

# Tax Issues for Divorced, Separated or Married Individuals

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*Prepared by The Community Tax Law Project*

## ***What is “joint and several liability?”***

When you sign an income tax return with your spouse (husband or wife), you are telling the tax agency that you agree to pay any tax due on that return, even if the tax is not caused by your own income or mistakes. You agree to pay the tax even if the tax is caused by your spouse. That is what “joint and several liability” means – you are liable for the tax as a married couple and as an individual person.

## ***How do I get out of “joint and several liability?”***

The easiest way to avoid joint and several liability is to file as “married filing separate.” Unfortunately, if you file “married filing separate” you will not be able to claim the Earned Income Credit. You may also end up paying more tax than you would if you filed jointly with your spouse. So some people will not want to file separately from their spouses.

If the IRS is saying that you owe taxes for a year in which you filed a joint return with your spouse, you can file **Form 8857, “Request for Innocent Spouse Relief,”** if you fit into one of three situations, listed below. The IRS will either agree with you and not hold you liable for the tax, or it will deny your request for relief. When the IRS denies your claim for relief, you can appeal to an IRS Appeals Officer and even the United States Tax Court.

The 3 situations for relief from joint tax debts are as follows:

***“Innocent Spouse” Relief:*** Your spouse did not report income or claimed too many deductions on a joint return. The IRS has corrected the joint tax return because of these errors. At the time of signing the joint return, you did not know and had no reason to know of his or her mistake. You did not receive any benefit from this mistake, e.g., your spouse did not take you on a long, expensive vacation with the money he or she hid from the IRS. You can ask for “innocent spouse” relief.

***“Separate Liability” Relief:*** You are legally separated,

divorced or widowed, or you lived separately from your spouse for at least 12 months. Your spouse did not report income or claimed too many deductions on a joint return. The IRS has corrected the joint tax return because of these errors. At the time of signing the joint return, you did not actually know about his mistake. You can ask the IRS to separate out the corrections and figure the tax according to which spouse earned the income or claimed the deductions. In this way you may not have to pay taxes that were caused by your spouse’s mistakes.

***“Other Equitable” Relief:*** You can ask the IRS not to make you pay taxes from a joint return if you don’t fit into either of the above categories and yet you think it would be unfair if you had to pay the tax. This may be appropriate where your spouse promised to pay the tax due and didn’t; where you signed the return out of fear; or where the spouse agreed to pay the taxes in a written separation agreement or by court order.

You can call The Community Tax Law Project for more information about “married filing separately” status and relief from joint tax debts. An attorney will talk with you about your situation and discuss how we can help you.

## ***My spouse forced me to sign a joint return. What relief can I get from the tax bill?***

If you signed a joint return under force or duress, you did not voluntarily sign the return. So, you actually have not filed a return for that year. In this case, you will have to show the IRS that you signed this return under force or duress, and you may have to file another return as married filing separately. In some cases, where your income is very low, you may not owe any taxes at all and are just filing to get the records straight.

## ***My spouse forged my signature on a joint return. What relief can I get from the tax bill?***

A forged signature is not a voluntary signature. So, you actually have not filed a return for that year. You will have to show the IRS that the signature on the return is not yours. In most cases you can get a

copy of your return from the IRS. You may have to file another return as married filing separately. Again, depending on your income, you may not owe any taxes at all.

***What do I do if my spouse forges my name on an income tax refund?***

If you suspect that your spouse forged your signature to an income tax refund, contact the IRS and report that you did not receive your refund. Request that the IRS send you IRS Form 3911, Taxpayer Statement Regarding Refund. The IRS will indicate on Form 3911 when it sent the refund and whether the refund was cashed. Complete Form 3911 and attach a statement describing why you believe the refund check was forged and by whom. The IRS will investigate whether your refund check was forged.

***What if another agency is taking my refund due to a debt owed solely by my spouse?***

The IRS is authorized to take refunds and apply them to debts owed to other government agencies, such as the Division of Child Support Enforcement. If the IRS is taking your joint income tax refund and applying it to a debt owed solely by your spouse, you may qualify for injured spouse relief. Injured spouse relief is not the same as innocent spouse relief. It only applies to taxpayers whose joint refunds are being withheld and applied to debts owed solely by their spouses to other government agencies. You should file IRS Form 8379. The IRS will determine how much of the refund belongs to you by comparing your income to your spouse's income. It will return the portion of the refund attributable to your income to you. If you are the only spouse who worked, the IRS will return your entire refund.

***My refunds are being taken due to another agency's actions. Can I contact the IRS or other agency?***

The IRS is authorized to withhold a taxpayer's refund and apply it to a debt owed to another agency if the agency has registered the debt with the Treasury Department's Federal Payment Management System. The Department will send the taxpayer several notices before it begins withholding refunds to give the taxpayer the opportunity to make payment arrangements. If a taxpayer does not respond to these notices, the IRS will begin withholding refunds. The only way to stop the refunds from being withheld is to pay the debt in its entirety. In most cases, if the IRS is withholding a taxpayer's refunds for a debt owed to another agency, there is usually a judgement in effect or the

debt has been turned over to a collection agency. The taxpayer can try contacting the agency directly to make payment arrangements or request information about the validity of the debt, but contacting the IRS is not appropriate.

***I'm recently separated from my spouse. Who gets to claim the children as dependents?***

IRS Publication 17 provides that, as a general rule, the parent with custody for the greater part of the year is the parent eligible to claim the children as dependents. Custody is determined by the most recent divorce decree, decree of separate maintenance, or custody decree. If the decree does not specify which parent has custody, then the parent with physical custody for the greater part of the year may claim the children as dependents. Child support payments are treated as support provided by the custodial parent. However, a noncustodial parent may claim the children as dependents if the custodial parent signs IRS Form 8332 and agrees not to claim dependency exemptions for the children, or the parents have an agreement that went into effect after 1984 that states that the noncustodial parent may claim the dependency exemption.