

8160.0500 INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED, LEGALLY SEPARATED, AND WIDOWED SPOUSES FOR INDIVIDUAL INCOME TAX.

Subpart 1. **General rule.** For all joint returns, and for combined returns for taxable years 1981 through 1984, the liability of a husband and wife for unpaid individual income taxes is joint and several.

Subp. 2. **Innocent spouse relief.** Either spouse, whether the marriage has been dissolved, legally separated, or terminated by the death of the other spouse or not, can apply to the Department of Revenue for innocent spouse relief from joint and several liability. The spouse must qualify for relief under the conditions prescribed in section 6015(b) of the Internal Revenue Code, and the regulations and federal court cases interpreting that code section.

If either spouse is found to qualify for innocent spouse relief from payment of an income tax amount, the other spouse is then solely liable, in full, for that amount.

Subp. 3. **Liability of divorced, legally separated, and widowed spouses; calculation.** In the case of divorced, legally separated, and widowed spouses, either spouse, or the surviving spouse, may apply to the Department of Revenue for a division of their joint income tax liability into two separate liabilities due from each spouse. Application must be made, in writing, by providing a copy of the decree of dissolution of marriage, decree of legal separation, or death record of the deceased spouse, and a copy of the state and federal tax returns, including required attachments and schedules, for the tax year of the liability. The formula for dividing the liability between the spouses is based upon a calculation of what their proportionate shares of the tax would be if they had filed separate returns.

Solely for the purpose of apportioning the liability between the spouses, the criteria in items A, B, and C shall be used.

A. Income, deductions, credits, exemptions, estimated payments, tax payments, and tax refunds attributable to, earned by, paid by, or paid to, solely one spouse shall be assigned to that spouse.

B. All of the items in item A that are attributable to, earned by, or paid to both spouses jointly, or paid from joint funds of both spouses, shall be divided equally between the spouses.

C. For purposes of additional assessments of income tax, the separate return apportionment shall be made solely based upon the additional assessment, without regard to any of the items in item A that are reported on the original return.

If innocent spouse relief is granted from liability for an additional assessment of income tax, the additional assessment is not included in the calculation of the separate

return formula. For example, H and W file a return without remitting the tax. Then, an additional assessment is made, and one of the spouses is granted innocent spouse relief from payment of the assessment. If the spouses are divorced, legally separated, or widowed, their liabilities are their shares of the tax not remitted with the return, and that amount is apportioned as follows:

$$\begin{array}{r} \text{Spouse's separate liability calculated on original return only} \\ \hline \end{array} \quad \times \quad \begin{array}{l} \text{Unpaid balance} \\ \text{due on original} \\ \text{return} \end{array}$$

Total of both spouses' separate liabilities calculated on original return only

Subp. 4. **Election of remedies; effect of innocent spouse relief and separate liability determinations.** Subject to subpart 3, item C, the separate return formula for calculating the liability of each spouse can be applied both to taxes reported on a return but not paid and to additional assessments of income tax. Innocent spouse relief applies only to additional assessments.

In the case of additional assessments, when an innocent spouse claim is allowed, the separate liability calculation is not available; conversely, when a separate liability calculation is allowed, innocent spouse relief is not available.

An innocent spouse relief determination or separate liability calculation, or any combination thereof, does not increase or reduce the amount of the underlying tax liability owed jointly by both spouses, whether married, divorced, legally separated, or widowed, that was owing prior to the granting of relief or calculation of the formula.

Subp. 5. **Notice requirements; appeal rights.** When either spouse applies for a separate liability calculation, the Department of Revenue must mail a copy of its proposed apportionment of liability to the other spouse at his or her last known address. In the case of a widowed spouse, notice must be mailed to the personal representative of the estate of the deceased spouse. The notice to the other spouse shall not be considered a disclosure violation under Minnesota Statutes, chapter 270B. The other spouse then has 30 days from the date of mailing of the notice in which to contest the separate liability calculation shown in the proposal. If the other spouse applies for innocent spouse relief, the department must make the innocent spouse determination first.

If either spouse applies for innocent spouse relief, the relief cannot be granted unless the department first gives notice to the other spouse of its intent to grant the relief. The other spouse then has 30 days in which to contest the granting of innocent spouse relief to the applicant spouse. If the other spouse applies for a separate liability calculation, the department must make the innocent spouse determination first.

A denial or granting of innocent spouse relief or an apportionment of a liability between spouses, once it becomes final, is not appealable administratively, but is appealable to the Minnesota tax court in the manner provided in Minnesota Statutes, chapter 271.

Statutory Authority: *MS s 270.06; 270C.06*

History: *17 SR 1758; 25 SR 971; L 2001 1Sp9 art 15 s 32; L 2005 c 151 art 1 s 114*

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