

1 Department of Revenue

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3 Adopted Permanent Rules Relating to Income Tax Liability of

4 Spouses

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6 Rules as Adopted

7 8160.0500 INNOCENT SPOUSE RELIEF AND LIABILITY OF DIVORCED

8 SPOUSES FOR INDIVIDUAL INCOME TAX.

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

13 Subp. 2. **Innocent spouse relief.** Either spouse, whether
14 the marriage has been dissolved or not, can apply to the
15 Department of Revenue for innocent spouse relief from joint and
16 several liability. The spouse must qualify for relief under the
17 conditions prescribed in section 6013(e) of the Internal Revenue
18 Code, and the regulations and federal court cases interpreting
19 that code section.

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

23 Subp. 3. **Liability of divorced spouses; calculation.** In
24 the case of divorced spouses, either spouse may apply to the
25 Department of Revenue for a division of their joint income tax
26 liability into two separate liabilities due from each spouse.
27 Application must be made, in writing, by providing a copy of the
28 decree of dissolution of marriage. The formula for dividing the
29 liability between the divorced spouses is based upon a
30 calculation of what their proportionate shares of the tax would
31 be if they had filed separate returns.

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

35 A. Income, deductions, credits, exemptions, estimated

1 payments, tax payments, and tax refunds attributable to, earned
2 by, paid by, or paid to, solely one spouse shall be assigned to
3 that spouse.

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

8 If innocent spouse relief is granted from liability for an
9 additional assessment of income tax, the additional assessment
10 is not included in the calculation of the separate return
11 formula. For example, H and W file a return without remitting
12 the tax. Then, an additional assessment is made, and one of the
13 spouses is granted innocent spouse relief from payment of the
14 assessment. If the spouses are divorced, their divorced spouse
15 liabilities are their shares of the tax not remitted with the
16 return, and that amount is apportioned as follows:

17	Spouse's separate liability calculated	
18	on original return only	
19	<hr/>	
20		x Unpaid balance
21	Total of both spouses' separate	due on original
22	liabilities calculated on original	return
23	return only	
24		

25 Subp. 4. Election of remedies; effect of innocent spouse
26 relief and divorced spouse liability determinations. The
27 separate return formula for calculating the liability of
28 divorced spouses can be applied both to taxes reported on a
29 return but not paid and to additional assessments of income
30 tax. Innocent spouse relief applies only to additional
31 assessments.

32 In the case of additional assessments, when an innocent
33 spouse claim is allowed, the divorced spouse liability
34 calculation is not available; conversely, when a divorced spouse
35 liability calculation is allowed, innocent spouse relief is not
36 available.

37 An innocent spouse relief determination or divorced spouse
38 liability calculation, or any combination thereof, does not
39 increase or reduce the amount of the underlying tax liability
40 owed jointly by both spouses, whether married or divorced, that

1 was owing prior to the granting of relief or calculation of the
2 formula.

3 Subp. 5. Notice requirements; appeal rights. When either
4 spouse applies for a divorced spouse liability calculation, the
5 Department of Revenue must mail a copy of the application to the
6 other spouse at his or her last known address. The notice to
7 the other spouse shall not be considered a disclosure violation
8 under Minnesota Statutes, chapter 270B. The other spouse then
9 has 30 days from the date of mailing of the notice in which to
10 contest the divorced spouse liability calculation shown in the
11 application. If the other spouse applies for innocent spouse
12 relief, the department must make the innocent spouse
13 determination first.

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

22 A denial of innocent spouse relief or an apportionment of a
23 liability between divorced spouses is not appealable
24 administratively, but is appealable to the Minnesota tax court
25 in the manner provided in Minnesota Statutes, chapter 271.