

THE INNOCENT SPOUSE RULE AND THE IRC RELIEF ACT OF 1998
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Section 6013 of the Internal Revenue Code provided for joint and several liability should a husband and wife file a joint Federal Tax Return. The balance of the Rule provision contained exceptionally harsh provisions, rendering the filing of a joint return one of the most dangerous and complex decisions in any marital dissolution matter. Additionally, hold harmless agreements and Property Settlement Agreements could only provide for reimbursement between spouses and naturally could not effect the rights of the Internal Revenue Department as a third party to the Agreement.

The IRC Relief Act of 1998 effectively abolished Section 613(e). The understanding thresholds and grossly erroneous tests have been repealed. New Section 6015 provides for much broader and liberal relief for innocent spouses. The relief available varies according to a number of factors, including whether parties remain married to pursue a divorce action.

Whether an innocent spouse is a victim within a viable marriage or in a divorce situation, some form of election is required, not later than two (2) years after the date upon which collection activities commence. Some authorities suggest that an election should automatically be made the moment a divorce case commences. Others caution against such an approach, as the election attracts to the return.

In a marital dissolution matter, the best advise is arguably referring your client to a CPA immediately upon conducting your initial intake and certainly before any joint tax returns are filed. If the parties do intend to file separate returns, you should very carefully consider the sequestration of tax benefits incidental to the marital estate, including head of household status, dependency claims and exemptions and various itemized deductions related to the marital estate. You should also remain cognizant of any withholdings or advanced payments attributable to or made by either party as well as carry forward deductions.