



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

## General instructions

Section 654 of the New York State Tax Law makes it easier to be relieved from an income tax liability related to your spouse (or former spouse). You can now request innocent spouse relief for an understatement of tax, no matter how small the amount. If you are divorced, separated, or no longer living with your spouse, you may now request separation of liability between you and your spouse (or former spouse) for an understatement of tax on a joint return. Also, the Tax Department will consider your request for equitable relief in situations where it would be unfair to hold you liable for tax that should be paid only by your spouse (or former spouse).

Section 654 applies to any income tax liability for a taxable year **beginning on or after January 1, 1999**. Innocent spouse relief is available for taxable 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 taxable year **beginning prior to January 1, 1999**, do not use Form IT-285; see Publication 89, *Innocent Spouse Relief*.

## Purpose of form

Use Form IT-285 to request relief from liability of tax, plus related penalties and interest, for which you believe only your spouse (or former spouse) should be held liable. You must have filed a joint return for the year(s) for which you are requesting relief. **The Tax Department will evaluate your request and notify you of the results.**

You may be allowed one or more of these three types of relief:

- Innocent spouse relief,
- Separation of liability, or
- Equitable relief.

If you are not eligible for the types of relief available by filing Form IT-285, you may contact the Tax Department to discuss resolution of your liability. Please call 1 800 835-3554. From areas outside the United States and outside Canada please call (518) 485-6800.

## Attaching a statement

**You must attach a statement and supporting documentation** to Form IT-285 explaining why you qualify for relief. Complete the statement using the best information you have available. Include your name and social security number (SSN) on the statement.

If you are requesting relief for more than one tax year, you only need to file one complete Form IT-285. However, you must include a separate statement and complete a separate allocation schedule (IT-285, Part V) for each year. Clearly indicate in the statement(s) the type(s) of relief you are requesting for each year.

See the specific instructions for each part for details on the information to be included with the statement(s). The Tax Department may ask you for additional information, or you may provide additional information at any time.

## Additional information

See Publication 89, *Innocent Spouse Relief*, for more details. For information on how to get publications or additional help, see *Need help?* on the back of Form IT-285.

## 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 become aware of an income tax liability for a tax year for which you believe only your spouse (or former spouse) should be liable. The following are some of the ways you may become aware of such a liability.

- The Tax Department has or is examining your tax return.
- The Tax Department sends you a notice that you owe additional tax.

You generally must file Form IT-285 no later than two years after the first Tax Department attempt to collect the tax from you. Examples of attempts to collect the tax from you are the issuance of a levy or an income execution, or applying your income tax refund to the tax due.

**Note:** *The time that the Tax Department will be allowed to collect taxes, interest, and penalties will be extended while your request for relief is being 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.
You use a private delivery service,	RADS - COPS Unit NYS Tax Department Bldg 8 W A Harriman Campus Albany NY 12227
None of the situations above apply to you,	NYS Department of Taxation and Finance PO Box 5120 Albany NY 12205-0120

\* Before the end of the time limit to appeal, you should file a *Request for Conciliation Conference* or a petition, as explained in the notice. By doing so, you preserve your rights if the Tax Department is unable to properly consider your request before the end of the period. Include the information that supports your position, including when and why you filed Form IT-285, in your *Request for Conciliation Conference* or a petition. The time for filing a *Request for Conciliation Conference* or a petition is **not** extended while the Tax Department is considering your request.

## Definitions

### Joint and several liability

Generally, *joint and several liability* applies to all joint returns. This means that both you and your

spouse (or former spouse) are liable for any **underpayment of tax** plus any **understatement of tax** that may become due later. This is true even if a divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns. However, this does not affect any rights you may have under the decree against your former spouse.

## 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 is 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.*

**Note:** If you have both an underpayment and understatement of tax, you may have to request different types of relief. **You may only request equitable relief for the underpayment of tax.**

## 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).

## Review of request for relief

- If you disagree, in whole or in part, with the Tax Department's determination concerning your request for relief, or
- If you have not received a determination notice from the Tax Department within 6 months from the date you filed Form IT-285,

## IT-285-I (6/02) (back)

you may protest by requesting a conciliation conference in the Department's Bureau of Conciliation and Mediation Services or petitioning for a hearing in the Division of Tax Appeals. You must file your request or petition no later than 90 days from the date the Tax Department mails its determination notice to you. See Publication 131, *Your Rights and Obligations Under the Tax Law*, for additional information concerning filing a request for conciliation conference or a petition. For information on how to get publications, see *Need help?* on the back of Form IT-285.

## Line instructions

Please answer all the questions on Form IT-285. The Tax Department will consider whether you qualify for relief under innocent spouse relief, separation of liability, or equitable relief. Information on Form IT-285, including phone numbers, will only be used in the administration of the Tax Law.

**Foreign address** — Enter the information in the following order: city, province, or state, and country. Follow the country's practice for entering the postal code. Please do not abbreviate the country name.

## Part I

### Victim of domestic abuse

If you have been a victim of domestic abuse and fear that filing a request for relief of liability will result in retaliation, check the box in Part I. Checking this box will alert the Tax Department to the sensitivity of your situation. It does not grant special consideration. However, evidence of abuse is one factor that may be considered for certain types of relief. Explain your concerns in the statement you attach to your request.

### Line 2

If you want to request relief for more than one tax year, you only need to file one complete Form IT-285. However, you must include a separate statement and separate allocation schedule (IT-285, Part V) for each year. If you are filing Form IT-285 for multiple years, indicate in your attached statement(s) the type(s) of relief you are requesting for each year.

### Line 3

Enter the assessment number(s) for which you are requesting relief from liability of tax. This only applies if you received a notice that you owe additional tax from the Tax Department.

### Line 4

Enter the current name and SSN of the person to whom you were married at the end of the year(s) listed on line 2. 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 Maple (formerly Jane 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 4 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 4 of any personal identifying information including name changes, address, and phone numbers.

## Line 5

**Federal relief of a joint liability** — If you received relief of a joint liability from the Internal Revenue Service (IRS), please attach to Form IT-285 federal documentation showing that relief was granted.

## Part II Innocent spouse relief

You may be allowed innocent spouse relief, for a taxable 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 2.
- There is an understatement of tax on the return(s) that is due to erroneous items (defined below) of the person listed on line 4.
- 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.

## Erroneous items

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

## 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 attach to Form IT-285 how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

## Requesting innocent spouse relief

**You must attach a statement** to Form IT-285 explaining why you believe you qualify. The statement will vary depending on your circumstances, but should include **all** of the following:

- The amount of the understatement of tax for which you are liable and are seeking relief.
- 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 of tax.
- Appropriate supporting documentation.

## Part III Separation of liability

You may request separation of liability for a taxable 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 4 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.

Please attach documentation showing why you feel you qualify for separation of liability.

## Part IV Equitable relief

You may be allowed equitable relief for a taxable 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.

You should request innocent spouse relief or separation of liability for any understatement of tax if you are eligible. The Tax Department will consider equitable relief for any understatement of tax if it determines that innocent spouse relief or 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 made after you filed Form IT-285.

For additional information, see Publication 89.

## Requesting equitable relief

You must attach an explanation of why you believe it would be unfair to hold you liable for the tax instead of the person listed on line 4. For example, you may provide documentation that shows that holding you liable for the tax would cause you economic hardship.

## Part V Allocation of items between spouses

You must complete an allocation schedule for each year for which you are requesting relief, no matter which type of relief you are requesting. Attach copies of all federal W-2 forms, all federal schedules and copies of any notices stating that you owe additional tax from the Tax Department. Allocate income and adjustments in the same manner you would have allocated them if you and your spouse had filed separate returns.

Allocate all items claimed on your joint return. In addition, allocate those items not reported on your return and items that were not reported correctly that resulted in a deficiency.

Allocate wages and salaries to the spouse who earned them and received Form W-2. You generally allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Income from a jointly owned business or investment should be allocated equally between you and your spouse unless there is clear and convincing evidence that supports a different allocation.