



Publication 89

Innocent Spouse Relief (And Separation of Liability And Equitable Relief)

Note: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

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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 shown on the return, but also to any additional tax, penalty, and interest the Tax Department (the department) determines to be due, even if the additional tax due is based on the income, deductions, or credits of your spouse (or former spouse).

You remain jointly and severally liable for any tax, penalty, and interest due on your joint return, and the department can collect from you even if you later divorce and the divorce decree states that your former spouse is solely responsible for the tax.

However, in some cases a spouse (or former spouse) will be relieved of liability for all or a portion of the tax, interest, and penalties due on a joint income tax return under the following provisions of the Tax Law:

- For tax years beginning before January 1, 1999, innocent spouse relief is available under former Tax Law section 651(b)(5).
- For tax years beginning on or after January 1, 1999, section 654 of the Tax Law provides for: innocent spouse relief, separation of liability relief, and equitable relief.

Each type of relief has different requirements. This publication explains the different types of relief, the requirements for each type of relief, who may qualify, and how to apply for relief. Table 1 (see page 23) and Table 2 (see page 24) compare the rules for the different types of relief.

You are not required to calculate the tax, interest, and penalties that qualify for relief. The department will calculate the amount due after you request relief and mail you a detailed description of any adjusted liability.

For information on nonobligated spouse relief, which prevents your share of a joint income tax refund from being applied to certain debts of your spouse, see *Other types of relief* on page 18.

Notification of your spouse or former spouse

By law, the department must contact your spouse (or former spouse) in matters related to a joint return. There are no exceptions, even for victims of spousal abuse or domestic violence. Therefore, the department will inform your spouse (or former spouse) that you filed for innocent spouse relief, separation of liability relief, or equitable relief and will allow him or her to participate in the process. The department must also inform him or her of the preliminary and final determinations regarding your request for relief.

However, to protect your privacy, the department will **not** disclose your personal information (for example, your current name, address, phone number(s), employer, income, or assets) or any other information that does not relate to your request for relief.

Note: If you petition for a hearing in the Division of Tax Appeals (see page 17), your spouse (or former spouse) may see your personal information.

Community property laws

Generally, you must follow community property laws when filing a tax return if you are married and live in a community property state. Community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws provide that you and your spouse are both entitled to one-half of your total community income and responsible for one-half of your expenses.

If you and your spouse filed a joint New York State income tax return while a resident of another state that is a community property state, you are both jointly and severally liable for the total liability on the return. If you request relief from joint and several liability, community property laws are **not** taken into account in determining whether an item belongs to you or your spouse (or former spouse).

Federal relief

For federal income tax purposes, section 6015 of the Internal Revenue Code (IRC) provides for relief from joint and several liability for taxpayers who file joint federal income tax returns. For taxpayers requesting both federal and New York State relief, the federal provisions will also apply for New York State income tax purposes except to the extent that any provision in section 6015 is either inconsistent with or not relevant to the Tax Law. For information on how to request relief from a federal joint income tax liability, see federal [Publication 971](#), *Innocent Spouse Relief*.

Federal innocent spouse relief. Generally, if you have received innocent spouse relief from the Internal Revenue Service (IRS) under section 6015(b) of the IRC for an understatement of tax due to an erroneous item(s) of your spouse (or former spouse), you are entitled to equivalent relief from New York State. The understatement of tax on your New York State income tax return must be from the same tax year and attributable to the same erroneous item(s) as the federal income tax liability. File [Form IT-285](#), *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, and attach a copy of your federal [Form 8857](#), *Request for Innocent Spouse Relief*, and a copy of the final determination received from the IRS to document the federal relief. If you are not sure what type of federal relief was granted, contact the IRS at 1 800 829-1040.

Federal equitable relief. The IRS procedures for requests for equitable relief ([Rev. Proc. 2013-34](#)) will apply for New York State income tax purposes except to the extent that any provision is either inconsistent with or not relevant to the Tax Law (see *Equitable relief* on page 13).

Victims of spousal abuse or domestic violence. If the IRS determines that you signed your joint federal return under duress (threat of harm or other form of coercion), the federal joint return is considered invalid and

you are not liable for the federal tax from the joint return. However, the IRS may require you to file a separate federal return for that tax year and pay the tax due, if any.

Note: If the IRS determined that your joint federal income tax return is invalid and you filed a joint New York State income tax return for the same tax year, you must report the federal change (that is, from married filing joint to married filing separate) by filing an [amended New York State income tax return](#).

Definitions

Understatement of tax

An *understatement of tax*, or deficiency, is generally the difference between the total amount of tax that the department determines should have been shown on the return, and the amount that actually was shown on the return.

Example – You and your spouse filed a joint return showing \$5,000 of tax due, which was fully paid. The department audits the return and finds \$10,000 of income that your spouse earned but did not report. With the additional income, the total tax becomes \$5,700. The amount of the understatement of tax is \$700 (\$5,700 - \$5,000).

Substantial understatement of tax

A *substantial understatement of tax* is any understatement of tax exceeding one hundred dollars.

Underpayment of tax

An *underpayment of tax* is tax that was properly shown on the return, but has not been paid.

Example – You filed a joint return that properly reflects your income and deductions, but showed an unpaid balance due of \$5,000. You and your spouse were getting divorced. You gave your spouse \$2,500 and your spouse promised to pay the full \$5,000, but your spouse did not. You and your spouse are both liable for the \$5,000 underpayment of tax.

Erroneous items

Any income, deduction, credit, or basis is an *erroneous item* if it was omitted from or incorrectly reported on the joint return. The following are examples of erroneous items:

- **Unreported income.** Your spouse received a \$10,000 cash bonus but it was not reported on your joint income tax return.
- **Incorrect deduction, credit, or basis.** Your spouse claimed a \$15,000 business expense but did not actually incur this expense.

Innocent spouse relief for tax years beginning before January 1, 1999

For tax years beginning before January 1, 1999, relief from a joint liability is only available as innocent spouse relief under former Tax Law section 651(b)(5). For calendar year filers, this means tax year 1998 or earlier.

To qualify for innocent spouse relief under section 651(b)(5), you must meet **all** of the following conditions:

- You filed a joint return that has a *substantial understatement of tax* due to an erroneous item(s) of your spouse (or former spouse); and
- You establish that at the time you signed the joint return you did not know, and had no reason to know, that there was a substantial understatement of tax; and
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the substantial understatement of tax.

In addition, if a substantial understatement of tax is attributable to a New York deduction, exemption, credit, or property basis for which there is no basis in fact or law (and not due to an omission from New York adjusted gross income), one of the following additional requirements must be met in order to qualify for innocent spouse relief:

- If the innocent spouse's New York adjusted gross income for the most recent tax year ending before the date the deficiency notice is mailed is \$20,000 or less, the liability from the erroneous item(s) must be greater than 10% of the innocent spouse's adjusted gross income.
- If the innocent spouse's New York adjusted gross income for the most recent tax year ending before the date the deficiency notice is mailed is more than \$20,000, the liability from the erroneous item(s) must be greater than 25% of the innocent spouse's adjusted gross income.

For purposes of making the computation for either item above, if the innocent spouse is married to another spouse at the close of the most recent tax year ending before the date the deficiency notice is mailed, the innocent spouse's New York adjusted gross income must include the New York adjusted gross income of the new spouse, whether or not they file a joint return.

How to request relief for tax years beginning before January 1, 1999.

You may use [Form IT-285](#), *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, **or** you can submit a signed statement showing why you believe you qualify for relief for the tax year(s) involved. If you do not use Form IT-285 and choose to send a statement, the statement must include:

- your name,
- your current address,
- your social security number, and

- the New York State Tax Department assessment (bill) ID number (if known).

Send your Form IT-285 or statement (with any supporting documentation attached) to:

NYS TAX DEPARTMENT
PROTEST CORRESPONDENCE UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-5120

If the department determines that you are not eligible for innocent spouse relief, you may protest that determination. See *If you disagree with the Tax Department's decision* on page 16.

If you would like to discuss the resolution of any balance due on your tax liability, call the Civil Enforcement Division (CED) at (518) 457-5434.

Relief for tax years beginning on or after January 1, 1999

Section 654 was added to the Tax Law in 1999 to make it easier for a taxpayer to be relieved from an income tax liability related to a spouse (or former spouse). Section 654 applies to joint tax liabilities for any tax year beginning on or after January 1, 1999. For calendar year filers, this means tax year 1999 or later.

Note: If you establish that you signed your joint New York State income tax return under duress (threat of harm or other form of coercion), then it is not a joint return, and you are not liable for tax from that return. However, you may be required to file a separate return for that tax year, which may result in you owing tax.

Section 654 of the Tax Law provides for the following three types of relief:

- Innocent spouse relief
- Separation of liability relief
- Equitable relief

You **must** use [Form IT-285, Request for Innocent Spouse Relief \(and Separation of Liability and Equitable Relief\)](#), to request relief for a tax year beginning on or after January 1, 1999. The department will consider whether you qualify under innocent spouse relief, separation of liability relief, or equitable relief.

File Form IT-285 as soon as you are notified by the department or you otherwise become aware of an income tax liability for which you believe only your spouse (or former spouse) should be liable.

Generally, to be considered for **innocent spouse relief** or **separation of liability relief**, you must file Form IT-285 no later than two years after the date on which the department first attempts to collect the tax from you by issuing a levy, an income execution, or any other asset seizure.

To be considered for **equitable relief**, the above mentioned two-year time limit does not apply (see [TSB-M-11\(11\)](#), *Equitable Relief*). You may request **equitable relief** regardless of when the department first took collection action. However, you must file Form IT-285 within the period of limitation on collection (generally 20 years from the first date a warrant could have been filed by the commissioner, whether or not a warrant is filed). In addition, if you are requesting a refund of tax you paid, you must file Form IT-285 within the time period for requesting a refund (generally three years from the date the original return was filed or two years from the date the tax was paid, whichever is later).

If you are requesting relief for more than one tax year, you need to file only one Form IT-285. However, you must complete a separate allocation schedule and statement for each tax year for which you are requesting relief (see the [instructions for Form IT-285](#)).

The department will review your Form IT-285 and supporting information and let you know if you qualify for relief. If you qualify, the department will also recalculate the understatement or underpayment of tax and related penalty and interest.

If it is determined you are not eligible for any of the types of relief available by filing Form IT-285, and you would like to discuss the resolution of any balance due on your tax liability, call the Civil Enforcement Division (CED) at (518) 457-5434.

If you disagree, in whole or in part, with the department's determination concerning your request for relief, see *If you disagree with the Tax Department's decision* on page 16.

Note: If you have not received a determination notice from the department within six months from the date you filed Form IT-285, you may:

- request a conciliation conference from the Bureau of Conciliation and Mediation Services (see page 16), or
- petition for a hearing in the Division of Tax Appeals (see page 17) to protect your rights if the decision turns out to be unfavorable.

Innocent spouse relief

You may qualify for innocent spouse relief only if **all** of the following apply:

- you filed a joint return for the tax year(s) for which you are requesting relief; and
- there is an understatement of tax on the return(s) that is due to an *erroneous item(s)* of your spouse (or former spouse); and
- you can show that when you signed the return(s) you did not know, and had no reason to know, that the understatement of tax existed (or the extent to which the understatement existed); and

- taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

By requesting innocent spouse relief, you may be relieved of responsibility for paying tax, interest, and penalties if your spouse (or former spouse) improperly reported items on or omitted items from your joint income tax return. If you are allowed innocent spouse relief, the tax, penalty, and interest that qualify for relief can be collected only from your spouse (or former spouse). However, you are jointly and severally liable for any tax, penalty, and interest that do not qualify for relief. The department can collect these amounts from you or your spouse (or former spouse).

Refunds. You are **not** eligible for a refund of payments made with the joint return (including withholding tax and estimated tax payments), joint payments, or payments that your spouse (or former spouse) made.

You may be able to receive a refund of any separate payment(s) you made. You may also be entitled to a refund of your portion of a joint overpayment from another tax year that was applied to the liability to the extent you can establish that you provided the funds resulting in the overpayment. However, all claims for refunds must be made within the time period for seeking a refund (generally three years from the date the original return was filed, or two years from the date the tax was paid, whichever is later).

Partial relief

If you knew about any of the erroneous items but not the full extent of the item(s), you may be allowed relief for the part of the understatement you did not know about if you meet all other requirements.

You must explain in a written statement how much you knew, and why you did not know or had no reason to know the full extent of the item(s). In this instance, you may have to pay only your share of the jointly issued assessment.

Example: *At the time you signed and filed your joint income tax return, you knew that your spouse had gambling winnings of \$5,000 but did not report these winnings on your joint tax return. The department examined your tax return and determined that your spouse's unreported gambling winnings were \$25,000. This resulted in a much larger understatement of tax than you were aware of at the time you signed the return.*

You establish that because of the way your spouse handled gambling winnings, you did not know about, and had no reason to know about, the additional \$20,000 in gambling winnings. Therefore, the understatement of tax due to \$20,000 of gambling winnings will qualify for innocent spouse relief if you meet the other requirements, but you will not qualify for relief for the understatement of tax due to the \$5,000 of gambling winnings you were aware of.

You and your spouse are jointly and individually liable for the tax due on the \$5,000 understatement you knew about, and the department can collect this amount from either you or your spouse.

Indications of unfairness for innocent spouse relief

The department will consider all the facts and circumstances of your case to determine if it is unfair to hold you responsible for an understatement of tax. Two indicators the department may use are whether you:

- received any *significant benefit* from the unreported income that caused the understatement of tax; or
- were later divorced from or deserted by your spouse.

You can receive a *significant benefit* either directly or indirectly. For example, if your spouse did not report \$10,000 of income on your joint return, you can benefit directly if your spouse shares that \$10,000 with you. You can benefit indirectly from the unreported income if your spouse uses it to pay extraordinary household expenses.

You do not have to receive a benefit immediately for it to be significant. For example, money your spouse gives you several years after he or she received it, or money you inherited from your spouse (or former spouse) can be a significant benefit.

Support payments you receive as a result of a divorce proceeding are not taken into account when determining whether you received a significant benefit.

Separation of liability relief

Under separation of liability relief, the department allocates (divides) the understatement of tax (plus penalties and interest) on your joint return between you and your spouse (or former spouse). The understatement of tax allocated to you is generally the amount you are responsible for. See *How to estimate your separation of liability* on page 13.

Separation of liability relief applies only to amounts owed that have not been paid. It cannot give you a refund of amounts already paid.

To request separation of liability relief you must have filed a joint return **and** meet one of the following requirements at the time you file Form IT-285:

- 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. (For purposes of this requirement, if your spouse is deceased you are no longer married.)
- You were not a *member of the same household* 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 IT-285.

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 absence 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 and that you did not transfer property to avoid tax. You must also establish a basis for allocating any erroneous items. Therefore, you should carefully complete Form IT-285 and attach all supporting documentation.

Transfers of property to avoid tax. If your spouse (or former 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. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made within one year before the date the department first issued a *Statement of Proposed Audit Changes* or a *Notice of Deficiency*.

This presumption will **not** apply if one of the following applies:

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

Limitations on relief

Even if you meet the requirements for separation of liability relief, your request will **not** be granted in the following situations:

1. The department can establish that you and your spouse (or former spouse) transferred assets as part of a fraudulent scheme. A fraudulent scheme includes a scheme to defraud the IRS, the department, or another third party such as a creditor, ex-spouse, or business partner.
2. The department can establish that at the time you signed your joint return, you had actual knowledge of any erroneous item giving rise to the deficiency that is allocable to your spouse (or former spouse).
3. Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax. (See *Transfers of property to avoid tax* above.)

In situations 2 and 3 above, the department will deny your request only for the part of the deficiency due to the incorrect items about which you had *actual knowledge*, or to the extent of the value of the property transferred. If you establish that you signed your joint return under duress (threat of harm or other form of coercion), it is not a joint return, and you are not liable for tax from that return. However, you may be required to file a separate return for that tax year which may result in you owing additional tax.

Actual knowledge. Relief does not apply to any part of the understated tax due to your spouse's (or former spouse's) erroneous items of which you had actual knowledge. You and your spouse (or former 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 department will not grant relief for that portion of the item.

Example – *You and your spouse filed a joint return showing your wages of \$50,000 and your spouse's self-employment income of \$10,000. The department audited the return and found that you and your spouse did not report an additional \$20,000 of your spouse's self-employment income on the return. The additional income resulted in a \$1,500 understatement of tax, plus penalty and interest. After obtaining a legal separation from your spouse, you filed Form IT-285 to request separation of liability relief.*

The department proved that at the time you signed the joint return, you actually knew about \$5,000 of the additional income because your spouse deposited the \$5,000 into your joint bank account.

Your spouse is liable for all of the understatement of tax, interest and penalties due to the \$20,000 of unreported self-employment income. You are liable only for the understatement of tax, interest, and penalties due to the additional \$5,000 that you actually knew about.

*The department can collect the part of the understatement of tax, interest, and penalties due to \$5,000 of unreported income from **either** you or your spouse. The department can collect the understatement of tax, interest, and penalties due on the remaining \$15,000 of unreported income only from your spouse.*

How to estimate your separation of liability

You are not required to calculate the amount of relief available under separation of liability. The department will calculate your separation of liability, and any related interest and penalties, after you file a completed Form IT-285 with the required statement and supporting documentation (see the [instructions for Form IT-285](#)). However, if you wish to estimate your separation of liability, use *Worksheet 1 - Estimating your separation of liability* on page 25. In addition to tax, your share of the liability may include penalties and interest.

Equitable relief

You may be allowed equitable relief if, taking into account all facts and circumstances, the department determines you should not be held liable for an understatement or underpayment of tax.

Equitable relief generally applies to an underpayment of tax and part or all of any understatement of tax that does not qualify for either innocent spouse relief or separation of liability relief. The department will automatically consider equitable relief for any understatement of tax if it determines that innocent spouse relief and separation of liability relief do not apply.

Refunds. You are **not** eligible for a refund of payments made with the joint return (including withholding tax and estimated tax payments), joint payments, or payments that your spouse (or former spouse) made.

You may be able to receive a refund of any separate payment(s) you made. You may also be entitled to a refund of your portion of a joint overpayment from another tax year that was applied to the liability to the extent you can establish that you provided the funds resulting in the overpayment. However, all claims for refunds must be made within the time period for seeking a refund (generally three years from the date the original return was filed, or two years from the date the tax was paid, whichever is later).

You may qualify for equitable relief if you filed a joint return and you meet **all** of the following conditions:

- you are not eligible for innocent spouse relief or separation of liability relief;
- you and your spouse (or former spouse) did not transfer assets to one another as part of a fraudulent scheme;
- your spouse (or former spouse) did not transfer assets to you for the main purpose of avoiding tax or the payment of tax;
- you did not file or fail to file your return with the intent to commit fraud; and
- you establish that, after taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax.

Example – *You and your spouse filed a joint 2012 income tax return showing tax due of \$10,000. You and your spouse agree that you will each pay \$5,000 towards the tax due. Since you and your spouse maintain separate checking accounts, you deposit \$5,000 into your spouse's checking account so your spouse can write one check for \$10,000 to pay the tax due. Without your knowledge, your spouse pays only \$5,000 towards the tax liability.*

You establish that you had no knowledge, or reason to know, that at the time you signed the return your spouse would not pay the tax. Also, you and your spouse divorced in 2013. Both these facts indicate that it may be unfair to hold you liable for the \$5,000 underpayment. The department will consider these facts, together with all the other facts and circumstances, to

determine whether to grant you equitable relief from the \$5,000 underpayment.

Factors for determining whether to grant equitable relief

The department will consider all the facts and circumstances of your case in order to determine whether it is unfair to hold you responsible for the understatement of tax. The department will consider all relevant factors and weigh them appropriately.

Examples of factors that weigh **in favor of** equitable relief:

- You are separated (whether legally or not), widowed, or divorced from your spouse.

Note: A temporary absence, such as an absence due to imprisonment, illness, business, vacation, military service, or education is not considered separation for this purpose. A temporary absence is one where 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.

- You would suffer economic hardship (for example, you would not be able to pay your reasonable living expenses) if relief is not granted. The department will take your **current** income, expenses, and assets into consideration.
- You were abused by your spouse (or former spouse), or your spouse (or former spouse) maintained control of the household finances by restricting your access to financial information, and because of the abuse or control you were not able to question or challenge the taxes reported as due, or the payment of the taxes due, on the joint return.
- You were in poor mental or physical health on the date you signed the return or at the time you requested relief.
- You did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.
- Your former spouse has a legal obligation to pay the tax under a divorce decree or agreement. (This will not weigh in your favor if you knew or had reason to know, at the time the divorce decree or agreement was entered into, that your spouse would not pay the tax.)
- The tax for which you are requesting relief is attributable to your spouse (or former spouse).

Examples of factors that weigh **against** equitable relief:

- You will not suffer economic hardship if relief is not granted.

- You knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time you signed the return.
- You received a significant benefit from the unpaid tax or items causing the understatement. (See *Indications of unfairness for innocent spouse relief* on page 11 for a discussion of *significant benefit*.)
- You have not made a good faith effort to comply with New York State income tax laws for the tax year for which you are requesting relief or the following years.
- You have a legal obligation to pay the tax under a divorce decree or agreement.
- The tax for which you are requesting relief is attributable to you.

If you disagree with the Tax Department's decision

If you disagree, in whole or in part, with the department's decision concerning your request for relief, or if you have not received a determination on your request within six months from the date you filed Form IT-285 (for amounts related to tax years 1999 and later), you may:

- request a conciliation conference from the Bureau of Conciliation and Mediation Services (BCMS), or
- petition for a hearing in the Division of Tax Appeals.

Conciliation conference

A [conciliation conference](#) is a rapid and inexpensive way to resolve protests without a formal hearing.

You can appear at the conference by yourself or appoint a representative by completing a *Power of Attorney* (see page 19). A representative can include:

- an attorney,
- a certified public accountant,
- a public accountant enrolled with the New York State Department of Education, or
- an enrolled agent licensed to practice before the IRS.

All others may request special permission from the Director of BCMS to represent a client.

An impartial conferee will conduct the conference, which typically lasts less than two hours. A department representative will participate to explain the department's position. You will then have an opportunity to ask questions, explain your position, and submit supporting documentation.

After all information and evidence has been presented, the conferee will attempt to mediate the dispute. If mediation is unsuccessful, the conferee will render a decision.

After the conference, the conferee will send you a proposed resolution in the form of a *Consent*. If you indicate your acceptance by signing and returning the *Consent* within 15 days, the disagreement will be concluded. Otherwise, the conferee will issue a *Conciliation Order*. This order is binding on the Tax Department, and will be binding on you unless you file a petition for a hearing with the Division of Tax Appeals within 90 days after the *Conciliation Order* is mailed to you.

To request a conference, you must complete [Form CMS-1, Request for Conciliation Conference](#), and mail it to the department **no later than 90 days** from the date the department mailed its determination notice to you. Mail your request to:

BCMS
WA HARRIMAN CAMPUS
BUILDING 9
ALBANY NY 12227-0918

Tax Appeals hearing

The Tax Appeals hearing process begins when you file a petition with the Division of Tax Appeals. You must indicate in writing the specific actions of the Tax Department you are protesting. You must file your petition **no later than 90 days** from the date the department mails its determination or within 90 days after a *Conciliation Order* is mailed to you (see *Conciliation conference* on page 16). If you do not file a petition, or you file it late, the Division of Tax Appeals cannot review your request for relief.

A Tax Appeals hearing is a proceeding before an impartial administrative law judge and is reported stenographically. After the hearing, the administrative law judge will issue a determination. The determination is binding on both parties (i.e., you and the Tax Department) **unless** you or the department requests a review of the determination by the Tax Appeals Tribunal by filing an exception within 30 days of notification of the determination. If such a review is requested, the record of the hearing and any additional oral or written arguments will be considered. After this review, the Tribunal will issue a decision affirming, reversing, or modifying the administrative law judge's determination, or referring the matter back to the administrative law judge for further hearing.

Small claims option. You may also elect to have your hearing held in the Small Claims Unit if the amount in dispute is within the dollar limits set by the *Rules of Practice and Procedure of the Tax Appeals Tribunal*. The hearing is conducted as informally as possible by an impartial presiding officer. The presiding officer's determination is conclusive and is not subject to review by any other unit in the Division of Tax Appeals, the Tax Appeals Tribunal, or by any court in the state.

Petition forms and the *Rules of Practice and Procedure* are available on the Division of Tax Appeals Web site (www.dta.ny.gov) or you may write to:

DIVISION OF TAX APPEALS
AGENCY BUILDING 1
EMPIRE STATE PLAZA
ALBANY NY 12223

Other types of relief

Nonobligated spouse relief

Nonobligated spouse relief is different from innocent spouse relief, separation of liability relief, and equitable relief. It **cannot** be used to request relief from a joint tax liability.

If you are filing a joint return and only your spouse owes a debt (as described below), you can separate your part of the refund by submitting a completed [Form IT-280](#), *Nonobligated Spouse Allocation*, **with** your joint New York State income tax return.

Debts your spouse may owe include: New York State tax liabilities (other than a liability from a joint return you filed with your spouse); defaulted governmental education, state university, or city university loans; past-due support liability; past-due legally enforceable debt to a New York State agency; or New York City warrant judgment debt.

You qualify as a nonobligated spouse if:

- you have income (such as wages or interest) and prepaid taxes (such as withholding or estimated tax payments) to report on a joint return, or
- you are going to file a joint return for any refundable credit(s), and do not want to apply your part of the joint refund or refundable credit to a debt owed solely by your spouse.

For more information about [nonobligated spouse relief](#), visit the department Web site.

Offer in compromise

You may qualify for an offer in compromise under section 171-eighteenth-d of the Tax Law if you are jointly and severally liable on a joint income tax return, and you meet the following conditions:

- at the time of the offer, you and your spouse are divorced, separated, or living apart and ineligible to file a joint income tax return; and
- you are able to demonstrate that collection of your spouse's (or former spouse's) share of liability from you could not be accomplished within a reasonable length of time without imposing substantial economic hardship on you. Substantial economic hardship does not necessarily require you to file for bankruptcy or be insolvent.

This offer in compromise would relieve you from the share of the joint liability attributable to the income of your spouse (or former spouse). This share is determined by multiplying the entire amount of the joint liability by a fraction, the numerator of which is your spouse's (or former spouse's) tax determined on a separate basis, and the denominator of which is the sum of your spouse's (or former spouse's) tax plus your tax, both of which are determined on a separate filing basis.

If you obtain an offer in compromise under section 171-eighteenth-d for your spouse's (or former spouse's) share of the liability, this does not relieve your spouse (or former spouse) from having to pay the entire amount due with respect to that return.

To request offer in compromise relief under section 171-eighteenth-d, file [Form DTF-4.2](#), *Compromise of Spousal Share of Liability on Joint Tax Return*.

Power of attorney

The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, you must give specific written authorization to a practitioner, paid preparer, or other representative before he or she will be given access to your confidential records or be allowed to represent you before the department or the Division of Tax Appeals.

A power of attorney is evidence that a practitioner or other person may act on your behalf. The power of attorney must contain explicit authorization for your representative to act for you, and must be properly completed and signed.

The department prefers that you use one of the department's [power of attorney forms](#), but will accept other forms if they contain all the necessary elements as required on the Tax Department forms. Tax Department power of attorney forms may be used for New York State tax matters, New York City tax matters, or both.

If you would like the department to correspond with your representative, you should complete and send a power of attorney with your request.

Frequently asked questions

This section answers questions commonly asked by taxpayers about relief from a joint tax liability.

What is joint and several liability?

When you file a joint income tax return, the law makes both you and your spouse jointly and individually responsible for the tax and any interest or penalty due on the joint return. This applies not only to the tax shown on the return, but also to any additional tax, penalty, and interest the department determines to be due after the return is filed. You remain jointly and severally liable for the taxes, and the department can collect from you even if you later divorce and the divorce decree states that your former spouse is solely responsible for the tax.

How can I get relief from joint and several liability?

For tax years beginning before January 1, 1999, you may request innocent spouse relief under former Tax Law section 651(b)(5) (see page 7).

For tax years beginning on or after January 1, 1999, you may request innocent spouse relief, separation of liability relief, or equitable relief under Tax Law section 654 (see page 8).

If you do not qualify for relief under sections 651(b)(5) or 654, see *Other types of relief* on page 18.

What if the department has levied my bank account for a tax liability I want to request relief for?

On the date your request for relief is **received** by the department, the department will suspend all collection activity on that liability until a final determination is made.

Do I qualify for relief for all situations when there is an understatement of tax?

No. There are many situations where you may owe tax that is related to your spouse (or former spouse), and you may not be eligible for relief. For example, you and your spouse file a joint return that reports \$10,000 of income. You know that your spouse earns income on a cash basis and that \$5,000 of additional income was not reported on your joint return. You are **not** eligible for innocent spouse relief or separation of liability relief when you have knowledge of the understatement of tax.

If the understatement of tax does not qualify for innocent spouse relief or separation of liability relief, the department will automatically consider equitable relief. Equitable relief is generally available for liabilities that are unpaid.

Is my marital status a consideration in granting relief from a joint and several liability?

Yes. If you are now divorced, legally separated, or living apart from the spouse you filed the joint return with, or if your spouse (or former spouse) is deceased, this will be a factor in considering your request for innocent spouse relief or equitable relief. However, you may still qualify for innocent spouse relief or equitable relief even if your marital status has not changed since you filed the joint return.

To request separation of liability relief, at least one of the following must be true:

- You are no longer married.
- Your spouse is deceased.
- You are legally separated from your spouse.
- You were not a member of the same household as the spouse you filed the joint return with at any time during the 12-month period ending on the date you filed Form IT-285.

If you were abandoned or receive no economic support from your spouse (or former spouse), attach supporting documentation to your request.

Will my spouse (or former spouse) be notified of my request for relief?

Yes. By law, the department must notify your spouse (or former spouse) in matters related to a joint return, including a request for relief and the department's final determination. Your spouse (or former spouse) will have the option of participating in the determination of the amount of relief, if any, from the liability. (See *Notification of your spouse or former spouse* on page 4.)

How do I demonstrate economic hardship?

Economic hardship means you are unable to pay your basic living expenses such as food, clothing, housing, medical expenses (including health insurance), transportation, child care, child support, etc.

Attach a signed statement to your request for relief detailing the facts and circumstances that support your claim of **current** economic hardship.

Factors that are considered include late child support payments, difficulty in meeting household expenses, medical bills and expenses, or other similar examples of economic distress. The department will contact you if additional documentation is needed.

Can I request relief while my joint return is under audit by the Tax Department?

Yes. File [Form IT-285, Request for Innocent Spouse Relief \(and Separation of Liability and Equitable Relief\)](#), with the department employee assigned to your audit case.

How will I find out the result of my request for relief?

The department will send you a determination letter notifying you of its decision to accept or deny your request. For tax years 1999 and later, if you have not received a determination within 6 months after you filed your request, or if you disagree with a determination you received for any tax year, see *If you disagree with the Tax Department's decision* on page 16.

Why would a request for separation of liability be denied?

Even if you meet the requirements (see *Separation of liability relief* on page 11), the department will not grant a request for separation of liability relief in any of the following situations:

- The department can establish that you and your spouse (or former spouse) transferred assets as part of a fraudulent scheme.
- The department can establish that at the time you signed your joint return, you had actual knowledge of any erroneous items giving rise to the deficiency that can be allocated to your spouse (or former spouse).
- You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax.

If I am denied innocent spouse relief, must I file another Form IT-285 if I believe I might qualify for separation of liability relief or equitable relief?

No. The department will automatically consider whether separation of liability relief or equitable relief would apply to your situation, and contact you if additional information is required.

Can I get a refund of payments already made toward the tax liability after I am granted relief?

If you are granted relief, refunds are permitted under innocent spouse relief and under limited circumstances, equitable relief. Refunds are **not** permitted under separation of liability relief.

In cases where refunds are permitted, the department will only refund payments you can prove you made with your own money. However, no proof must be submitted in a case where the department applied all or a part of a New York State income tax refund from a return you filed, to pay a liability on a joint return for another year.

Where do I send payment for any tax that may still be due after I receive relief?

You will receive an adjusted assessment notice with payment instructions after you receive the determination letter. You may also call the Civil Enforcement Division (CED) at (518) 457-5434.

Table 1 – Innocent spouse relief for tax years beginning before January 1, 1999
(Former Tax Law section 651(b)(5))

Type of liability	You must have filed a joint return that has a substantial understatement of tax (an amount over \$100) due to an erroneous item of your spouse (or former spouse).
Marital status	Not considered a factor for relief.
Knowledge	You must establish that at the time you signed the joint return you did not know, and had no reason to know, that there was a substantial understatement of tax.
Other qualifications	If a substantial understatement is attributable to a New York deduction, exemption, credit, or property basis for which there is no basis in fact or law, the tax liability must exceed a specified percentage of the innocent spouse's New York adjusted gross income for the most recent tax year ending before the date the deficiency is mailed. This requirement does not apply to a substantial understatement attributable to an omission from New York adjusted gross income.
Unfairness	When taking into account all the facts and circumstances, it would be unfair to hold you liable for the substantial understatement of tax.
Refunds	Your request can generate a refund.

Table 2 – Relief for tax years beginning on or after January 1, 1999
(Tax Law section 654)

Factors	Innocent spouse relief	Separation of liability	Equitable relief
Type of liability	You must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse.	You must have filed a joint return that has an understatement of tax due, at least in part, to an erroneous item of your spouse.	You must have filed a joint return that has either an understatement or an underpayment of tax.
Marital status	Marital status may be considered in determining whether to grant relief.	You must be divorced (or your spouse is deceased), legally separated, or not a member of the same household as your spouse for an entire year before you file for relief.	Marital status may be considered in determining whether to grant relief.
Knowledge	You must establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax or the extent of the understatement.	If the department establishes that you actually knew of the item giving rise to the understatement, then you are not entitled to relief for any portion of the liability attributable to that item.	May be considered as a factor.
Other qualifications	None	None	You do not qualify for either innocent spouse relief or separation of liability.
Unfairness	When taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.	Not considered as a factor for relief.	When taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
Refunds	Your request can generate a refund.	No refunds are permitted.	Your request can generate a refund.

Worksheet 1 – Estimating your separation of liability

See instructions on page 26.

(This optional worksheet is provided for you to estimate your liability. You are not required to complete it.)
Do **not** send this worksheet to the Tax Department.

1. Enter the net amount of income and deductions used to calculate the understatement of tax and allocated to you.			1.
2. Enter the net amount of all income and deductions used to calculate the understatement of tax.*			2.
3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least three places).			3.
4. Enter the understatement of tax.*		4.	
5. Enter the credits and other taxes taken into account used to calculate the understatement of tax and allocated to your spouse (or former spouse).*	5.		
6. Enter the credits and other taxes used to calculate the understatement of tax and allocated to you.*	6.		
7. Add lines 5 and 6.		7.	
8. Subtract line 7 from line 4.			8.
9. Multiply line 8 by line 3.			9.
10. Add lines 6 and 9. This is your estimate of the understatement of tax you may be found responsible for.			10.

*This amount is shown on the Tax Department notice or audit report.

Instructions for completing Worksheet 1

Line 1

When allocating income and deductions taken into account in computing the understatement of tax, allocate the items in the same manner you would have allocated the items if you (and your spouse or former spouse) had filed a separate return.

If you filed federal [Form 8814](#), *Parent's Election to Report Child's Interest and Dividends*, allocate the tax liability from that income as appropriate between you and your spouse.

You must allocate all income and deductions equally between you and your spouse (or former spouse) **unless** there is clear and convincing evidence that shows a different allocation is appropriate or the department establishes that you had actual knowledge of the joint items. For example:

- Allocate wages and salaries to the spouse who performed the job and received federal Form W-2, *Wage and Tax Statement*.
- Allocate investment income (including capital gains) according to which spouse owned the investment.
- Allocate New York addition and subtraction modifications (such as 414(h) retirement contributions and/or pension exclusions) to the spouse to whom the modification belongs.
- Allocate business income and deductions according to the ownership of the business. You generally allocate business income according to which spouse owned the business that produced the income.
- Allocate personal deductions (such as itemized deductions for mortgage interest and taxes).

Items limited or not allowed on separate returns

If a deduction would not be allowed if you had filed a separate return, calculate the deduction as you would on a joint return and allocate that amount equally between you and your spouse (or former spouse).

Do the same with income and deductions (such as an IRA deduction) that are subject to special limits on a separate return. Calculate these items as you would on a joint return and allocate the items between you and your spouse (or former spouse).

Example: *You and your spouse filed a joint return and you both qualify for an IRA deduction. Several months after filing the return, you received a notice from the department for additional tax because of unreported interest and dividend income. You would like to estimate your separation of liability so you are using Worksheet 1.*

You and your spouse both contributed to IRA accounts. If you and your spouse had filed separate returns, the IRA deductions would have been eliminated due to the federal limits on IRA deductions on separate returns.

On Worksheet 1, each spouse should take the IRA deduction allowable as if you had filed a joint return.

Items allocable to one spouse that benefit the other spouse

If a deduction that is otherwise allocable to one spouse created a tax benefit for the other spouse, you must allocate that deduction to the other spouse to the extent the item created a benefit.

Example: *Your joint income tax return shows \$50,000 of wages allocable to you, \$15,000 of self-employment income allocable your spouse, and a \$20,000 deduction allocable to your spouse. The department audited your return and disallowed the \$20,000 deduction. Only \$15,000 of the disallowed deduction is allocable to your spouse (the amount that offset your spouse's self-employment income). The remaining \$5,000 must be allocated to you because the amount offset your income.*

Lines 5 and 6

Enter the part of the understatement of tax that is due to the disallowance of a credit or to the increase in any tax, **other than income tax**. Allocate credits and other taxes as you would have if you and your spouse (or former spouse) had filed separate returns.

Example: *You reported a \$750 separate tax on a lump-sum distribution. All of this tax is allocable to you. The department audited your return and determined that your separate tax on a lump-sum distribution should have been \$1,100. On line 6, enter the \$350 increase in separate tax on lump-sum distributions (\$1,100 - \$750).*

Credits not allowed on separate returns

If a credit would not be allowed if you had filed a separate return, calculate the credit as you would on a joint return and allocate that amount between you and your spouse (or former spouse). Examples of credits not generally allowed on a separate return are the child and dependent care credit and the earned income credit.

Example: *You claimed a credit of \$860 for child and dependent care expenses on your tax return. The department audited your return and allowed only \$500. Even though none of the credit would have been allowed on separate returns, you are entitled to a \$500 credit amount for purposes of estimating your separation of liability. Allocate the \$360 disallowance (\$860 - \$500) between you and your spouse on lines 5 and 6.*

Credits allocable to one spouse that benefit the other spouse

If a credit that is otherwise allocated to one spouse created a tax benefit for the other spouse, it must be allocated to the other spouse to the extent the credit created a benefit.

Example: *Your joint income tax return shows \$60,000 of wages attributable to you, and a \$2,000 conservation easement tax credit attributable to your spouse. This credit was for land owned by your spouse that you have no ownership interest in. Since your spouse had no income, the entire credit offset \$2,000 of your income tax on the joint return. You received the tax benefit from the entire credit. The department audited your return and disallowed \$400 of the credit. You and your spouse remain jointly and severally liable for the \$400 deficiency. It was your spouse's item and you received a \$400 tax benefit.*

Sample – Case A

Completing Worksheet 1. Mary and Sam timely filed a joint income tax return (Form IT-201) for tax year 2010. They divorced May 3, 2013. On July 27, 2014, the department issued a Notice of Deficiency to Mary and Sam for their 2010 return. The notice shows a \$504 understatement of tax based on the following four items listed on the notice:

1. \$2,500 of wages that Mary did not report on the joint return.
2. \$336 for a disallowed resident credit attributable to Mary.
3. \$150 for an additional New York subtraction modification for interest income on U.S. government bonds belonging entirely to Mary.
4. \$500 of interest income not reported on the joint return from an account belonging entirely to Sam.

Sam decides to file Form IT-285 to request relief under separation of liability. Sam must allocate the items between Sam and Mary as follows:

Items to allocate	Sam	Mary
Wages		\$2,500
Disallowed resident credit		\$ 336
New York subtraction modification on U.S. government bonds		\$ 150
Interest income	\$500	

Although not required, Sam uses Worksheet 1 to estimate the understatement of tax that is allocable to him. He fills out the worksheet as follows (see Example of completed Worksheet 1 on page 29).

- Line 1** Sam enters the **\$500** interest income from his bank account.
- Line 2** The net amount of income and deductions used to calculate the understatement of tax is **\$2,850**. This is the sum of the unreported wages (\$2,500) and interest income (\$500), minus the additional New York subtraction modification for interest on U.S. government bonds (\$150).
- Line 3** Divide line 1 by line 2 (carry the decimal to at least three places) to get **.175**.
- Line 4** Sam enters the **\$504** understatement of tax as shown on the Notice of Deficiency.
- Line 5** Sam enters the disallowed resident credit of **\$336** allocated to Mary.
- Line 6** Sam enters **\$0** because there are no credits or taxes allocated to Sam.
- Line 10** Sam completes lines 7 through 10. Line 10 estimates that Sam is responsible for **\$29** of the understatement of tax. Mary would be responsible for the remaining amount (\$475).

Example of completed Worksheet 1 (Sample case A)

1. Enter the net amount of income and deductions used to calculate the understatement of tax and allocated to you.			1. \$500
2. Enter the net amount of all income and deductions used to calculate the understatement of tax.*			2. \$2,850
3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least three places).			3. .175
4. Enter the understatement of tax.*		4. \$504	
5. Enter the credits and other taxes used to calculate the understatement of tax and allocated to your spouse (or former spouse).*	5. \$336		
6. Enter the credits and other taxes used to calculate the understatement of tax and allocated to you.*	6. \$0		
7. Add lines 5 and 6.		7. \$336	
8. Subtract line 7 from line 4.			8. \$168
9. Multiply line 8 by line 3.			9. \$29
10. Add lines 9 and 6. This is your estimate of the understatement of tax you may be found responsible for.			10. \$29

*This amount should be shown on the Tax Department notice or audit report.

Sam decides to file Form IT-285 (not illustrated) to request separation of liability. Sam does not send Worksheet 1 with the form; he keeps it for his records only. Sam completes the entire Form IT-285 so the department will consider all three types of relief and attaches the required statements and supporting documentation to Form IT-285.

Sample – Case B

Completing Form IT-285. Alice and David timely filed their joint 2011 New York State income tax return (Form IT-201). They divorced December 12, 2012. On February 9, 2014, the Tax Department issued a Notice of Deficiency to Alice and David because there was \$5,000 of unreported income attributable to tax year 2011. The notice shows tax due of \$350 and penalties and interest of \$80.

The \$5,000 in unreported income was from David's business. The Internal Revenue Service (IRS) had previously assessed Alice and David for the same \$5,000 of unreported income on their 2011 federal income tax return. Alice had requested and recently received innocent spouse relief from the IRS.

Alice believes she qualifies for New York State relief because:

1. Alice and David filed a joint return for tax year 2011.
2. Alice is no longer married to David.
3. Alice did not know about the \$5,000 in business income that was not included on the return.
4. Alice received innocent spouse relief from the IRS for the same erroneous item for the same tax year.

Line 1 Alice marks an **X** for Yes; she is requesting relief from a liability from a joint return.

Line 2 Alice marks an **X** for No.

Line 3 Alice enters **2011**; this is the tax year for which she is requesting relief.

Line 4 Alice provides an explanation and will attach the same supporting documentation she sent to the IRS.

Line 5 Alice enters David's name and social security number. She does not know his current address or phone number.

Line 6 Alice marks an **X** in the box that indicates she is divorced and includes the date. (She must provide a copy of the entire divorce decree with the attachments to Form IT-285.)

Line 7 Alice marks an **X** for No.

Line 8 Alice marks an **X** in the boxes that apply. She uses the explanation line to state that she had access to a joint account for household finances, but she had no access to David's business bank accounts and records.

Line 9 Alice marks an **X** in the boxes to indicate she gave David her Form W-2 for return preparation and reviewed the return before she signed it.

Line 10 Alice marks an **X** for No.

Line 11 Alice marks an **X** to indicate she did not know that anything was incorrect or missing. She also explains that she had no way to know if the information reported for David's business was correct.

Line 12a Alice marks an **X** for Yes. She must include a copy of federal Form 8857 with her attachments to Form IT-285.

Line 12b *Alice marks an X for Yes. She must include a copy of the final federal determination with her attachments to Form IT-285.*

*Alice does not complete the allocation schedule on page 4 because she does not have the specific information she needs. She signs Form IT-285, and attaches **all** required supporting documentation and statements as required by the instructions for the form. She explains why she feels she qualifies for relief, why she did not know about David's unreported business income, and documentation from the IRS that shows the \$5,000 understatement was attributable to David. She also states that holding her liable for the tax due would cause an economic hardship because of a lack of child support from David and excessive medical expenses.*

Note: *Filing Form IT-285 to request relief will not extend the deadline to protest the notice of deficiency. If Alice wishes to protest the notice of deficiency, she must also file a Request for Conciliation Conference with the Tax Department's Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals within the time limit specified in the notice. The request should include the same information that supports Alice's request for relief from the joint liability, including when and why she filed or plans to file Form IT-285. (Also see If you disagree with the Tax Department's decision on page 16.)*

**Request for Innocent Spouse Relief
(and Separation of Liability and Equitable Relief)****Important: Do not file this form with your income tax return. See *Where to file* on page 4.**

Your first name and middle initial Alice		Your last name Smith		Your social security number 111-22-3333	
Mailing address (number and street or PO box) 1 Main Street					Apartment number
City, village, or post office Anytown		State NY	ZIP code 11111	Daytime phone number (444) 555-6666	Evening phone number ()

Important notes:

- See the instructions, Form IT-285-I, and our Web site for information on the types of relief available.
- By law, the Tax Department must contact the person who was your spouse during the years for which 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 Division of Tax Appeals, your personal information may be released. See instructions.

1 Are you requesting relief from a liability that resulted from a jointly filed return? Mark an **X** in the appropriate box.

☒ Yes. Go to line 2. ☐ No. **Stop.** You cannot file Form IT-285.

2 Are you requesting that all or part of your share of a joint refund, that was (or will be) applied against your spouse's past-due debt (such as child support), be refunded to you?

☐ Yes. **Stop.** Use Form IT-280, *Nonobligated Spouse Allocation*, to make this request. Do not use Form IT-285. ☒ No. Go to line 3.

3 Enter the tax year(s) for which you are requesting relief from liability for tax. (Form IT-285 must be used for tax years beginning on or after January 1, 1999. For relief from a joint liability for prior years, see *General information* in the instructions.) **3** 2011

Note: If the answers are not the same for each of the following questions for all tax years for which you are filing this form, submit an explanation (be sure to include your name and social security number).

4 Explain why you believe you qualify for relief. You **must** submit a statement and appropriate supporting documentation (*see instructions*).

I am no longer married to David. I did not know anything about his business finances.

(continued)



5 Information, if known, about **your spouse (or former spouse)** to whom you were married at the end of the year(s) on line 3.

First name and middle initial David	Last name Smith	Social security number 222-33-4444		
Mailing address (number and street or PO box; see instructions) unknown				Apartment number
City, village, or post office	State	ZIP code	Daytime phone number ()	Evening phone number ()

6 What is the current marital status between you and the person on line 5?

☐ Married and still living together

☐ Married and living apart since (mm-dd-yyyy)

☐ Widowed since (mm-dd-yyyy)
(Include a photocopy of the death certificate.)

☐ Legally separated since (mm-dd-yyyy)
(Include a photocopy of your entire separation agreement.)

☒ Divorced since (mm-dd-yyyy)
(Include 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.

7 Were you a victim of spousal abuse or domestic violence, or suffering the effects of such abuse during the tax years for which you are requesting relief or when any of the returns were filed for those years?

☐ Yes. See instructions. ☒ No.

8 For the years for which you want relief, how were you involved in the household finances? Mark all that apply.

- ☐ You were not involved in handling money for the household. Explain below.
- ☒ You knew the person on line 5 had separate accounts.
- ☒ You had joint accounts but you had limited use of them or did not use them. Explain below.
- ☐ You used joint accounts. You made deposits, paid bills, balanced the checkbook, or reviewed the monthly bank statements.
- ☒ You made decisions about how money was spent. For example, you paid bills or made decisions about household purchases.
- ☐ Other: _____

Explain anything else you want to tell us about your household finances: We had a joint checking account to pay household bills.

I could write checks but I did not balance the account. I had no access to David's business accounts. I did not see bank

statements for any of the checking accounts.

(continued)



9 How were you involved with preparing your tax return(s)? Mark all that apply and explain, if necessary.

- ☐ You were not involved in preparing the returns.
- ☐ You filled out or helped fill out the returns.
- ☐ You gathered receipts and canceled checks.
- ☒ You gave tax documents (such as federal Forms W-2, 1099, etc.) for the preparation of the returns.
- ☒ You reviewed the returns before they were filed.
- ☐ You did not review the returns before they were filed. Explain below.
- ☐ You did not know a joint return was filed.
- ☐ Other: _____

Explain: I gave David my W-2 form and reviewed the return before I signed it. I had no way of knowing if the numbers
for David's business were correct.

10 When the returns were filed, did you know any amounts were due to New York State?

- ☐ Yes ☒ No If **Yes**, explain when and how you thought the amount of tax reported on your return would be paid: _____

11 When the returns were filed, what did you know about any incorrect or missing information? Check all that apply and explain, if necessary.

- ☐ You knew something was incorrect or missing, but you said nothing. Explain below.
- ☐ You knew something was incorrect or missing, and asked about it. Explain below.
- ☒ You did not know anything was incorrect or missing.
- ☐ Not applicable. There was no incorrect or missing information.

Explain: _____

12a Did you file federal Form 8857, *Request for Innocent Spouse Relief*, with the IRS for the same tax year(s) and with the same missing or incorrect items on your return(s) for which you are filing this form?

- ☒ Yes. Include a copy of your Form 8857 and continue with line 12b.
- ☐ No. Continue with the *Allocation of items between spouses* schedule.

12b Did you receive a final determination from the IRS granting you *Innocent Spouse* relief under IRC section 6015(b)?

Note: Other types of relief can be granted by the IRS. If you are unsure which type of relief you were granted, mark the **No** box or contact the IRS to determine the type of relief you were granted.

- ☒ Yes. Include a copy of the final determination. Sign the form and see *Where to file* on page 4.
 Do not complete the *Allocation of items between spouses* schedule.
- ☐ No. Complete the *Allocation of items between spouses* schedule.

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Allocation of items between spouses

If filing for more than one tax year, complete a separate schedule for each year. Include copies of all federal Forms W-2, all federal schedules, and copies of any notices from the New York State Tax Department.

If you do not have specific information to complete the allocation schedule, mark an **X** in the box and see instructions. ☐

Allocated items	a – Allocated to you	b – Allocated to your spouse or former spouse	c – Total of column a plus column b
13 Enter the tax year covered by this schedule _____			
14 Wages			
15 Interest and dividends			
16 Business income			
17 All other income. Identify the type and amount below. _____ _____ _____ Line 17 total ...			
18 Federal adjustments to income. Allocate separate adjustments, such as an IRA deduction, to the spouse to whom they belong			
19 New York adjustments to income. Allocate separate adjustments, such as 414(h) contributions and/or pension exclusions, to the spouse to whom they belong.....			
20a Estimated tax payments (<i>see instructions</i>)			
b Payment made with extension Form IT-370 or using the online application			
c Payments made with return			
d Payments made on assessments (bills).....			
21 Income tax withheld. Allocate New York State/New York City/Yonkers income tax withheld to each spouse as shown on federal Forms W-2. Be sure to submit copies of these forms with this Form IT-285.....			

▼ Paid preparer must complete (<i>see instr.</i>) ▼		Date
Preparer's signature	Preparer's NYTPRIN	
Firm's name (<i>or yours, if self-employed</i>)	Preparer's PTIN or SSN	
Address	Employer identification number	
	NYTPRIN excl. code	
E-mail:		

▼ Taxpayer sign here ▼
Your signature
Date
Daytime phone number ()
E-mail:
Keep a copy of this form for your records.

Where to file

Generally, you should send this form to: **NYS Tax Department, Protest Correspondence Unit, W A Harriman Campus, Albany NY 12227-5120**. But, if you are meeting with a Department of Taxation and Finance employee, or you received a notice of deficiency, or you are using a private delivery service, see instructions. If you would like the Tax Department to correspond with your representative, you must complete and submit a power of attorney.

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Sample - Case C

Completing Form IT-285 (Allocation of items between spouses). Michael and Sue filed a joint 2010 New York State income tax return (Form IT-201). They divorced November 28, 2011. On July 10, 2013, the Tax Department issued a Notice of Deficiency to Michael and Sue for tax year 2010 for additional tax due of \$801 plus penalty and interest. The deficiency is the result of \$12,100 in income that was not reported on their 2010 joint return.

The understatement of tax is based on these following items not reported on the joint return:

1. \$200 of wages that Sue earned.
2. \$900 of dividends from stocks that belonged solely to Michael.
3. \$11,000 Michael received as a cash prize from a contest.

Sue believes she may qualify for relief because:

- She filed a joint return with Michael for tax year 2010.
- She is no longer married to Michael.
- She did not know about the stocks belonging to Michael or the \$11,000 cash prize that Michael received.

To request relief, Sue must file Form IT-285 with the department. Michael and Sue's original joint return reported \$50,000 in wage income from Michael's job and \$2,000 in taxable interest and dividends from jointly held accounts. On lines 13 through 21 of Form IT-285, Sue must allocate these items and the additional items from the Notice of Deficiency.

Sue completes the applicable lines in the Allocation of items between spouses section, columns a and b, as follows:

Line 13 Sue enters **2010**.

Line 14 **Column a** – Sue enters **\$200** for the wages she earned but did not report (the amount from the deficiency)

Column b – Sue enters **\$50,000** for the wages Michael earned that were reported on the original return.

Line 15 **Column a** – Sue enters **\$1,000** for her share of the interest and dividends that were reported on the original return.

Column b – Sue enters **\$1,900** for Michael's share of interest and dividends (\$1,000 for his share of the amount that was originally reported on the return plus \$900 from the deficiency).

Line 17 **Column a** – Sue enters **\$0**.

Column b – Sue enters **\$11,000** for the cash prize won by Michael (the amount from the deficiency).

Line 21 **Column a** – Sue enters **\$0**.

Column b – Sue enters **\$2,780** as shown on Michael's 2010 federal Form W-2.

Sue attaches a statement and supporting documentation as required by the instructions for Form IT-285. The statement includes why she feels she qualifies for relief from the joint liability, why she did not know about the dividend income, and documentation that shows that the \$11,000 cash prize was won by Michael while he was at a sporting event she did not attend. She states that holding her liable for the tax due would cause an economic hardship since she is only able to work part-time because she has to care for a disabled family member.

Note: *Filing Form IT-285 to request relief will not extend the deadline to protest the notice of deficiency. If Sue wishes to protest the notice of deficiency, she must also file a Request for Conciliation Conference with the Tax Department's Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals within the time limit specified in the notice. The request should include the same information that supports Sue's request for relief from the joint liability, including when and why she filed or plans to file Form IT-285. (Also see If you disagree with the Tax Department's decision on page 16.)*

Allocation of items between spouses

If filing for more than one tax year, complete a separate schedule for each year. Include copies of all federal Forms W-2, all federal schedules, and copies of any notices from the New York State Tax Department.

If you do not have specific information to complete the allocation schedule, mark an **X** in the box and see instructions. ☐

Allocated items		a – Allocated to you	b – Allocated to your spouse or former spouse	c – Total of column a plus column b
13	Enter the tax year covered by this schedule <u>2010</u>			
14	Wages	200.00	50000.00	50200.00
15	Interest and dividends	1000.00	1900.00	2900.00
16	Business income			
17	All other income. Identify the type and amount below. Cash prize Line 17 total ...	0.00	11000.00	11000.00
18	Federal adjustments to income. Allocate separate adjustments, such as an IRA deduction, to the spouse to whom they belong			
19	New York adjustments to income. Allocate separate adjustments, such as 414(h) contributions and/or pension exclusions, to the spouse to whom they belong.....			
20a	Estimated tax payments (see instructions)			
b	Payment made with extension Form IT-370 or using the online application			
c	Payments made with return			
d	Payments made on assessments (bills).....			
21	Income tax withheld. Allocate New York State/New York City/Yonkers income tax withheld to each spouse as shown on federal Forms W-2. Be sure to submit copies of these forms with this Form IT-285.....	0.00	2780.00	2780.00

▼ Paid preparer must complete (see instr.) ▼		Date	
Preparer's signature		Preparer's NYTPRIN	
Firm's name (or yours, if self-employed)		Preparer's PTIN or SSN	
Address		Employer identification number	
		NYTPRIN excl. code	
E-mail:			

▼ Taxpayer sign here ▼
Your signature
Date
Daytime phone number ()
E-mail:
Keep a copy of this form for your records.

Where to file

Generally, you should send this form to: **NYS Tax Department, Protest Correspondence Unit, W A Harriman Campus, Albany NY 12227-5120**. But, if you are meeting with a Department of Taxation and Finance employee, or you received a notice of deficiency, or you are using a private delivery service, see instructions. If you would like the Tax Department to correspond with your representative, you must complete and submit a power of attorney.

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New York State Tax Department

Online Services

Create an Online Services account
and log in to:

- make payments
- file certain returns and other tax forms
- view your account and filing information
- change your address
- receive email notifications
- respond to bills and notices

Access is available 24 hours a day, 7 days
a week (except for scheduled maintenance).

www.tax.ny.gov

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- get information and manage your taxes online
- check for new online services and features



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Telephone assistance

Automated income tax refund status: (518) 457-5149

Personal Income Tax Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.