivolous arguments, you may be subject to a penalty of \$5,000.

Paperwork Reduction Act Notice: We ask for the information on this form to carry out the Internal Revenue laws of the United States. Your response is voluntary. 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. Although the time needed to complete this form may vary depending on individual circumstances, the estimated average time is 30 minutes.

Should you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, please write to: **Internal Revenue Service, Tax Products Coordinating Committee, Room 6406, 1111 Constitution Ave. NW, Washington, DC 20224.**

Instructions for Section I

- 1a. Enter your name as shown on the tax return that relates to this request for assistance.
- 1b. Enter your spouse's name (if applicable) if this request relates to a jointly filed return.
- 2a. Enter your Social Security Number.
- 2b. Enter your spouse's Social Security Number if this request relates to a jointly filed return.
- 3a-d. Enter your current mailing address, including the street number and name, and if applicable, your apartment number, your city, town, or post office, state or possession or foreign country, and ZIP code.
4. Enter your fax number, including the area code.
5. Enter your e-mail address. We may use this to contact you if we are unable to reach you by telephone. We will not, however, use your e-mail address to discuss the specifics of your case.
6. Enter your Employer Identification Number if this request involves a business or non-individual entity (e.g., a partnership, corporation, trust, or self-employed individual).
7. Enter the number of the Federal tax return or form that relates to this request.
For example, an individual taxpayer with an income tax issue would enter Form 1040.

Instructions for Section I
continue on the next page ►

Instructions for Section I - (Continued from Page 3)

8. Enter the quarterly, annual, or other tax period that relates to this request. For example, if this request involves an income tax issue, enter the calendar or fiscal year; if an employment tax issue, enter the calendar quarter.
9. Enter the name of the individual we should contact. For partnerships, corporations, trusts, etc., enter the name of the individual authorized to act on the entity's behalf. If the contact person is not the taxpayer or other authorized individual, please see the Instructions for Section II.
10. Enter your daytime telephone number, including the area code. If this is a cell phone number, please check the box.
11. Indicate the best time to call you. Please specify a.m. or p.m. hours.
12. Indicate any special communication needs you require (such as sign language). Specify any language other than English.
- 13a. Describe the problem. Specify the actions that the IRS has taken (or not taken) to resolve the problem. If the problem involves an IRS delay of more than 30 days in resolving your issue, indicate the date you first contacted the IRS for assistance in resolving your problem.
- 13b. Please describe the relief/assistance you are requesting. Specify the action that you want taken and that you believe necessary to resolve the problem. Furnish any documentation that you believe would assist us in resolving the problem.
- 14-15. If this is a joint assistance request, both spouses must sign in the appropriate blocks and enter the date the request was signed. If only one spouse is requesting assistance, only the requesting spouse must sign the request. If this request is being submitted for another individual, only a person authorized and empowered to act on that individual's behalf should sign the request. Requests for corporations must be signed by an officer and include the officer's title.

Note: The signing of this request allows the IRS by law to suspend, for the period of time it takes the Taxpayer Advocate Service to review and decide upon your request, any applicable statutory periods of limitation relating to the assessment or collection of taxes. However, it does not suspend any applicable periods for you to perform acts related to assessment or collection, such as petitioning the Tax Court for redetermination of a deficiency or requesting a Collection Due Process hearing.

Instructions for Section II

Taxpayers: If you wish to have a representative act on your behalf, you must give him/her power of attorney or tax information authorization for the tax return(s) and period(s) involved. For additional information see Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, and the accompanying instructions. Information can also be found in Publication 1546, The Taxpayer Advocate Service of the IRS-How to Get Help With Unresolved Tax Problems.

Representatives: If you are an authorized representative submitting this request on behalf of the taxpayer identified in Section I, complete Blocks 1 through 7 of Section II. Attach a copy of Form 2848, Form 8821, or other power of attorney. Enter your Centralized Authorization File (CAF) number in Block 2 of Section II. The CAF number is the unique number that the IRS assigns to a representative after Form 2848 or Form 8821 is filed with an IRS office.

Note: Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. Form 8821 does authorize anyone you designate to inspect and/or receive your confidential tax information in any office of the IRS, for the type of tax and tax periods you list on Form 8821.

Instructions for Section III (For IRS Use Only)

Enter the taxpayers name and taxpayer identification number from the first page of this form.

1. Enter your name.
 2. Enter your phone number.
 - 3a. Enter your Function (e.g., ACS, Collection, Examination, Customer Service, etc.).
 - 3b. Enter your Operating Division (W&I, SB/SE, LMSB, or TE/GE).
 4. Enter the Organization code number for your office (e.g., 18 for AUSC, 95 for Los Angeles).
 5. Check the appropriate box that best reflects how the need for TAS assistance was identified.
For example, did taxpayer or representative call or write to an IRS function or the Taxpayer Advocate Service (TAS).
 6. Enter the date the taxpayer or representative called or visited an IRS office to request TAS assistance. Or enter the date when the IRS received the Congressional correspondence/inquiry or a written request for TAS assistance from the taxpayer or representative. If the IRS identified the taxpayer's issue as meeting TAS criteria, enter the date this determination was made.
 7. Check the box that best describes the reason TAS assistance is requested. **Box 9 is for TAS Use Only.**
 8. State the action(s) you took to help resolve the taxpayer's problem.
 9. State the reason(s) that prevented you from resolving the taxpayer's problem. For example, levy proceeds cannot be returned because they were already applied to a valid liability; an overpayment cannot be refunded because the statutory period for issuing a refund expired; or current law precludes a specific interest abatement.
 10. Ask the taxpayer how he or she learned about the Taxpayer Advocate Service and indicate the response here.
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IRS Innocent Spouse Relief Information

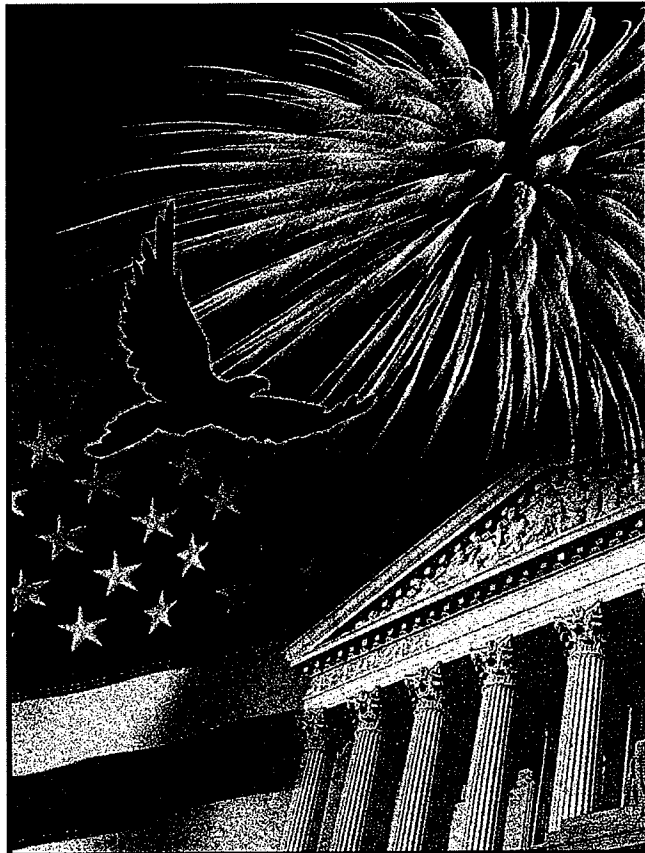


Department of the Treasury
Internal Revenue Service

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Innocent Spouse Relief



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Introduction

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called joint and several 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, even if the additional tax is due to income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for the taxes, and the IRS still can collect from you, even if you later divorce and the divorce decree states that your former spouse will be solely responsible for the tax.

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.

Married persons who did not file joint returns, but who live in community property states, may also qualify for relief. See *Community Property Laws*, later.

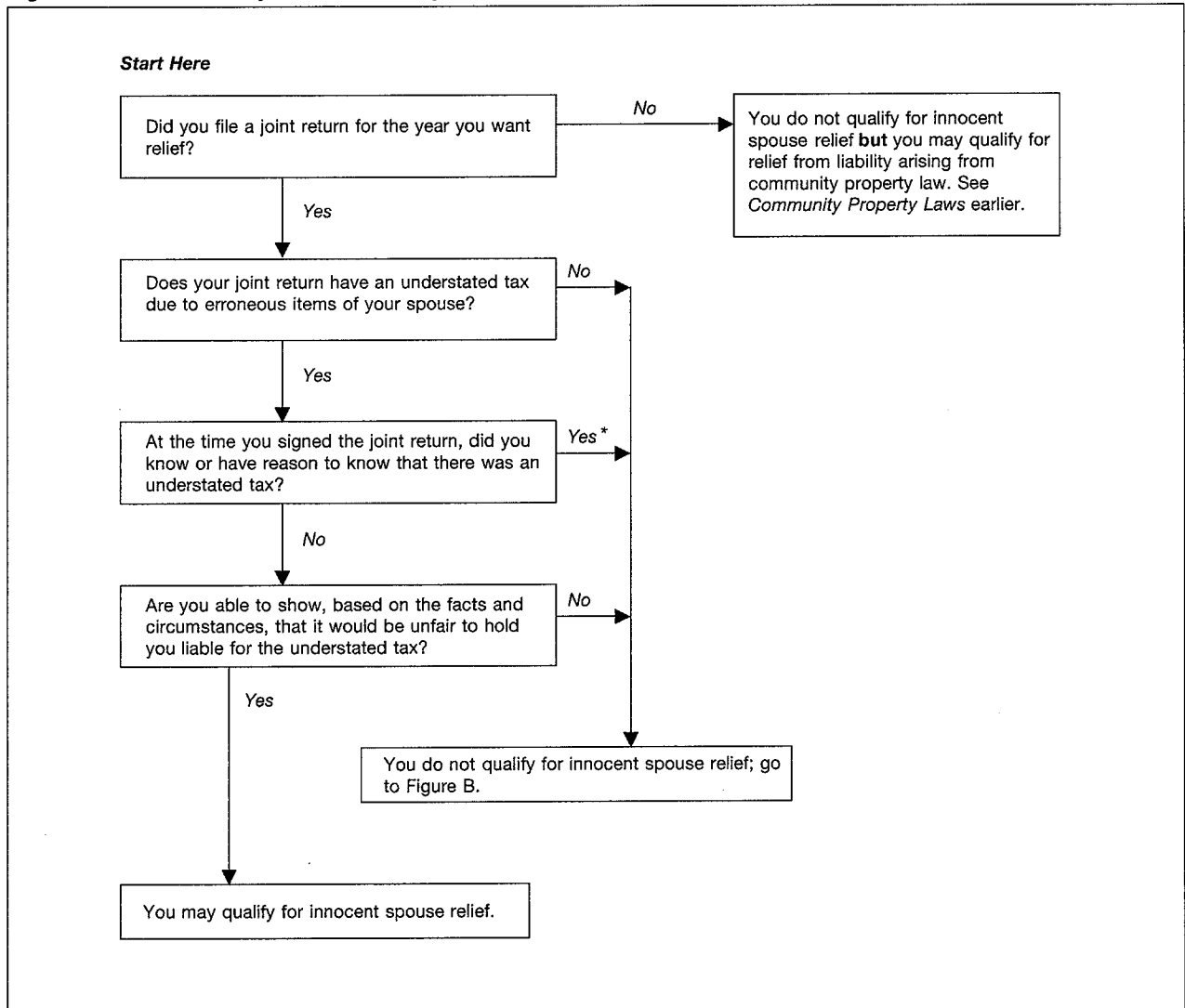
This publication explains these types of relief, who may qualify for them, and how to get them. You can also use the Innocent Spouse Tax Relief Eligibility Explorer at www.irs.gov to see if you qualify for innocent spouse relief. Click on "Individuals," "Tax Information for Innocent Spouses," and "Explore if you are an Eligible Innocent Spouse."

What this publication does not cover. This publication does *not* discuss *injured spouse* relief. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied (offset) against your spouse's legally enforceable past-due federal

Flowcharts

The following flowcharts provide a quick way for determining whether you may qualify for relief. But do not rely on these flowcharts alone. Also read the earlier discussions.

Figure A. **Do You Qualify for Innocent Spouse Relief?**



* You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know of only a portion of an erroneous item.

Figure B. Do You Qualify for Separation of Liability Relief?

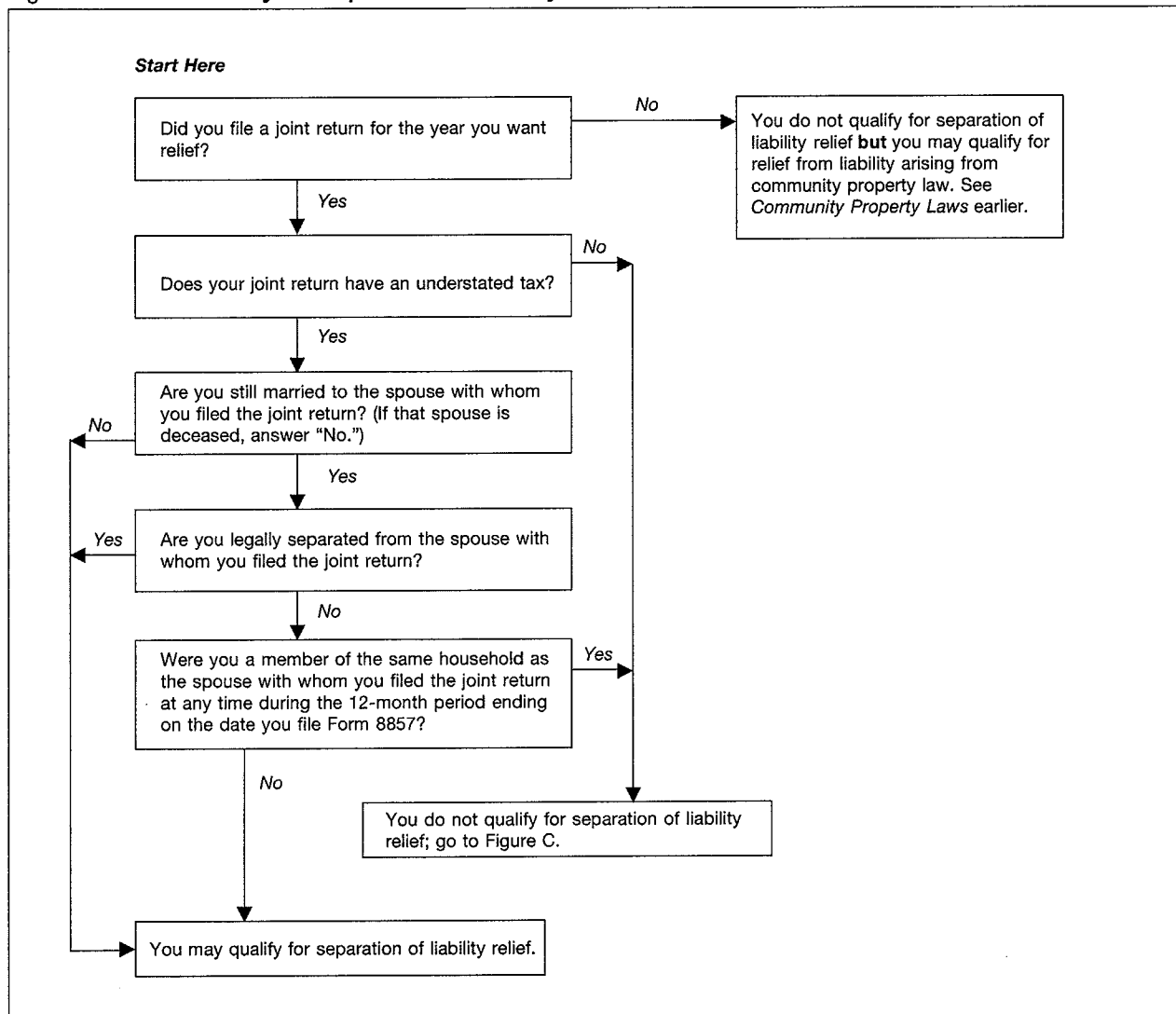
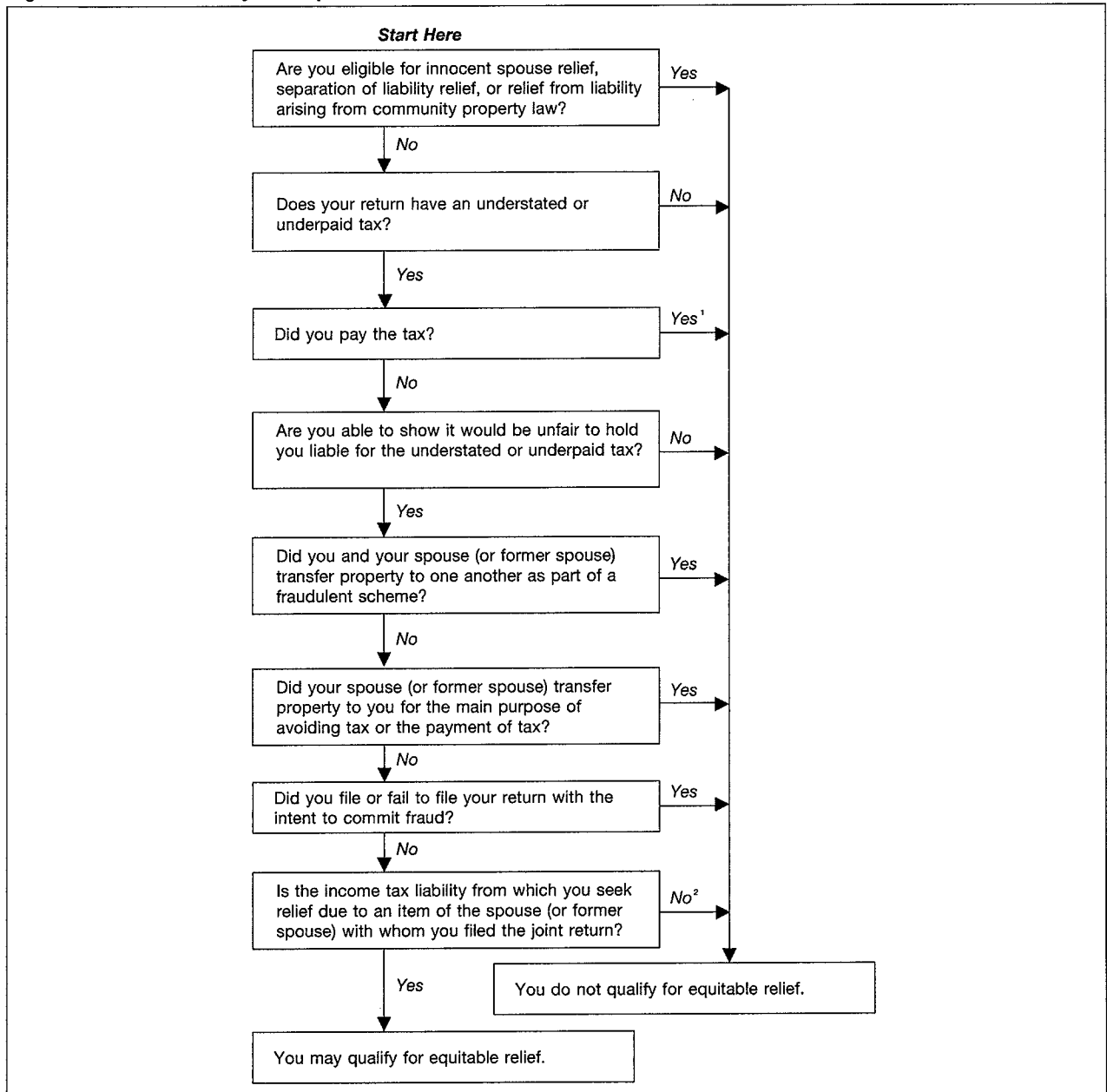


Figure C. Do You Qualify for Equitable Relief?



¹You may qualify for equitable relief and receive a refund of certain payments made out of your own funds. See *Refunds* earlier.

²You may qualify for equitable relief if you meet any of the exceptions to condition (8) discussed earlier under *Conditions for Getting Equitable Relief*.

How and When To Request Relief

You request relief by filing Form 8857, as discussed earlier. Fill in Form 8857 according to the instructions.

For relief from liability arising from community property law, you must file Form 8857 no later than 6 months before the expiration of the period of limitations on assessment (including extensions) against your spouse for the tax year for which you are requesting relief. However, if the IRS begins an examination of your return during that 6-month period, the latest time for requesting relief is 30 days after the examination begins. The period of limitation on assessment is the amount of time, generally three years, that the IRS has from the date you filed the return to assess taxes that you owe.

Innocent Spouse Relief

By requesting innocent spouse relief, you can be relieved of responsibility for paying tax, interest, and penalties if your spouse (or former spouse) improperly reported items or omitted items on your tax return. Generally, the tax, interest, and penalties that qualify for relief can only be collected from your spouse (or former spouse). However, you are jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The IRS can collect these amounts from either you or your spouse (or former spouse).

You must meet all of the following conditions to qualify for innocent spouse relief.

1. You filed a joint return.
2. There is an understated tax on the return that is due to erroneous items (defined later) of your spouse (or former spouse).
3. You can 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). See *Actual Knowledge or Reason To Know*, later.
4. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated tax. See *Indications of Unfairness for Innocent Spouse Relief*, later.

A request for innocent spouse relief will not be granted if the IRS proves that you and your 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.

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

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).

The following are examples of erroneous items.

- The expense for which the deduction is taken was never paid or incurred. For example, your spouse, a cash-basis taxpayer, deducted \$10,000 of advertising expenses on Schedule C of your joint Form 1040, but never paid for any advertising.
- The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of \$10,000 that was for the payment of state fines. Fines are not deductible.
- No factual argument can be made to support the deductibility of the expense. For example, your spouse claimed \$4,000 for security costs related to a home office, which were actually veterinary and food costs for your family's two dogs.

Actual Knowledge or Reason To Know

You knew or had reason to know of an understated tax if:

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

Actual knowledge. If you actually knew about an erroneous item that belongs to your spouse (or former spouse), the relief discussed here does not apply to any part of the understated tax due to that item. You and your spouse (or former spouse) remain jointly liable for that part of the understated tax. For information about the criteria for determining whether you actually knew about an erroneous item, see *Actual Knowledge* later under *Separation of Liability Relief*.

Reason to know. If you had reason to know about an erroneous item that belongs to your spouse (or former spouse), the relief discussed here does not apply to any part of the understated tax due to that item. You and your spouse (or former spouse) remain jointly liable for that part of the understated tax.

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. The facts and circumstances include:

- The nature of the erroneous item and the amount of the erroneous item relative to other items.

- The financial situation of you and your spouse (or former spouse).
- Your educational background and business experience.
- The extent of your participation in the activity that resulted in the erroneous item.
- Whether you failed to ask, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question.
- Whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns).

Partial relief when a portion of erroneous item is unknown. You may qualify for partial relief if, at the time you filed your return, you had no knowledge or reason to know of only a portion of an erroneous item. You will be relieved of the understated tax due to that portion of the item if all other requirements are met for that portion.

Example. At the time you signed your joint return, you knew that your spouse did not report \$5,000 of gambling winnings. The IRS examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually \$25,000. You established that you did not know about, and had no reason to know about, the additional \$20,000 because of the way your spouse handled gambling winnings. The understated tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understated tax due to the \$5,000 of gambling winnings you knew about will not qualify for relief.

Indications of Unfairness for Innocent Spouse Relief

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.

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

For other factors, see *Factors for Determining Whether To Grant Equitable Relief* later under *Equitable Relief*.

Significant benefit. A significant benefit is any benefit in excess of normal support. Normal support depends on your particular circumstances. Evidence of a direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understated tax.

Example. You receive money from your spouse that is beyond normal support. The money can be traced to your spouse's lottery winnings that were not reported on your joint return. You will be considered to have received a significant benefit from that income. This is true even if your spouse gives you the money several years after he or she received it.

Separation of Liability Relief

Under this type of relief, the understated tax (plus interest and penalties) on your joint return is allocated between you and your spouse (or former spouse). The understated tax allocated to you is generally the amount you are responsible for.

This type of relief is available only for unpaid liabilities resulting from the understated tax. Refunds are not allowed.

To request separation of liability relief, you must have filed a joint return and meet either of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household (explained below) as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Members of the same household. You and your spouse are not members of the same household if you are living apart and are estranged. However, you and your spouse are considered members of the same household if any of the following conditions are met.

1. You and your spouse reside in the same dwelling.
2. You and your spouse reside in separate dwellings but are not estranged, and one of you is temporarily absent from the other's household as explained in (3) below.
3. Either spouse is temporarily absent from the household and it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of the absent spouse's return. Examples of temporary absences include absence due to imprisonment, illness, business, vacation, military service, or education.

Burden of proof. You must be able to prove that you meet all of the requirements for separation of liability relief (except actual knowledge) and that you did not transfer property to avoid tax (discussed later). You must also establish the basis for allocating the erroneous items.

Limitations on Relief

Even if you meet the requirements discussed previously, a request for separation of liability relief will not be granted in the following situations.

- The IRS proves that you and your spouse (or former spouse) transferred assets 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.
- The IRS proves that at the time you signed your joint return, you had actual knowledge (explained below) of any erroneous items giving rise to the deficiency that were allocable to your spouse (or former spouse). For the definition of erroneous items, see *Erroneous Items* earlier under *Innocent Spouse Relief*.
- Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax. See *Transfers of Property To Avoid Tax*, later.

Actual Knowledge

The relief discussed here does not apply to any part of the understated tax due to your spouse's erroneous items of which you had actual knowledge. You and your spouse remain jointly and severally liable for this part of the understated tax.

If you had actual knowledge of only a portion of an erroneous item, the IRS will not grant relief for that portion of the item.

You had actual knowledge of an erroneous item if:

- You knew that an item of unreported income was received. (This rule applies whether or not there was a receipt of cash.)
- You knew of the facts that made an incorrect deduction or credit unallowable.
- For a false or inflated deduction, you knew that the expense was not incurred, or not incurred to the extent shown on the tax return.

Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. Also, your actual knowledge may not be inferred when you merely had a reason to know of the erroneous item. Similarly, the IRS does not have to establish that you knew of the source of an erroneous item in order to establish that you had actual knowledge of the item itself.

Your actual knowledge of the proper tax treatment of an erroneous item is not relevant for purposes of demonstrating that you had actual knowledge of that item. Neither is your actual knowledge of how the erroneous item was

treated on the tax return. For example, if you knew that your spouse received dividend income, relief is not available for that income even if you did not know it was taxable.

Example. Bill and Karen Green filed a joint return showing Karen's wages of \$50,000 and Bill's self-employment income of \$10,000. The IRS audited their return and found that Bill did not report \$20,000 of self-employment income. The additional income resulted in a \$6,000 understated tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed Form 8857 to request separation of liability relief. The IRS proved that Karen actually knew about the \$20,000 of additional income at the time she signed the joint return. Bill is liable for all of the understated tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understated tax, interest, and penalties due to the \$20,000 of unreported income because she actually knew of the item. The IRS can collect the entire \$6,000 plus interest and penalties from either Karen or Bill because they are jointly and individually liable for it.

Factors supporting actual knowledge. The IRS may rely on all facts and circumstances in determining whether you actually knew of an erroneous item at the time you signed the return. The following are examples of factors the IRS may use.

- Whether you made a deliberate effort to avoid learning about the item in order to be shielded from liability.
- Whether you and your spouse (or former spouse) jointly owned the property that resulted in the erroneous item.

Exception for spousal abuse or domestic violence.

Even if you had actual knowledge, you may still qualify for relief if you establish that:

- You were the victim of spousal abuse or domestic violence before signing the return, and
- Because of that abuse, you did not challenge the treatment of any items on the return because you were afraid your spouse (or former spouse) would retaliate against you.

If you establish that you signed your joint return under duress (threat of harm or other form of coercion), then it is not a joint return, and you are not liable for any tax shown on that return or any tax deficiency for that return. However, you may be required to file a separate return for that tax year. For more information about duress, see the instructions for Form 8857.

Transfers of Property To Avoid Tax

If your spouse transfers property (or the right to property) to you for the main purpose of avoiding tax or payment of tax, the tax liability allocated to you will be increased by the fair market value of the property on the date of the transfer. The increase may not be more than the entire amount of

the liability. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made after the date that is 1 year before the date on which the IRS sent its first letter of proposed deficiency. This presumption will not apply if:

- The transfer was made under a divorce decree, separate maintenance agreement, or a written instrument incident to such an agreement, or
- You establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

If the presumption does not apply, but the IRS can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the tax liability allocated to you will be increased as explained above.

Equitable Relief

If you do not qualify for innocent spouse relief, separation of liability relief, or relief from liability arising from community property law, you may still be relieved of responsibility for tax, interest, and penalties through equitable relief.

Unlike innocent spouse relief or separation of liability relief, you can get equitable relief from an understated tax (defined earlier under *Innocent Spouse Relief*) or an underpaid tax. An underpaid tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 2005 return shows that you and your spouse owed \$5,000. You pay \$2,000 with the return. You have an underpaid tax of \$3,000.

Conditions for Getting Equitable Relief

You may qualify for equitable relief if you meet all of the following conditions.

1. You are not eligible for innocent spouse relief, separation of liability relief, or relief from liability arising from community property law.
2. You have an understated tax or an underpaid tax.
3. You did not pay the tax. However, see *Refunds*, later, for situations in which you are entitled to a refund of payments you made.
4. You establish that, taking into account all the facts and circumstances, it would be unfair to hold you liable for the understated or underpaid tax. See *Factors for Determining Whether To Grant Equitable Relief*, later.
5. You and your spouse (or former spouse) did not transfer assets to one another as a 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.

6. Your spouse (or former spouse) did not transfer property to you for the main purpose of avoiding tax or the payment of tax. See *Transfers of Property To Avoid Tax*, earlier, under *Separation of Liability Relief*.
7. You did not file or fail to file your return with the intent to commit fraud.
8. The income tax liability from which you seek relief must be attributable to an item of the spouse (or former spouse) with whom you filed the joint return, unless one of the following exceptions applies:
 - a. The item is attributable or partially attributable to you solely due to the operation of community property law. If you meet this exception, that item will be considered attributable to your spouse (or former spouse) for purposes of equitable relief.
 - b. If the item is titled in your name, the item is presumed to be attributable to you. However, you can rebut this presumption based on the facts and circumstances.
 - c. You did not know, and had no reason to know that funds intended for the payment of tax were misappropriated by your spouse (or former spouse) for his or her benefit. If you meet this exception, the IRS will consider granting equitable relief although the underpaid tax may be attributable in part or in full to your item, and only to the extent the funds intended for payment were taken by your spouse (or former spouse).
 - d. You establish that you were the victim of spousal abuse or domestic violence before signing the return, and that, as a result of the prior abuse, you did not challenge the treatment of any items on the return for fear of your spouse's retaliation. If you meet this exception, relief will be considered although the understated tax or underpaid tax may be attributable in part or in full to your item.

Factors for Determining Whether To Grant Equitable Relief

The IRS will consider all of the facts and circumstances in order to determine whether it is unfair to hold you responsible for the understated or underpaid tax. The following are examples of factors that the IRS will consider to determine whether to grant equitable relief. The IRS will consider all factors and weigh them appropriately.

Relevant Factors

The following are examples of factors that may be relevant to whether the IRS will grant equitable relief.

- Whether you are separated (whether legally or not) or divorced from your spouse. A temporary absence, such as an absence due to imprisonment, illness, business, vacation, military service, or education, is

Request for Innocent Spouse Relief

OMB No. 1545-1596

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

Important things you should know

- Answer all the questions on this form that apply, attach any necessary documentation, and sign on page 4. Do not delay filing this form because of missing documentation. See instructions.
- By law, the IRS must contact the person who was your spouse for the years you want relief. There are no exceptions, even for victims of spousal abuse or domestic violence. Your personal information (such as your current name, address, and employer) will be protected. However, if you petition the Tax Court, your personal information may be released. See instructions for details.
- If you need help, see *How To Get Help* in the instructions.

Part I Should you file this form? You must complete this part for each tax year.

- Enter each tax year you want relief.** It is important to enter the correct year. For example, if the IRS used your 2006 income tax refund to pay a 2004 tax amount you jointly owed, enter tax year 2004, not tax year 2006. ▶
Caution. The IRS generally cannot collect the amount you owe until your request for each year is resolved. However, the time the IRS has to collect is extended. See *Collection Statute of Limitations* on page 3 of the instructions.
- Check the box for each year you would like a refund if you qualify for relief.** You may be required to provide proof of payment. See instructions. ▶
- Did the IRS use your share of the joint refund to pay any of the following past-due debts of your spouse: federal tax, state income tax, child support, spousal support, or federal non-tax debt such as a student loan?**
 - If "Yes," stop here; do not file this form for that tax year. Instead, file Form 8379. See instructions.
 - If "No," go to line 4.
- Did you file a joint return for the tax year listed on line 1?**
 - If "Yes," skip line 5 and go to line 6.
 - If "No," go to line 5.
- If you did not file a joint return for that tax year, were you a resident of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin?**
 - If "Yes," see *Community Property Laws* on page 2 of the instructions.
 - If "No" on both lines 4 and 5, stop here. Do not file this form for that tax year.

	Tax Year 1		Tax Year 2		Tax Year 3*	
1	2004					
2	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
3	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*If you want relief for more than 3 years, fill out an additional form.

Part II Tell us about yourself

6 Your current name (see instructions) Janie Boulder	Your social security number 123 : 00 : 9876
Your current home address (number and street). If a P.O. box, see instructions. 5161 Old Farm Estates	Apt. no. County Montgomery
City, town or post office, state, and ZIP code. If a foreign address, see instructions. Hutchinson, IA 55555	Best daytime phone number (721) 555-1023

Part III Tell us about you and your spouse for the tax years you want relief

7 Who was your spouse for the tax years you want relief? File a separate Form 8857 for tax years involving different spouses or former spouses.	
That person's current name Joe E. Boulder	Social security number (if known) 234 : 00 : 8765
Current home address (number and street) (if known). If a P.O. box, see instructions. 3895 Timber Way	Apt. no.
City, town or post office, state, and ZIP code. If a foreign address, see instructions. Creekbed, WY 77777	Best daytime phone number (271) 555-2345

For Privacy Act and Paperwork Reduction Act Notice, see instructions.

Cat. No. 24647V

Form **8857** (Rev. 6-2007)

Note. If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Part III (Continued)

8 What is the current marital status between you and the person on line 7?

- Married and still living together
- Married and living apart since

/	/
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Attach a photocopy of the death certificate and will (if one exists).

Attach a photocopy of your entire separation agreement.

Attach a photocopy of your entire divorce decree.

Note. A divorce decree stating that your former spouse must pay all taxes does not necessarily mean you qualify for relief.

9 What was the highest level of education you had completed when the return(s) were filed? If the answers are not the same for all tax years, explain

- High school diploma, equivalent, or less
 - Some college
 - College degree or higher. List any degrees you have
- List any college-level business or tax-related courses you completed
- Explain

10 Were you a victim of spousal abuse or domestic violence during any of the tax years you want relief? If the answers are not the same for all tax years, explain.

- Yes. Attach a statement to explain the situation and when it started. Provide photocopies of any documentation, such as police reports, a restraining order, a doctor's report or letter, or a notarized statement from someone who was aware of the situation.
- No.

11 Did you sign the return(s)? If the answers are not the same for all tax years, explain.

- Yes. If you were forced to sign under duress (threat of harm or other form of coercion), check here . See instructions.
- No. Your signature was forged. See instructions.

12 When any of the returns were signed, did you have a mental or physical health problem or do you have a mental or physical health problem now? If the answers are not the same for all tax years, explain.

- Yes. Attach a statement to explain the problem and when it started. Provide photocopies of any documentation, such as medical bills or a doctor's report or letter.
- No.

Part IV Tell us how you were involved with finances and preparing returns for those tax years

13 How were you involved with preparing the returns? Check all that apply and explain, if necessary. If the answers are not the same for all tax years, explain.

- You filled out or helped fill out the returns.
 - You gathered receipts and cancelled checks.
 - You gave tax documents (such as Forms W-2, 1099, etc.) to the person who prepared the returns.
 - You reviewed the returns before they were signed.
 - You did not review the returns before they were signed. Explain below.
 - You were not involved in preparing the returns.
 - Other
- Explain how you were involved

Note. If you need more room to write your answer for any question, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

Part IV (Continued)

14 When the returns were signed, were you concerned that any of the returns were incorrect or missing information? Check all that apply and explain, if necessary. If the answers are not the same for all tax years, explain.

- Options for question 14: You knew something was incorrect or missing, but you said nothing; You knew something was incorrect or missing and asked about it; You did not know anything was incorrect or missing.

Explain: I did not know about the \$5,000 award. My ex-husband was very secretive about the way he conducted his financial affairs.

15 When any of the returns were signed, what did you know about the income of the person on line 7? If the answers are not the same for all tax years, explain.

- Option for question 15: You knew that person had income.

List each type of income on a separate line. (Examples are wages, social security, gambling winnings, or self-employment business income.) Enter each tax year and the amount of income for each type you listed. If you do not know any details, enter "I don't know."

Table with 5 columns: Type of income, Who paid it to that person, Tax Year 1, Tax Year 2, Tax Year 3. Row 1: Wages, Allied, \$ 40,000, \$, \$.

- Options for question 15: You knew that person was self-employed and you helped with the books and records; You knew that person was self-employed and you did not help with the books and records; You knew that person had no income; You did not know if that person had income.

Explain

16 When the returns were signed, did you know any amount was owed to the IRS for those tax years? If the answers are not the same for all tax years, explain.

- Options for question 16: Yes. Explain when and how you thought the amount of tax reported on the return would be paid; No.

Explain

17 When any of the returns were signed, were you having financial problems (for example, bankruptcy or bills you could not pay)? If the answers are not the same for all tax years, explain.

- Options for question 17: Yes. Explain; No; Did not know.

Explain

18 For the years you want relief, how were you involved in the household finances? Check all that apply. If the answers are not the same for all tax years, explain.

- Options for question 18: You knew the person on line 7 had separate accounts; You had joint accounts but you had limited use of them or did not use them; You used joint accounts; You made decisions about how money was spent; You were not involved in handling money for the household; Other.

Explain anything else you want to tell us about your household finances: My ex-husband handled the household finances. He didn't want me involved. He was so secretive about it, too.

19 Has the person on line 7 ever transferred assets (money or property) to you? (Property includes real estate, stocks, bonds, or other property to which you have title.) See instructions.

- Options for question 19: Yes. List the assets and the dates they were transferred; No.

Part V Tell us about your current financial situation

20 Tell us the number of people currently in your household. Adults 1 Children 1

21 Tell us your current average monthly income and expenses for your entire household. If family or friends are helping to support you, include the amount of support as gifts under **Monthly income**. Under **Monthly expenses**, enter all expenses, including expenses paid with income from gifts.

Monthly income	Amount	Monthly expenses	Amount
Gifts		Federal, state, and local taxes deducted from your paycheck	250
Wages (Gross pay)	2,000	Rent or mortgage	620
Pensions		Utilities	100
Unemployment		Telephone	40
Social security		Food	568
Government assistance, such as housing, food stamps, grants		Car expenses, payments, insurance, etc.	254
Alimony		Medical expenses, including medical insurance	200
Child support	750	Life insurance	10
Self-employment business income		Clothing	200
Rental income		Child care	455
Interest and dividends		Public transportation	
Other income, such as disability payments, gambling winnings, etc. List the type below:		Other expenses, such as real estate taxes, child support, etc. List the type below:	
Type		Type	
Type		Type	
Type		Type	
Total ▶	2,750	Total ▶	2,697

22 Please provide any other information you want us to consider in determining whether it would be unfair to hold you liable for the tax. If you need more room, attach more pages. Be sure to write your name and social security number on the top of all pages you attach.

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Caution
By signing this form, you understand that, by law, we must contact the person on line 7. See instructions for details.

Sign Here

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.

Keep a copy for your records.	Your signature Janie Boulder	Date 8/01/2007	
	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>
Paid Preparer's Use Only	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Preparer's SSN or PTIN
		Phone no. ()	

IRS Offer In Compromise Information



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 656-B (03-2009)
Catalog Number 52133W

Form 656-B

Offer in Compromise Booklet

IMPORTANT! THIS BOOKLET CONTAINS INFORMATION AND FORMS THAT YOU NEED IN ORDER TO PREPARE A COMPLETE AND ACCURATE OFFER IN COMPROMISE. PLEASE READ THESE INSTRUCTIONS CAREFULLY BEFORE ATTEMPTING TO COMPLETE THE ENCLOSED FORMS.

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Note: If you have any questions, please call our toll-free number at 1-800-829-1040. You can get forms and publications by calling toll free at 1-800-829-3676 (1-800-TAX-FORM), or by visiting your local Internal Revenue Service (IRS) office or our web site at www.irs.gov.

What is an Offer in Compromise?

An Offer in Compromise (OIC) is an agreement between the taxpayer and the government that settles a tax liability for payment of less than the full amount owed.

The IRS will generally accept an Offer in Compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An OIC is a legitimate alternative to declaring a case currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the government.

The success of the Offer in Compromise program will be assured only if taxpayers make adequate compromise proposals consistent with their ability to pay and the Service makes prompt and reasonable decisions. Taxpayers are expected to provide reasonable documentation to verify their ability to pay. The ultimate goal is a compromise which is in the best interest of both the taxpayer and the Service. Acceptance of an adequate offer will also result in creating a fresh start for the taxpayer and an expectation of compliance with all future filing and payment requirements.

■ **Doubt as to Collectibility.** This means that doubt exists that the taxpayer could ever pay the full amount of tax liability owed within the remainder of the statutory period for collection. The IRS will consider a doubt as to collectibility offer when the taxpayer is unable to pay the taxes in full either by liquidating assets or through current installment agreement guidelines. The taxpayer **must** submit the appropriate collection information statement along with all required supporting documents.

■ **Doubt as to Liability.** This means that a legitimate doubt exists that the taxpayer owes part or all of the

assessed tax liability. To submit a Doubt as to Liability OIC, the taxpayer must submit Form 656-L, which can be obtained by calling the toll free number 1-800-829-1040, by visiting the local IRS office or our web site at www.irs.gov.

■ **Effective Tax Administration (ETA).**

This means that the taxpayer **does not have any doubt** that the tax is correct and there is potential to collect the full amount of the tax owed, but an exceptional circumstance exists that would allow the Service to consider an offer. To be eligible for compromise on this basis, a taxpayer must demonstrate that collection of the tax would create an economic hardship or would be unfair and inequitable. For an ETA offer, a taxpayer must submit:

1. A collection information statement with all appropriate attachments, and
2. A written narrative explaining the taxpayer's special circumstances and why paying the tax liability in full would create an economic hardship or would be unfair and inequitable.

The taxpayer **must** also attach appropriate documentation that will support their request for an ETA offer such as proof of unusual expenses that would cause an economic hardship if the taxes were collected in full.

Note: An important factor in determining the type of offer to submit is the potential ability to pay the liability in full. If the taxpayer cannot pay their liability in full, then they should submit a Doubt as to Collectibility offer. If special circumstances exist, see Page 6 for additional information. However, if potential exists to pay their liability in full, but the collection of the tax would create an economic hardship or would be unfair or inequitable, then they should submit an Effective Tax Administration (ETA) offer.



PLEASE DO NOT GO ANY FURTHER WITHOUT FIRST DETERMINING WHETHER OR NOT YOU ARE ELIGIBLE TO HAVE YOUR OFFER IN COMPROMISE PROCESSED AT THIS TIME.

Step One:

Please answer the three questions below to determine if you are eligible to have your Offer in Compromise processed.

YES NO

1. Do you currently have an open bankruptcy proceeding? You should contact your Bankruptcy Attorney if you are not certain. If you are involved in an open bankruptcy proceeding, contact your local IRS Insolvency office. If you do not know the location of your local IRS Insolvency office, then you may call 1-800-829-1040. They will be able to provide you with the local number. Any resolution of your outstanding tax liabilities generally must take place within the context of your bankruptcy proceeding. If you answered **YES** to this question, then stop here. You **are not eligible** to have your offer considered or processed at this time.

2. **Offer in Compromise Application Fee** — Your offer must include the \$150 application fee or a completed Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*, if you are requesting an exception of the fee because of your income. Offers received without the \$150 fee or a completed Form 656-A will not be accepted for processing. Please see Step Four on Page 12 of this package for more information on the application fee and to determine if you qualify for the exception.

Have you attached the \$150 application fee or the Form 656-A, whichever is applicable, to the Form 656? If you answered **NO** to this question, Stop Here. You **are not eligible** to have your offer considered or processed at this time.

3. **Cash Payment and Periodic Payment Offers** — Your offer must include your 20% payment for Lump Sum Cash payment offers, or your first installment payment of your Periodic Payment offer (Short Term or Deferred). If you are requesting an exception to the 20% down payment or your initial periodic payment because of your income level, then you must complete Form 656-A, *Certification of Offer in Compromise Application Fee and Payment*. Offers received without one of these will not be accepted for processing. Please see Step Four on Page 12 of this package for more information on the Cash Payment and Periodic Payment Offer.

Have you attached either the 20% payment for Lump Sum Cash payment offers or your first installment payment for a Periodic Payment Offer, or, the Form 656-A? If you answered **NO** to this question, Stop Here. You **are not eligible** to have your offer considered or processed at this time.

NOTE: If you currently have an approved installment agreement with IRS and are currently making installment payments to IRS, then you may stop making those installment agreement payments when you submit a Periodic Payment offer. This will allow you to make your payments required under the Periodic Payment guidelines. You do not have to make both installment agreement payments and periodic payments at the same time.

However this procedure does not apply to Lump Sum Cash Offers. If you submit a Lump Sum Cash offer and you are currently making installment agreement payments, then you must continue to make your installment agreement payments until your offer is accepted.

Step Two: What We Need to Fully Evaluate Your Offer

1. You must file all tax returns that you were legally required to file prior to submitting an Offer in Compromise. If you have not filed all required tax returns, you will be asked to do so before we begin to evaluate your offer.

This includes but is not limited to:

- All Income Tax, Employment Tax, and Excise Tax returns, along with all returns required to be filed by Partnerships, Limited Liability Companies, or closely held Sub-Chapter S Corporations.

If you did not file a return for a specific year prior to submitting your OIC because you were not legally required to file the return, then you **must** include a detailed explanation of your circumstances with your OIC.

If you used an employee leasing company for all or part of the time during the past three years, then please provide a detailed explanation of your circumstances with your offer by providing the exact dates you used the employee leasing company, the name and address of the leasing company, and EIN of the leasing company, and whether or not you are still using them.

2. If you are a business with employees, then you must have made all required federal tax deposits for the current quarter. If you have not made all the required deposits, you will be asked to do so before we begin to evaluate your offer. In addition, you must remain current on all filing and deposit requirements while your offer is being investigated.

3. Estimated tax payments must be up to date for the current year — We will not process your offer to completion if we determine that your estimated tax payments for the current year's income tax liability are not paid up to date. If we determine

this to be the case, you will have one opportunity to make the required payments before we return your offer.

NOTE: If you fail to comply with items 1, 2, or 3, then your offer will be returned to you and we will keep your \$150 application fee as well as any payments you made with your offer, such as the 20% payment or your first installment. Any money not returned will be applied to your tax liability.

4. Complete an accurate

Form 656 — Complete all applicable items on Form 656, **which is the official compromise agreement.** You **must** sign Form 656. If someone else prepared the offer package, then please see the instructions in Step Eight, Section IX and X, found on Page 21 of this package. If your Form 656 was prepared by an authorized representative, you **must** include a completed Form 2848, *Power of Attorney and Declaration of Representative*, with your offer, unless a copy is already on file with the IRS

Detailed instructions for the completion of Form 656 are found on Pages 20 – 22 of this package.

Common errors to avoid in completing Form 656:

- The taxpayer's name is missing.
- The street address is missing or incomplete.
- The social security number (SSN) or employer identification number (EIN) is missing, incomplete, or incorrect.
- The preprinted terms and conditions listed on the Form 656 have been altered or deleted.
- An offer amount is missing.
- Payment terms are missing or terms do not equal the offer amount.
- A required signature is missing.

5. Complete an accurate collection information statement (Form 433-A and/or Form 433-B) —

You **must** provide financial information when you submit offers based on doubt as to collectibility and effective tax administration. You **must** send us current information that reflects your financial situation for the **three months** immediately prior to the date you submitted your Offer in Compromise. Collection information statements **must** show all assets and income. The offer investigator needs this information to evaluate your offer and may ask you to update it or verify certain financial information. These forms **must** be filled in completely. We may return offer packages that are incomplete. Annotate items that do not apply to you with “N/A.”

Provide all the information required to support your financial condition.

Required items of documentation are clearly indicated on the collection information statements under the signature blocks. Photo copies of these support documents are acceptable. If you mail your original documents to the IRS, they will not be returned to you unless you specifically request it.

When only one spouse has a tax liability but both have incomes, only the spouse responsible for the tax debt is required to sign the necessary collection information statements. The responsible spouse should include **only** his/her assets and liabilities on his/her collection information statements. However, the income and expenses of the entire household is required on the responsible spouse’s collection information statements. The entire household includes spouse, domestic partner, significant other, children, and others that contribute to the household. This is necessary for the IRS to evaluate the income

and expenses allocable to the liable taxpayer.

When both spouses have tax liabilities included in the offer, whether jointly or separately, and they maintain a household together, both spouses are required to sign the collection information statement and include income and expenses of the entire household.

In states with community property laws, we require collection information statements from both spouses. We may also require financial information on the non-liable spouse, or cohabitant(s), for offer verification purposes, even when community property laws do not apply.

6. Respond promptly to requests for additional information — While we are evaluating your offer, we may contact you for any information that is missing or requires clarification. You must respond within the time frame given to you by IRS or, we will not give your offer any further consideration. **Your offer will be returned to you and we will keep your \$150 application fee as well as any payments you made with your offer such as the 20% payment or your first installment. Any money not returned will be applied to your tax liability.**

7. We will not consider offers where liabilities have not been assessed — You cannot submit an offer that is solely for a tax year or tax period that has not been assessed. Your offer will be returned if you submit an offer that is solely for an unassessed tax year or tax period and you will forfeit your application fee. Any money not returned will be applied to your tax liability.

8. Trust fund taxes - Offers, from businesses seeking to compromise unpaid trust fund taxes that are

subject to assertion of the trust fund recovery penalty, will not be evaluated until the trust fund portion of the liability is either fully paid or the trust fund recovery penalty has been assessed against the responsible persons.

- 9. Make copies of removable forms and documents** — This is a reminder that you should make copies of all the removable forms and documents that you send to the IRS. You should keep these copies with your records.

Step Three: Determining the Amount of Your Offer

Doubt as to Collectibility

Your offer amount must equal or exceed your reasonable collection potential amount. The information provided on the collection information statements (*Form 433-A and Form 433-B*) assists us in determining the reasonable collection potential (*RCP*). The RCP equals the net equity of your assets plus the amount we could collect from your future income. **If our financial analysis indicates that you have the ability to fully pay the tax liability, either immediately or through an installment agreement, your offer will be rejected. Exception: special circumstances. Please see below for more information on special circumstances. You must offer an amount greater than or equal to the RCP amount. All offer amounts must exceed zero.**

If special circumstances cause you to offer an amount less than the RCP, you **must** complete Section VI, "Explanation of Circumstances," on Form 656, explaining your situation. You **must** also attach to Form 656 any supporting documents to help support your special circumstances. Special circumstances

may include factors such as advanced age, serious illness from which recovery is unlikely, or any other factors that have an impact upon your ability to pay the total RCP and continue to provide for the necessary living expenses for you and your family.

If you are a wage earner or self-employed individual, completion of the worksheet on Pages 9 - 11 will give you a good estimate of what an acceptable offer amount may be. You will use the information on your Form 433-A to complete the worksheet.

Effective Tax Administration (ETA)

Complete Form 433-A or Form 433-B, as appropriate, and attach to Form 656. You **must** complete Section VI, "Explanation of Circumstances," on Form 656, explaining your exceptional circumstances and why requiring payment of the tax liability in full would either create an economic hardship or would be unfair and inequitable. You **must** also attach to Form 656 any documents to help support your exceptional circumstances.

Determine Your Payment Terms

There are three payment plans you and the IRS may agree to:

- **Lump Sum Cash Offer** – This option requires the offer amount to be paid **in five** or fewer installments, upon written notice of acceptance. Twenty percent of the total amount of the offer must be paid when you submit the Form 656.

If these installments will be paid in five months or less, you should offer the realizable value of your assets plus the total amount we could collect over 48 months of payments (or the remainder of the statutory period for collection, whichever is less).

If these installments will be paid in more than five months, but less than 24 months you should offer the realizable value of your assets plus the total amount we could collect over 60 months of payments.

If these installments will be paid in more than 24 months, you should offer the realizable value of our assets plus the number of months remaining on the statutory period for collection.
- **Short Term Periodic Payment Offer** – This option requires the offer amount to be paid within 24 months from the date IRS received the offer. The first payment **must** be submitted with your Form 656. You **must** continue to make regular payments during your offer investigation. Failure to make regular payments during your offer investigation will cause your offer to be withdrawn.

The offer must include the realizable value of your assets plus any amount we could collect over 60 months of payments (or the remainder of the statutory period of collection, whichever is less.)

NOTE: Generally the collection statute is 10 years from the date that your liability was assessed. If

you need assistance in calculating the remaining time on your collections statute, call 1-800-829-1040.

- **Deferred Periodic Payment Offer** – This option requires you to pay the offer amount over the remaining statutory period for collecting the tax. This offer option must include the realizable value of your assets plus the amount we could collect through monthly payments during the remaining life of the collection statute. As with the Short Term Periodic Payment above, the first payment must be submitted with your Form 656. You must make regular payments during your offer investigation. Failure to make regular payments during your offer investigation will cause your offer to be withdrawn.

Use the worksheet on pages 9 - 11, and use the amount in Box P as the basis for your offer amount in Section IV of Form 656.
- **Notice of Federal Tax Lien** – We may file a Notice of Federal Tax Lien with any of the above payment options.
- **How to Calculate an Offer Amount** – The worksheet on pages 9 - 11 instructs wage earners and self-employed individuals how to figure the appropriate amount of Lump Sum Cash, Short Term Periodic Payment and Deferred Periodic Payment Offers.
- **Exception to Application Fee and Payments** – If you believe that you qualify for the exception to the \$150 application fee and payments due to your low income, then please complete the Offer in Compromise Application Fee and Payment Worksheet. If you meet the qualifications, then you are not required to make any payments while we investigate your offer. Complete Form 656-A, *Income Certification for Offer in Compromise Application Fee and Payment*, and submit it with Form 656.

Step Six: What to Expect After the IRS Receives Your Offer

How We Consider Your Offer	An offer examiner will evaluate your offer and may request additional documentation from you to verify financial or other information you provide. The examiner will then make a recommendation to accept or reject the offer. The examiner may also	return your offer if you do not provide the requested information. The examiner may decide that a larger offer amount is necessary to justify acceptance. You will have the opportunity to amend your offer.
Additional Agreements	When you submit certain offers, we may also request that you sign an additional agreement requiring you to:	<ul style="list-style-type: none"> ■ Pay a percentage of your future earnings. ■ Waive certain present or future tax benefits.
Withholding Collection Activities	There are certain circumstances where we will withhold collection activities while we consider your offer. We will not act to collect the tax liability:	<ul style="list-style-type: none"> ■ While you appeal an offer rejection. <p>The above do not apply if we find any indication that you submitted your offer to delay collection or cause a delay which will jeopardize our ability to collect the tax.</p>
Periodic Payments Requirements	If you choose one of the Periodic Payment options, then you are required to continue to make payments while your offer is being investigated. The removable Form 656-PPV is to be used to make these periodic payments. The instructions to complete Form 656-PPV are contained on the form as well as the proper address to mail your payments to. It is important to note that	<ul style="list-style-type: none"> ■ While we investigate and evaluate your offer. ■ For 30 days after we reject an offer. <p>the address where you send your periodic payments is different from the address where you submit your offer form. Be sure you send your periodic payment and Form 656-PPV to the address listed on the Form 656-PPV, as it applies to where you originally filed your offer.</p>

NOTE: Step Six continues on Page 16.

If We Accept Your Offer

If we accept your offer, we will notify you by mail. When you receive your acceptance letter, you must:

- Promptly pay any unpaid amounts that become due under the terms of the offer agreement. You must comply with the payment terms specified in the agreement in a timely manner or your offer and agreement will be in default.
- Comply with all the terms and conditions of the offer, along with those of any additional agreement.
- Promptly notify us of any change of address until you meet the conditions of your offer. Your acceptance letter will indicate the IRS office to contact if your address changes. Your notification allows us to contact you immediately regarding the status of your offer.

We will release all Notices of Federal Tax Lien when you satisfy the payment terms of the offered amount. For an immediate release of a lien, you can submit certified funds with a request letter to the address on the acceptance letter.

Once your offer is accepted, not filing returns or paying taxes when due could result in the default of an accepted offer (see Section V (d) of Form 656 for the

future compliance provision). If you default your agreement, we will reinstate the unpaid amount of the original tax liability, file a Notice of Federal Tax Lien on any tax liability without a filed notice, and resume collection activities. The future compliance provision applies to all offers based on **Doubt as to Collectibility and Effective Tax Administration offers**.

We will not default your offer agreement when you have filed a joint offer with your spouse or ex-spouse as long as you have kept or are keeping all the terms of the agreement, even if your spouse or ex-spouse violates the future compliance provision.

The offer agreement requires you to forego certain refunds, and to return those refunds to us if they are issued to you by mistake. These conditions are also listed on Form 656, Sections V (f) and (g). For example, if your offer was accepted by the IRS in the tax year 2008, the IRS would keep the refund due to you with respect to the tax year 2008, which you would normally receive in calendar year 2009 (*because the due date for filing the tax year 2008 is April 15, 2009*).

If We Reject Your Offer

We will notify you by mail if we reject your offer. In our letter, we will explain our reason for the rejection. We will also keep your \$150 application fee and payments. If your offer is rejected, you have the right to:

- Appeal our decision to the Office of Appeals within thirty days from the date of our letter. The letter will include detailed instructions on how to appeal the rejection.

■ Information about appeals, including an online self-help tool to assist you in deciding whether to appeal the rejection of your offer, is available at www.irs.gov, using key word "appeals".

Step Seven: Offer in Compromise Summary Checklist

Below is a checklist of items that you should review and complete prior to submitting your Form 656, *Offer in Compromise*. This checklist is solely for your benefit, so do not submit with your offer.

- Did you answer YES to question one on Page 2? If you did, then please do not submit Form 656 because you are not eligible to have your offer considered at this time.
- Did you answer NO to questions two or three on Page 2? If you did, then please do not submit Form 656 because you are not eligible to have your offer considered at this time.
- Have you properly completed Form 656, *Offer in Compromise*, by following the instructions on Pages 20 - 22?
- Are the preprinted terms and conditions listed on Form 656 unaltered?
- Are you using the most current versions of Form 656, Form 433-A, and Form 433-B as instructed on Page 4?
- Did you include your name (or names, if joint)?
- Have you included your social security number (SSN) (both SSNs are required if filing a joint offer) and/or employer identification number (EIN) and is it accurate?
- Have you included an offer amount (the amount must be greater than **zero**) and payment terms as instructed on Page 11, Box P?
- Have you signed the Form 656? If this is a joint Form 656, have both spouses signed Form 656?
- Have you included complete financial information (Form 433-A or Form 433-B, or both) and all attachments as instructed on Page 4?
- Have you either attached the application fee in the designated area on the Form 656 or attached the Form 656-A certification, whichever is applicable?**
- Have you attached to Form 656 either the 20% payment for the Lump Sum Cash offer, or the first installment payment for either the Short Term Periodic Payment or Deferred Periodic Payment, OR attached Form 656-A certification, whichever is applicable?
- Have you signed in all required places on Form 433-A and/or Form 433-B?
- Is your offer amount greater than or equal to the reasonable collection potential (RCP) as described on Page 6 and calculated on Page 11, unless your offer is based on Effective Tax Administration and/or special circumstances exist?
- If applicable, are Sections IX and XI, on Form 656 completed?
- If applicable, is Section X on Form 656 completed and **signed**?
- Have you properly identified where to mail your Form 656 from the instructions on Page 14?
- If applicable, did you attach Form 2848 as required in Section XI, Page 22?

If you have any questions, please call our toll-free number at 1-800-829-1040. You can get forms and publications by calling toll free at 1-800-829-3676 (1-800-TAX-FORM), or by visiting your local Internal Revenue Service (IRS) office or our website at www.irs.gov.

Important Information Regarding the Offer in Compromise

Statute of Limitations for Assessment and Collection is Suspended — The statute of limitations for assessment and collection of a tax debt is suspended while an OIC is “pending,” or being reviewed. The Offer in Compromise is pending starting with the date an authorized IRS employee determines the Form 656 can be processed and signs the Form 656. The OIC remains pending until an authorized IRS employee accepts, rejects, returns, or acknowledges withdrawal of the offer in writing. If a taxpayer appeals an OIC that was rejected, the IRS will continue to treat the OIC as pending until the Appeals Office accepts or rejects the OIC in writing.

Taxpayers Must File and Pay Taxes — In order to avoid defaulting an OIC once it is accepted by the IRS, taxpayers must remain in compliance in the filing and payment of all required taxes for a period of five years, or until the offered amount is paid in full, whichever is longer. Failure to comply with these conditions will result in the default of the OIC and the reinstatement of the full tax liability.

Federal Tax Liens Are Not Released — If there is a Notice of Federal Tax Lien on record prior to the OIC being submitted, the lien is not released until the terms of the offer in compromise are satisfied, or until the liability is paid, whichever comes first.

The IRS generally files a Notice of Federal Tax Lien to protect the Government’s interest on all payment offers. This tax lien will be released when the payment terms of the offer agreement have been satisfied.

Effect of the Offer on the Taxpayer’s Refund — The IRS will keep any refund, including interest due to the taxpayer because of overpayment of any tax or other liability, for tax periods extending through the calendar year that the IRS accepts the offer. The taxpayer may not designate an overpayment ordinarily subject to refund, to which the IRS is entitled, to be applied to estimated tax payments for the following year.

Effect of the Offer on Levies — The IRS will keep all payments and credits made, received or applied to the total original

tax liability before submission of this offer. The IRS may keep any proceeds from a levy served prior to submission of the offer, but not received at the time the offer is submitted. If a levy has been served prior to submission of the offer, or if a levy was served after the offer was filed, then immediately contact the IRS person or function whose name and phone number appear on the levy as the contact person.

Public Inspection Files for Accepted Offer in Compromise Files — The law requires IRS to make certain information from accepted Offers in Compromise available for public inspection and review. These public inspection files are located in designated IRS Area Offices. It is important to know that certain information regarding your accepted Offer in Compromise will be publicly known.

Taxpayer Advocate Service — The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should. If you believe you are eligible for TAS assistance, you can reach TAS by calling toll free 1-877-777-4778, or TTY/TTD 1-800-829-4059.

Low Income Taxpayer Clinic (LITC) — Low Income Taxpayer Clinics are independent organizations that provide low income taxpayers with representation in Federal tax controversies with the IRS for free or for a nominal charge. The clinics also provide tax education and outreach for taxpayers with limited English proficiency or who speak English as a second language. IRS Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area and is available through the IRS website at www.irs.gov, by phone at 1-800-TAX-FORM (1-800-829-3676), or at your local IRS office.

Penalties and Interest — Penalties and interest will continue to accrue on your unpaid balance of assessment(s) while your offer is being considered.