

## The Innocent Spouse Checklist

Potential Client Name \_\_\_\_\_

1. Was a joint tax return filed? Yes / No
2. Has IRS Collection started: Yes / No
  - IRS off-set the taxpayer's income tax refund;
  - The government has filed a claim in a court proceeding;
  - The filing of a suit by the United States against the taxpayer to collect the joint liability; or
  - The issuance of an IRC § 6330 notice of the IRS's intent to levy and the taxpayer's right to a Collection Due Process (CDP) hearing.
3. Is the joint-tax return valid? Yes / No
  - Did the couple intend to file a joint return?
  - Was their consent by one spouse for the other to file the joint return (express or tacit)?
  - Was the return signed under duress?
  - Was the return signature forged?
  - Is the return unlawful or invalid?
4. If the return was filed without the taxpayer's consent, was their Tacit Consent?
  - Did the requesting spouse have a filing requirement?
  - Did the requesting spouse file a joint return for prior years?
  - Did the requesting spouse participate in preparation of return?
  - Did the requesting spouse receive a tax benefit?
  - Did the requesting spouse have a non-tax reason to file a joint tax return?
5. Is the issue with the return an erroneous item (ie. the income and liability on the return are inaccurate) or is it failure to pay the liability?
  - Erroneous item – IRC § 6015(b), (c) or (f)
  - Failure to pay – can only use IRC § 6015(f)
6. Is the couple divorced, or are they legally separated for at least 12 months? Yes / No
  - If yes, look at IRC 6015(c) relief
  - If No, look at IRC 6015(b) or (f) relief

7. Did the taxpayer know or have any reason to know that the tax return was not accurate?  
Yes / No

8. Did the taxpayer benefit from the income? Yes / No

- Look at lifestyle
- Did the income come into the household or was it diverted to purposes the taxpayer was not aware of?

9. Is it inequitable to hold the spouse liable for the tax debt?

Factors the IRS considers (see Revenue Procedure 2013-34)

- Marital status.
- Economic hardship.
- Knowledge or reason to know.
- Non-requesting spouse's legal obligation.
- Significant benefit.
- Compliance with income tax laws.
- Abuse
- Physical/mental health
- Financial dominance