



Publication 125

April 2010

Injured and Innocent Spouse Relief

The information in this publication is current as of the date of the publication. Please visit our website at tax.illinois.gov to verify you have the most current revision.

This publication is written in the plain English style so the tax information is easier to understand. As a result, we do not directly quote Illinois statutes or the Illinois Administrative Code. The contents of this publication are informational only and do not take the place of statutes, rules, and court decisions. For many topics covered in this publication, we have provided a reference to the applicable section or part of the Illinois Administrative Code for further clarification or more detail. All of the sections and parts referenced can be found in Title 86 of the Code.

About this publication

Publication 125, Injured and Innocent Spouse Relief, provides information and guidance about injured and innocent spouse relief. The objectives of Publication 125 are to

- define “injured spouse.”
- instruct eligible taxpayers how to obtain injured spouse relief by filing their Form IL-1040, Individual Income Tax Return, separately from their spouse for 2009 and later tax years.
- instruct eligible taxpayers how to obtain injured spouse relief for 2008 and earlier tax years.
- instruct eligible taxpayers how to obtain an individual income tax refund due them as an injured spouse.
- define “innocent spouse relief.”
- instruct eligible taxpayers how to apply for innocent spouse relief.

Taxpayer Bill of Rights

You have the right to call the Department of Revenue for help in resolving tax problems.

You have the right to privacy and confidentiality under most tax laws.

You have the right to respond, within specified time periods, to department notices by asking questions, paying the amount due, or providing proof to refute the department's findings.

You have the right to appeal department decisions, in many instances, within specified time periods, by asking for department review or by taking the issue to court.

If you have overpaid your taxes, you have the right, within specified time periods, to a credit (or, in some cases, a refund) of that overpayment.

For more information about these rights and other department procedures, you may write us at the following address:

Problems Resolution Office
Illinois Department of Revenue
PO Box 19014
Springfield, IL 62794-9014

Get forms and other information faster and easier at tax.illinois.gov

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General Information

Who is an injured spouse?

An injured spouse is someone who is not liable for the past-due federal or state tax, child support, spousal support, or other outstanding debt of their spouse, but whose joint income tax refund may be taken or was taken to pay the debt.

What has changed with injured spouse relief?

Beginning with the 2009 tax year, any joint refund may be used to pay the debts of either spouse. A person who does not want their Illinois income tax refund to be used to pay their spouse's liabilities, **must** file a separate return.

Prior to the 2009 tax year, an injured spouse was entitled to a refund of his or her separate share of an Illinois joint refund that was taken to pay the other spouse's liability.

How do I apply for injured spouse relief?

Illinois does not provide a specific form to request injured spouse relief.

For tax year

- 2009 and after, if you are married and you filed a joint federal return with your spouse and you are an injured spouse, you may elect to file separate IL-1040 returns using the "married

filing separately" filing status. You may make this election up until the extended due date of your return, and once the election is made, it is **irrevocable**.

Note If you file a joint Illinois return, we may take the entire refund to pay your spouse's liability.

For tax year

- 2008 and earlier, if you are an injured spouse filing your original Form IL-1040 using the "married filing jointly" filing status, you should write "Injured Spouse" in red ink across the top of the front page of your Form IL-1040.

If you filed your federal income tax return using the "married filing separately" filing status, you must also file "married filing separately" with Illinois. In this case, you do not need to apply for injured spouse relief.

If you applied for injured spouse relief with the Internal Revenue Service (IRS) using U.S. Form 8379, Injured Spouse Allocation, you must attach this form to your Form IL-1040.

How do I get a refund if I am an injured spouse?

For tax year

- 2009, if you file Form IL-1040 using the "married filing separately" filing status, we will refund any overpayment due if you do not have any other outstanding liabilities.

- 2008 and earlier, if you have already filed a joint Illinois return, and you receive
 - a notice telling you that all or a portion of your refund is being offset to satisfy an Illinois Department of Revenue tax liability, you may request a refund of your portion of the overpayment by filing form IL-1040-X, Amended Individual Income Tax Return, showing your separate tax liability. When you file Form IL-1040-X, write "Injured Spouse" in red ink across the top of the front page and attach a copy of your
 - joint federal tax return,
 - W-2 and 1099 Forms, and
 - U.S. Form 8379, if filed.
 - a notice telling you that all or a portion of your refund is being offset to another agency, you must contact that agency for information on obtaining your portion of the refund. The notice you receive will tell you how to contact the other agency.
- any final determination of your federal or Illinois tax liability that you received from the IRS, Illinois Department of Revenue, or a court of law, including any grant or denial of innocent spouse relief, and
- any other supporting documentation you believe would assist us in determining your eligibility.

Send your completed Form IL-8857, along with supporting documentation to

ILLINOIS DEPARTMENT OF REVENUE
PROBLEMS RESOLUTION DIVISION
P.O. BOX 19014
SPRINGFIELD, ILLINOIS 62794-9014.

How do I get a refund if I am granted innocent spouse relief?

If you are due a refund, Form IL-8857 serves as your claim for refund of any overpayment due you as a result of innocent spouse relief. You do not have to file any other forms to request a refund.

We will only issue a refund for a tax year if we receive your Form IL-8857 within three years after the extended due date of your original Form IL-1040, three years after the date you filed your original Form IL-1040, or one year after you paid the Illinois tax, whichever is latest.

What is innocent spouse relief?

Generally, spouses who file a joint return for a tax year are each responsible for paying the entire joint tax liability regardless of which spouse earned the income. Innocent spouse relief is an exception to the general rule, and may allow one spouse to avoid paying the joint liability when the other spouse is responsible for failing to pay the tax shown due on a joint Illinois income tax return or for failing to report all of the tax due. You may be entitled to innocent spouse relief when

- you filed a joint return with your spouse for a tax year,
- some liability shown on the return was not paid or some liability was not reported, and
- your separate payments (e.g., withholding from your wages) plus your share of any joint payments equal or exceed the liability you would owe if you had filed a separate income tax return.

Note If we grant your request for innocent spouse relief, you may not be relieved of the entire liability. You may be held responsible for any tax, penalty, and interest on your separate portion of the tax liability.

How do I apply for innocent spouse relief?

You must complete a separate Form IL-8857, Request for Innocent Spouse Relief, for each year you are requesting relief. For each request, you must attach the following items, as applicable

- a copy of your original U.S. and Illinois income tax returns,
- a copy of any amended U.S. and Illinois income tax returns,
- a copy of U.S. Form 8857, Request for Innocent Spouse Relief, if you requested relief from the IRS,

Office locations

Maine North Regional Building
9511 Harrison Street FA 203
Des Plaines, Illinois 60016-1563
847 294-4200

200 South Wyman Street
Rockford, Illinois 61101-1237
815 987-5210

James R. Thompson Center
Concourse Level
100 West Randolph Street
Chicago, Illinois 60601-3274
800 732-8866
217 782-3336

Willard Ice Building
101 West Jefferson
Springfield, Illinois 62702
800 732-8866
217 782-3336

15 Executive Drive
Business Center One, Suite 2
Fairview Heights, Illinois 62208-1331
618 624-6773

2309 W. Main
Suite 114
Marion, Illinois 62959-1196
618 993-7650

For information or forms

Visit our website at tax.illinois.gov

Call us at **1 800 732-8866** or **217 782-3336**.

Call our TDD (telecommunications device for the deaf) at **1 800 544-5304**.

Write us at Illinois Department of Revenue, P.O. Box 19044, Springfield, IL 62794-9044.

Call our 24-hour Forms Order Line at **1 800 356-6302**.

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