

# Relief from Joint Liability

## (Innocent Spouse Relief)

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## INTRODUCTION

Many married taxpayers file joint tax returns. However, filing a joint tax return makes both you and your spouse legally responsible for the entire tax liability even if the other spouse earned all the income or claimed improper deductions or credits. This is called joint and several liability. Joint and several liability applies not only to the tax liability you show on the return but also to any additional tax liability, interest, penalties, and other charges the Department determines to be due.

In some cases, a spouse (or former spouse) who filed a joint return and has an outstanding liability will be relieved of the tax, interest, and penalties attributable to the joint tax return. Three types of relief are available to married persons who filed a joint return:

1. **Understatement of Tax**
2. **Separation of Liability**
3. **Income Allocation**

This publication explains the three types of relief and the application process. Since each type of relief has different requirements, read the explanation for each type of relief and use the flowcharts near the end of this publication to see which types of relief you may qualify.

This publication does not cover injured spouse relief or returns filed under duress.

**Injured spouse relief.** Injured spouse relief is available when spouses file a joint return containing a tax overpayment, and the tax overpayment is to be applied against one spouse's delinquent child support liability or personal income tax liability. In such a case, the other spouse may claim injured spouse relief to protect his/her share of the overpayment from being applied towards the other spouse's child support or personal income tax liability.

To file a claim for injured spouse relief, you should obtain a Form PA 8379, Injured Spouse Claim and Allocation.

**Duress.** If you are a victim of domestic abuse and can demonstrate that you involuntarily executed a return as a result of that abuse, you do not claim relief as described in this publication. Please contact the Department's Taxpayers' Rights Advocate for further instructions.

Note: The duress must be directly connected with the signing of the joint return.

#### **For additional information or to obtain forms:**

- [www.revenue.state.pa.us](http://www.revenue.state.pa.us)
- E-mail: [pataxadvocate@state.pa.us](mailto:pataxadvocate@state.pa.us)
- Fact & Information Line: 1-888-PATAXES (1-888-728-2937)

#### **Requires Touch-Tone Service**

- Office of Taxpayers Rights' Advocate: (717) 772-9347



## **How To Request Relief**

File an election packet to request relief for an outstanding PA Personal Income Tax liability. The election packet includes the following forms:

- PA 8857, Request for Relief from Joint Liability
- PA 12507, Innocent Spouse Statement
- PA 12510, Questionnaire for Spousal Relief from Joint Liability for Requesting Spouse
- REV-488, Statement of Financial Condition for Individuals.

You may request relief for more than one tax year in a single election packet.

You must fully complete all of the above forms for a valid election packet. See the instructions on Form PA 8857 for more information.

**Spousal notification.** The Department is required to inform the non-electing spouse (your spouse or former spouse) of your request for relief from liability. There are no exceptions even for victims of spousal abuse or domestic abuse.

The Department will contact the non-electing spouse and allow him or her to provide information that may assist in determining your eligibility for relief from joint liability. The Department will also inform the non-electing spouse of its preliminary and final determinations regarding your request for relief. However, to protect your privacy, the Department will not provide information to the non-electing spouse that could infringe on your privacy. The Department will not provide your new name, address, information about your employer, phone number, or any other information that does not relate to a determination about your request for relief from liability.

## **When To Request Relief**

You should file a complete election packet as soon as you become aware of a tax liability for which you believe only your spouse or former spouse should be held liable. You must file the packet no later than 2 years after the date the Department first attempted to collect the tax from you. Some example of attempts that may start the 2-year period are:

- The mailing of a notice that the Department plans to intercept your Federal Income Tax refund.
- The issuance of a writ of execution.

The issuance of a billing notice, a preassessment notice, or an assessment notice is not a collection activity.

**TIP:** You should not file an election packet until the tax for which relief is requested may no longer be appealed. Your appeal rights must have expired before you request relief from joint liability.

## **Relief from an Understatement of Tax Due to an Erroneous Item ( See Flowchart A, Page 7)**

An understatement of tax is generally the difference between the total amount of tax that you should have reported on your return and the amount of tax that you actually reported. For example, you reported total tax of \$2,500 on your 2005 return. The Department reviewed your 2005 return and determined that the total tax is \$3,000. You have a \$500 understatement of tax.

You may be relieved of joint liability for an understatement of tax and the related interest and penalties if **all** the following conditions are met:

1. You filed a joint return which has an understatement of tax due to an erroneous item of your spouse;
2. You establish that at the time you signed the joint return you did not know and had no reason to know that there was an understatement of tax. (If you establish that you were the victim of domestic abuse prior to the time you signed your joint return, and because of the prior abuse, you did not challenge the treatment of any items on the return for fear of your spouse's retaliation, you can qualify for relief even if you had actual knowledge of your spouse's understatement of tax.); and
3. Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

**Erroneous item.** Erroneous items include:

- **Unreported income.** This is any gross income item received by your spouse that is not reported;
- **Incorrect deduction or credit.** This is any improper deduction or credit claimed by your spouse.
- **Basis error.** Income was incorrectly calculated because the basis used by your spouse to determine the gain or loss was incorrect.

The following are examples of an erroneous item:

1. The expense for which a deduction is taken was never paid or incurred. For example, your spouse, a cash-basis taxpayer, deducted \$10,000 of advertising expenses on PA Schedule C, but never paid for any advertising.
2. The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of \$10,000 that was for the payment of state fines. Fines are not deductible.
3. No factual argument can be made to support the deductibility of the expense. For example, your spouse claimed \$4,000 for security costs related to a home office. The cost were actually veterinary and food costs for your family's two dogs.
4. Your spouse claims a resident credit for taxes paid to another state, but no tax was due or paid to the other state.

Indicators of unfairness to hold spouse jointly liable. The Department will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you jointly responsible for the understatement. Two factors the Department will consider are whether you:

1. Received any significant benefit from the understatement of tax; or
2. Were later divorced from or deserted by your spouse.

Significant benefit. You can receive a significant benefit either directly or indirectly. For example, if your spouse did not report \$10,000 of income on your joint return, you can benefit directly if your spouse shared that \$10,000 with you. You can benefit indirectly from the unreported income, if your spouse uses it to pay extraordinary household expenses.

You do not have to receive a benefit immediately for it to be significant. For example, money your spouse gives you several years after he or she received it or amounts inherited from your spouse (or former spouse) can be a significant benefit.

Normal support or support payments that you receive as a result of a divorce proceeding are not a significant benefit.

The Department will calculate the understatement of tax due to erroneous items of your spouse after you file the election packet. You are not required to calculate these amounts.

### **Separation of Liability Relief (See Flowchart B, Page 8)**

You may elect separation of liability relief if you meet one of the following conditions at the time you file the election packet:

- You are divorced, widowed, or legally separated from the individual with whom you filed the joint return.
- You and the individual with whom you filed the joint return have not been members of the same household at any time during the 12-month period preceding the date the election packet is filed.

Members of the same household. You and your spouse are not members of the same household if you are living apart and are estranged. However, you and your spouse are considered members of the same household under any of the following conditions:

1. You and your spouse reside in the same dwelling.
2. You and your spouse reside in separate dwellings but are not estranged.
3. One spouse is temporarily absent from the other's household. A spouse is considered temporarily absent from the household if it is reasonable to assume that the absent spouse will return to the household. Examples of temporary absences include absence due to imprisonment, illness, business, vacation, military service, or education.

How the Department will calculate separation of liability relief. If you qualify for separation of liability relief, the Department generally allocates erroneous items between you and your spouse or former spouse by determining how the erroneous items would have been reported if you were to have filed a separate return. Relief from joint liability may be granted for the tax attributable to the items allocated to your spouse or former spouse.

Unless your spouse also elects separation of liability relief, he/she will remain liable for the entire understatement of tax. Even if both you and your spouse elect separation of liability, there may be a portion of the understatement that is not allocable; and as a result, both you and your spouse remain jointly and severally liable.

The Department will calculate your separate liability and figure any related interest and penalties after you file a complete election packet. You are not required to calculate these amounts.

Burden of proof. You have the burden of proof in establishing the basis for separating your liability.

Example: Bill and Karen Green filed a joint return showing Karen's wages of \$50,000 and Bill's business income of \$10,000. The Department audited their return and found that Bill did not report \$20,000 of business income. The additional income resulted in a \$614 understatement of tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed the election packet to request relief by separation of liability. The Department proved that Karen actually knew about the \$20,000 of additional income at the time she signed the joint return. Bill is liable for all of the understatement of tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understatement of tax, interest, and penalties due to the \$20,000 of unreported income because she actually knew of the item. The Department can collect the entire deficiency from either Karen or Bill.

**Invalid election** A request for relief from joint liability will not be granted in the following situations:

1. The Department proves that you and your spouse transferred assets as part of a fraudulent scheme.
2. Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax. See transfers of property to avoid tax below.
3. You had actual knowledge of the erroneous item responsible for the understatement of tax.

Partial relief when the extent of understatement is unknown. You may qualify for partial relief if, at the time you filed your return, you knew or had reason to know, that there was an understatement of tax due to your spouse's erroneous items, but you did not know how large the understatement was. You will be relieved of the understatement to the extent you did not know about it and had no reason to know about it.

Example: At the time you signed your joint return, you knew that your spouse did not report \$5,000 of gambling winnings. The Department examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually \$25,000. This resulted in a much larger understatement of tax than you knew about at the time you signed your return. You established that you did not know about, and had no reason to know about, the additional \$20,000 because of the way your spouse handled gambling winnings. The understatement of tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understatement of tax due to the \$5,000 of gambling winnings will not qualify for relief.

Transfers of property to avoid tax. If your spouse transfers property to you for the main purpose of avoiding tax or payment of tax, the tax liability allocated to you will be increased by the value of the property transferred. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made during or after the 12-month period before the mailing date of the Department's first billing notice. This presumption will not apply if the transfer was made under a divorce decree, separate maintenance agreement, or a written instrument incident to such an agreement. The presumption will also not apply if you establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

### **Relief by Income Allocation (See Flowchart C, Page 9)**

You may qualify for relief by income allocation if you are jointly liable for an underpayment of tax, and the underpaid tax is not attributable to income that would have been on your separate return if you were to have filed a separate return. In addition, you may qualify for relief by income allocation if you failed to qualify for relief from joint liability for an erroneous item through your election for relief from an understatement of tax or your election for relief by separation of liability.

Underpayment of tax. An underpayment of tax is the amount of tax you reported or should have reported on your return, but you have not paid. For example, your joint 2008 return shows that you and your spouse owe \$5,000. You pay \$2,000 with the return. You have an underpayment of \$3,000.

If you elect relief from an understatement of tax and/or relief by separation of liability and the Department determines that you do not qualify for either, the Taxpayers' Rights Advocate will automatically consider whether relief by income allocation is appropriate.

You may qualify for relief by income allocation if you meet **all** of the following conditions:

1. You are not eligible for relief from an understatement of tax or relief by separation of liability, or you are jointly liable for an underpayment of tax that is not attributable to income that would have been reported by you if you had filed a separate return;
2. You and your spouse did not transfer assets to one another as a part of a fraudulent scheme;
3. Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax. See "Transfers of property to avoid tax" on Page 4;
4. You did not file your return with the intent to commit fraud;
5. You have filed all required personal income tax returns and do not have an outstanding personal income tax liability for a tax year or years other than the year or years for which you are seeking relief;
6. You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period preceding the date you filed the election packet; and
7. You establish that taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. See Indications of unfairness for the granting of relief by income allocation (defined below).

Indications of unfairness for the granting of relief by income allocation. The Department will consider all of the facts and circumstances in order to determine whether it is unfair to hold you responsible for the understatement or underpayment of tax. The Department will consider positive and negative factors and weigh them appropriately to determine whether to grant relief by income allocation.

The following example shows a situation that may qualify for relief by income allocation:

You and your spouse file a joint 2006 return. That return shows you owe \$10,000. You have \$5,000 of your own money, and you take out a loan to pay the other \$5,000. You give two \$5,000 checks to your spouse to pay the \$10,000 liability. Without telling you, your spouse takes the \$5,000 loan and spends it on himself. You and your spouse were divorced in 2007. In addition, you had no knowledge or reason to know at the time you signed the return that the tax would not be paid. Both of these facts indicate to the Department that it may be unfair to hold you liable for the \$5,000 underpayment. The Department will consider these facts, together with all of the other facts and circumstances, to determine whether to grant you relief from joint liability through income allocation for the \$5,000 underpayment.

## **Appeal Rights**

Relief for an understatement of tax or for relief by separation of liability. You may appeal the Taxpayers' Rights Advocate's determination of relief for an understatement of tax due to an erroneous statement and relief by separation of liability by filing a petition with the Board of Finance and Revenue within sixty days of the mailing date of the notice of final determination.

Relief by income allocation. There is no right to appeal the Taxpayers' Rights Advocate's denial of a request for relief by income allocation.

Taxpayers' Rights Advocate fails to act. You may also file a petition with the Board of Finance and Revenue requesting it to review your request for relief if the Department has not provided you a final determination within six months from the date you filed a complete election packet.

## **Questions & Answers**

This section answers questions commonly asked by taxpayers about innocent spouse relief.

### **What are the consequences of filing a joint income tax return?**

Since spouses filing a joint return are jointly and severally liable, the Department can collect the entire tax liability including interest, penalties, and charges, from either spouse without regard to which spouse earned the income during the tax year.

### **What is an erroneous item?**

An erroneous item includes any deduction, credit, or other item incorrectly reported on the return, or income that was incorrectly omitted from the return.

### **Will I qualify for relief for an understatement of tax in every situation where my former spouse is responsible for the erroneous item?**

No. There are situations attributable to an erroneous item reported by your spouse in which you may owe tax. For example, you and your spouse file a joint return on which you report \$10,000 of income but you also know that your spouse did not report \$5,000 of dividends. You are not eligible for relief because you had knowledge of the understatement.

### **If I am denied a particular type of relief, must I reapply if I believe I might qualify for one of the other two provisions?**

No. The Taxpayers' Rights Advocate automatically considers whether any of the other provisions apply.

### **When should I file an election packet?**

You must file the election packet no later than 2 years after the date on which the Department first begins collection activity. Collection activity includes a notice that the Department plans to intercept your Federal Income Tax refund.

### **I am currently undergoing an examination of my return. Can I file an election packet to request relief?**

You should **not** file an election packet if the appeal period for the tax for which you are requesting relief is still open. Relief from joint liability is available only after the tax is no longer subject to appeal.

### **The Department has given me notice that it has filed a lien for the tax liability. Can I still file the election packet to request relief?**

Yes. Please note that the Department suspends collection activity related to the joint liability for which you are seeking relief after it receives your election packet. Collection activity will resume on any liability that remains after the Taxpayers' Rights Advocate determination is final.

### **I've been separated from my spouse for 12 months; however, we are still members of the same household. Can I file for relief from joint liability for tax that was not paid when we filed the return?**

No. Since relief by income allocation is the only type of relief that is applicable to unpaid tax and this relief is not available if the joint filers are still members of the same household, you should not file for relief until you are no longer members of the same household.

## **Contact the Taxpayers' Rights Advocate**

The Office of Taxpayers' Rights Advocate is an independent organization within the Department of Revenue. You can contact the Advocate by:

- **Phone:** (717) 772-9347
- **Fax:** (717) 787-8264
- **E-mail:** [pataxadvocate@state.pa.us](mailto:pataxadvocate@state.pa.us)
- **Writing:**

PA Department of Revenue  
Attn: Taxpayers' Rights Advocate  
Lobby, Strawberry Square  
Harrisburg, PA 17128-0101

### Where to Obtain Additional Information.

Internet: Forms are available on the Department's Web site along with filing options and information at: [www.revenue.state.pa.us](http://www.revenue.state.pa.us)

### **Telephone Services:**

#### **Automated 24-hour FACT & Information Line** 1-888-PATAXES

(1-888-728-2937). Touch-tone service required. If in the local Harrisburg area, you can call 717-772-9739. This service provides:

- Answers to some of the most commonly asked tax questions;
- The balance of your PA estimated tax account; and
- The status of a filed PA Personal Income Tax return or Property Tax/Rent Rebate claim.

**NOTE:** The Department does not have all forms available by fax.

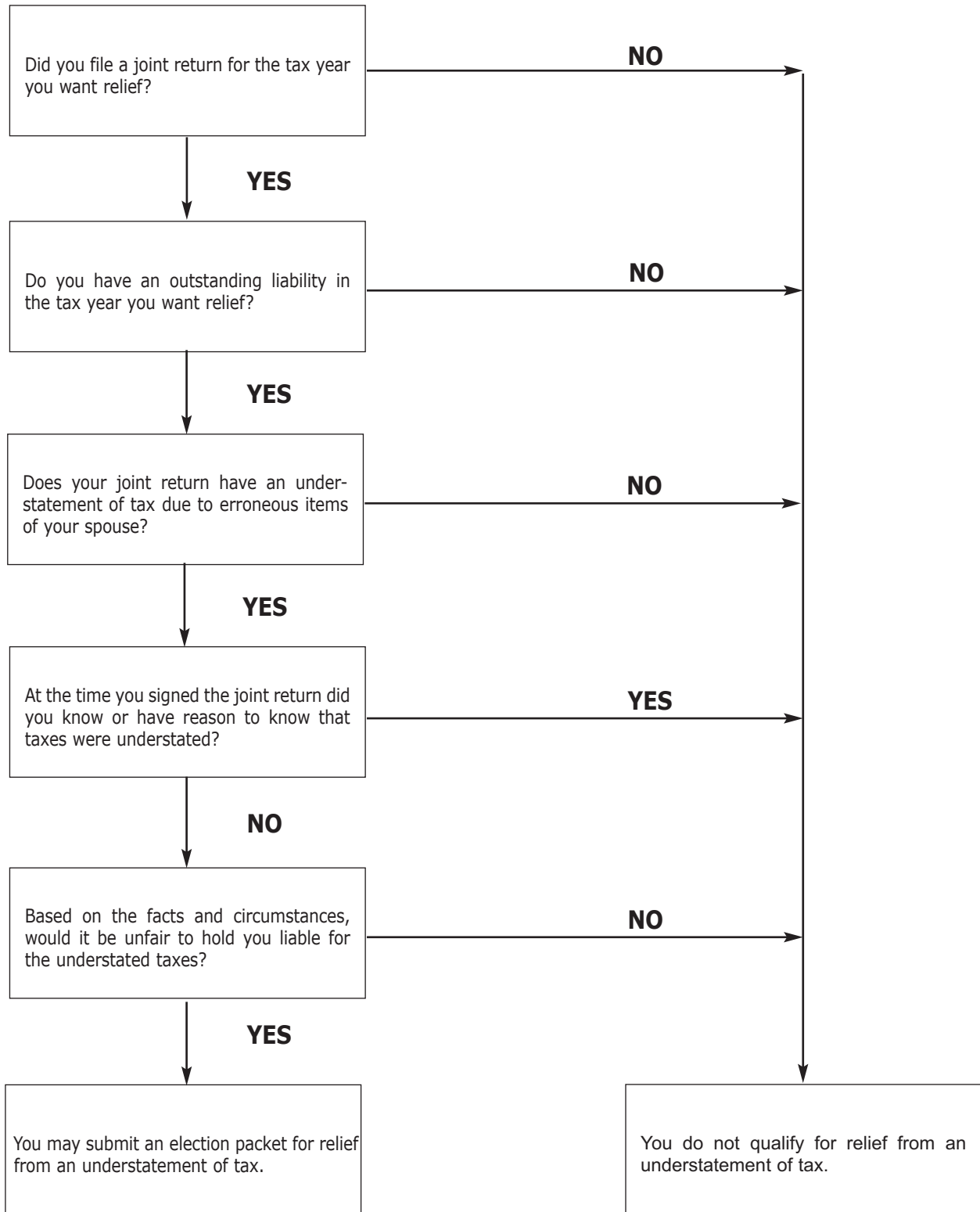
**Toll-free 24-hour, Automated Forms Ordering Message Service: 1-800-362-2050.** Serves taxpayers without touch-tone phone service.

**Services for Taxpayers with Special Hearing and/or Speaking Needs: 1-800-447-3020**  
(TT only)

# Flowchart A

## DO YOU QUALIFY FOR RELIEF FROM AN UNDERSTATEMENT OF TAX?

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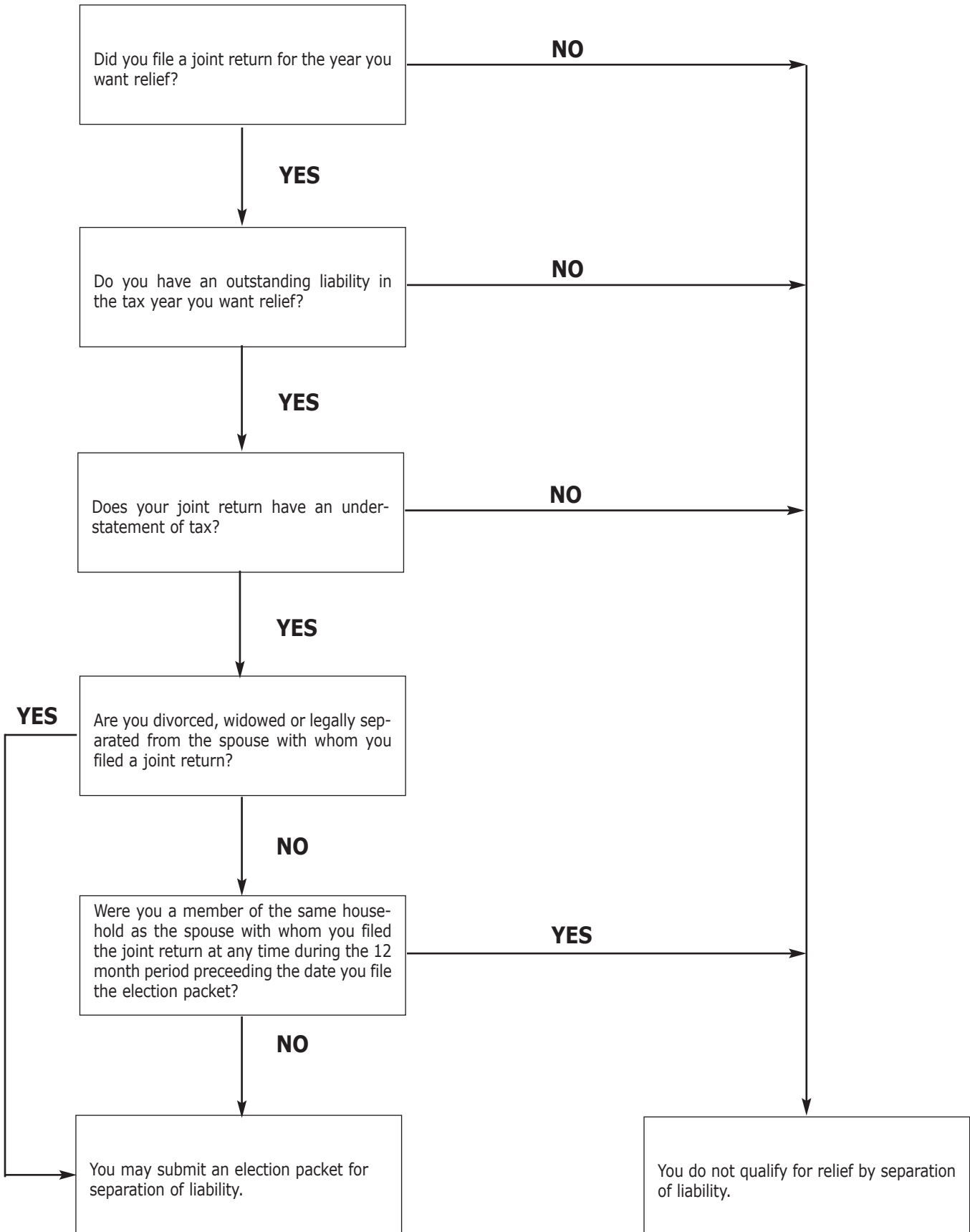




## Flowchart B

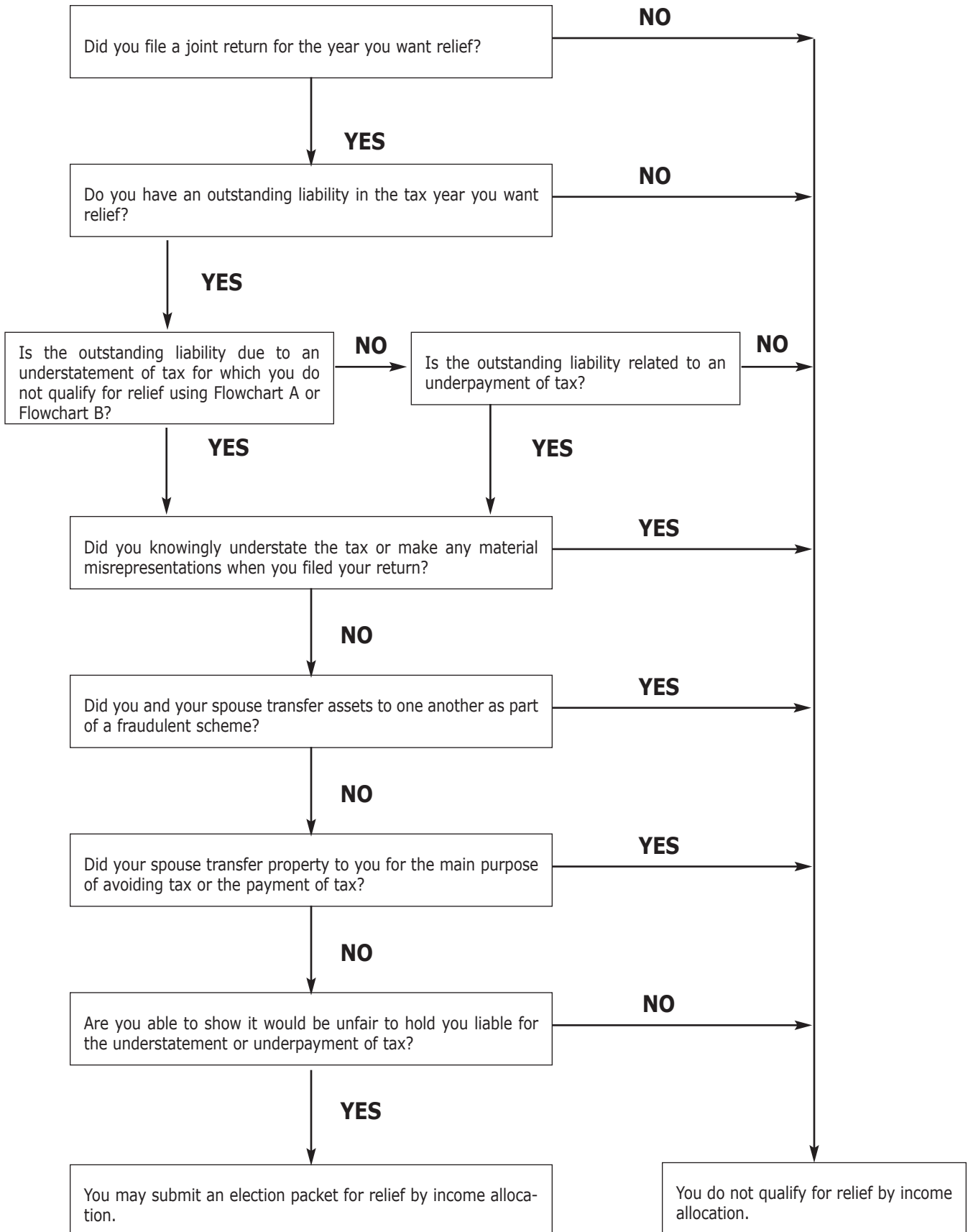
### DO YOU QUALIFY FOR RELIEF BY SEPARATION OF LIABILITY?

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## Flowchart C

### DO YOU QUALIFY FOR RELIEF BY INCOME ALLOCATION?



## **Instructions for completing PA 8857**

This example explains how Janie Boulder completes Form PA 8857 to request relief from joint liability. See Sample Form PA 8857.

Janie and Joe Boulder filed a joint tax return for 2007. Joe did not report a \$5,000 award he won that year. They received a Notice of Assessment for additional tax of \$154 plus penalty and interest. Subsequently, the Department initiated collection activities to collect the tax, interest, penalty and other charges resulting from the understatement of tax.

Janie applies the conditions listed under relief from an understatement of tax due to an erroneous item on Page 2 to see if she qualifies for relief.

1. Janie meets the first condition because the joint tax return they filed has an understatement of tax.
2. Janie believes she meets the second condition. She did not know about the award and had no reason to know about it because of the secretive way Joe conducted his financial affairs.
3. Janie believes she meets the third condition. She believes it would be unfair to be held liable for the tax because she did not benefit from the award. Joe spent it on personal items for his use only.

Because Janie believes she qualifies for relief from the understatement of tax, she files Form PA 8857 with the Department. She fills in her name, address, Social Security Number, and daytime phone number. She fills out the rest of the form as follows:

**Line 1.** Janie enters "2007" because this is the tax year for which she is requesting relief.

**Line 2.** She enters the name, address, Social Security Number, and daytime phone number of her spouse.

**Line 3.** She checks the **Yes** box because she received a Department notice for additional tax.

**Lines 4-6.** Janie checks the **No** box on each of these lines because she and Joe were not divorced, separated, or living apart during the last 12 months.

**Line 7.** Janie does not check the box on this line because she checked the **No** boxes on Lines 4, 5, and 6.

**Line 8.** Janie checks the **Yes** box on this line because the income items all belonged to her husband. She completes PA 12507, Innocent Spouse Statement (not illustrated) explaining why she feels she qualifies for relief from the understatement of tax.

**Line 9.** Janie checks the **No** box on this line because she does not have an underpayment of tax.

**Signing and mailing Form PA 8857.** Janie signs and dates the form. She attaches the PA 12507, Innocent Spouse Statement, PA 12510, Questionnaire for Spousal Relief from Joint Liability for Requesting Spouse and REV-488, Statement of Financial Condition for Individuals. Finally, she mails the completed forms to the Department of Revenue's Office of Taxpayers' Rights Advocate.

EXAMPLE

PA 8857 (10-09)

Request for Relief from Joint Liability

(Relief from Understatement of Tax, Separation of Liability and Relief by Income Allocation)

PA Department of Revenue

Do not file with your tax return. See instructions.

Your name: Janie Boulder
Your current address: 5161 Old Farm Estates
City, town or post office, state, and ZIP code: Hutchinson, PA 55555
Your Social Security Number: 123 00 9816
Daytime phone number: (720) 555-1023

- You may not claim relief from an understatement of Tax, separation of liability or relief by income allocation unless you filed a joint return with your spouse during the year for which you are claiming relief.
Do not file this form if you filed a joint return showing an overpayment of tax and all or part of the overpayment is expected to be applied against your spouse's past-due Pennsylvania Personal Income Tax or child support liability(ies).



The Department can help you with your request by calling 717-772-9347.

If you have been a victim of domestic abuse and fear that filing a claim for relief from joint liability will result in retaliation, check here

Part I 1 Enter the year(s) for which you are requesting relief from liability of tax 1998

2 Information about your spouse (or former spouse) with whom you filed a joint return for the tax year(s) listed on Line 1.
Name: Joe E. Boulder
Social Security Number: 234 00 8765
Current home address: 3898 Timber Way
City, town or post office, state, and ZIP code: Creekbed, MS 77777
Daytime phone number (if known): (270) 555-2345

3 Do you have an Understatement of Tax (that is, the Department of Revenue determined there is a difference between the amount of tax shown on your return and amount of the tax that should have been shown)?
Yes. Go to Part II. No. Go to Part IV.

Part II 4 Are you divorced from the person listed on Line 2 (or has that person died)?
5 Are you legally separated from the person listed on Line 2?
6 Have you lived apart from the person listed on Line 2 at all times during the 12-month period prior to filing this form?
7 If Line 4, 5, or 6 is Yes, you may request Separation of Liability. If the understatement of tax on the joint return is due in part, to an item of your spouse, you may request relief by submitting an election packet. Otherwise check here and go to Part III below.

Part III 8 Is the understatement of tax due to the erroneous items of your spouse (see Page 4)?
Yes. You may request Relief from an Understatement of Tax by submitting an election packet. No. If Line 6 is Yes, you may request Relief by Income Allocation. Check here and submit an election packet.

Part IV 9 If you were not a member of your spouse's household for an entire year before filing this form and you have an Underpayment of Tax (that is, tax that is properly shown on your return but not paid), check here.
You may request Relief by Income Allocation by submitting an election packet. Otherwise you cannot file this form unless Line 3 is Yes.

Under penalties of perjury, I declare that I have examined this form and any accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here

Keep a copy of this form for your records.

Your signature: Janie Boulder
Date: 1/30/2000
Preparer's signature
Firm's name (or yours if self-employed) and address
Check if self-employed
Preparer's SSN or PTIN
EIN
ZIP code

Paid Preparer's Use Only