



# Instructions for Form IT-285 Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief)

## General information

When you file a joint income tax return, the law makes both you and your spouse responsible for the entire tax liability. This is called *joint and several liability*. Joint and several liability applies not only to the tax liability you show on the return, but also to any additional tax liability the Tax Department determines to be due, even if the additional tax is due to the income, deductions, or credits of your spouse or former spouse. You remain jointly and severally liable for taxes, and the Tax Department can collect from you even if you later divorce and the divorce decree states that your former spouse is solely responsible for the tax.

However, if you believe that your spouse or former spouse should be held responsible for all or part of a tax liability, you can request tax relief. If the joint return was for a tax year **beginning on or after January 1, 1999**, you must file Form IT-285 to request relief from the liability and related penalty and interest. If you are requesting relief for more than one tax year, you only need to file one Form IT-285.

There are three types of relief: innocent spouse relief, separation of liability, and equitable relief. An explanation of each type of relief is given on page 2.

See Publication 89, *Innocent Spouse Relief*, for more details. For information on how to get publications or additional help, see *Need help?* on page 4.

Innocent spouse relief is available for tax years beginning prior to January 1, 1999, under former Tax Law section 651(b)(5). To request relief from a joint income tax liability for a tax year **beginning prior to January 1, 1999**, you may use Form IT-285; however, see Publication 89 for more information on the relief available for these years.

## Notification of your spouse or former spouse

By law, the Tax Department must contact your spouse or former spouse in matters related to a joint return. There are no exceptions, even for victims of spousal abuse or domestic violence.

However, to protect your privacy, the Tax Department will not disclose your personal information (for example, your current name, address, phone number(s), information from your employer, your income or assets) or any other information that does not relate to making a determination about your request for relief from liability.

We will inform your spouse or former spouse that you filed Form IT-285 and will allow him or her to participate in the process. The Tax Department must also inform him or her of the preliminary and final determinations regarding your request for relief.

**Note:** If you petition for a hearing in the Division of Tax Appeals (explained under *Request for conciliation conference or petition for a Division of Tax Appeals hearing*), your spouse or former spouse may see your personal information.

## Community property laws

Generally, you must 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 provide that you and your spouse are both entitled to one-half of your total community income and expenses.

If you and your spouse filed a joint New York return while a resident of another state that is a community property state, you are both jointly and severally liable for the total liability on the return. If you request relief from joint and several liability, community property laws are not taken into account in determining whether an item belongs to you or your spouse (or former spouse).

## When and where to file

Do not file Form IT-285 with your tax return.

### When to file

Generally, you should file Form IT-285 as soon as you are notified by the Tax Department or otherwise become aware of an income tax liability for which you believe only your spouse (or former spouse) should be liable.

Generally, you must file Form IT-285 no later than two years after the first attempt by the Tax Department to collect the tax from you.

**Exception for equitable relief** – On July 25, 2011, the IRS eliminated the two-year deadline that applied to requests for equitable relief (see IRS Notice 2011-70 and Revenue Procedure 2013-34). As a result, New York State also eliminated this deadline. You may request equitable relief, regardless of when the first collection action was taken by the department, by filing Form IT-285. However, you must file your request within the period of limitation on collection in Tax Law sections 174-b and 692; for any credit or refund of tax, you must file your request within the period of limitation in Tax Law section 687. See TSB-M-11(11), *Equitable Relief*, for additional information.

**Note:** The time that the Tax Department is allowed to collect taxes, interest, and penalties on the liability will be extended while your request for relief is considered.

## Where to file

If:	then file Form IT-285 with:
you are meeting with a Tax Department employee for an examination, examination appeal, or collection,	that Tax Department employee.
you received a notice of deficiency, and the time limit to appeal specified in the notice has not expired,*	your completed <i>Request for Conciliation Conference</i> or a petition for a hearing.
you use a private delivery service,	NYS TAX DEPARTMENT PROTEST CORRESPONDENCE UNIT 90 COHOES AVE GREEN ISLAND NY 12183-1515
(For more information about private delivery services, see Publication 55.)	
none of the situations above apply to you,	NYS TAX DEPARTMENT PROTEST CORRESPONDENCE UNIT W A HARRIMAN CAMPUS ALBANY NY 12227-5120

\*See *Request for conciliation conference or petition for a Division of Tax Appeals hearing* on page 2.

## What happens after you file Form IT-285

After you file Form IT-285, the Tax Department will review your request and supporting information and notify you of its decision to accept or deny your request.

If it is determined that you are not eligible for any of the types of relief available by filing Form IT-285, you may contact the Tax Department at (518) 457-5434 to discuss resolution of your liability.

If you disagree, in whole or in part, with the Tax Department's determination concerning your request for relief, you can protest the decision. See *Request for conciliation conference or petition for a Division of Tax Appeals hearing*.

If you have not received a determination notice from the Tax Department within six months from the date you filed Form IT-285, you may request a conciliation conference or petition for a hearing (see below) to protect your rights to protest if the decision turns out to be unfavorable.

## Request for conciliation conference or petition for a Division of Tax Appeals hearing

If you disagree with the determination of the Tax Department resulting from filing Form IT-285, you must file your request for a conciliation conference with the Tax Department's Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals no later than 90 days from the date the Tax Department mails its determination notice to you. See Form CMS-1, *Request for Conciliation Conference*, for additional information concerning filing a request for conciliation conference or a petition for a hearing. For information on how to get forms and publications, see *Need help?* on page 4.

**Note:** If you received a notice of deficiency for a joint liability shared by you and your spouse, filing Form IT-285 to request relief from the joint liability will not extend the deadline to protest the notice of deficiency. If you wish to protest the notice of deficiency, you must file a *Request for Conciliation Conference* with the Tax Department's Bureau of Conciliation and Mediation Services or petition for a hearing in the Division of Tax Appeals within the time limit specified in the notice. Your request for conciliation conference or your petition for a hearing should also include the information that supports your request for relief from the joint liability, including when and why you filed or plan to file Form IT-285.

## Definitions

### Understatement of tax

An *understatement of tax*, or deficiency, is generally the difference between the total amount of tax that the Tax Department determines should have been shown on the return, and the amount that actually was shown on the return.

**Example:** *You and your spouse (or former spouse) file a joint return showing \$5,000 of tax, which was fully paid. The Tax Department later audits the return and finds \$10,000 of income that your spouse earned but did not report. With the additional income, the total tax becomes \$5,700. You and your spouse are both liable for the \$700 understatement of tax.*

### Underpayment of tax

An *underpayment* is tax that was properly shown on the return, but has not been paid.

**Example:** *You filed a joint return that properly reflects your income and deductions, but showed an unpaid balance due of \$5,000. You and your spouse were getting divorced. You gave your spouse \$2,500 and your spouse promised to pay the full*

*\$5,000, but did not. You and your spouse are both liable for the \$5,000 underpayment of tax.*

## Erroneous items

Any income, deduction, credit, or basis is an *erroneous item* if it was omitted from or incorrectly reported on the joint return.

## Types of relief

### Innocent spouse relief

You may be allowed innocent spouse relief for a tax year beginning on or after January 1, 1999, only if **all** of the following apply:

- You filed a joint return for the year(s) entered on line 3.
- There is an understatement of tax on the return(s) that is due to erroneous items (defined above) of the person listed on line 5.
- You can show that when you signed the return(s) you did not know and had no reason to know that the understatement of tax existed (or the extent to which the understatement existed).
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

### Partial innocent spouse relief

If you knew about any of the erroneous items but not the full extent of the item(s), you may be allowed relief for the part of the understatement you did not know about. Explain in the statement you submit with Form IT-285 (see line 4 instructions) how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

### Separation of liability

You may be allowed separation of liability for a tax year beginning on or after January 1, 1999, for any understatement of tax shown on the joint return(s) you filed with the person listed on line 5 if you and that person:

- are divorced
- are legally separated, or
- have lived apart at all times during the 12-month period prior to the date you file Form IT-285.

**Exception:** If, at the time you signed the joint return, you knew about any item that resulted in part or all of the understatement, then your request will not apply to that part of the understatement.

Separation of liability applies only to amounts owed that have not been paid. It cannot give you a refund of amounts already paid.

### Equitable relief

You may be allowed equitable relief for a tax year beginning on or after January 1, 1999, if, taking into account all the facts and circumstances, the Tax Department determines you should not be held liable for any understatement or underpayment of tax.

Equitable relief generally applies to an underpayment of tax and part or all of any understatement of tax that does not qualify for either innocent spouse relief or separation of liability.

The Tax Department will consider equitable relief for any understatement of tax if it determines that innocent spouse relief and separation of liability do not apply.

Equitable relief is generally available only for liabilities that are unpaid. However, you may be able to receive a refund of certain payments you made.

## Line instructions

Answer all the questions on Form IT-285. If the answers are not the same for all tax years for which you are filing this form, submit an explanation (be sure to include your name and social security number (SSN)).

The Tax Department will consider whether you qualify for relief under innocent spouse relief, separation of liability, or equitable relief.

**Foreign address** – Enter the information in the following order: city, province or state, and then country (all in the *City, village, or post office* box). Follow the country's practice for entering the postal code. **Do not abbreviate the country name.**

**Line 3** – Even if you want to request relief for more than one tax year, you need to file only one complete Form IT-285. However, you must include a separate statement (see line 4 instructions) and separate allocation schedule (see *Allocation of items between spouses*) for each year.

**Line 4** – **You must submit a statement** with Form IT-285 for each tax year for which you are requesting relief explaining why you believe you qualify for relief. Be sure to include your name and SSN. The statement will vary depending on your circumstances, but should include the following:

- The amount of the understatement or underpayment of tax for which you are liable and are seeking relief.
- For an understatement of tax, the amount and a detailed description of each erroneous item, including why you had no reason to know about the item or the extent to which you knew about the item.
- Why you believe it would be unfair to hold you liable for the understatement or underpayment of tax. For example, you may provide documentation that shows that holding you liable for the tax would cause you economic hardship.
- Appropriate supporting documentation.

**Line 5** – Enter the current name and SSN of the person to whom you were married at the end of the year(s) listed on line 3. If the name of the person shown on that year's tax return(s) is different from the current name, enter it in parentheses after the current name. For example, enter **Jane D. Maple (formerly Oak)**. Also enter the current address and phone number if you know it.

**PO box** – Enter the box number instead of the street address only if you do not know the street address or the post office does not deliver mail to the street address.

**Spousal notification** – The Tax Department will inform the person listed on line 5 of your request for relief, and allow that person to participate in the determination of the amount of relief from liability. However, the Tax Department will not inform the person listed on line 5 of any of your personal identifying information including name changes, address, and phone numbers.

**Line 7** – If you were (or are now) a victim of domestic violence or spousal abuse by the person on line 5, please include with this request any information and supporting documentation that you would like us to consider in determining whether to grant relief. By law, the Tax Department is required to notify the person on line 5 that relief is being sought. However, your personal information will be protected. See *Notification of your spouse or former spouse* on page 1 for more information.

## Allocation of items between spouses

If you marked an **X** in the box because you do not have the specific information to complete the schedule, submit a separate

statement (including your name and SSN) with Form IT-285 listing the following information:

- 1) all items of income you are aware of, the source of that income (for example, employer name, name of business, bank accounts, investments accounts, etc.), and who earned the income or was listed as the account owner, **and**
- 2) any other information you have about your or your spouse's sources of income during the year.

If you did not mark an **X** in the box, complete an allocation schedule for each year for which you are requesting relief. Allocate all items claimed on your joint return. Allocate income and adjustments in the same manner you would have allocated them if you and your spouse had filed separate returns. In addition, allocate those items not reported on your return and items that were not reported correctly that resulted in a deficiency.

Submit copies of all federal Forms W-2, all federal schedules, and copies of any notices from the New York State Tax Department stating that you owe additional tax.

**Line 14** – Allocate wages and salaries to the spouse who earned them and received federal Forms W-2.

**Lines 15, 16, and 17** – Generally, you allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Allocate income from a jointly owned business or investment equally between you and your spouse unless there is clear and convincing evidence that supports a different allocation.

**Line 20** – Enter payments made by you in column **a** and payments made by your spouse or former spouse in column **b**. Submit documentation for each payment (for example, copies of canceled checks and bank statements).

## Paid preparer's signature

If you pay someone to prepare your form, the paid preparer must also sign it and fill in the other blanks in the paid preparer's area of your form. A person who prepares your form and does not charge you should not fill in the paid preparer's area.

**Paid preparer's responsibilities** – Under the law, all paid preparers must sign and complete the paid preparer section of the form. Paid preparers may be subject to civil and/or criminal sanctions if they fail to complete this section in full.

When completing this section, enter your New York tax preparer registration identification number (NYTPRIN) if you are required to have one. If you are not required to have a NYTPRIN, enter in the *NYTPRIN excl. code* box one of the specified 2-digit codes listed below that indicates why you are exempt from the registration requirement. You **must** enter a NYTPRIN **or** an exclusion code. Also, you must enter your federal preparer tax identification number (PTIN) if you have one; if not, you must enter your social security number.

Code	Exemption type	Code	Exemption type
01	Attorney	02	Employee of attorney
03	CPA	04	Employee of CPA
05	PA (Public Accountant)	06	Employee of PA
07	Enrolled agent	08	Employee of enrolled agent
09	Volunteer tax preparer	10	Employee of business preparing that business' return

See our Web site for more information about the tax preparer registration requirements.

## Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



#### Telephone assistance

Automated income tax refund status: (518) 457-5149

**Personal Income Tax** Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, 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, call the information center.