

**Publication 89**  
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# **Innocent Spouse Relief (And Separation of Liability and Equitable Relief)**

**New York State Department of Taxation and Finance**



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<b>Table of contents</b>	<b>Page</b>
Relief from a joint liability . . . . .	4
Community property laws . . . . .	8
Innocent spouse relief for taxable years before 1999 . . . . .	8
Incorrect deduction, exemption, credit, or basis . . . . .	9
How to request relief . . . . .	10
Section 654 relief . . . . .	10
Innocent spouse relief for taxable years 1999 and after . . . . .	11
Erroneous items . . . . .	12
Understatement of tax . . . . .	13
Indications of unfairness . . . . .	14
Relief by separation of liability . . . . .	14
How to figure your separation of liability . . . . .	17
Instructions for completing Worksheet 1 . . . . .	19
Worksheet 1 Example . . . . .	21
Equitable relief . . . . .	24
How to request relief for taxable years 1999 and after . . . . .	27
Instructions for completing Form IT-285, Part V . . . . .	27
Filled in Form IT-285 . . . . .	29
Part I . . . . .	30
Part II Innocent spouse relief . . . . .	30
Part III Separation of liability . . . . .	31
Part IV Equitable relief . . . . .	31
Part V Allocation of items between spouses . . . . .	31
If you disagree with the Tax Department's decision . . . . .	35
Conciliation conference . . . . .	35
Tax Appeals hearing . . . . .	35
Questions & Answers . . . . .	37
General questions . . . . .	37
Innocent spouse relief under section 654 . . . . .	40
Separation of liability . . . . .	41
Equitable relief . . . . .	42
Filing Form IT-285 . . . . .	43
Other types of relief . . . . .	45

## **Relief from a joint liability**

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. When filing a joint return, both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce or otherwise separate. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. However, this does not affect any rights you may have under the divorce decree against your former spouse.

In some cases, a spouse will be relieved of a portion or all of the tax, interest, and penalties on a joint tax return. The following types of relief are available:

1. For taxable years beginning before January 1, 1999:  
Former Tax Law section 651(b)(5),  
innocent spouse relief
  
2. For taxable years beginning on or after January 1, 1999:  
Tax Law section 654, which includes:  
innocent spouse relief  
separation of liability  
equitable relief

Tables 1 and 2 on pages 6 and 7, respectively, compare the rules for these types of relief. This publication explains these types of relief, who may qualify for them, and how to apply for relief.

Each type of relief has different requirements. They are explained separately in different parts of this publication. You can only qualify for equitable relief if you do not qualify for innocent spouse relief or relief by separation of liability. An underpayment of tax (an amount of tax you properly reported on your return but you have not paid) will only qualify for equitable relief. Read each part to see if you qualify for that type of relief.

You are not required to figure the tax, interest, and penalties that qualify for relief. The Tax Department will figure these amounts after you request relief. You will be mailed a detailed description of any adjusted liability.

**Nonobligated spouse relief.** Nonobligated spouse relief is different than innocent spouse relief. You qualify as a nonobligated spouse if you have income (e.g., wages, interest, etc.) and prepaid taxes (e.g., withholding or estimated tax payments) that are to be reported on a joint return, or you are going to file a joint return for any refundable credit(s) and;

1. You want to disclaim your spouse's past due legally enforceable debt to a New York State agency; and
2. You 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 claims, see Form IT-280, *Nonobligated Spouse Allocation*.

**Table 1. Type of relief available for taxable years prior to 1999. Rules for innocent spouse relief under former section 651(b)(5)**

<b>Type of liability</b>	You must have filed a joint return that has a substantial understatement of tax (an amount over \$100) due to a grossly erroneous item of your spouse. Relief under section 651(b)(5) is <b>not</b> available for taxable years beginning on or after January 1, 1999.
<b>Marital status</b>	Not considered as a factor for relief.
<b>Knowledge</b>	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.
<b>Other qualifications</b>	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 taxable year ending before the date the deficiency is mailed. This requirement shall not apply to a substantial understatement attributable to an omission from New York adjusted gross income.
<b>Unfairness</b>	It must be unfair to hold you liable for the substantial understatement of tax taking into account all the facts and circumstances.
<b>Refunds</b>	Your request can generate a refund.

**Table 2. Types of relief available for taxable years 1999 and after under section 654.**

<b>Factors</b>	<b>Rules for innocent spouse relief section 654</b>	<b>Rules for separation of liability section 654</b>	<b>Rules for equitable relief section 654</b>
<b>Type of liability</b>	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 item of your spouse.	You must have filed a return that has either an understatement or an underpayment of tax.
<b>Marital status</b>	Marital status may be considered in determining whether to grant relief.	You must be no longer married (or your spouse is deceased), legally separated, or have not lived with your spouse in the same residence for an entire year before you file for relief.	Marital status may be considered in determining whether to grant relief.
<b>Knowledge</b>	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 Tax Department establishes that you actually knew of the item giving rise to the understatement, then you are not entitled to relief to the extent of the actual knowledge.	May be considered as a factor for relief.
<b>Other Qualifications</b>	None.	None.	You do not qualify for innocent spouse relief or separation of liability.
<b>Unfairness</b>	It must be unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.	Not considered as a factor for relief.	It must be unfair to hold you liable for the underpayment or understatement of tax taking into account all the facts and circumstances.
<b>Refunds</b>	Your request can generate a refund.	Your request cannot generate a refund.	Your request can generate a refund only for amounts paid pursuant to an installment agreement after the date the request for relief is made.

**Publication 89 (11/01)**

**Community property laws**

You must generally 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 require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or your spouse (or former spouse) for purpose of requesting any relief from liability.

**Innocent spouse relief under section 651(b)(5) for a taxable year beginning before January 1, 1999**

For taxable years beginning prior to January 1, 1999, relief from a joint liability is only available through innocent spouse relief under former section 651(b)(5) of the New York State Tax Law. In order to qualify for innocent spouse relief under section 651(b)(5), **all** of the following conditions must be met:

1. You filed a joint return that has a substantial understatement of tax due to grossly erroneous items of your spouse;
2. 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
3. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return, and the amount of tax that was actually shown on your return. A “substantial understatement” means any understatement exceeding one hundred dollars.

Grossly erroneous items are either of the following:

1. **Unreported income.** This is any gross income item received by your spouse that is not reported; or

2. **Incorrect deduction, exemption, credit, or basis.** This is any claim of a New York deduction, exemption, credit or property basis by your spouse in an amount for which there is no basis in fact or law.

The following are examples of grossly erroneous items:

1. Some income received by your spouse was not reported on the return. For example, your spouse received a \$10,000 award and failed to claim it on the joint return.
2. The expense for which a deduction is taken was never incurred. For example, your spouse claimed job expenses of \$15,000 but this was disallowed by the Tax Department because your spouse did not incur these expenses.

**Substantial understatement due to an incorrect deduction, exemption, credit, or basis**

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 (and not due to an omission from New York adjusted gross income), the following additional requirements must be met in order to qualify for innocent spouse relief:

1. If the innocent spouse's New York adjusted gross income for the most recent taxable year ending before the date the deficiency notice is mailed is \$20,000 or less, the liability from the grossly erroneous items must be greater than 10% of the innocent spouse's adjusted gross income.
2. If the innocent spouse's New York adjusted gross income for that year is more than \$20,000, then such liability must be greater than 25% of the innocent spouse's adjusted gross income.

For purposes of making the computation in items 1 and 2 above, if the innocent spouse is married to another spouse at the close of such year, 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.

**Publication 89 (11/01)**

**How to request relief for a taxable year beginning prior to January 1, 1999**

To request innocent spouse relief for a taxable year beginning prior to January 1, 1999, you must file a statement with supporting documentation showing why you believe you qualify for relief.

Send your statement with supporting documentation to:

NYS Tax Department  
PO BOX 1912  
ALBANY, NY 12201-1912

**Example.** *William and Mary Johnson filed a joint 1998 New York return (Form IT-201) on April 2, 1999. They divorced on December 6, 1999. On January 28, 2000, they received a notice of deficiency for \$685. The deficiency is the result of \$10,000 in severance pay that William received in 1998 but failed to claim on the joint return. Mary was unaware of the severance pay because William did not tell her about it and spent the money on a trip he took by himself. Mary believes it would be unfair to hold her liable for the tax.*

*Mary completes a statement explaining that the substantial understatement was due to a grossly erroneous item of her spouse. She explains in the statement why she did not know and had no reason to know about the unreported severance pay. She explains that she feels it would be unfair to hold her liable for the substantial understatement of tax because it was due to income attributable to William that she did not know about or benefit from.*

*Since the substantial understatement is attributable to an omission from New York adjusted gross income, she does not have to meet the additional requirement concerning percentage of New York adjusted gross income. She attaches documentation showing that the unreported income was William's severance pay.*

**Section 654 relief**

Section 654 was added to the New York State tax law in 1999 to make it easier to be relieved from an income tax liability related to your spouse (or former spouse). You can now request innocent spouse relief for an understatement of tax no matter how small the amount. See *Questions & answers*, starting on

page 37 of this publication, for a list of questions and answers about innocent spouse relief.

The new law also added two other ways for you to get relief. First, if you are divorced, legally separated, or have lived apart from your spouse at all times during the 12- month period prior to the date you request relief, you can request relief by separating the liability for an understatement of tax between you and your spouse. (For purposes of this rule, you are considered to be no longer married if your spouse is deceased.) Second, if you do not qualify for innocent spouse relief or relief by separation of liability, the Tax Department may grant you equitable relief. Equitable relief may be granted if it would be unfair to hold you liable for the tax that should be paid only by your spouse (or former spouse).

Section 654 relief applies to any income tax liability and is applicable to any taxable year beginning on or after January 1, 1999. For taxable years beginning prior to January 1, 1999, innocent spouse relief is available under former section 651(b)(5). Separation of liability and equitable relief are not available for taxable years beginning before January 1, 1999.

**Innocent Spouse  
Relief under Section  
654, for taxable years  
beginning on or after  
January 1, 1999**

By requesting innocent spouse relief, you may be relieved of responsibility for paying tax, interest, and penalties if your spouse did something wrong on your tax return. The tax, interest, and penalties that qualify for relief can only be collected from your spouse. However, you are jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The Tax Department can collect these amounts from either you or your spouse.

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

1. You filed a joint return for a taxable year beginning on or after January 1, 1999, that has an understatement of tax due to erroneous items of your spouse;

**Publication 89 (11/01)**

2. You 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; and
3. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

**Federal determination.** If you received innocent spouse relief from the Internal Revenue Service for an understatement of federal tax due to erroneous items of your spouse (or former spouse) for the same taxable year that is attributable to the same erroneous items for which you are seeking innocent spouse relief from a New York State tax liability, you generally qualify for innocent spouse relief for these items for New York State tax purposes. You should attach to Form IT-285 documentation showing that innocent spouse relief was granted for federal purposes.

**Erroneous items**

Erroneous items are **either** of the following:

1. **Unreported income.** This is any gross income item received by your spouse that is not reported; or
2. **Incorrect deduction, credit, or basis.** This is any incorrect deduction, credit, or property basis claimed by your spouse that was disallowed or adjusted by the Tax Department.

The following are examples of erroneous items:

1. The income received by your spouse was not reported on the return. For example, your spouse received \$20,000 in business income and failed to claim it on the joint return.
2. The expense for which a deduction is taken was never incurred. For example, your spouse deducted \$10,000 of advertising expenses on federal Schedule C that was disallowed by the Tax Department after an audit determined that the expenses were never incurred.

3. The expense for which a credit is claimed was never incurred. For example, your spouse claimed a resident tax credit of \$500 on your joint return for income taxes paid to New Jersey. The Tax Department disallowed the credit because no income taxes were paid to New Jersey.
4. An incorrect property basis was used in computing a credit. For example, your spouse claimed an investment tax credit on your joint return calculating the credit using an investment credit base of \$250,000. The Tax Department determined that the actual basis of the property for federal income tax purposes was \$200,000.

## Understatement of tax

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return, and the amount of tax that was actually shown on your return.

**Partial relief when extent of understatement is unknown.** You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know that there was an understatement of tax due to your spouse's erroneous items, but you did not know how large the understatement was. You will be relieved of the understatement to the extent you did not know about it and had no reason to know about it. In this instance, you will have satisfied your tax liability when you pay your calculated share of the jointly issued assessment.

**Example.** *At the time you signed your joint return, you knew that your spouse did not report \$5,000 of gambling winnings. The Tax Department examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually \$25,000. This resulted in a much larger understatement of tax than you knew about at the time you signed your return. You establish 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 understatement of tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understatement of tax due to the \$5,000 of*

*gambling winnings will not qualify for relief. You and your spouse are jointly and individually liable for the tax due on the \$5,000 understatement you knew about, and the Tax Department will be able to collect this amount from either you or your spouse.*

**Indications of unfairness**

The Tax Department 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 understatement. Two indicators the Tax Department may use to decide that it is unfair to hold you responsible for the tax are whether you:

1. Received any significant benefit from the understatement of tax; or
2. Were later divorced from or deserted by your spouse.

**Significant benefit.** 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 amounts inherited from your spouse (or former spouse) can be a significant benefit.

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

**Relief by separation of liability under section 654 for taxable years beginning on or after January 1, 1999**

Under this type of relief, the Tax Department allocates (divides) the understatement of tax (plus interest and penalties) 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 figure your separation of liability*, on page 17.

You can request this type of relief whether or not you request innocent spouse relief. If the Tax Department determines you are not eligible for innocent spouse relief or separation of liability, then equitable relief will automatically be considered.

To request relief by separation of liability, you must have filed a joint return for a taxable year beginning on or after January 1, 1999, and meet **either** 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. You also qualify under this rule if your spouse is deceased; or
- 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.

**Burden of proof.** You have the burden of proof in establishing the basis for separating your liability. Therefore, you should carefully complete Part V of Form IT-285 and attach all supporting documentation.

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

1. The Tax Department can establish that you and your spouse transferred assets as part of a fraudulent scheme;
2. The Tax Department can establish that at the time you signed your joint return, you had actual knowledge that any items giving rise to the deficiency and allocable to your spouse were incorrect; or
3. You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax. See *Transfers of property to avoid tax*, on page 16.

In situations (2) and (3) , a request will be denied 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, then it is not a joint return, and you are not liable for amounts from that return. However, you may be required to file a separate return for that tax year which may result in additional tax due.

**Example.** *Mike and Susan Smith filed a joint return showing Susan's wages of \$50,000 and Mike's self-employment income of \$10,000. The Tax Department audited their return and found that Mike did not report \$20,000 of self-employment income. The additional income resulted in a \$1,400 understatement of tax, plus interest and penalties. After obtaining a legal separation from Mike, Susan filed Form IT-285 to request relief by separation of liability. The Tax Department proved that Susan actually knew about \$5,000 of the additional income at the time she signed the joint return because Mike deposited that amount into a joint account. Mike is liable for all of the understatement of tax, interest, and penalties because all of it was due to his unreported income. Susan is also liable for the understatement of tax, interest, and penalties due to the \$5,000 of additional income that she actually knew about. The Tax Department can collect that part from either Susan or Mike. The Tax Department can collect the remainder only from Mike.*

**Transfers of property to avoid tax.** If your spouse transfers 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 value of the property transferred. 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 Tax Department first informed you of the tax due. The notification of tax due includes the issuance of a *Statement of Proposed Audit Changes* and a *Notice of Deficiency*. This presumption will not apply if the transfer was made under a divorce decree, separate maintenance decree, or a written instrument incident to such a decree. In addition, the presumption will not apply if you establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

**How to figure your  
separation of liability**

**The Tax Department will figure 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.** Complete a separate allocation schedule, Part V of Form IT-285, for each year you are requesting relief from liability. Allocate all items reported on the joint return and those items not reported that resulted in a deficiency. **You are not required to figure the amount of relief available under separation of liability.** But if you wish, you can estimate your separation of liability yourself by using Worksheet 1 and the instructions that follow. However, if you filed federal Form 8814 to report your child's tax liability on your joint return, do not include that liability when figuring your separation of liability. Instead, allocate it as appropriate between you and your spouse. Please note that in addition to tax, your share of the liability may include penalties and interest.

**Worksheet 1. Worksheet for estimating your separation of liability**  
 (Note: This worksheet is optional. Keep it for your records. Do not mail it to the Tax Department.)

1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you.*			1.
2. Enter the net amount of <b>all</b> income and deductions taken into account in computing the understatement of tax.*			2.
3. Divide line 1 by line 2. Enter the results as a decimal (rounded to at least 3 places).			3.
4. Enter the understatement of tax.*		4.	
5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse.*	5.		
6. Enter the credits and other taxes taken into account in computing 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 9 and 6. This is the understatement of tax you may be found responsible for.			10.

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

**Instructions for  
completing Worksheet 1**

Use the following instructions to complete Worksheet 1.

**Line 1.** When allocating income and deductions taken into account in computing the understatement of tax, allocate them in the same manner you would have allocated them if you and your spouse had filed separate returns.

Allocate wages and salaries to the spouse who performed the job and received the federal Form W-2. You generally allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Income from a jointly owned business or investment should be allocated equally between you and your spouse unless there is clear and convincing evidence that supports a different allocation.

Allocate New York addition and subtraction adjustments (such as 414(h) retirement contributions and/or pension exclusions) to the spouse to whom they belong.

Allocate business deductions according to the ownership of the business. Allocate personal deductions (such as itemized deductions for mortgage interest and taxes) equally between you and your spouse unless there is clear and convincing evidence that shows a different allocation is appropriate, or the Tax Department establishes that you had actual knowledge of the joint items.

**Items that are limited or not allowed on separate returns.** If a deduction would not be allowed if you had filed a separate return, figure the deduction as you would on a joint return and allocate that amount equally between you and your spouse.

A similar rule applies to income and deductions (such as an IRA deduction) that are subject to special limits on a separate return. Figure these items as you would on a joint return and allocate them between you and your spouse.

**Example.** *John and Karen filed a joint return for 1999. They both qualified for an IRA deduction. Several months after filing the return, John and Karen received a notice from the Tax Department for additional tax because they did not report some*

*interest and dividend income. If they had filed separate returns, their IRA deductions would have been eliminated due to the federal limits on IRA deductions on separate returns. When figuring their separation of liability, each would take the IRA deduction allowable as if they had filed a joint return.*

**Items allocable to one spouse that benefit the other spouse.** A deduction that is otherwise allocable to one spouse must be allocated to the other spouse to the extent the item created a tax benefit for the other spouse.

**Example.** *Your joint return shows \$50,000 of wages allocable to you and \$15,000 of self-employment income allocable to your spouse. The Tax Department audited your return and disallowed a \$20,000 deduction allocable to your spouse. Only \$15,000 of the disallowed deduction is allocated to your spouse because that is the amount that offset your spouse's self-employment income. The remaining \$5,000 must be allocated to you because that 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 the income tax.** Allocate credits and other taxes in the same manner you would have allocated them if you and your 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 Tax Department audited your return and determined that your separate tax on a lump-sum distribution should have been \$1,100. On line 6, you enter the \$350 increase in separate tax on lump-sum distributions (\$1,100-\$750).*

**Credits that are not allowed on separate returns.** If a credit would not be allowed if you had filed a separate return, figure the credit as you would on a joint return and allocate that amount between you and your spouse. Examples of credits that are generally not 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 Tax Department audited*

*your return and allowed you only \$500. The remaining \$360 was disallowed. Even though none of the credit would have been allowed on separate returns, you are entitled to a \$500 credit for purposes of figuring your separation of liability. You allocate the \$360 disallowance (rather than the full \$860) between you and your spouse (or former spouse) on lines 5 and 6 of Worksheet 1.*

**Credits allocable to one spouse that benefit the other spouse.**

A credit that is otherwise allocated to one spouse must be allocated to the other spouse to the extent the item created a tax benefit for the other spouse.

**Example.** *Tom and Donna filed a joint return (Form IT-201) for 1999. The return showed \$60,000 of wages attributable to Tom and a \$2,000 alternative fuels credit attributable to Donna. The alternative fuels credit was for Donna's personal vehicle that Tom never used. Since Donna had no income, the entire credit offset \$2,000 of Tom's income tax on the return. Tom received the tax benefit on the return from the entire credit. The Tax Department audited their return and disallowed \$400 of the credit. Tom and Donna remain jointly and severally liable for the \$400 deficiency. It was Donna's item and Tom received a \$400 tax benefit.*

**Worksheet 1 Example**

*Steven and Jill Brady filed a joint return (Form IT-201) for 1999. They divorced on May 3, 2001. On July 27, 2001, the Tax Department issued a notice of deficiency to the Bradys relating to their 1999 return. There were four items listed on the notice:*

- 1. \$2,500 of wages that Steven did not report.*
- 2. \$336 for a disallowed resident credit attributable to Steven.*
- 3. \$150 for an additional New York subtraction for interest income on U.S. government bonds attributable to Steven.*
- 4. \$500 of interest income from an account that belonged entirely to Jill.*

**Publication 89 (11/01)**

*Jill decides to file Form IT-285 to request relief under separation of liability. She allocates the items between her and Steven as follows:*

<b>Items to allocate</b>	<b>Jill</b>	<b>Steven</b>
Wages		\$2,500
Interest income	\$500	
NY subtraction for interest income on U.S. government bonds		\$150
Disallowed resident credit		\$336

*Although not required, Jill uses Worksheet 1 to determine the understatement of tax that is allocable to her. She fills out the worksheet as follows.*

**Line 1.** Jill enters the \$500 interest income from her bank account.

**Line 2.** The net amount of income and deductions taken into account in computing 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 for interest income on U.S. government bonds (\$150).

**Line 3.** Jill divides line 1 by line 2 to get .175

**Line 4.** Jill enters the \$504 understatement of tax. This is shown on the notice of deficiency.

**Line 5.** Jill enters the disallowed resident credit of \$336.

**Line 6.** Jill enters \$0 because there are no credits or other taxes allocated to her.

**Lines 7-10.** Jill completes lines 7 through 10. Line 10 shows that she is responsible for \$29 of the understatement of tax. Steven is responsible for the remaining amount (\$475).

**Worksheet 1. Worksheet for estimating your separation of liability**  
 (Note: This worksheet is optional. Keep it for your records. Do not mail it to the Tax Department.)

1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you.*			1. \$500
2. Enter the net amount of <b>all</b> income and deductions taken into account in computing the understatement of tax.*			2. \$2,850
3. Divide line 1 by line 2. Enter the results as a decimal (rounded to at least 3 places).			3. .175
4. Enter the understatement of tax.*		4. \$504	
5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse.*	5. \$336		
6. Enter the credits and other taxes taken into account in computing 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 the understatement of tax you may be found responsible for.			10. \$29

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

*Jill decides to file Form IT-285 (not illustrated) to request separation of liability. She does not send Worksheet 1 with the form. Worksheet 1 is optional and for her records only. Jill completes the entire Form IT-285 so the Tax Department will consider all three types of relief. Jill completes the allocation schedule (Part V) and attaches the required statement and supporting documentation.*

**Equitable relief  
section 654 for  
taxable years  
beginning on or after  
January 1, 1999**

Even if you do not qualify for innocent spouse relief or separation of liability, you may still be relieved of responsibility for tax, interest, and penalties for a taxable year beginning on or after January 1, 1999, through 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 or relief by separation of liability.
2. You and your spouse did not transfer assets to one another as a part of a fraudulent scheme.
3. Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax.
4. You did not file your return with the intent to commit fraud.
5. You did not pay the tax. However, you may be able to receive a refund of certain installment payments made after you file Form IT-285.
6. You establish that, taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. See *Indications of unfairness for equitable relief*, on page 25.

Unlike innocent spouse relief or separation of liability, you can get relief from an **understatement of tax** or an **underpayment of tax** for a taxable year beginning on or after January 1, 1999, through equitable relief.

**Understatement of tax.** An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return, and the amount of tax that was actually shown on your return. For example, your joint 1999 return shows that you and your spouse owed \$5,000. You pay \$5,000 with the return. The Tax Department audits your return and discovers that due to income not reported on the return, you owe additional tax of \$1,000. You have an understatement of \$1,000.

**Underpayment of tax.** An underpayment of tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 1999 return shows that you and your spouse owed \$5,000. You pay \$2,000 with the return. You have an underpayment of \$3,000.

**Indications of unfairness for equitable relief.** The Tax Department 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 understatement or underpayment of tax. The Tax Department will consider all factors and weigh them appropriately.

**Positive factors.** The following are examples of factors that weigh **in favor** of equitable relief:

- You are separated (whether legally or not), widowed, or divorced from your spouse.
- You would suffer economic hardship if relief is not granted. (In other words, you would not be able to pay your reasonable basic living expenses.)
- You were abused by your spouse, but the abuse did not amount to duress.
- 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 spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This will **not** be a positive

**Publication 89 (11/01)**

factor 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.

**Negative factors.** The following are 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, *Significant benefit*, under *Innocent Spouse Relief*, on page 14.)
- 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 under a divorce decree or agreement to pay the tax.
- The tax for which you are requesting relief is attributable to you.

The following example shows a situation that may qualify for equitable relief:

**Example.** *You and your spouse file a joint 1999 return. That return shows you owe \$10,000. You have \$5,000 of your own money and you take out a loan to pay the other \$5,000. You give two checks for \$5,000 each to your spouse to pay the \$10,000 liability. Without telling you, your spouse takes the \$5,000 loan and spends it on himself. You and your spouse were divorced in 2000. In addition, you had no knowledge or reason to know at*

*the time you signed the return that the tax would not be paid. Both of these facts indicate to the Tax Department that it may be unfair to hold you liable for the \$5,000 underpayment. The Tax 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.*

**How to request relief  
for a taxable year  
beginning on or after  
January 1, 1999**

File Form IT-285, *Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, to ask the Tax Department for relief of an income tax liability for a taxable year (or years) beginning on or after January 1, 1999. You only need to file one Form IT-285 even if you are requesting relief for more than one tax year, but you will have to complete a separate allocation schedule (Part V) on the back of Form IT-285 for each year no matter which type of relief you are requesting.

The Tax Department will review your Form IT-285, figure the understatement or underpayment of tax and related interest and penalties, and let you know if you qualify. A completed Form IT-285, based on an example that begins on page 29, is shown on page 33.

**When to file Form IT-285.** You must file Form IT-285 no later than two years after the date on which the Tax Department first attempts to collect the tax from you through the issuance of a levy, an income execution, or any other asset seizure.

**Spousal notification.** The Tax Department will inform your spouse (or former spouse) if you request innocent spouse relief, separation of liability, or equitable relief and will allow your spouse (or former spouse) to participate in the determination of the amount of relief from liability. However, the Tax Department will **not** disclose any personal identifying information including name changes, address, and phone numbers.

**Instructions for  
completing Form  
IT-285 Part V,  
Allocation of items  
between spouses**

Use the following instructions to complete the allocation schedule on the back of Form IT-285. **If filing for more than one tax year, complete a separate schedule for each year no matter which type of relief you are requesting.** Please include copies of all federal W-2 forms, all federal schedules, and copies of any notices from the Tax Department.

When allocating income and deductions, allocate them in the same manner you would have if you and your spouse had filed separate returns.

**Line 14.** Enter the tax year, beginning on or after January 1, 1999, for which you are requesting relief.

**Line 15.** Allocate wages and salaries to the spouse who earned them and received the federal Form W-2 or New York Form IT-2102. You generally allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Income from a jointly owned business or investment should be allocated equally between you and your spouse unless there is clear and convincing evidence that supports a different allocation. Attach any evidence supporting the allocation to Form IT-285.

**Line 16.** Allocate federal adjustments, such as IRA deductions, moving expenses, and alimony you pay, to the spouse to whom they belong.

**Items that are limited or not allowed on separate returns.** If an adjustment would not be allowed or is subject to special limits if you had filed a separate return (such as an IRA deduction), figure the adjustment as you would on a joint return and allocate that amount equally between you and your spouse unless there is clear and convincing evidence that shows a different allocation is appropriate.

**Example.** *John and Karen filed a joint return for 1999. They both qualified for an IRA deduction. Several months after filing the return, John and Karen received a notice from the Tax Department for additional tax because they did not report some interest and dividend income. If they had filed separate returns, their IRA deductions would have been eliminated due to the federal limits on IRA deductions on separate returns. When completing the Part V allocation schedule on Form IT-285, each would take the IRA deduction allowable as if they had filed a joint return.*

**Line 17.** Allocate New York additions, such as public employee 414(h) contributions, and New York subtractions, such as

pension and annuity income exclusions, to the spouse to whom they belong.

**Line 18.** Do not allocate nonrefundable credits (such as the household credit) or other taxes (such as the separate tax on lump-sum distributions). Include these amounts in Column C only.

**Line 19.** Allocate New York State, city of New York, and city of Yonkers tax withheld to each spouse as shown on federal Forms W-2. Please attach copies of these forms to Form IT-285.

## **Filled in Form IT-285**

This part explains how Alice Brown fills out Form IT-285 to request relief from a joint liability.

Alice and Joe Brown filed a joint 1999 New York tax return on March 2, 2000. They are divorced on December 12, 2000. They received a *Notice of Deficiency* on February 9, 2001, for additional tax of \$350 and penalties and interest of \$80. The deficiency is the result of \$5,000 in income that was not claimed on their 1999 return. One thousand dollars of the unreported income was due to interest income from a bank account under Alice's name only. The remaining \$4,000 of income was from Joe's business. Alice did not know about the additional \$4,000 of income. Alice previously had requested and received separation of liability from the Internal Revenue Service for a federal tax liability that was for the same tax year and due to the same unreported income.

Alice applies the conditions listed under *Separation of liability* on Form IT-285 to see if she qualifies for relief.

1. Alice believes she meets the first condition because the joint tax return was for a taxable year beginning on or after January 1, 1999, and the understatement of tax was due in part to an item of her spouse.
2. Alice believes she meets the second condition. She is no longer married to Joe.

**Publication 89 (11/01)**

3. Alice did not know about the \$4,000 in business income allocable to Joe that was not claimed on the return.

Because Alice believes she qualifies for separation of liability, she files Form IT-285 with the Tax Department. She fills in her name, address, social security number, and daytime and evening phone numbers. She fills out the rest of the form as follows:

**Part I**

**Line 1.** Alice checks *Yes* she is requesting relief from a liability that resulted from a jointly filed return.

**Line 2.** Alice enters **1999** because this is the tax year for which she is requesting relief.

**Line 3.** Alice enters the assessment number listed on the *Notice of Deficiency*.

**Line 4.** Alice enters the name, address, social security number, and daytime and evening phone numbers of her former spouse (if known).

**Line 5.** Alice checks the *Yes* box, since she has received relief from the Internal Revenue Service. She attaches a copy of the federal determination letter.

**Lines 6.** Alice checks the *Yes* box, since she has an understatement of tax.

**Part II Innocent spouse relief**

**Line 7.** Alice checks the *Yes* box, since she believes the understatement of tax is due to an erroneous item of her spouse.

**Line 8.** Alice checks the *No* box, since she did not know the extent of the understatement. Alice did not know about the \$4,000 in unreported business income attributable to Joe.

Alice attaches a statement and supporting documentation as required by the instructions to Form IT-285. The statement includes why she feels she qualifies for innocent spouse relief, why she did not know about Joe's unreported income, and documentation that shows that \$4,000 of the \$5,000 understatement was attributable to Joe.

**Part III Separation of liability**

**Line 9.** Alice checks *Yes* because she is divorced from Joe.

**Line 12.** Alice enters a check mark in the box and attaches the required supporting statement and documentation. Since she already attached a statement and supporting documentation to request innocent spouse relief at line 8, she only includes any additional information required to request separation of liability ( a copy of her divorce decree and documentation showing that only \$1,000 of the \$5,000 understatement was attributable to her).

**Part IV Equitable relief**

**Line 13.** Alice checks the *Yes* box so the Tax Department will consider equitable relief if it decides that she does not qualify for innocent spouse relief and separation of liability. She attaches a statement and supporting documentation that show that it would be unfair to hold her liable for the tax and that being held liable would cause an economic hardship. She attaches a signed statement showing that due to the divorce, lack of child support from Joe, and excessive medical expenses, she is unable to pay the tax without it causing an economic hardship.

**Part V Allocation of items between spouses**

**Line 14.** Alice enters the tax year *1999*.

**Lines 15 through 19.** Alice allocates the income reported on the joint return and the \$5,000 income that was not reported on the return.

**Line 15a.** Alice enters her wages of \$30,000 claimed on the return in column a, \$0 in column b because Joe had no wages, and \$30,000 in column c.

**Line 15 b.** In column a, Alice enters \$1,200, which represents the \$1,000 of interest income attributable to her and **not** claimed on the return, plus \$200, which is the amount of interest income claimed on the return that was attributable to her own private accounts.

In column b, Alice enters \$100 interest income, which is the amount claimed on the return and attributable to Joe's private accounts. In addition, she enters \$44,000 in business income,

which is the \$40,000 claimed on the return plus the \$4,000 in business income **not** reported that is all attributable to Joe's private business.

In column c, Alice enters the total of column a and column b.

**Lines 16 through 18.** Alice enters \$0, since these items were not claimed on the return and did not result in the deficiency.

**Line 19.** In column a, Alice enters \$2,000. In column b, she enters \$0. These amounts are the income tax withheld as claimed on the joint return and allocated to each spouse according to who received the federal Form W-2. In column c, the total tax withheld of \$2,000 is entered.

Alice signs and dates Form IT-285. She attaches copies of all New York State IT-2102 forms or federal W-2 forms, all federal schedules, a copy of the *Notice of Deficiency*, a signed explanatory statement explaining why she feels she qualifies for relief, a copy of the federal determination letter, and any other supporting documentation. Finally, she mails the form to the Tax Department at the address indicated in the IT-285 instructions before the end of the time limit to request relief specified in the *notice of deficiency*.

Once the completed Form IT-285 is received, the Tax Department will consider if Alice qualifies for relief under innocent spouse relief, separation of liability, or equitable relief and notify her of the determination.

# Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)



# IT-285

(11/00)

Print or type	Your first name and middle initial Alice	Your last name Brown	Your social security number 000-00-0000		
	Mailing address (number and street or rural route) 1 Main Ave.				Apartment number
	City, village or post office Albany	State NY	ZIP code 12345	Daytime phone number (123 ) 456-7890	Evening phone number (123 ) 456-7891

**Important: Do not file this form with your income tax return. See *Where to file* below.**

**Do not file this form if all or part of your overpayment was (or is expected to be) applied against your spouse's past-due debt (such as child support). Instead, use Form IT-280, *Nonobligated Spouse Allocation*, to request that your share of the overpayment be refunded to you.**

**Please read Form IT-285-1, *Instructions for Form IT-285, Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*, carefully before you continue.**

### Part I

- Are you requesting relief from a liability that resulted from a jointly filed return?  
 **Yes** Go to line 2.       **No** Stop. You cannot file Form IT-285.
- Enter the taxable year(s) for which you are requesting relief from liability for tax. (Form IT-285 can be used only for taxable years beginning on or after January 1, 1999. For relief from a joint liability for prior years, see instructions.) ..... **2** 1999
- Enter the assessment number(s) (if any) ..... **3** 01234567
- Information, if known, about **your spouse (or former spouse)** to whom you were married at the end of the year(s) on line 2.

Print or type	First name and middle initial Joe	Last name Brown	Social security number 111-11-1111		
	Mailing address (number and street or rural route) 1 First Street				Apartment number
	City, village or post office Albany	State NY	ZIP code 12345	Daytime phone number (123 ) 456-7892	Evening phone number (123 ) 456-7893

- Did you receive relief of a joint federal tax liability from the Internal Revenue Service for the same tax year?  
 **Yes** Attach documentation. Go to line 6.       **No** Go to line 6.
- Do you have an understatement of tax (the Tax Department has determined there is a difference between the tax shown on your return and the tax that should have been shown)?  
 **Yes** Go to line 7.       **No** Go to line 13.

### Part II Innocent spouse relief

- Is the understatement of tax due to the **erroneous items** of your spouse (see instructions)?  
 **Yes** Go to line 8.       **No** Go to line 9.
- Did you know, or have reason to know, that the understatement of tax existed (or the extent to which the understatement existed)?  
 **Yes** You do not qualify for innocent spouse relief or separation of liability. Go to line 13.       **No** You may request innocent spouse relief by attaching a statement (see instructions). Go to line 9.

### Part III Separation of liability

- Are you divorced from the person listed on line 4 (or is that person deceased)?  
 **Yes** Go to line 12.       **No** Go to line 10.
- Are you legally separated from the person listed on line 4?  
 **Yes** Go to line 12.       **No** Go to line 11.
- Have you lived apart from the person listed on line 4 at all times during the 12-month period prior to filing this form?  
 **Yes** Go to line 12.       **No** Go to line 13.
- If you answered **Yes** at line 9, 10, or 11, you may request **separation of liability** by checking this box  and attaching a statement and supporting documentation (see instructions). Go to line 13.

### Where to file:

Generally, you should send this form to: **NYS Department of Taxation and Finance, PO Box 5120, Albany New York 12205-0120**. 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 attach Form POA-1, *Power of Attorney*.

Paid preparer's use only	Preparer's signature	Date	Mark "X" if self-employed <input type="checkbox"/>	Sign here	Your signature
	Firm's name (or yours, if self-employed)	Preparer's SSN or PTIN			Date
	Address	Employer identification number			

**Part IV Equitable relief**

**13** Do you have an underpayment of tax (that is, tax that is properly shown on your return but not paid) or another tax liability that qualifies for **equitable relief** (see instructions)?

**Yes** You may request **equitable relief** by attaching  **No** You do not qualify for equitable relief (see instructions).  
a statement and supporting documentation (see instructions).

**Part V Allocation of items between spouses**

If filing for more than one tax year, complete a separate schedule for each year, no matter which type of relief you are requesting. Please include copies of all New York State IT-2102 forms, or federal W-2 forms, all federal schedules, and copies of any notices from the Tax Department.

Allocated items	(a) Allocated to you	(b) Allocated to your spouse or former spouse	(c) Total <i>(column a and column b)</i>
<b>14</b> Enter the tax year covered by this schedule _____			
<b>15</b> Income. Allocate separate income to the spouse who earned it. Allocate joint income, such as interest earned on a joint bank account, as you determine. Be sure to allocate all income.			
<b>a</b> Wages .....			
<b>b</b> All other income. Identify the type and amount. ..... ..... .....			
<b>c</b> Total income (add lines 15a and 15b) .....			
<b>16</b> Federal adjustments to income. Allocate separate adjustments, such as an IRA deduction, to the spouse to whom they belong .....			
<b>17</b> New York adjustments to income. Allocate separate adjustments, such as 414(h) contributions and/or pension exclusions, to the spouse to whom they belong .....			
<b>18</b> Nonrefundable credits and other taxes .....			
<b>19</b> Income tax withheld. Allocate New York State/City of New York/City of Yonkers income tax withheld to each spouse as shown on New York State Forms IT-2102 or federal Forms W-2. Be sure to attach copies of these forms to this Form IT-285 .....			

**Privacy notification**

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 22, 26, 26-A, 26-B, 30, 30-A, and 30-B of the Tax Law; Article 2-E of the General City Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer tax liabilities due the state and city of New York and the city of Yonkers. We also use this information for certain tax offset and exchange of tax information programs authorized by law, and for any other purpose authorized by law.

Information concerning quarterly wages paid to employees and identified by unique random identifying code numbers to preserve the privacy of the employees' names and social security numbers is provided to certain state agencies, for research purposes to evaluate the effectiveness of certain employment and training programs.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 338, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

**Need help?**

Tax information: 1 800 225-5829  
Forms and publications: 1 800 462-8100  
Refund status: Access our website or call 1 800 443-3200;  
if electronically filed 1 800 353-0708;  
direct deposit refunds: 1 800 321-3213  
From outside the U.S. and outside Canada: (518) 485-6800  
Fax-on-demand forms: 1 800 748-3676  
Internet access: <http://www.tax.state.ny.us>  
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

**Private delivery services**

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return. However, if, at a later date, you need to establish the date you filed your return, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* above for information on ordering forms and publications.)



**If you disagree with the Tax Department's decision**

1. If you disagree in whole, or in part, with the Tax Department's determination concerning your request for innocent spouse relief, separation of liability, or equitable relief under Tax Law section 654 (or innocent spouse relief under former Tax Law section 651(b)(5)); or
2. You have not received a determination notice from the Tax Department within six months from the date you filed Form IT-285 requesting relief under Tax Law section 654;

you may protest by requesting a conciliation conference in the Department's Bureau of Conciliation and Mediation Services or petitioning 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 must file a request for a conciliation conference **no later than 90 days** from the date the Tax Department mails its determination notice to you. The conference is conducted informally by a conciliation conferee who will review all the evidence presented to determine a fair result. 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 protest will be concluded. Otherwise, the conferee will issue a conciliation order. This order will be binding unless you file a petition for a hearing with the Division of Tax Appeals within 90 days after the conciliation order is issued. You may request a conciliation conference by filing Form DTF-996.30, *Request for Conciliation Conference*, included with the determination notice mailed to you. Send your completed Form DTF-996.30 to:

Bureau of Conciliation and Mediation Services  
New York State Tax Department  
Building 9  
W A Harriman Campus  
Albany NY 12227

**Tax Appeals hearing**

You must file a petition with the Division of Tax Appeals in order for it to review your request for relief. You must file the petition **no later than 90 days** from the date the Tax Department

mails its determination notice to you. If you do not file a petition, or you file it late, the Division of Tax Appeals cannot review your request for relief.

The hearing is an adversary proceeding before an impartial administrative law judge. The hearing will be stenographically reported. After the hearing, the administrative law judge will issue a determination that will finally decide the matter(s) in dispute, unless either you or the department requests review of the decision by the Tax Appeals Tribunal. If such a review is requested, the record of hearing and any additional oral or written arguments will be reviewed, and the Tribunal will issue a decision affirming, reversing, or modifying the administrative law judge's determination, or will refer the matter back to the administrative law judge for further hearing. If you do not agree with the Tax Appeals Tribunal's decision, you may seek court review within four months from when the Tax Appeals Tribunal serves notice of the decision, by certified mail or personal service, on the parties to the proceeding.

You may also elect to have your Tax Appeals 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, a copy of which will be sent to you with the petition forms. 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.

You may request a Tax Appeals hearing by filing Form TA-10, *Petition for a Tax Appeals Hearing*. Petition forms and the *Rules of Practice and Procedures of the Tax Appeals Tribunal* may be requested by telephone (518) 266-3000, facsimile transmission (518) 272-5178, or by writing to:

Division of Tax Appeals  
Riverfront Professional Tower  
500 Federal Street  
Troy, NY 12180-2894

A request for petition forms and the rules is **not** considered the filing of a petition for a hearing for purposes of the time limits, and does not extend the time limits for filing a petition.

## Questions & answers

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

### General questions

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

Many married taxpayers choose to file a joint return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. However, this does not affect any rights you may have under the decree against your former spouse.

#### **How can I get relief from joint and several liability?**

For taxable years beginning prior to January 1, 1999, you may request innocent spouse relief under former Tax Law section 651(b)(5).

For taxable years beginning on or after January 1, 1999, you may request relief under new Tax Law section 654. Relief under section 654 falls into three categories: “innocent spouse relief,” “separation of liability,” and “equitable relief.”

If you do not qualify for relief under former Tax Law section 651(b)(5) or new Tax Law section 654, relief may be available under Tax Law section 171-eighteenth-d, see *Other types of relief* on page 45.

#### **For taxable years beginning prior to January 1, 1999 what type of relief is available?**

For taxable years beginning prior to January 1, 1999, innocent spouse relief is available under former Tax Law section 651(b)(5). In order to qualify for innocent spouse relief under section 651(b)(5), all of the following conditions must be met:

**Publication 89 (11/01)**

1. You filed a joint return that has a substantial understatement of tax (exceeds \$100) due to grossly erroneous items of your spouse;
2. 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
3. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

If a substantial understatement of tax is not attributable to an omission from New York adjusted gross income, but is attributable to a New York deduction, exemption, credit, or property basis for which there is no basis in fact or law, the following additional requirements must be met:

1. If the innocent spouse's New York adjusted gross income for the most recent taxable year ending before the date the deficiency notice is mailed is \$20,000 or less, the liability from the grossly erroneous items must be greater than 10% of adjusted gross income.
2. If the spouse's New York adjusted gross income for that year is more than \$20,000, then such liability must be greater than 25% of the adjusted gross income.

If the spouse is married to another spouse at the close of such year, the spouse's New York adjusted gross income shall include the New York adjusted gross income of the new spouse, whether or not they file a joint return.

To request innocent spouse relief under former section 651(b)(5), you must file a statement with supporting documentation showing why you believe you qualify for relief.

Send your statement with supporting documentation to:

NYS Tax Department  
PO Box 1912  
Albany, New York 12201-1912

**For taxable years beginning on or after January 1, 1999, what type of relief is available?**

For taxable years beginning on or after January 1, 1999, relief is available under Tax Law section 654. Relief under section 654 falls into three categories:

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

Each of these types of relief have different requirements. They are explained separately below.

To request relief for a taxable year beginning on or after January 1, 1999, you must file Form IT-285, *Innocent Spouse Relief (and Separation of Liability and Equitable Relief)*. Complete the entire form and return it to the appropriate address in the instructions. The Tax Department will consider whether you qualify for relief under innocent spouse relief, separation of liability, or equitable relief. If you are requesting relief for more than one tax year, you only need to file one complete Form IT-285. However, you must include a separate statement, supporting documentation, and a separate allocation schedule (Part V) for each tax year.

**Federal determination.** If you received relief from a joint federal liability for the same taxable year and for the same items for which you are seeking relief from a New York State tax liability, you may also qualify for relief for New York purposes. Attach to Form IT-285 federal documentation showing that relief was granted by the Internal Revenue Service.

**How do state community property laws affect my ability to qualify for relief?**

Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or your spouse (or former spouse) for purposes of requesting any relief from liability.

**Innocent spouse relief under section 654**

**What are the rules for innocent spouse relief?**

To qualify for innocent spouse relief, for a taxable year beginning on or after January 1, 1999, you must meet **all** of the following conditions.

- You must have filed a joint return that has an understatement of tax.
- The understatement of tax must be due to erroneous items of your spouse (or former spouse).
- You must establish that at the time you signed the joint return, you did not know, and had no reason to know, there was an understatement of tax.
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
- You must request relief within two years after the date on which the Tax Department first began collection activity against you (the issuance of a levy, an income execution, and any other asset seizure).

**Will I qualify for innocent spouse relief in any situation where there is an understatement of tax?**

No. There are many situations in which you may owe tax that is related to your spouse, but you are not eligible for innocent

spouse relief. For example, you and your spouse file a joint return that reports \$10,000 of income and deductions, but you knew that your spouse was not reporting \$5,000 of dividends. You are **not** eligible for innocent spouse relief when you have knowledge of the understatement.

**Is my marital status a consideration in granting innocent spouse relief?**

If you are divorced, legally separated, or living apart from your spouse, this may be a positive factor in considering innocent spouse relief. However, you may qualify for innocent spouse relief if your marital status has not changed since you filed the joint return. If you were abandoned or receive no economic support from your spouse, attach supporting documentation to Form IT-285.

**Separation of liability**

**What are the rules for separation of liability?**

Under this type of relief, you divide (separate) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse. The understatement of tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability, you must have filed a joint return for a taxable year beginning on or after January 1, 1999, and meet **either** 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 rule, you are considered to be no longer married if your spouse is deceased.)
- 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 filed Form IT-285.

### **Why would a request for separation of liability be denied?**

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

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

### **Equitable relief**

#### **What are the rules for equitable relief?**

Equitable relief is only available for taxable years beginning on or after January 1, 1999. You must meet **all** of the following conditions.

- You do not qualify for innocent spouse relief or separation of liability.
- The Tax Department determines that it is unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.
- You and your spouse did not transfer assets to one another as a part of a fraudulent scheme.
- Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax.
- You did not file your return with the intent to commit fraud.
- You did not pay the tax.

**Note:** Unlike innocent spouse relief or separation of liability, if you qualify for equitable relief, you can get relief from an underpayment of tax. (An underpayment of tax is an amount properly shown on the return but not paid.)

**Is my marital status a consideration in granting equitable relief?**

If you are divorced, legally separated, or living apart from your spouse, this may be a positive factor in considering equitable relief. However, you may qualify for equitable relief if your marital status has not changed since you filed the joint return. For example, if you were abandoned, abused, or received no economic support from your spouse, these would be factors considered for equitable relief. Attach any supporting documentation to Form IT-285.

**How do I demonstrate economic hardship?**

Attach a signed statement to Form IT-285 that details the facts and circumstances of your current economic condition that support your claim of economic hardship. Factors that will be considered include late child support payments, difficulty in meeting household expenses, unanticipated medical bills, or other similar examples of economic distress. The Tax Department will contact you if additional documentation is necessary.

**Filing Form IT-285**

**When should I file Form IT-285?**

If you are requesting innocent spouse relief, separation of liability, or equitable relief for a taxable year beginning on or after January 1, 1999, file Form IT-285 no later than two years after the date on which the Tax Department first began collection activities against you ( for example, the issuance of a levy, an income execution, or an asset seizure).

**Where should I file Form IT-285?**

Generally, you should send your completed Form IT-285 with supporting documentation to:

NYS Tax Department  
PO Box 5120  
Albany, NY 12205-0120

If you are meeting with a Tax Department employee, you received a notice of deficiency, or you are using a private delivery service, follow the Form IT-285 instructions.

**I am currently undergoing an examination of my return. How do I request innocent spouse relief?**

File Form IT-285 with the employee assigned to examine your return.

**What if the Tax Department has levied my bank account for the tax liability and I decide to request relief?**

All collection activity is suspended from the date the request is received by the Tax Department until the final determination is made.

**If I am denied innocent spouse relief, must I reapply if I believe I might qualify for either relief by separation of liability or equitable relief?**

No. The Tax Department will automatically consider whether separation of liability or equitable relief would apply and contact you if additional information is required.

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

The Tax Department will send you a determination letter notifying you of the result of the review of your request.

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

The Tax Department will inform your spouse (or former spouse), who is also responsible for the joint liability, of your request for relief and the determination. Your spouse (or former spouse) will have the option of participating in the determination of the amount of any relief from liability. However, the Tax

Department will not inform your spouse (or former spouse) of any personal identifying information including name changes, address, and phone numbers.

**Where do I send my payment for any tax that may be due after receiving relief?**

You will receive an adjusted assessment notice with payment instructions after you receive a determination letter.

**Other types of relief**

**If I don't qualify for relief under former Tax Law section 651(b)(5) or new section 654, are there other options available?**

A taxpayer who is jointly and severally liable on a joint income tax return may qualify for an offer in compromise under Tax Law section 171-eighteenth-d. The following conditions must be met:

1. At the time of the offer, the taxpayer and spouse are divorced, separated, or living apart and ineligible to file a joint income tax return.
2. The taxpayer is able to demonstrate that collection of the spouse's share of liability from the taxpayer could not be accomplished within a reasonable length of time without imposing substantial economic hardship on the taxpayer. Substantial economic hardship does not necessarily require the bankruptcy or insolvency of the taxpayer.

The procedure applies only to the share of the joint liability attributable to the income of the taxpayer's spouse. This share is determined by multiplying the entire amount of the joint liability by a fraction, the numerator of which is the spouse's tax determined on a separate filing basis, and the denominator of which is the sum of the spouse's and taxpayer's taxes determined on a separate filing basis.

A compromise under Tax Law 171-eighteenth-d for the spousal share of liability on the return does not compromise the joint and several liability of the taxpayer's spouse with respect to that return.

To request offer in compromise relief under Tax Law 171-eighteenth-d, or to discuss resolution of your liability, you may contact the Tax Department. Please call 1-800-835-3554. From areas outside the United States and outside Canada please call (518) 485-6800.

### **What is “nonobligated spouse relief”?**

Nonobligated spouse relief is different from innocent spouse relief. When a joint return is filed and the refund is used to pay one spouse's defaulted student loan, past-due support liability, or past-due legally enforceable debt owed to a state agency, the other spouse may be considered a nonobligated spouse. The nonobligated spouse can claim his or her share of the refund using Form IT-280, *Nonobligated Spouse Allocation*. To be considered a nonobligated spouse, you must have:

- filed a joint return;
- received income (such as wages, interest, etc.);
- made tax payments (such as withholding or estimated tax payments);
- reported the income and tax payments on the joint return; and
- had an overpayment, all or part of which was applied to the past due amount of the other spouse.

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## Need Help?



**Telephone assistance** is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

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For tax information: 1 800 225-5829

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To order forms and publications: 1 800 462-8100

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Refund status: (electronically filed) 1 800 353-0708  
(direct deposit) 1 800 321-3213  
(all others) 1 800 443-3200

(Automated service for refund status is available 24 hours a day, seven days a week.)

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From areas outside the U.S. and outside Canada: (518) 485-6800



**Fax-on-demand forms:** Forms are available 24 hours a day, 7 days a week

1 800 748-3676



**Internet access:** [www.tax.state.ny.us](http://www.tax.state.ny.us)

(for forms, publications, your refund status, to check your estimated tax account, and other information)



### Hotline for the hearing and speech impaired:

1 800 634-2110 from 8:30 a.m. to 4:25 p.m.(eastern time), Monday through Friday. If you do not own a telecommunications device for the deaf (TDD), check with independent living centers or community action programs to find out where machines are available for public use.



**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, please call 1 800 225-5829.



**If you need to write,** address your letter to:

NYS TAX DEPARTMENT  
TAXPAYER ASSISTANCE BUREAU  
W A HARRIMAN CAMPUS  
ALBANY NY 12227