



## General Information

### What is innocent spouse relief?

Innocent spouse relief is a means of reducing an innocent spouse's income tax liability resulting from a joint return. Generally, when you file a joint return, both you and your spouse are responsible for any tax liability, penalties, and interest that may be due or become due for that tax year. Therefore, you may be held responsible for the tax due on your spouse's income or for taxes, penalties, and interest due as the result of your spouse's error.

However, if you are granted innocent spouse relief, you are not liable for the tax on your spouse's income reported on your joint return. Also, you are not liable for the tax, penalties, and interest due on income your spouse did not report or that results from deductions or credits that were overstated by your spouse, unless you knew of the erroneous reporting of those items.

### What is the purpose of this form?

The purpose of this form is to request a release from a joint tax liability that you believe is the sole responsibility of the person with whom you filed the return. The Allocation of Liability Worksheet will help you determine your separate liability and your share of any payments that have already been made.

You must complete a separate Form IL-8857 and an Allocation of Liability Worksheet for each year you are seeking innocent spouse relief. If you are granted innocent spouse relief, the worksheet will determine the amount of refund that you may be entitled to or the amount of your remaining liability.

**Note** You must have filed a joint return for the year that you are requesting a release from tax liability in order to receive innocent spouse relief.

### What part of the tax liability am I responsible for as an innocent spouse?

Effective August 13, 1999, an innocent spouse is responsible only for the amount of Illinois Income Tax liability that would have been shown on that spouse's separate return for the same tax year. Therefore, if you filed your return or were assessed

- on or after August 13, 1999, or
- before August 13, 1999, and your tax liability was not paid by that date

you will be responsible for the amount of tax liability claimed on a separate return for the same tax year that shows only your income and deductions. The Allocation of Liability Worksheet will help you determine this amount.

If you filed and paid before August 13, 1999, your innocent spouse relief will be reviewed according to the federal guidelines that were in effect in years prior to 1998. You will be released from any Illinois tax, penalties, interest, or other amounts in the same manner that you received a release from the federal government.

Under the old guidelines, if you did not have an innocent spouse issue for federal income tax purposes, you will be released of any Illinois tax, penalties, interest, or other amounts if

- you filed a joint return, and
- the difference between the total amount of tax that should have been shown and the amount of tax that was actually

shown was greater than \$500 and this difference resulted from an omission by the person you were married to at the time the return was filed, and

- you did not know of this difference at the time you signed this return.

### How long do I have to request a refund?

If your request for innocent spouse relief results in a refund, you must file your request within

- three years after the extended due date of the return,
- three years after the date your original return was filed (if it was filed late), or
- one year after the date your Illinois tax was paid,

whichever is latest.

**Note** If you file your request within three years of the extended due date, you may receive a refund of all taxes paid. If you file within three years after a late-filed return, your refund is limited to the total of payments you made with the return or after filing. Otherwise, your refund is limited to payments made on or after the date that is one year prior to your filing.

### Will collection activity stop?

Once we receive your Form IL-8857, collection activity against the person requesting innocent spouse relief will stop during our review for the tax year identified on this form. However, we may continue with investigation, adjustment, and collection of all joint tax liabilities for other tax years.

### What must I attach to Form IL-8857?

You must attach

- a copy of your Illinois and federal income tax returns, W-2s, and attachments for the year,
- any amended federal or Illinois Income Tax returns, and
- any final determinations of federal or Illinois Income Tax liability you received from the Internal Revenue Service (IRS), the Illinois Department of Revenue (IDOR), or the courts.

### Where do I mail this form?

Mail this form and any required attachments to:

ILLINOIS DEPARTMENT OF REVENUE  
PROBLEMS RESOLUTION DIVISION  
PO BOX 19014  
SPRINGFIELD IL 62794-9014

### What if I need assistance, forms, or schedules?

If you need assistance, visit our website at [tax.illinois.gov](http://tax.illinois.gov), or call our Taxpayer Assistance Division at 1 800 732-8866 or 217 782-3336. Our office hours are 8 a.m. to 5 p.m.

If you need forms or schedules, visit our website or call our 24-hour Forms Order Line at 1 800 356-6302.

Our TDD (telecommunications device for the deaf) number is 1 800 544-5304.

# Step-By-Step Instructions

## Step 1: Provide the following information

**Lines 1 through 5** — Write the information requested on the form.

**Line 6** — Write the tax year for which you are requesting innocent spouse relief.

## Step 2: Provide the following information about the person to whom you were married

**Lines 7 through 11** — Write the information requested on the form regarding the spouse with whom you filed the joint return.

## Step 3: Answer the following questions

**Line 12** — Check the appropriate box. If you filed a federal Form 8857, attach a copy of that form along with any documentation used in the review along with a copy of any determination you received from the IRS.

**Line 13** — Check the appropriate box. If “Yes,” attach an explanation of each transfer.

**Line 14** — Check the appropriate boxes. If your request is for a tax year ending

- on or after August 13, 1999, your innocent spouse tax relief will be reviewed according to Illinois guidelines.
- before August 13, 1999, and your tax liability was not paid by that date, your innocent spouse tax relief will be reviewed according to Illinois guidelines.
- before August 13, 1999, and your tax liability was paid by that date, your innocent spouse tax relief will be reviewed according to the federal guidelines that were in effect in years prior to 1998.

**Lines 15 and 16** — Check the appropriate boxes. If you answered “Yes” to either of these questions, you must complete the Erroneous Items Worksheet section of the Allocation of Liability Worksheet for Lines 57 and 61.

## Step 4: Explain your request

**Line 17** — Explain in detail why you believe you are not responsible for the tax liability for the tax year you identified on this form. If more room is needed, you may attach additional sheets. You may also attach any other information to help us make a determination.

## Step 5: Complete the Allocation of Liability Worksheet

**Line 18** — Complete the Allocation of Liability Worksheet for the tax year that you are requesting innocent spouse relief.

**Line 18a** — If “Yes,” write the amounts from your federal return on the appropriate lines. If “No,” write the amounts on Lines 1 through 32 as finally determined by the IRS or the courts.

**Line 18b** — If “Yes,” write the amounts from your Illinois return on the appropriate lines. If “No,” write the amounts on Lines 33 through 41 as finally determined by IDOR or the courts.

## How to allocate items of income, deductions, payments, and credits

In general, an item of income, deduction, payment, or credit is allocated to the spouse who earned the item or made the payments. However,

- If the IRS or a federal court has made a determination regarding the allocation of any item of income, expense, or exemption between you and your spouse in an innocent spouse proceeding, the amounts shown in Columns B and C must follow that allocation.
- If you cannot determine whether you or your spouse is entitled to an item of income, expense, or exemption, divide that item equally by claiming half in Column B and half in Column C.
- If you and your spouse did not file an income tax return before

the IRS assessed a federal income tax liability, the entire amount of any item of income in Column A is allocated to each spouse who had knowledge of that income.

**For example:** If the wife was filing for innocent spouse relief and the husband earned \$1,000 in business income, no return was filed before the IRS assessed the liability, and the wife knew of that income, the \$1,000 must be included in both Columns B and C of Line 6, even if the income would be attributed entirely to the husband under the normal rules. Any deduction associated with that income must also be included in both Columns B and C. If the wife did not know of the income, the income and associated deductions should be included in the husband’s column only.

- If you and your spouse did not file an income tax return before IDOR assessed an Illinois Income Tax liability, the entire amount of any item of income in Column A is allocated to each spouse who had knowledge of that income.

**For example:** If the husband earned \$1,000 in municipal bond interest exempt from federal income tax, no return was filed before IDOR assessed the liability, and the wife knew of the interest, that \$1,000 must be included in Line 33 of both Columns B and C. Any subtractions allowed for expenses, which could not be deducted in computing federal adjusted gross income, should also be included in both columns.

If the wife had no knowledge of the interest, the interest and related subtractions should be included in the husband’s column only.

## Allocate income items

### Lines 1 through 15

**Column A:** If you filed a federal return, complete this column by writing the income amounts you and your spouse actually used to file your federal return. If you did not file a federal return, write the amounts as determined by the IRS or the courts.

**Columns B and C:** Complete Column B using the amounts actually earned by the husband. Complete Column C using the amounts actually earned by the wife.

**Line 16** – Add Lines 1 through 15. Write the total of each column.

## Allocate deduction items

### Lines 17 through 30

**Column A:** Complete this column using the deduction amounts you and your spouse actually used to file your federal return. If you did not file a federal return, write the amounts as determined by the IRS or the courts.

**Columns B and C:** Complete Column B using the amounts actually incurred by the husband. Complete Column C using the amounts actually incurred by the wife.

**Line 31** – Add Lines 17 through 30. Write the total of each column.

**Line 32** – Subtract Line 31 from Line 16. Write the result in each column.

## Allocate Illinois additions, subtractions, and income

If a subtraction is allowed on an item of income that is subject to federal income tax but not Illinois income tax, that subtraction must be allocated in the same manner as the income is allocated.

### Lines 33 and 34

**Column A:** If you filed an Illinois return, complete these lines using the amounts you and your spouse actually used when filing a joint Form IL-1040, Illinois Individual Income Tax Return. If you did not file an Illinois return, write the amounts determined by IDOR or the courts.

**Columns B and C:** Complete Column B using the amounts allocated to the husband. Complete Column C using the amounts allocated to the wife.

**Line 35** – Add Lines 32, 33, and 34. Write the total of each column.

## Lines 36 through 38

**Column A:** If you filed an Illinois return, complete these lines using the amounts you and your spouse actually used when filing a joint Form IL-1040. If you did not file an Illinois return, write the amounts determined by IDOR or the courts.

**Columns B and C:** Complete Column B using the amounts allocated to the husband. Complete Column C using the amounts allocated to the wife.

**Line 39** – Add Lines 36 through 38. Write the total in each column.

**Line 40** – Subtract Line 39 from Line 35. This is your Illinois base income.

**Line 41** – Allocate your income to Illinois as follows:

**Column A: Residents** – Write the amount from Line 40.

**Nonresidents and part-year residents** – Write in Column A the amount of base income reported on Line 40 that you allocated or apportioned to Illinois on your original Schedule NR, Nonresident and Part-Year Resident Computation of Illinois Tax.

**Columns B and C: Residents** – Write the amount from Line 40, Columns B and C on Line 41, Columns B and C.

**Nonresidents and part-year residents** – Complete Column B using the amount of base income that is allocated to the husband. Complete Column C using the amount of base income that is allocated to the wife.

**Note** Use a separate Schedule NR as a worksheet for making this allocation for each spouse, and attach a copy of each Schedule NR.

**Line 42** – Write the amounts from Line 41 for all columns here.

### Allocate Illinois exemptions and tax

**Line 43** – Allocate your Illinois exemption allowance as follows:

**Column A: Residents** – Complete Column A using the exemption allowance you and your spouse were allowed when filing a joint Form IL-1040.

**Nonresidents and part-year residents** – Complete Column A using the exemption allowance you and your spouse were allowed on your original Schedule NR.

**Columns B and C: Residents** – Complete Column B using the exemption allowance allowed to the husband. Complete Column C using the exemption allowance allowed to the wife.

**Nonresidents and part-year residents** – Complete Columns B and C by determining the amount of exemption allowance for each spouse by referring to the Schedule NR worksheets you completed to use for Line 41.

**Line 44** – Subtract Line 43 from Line 42 in all columns. This is your Illinois net income. This amount cannot be less than zero. If zero or negative, write zero.

**Line 45** – Multiply Line 44 in each column by

- 5 percent (.05) for tax years 2011 and after or
- 3 percent (.03) for tax years 2010 and prior.

**Line 46** –

**Column A:** Complete this line by writing the amount of recapture of investment tax credits from your joint IL-1040.

**Columns B and C:** Allocate the proper amounts in Columns B and C. If it is not clear which spouse owes the recapture of investment tax credits, divide the total equally between both spouses.

**Line 47** – Add Line 45 and Line 46. Write the total in each column. This is your total tax.

### Allocate Illinois nonrefundable credits and use tax Lines 48 through 50

**Column A:** If you filed an Illinois return, complete this column using the credit amounts you and your spouse actually used to file your

joint Form IL-1040. If you did not file an Illinois return, write the amounts determined by IDOR or the courts.

**Columns B and C:** Complete Column B using the amount of each credit item allocated to the husband. Complete Column C using the amount of each credit item allocated to the wife.

**Note** The credit items must be allocated in the same manner as the related item of income or expense is allocated in Lines 1 through 15 and Lines 17 through 30.

**For example:** If the income and deductions from a partnership are allocated to the wife, a credit earned by the partnership must also be allocated to the wife.

If it is not clear whether an item should be allocated to the husband or the wife, that item should be divided equally between both spouses.

**Line 51** – Add Lines 48 through 50. Write the total in each column.

**Line 52** – Subtract Line 51 from Line 47. Write the result in each column. This is your tax after nonrefundable credits. This amount cannot be less than zero. If zero or negative, write zero.

**Line 53** –

**Column A:** Complete this line by writing the amount of use tax on internet, mail order, or other out-of-state purchases from your joint IL-1040.

**Columns B and C:** Allocate the proper use tax amounts in Columns B and C. If it is not clear which spouse owes the use tax, divide the use tax equally between both spouses.

**Line 54** – Add Lines 52 and 53. Write the total in each column. This is your tax after nonrefundable credits and use tax.

**Line 55** –

**Column A:** Write the amount of voluntary contributions you designated on your joint IL-1040 Schedule G.

**Columns B and C:** Allocate the proper contributions to Columns B and C. If it is not clear which spouse made a contribution, divide the contribution equally between both spouses.

**Line 56** – Subtract Line 55 from Line 54. This is your total liability. Write the total in each column.

### Correction of erroneous items

Use this section to report and allocate any corrections to erroneous items on the federal or Illinois return you originally filed. This is for returns filed before any tax was assessed by the IRS or IDOR.

An erroneous item is an amount of income omitted from a return or an amount of deduction or credit claimed in error.

Do not include any items of income, deduction, or credit required to be shown on a federal income tax return if you did not file a federal income tax return before the IRS assessed your tax. You should report and allocate these items on Lines 1 through 32 because all items of income and deduction are considered erroneous items.

Do not include any Illinois subtractions or credits if you did not file an Illinois Income Tax return before IDOR assessed your tax. You should report and allocate these items on Lines 36 through 38, Lines 48 through 50, and Line 69 because all items of income and deduction are considered erroneous items.

**Note** In computing the separate tax liabilities of spouses when one has requested innocent spouse relief, an erroneous item is allocated to each spouse who had knowledge of that item.

**For example:** If a husband earned \$1,000 in municipal bond interest exempt from federal income tax, this amount was not reported as an addition on the Illinois return, and the wife knew of the interest, that \$1,000 must be included in both the husband and the wife's columns of Line 57.

Any subtraction allowed for expenses, which could not be deducted in figuring federal adjusted gross income because they were incurred

in connection with earning exempt interest income, should also be included in both Columns B and C. If the wife had no actual knowledge of the interest, the interest and related subtraction should be included in the husband's column only.

**Note** If you checked the "No" boxes in Step 5, Line 18 a and b, write zero in each column of Lines 57 through 62.

#### Line 57

Write the correction of each item of erroneous income or deduction on a separate line on Page 4 and identify each adjustment. Write corrections that decrease income as negative amounts. Attach additional sheets if necessary.

**Column A:** Complete this column correcting any erroneous amount of income or deduction you and your spouse omitted on your original joint federal or Illinois return.

**Columns B and C:** Complete Columns B and C correcting any erroneous amount of income or deduction that was omitted on your original joint federal or Illinois return that was allocable to a spouse or that the spouse was aware of at the time of reporting.

#### Line 58 –

**Column A:** Complete this column correcting any exemption allowance you and your spouse erroneously claimed on your original joint federal or Illinois return. Write corrections that decrease the exemption allowance as a negative number.

**Columns B and C:** Complete Columns B and C correcting any exemption allowance erroneously claimed on your original joint federal or Illinois return and that you were aware of at the time of reporting.

**Line 59 –** Add Lines 57 and 58.

**Line 60 –** Multiply Line 59 by

- 5 percent (.05) for tax years 2011 and after or
- 3 percent (.03) for tax years 2010 and prior.

#### Line 61 –

**Column A:** Complete this column correcting any credit amount you and your spouse erroneously claimed on your original joint federal or Illinois return. Write corrections that decrease the credits as a negative number.

**Columns B and C:** Complete Columns B and C correcting any credit amount erroneously claimed on your original joint federal or Illinois return and that you were aware of at the time of reporting.

**Note** Include any increase in credit allowed as the result of an increase in your joint tax liability resulting from the correction of an erroneous item.

**Line 62 –** Add Lines 60 and 61. This is the total amount of corrections to your tax.

### Penalties

#### Lines 63 a through d –

**Column A:** Complete this column using the amounts of any penalties assessed on the jointly filed Illinois Income Tax return.

**Columns B and C:** Complete Column B identifying the penalties attributable to the husband. Complete Column C identifying the penalties attributable to the wife.

**Note** If it is not clear which spouse owes a penalty, multiply that penalty times a fraction equal to the amount on Lines 56 plus 62 for that spouse divided by the sum of the amounts for both spouses on Lines 56 plus 62.

**Line 64 –** Add Lines 63 a through d. This is the amount of your penalties. Write the total in each column.

**Line 65 –** Add Lines 56, 62, and 64. Write the total in each column.

### Payments and refundable credit

#### Line 66 –

**Column A:** Complete this column using the total amount of withholding you and your spouse claimed on your original joint Illinois return.

**Columns B and C:** Complete Column B using the amount actually withheld from the income of the husband. Complete Column C using the amount actually withheld from the income of the wife.

#### Lines 67 through 71

Include any amount treated as a payment toward your Illinois Income Tax liability including overpayments from other years credited against this year's liability, federal income tax refunds offset against this liability, and any amount collected by levy or foreclosure.

**Column A:** Complete this column using the total amount of payments you and your spouse paid on your original return and include all payments made through the date of filing this request.

**Columns B and C:** Complete Column B using the amounts actually paid by the husband. Complete Column C using the amounts actually paid by the wife.

**Note** If it is not clear which spouse should receive credit for a payment, multiply that payment by a fraction equal to the net liability of the spouse shown on Line 65 divided by the sum of the net liabilities of the spouses on Line 65.

**Line 72 –** Add Lines 66 through 71. This is the total amount of your payments. Write the total in each column.

#### Line 73

**Column A:** Complete this column using the total of any refund you and your spouse received from your original return. Include any overpayment reported for this year that was applied against any liability for another year, rather than refunded to you. Also include any overpayment applied against your estimated tax liability for a subsequent year.

**Columns B and C:** Complete Column B using the refund amount attributable to the husband's tax liability. Complete Column C using the refund amount attributable to the wife's tax liability.

**Line 74 –** Subtract Line 73 from Line 72. This is the total amount of your net payments. Write the total in each column.

### Net overpayment or underpayment

**Line 75 –** Subtract Line 74 from Line 65. This is your net overpayment or underpayment. If the amount is negative, write this amount in brackets.

**Line 76 –** Add Lines 62 and 64. This is your net overpayment or underpayment from erroneous items. If the amount is negative, write this amount in brackets.

**Line 77 –** Compare Lines 75 and 76.

If both Lines 75 and 76 show an underpayment allocable to the spouse requesting relief, that spouse shall be liable only for the larger of those two amounts.

If both Lines 75 and 76 show an overpayment allocable to the spouse requesting relief, that spouse is entitled to a refund of the smaller of those two amounts.

If one of Lines 75 and 76 show an overpayment allocable to the spouse requesting relief and the other shows an underpayment, and

- the overpayment exceeds the underpayment, the spouse is entitled to a refund of the excess of the amount of the overpayment over the amount of underpayment.
- the underpayment exceeds the overpayment, the spouse is liable only for the excess of the amount of the underpayment over the amount of the overpayment.

**Note** These computations do not include interest. If you paid some of your liability after it was due, an overpayment shown on this line will be reduced by interest on the late payment. Interest will be figured on any amount you owe us or on any refund we owe you after the overpayment or underpayment is determined.