



Compromise of Spousal Share of Liability On Joint Tax Return

Important things you should know before you file this form:

A taxpayer who has filed a joint income tax return for a taxable year may qualify under New York State Tax Law section 171, subdivision eighteenth-d for a compromise of the tax due for that taxable year.

However, the New York State Department of Taxation and Finance offers other joint liability relief programs that may better suit your needs. See the tables on page 4. After reviewing the tables, if you believe a compromise of spousal share of liability on joint tax return best fits your needs, observe the following:

- All questions on this form must be answered or your request may be returned to you.
- Before completing this form, see *Terms* on page 5 and *Instructions* on page 6. If you have any questions about how to complete this form, call the Tax Department, Offer in Compromise Unit at (518) 591-5000.

1 According to Tax Law section 171, subdivision eighteenth-d, the following taxpayer submits this offer to the Commissioner of Taxation and Finance to compromise a liability for unpaid taxes.

| |
|------|
| Date |
| / / |

2 Current identifying information

| | | |
|-------------------|-----------------------------|--------------------------|
| Your name | Your social security number | Date of birth (mm/dd/yy) |
| | | / / |
| Your home address | Telephone numbers | |
| | Day () | Evening () |

3 Current employment information

| | | |
|------------------|---------|------------------|
| Name of employer | Address | Telephone number |
| | | () |

4 Taxpayer representative (if applicable)

| | | |
|------------------------|---------|------------------|
| Name of representative | Address | Telephone number |
| | | () |

5 Marital status — At the time of the offer in compromise (OIC), the taxpayer and joint taxpayer (spouse) are (mark an X in one):

- Divorced* Legally separated Living apart and ineligible to file a joint return
 Date _____ Date _____

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

6 List all tax years or liability periods you wish to compromise. _____

7 Will the collection of the spousal share of the liability from the taxpayer within a reasonable period of time impose substantial hardship? (mark an X in one) Yes No

If Yes, describe the hardship (see page 6 for supporting documents that must be included with your completed Form DTF-4.2):

8 Dependent children or relatives

| Name | Relationship | Social security number | Date of birth |
|------|--------------|------------------------|---------------|
| | | | |
| | | | |
| | | | |
| | | | |

9 Enter the names and addresses of all banks or other financial institutions where you have done business during the past three years.

| Name and address | Name and address |
|------------------|------------------|
| | |

10 Enter your most recent financial information in the columns below. Enter the fair market value of each asset you own directly or indirectly. Also list your interests in partnerships, S corporations, LLCs, estates, trusts, and other property rights, including contingent interests and remainders.

| Assets | Fair market value |
|---|-------------------|
| Cash | |
| Cash surrender value of insurance | |
| Real estate | |
| Furniture and fixtures | |
| Automobiles and trucks | |
| Recreational vehicles | |
| Stocks, bonds, and other securities | |
| Jewelry | |
| Business equipment | |
| Individual retirement accounts, 401(k)s, etc. | |
| Other assets <i>(list below)</i> | |
| | |
| | |
| Total assets | \$ |

11 Enter the amount owed on the following applicable liabilities.

| Liabilities | Amount |
|---------------------------------------|--------|
| Mortgage(s) | |
| Real estate taxes owed | |
| Judgments | |
| Federal income tax owed | |
| Loans from relatives | |
| Loans from others | |
| Credit card debt | |
| Other liabilities <i>(list below)</i> | |
| | |
| | |
| Total liabilities | \$ |

12 Real estate *(attach copy of indenture, mortgage, and deed for each)*

| Address(es) and description(s) of real property | Cost | Fair market value | Balance due on mortgage | Overdue taxes, penalties, interest |
|---|------|-------------------|-------------------------|------------------------------------|
| | | | | |
| | | | | |
| Totals | \$ | \$ | \$ | \$ |

13 Automobiles, trucks, boats, planes, and recreational vehicles

| Make of vehicle | Model | License plate number | Year | Cost | Fair market value | Balance due, if pledged |
|-----------------|-------|----------------------|------|------|-------------------|-------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

14 Securities (*bonds, stocks, mutual funds, etc.*)

| Name of company | Number of units | Cost | Fair market value | Balance due, if pledged |
|-----------------|-----------------|------|-------------------|-------------------------|
| | | | | |
| | | | | |
| | | | | |

15 Judgments

| Name of creditor | Amount of judgment | Balance due of judgment | Date recorded | Where recorded |
|------------------|--------------------|-------------------------|---------------|----------------|
| | | | | |
| | | | | |
| | | | | |

16 Current monthly income and expenses – List your current average monthly income and expenses for your entire household. Include income from a spouse or anyone who lives with you.

| Income | Monthly amount | Expenses | Monthly amount |
|--|----------------|--|----------------|
| Wages (gross pay), tips, etc. | | Federal, state, and local taxes withheld from your paycheck | |
| Pensions | | Rent or mortgage | |
| Unemployment | | Utilities | |
| Social security | | Telephone | |
| Government assistance | | Food | |
| Alimony received | | Car expenses, payments, and insurance, etc. | |
| Child support received | | Medical expenses, including insurance | |
| Self-employment | | Life insurance | |
| Rental income | | Clothing | |
| Interest, dividends, capital gains | | Public transportation | |
| Partnerships, LLCs, and S Corporations | | Child care expenses | |
| Other income (<i>such as disability payments</i>) List: | | Other expenses (<i>such as real estate taxes and child support</i>) List: | |
| Total | \$ | Total | \$ |

17 Enter the number of people in your household.

Adults

Children under 21

For tax years 1999 and after: Types of relief from joint liability available under Tax Law section 654

| Factors | Rules for innocent spouse relief | Rules for separation of liability | Rules for 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 item of your spouse. | You must have filed a joint return that has either an understatement or an underpayment of tax. |
| 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. | 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 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. |
| Other qualifications | None. | None. | You do not qualify for innocent spouse relief or separation of liability. |
| Unfairness | 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. |
| Refunds | Your request can generate a refund. | Your request cannot generate a refund. | Your request can generate a refund under certain circumstances. |
| To apply | File Form IT-285 with supporting documentation. | | |

For tax years prior to 1999: Rules for innocent spouse relief under 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 a grossly erroneous item of your spouse. Relief under section 651(b)(5) is not available for tax years beginning on or after January 1, 1999. |
| Marital status | Not considered as 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 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. |
| Unfairness | It must be unfair to hold you liable for the substantial understatement of tax taking into account all the facts and circumstances |
| Refunds | Your request can generate a refund. |
| To apply | File a statement with supporting documentation. |

For detailed information, see NYS Publication 89, *Innocent Spouse Relief (And Separation of Liability and Equitable Relief)*, (at www.nystax.gov).

For specific details of the offer process, see NYS Publication 220, *Offer in Compromise Program*.

Terms

1. In making this offer, and as a part of consideration, it is agreed that the Commissioner of Taxation and Finance shall keep all payments, sums collected, refund offsets, and other credits made to the liabilities for the periods covered by this offer.
2. It is agreed that upon notice to the taxpayer of the acceptance of this offer, the taxpayer shall have no right to contest in court, or otherwise, the amount of the liability sought to be compromised. No liability will be compromised nor will any warrant be amended until all obligations of this taxpayer under the compromise agreement are completely performed and satisfied. In the event of a default by the taxpayer on the compromise agreement, it is agreed that the Tax Department may disregard the offer and immediately, without notice, proceed to collect the balance of any warrant(s) representing the original liability.
3. It is understood that this offer will be considered and acted upon in due course, and that it does not relieve this taxpayer from the liability sought to be compromised unless and until the offer is accepted in writing by the Commissioner and there has been full compliance with the terms of the offer.
4. This taxpayer waives the benefit of any statute of limitations applicable to the collection of the liability sought to be compromised, and agrees to the suspension of the running of the statutory period of limitations on collection for the period during which this offer is pending, and for one year thereafter. For these purposes, the offer shall be deemed pending from the date of acceptance of the waiver of the statutory period of limitations by the authorized Tax Department official until the date on which the offer is formally accepted, rejected, or withdrawn in writing.

Statement

I declare that I have examined the information given in this statement and, to the best of my knowledge and belief, it is true, correct, and complete. This statement is made with the knowledge that a willfully false representation is a misdemeanor punishable under section 210.45 of the Penal Law of New York State.

Date of statement

Signature of taxpayer

Signature of paid preparer (if any)

ID# of preparer

For office use only (make no marks below this line)



NYS TAX DEPARTMENT
CED OFFER IN COMPROMISE UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-5100

We received your Form DTF-4.2, *Compromise of Spousal Share of Liability on Joint Tax Return*. Your case will be assigned to a reviewer who will contact you.

If you have any questions, please contact the Offer in Compromise Unit at (518) 591-5000.

Date office received

[Empty box for date office received]

Instructions

Basis for compromise

A taxpayer who has filed a joint income tax return for a tax year may qualify under New York State Tax Law section 171, subdivision eighteenth-d for a compromise of some or all of any tax due for that tax year. The following conditions must be met:

1. At the time of the compromise offer, the taxpayer and spouse are:
 - a) divorced,
 - b) legally separated, or
 - c) living apart and ineligible to file a joint return; and
2. The taxpayer is able to demonstrate that collection of the spousal share of the liability from the taxpayer cannot be accomplished within a reasonable period of time without imposing substantial economic hardship on the taxpayer. *Substantial economic hardship* does not require the taxpayer's bankruptcy or insolvency.

You must also be in compliance with all payment and filing requirements for periods not included in the offer. This includes estimated tax payments and tax deposits.

The Tax Department may also require proof of your income during the period(s) for which you seek compromise. Once this information is obtained from you and/or our records, your share, if any, of the tax liability can be calculated by the Tax Department's Audit Division as follows:

$$\frac{\text{compromised spouse's tax}}{\text{total recalculated tax for both taxpayers}} \times \frac{\text{balance on assessment as of application date}}{\text{amount due}} = \text{amount due}$$

You will be notified of the results.

Submission of an offer does not automatically suspend collection of any warrant. If there is any indication that the filing of the offer is solely for the purpose of delaying collection of the tax, the Tax Department will continue collection efforts.

Interest and penalties will continue to accrue on the liability while your offer is under consideration. Interest rates are computed quarterly and may change.

If your offer is accepted and all terms of the offer are satisfied (that is, your share of the liability is paid in full), the Tax Department will amend the appropriate warrant(s). Interest will also be due at the rates established under the Tax Law on any deferred portion of the offer from the date of notice of acceptance until it is paid in full.

Terms on page 5 include: 1) a waiver of refunds; and 2) a waiver of the right to contest the liability after the offer is accepted. Your submission of this form is an acceptance of these provisions.

Specific instructions

Attach additional sheets of paper if you need more space to answer a question. Identify each sheet by writing your name and social security number at the top of the page and the number of the question you are answering.

Complete all areas, for example:

Item 1 – Date the first page of Form DTF-4.2 in the space provided. This date is important for identification and reference purposes.

Item 7 – List the facts and reasons (hardship) that are grounds for acceptance of the offer.

Signature – Sign and date the *Statement* on page 5.

Submitting Form DTF-4.2

After answering all questions, read the *Terms* on page 5. You must also attach a copy of the following **supporting documents**:

1. proof of marital status - divorce decree, separation papers, or other;
2. your current pay stub or other proof(s) of income;
3. Social security lifetime wage earnings statement, if available;
4. your most recent federal income tax return with all attachments and schedules; and
5. Form POA-1, *Power of Attorney*, if you are retaining a representative.

These instructions are intended only as an overview of the offer process and a guide in preparing Form DTF-4.2.