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Joint Tax Considerations: Refunds and Liabilities

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Joint Tax Considerations: Refunds and Liabilities

What are some joint tax considerations?

If you're separated or considering a divorce, you and your spouse might wish to continue filing your tax returns jointly for as long as possible. If this is the case, you should be aware of the advantages and disadvantages to using this filing status. Particular attention should be paid to the impact that joint filing may have on your tax refunds and how the liabilities of one spouse may affect the other spouse.

When can you choose to file your tax return jointly?

Your selection of a filing status for a given year will depend on your marital status as of the last day of the tax year (usually December 31). You and your spouse (or former spouse) may be able to file a joint return if you were married to each other through the last day of the tax year, even if you were living apart (although under certain conditions married individuals living separately from their spouses can file as head of household). If you are living apart from your spouse, you can't file jointly if you are legally separated under a final decree of divorce or separate maintenance. You can, however, file jointly if you are separated under an interlocutory (not final) decree of divorce.

Example(s): Assume John and Mary unofficially separate on February 1, 2009. Mary continues to reside in the family house, while John rents an apartment elsewhere. On September 8, 2010, they divorce. When considering their 2009 tax situation, John and Mary can choose to file a married filing jointly return, since they remained married through December 31, 2009.

What are the advantages and disadvantages of using married filing jointly as your filing status?

The main advantage to filing a joint return is that the total tax liability of you and your spouse will usually be lower if you file jointly than if you file married separately. Other advantages involve cost and time. If you pay someone else to complete your tax returns, you'll probably be charged more for two separate returns than for one joint return. And if you complete your own tax returns, you'll find that it's more time consuming to fill out two separate returns, particularly when you bear in mind that state tax returns must be completed as well.

However, filing a joint return also carries some disadvantages, especially for spouses or former spouses who are no longer on the best of terms with each other. Signing a joint return obligates you to accept full responsibility for the information contained in your tax return (as well as for any errors and omissions). You may be held individually responsible for the taxes, penalties, and interest that result from your joint tax return. You may be responsible even if your spouse earned all of the income and made decisions without your knowledge. And if you get divorced, you can still be liable for any unpaid taxes attributable to prior years (when you filed a joint return).

Example(s): Assume John kept his wife in the dark regarding their financial affairs. He handled all of their bills, told his wife to sign various checks, contracts, and tax returns without allowing her to read them, and never discussed his business dealings with her. They filed jointly. If John is found guilty of criminal tax fraud for misrepresenting business income and deductions, the IRS can pursue not only John but also his wife for any tax liability due. That's because they signed joint federal tax returns.

Innocent spouse rules

In certain cases, a spouse may be relieved of responsibility for tax, interest, and penalties due on a joint tax return. This relief is known as innocent spouse relief. You must file IRS Form 8857 to request this relief. You may request relief for more than one tax year on the same form.

Injured spouse claims

Another disadvantage to filing a joint tax return is that it might jeopardize your own federal income tax refund if your spouse contracted a particular debt before (or during) your marriage. If you file a joint return with your spouse and he or she is liable for certain debts, including student loans, taxes, and child support arrearages, the IRS is authorized to offset such debts against any refund that might be due for the joint return.

Before the IRS issues a refund check, it must determine whether the party (or parties) signing the return owes any federal taxes from prior years. A refund would be applied first to any unpaid federal taxes; any remaining amount would then be applied to any delinquent child support, state taxes, and other federal debts. The IRS recognizes that it may be inequitable for you to lose your portion of the tax refund simply because your spouse owes money. By filing an injured spouse claim with the IRS (Form 8379), you may be able to get your portion of the tax refund. To be considered an injured spouse, you must not be otherwise required to pay your spouse's past due amount and you must have:

- Filed a joint tax return
- Reported income of your own (e.g., wages, interest) on the joint return
- Made and reported payments (e.g., federal income tax withheld from wages or estimated payments), or claimed the earned income credit or any other refundable credits on the joint return
- Had an overpayment

Can you time your legal proceedings to get the most beneficial filing status?

If filing as married individuals (either jointly or separately) would be more beneficial than each of you filing as single, consider delaying a divorce until after the end of the tax year. Conversely, finalizing a divorce before the end of the tax year will allow both of you to file as unmarried individuals (i.e., as single or--if one of you qualifies--as head of household).

Tip: Also, if you desire to file as an unmarried individual, consider getting a decree of separate maintenance before the end of the tax year. This may also allow you to file your tax return for the year as an unmarried individual.



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