



*This is your formal  
invitation to:*

## *The Risks of Taxpayers with Married Filing Joint Returns*

*RSVP to:*

*Angelene Wierzbic, EA, CTRS*

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1



### *About Angelene Wierzbic, EA, CTRS*

*Since my start at Lawler & Witkowski,  
CPAs in 2004, I have been assisting  
taxpayers with IRS problems.  
Since 2021, I have been teaching other  
practitioners how to assist their clients  
through ASTPS and CPA Academy  
webinars.*

*In my spare time, I enjoy taking walks in  
the local parks looking for wild animals,  
flowers, or interesting landmarks to  
photograph.*

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## What is “Married” for Tax Purposes?

- Legally married on the last day of the year
  - Divorced last day of the year considered unmarried all year
- Married when spouse passed away during the tax year and taxpayer did not remarry



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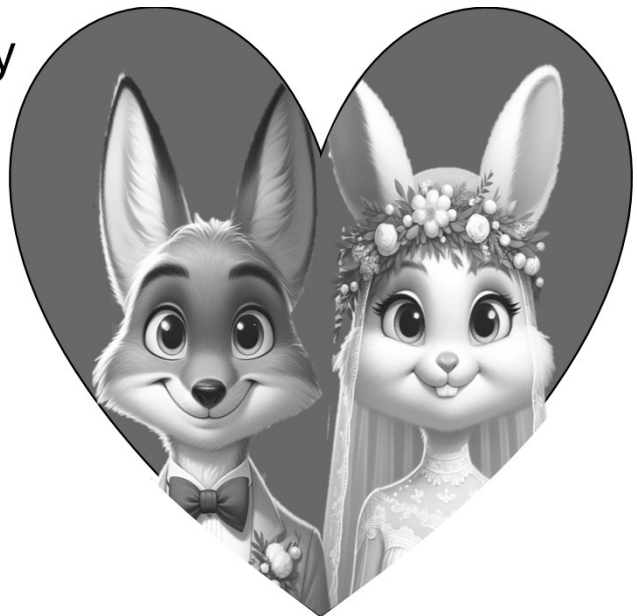
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## Benefits of Filing Jointly

- Potential for lower combined tax bracket
- Higher Standard Deduction
- Lower portion of taxable Social Security
- Qualify for certain credits



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## Weighing Married Filing Joint Vs. Married Filing Separate in Non-Community Property States

	Joint	Separate
Credits at Filing	Higher income brackets to qualify	Limitations on most credits
Balance Due at Filing	Both Parties responsible for 100%	Each responsible for own portion
Liability Resulting from Audit	Both Parties responsible for 100%	Person audited responsible
Collections Matters: Assets	100% of assets belonging to either of them are subject to collection	- 100% of assets owned by responsible person - Jointly held assets split by ownership percentage
Collection Matters: Income	100% of income belonging to either of them are subject to collections	-100% of income by liable person
Collection Matters: Expenses	100% of allowable expenses belonging to either of them	-Certain expenses proportioned by income percentage (Food, Clothing, Misc, Household, expenses paid by both parties)

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## Risks of Joint Filing Introduction

When married taxpayers elect to file a joint tax return, both taxpayers become responsible for any tax liability or future tax obligations relating to that tax period.

IRS can offset joint refunds against the debt of only one spouse.

If a situation arises where it would be inequitable to hold one person in the marriage responsible for the other's portion of the joint tax obligations, that person may file an innocent spouse claim for relief from the debt.

Joint filing also exposes certain assets to IRS collections



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## Married Filing Joint vs. Married Filing Separate

**If joint return was filed, it can be amended to married filing separate until April deadline.**

**After April deadline, it cannot be undone through amendment.**

- **Must qualify for innocent spouse or**
- **Other limited relief**



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## Limited Abilities to Reverse the Joint Filing

- **Signed Under Duress**
  - Domestic Violence Situation
  - Fear of reprisal from not signing
  - Returns signed under duress not treated as an actual return
- **Innocent Spouse**
  - Exonerates spouse from additional liabilities from audit due to unknown factors
  - Exonerates spouse from unpaid liabilities in limited situations
  - Divorce or separation scenarios may split items based on Married Filing Separate status



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## *Married Filing Joint Refund Issues & Injured Spouse*



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## Refunds in Non-Liable Spouse Scenarios

### Where debt can originate

- Taxpayer with a pre-marriage federal tax liability
- Federal tax debt from Married Filing Separate Returns
- Federal tax debt from Civil Penalty assessments
  - Example: Trust Fund Recovery Penalty
- State income tax or unemployment compensation debts
- Delinquent child support
- Delinquent student loans
- Community property laws create an offset situation



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## Refunds in Non-Liable Spouse Scenarios

Refunds will be offset against the tax debt

- Joint refunds will be offset against the debt regardless of who's withholdings, estimated payments or credits are generating the refund



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## Relief From Offset: Injured Spouse Claims

- Non-Liable spouse can include Form 8379 Injured Spouse Allocation in the Married Filing Joint Return
  - Allows the couple to qualify for credits and benefits of MFJ status
  - IRS will split the refund offsetting liable taxpayer's portion to old debt
  - IRS will refund non-liable spouse portion of refund to them
- IRS will process the return with the injured Spouse claim
  - Will analyze the return based upon who's items belonged to who
  - Split the refund appropriately based upon each person's items

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## Form 8379: Injured Spouse Allocation

- Return must be filed MFJ to qualify
- Only one party owes debt to the IRS, state, unemployment, child support or student loans which will cause an offset
- The person requesting is not legally obligated to pay the debt
- Items allocated by each person's
  - Withholding & estimated payments
  - Earned income
  - Other income
  - Portion of standard or itemized deductions
  - Portion of credits
  - Portion of refundable credits



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## Community Property Issues

- Revenue Rulings depending upon what states have similar rules
  - Rev. Rul. 2004-71 – Arizona & Wisconsin
  - Rev. Rul. 2004-72 – California, Idaho & Louisiana
  - Rev. Rul. 2004-73 – Nevada, New Mexico & Washington
  - Rev. Rul. 2004-74 – Texas
- State Law dictates what is separate & joint debts
  - Certain items which would be non-liable debt in other states are deemed to be joint debt in community property states
  - Different rules apply in some states to pre & post marriage debts
  - Allows attachment of non-liable payments against liable spouse debt

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## *Understanding Innocent Spouse Concepts*

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Polling Question

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## Joint and Several Liability

Tax obligations when the return is filed

- Not split 50/50
- IRS can collect from either party
- IRS will collect from whoever can pay
- Both responsible to pay until tax paid in full
- Additional assessments under same rules
- IRS does not take divorce decrees into consideration

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# The Three Types of Relief

Innocent Spouse IRC 6015(b)

Separation of Liability IRC 6015(c)

Equitable Relief IRC 6015(f)



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## Basic Differences in Innocent Spouse

### Innocent Spouse IRC 6015(b)

- Relief from additional tax from audit

### Separation of Liability IRC 6015(c)

- Taxpayers are divorced or legally separated
- Divides the debt between the couple

### Equitable Relief IRC 6015(f)

- Splits liability from the original filing
- Must be unfair to hold the spouse responsible for the debt

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## *Innocent Spouse IRC 6015(b)*



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## Innocent Spouse IRC 6015(b)

“Traditional” innocent spouse relief These type of cases always include an audit where one party has no idea of the other’s indiscretions that cause an additional tax assessment. In addition, there were not any queues where the unknowing party should have realized the financial scenario which prompted the additional assessment.



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## Criteria for 6015(b) Innocent Spouse

1. Couple filed jointly
2. Return was audited
3. The audit resulted in an understatement due to erroneous item of one of the taxpayers
4. Other “innocent” party had no knowledge of item



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## Criteria for 6015(b) Innocent Spouse

5. Inequitable to hold innocent party responsible for tax based upon facts and circumstances, and
6. Request of for Innocent Spouse Relief is filed within 2 years of the start of collection activities.
  - May be allowed refunds



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## Disputes Over Joint Returns

Establish if the requesting spouse intended to file jointly

- Can impact the IRS determination
- A long history of MFJ it is harder to prove intent of filing separate

How much engagement the requesting party have in the return's preparation?



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## Signature on the Filing

- Did the requesting spouse sign the return
- Did the non-requesting spouse sign in their stead?
  - Was there Tacit Consent?



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## Understatement & Knowledge

- Understatement only affiliated with item(s) of the other spouse
- Requesting spouse seeks relief from additional audit assessment
  - Did not know of items
  - Had no reason to know
- Review of knowledge facts & circumstance based
  - No knowledge of the item creating the underpayment & overall household finances
- No constructive knowledge



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## Inequity & Significant Benefit

Requesting spouse must establish that it is inequitable for them to be responsible for the other taxpayer's additional assessment.

Evaluated upon:

- Facts and circumstances
- Requester's marital status & living situation, and
- Requester's benefit from the erroneous item was not beyond a regular support situation



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## *Separation of Liability IRC 6015(c)*

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## Separation of Liability IRC 6015(c)



- If a joint return was filed where the liabilities could be attributed solely to erroneous item(s) of one of the taxpayers, and the couple is now separated or divorced, the other taxpayer may be eligible for relief through separation of liability.
- In these cases, IRS splits the liability based upon what each of the taxpayers individually owe by creating two assessments. By doing so, the IRS removes joint and several liability.

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## Criteria for 6015(c) Separation of Liability



1. The requesting and non-requesting spouses filed a joint return
2. The return created a liability which can be contributed to erroneous items of the non-requesting spouse
3. When the requesting spouse files for relief, they must be
  - No longer married,
  - Legally separated, or
  - Living apart for more than 12 months from the non-requesting spouse
4. The claim for relief must be made within two years of the first IRS collection activity
  - No refunds allowed

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## Allocating the Tax Understatement



Allocations if approved:

- IRS reviews joint account and allocates income/deductions based on Married Filing Separate (MFS) returns
  - Community property allocations or limitations on deductions and credits not taken into account
- Tax liabilities allocated based upon the MFS criteria

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30

## Rules Limiting the Election



- Request cannot be part of fraudulent scheme
- Knowledge of item causing the deficiency
  - Both parties subject to joint & several liability
- Cannot be a strategy for tax avoidance
  - Ex: Transfer of property

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*Equitable Relief  
IRC 6015(f)*



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## Equitable Relief IRC 6015(f)



For scenarios that do not qualify for relief through the provisions under 6015(b) and 6015(c), but a mitigating factor arises which would make it unreasonable to hold the spouse responsible, that person may be eligible for Equitable Relief.

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## Equitable Relief Scenarios - IRC 6015(f)



- Community Property laws,
- The liability was prompted by items which the requester was not aware,
- When the return properly reported the income, and the requester gave funds to the non-requesting spouse to pay the tax and they failed to make payment,
- The non requesting spouse did something illegal that requesting spouse was unaware of, or
- Domestic Abuse situations where the return was not signed under duress

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## Criteria for Equitable Relief

1. A joint tax return must have been filed,
2. The requester must not qualify for relief under IRC 6015(b) or 6015(c),
3. There must be a liability owed where the statute of limitations on collections has not expired,



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## Criteria for Equitable Relief

4. There was no fraudulent schemes to transfer assets or asset transfers between the couple for purposes of tax avoidance,
5. The return filing was not fraudulent, and
6. The liability which the taxpayer is seeking relief was at least partially generated by the non-requesting spouse.
  - Refunds may be allowed based upon payment of the tax & who submitted payments



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36

## Facts & Circumstances

- Marital Status,
- Economic Hardship,
- Knowledge,
- Domestic Abuse,
- Legal Obligation to pay the tax,
- Significant benefit,
- Compliance with other taxes, and
- Mental or physical health



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*IRS Notification of  
Non-Requesting  
Spouse*



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## Notification

When any claim under 6015 is made, regardless if it is for innocent spouse, separation of liability or equitable relief the non-requesting spouse is notified. During this process the non-requesting spouse can refute the matter.

If there is a domestic violence situation, the IRS will not release any new addresses or contact information for the requesting spouse.



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*I Cannot Pay the  
IRS:  
From the eyes of an  
Innocent Spouse*

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On a sunny gleeful day,  
a stormy cloud it came my way.  
I went outside to grab the mail,  
it caused me to begin to wail.  
I glance upon the mail's address,  
it has come from IRS.  
Oh no Oh no! aloud I plea,  
this is what I don't want to see.  
Into my house I then did trudge,  
my husband's in trouble I said with  
a grudge.



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Later that day in the afternoon,  
watching the clock, he'd be home  
soon.  
As he walked inside the door,  
I gave him an earful, maybe more.  
Look here look here! We got a letter,  
I thought the IRS stuff was better.  
He looked at me and then he cried,  
Sorry babe I may have lied.



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Oh, wait I cried, I did not know,  
the IRS says that we owe?  
Why are we in such disgrace,  
you took your records to their place.  
You said the business was not mine,  
and everything would be just fine.  
What have you done, what will we do?  
I placed all of my trust in you!  
And now they say that we have debt?  
Did you lie to them like me? I bet!



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He looked at me, dropped his head,  
His face was stricken with some dread.  
In the IRS audit they did deny,  
lots of expenses he let out a cry.  
I made them up on our return,  
I don't want to pay on what I earn.  
And then he cried why should I pay,  
That money's from my holiday!  
Then he started to ramble  
I won it in Vegas because I gamble!  
I'd rather not pay the IRS,  
I'm off to Vegas to ease my stress.



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44

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Later on, awake in bed,  
The IRS letter in my head.  
I cannot turn out the light,  
The tax debt keeps me up at night  
On the TV came an ad,  
Owing IRS is bad!  
Maybe it is not your debt!  
Did your spouse secretly bet?  
Don't worry you can keep your house!  
You may just be an innocent spouse!



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As I watched I thought oh Damn!  
I hope this isn't just a scam!  
I grabbed my phone and googled  
fast,  
if this works my debt is past!  
He said he had a trip for work,  
He lied to gamble like a jerk!  
I hurried then to make a call,  
this can probably fix it all!



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Ring! Ring! Buzzed the phone,  
Why won't people leave me alone!  
"Fix'in IRS Problems this is Doris",  
rang her voice just like a chorus.  
"Why, yes we can I do declare,  
this is a firm where we sure care!"



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47

She listened and she clicked her nails,  
thinking why'd I take up sales?  
Doris' hand covering her headset,  
She yelled out loud, is it lunch yet?  
After the caller took a break,  
Doris popped in with a "Goodness sake"  
Why yes, these things can get real hard,  
that'll be 7 grand and we take card.  
Doris hung up the phone,  
done with her mission,  
knowing she would get good commission.



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After the call I filled out forms,  
They came in piles looking like swarms.  
Well now I feel that I can rest,  
I think that I've hired the best!  
I'm leaving him with his IRS trouble,  
and I hope they make him pay double!



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Slowly and slowly I felt less sublime,  
"man these people are taking their time!"  
I sit by my phone and I haven't heard,  
a call, text, email or even a word.  
It's been a few months since I hired those  
folks,  
maybe it's just IRS being slowpokes?



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About a year down the road,  
off to the grocery store I strode  
I was at the store to grab some food,  
but ran into a cashier who was rude  
I'm sorry but, your card was denied,  
you will have to leave that food all  
inside!  
I said "Get someone of higher rank,  
there is no problem with my bank!"  
She looked at me my head in a whirl,  
"The bank says you have no money,  
girl!"  
Then she stared with distasteful glee,  
"Do I have to call store security?"  
What's your problem I said with a start,  
"People have to eat, have a heart."



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When I got back home all in a huff,  
Time to call them, this is enough!  
I grabbed my phone and made the call,  
but nobody would pick up at all  
I googled the business, "Son of a pup!  
That company has gone bankrupt!"  
I cannot pay the IRS,  
I cannot handle all this stress.



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After searching tax issues for the best,  
I discovered a company through ASTPS.  
I had an interview, and they knew,  
the IRS rules through and through.  
I knew these people were being true,  
An innocent spouse they could do.  
They asked lots of questions taking the  
care,  
to make sure that the facts were there.  
I signed a form and they sent it in quick,  
gosh these people were really slick.



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Within a few weeks I got a reply,  
I thought man these people do fly.  
It said they fixed things with an RO,  
My innocence IRS did not know.  
The IRS they gave back my cash,  
It was back in my bank account in a flash.  
It will take some time to finish the rest,  
innocent spouse is much like a test.  
IRS is slow to make these decisions,  
Contacting your husband to check for  
revisions.  
But if you get approved you will see,  
from all that debt you can be free.  
A letter came after a while,  
The debts is all his I said with a smile.



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## *Collection Issues with Filing Jointly*

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## How Joint Debt Impacts Collections

- Remembering concepts: **Joint & Several Liability**
  - IRS collects from whomever they can
- Collection Information Statements (financials) include assets and income streams of both taxpayer and spouse
  - 100% of jointly owned assets listed
  - 100% of all income shown
  - 100% of all expenses taken



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## How Marriage & Separate Debt Impacts Collections

- Taxpayer who owes responsible to pay
  - Unless community property state
- Non-Community Property State:
  - Collection Information Statements (financials) include assets of liable party only
  - 50% of jointly owned assets listed
  - Separate assets of non-liable not listed
  - 100% of liable income shown
  - Joint expenses split by income percentage of the liable and non-liable parties



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## Asset Example: Joint vs Separate Debts

Asset	Ownership	Total Value	Joint Debt Scenario	Taxpayer Separate Debt Scenario
Checking Account	Joint	\$5,000	\$5,000	\$2,500
Savings Account	Taxpayer	\$2,000	\$2,000	\$2,000
IRA	Spouse	\$50,000	\$50,000	\$0
401(k)	Taxpayer	\$10,000	\$10,000	\$10,000
Car	Taxpayer	\$3,000	\$3,000	\$3,000
SUV	Spouse	\$6,000	\$6,000	\$0
Home	Joint	\$100,000	\$100,000	\$50,000
<b>Totals</b>		<b>\$176,000</b>	<b>\$176,000</b>	<b>\$67,500</b>

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## Before Your Taxpayers File Joint with a Large Balance

- Discuss ability for the couple to pay the debt
- If they cannot full pay, explain joint & several liability concept with both parties
- Review assets to determine if there is exposure to collection of joint assets that could be protected filing separately
- Evaluate and determine if the savings of filing joint outweigh the exposure of asset and income streams



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*Collection Programs  
for Tax Debts*

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## There are options to resolve any IRS debt



- For taxpayers who owe, there are options available if they can't afford to full pay the IRS. Available remedies include:
  - Installment Agreements
  - Partial Pay Installment Agreements
  - Currently Non-Collectible Status
  - Offer In Compromise
  - Penalty Abatements
  - Bankruptcy
- If you are a licensed practitioner (CPA, EA, or attorney) you can prepare and request these resolutions on behalf of your taxpayers.

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## Full Payment



- Some taxpayers do not qualify for other relief
  - Do not meet the financial requirements
  - Have liquid assets to pay
  - No hardship scenarios
- Positive - Saves future penalty and interest vs. other full pay options

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## Installment Agreements (I/A)

- Taxpayer can full pay but needs time
  - Generally, up to 72 months or Collection Statute Expiration Date (CSED), whichever is first
  - May need to provide collection information statements
  - Different IAs based on balances, tax type and IRS staff

63



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## Partial Pay Installment Agreement (PPIA)

Taxpayer can pay something but cannot full pay the liability by the CSEDs

- Pays what they can
- IRS may remove taxpayer from PPIA if financial situation improves
- If unpaid by CSEDs, debt goes away

64





## Currently Non Collectible (CNC)

For taxpayers that cannot pay anything

- Used in financial or other hardship situations
- IRS can put taxpayers in CNC for other reasons

Will remain in CNC so long as financial situation does not change

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## Doubt as to Collectibility Offer in Compromise (OIC)

Settlement plan for taxpayers who cannot afford to pay the IRS in the foreseeable future

- Based upon the current value of assets and a future income component of 12 or 24 months
- If accepted, IRS will write the debts off

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## Bankruptcy (B/R)

- Debts may be written off through discharge or paid through long term plans
- Some tax debts may be dischargeable if:
  - Not from the most recent 3 tax years
  - Must be assessed more than 240 days ago
  - Rules depend upon where taxpayer lives

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## Penalty Abatement

- First Time Abatement
  - Reversal of failure to file, failure to pay or failure to deposit
  - 3 years prior compliance with no penalties (besides failure to make estimates)
- Reasonable Cause
  - Unfair for IRS to charge penalties
  - Reason taxpayer could not file/pay was outside of their control

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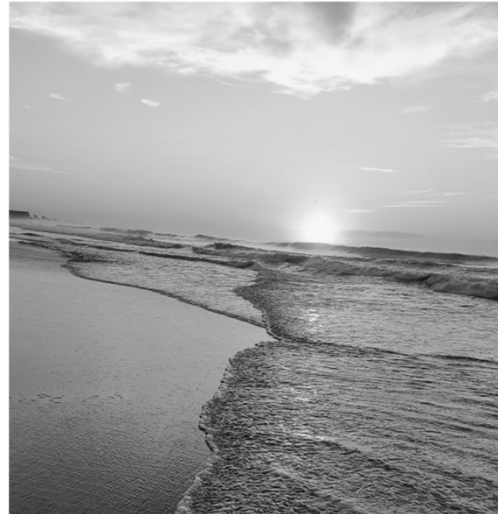
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## Key Take Aways

- Filing Jointly can expose a non-liable spouse refund to IRS offset. Protect these taxpayers with an Injured Spouse claim
- Filing jointly creates Joint & Several Liability
- Both parties will be subject to collections and future audit adjustments
- Innocent Spouse can remove that joint & several liability and give relief
- Collection issues can also be resolved with OICs, IAs, PPIAs, Penalty abatements or full payment.



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