When a married couple files a joint tax return, each spouse is “jointly and severally” liable for the full amount of tax on the couple’s combined income. That means the IRS can pursue either spouse to collect the entire tax — not just the part that’s attributed to one spouse or the other. This includes any tax deficiency that the IRS assesses after an audit, as well as any penalties and interest. (However, the civil fraud penalty can be imposed only on spouses who’ve actually committed fraud.)

Innocent Spouse Relief

In some cases, spouses are eligible for “innocent spouse relief.” This generally involves individuals who were unaware of a tax understatement that was attributable to the other spouse.

To qualify, you must show not only that you didn’t know about the understatement, but that there was nothing that should have made you suspicious. In addition, the circumstances must make it inequitable to hold you liable for the tax. This relief is available even if you’re still married and living with your spouse. In addition, if you’re widowed, divorced, legally separated, or have lived apart for at least one year, you may be able to limit liability for any tax deficiency on a joint return.

Election to Limit Liability

If you make this election, the tax items that gave rise to the deficiency will be allocated between you and your spouse as if you’d filed separate returns. For example, you’d generally be liable for the tax on any unreported wage income only to the extent that you earned the wages.

The election won’t provide relief from your spouse’s tax items if the IRS proves that you knew about the items or had reason to know when you signed the return — unless you can show that you signed the return under duress. Also, the limitation on your liability is increased by the value of any assets that your spouse transferred to you in order to avoid the tax.

An “Injured” Spouse

In addition to innocent spouse relief, there’s also relief for “injured” spouses. What’s the difference? An injured spouse claim asks the IRS to allocate part of a joint refund to one spouse. In these cases, an injured spouse has all or part of a refund from a joint return applied against past-due federal tax, state tax, child or spousal support, or a federal nontax debt (such as a student loan) owed by the other spouse. If you’re an injured spouse, you may be entitled to recoup your share of the refund.

Whether, and to what extent, you can take advantage of the above relief depends on the facts of your situation. If you’re interested in trying to obtain relief, there’s paperwork that must be filed and deadlines that must be met. We can assist you with the details.

Moving On

As you file tax returns in the future, be mindful of “joint and several liability.” Generally filing a joint tax return results in lower taxes for a married couple. But if you want to ensure that you’re responsible only for your own tax, filing separate returns might be a better choice for you, even if your marriage is intact.

Contact us with any questions or concerns.