

DOMESTIC VIOLENCE AND TAX LAW: MICHIGAN INNOCENT SPOUSE RELIEF

EMILY TURBIAK[†]

ABSTRACT.....	471
I. INTRODUCTION	472
II. DOMESTIC VIOLENCE—GENERALLY	475
III. INNOCENT SPOUSE RELIEF—FEDERAL AND STATE PROVISIONS...	478
A. <i>Federal Innocent Spouse Relief</i>	479
B. <i>Michigan Innocent Spouse Relief</i>	485
C. <i>Innocent Spouse Relief—Other States</i>	486
1. <i>Twenty-Five States Have Innocent Spouse Relief Statutes</i> ..	486
2. <i>Thirteen States Have Innocent Spouse Relief Forms</i>	489
3. <i>Department of Revenue Websites: Webpage Devoted to</i> <i>Innocent Spouse Relief</i>	495
4. <i>Offer-in-Compromise</i>	496
5. <i>State Appeals Process</i>	497
IV. LIMITATIONS OF THE INNOCENT SPOUSE RELIEF IN MICHIGAN.....	497
V. MICHIGAN SHOULD REVISE ITS INNOCENT SPOUSE RELIEF PROGRAM	503
VI. CONCLUSION.....	507
APPENDIX I: FIFTY STATE INNOCENT SPOUSE RELIEF CHART	508

ABSTRACT

One in three women will become a victim of domestic violence at some point in her life. Little is understood about financial and economic abuse, but financial and economic abuse is considered domestic violence. Some domestic violence survivors who suffer economical and financial

[†] Associate Attorney, Dickinson Wright PLLC. B.S. in B.A., 2011, *summa cum laude*, Central Michigan University; J.D., 2016, *magna cum laude*, Michigan State University College of Law. Before law school and my employment with Dickinson Wright PLLC, I obtained licensure as a Certified Public Accountant and Certified Fraud Examiner and worked as a Litigation Consultant where I provided complex data analysis, financial modeling, quantification of economic damages in cases of commercial disputes, and investigated fraud at Crawford & Winiarski in Detroit, Michigan.

I would like to thank Professor Hannah Brenner and Professor Joshua Wease for their mentorship while writing this Article. A special thank you to my parents, Stephan and Sharon, for supporting and encouraging me. Also, thank you to Elizabeth and Kristin, not only my sisters, but my best friends: Life would not be as fun without my sisters. I would also like to thank Jack Burdick for correcting my grammar when requested—and, I suppose, also when not requested.

abuse continue to suffer consequences of that abuse long after leaving the abuser. Some may face issues with tax authorities because of issues regarding the tax liability of the spousal unit when the survivor and abuser were formerly married. The IRS and various states allow for relief from the joint tax liability in certain circumstances. This relief is generally called innocent spouse relief.

However, several states—including Michigan, the focus of this article—do not have adequate innocent spouse relief programs. Survivors cannot seek innocent spouse relief because the program is poorly designed, not maintained well, and not directed by statutory authority. This article explores the innocent spouse relief in all 50 states and provides an overview of each program attached in the appendix. After exploring the innocent spouse relief programs in all 50 states, this article argues Michigan should construct a webpage with updated innocent spouse relief information, design a user-friendly Form and accompanying step-by-step instructions, and increase the time restrictions for filing for relief in order to fix the inherent problems in its current innocent spouse relief program.

I. INTRODUCTION

Sarah married her husband, Joe, in 2010.¹ She stayed at home while he ran his own business.² Joe emotionally abused and financially controlled Sarah during their marriage.³ Sarah eventually moved out of their house and filed for divorce.⁴ She began working a minimum wage job and rented a small apartment.⁵ All her earnings from her job went to paying for the apartment and other bills. After she noticed Michigan

1. This Article will use a hypothetical couple, Sarah and Joe, to demonstrate a victim's plight with filing for federal and Michigan innocent spouse relief. Please note, this Article characterizes the victim as female and the abuser as male only because of the problems associated with writing gender neutrality into this specific Article. There is much research and publication regarding stereotyping domestic violence on one specific gender and, also, domestic violence against males generally. The discussion and analysis contained in this Article applies to the inverse hypothetical situation where Sarah is the abuser and Joe is the survivor.

2. Sandra Block, *Proving Innocence to the IRS is Not Easy*, USA TODAY (Jun. 24, 2011, 10:42 AM), http://usatoday30.usatoday.com/money/perfi/taxes/2011-06-23-how-to-look-for-innocent-spouse-tax-relief_n.htm.

3. Kelly Phillips Erb, *IRS Proposes To Permanently Ease Restrictions For Innocent Spouse Relief*, FORBES (Aug. 13, 2013, 12:57 AM), <http://www.forbes.com/sites/kellyphillipserb/2013/08/13/irs-proposes-to-permanently-ease-restrictions-for-innocent-spouse-relief/>.

4. Block, *supra* note 2.

5. Erb, *supra* note 3.

garnished her wages from her job, Sarah received a letter from the Michigan Department of Revenue claiming she owed \$5,000 in taxes for unreported income from her ex-husband's business in 2014.⁶ Joe never let her handle the finances during their marriage; he just demanded she sign the tax return every year.⁷ How could she be responsible for the tax liability? How can she pay it on her modest income?

One in three women will become a victim of domestic violence at some point in her life.⁸ "Domestic abuse is defined fairly broadly [by the IRS] as including 'physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, or to undermine the victim's ability to reason independently' and is determined based on all facts and circumstances."⁹ Financial abuse is considered domestic abuse.¹⁰ Economic control and dependency is correlated with domestic abuse.¹¹ A domestic abuse victim may not know the financial situation of the family unit and, therefore, cannot accurately understand the tax return.¹² Some victims prefer not to question the tax return for fear that financial abuse may turn into physical abuse.¹³

The reason why one spouse or former spouse can be assessed all of the tax liability for the tax return is because married spouses are treated as one economic unit and may file a joint return under tax law.¹⁴ When the spouses file jointly, both spouses are jointly and severally responsible for the tax liability; therefore, the IRS can pursue each for a tax deficiency.¹⁵ Furthermore, filing the tax return as married filing jointly means each spouse is ensuring the accuracy and completeness of the return.¹⁶ Therefore, the husband and wife share the tax liability jointly.¹⁷ Even if the spouses have been divorced for several years, if the IRS pursues the tax deficiency within the statute of limitations, the IRS may

6. Block, *supra* note 2.

7. See Erb, *supra* note 3.

8. Mary Leto Pareja, *Beyond the Affordable Care Acts Premium Tax Credit: Ensuring Access to Safety Net Programs*, 38 HAMLINE L. REV. 241, 243 (2014).

9. *Id.* at 272.

10. *Id.* at 243.

11. Stephanie Hunter McMahon, *What Innocent Spouse Relief Says about Wives and the Rest of Us*, 17 HARV. J.L. & GENDER 141, 171 (2014).

12. Pareja, *supra* note 8, at 244.

13. *Id.*

14. McMahon, *supra* note 11, at 142. But note an exception for those who are allowed to file married filing-separately in certain circumstances.

15. *Id.* at 147. If the spouses decided to file separately, the IRS only pursues the spouse associated with the separate return. IRS, PUBLICATION 504, 5 (2016), <https://www.irs.gov/pub/irs-pdf/p504.pdf>.

16. Part 25. Special Topics, IRS, https://www.irs.gov/irm/part25/irm_25-015-001.html#d0e207 (last visited Dec. 2, 2015).

17. McMahon, *supra* note 11, at 147.

collect a tax deficiency from either spouse for any year the former spouses filed their tax return married filing jointly.¹⁸ A divorce decree or other agreement cannot modify the responsibilities under tax law of the parties filing married filing jointly.¹⁹

In many cases the victim can apply for tax relief from the IRS and state tax assessment authorities by filing for innocent spouse relief.²⁰ The only solution to the joint and several responsibility rule of the tax code is innocent spouse relief.²¹ However, there are many inherent limitations in the federal innocent spouse relief that make it difficult for financial and emotional abuse victims to get relief from tax liabilities. Considering Michigan's innocent spouse relief is modeled after the federal innocent spouse relief, Michigan's innocent spouse relief imposes the same limitations as the federal innocent spouse program. Therefore, the Michigan legislature should revise the Michigan innocent spouse relief directives so domestic violence survivors do not encounter hurdles to receive tax relief.

Part I discusses domestic violence generally and focuses on nonviolent abuse. Part I expounds on the fact that not all abuse is physical abuse. Partners may emotionally and financially control their victims. Nonviolent abuse tends to be ignored as abuse because there is little visible evidence of the abuse. Part II discusses the innocent spouse relief at the federal and state level. Part II specifically addresses Michigan's innocent spouse relief program as well as several other state statutes, provisions, and forms. Part III discusses the limitations of the Michigan innocent spouse relief by comparing Michigan's provision to the federal innocent spouse relief provision and other states' provisions as discussed in Part II. Part III also demonstrates the limitations of federal and Michigan innocent spouse relief by revisiting the domestic violence survivor, Sarah, from the introduction, and illustrating some of the issues she faces in solving the tax deficiency issue. Part IV offers a recommendation regarding how Michigan can change its innocent spouse relief to be more effective for domestic abuse survivors and make it more accessible to taxpayers seeking relief.

18. See Erb, *supra* note 3.

19. *Joint & Several Liability*, TAX & ACCOUNTING PROF'LS, INC., <http://www.taxman4u.com/161/Joint-Several-Liability/> (last visited Dec. 2, 2015).

20. See *infra* Section I.A–B.

21. McMahon, *supra* note 11, at 147.

II. DOMESTIC VIOLENCE—GENERALLY

Domestic violence does not discriminate between race and gender.²² Both men and woman can become victims of domestic violence—although, violence against women occurs at a greater rate.²³ Women account for 85% of domestic violence victims.²⁴ Most domestic violence against women is committed by her current significant other or spouse.²⁵ Overall, African Americans face greater rates of domestic violence than Caucasians.²⁶

Domestic violence is more than just a physical assault to the victim's body.²⁷ While physical violence often occurs within the relationship, more often than not, the batterer seeks to control the victim by limiting her freedom and resources.²⁸ Dr. Evan Stark, a prominent professor and researcher on community and gender based violence, calls the nonviolent abuse "Coercive Control" and defines it as:

Coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).²⁹

22. *Domestic Violence: Communities of Color*, WOMEN OF COLOR NETWORK, http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_domestic_violence_2006.pdf (last visited Mar. 28, 2017); *Who is Doing What to Whom? Determining the Core Aggressor in Relationships Where Domestic Violence Exists*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <http://ncadv.org/files/Who%20is%20Doing%20What%20to%20Whom.pdf> (last visited Mar. 28, 2017); *Domestic Violence Statistics*, AM. BAR ASS'N, http://www.americanbar.org/groups/domestic_violence/resources/statistics.html (last visited Mar. 28, 2016).

23. AM. BAR ASS'N, *supra* note 22.

24. *Demographics and Domestic Violence: Leading Facts and Statistics on the Demographics of Domestic Violence Victims and Abusers*, DOMESTIC SHELTERS (Jan. 7, 2015), <https://www.domesticshelters.org/domestic-violence-statistics/demographics-and-domestic-violence#.VvmpVFJUfw>.

25. JENNIFER L. TRUMAN & RACHEL R. MORGAN, NONFATAL DOMESTIC VIOLENCE 2003–2012, BUREAU OF JUST. STATS. 7 (Apr. 2014), <http://www.bjs.gov/content/pub/pdf/ndv0312.pdf>.

26. *Id.* at 11.

27. EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (INTERPERSONAL VIOLENCE) 5 (Claire Renzetti & Jeffrey L. Edleson eds., 2007).

28. *Id.* (stating the batterer's "primary harm" is the "deprivation of rights and resources that are critical to personhood and citizenship").

29. *Id.* at 15.

The batterer uses many strategies to control his victim.³⁰ A batterer controls his victim's freedom and resources by cutting off her personal support system and access to money.³¹ A victim loses the freedom to dictate her schedule because the batterer will monopolize her time and use her for personal service.³² The abuser uses financial control to specifically isolate and manipulate the victim into believing she is dependent on the abuser.³³ Abusers may hide money or let bills go unpaid in order to force the victim to believe that there is very little money, and therefore she cannot leave.³⁴ If the victim is allowed to work, she will have to turn over the paycheck to her abuser.³⁵ Some victims must account for every penny they spend.³⁶

All the aforementioned strategies are ways the abuser prevents his victim from leaving the controlled relationship.³⁷ These strategies are similar to other crimes like kidnapping, stalking, and harassment.³⁸ The on-going patterns of physical and psychological abuse are more devastating to a victim than the severity of the abuse.³⁹ Generally, victims are subjected to several control strategies throughout the duration of the relationship.⁴⁰

Nonviolent abuse victims face many problems beyond the abuse itself.⁴¹ Victims may appear to be brainwashed by the batterer's coercive control.⁴² Unfortunately, no one detects the victim's personal life abuse because of the lack of physical injury.⁴³ Women are often ignored—or

30. *Id.* at 5.

31. *Id.* (comparing the victim to a hostage).

32. *Id.*

33. CATHERINE PARIS, INFORMATION EVERY WOMAN SHOULD HAVE: DOMESTIC VIOLENCE HANDBOOK 16 (iUniverse.com 2003).

34. *Id.*

35. *Id.*

36. *See id.*

37. *See id.*

38. STARK, *supra* note 27, at 5 (stating that in those aforementioned crimes and domestic violence, the "perpetrators use various means to hurt, humiliate, intimidate, exploit, isolate, and dominate their victims").

39. PARIS, *supra* note 33, at 12; LYN SHIPWAY, DOMESTIC VIOLENCE: A HANDBOOK FOR HEALTH CARE PROFESSIONALS 22 (Routledge 2004) (stating women believe that the psychological abuse is "the most destructive element").

40. STARK, *supra* note 27, at 13 (stating "coercive control accounts for 50% to 80% of all help seeking by abused women"); SHIPWAY, *supra* note 39, at 1 (stating domestic violence takes and combines many forms).

41. *See* STARK, *supra* note 27, at 5.

42. *Id.* at 12 ("Cognitive psychologists in the late 1970s and 1980s tried to capture what these women were experiencing by comparing it to 'coercive persuasion,' brainwashing, and other tactics used with hostages, prisoners of war, kidnap victims, and by pimps with prostitutes.").

43. *Id.*

even shamed—for breaking the silence against nonviolent abuse because there is no physical injury, or the nonviolent abuse has no—or very little—legal basis.⁴⁴ Victims faced with financial limitations often perceive themselves as having no way to leave their situation.⁴⁵ Dr. Stark calls the nonviolent, controlling abuse a liberty crime.⁴⁶ However, “there is little recognition afforded to women who survive the ordeals of personal life.”⁴⁷

There are many reasons why people ignore coercive control when domestic violence is talked about. Assaultive injuries are more dramatic and condemning than nonviolent control.⁴⁸ Physical injuries are better evidence of an abusive relationship.⁴⁹ Assaultive injuries are easier to see and confirm as abuse than financial and emotional abuse injuries.⁵⁰ Furthermore, the past political atmosphere against physical violence has contributed to the discounting of nonviolent abuse.⁵¹ The outcry against physical abuse led drafters of former versions of domestic violence legislation to only consider that as the sole definition of domestic violence.⁵² Finally, unlike how to prevent physical abuse, “no one knows what to do about” nonviolent control.⁵³

Domestic violence began to change politically in the 1980s when the goals of the domestic violence movement changed.⁵⁴ Participants in the domestic violence movement began to pay attention to the psychological abuse beyond the physical abuse.⁵⁵ Domestic violence discussions included “nonviolent forms of oppression.”⁵⁶ Various countries and organizations started to define violence against women by including coercive control in the definition.⁵⁷

One of the most widely recognized pieces of legislation addressing domestic violence is the Violence Against Women Act of 1994

44. *Id.* at 3 (noting the example of Nicole Brown Simpson’s repeated complaints about stalking and abuse).

45. PARIS, *supra* note 33, at 16.

46. STARK, *supra* note 27, at 13.

47. *Id.* at 17.

48. *See id.* at 14.

49. *See id.*

50. *See id.*

51. *Id.* (“The radical feminists who led the fight against rape and pornography also inadvertently contributed to the invisibility of coercive control.”).

52. *Id.*

53. *Id.* at 15.

54. *Id.* at 11.

55. *See id.*

56. *Id.* But *see id.* at 8 (“Our key finding is that the domestic violence revolution appears to have had little effect on coercive control.”).

57. *Id.* at 13 (noting Scotland, Canada, and the U.S. Armed Forces).

(VAWA).⁵⁸ VAWA has improved the criminal justice system, improved a victim's access to services, and changed the political and social environment surrounding domestic violence generally.⁵⁹ VAWA has increased the penalties for convicted offenders, changed law enforcement response to domestic violence and sexual assault calls, and funded educational training for law enforcement, prosecutors, judges, and victim advocates.⁶⁰ Victims have better access to support systems.⁶¹ Violence against woman and intimate partner violence has decreased since the passage of VAWA.⁶² States have developed better, more comprehensive domestic violence laws.⁶³ VAWA has made domestic violence a community-based issue.⁶⁴

III. INNOCENT SPOUSE RELIEF—FEDERAL AND STATE PROVISIONS

Although spouses are required to pay the tax liability on their joint tax form, the innocent spouse relief absolves spouses of joint liability in certain circumstances and with no knowledge of an error on the tax return from responsibility for their joint tax deficiency.⁶⁵ The federal government offers a widespread innocent spouse relief program for innocent spouses.⁶⁶ A spouse files a form with the IRS that discusses relevant facts and circumstances regarding the financial situation of the spouse.⁶⁷ The IRS weighs the facts and circumstances and makes a determination regarding the spouse's joint liability responsibility.⁶⁸

Many states offer similar relief from state tax deficiencies to innocent spouses.⁶⁹ Michigan's Department of Treasury guides applicants to the federal law for the requirements for filing in Michigan.⁷⁰ However, a majority of states based their programs on

58. *About the Office on Violence Against Women*, U.S. DEP'T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN (Jun. 2016), <https://www.justice.gov/file/29836/download> [hereinafter *About the Office*].

59. *Id.*

60. *Id.*

61. *Id.*

62. Shannon Catalano, et al., *Female Victims of Violence*, U.S. DEP'T OF JUSTICE 2 (Oct. 23, 2009), <https://www.bjs.gov/content/pub/pdf/fvv.pdf>.

63. Monica N. Modi, et al., *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue*, 23 J. WOMEN'S HEALTH 253, 254 (2014).

64. *About the Office*, *supra* note 58.

65. *See infra* Part I.

66. *See infra* Part I.A.

67. *See infra* Part I.A.

68. *See infra* Part I.A.

69. *See infra* Parts I.B–C.

70. *See infra* Part I.B.

statutes,⁷¹ and many states have created their own forms for applicants to file.⁷²

A. Federal Innocent Spouse Relief

Before 1971, when Congress passed the innocent spouse relief statute, a spouse could only find relief by claiming successfully that she signed the tax return under duress.⁷³ Proving that a spouse signed the tax return under duress was a difficult burden to overcome.⁷⁴ Therefore, only a small select group of people could find relief.⁷⁵

The early innocent spouse relief statute only granted relief to spouses who had a financial hardship.⁷⁶ This change broadened the group of people who could find relief under the statute, but still left out others who should have been able to equitably qualify for relief.⁷⁷ However, the provision, yet again, expanded in 1998 to include other groups of people as well.⁷⁸ But when the IRS expanded the provision, it did not solicit public comments regarding procedures and qualifications for seeking innocent spouse relief.⁷⁹

The current innocent spouse relief system is costly for the IRS to administer and costly for the innocent spouse to seek relief.⁸⁰ The IRS receives approximately 55,000 applications for relief a year.⁸¹ In 2004, 6,555 spouses were granted the relief they requested.⁸² In 2001, the life cycle of an innocent spouse relief case was 363 days from receipt to closure.⁸³ From 1999 to 2001, the average day life cycle of an innocent spouse case increased—primarily because the caseload of the IRS

71. See *infra* Part I.C.1.

72. See *infra* Part I.C.

73. McMahon, *supra* note 11, at 147.

74. See *id.*

75. *Id.* at 148.

76. *Id.*

77. See *id.*

78. *Id.* (stating spouses received relief where it was appropriate to provide the spouse relief).

79. Leslie Book, *A New Paradigm for IRS Guidance: Ensuring Input and Enhancing Participation*, 12 FLA. TAX REV. 517, 519–20 (2012). Usually, when agencies make large changes to procedures and provisions, the agencies solicit public comments. *Id.* The IRS shockingly did not seek public comment or opinions when changing the innocent spouse relief. See *id.*

80. McMahon, *supra* note 11, at 144.

81. *Id.* at 150.

82. *Id.* at 153.

83. U.S. GEN. ACCT. OFF., GAO-02-558, IRS'S INNOCENT SPOUSE PROGRAM PERFORMANCE IMPROVED; BALANCED PERFORMANCE MEASURES NEEDED 18 (2002) (showing one-third of cases received progressed to closure after 604 days).

increased.⁸⁴ Currently, the IRS states that it may take up to six months for a claim to be processed and a decision rendered.⁸⁵

At the pre-assessment stage of the innocent spouse relief process, the examiner must discuss joint liability with the taxpayer.⁸⁶ The examiner may provide the taxpayer with publications and forms regarding innocent spouse relief.⁸⁷ All of the pre-assessment interaction must be documented by the examiner.⁸⁸ The Innocent Spouse Tracking System must be updated by an Innocent Spouse Coordinator to ensure the claim is being handled efficiently and properly.⁸⁹

Any IRS field office that receives the innocent spouse relief forms must forward the forms onto the centralized location for innocent spouse relief processing.⁹⁰ This procedure is in place to ensure accuracy, consistency, and timeliness of decisions.⁹¹ IRS agents at the centralized location are specially trained to review innocent spouse relief claims.⁹² However, an audit in 2007 showed field offices taking an average of seventy-four days to forward innocent spouse relief claims to Cincinnati Centralized Innocent Spouse Operations location—the centralized location for innocent spouse relief in 2007—for review.⁹³ The delay potentially caused inappropriate IRS collections efforts to be taken against taxpayers who timely submitted an innocent spouse relief claim and prevented the taxpayer from seeking other payment relief because of delayed processing of the claim.⁹⁴

Examiners considering the innocent spouse relief claim must first review Internal Revenue Code Section 6013(e), 6015(b), 6015(c), and 6015(f) (in that order).⁹⁵ The examiner then compiles, in his or her own

84. *Id.* at 35.

85. *Innocent Spouse Questions & Answers*, IRS, (Nov. 28, 2016) <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Innocent-Spouse-Questions-and-Answers>.

86. INTERNAL REVENUE MANUAL § 4.11.34.3 (2004), <https://www.irs.gov/irm/index.html>.

87. *Id.*

88. *Id.*

89. *Id.* at § 4.11.34.3.1.1.

90. Memorandum from Michael R. Phillips, Deputy Inspector General for Audit, to Commissioners for Small Business/Self-Employed Division & Wage & Investment Division (Sept. 14, 2007) (<https://www.treasury.gov/tigta/auditreports/2007reports/200740175fr.html>); INTERNAL REVENUE MANUAL, *supra* note 86, at § 4.11.34.1.

91. Memorandum, *supra* note 90.

92. *Id.*

93. *Id.* In some cases the delays were caused by the claims not being forwarded directly to CCISO. *Id.* The longest case was held for 156 days. *Id.*

94. *Id.*

95. INTERNAL REVENUE MANUAL, *supra* note 86, at § 4.11.34.1.

work papers, the following: “Statement of determination for each year; summary of pertinent facts, cross-referenced as needed; basis for determination, including the development of all relevant factors; listing of code sections addressed; [and] taxpayer’s position if case is unagreed.”⁹⁶ The Internal Revenue Manual instructs the examiner to consider all the facts and circumstances of the case and to apply the law objectively to the facts.⁹⁷ The determination form must contain sufficient facts and support because the form will be sent to either the requesting spouse (in the case of a non-favorable determination) or non-requesting spouse (in the case of a favorable determination), so either spouse has adequate facts to protest the determination.⁹⁸

The examiner must send a letter to the non-requesting spouse regarding the requesting spouse’s claim, but the Internal Revenue Manual warns examiners to not include the requesting spouse’s new name and new address.⁹⁹ The streamline procedural review process serves as the review for the determination.¹⁰⁰ At each of the aforementioned steps, the Innocent Spouse Tracking System must be updated.¹⁰¹

Currently, Section 6015 of the Internal Revenue Code guides the IRS regarding exceptions from joint and several liability.¹⁰² A spouse can get relief from joint and several liability in one of three ways:

- (1) a release from all liabilities because the innocent spouse had no knowledge of any understatements or deficiencies; (2) partial liability if the spouses are now divorced or separated and the innocent spouse elects to have her liability limited to only items

96. *Id.* at § 4.11.34.3.3.

97. *Id.* at § 4.11.34.4.2.

98. *Id.* at § 4.11.34.4.1.

99. *Id.* at § 4.11.34.3.3. Furthermore, if the examiner communicates with the non-requesting spouse, the Internal Revenue manual specially states the examiner may not give out the requesting spouse’s name, address, phone number, or place of employment. *Id.* at § 25.15.6.3.1. The Internal Revenue details specific procedures if the requesting spouse alleges abuse or fears retaliation.

100. *Id.* at § 4.11.34.3.4–5, 4.2 (stating the procedural review process can overturn determinations if harm would come to the taxpayer because of the wrong determination). Because the centralized office handles innocent spouse relief claims, correspondence with the non-requesting spouse will not reveal the location of the requesting spouse. *Id.* at § 25.15.6.3.1.2. Field offices can have the centralized office or an innocent spouse relief coordinator contact the non-requesting spouse in situations of alleged abuse or fear in order to add a layer of concealment. *Id.*

101. *Id.* at § 4.11.34.8.

102. Jacqueline Clarke, *(In)equitable Relief: How Judicial Misconceptions about Domestic Violence Prevent Victims from Attaining Innocent Spouse Relief Under I.R.C. § 6015(F)*, 22 AM. U. J. GENDER SOC. POL’Y & L. 825, 827–28 (2014).

which would be allocable to her; and (3) discretionary equitable relief for those taxpayers who can demonstrate that full payment of the liability would be unfair because of the presence of factors like economic hardship and abuse.¹⁰³

Essentially, the IRS looks at the tax return and the spouse's financial situation to determine "who 'owns' the income and should owe tax on that income."¹⁰⁴ The specific innocent spouse relief provision is the first aforementioned listed exception to joint and several liability.

In order to qualify for innocent spouse relief, the spouse must demonstrate four specific elements: (1) the tax return must have been a joint return; (2) "[t]here is an understated tax on the return that is due to erroneous items . . . of [the applicant's] spouse (or former spouse);"¹⁰⁵ (3) the applicant had no actual knowledge or reason to know that the tax return was erroneous;¹⁰⁶ and (4) "[t]aking into account all the facts and circumstances, it would be unfair to hold [the innocent spouse] liable for the understated tax."¹⁰⁷ A spouse must demonstrate all elements, by filing Form 8857—Request for Innocent Spouse Relief, in order for the IRS to grant relief.¹⁰⁸ However, for the last element, the IRS weighs many factors listed in Revenue Procedure 2013-34 to determine the equity of holding a spouse liable for the tax.¹⁰⁹ The filing time restriction for filing

103. *Id.*

104. McMahon, *supra* note 11, at 163.

105. IRS, PUBLICATION 971—MAIN CONTENT (Oct. 2014), https://www.irs.gov/publications/p971/ar02.html#en_US_201408_publink100098623.

Erroneous items are income that the spouse did not report or deductions the spouse improperly used. *Id.*

106. *Id.*; see also Clarke, *supra* note 102, at 827–28. The innocent spouse relief was promulgated to protect spouses that had no control or knowledge regarding the financial affairs of their family. Book, *supra* note 79. The IRS considers two different tests of knowledge: actual knowledge and reason to know. PUBLICATION 971, *supra* note 105. In regards to reason to know, the IRS asks whether "a reasonable person in a similar circumstance would have known of the understated tax." *Id.* Although, when analyzing whether the spouse had reason to know of the understatement, the IRS takes into account the educational background of the spouse, the participation in the activity (i.e. earning the unreported income), the significance of the erroneous item compared to other items, departures from prior year's tax returns, and whether the spouse should have questioned the item. *Id.*

107. *Id.*; McMahon, *supra* note 11, at 149.

108. PUBLICATION 971, *supra* note 105. Form 8857 is seven pages long and walks the filer through the four elements by asking questions about the tax return, the educational background of the filer, any domestic abuse issues, how the tax return was prepared, the filer's financial role in the former-marital unit, the filer's current situation, and a section for additional information. IRS, FORM 8857—REQUEST FOR INNOCENT SPOUSE RELIEF (Jan. 2014), <https://www.irs.gov/pub/irs-pdf/f8857.pdf>.

109. Rev. Proc. 2013-34, 2013-43 I.R.B. 397; PUBLICATION 971, *supra* note 105.

for federal innocent spouse relief is two years from the start of collection of the unpaid tax.¹¹⁰

Congress promulgated the innocent spouse relief provision to protect spouses that had no control or knowledge regarding the financial affairs of their family.¹¹¹ The IRS considers two different tests of knowledge: actual knowledge and reason to know.¹¹² In regards to “reason to know,” the IRS asks whether “a reasonable person in a similar circumstance would have known of the understated tax.”¹¹³ Although, when analyzing whether the spouse had reason to know of the understatement, the IRS takes into account the educational background of the spouse, the participation in the activity (for instance, earning the unreported income), the significance of the erroneous item compared to other items, departures from prior year’s tax returns, and whether the spouse should have questioned the item.¹¹⁴

In weighing the “totality of the circumstances” element, the IRS considers factors such as: whether the applicant received a benefit from the understated tax, whether the applicant is divorced or separated from her spouse, whether there is an economic hardship from the liability, whether the innocent spouse made a good faith effort to comply with tax laws, the mental and physical health of the innocent spouse,¹¹⁵ and whether the former spouse abused the innocent spouse.¹¹⁶ Abuse is a factor that is afforded the most weight.¹¹⁷ However, alleged abuse does not mean the spouse will be granted relief.¹¹⁸ “[A]buse can be outweighed by other factors.”¹¹⁹

The IRS does not grant exceptions for victims of domestic abuse.¹²⁰ Both Publication 971 and Form 8857—Request for Innocent Spouse Relief warn that the IRS must contact the former spouse regarding the innocent spouse’s filing for relief.¹²¹ The IRS allows the former spouse to

110. PUBLICATION 971, *supra* note 105. The two-year filing time restriction does not apply to Section 6015(f) cases. *Lantz v. Comm’r*, 607 F.3d 479 (7th Cir. 2010).

111. Book, *supra* note 79.

112. PUBLICATION 971, *supra* note 105.

113. *Id.*

114. *Id.*

115. *Id.*

116. McMahon, *supra* note 11, at 151.

117. *Id.*

118. *Id.* at 151–52. In 60.17% of innocent relief filings, the spouse alleged abuse and lost on the abuse factor. *Id.* However, 14.75% of filers alleging abuse still won relief overall. *Id.*

119. *Id.* at 179.

120. PUBLICATION 971, *supra* note 105.

121. *Id.*; FORM 8857, *supra* note 108.

participate in the process.¹²² However, the IRS states it will not disclose the applicant's current name, address, phone number, or employer to the former spouse.¹²³

There are many avenues a taxpayer or non-requesting spouse can take to appeal an unfavorable decision by the IRS. If the first innocent spouse relief claim is denied, the spouse may file a second claim.¹²⁴ However, the second claim (or reconsideration) has no tax court appeal rights.¹²⁵ Individuals who receive an unfavorable determination of relief from the IRS may appeal to the judicial system.¹²⁶ The Tax Court has primary jurisdiction over innocent spouse relief cases, but the federal courts have heard innocent spouse relief cases as well.¹²⁷ However, generally the courts uphold the decision of the IRS.¹²⁸

If the non-requesting spouse disagrees with the IRS's determination in favor of the requesting spouse, he can file a Form 12509, Statement of Disagreement.¹²⁹ The non-requesting spouse must write a narrative stating why he believes that he should not be responsible for the tax or why the requesting spouse is responsible for the tax.¹³⁰

Both the non-requesting spouse and the requesting spouse may file Form 12203, Request for Appeals Review, if either receives an unfavorable determination.¹³¹ The filer must state the determination that she disagrees with and the reasons why she disagrees with that determination.¹³² If the additional tax or penalty is above \$25,000, the taxpayer must file a formal written request in order to submit to an Appeals Review.¹³³

If the innocent spouse cannot file for relief from the IRS through the innocent spouse provision, there are other ways a spouse may seek relief. The spouse can seek contribution from the other spouse using the judicial

122. FORM 8857, *supra* note 108.

123. *Id.*

124. *Innocent Spouse Questions & Answers*, *supra* note 85.

125. *Id.*

126. U.S. GEN. ACCT. OFF., *supra* note 83, at 27.

127. *Id.* at 28.

128. *Id.* at 27 (stating the decision is upheld either in part or whole).

129. IRS, FORM 12509, STATEMENT OF DISAGREEMENT (Jan. 2005), https://www.irs.gov/pub/irs-access/f12509_accessible.pdf.

130. *Id.*

131. IRS, FORM 12203, REQUEST FOR APPEALS REVIEW (Feb. 2016), <https://www.irs.gov/pub/irs-pdf/f12203.pdf>.

132. *Id.*

133. *Preparing a Request for Appeals*, IRS (Nov. 6, 2015), <https://www.irs.gov/Individuals/Preparing-a-Request-for-Appeals-1>.

system after the tax liability has been assessed.¹³⁴ The spouse can negotiate with the IRS regarding payment of the liability.¹³⁵ The IRS will set up an installment agreement or agree to an offer-in-compromise.¹³⁶ Otherwise, the IRS may designate the liability as “currently not collectible” so collections efforts are stalled until the taxpayer can afford to pay the liability.¹³⁷

B. Michigan Innocent Spouse Relief

Michigan requires married couples that file jointly federally to file jointly in Michigan.¹³⁸ Therefore, both spouses are also responsible jointly and severally for a Michigan tax liability.¹³⁹ However, Michigan grants relief from the joint and several provision through its innocent spouse relief provision.¹⁴⁰ The IRS instructs the non-requesting spouse to narrate factors similar to the innocent spouse relief form: education background, financial background, and occupation.¹⁴¹

Michigan’s innocent spouse relief is modeled after the Internal Revenue Code and IRS regulations.¹⁴² The applicant should file and receive a determination from the IRS granting federal relief before seeking innocent spouse relief from the Michigan Department of Treasury.¹⁴³ Similar to the federal relief provisions, the applicant has two years from when the Department begins collection efforts to file for innocent spouse relief.¹⁴⁴ An applicant may request relief by sending a written letter requesting relief and the federal relief determination to the Michigan Department of Treasury.¹⁴⁵

134. McMahon, *supra* note 11, at 154 (giving an example of another way an innocent spouse can get relief).

135. *Id.* at 155. An offer-in-compromise is an agreement with the IRS stating the taxpayer only has to pay a percentage less than the total amount of the liability. *Offer in Compromise*, IRS (Sept. 30, 2015), <https://www.irs.gov/Individuals/Offer-in-Compromise-1>.

136. McMahon, *supra* note 11, at 155.

137. *Id.*

138. MICH. DEP’T OF TREASURY, REVENUE ADMINISTRATIVE BULLETIN 2000-9 (Dec. 15, 2000), https://www.michigan.gov/documents/rab-2000-9_108786_7.pdf.

139. *Id.*

140. *Id.*

141. *Innocent Spouse—Online Self-Help Tool* (24), IRS (Aug. 3, 2016), [https://www.irs.gov/Individuals/INNOCENT-SPOUSE-Online-Self-Help-Tool-\(24\)](https://www.irs.gov/Individuals/INNOCENT-SPOUSE-Online-Self-Help-Tool-(24)).

142. REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138.

143. *Id.* However, if an applicant did not have a federal tax liability, the applicant must demonstrate the federal requirements in order to get Michigan relief. *Id.*

144. *Id.*

145. *Id.*

C. Innocent Spouse Relief—Other States

Overall, thirty-one states afford innocent spouse relief by statute, regulation, or treasury form.¹⁴⁶ Nine states do not have innocent spouse relief programs.¹⁴⁷ Ten states do not have innocent spouse relief because the relief is not applicable to its tax requirements.¹⁴⁸ The non-applicable states either do not have joint and several liability for married taxpayers or do not have a state personal income tax.

Table 1.

States that have ISR Relief Statutes, Regulations, or Forms¹⁴⁹	States that Do Not have ISR Relief Statutes, Regulations, or Forms¹⁵⁰	Not Applicable (States do not have joint and several liability or do not have personal income tax)¹⁵¹
31	9	10

1. Twenty-Five States Have Innocent Spouse Relief Statutes

Statutes provide authority for innocent spouse relief programs. Twenty-five states have innocent spouse relief statutes to guide the state's innocent spouse relief program. The statutes can be placed into two categories:

146. *See infra* Table 1.

147. *See infra* Table 1.

148. *See infra* Table 1.

149. *See infra* Appendix I (Alabama, Arizona, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Vermont, and Wisconsin).

150. *See infra* Appendix I (Arkansas, Delaware, Maryland, Nebraska, New Jersey, North Dakota, Rhode Island, Virginia, and West Virginia).

151. *See infra* Appendix I (Alaska, Florida, Missouri, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming).

Table 2.

Statutes that Use/Mention the Requirements of 6015 ¹⁵²	Statutes with State Requirements ¹⁵³
20	5

Twenty states have statutes that mention the requirements of the federal innocent spouse relief statute: Section 6015. The majority of state statutes within the first category state:

A spouse granted relief under 6015 of the Internal Revenue Code with regard to any income item is rebuttably presumed to be an innocent spouse with regard to that income item is included in . . . the calculation of the tax imposed under . . . the [state] Code.¹⁵⁴

In several states, the treasury department follows the provisions of Section 6015 in order to determine if relief should be granted for the state tax liability.¹⁵⁵ New York also adopted the provisions of Section 6015 and applies it to the same extent as the Federal government does; however, New York modifies the language of Section 6015 only to make

152. See ALA. CODE § 40-18-27(e) (2015); COLO. REV. STAT. ANN. § 39-22-107.5 (West 2001); GA. CODE ANN. § 48-7-86 (West 2015); HAW. REV. STAT. ANN. § 235-2.45 (West 2015); IDAHO CODE ANN. § 63-3022T (West 2015); IDAHO CODE ANN. § 63-3022T (West 2015); 35 ILL. COMP. STAT. ANN. 5/502 (West 2014); IOWA CODE ANN. § 422.21 (West 2009); IOWA ADMIN. CODE r. 701-38.15(422) (2017); KAN. STAT. ANN. § 79-32,209 (West 2015); KY. REV. STAT. ANN. § 141.180 (West 2015); ME. REV. STAT. ANN. tit. 36, § 5287 (2015); MINN. STAT. ANN. § 289A.31 (West 2012); MINN. R. 8160.0500 (2017); MISS. CODE ANN. § 27-7-31 (West 2015); MONT. CODE ANN. § 15-30-2646 (West 2013); N.C. GEN. STAT. ANN. § 105-153.8 (West 2014); N.Y. TAX LAW § 654 (McKinney 2014); OHIO REV. CODE ANN. § 5703.06 (West 2015); OKLA. STAT. ANN. tit. 68, § 2361 (West 2001); OR. REV. STAT. ANN. § 316.369 (West 2015); OR. ADMIN. R. 150-316.369 (2017); 72 PA. STAT. AND CONS. STAT. ANN. § 3310-212 (West 2002); S.C. CODE ANN. § 12-6-50 (2013); WIS. STAT. ANN. § 71.10 (West 2015).

153. See ARIZ. REV. STAT. ANN. § 42-2201 (2015); CAL. CODE REGS. tit. 18, §§ 5240-42 (West 2016); 1999 Conn. Acts 48 § 4; LA. STAT. ANN. § 47:101(b)(7) (2015); MASS. GEN. LAWS ANN. ch. 830, § 62C.84.1 (West 2015).

154. OHIO REV. CODE ANN. § 5703.06 (West 2015); see also KAN. STAT. ANN. § 79-32,209 (West 2015); KY. REV. STAT. ANN. § 141.180 (West 2015); ME. REV. STAT. ANN. tit. 36, § 5287 (2015); MINN. STAT. ANN. § 289A.31 (West 2012); MINN. R. 8160.0500 (2017); MISS. CODE ANN. § 27-7-31 (West 2015); N.C. GEN. STAT. ANN. § 105-153.8 (West 2014).

155. See HAW. REV. STAT. ANN. § 235-2.45 (West 2015); 35 ILL. COMP. STAT. ANN. 5/502 (West 2014); IOWA CODE ANN. § 422.21 (West 2009); IOWA ADMIN. CODE r. 701-38.15(422) (2017); 72 PA. STAT. AND CONS. STAT. ANN. § 3310-212 (West 2002).

the language consistent with other New York laws.¹⁵⁶ South Carolina specifically mentions Internal Revenue Code provisions not adopted by the state, but excepts the federal innocent spouse relief provision from the Internal Revenue Code provisions as a provision the state does follow.¹⁵⁷ Furthermore, in Kansas and Kentucky, the states include a clause regarding situations where a federal liability did not exist.¹⁵⁸ Both states will follow Section 6015 as if a federal tax liability existed.¹⁵⁹ Additionally, Oklahoma and Idaho make the same determination as the Internal Revenue Service.¹⁶⁰ However, in Oklahoma, the facts and circumstances must be the same for the federal liability as the state liability.¹⁶¹

While the factors and procedures are similar to Section 6015, five states have adopted their own requirements for seeking innocent spouse relief regarding state tax liability.¹⁶² In Louisiana, the innocent spouse relief factors are nearly identical to Section 6015; however, the state does not mention Section 6015 in its statute.¹⁶³ Therefore, Louisiana disregards any subsequent Congressional amendments to Section 6015. Louisiana would have to make the same amendments to its own Code. Massachusetts includes application procedural provisions in the statute.¹⁶⁴ Massachusetts states how the innocent spouse relief filer can seek a determination under the statute.¹⁶⁵ A filer must submit an application with an affidavit explaining her tax situation and attach specific tax documents: tax returns, federal determination letters, and the federal application.¹⁶⁶

156. N.Y. TAX LAW § 654 (McKinney 2014). For similar language, see also ALA. CODE § 40-18-27(e) (2015).

157. S.C. CODE ANN. § 12-6-50 (2013).

158. KAN. STAT. ANN. § 79-32, 209 (West 2015); KY. REV. STAT. ANN. § 141.180 (West 2015).

159. KAN. STAT. ANN. § 79-32, 209 (West 2015); KY. REV. STAT. ANN. § 141.180 (West 2015).

160. IDAHO CODE ANN. § 63-3022T (West 2015); MONT. CODE ANN. § 15-30-2646 (West 2013); OKLA. STAT. ANN. tit. 68, § 2361 (West 2001).

161. OKLA. STAT. ANN. tit. 68, § 2361 (West 2001).

162. ARIZ. REV. STAT. ANN. § 42-2201 (2015); CAL. CODE REGS. tit. 18, §§ 5240-42 (West 2016); 1999 Conn. Acts 48 § 4; LA. STAT. ANN. § 47:101 (b)(7) (2015); MASS. GEN. LAWS ANN. ch. 830 § 62C.84.1 (West 2015).

163. LA. STAT. ANN. § 47:101(b)(7) (2015).

164. MASS. GEN. LAWS ANN. ch. 830, § 62C.84.1 (West 2015).

165. *Id.*

166. *Id.*

2. Thirteen States Have Innocent Spouse Relief Forms

Six states have forms and publications that explain the state's innocent spouse relief program.¹⁶⁷ For example, in Illinois, married spouses who file a joint return are responsible for the entire liability jointly and severally.¹⁶⁸ However, innocent spouses may file for relief by filing the Illinois Department of Revenue Form IL-8857.¹⁶⁹ Although Illinois does not require a spouse to first file federally for relief, if the spouse has filed for federal relief, the spouse must attach federal Form-8857 and any determination from the IRS or judicial court.¹⁷⁰ Additionally, the applicant must send in original and amended federal and Illinois tax returns with her request for relief.¹⁷¹

The elements for potential entitlement to innocent spouse relief in Illinois are: (1) a joint return was filed; (2) "some liability shown on the return was not paid or some liability was not reported;" (3) if the spouse filed a separate return, she would not be liable for the liability created by the joint return;¹⁷² and (4) the spouse did not know of the error.¹⁷³ Illinois considers the explanation regarding the responsibility for the tax liability, as well as what portion of the tax the innocent spouse would be responsible for if she filed separately.¹⁷⁴ Therefore, an innocent spouse may be responsible for part of the tax liability.¹⁷⁵ As part of the filing for relief, on Form IL-8857, the innocent spouse must fill out an allocation

167. ARIZ. DEP'T OF REVENUE, PUBLICATION 300—INNOCENT SPOUSE (May 2009), <https://www.azdor.gov/portals/0/Brouchure/300.pdf>; CAL. FRANCHISE TAX BD., FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, <https://www.ftb.ca.gov/forms/misc/705.pdf> (last visited Nov. 29, 2015); ILL. DEP'T OF REVENUE, PUBLICATION 125—INJURED AND INNOCENT SPOUSE RELIEF (Apr. 2010), <http://www.revenue.state.il.us/publications/Pubs/Pub-125.pdf>; REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138; N.Y. DEP'T OF TAXATION & FIN., PUBLICATION 89—INNOCENT SPOUSE RELIEF (AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF) (Feb. 2015), <https://www.tax.ny.gov/pdf/publications/income/pub89.pdf>; PENN. DEP'T OF REVENUE, PA-971—RELIEF FROM JOINT LIABILITY (INNOCENT SPOUSE RELIEF), <http://www.revenue.pa.gov/formsandpublications/formsforindividuals/documents/advocate/pa-971.pdf> (last visited Feb. 7, 2016).

168. PUBLICATION 125—INJURED AND INNOCENT SPOUSE RELIEF, *supra* note 167.

169. ILL. DEP'T OF REVENUE, FORM IL-8857—REQUEST FOR INNOCENT SPOUSE RELIEF, <http://www.revenue.state.il.us/taxforms/Other/InjuredSpouse/IL-8857.pdf> (last visited Nov. 29, 2015).

170. PUBLICATION 125, *supra* note 167.

171. *Id.*

172. *Id.*

173. *Form IL-8857—Instructions*, ILL. DEP'T OF REVENUE, <http://www.revenue.state.il.us/taxforms/Other/InjuredSpouse/IL-8857-Instr.pdf> (last visited Nov. 29, 2015).

174. FORM IL-8857, *supra* note 169.

175. *Id.*

of liability worksheet to determine if some of the liability should still be allocated to the innocent spouse.¹⁷⁶

In California, people who file a joint tax return are responsible for paying the taxes, penalties, and interest jointly and severally.¹⁷⁷ For California taxpayers, there are two methods of seeking innocent spouse relief: the traditional innocent joint filer relief method¹⁷⁸ and the Internal Revenue Service relief method.¹⁷⁹ The applicant does not have to file for federal innocent spouse relief in order to potentially obtain California innocent spouse relief.¹⁸⁰ Furthermore, if the spouse does seek federal innocent spouse relief first, she can seek relief from California after receiving a federal determination.¹⁸¹ There is no filing time restriction attached to the IRS relief method in California.¹⁸²

In order to file for relief in California, the applicant must send the following documents to the Franchise Tax Board: (1) the FTB 705 form; (2) a statement of explanation regarding relief; (3) the state and federal tax returns for the years of requested relief; (4) IRS determination letter, if applicable; and (5) a divorce decree.¹⁸³ FTB 705 is a one-page form regarding the personal information of the applicant and contact

176. *Id.*

177. *Innocent Joint Filer Tax Liability Relief*, CAL. FRANCHISE TAX BD., <https://www.ftb.ca.gov/individuals/faq/innocentSpouseFAQ.shtml> (last visited Nov. 29, 2015).

178. *Id.* Under the traditional innocent joint filer relief method, the taxpayer must meet all of the following requirements: (1) a filing of a joint return; (2) the innocent spouse was unaware of the items causing the additional tax; (3) the other spouse created the liability; (4) the facts and circumstances make it unfair for the innocent spouse to have the liability; and (5) the innocent spouse filed the California Form, FTB 705—Innocent Joint Filer application, no later than two years after collection efforts began. *Id.*

179. *Id.* Under the IRS relief method, the taxpayer must meet the following requirements: (1) a filing of a joint return; (2) the innocent spouse filed the California Form, FTB 705—Innocent Joint Filer application; (3) the facts and circumstances are the same for California and the federal application; (4) the spouse provides the IRS determination letter; (5) relief was granted by the IRS for the same tax years; and (6) the spouses are divorced and documentation of the divorce is provided. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* However, note the federal filing time restriction is two years. PUBLICATION 971, *supra* note 105. Although, there is debate if the IRS still has a filing time restriction for innocent spouse relief. Compare Book, *supra* note 79, at 584, with PUBLICATION 971,, *supra* note 105. The IRS still notes the two year time requirement on its website. PUBLICATION 971,, *supra* note 105; see also *Two-Year Limit No Longer Applies to Many Innocent Spouse Requests*, IRS (Jul. 25, 2011), <https://www.irs.gov/uac/Two-Year-Limit-No-Longer-Applies-to-Many-Innocent-Spouse-Requests> (“By law, the two-year election period for seeking innocent spouse relief under the other provisions of section 6015 of the Internal Revenue Code, continues to apply.”).

183. *Innocent Joint Filer Tax Liability Relief*, *supra* note 177.

information of the former spouse.¹⁸⁴ The applicant's written personal statement details the facts and circumstances surrounding the need for relief.¹⁸⁵

In Arizona, spouses that file a joint return are responsible for the tax liability both jointly and severally, regardless of what a future divorce decree states.¹⁸⁶ However, if the applicant meets all the requirements, she may qualify for innocent spouse relief and be relieved of the tax liability.¹⁸⁷ The applicant only needs to file one Form 200, the innocent spouse relief form for Arizona, for all the years she seeks innocent spouse relief.¹⁸⁸ If the applicant filed for federal relief, the applicant will only have to complete the first page of the Arizona Form 200, sign the Form 200, and attach the federal Form 8857.¹⁸⁹ However, because Arizona does not require an applicant to first file with the U.S. government, if the applicant has not applied for federal relief, she must complete the rest of Form 200.¹⁹⁰

Nine states have form instructions that explain the form step-by-step.¹⁹¹ The publications explain how to file for innocent spouse relief in the state.¹⁹² The publications also detail the requirements for innocent

184. FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167.

185. *Id.*

186. PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167.

187. *Id.* The Arizona requirements are: (1) the spouses must have filed a joint tax return; (2) an understatement of tax is caused by an erroneous item attributable to the applicant's spouse or former spouse; (3) the applicant had no knowledge or reason to know of the error at the time of signing the return; and (4) the facts and circumstances make it unfair to hold the applicant accountable for the tax liability. *Id.*

188. *Id.*

189. ARIZ. DEP'T OF REVENUE, FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, https://www.azdor.gov/portals/0/ADOR-forms/TY2014/10100/10180_f.pdf (last visited Nov. 29, 2015).

190. *Id.*

191. *Id.*; Form CT-8857 Instructions, CONN. DEP'T OF REVENUE SERVS. (Jan. 2015), <http://www.ct.gov/drs/lib/drs/forms/2012forms/incometax/ct-8857.pdf>; Instructions for Form N-379 Request for Innocent Spouse Relief, HAW. DEP'T OF TAXATION (2012), <http://files.hawaii.gov/tax/forms/2012/n379ins.pdf>; Form IL-8857—Instructions, *supra* note 173; Form 84 Instructions, MASS. DEP'T OF REVENUE (Aug. 2012), <http://www.mass.gov/dor/docs/dor/forms/inctax00/pdfs/84.pdf>; Instructions for Form IT-285 Request for Innocent Spouse Relief, N.Y. DEP'T OF TAXATION & FIN. (Sept. 2015), https://www.tax.ny.gov/pdf/current_forms/it/it285i.pdf; PA 8857 General Instructions, PENN. DEP'T OF REVENUE (Oct. 2010), http://www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/Documents/Advocate/is_packet.pdf.

192. See, e.g., PUBLICATION 125—INJURED AND INNOCENT SPOUSE RELIEF, *supra* note 167.

spouse relief within the state.¹⁹³ Furthermore, the publications may also detail the other kinds of relief the spouse could receive if she does not meet the requirements of the state's innocent spouse relief program.¹⁹⁴

Eleven states have filing time restrictions indicated on the form or in a publication.¹⁹⁵ For example, in Connecticut and Arizona, taxpayers must file for relief "as soon as" they are aware or learn of the tax liability.¹⁹⁶ The majority of states with an explicit filing time restriction for filing a claim state the time period as two years from the start of collection activities (or similar activities).¹⁹⁷ Illinois has a filing time restriction of three years for filing for innocent spouse relief.¹⁹⁸

Six states consider a person for other forms of relief automatically with the IRS application.¹⁹⁹ In Arizona, the Department will consider all forms of relief—separation of liability and equitable relief—even if she is denied innocent spouse relief.²⁰⁰ California will review the application and FTB 705 form to determine if the innocent spouse qualifies for other relief.²⁰¹ The spouse need not submit another form in order to be considered for any other form of relief.²⁰²

193. See, e.g., PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167.

194. See, e.g., FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167.

195. FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, *supra* note 189; FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167; *Form CT-8857 Instructions*, *supra* note 191; *Instructions for Form N-379 Request for Innocent Spouse Relief*, *supra* note 191; *Form IL-8857—Instructions*, *supra* note 173; IOWA CODE ANN. § 422.21 (West 2009); *Form 84 Instructions*, *supra* note 191; REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138; LA. STAT. ANN. § 47:101(b)(7) (2015); PUBLICATION 89—INNOCENT SPOUSE RELIEF (AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF), *supra* note 167; PA-971—RELIEF FROM JOINT LIABILITY (INNOCENT SPOUSE RELIEF), *supra* note 167.

196. PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167; *Form CT-8857 Instructions*, *supra* note 191.

197. See, e.g., *Innocent Joint Filer Tax Liability Relief*, *supra* note 177.

198. *Id.*

199. FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, *supra* note 189; FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167; *Form CT-8857 Instructions*, *supra* note 191; *Instructions for Form N-379 Request for Innocent Spouse Relief*, *supra* note 191; PUBLICATION 89—INNOCENT SPOUSE RELIEF (AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF), *supra* note 167; PA-971—RELIEF FROM JOINT LIABILITY (INNOCENT SPOUSE RELIEF), *supra* note 167.

200. PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167.

201. *Innocent Joint Filer Tax Liability Relief*, *supra* note 177.

202. PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167; *Innocent Joint Filer Tax Liability Relief*, *supra* note 177.

Seven states explicitly warn the filer that the former spouse will have to be informed of the innocent spouse relief claim.²⁰³ Of those that inform the other spouse of the claim, most state that personal information will be kept confidential.²⁰⁴ California warns innocent spouses that it must notify the former spouse of the innocent spouse's application.²⁰⁵ The former spouse must be given the opportunity to appeal the decision of California and provide documentation regarding the application.²⁰⁶ However, the publication states that if the innocent spouse applicant requests her new name and address to be kept confidential, California will not disclose it to the former-spouse.²⁰⁷

Also, Arizona warns that it will contact the spouse or former spouse and ask if he would like to take part in the process.²⁰⁸ Furthermore, when a final determination is made, regardless if the spouse or former spouse participated in the process, a letter will be sent to the former spouse in case he wants to appeal.²⁰⁹ No exceptions will be made for victims of domestic abuse.²¹⁰ However, the department will not disclose an applicant's current name, address, phone number, employer, income or assets, or "any other information that does not relate to making a determination about [the applicant's] request for relief from liability."²¹¹

203. FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, *supra* note 189; FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167; *Form CT-8857 Instructions*, *supra* note 191; *Instructions for Form N-379 Request for Innocent Spouse Relief*, *supra* note 191; MINN. STAT. ANN. § 289A.31 (West 2012); PUBLICATION 89—INNOCENT SPOUSE RELIEF (AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF), *supra* note 167; PA-971—RELIEF FROM JOINT LIABILITY (INNOCENT SPOUSE RELIEF), *supra* note 167.

204. FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, *supra* note 189; FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167; *Form CT-8857 Instructions*, *supra* note 191; *Instructions for Form N-379 Request for Innocent Spouse Relief*, *supra* note 191; PUBLICATION 89—INNOCENT SPOUSE RELIEF (AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF), *supra* note 167; PA-971—RELIEF FROM JOINT LIABILITY (INNOCENT SPOUSE RELIEF), *supra* note 167.

205. *Innocent Joint Filer Tax Liability Relief*, *supra* note 177.

206. *Id.*

207. *Id.* The tax form states that the Franchise Tax Board will not release personal information. FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167.

208. *Arizona Form 200—Instructions*, ARIZ. DEP'T OF REVENUE, https://www.azdor.gov/portals/0/ADOR-forms/TY2014/10100/10180_inst.pdf (last visited Nov. 29, 2015).

209. *Id.*

210. *Id.*

211. *Id.*

A cautionary statement is placed on the instructions of Form 200²¹² and right above the signature line of Form 200.²¹³

Six states have a reference to domestic violence on their form.²¹⁴ For example, in Arizona, Form 200 asks the applicant for information about the spouse and applicant, the level of education the applicant achieved, the marital status, domestic violence issues, duress, physical and mental health problems, financial and return preparation involvement, and the current financial situation of the applicant.²¹⁵

Eight states do not require the taxpayer to file first with the federal government for innocent spouse relief.²¹⁶ In Indiana, there are four ways a person may be determined to qualify for innocent spouse relief: (1) the IRS determined the person qualified for innocent spouse relief for her federal return for the same years as she is applying for in Indiana; (2) the applicant was unaware the income was not reported on the tax return or she had no access to the income; (3) the innocent spouse did not earn the compensation that was not reported; or (4) all the income was the spouse's income, and the applicant filed and paid her tax that was due.²¹⁷ The applicant must file the innocent spouse worksheet and attach the required documents to the worksheet.²¹⁸ The worksheet serves as an allocation of responsibility for the liability; therefore, the innocent

212. *Id.*

213. FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, *supra* note 189.

214. *Id.*; Form CT-8857 Instructions, *supra* note 191; Instructions for Form IT-285 Request for Innocent Spouse Relief, *supra* note 191; PA 8857 General Instructions, *supra* note 191; S.C. DEP'T OF REVENUE, SC 8857 REQUEST FOR INNOCENT SPOUSE RELIEF (Oct. 10, 2013), https://dor.sc.gov/forms-site/Forms/SC8857_10102013.pdf; UTAH STATE TAX COMM'N, TC 8857 REQUEST FOR INNOCENT SPOUSE RELIEF (Nov. 2011), <http://tax.utah.gov/forms/current/tc-8857.pdf>.

215. Arizona Form 200—Instructions, *supra* note 208.

216. FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF, *supra* note 189; FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167; Form CT-8857 Instructions, *supra* note 191; Form IL-8857—Instructions, *supra* note 173; IND. DEP'T OF REVENUE, IN-40SP, INDIANA INNOCENT SPOUSE ALLOCATION WORKSHEET (Mar. 2004), <https://forms.in.gov/download.aspx?id=7252>; PUBLICATION 89—INNOCENT SPOUSE RELIEF (AND SEPARATION OF LIABILITY AND EQUITABLE RELIEF), *supra* note 167; OKLA. STAT. ANN. tit. 68, § 2361 (West 2001); SC 8857 Request for Innocent Spouse Relief, *supra* note 214.

217. IN-40SP, INDIANA INNOCENT SPOUSE ALLOCATION WORKSHEET, *supra* note 216.

218. *Id.* The applicant must attach the federal tax return for the year claimed, all W-2s of both spouses, a detailed letter regarding the reasons for seeking innocent spouse relief, the Indiana tax returns for the year claimed, and the approved IRS innocent spouse relief form, if applicable. *Id.*

spouse may still have some liability.²¹⁹ Additionally, the applicant does not need to file for federal relief before seeking Indiana state relief.²²⁰

3. Department of Revenue Websites: Webpage Devoted to Innocent Spouse Relief

Webpages provide the public better access to innocent spouse relief information and relevant forms. Of the thirty-one states that have an innocent spouse relief tax program, only twelve have a webpage devoted to innocent spouse relief information.²²¹ The webpages range from providing information about the innocent spouse relief program as well as links to forms and publications to a Question and Answer page with a small paragraph devoted to innocent spouse relief explanations.²²² Various states provide contact information to divisions within the Department of Revenue (or equivalent) for taxpayers with specific innocent spouse relief questions.²²³

219. *Id.*

220. *Id.*

221. See *infra* Table 3.

222. *Individual Income Tax Frequently Asked Questions*, ARIZ. DEP'T OF REVENUE, <https://www.azdor.gov/About/FAQs/Individual.aspx> (last visited Mar. 28, 2016); *Innocent Joint Filer Tax Liability Relief*, *supra* note 177; *Individual Income Tax—Quick Answers*, COLO. DEP'T OF REVENUE, <https://www.colorado.gov/pacific/tax/individual-income-tax-quick-answers> (last visited Mar. 28, 2016); *SN 99(15) Innocent Spouse Relief, Separation of Liability, and Equitable Relief*, CONN. DEP'T OF REVENUE SERVS. (Mar. 30, 2000), <http://www.ct.gov/drs/cwp/view.asp?A=1514&Q=268778>; *Innocent Spouse Relief*, GA. DEP'T OF REVENUE, <https://dor.georgia.gov/innocent-spouse-relief> (last visited Mar. 28, 2016); *Innocent Spouse Program*, MINN. REVENUE, http://www.revenue.state.mn.us/individuals/individ_income/Pages/Innocent_Spouse_Allocation_Program.aspx (last visited Mar. 28, 2016); *Frequently Asked Questions*, MONT. DEP'T OF REVENUE, <http://revenue.mt.gov/home/individuals#Frequently-Asked-Questions-745> (last visited Mar. 28, 2016); *Collections: Innocent Spouse Relief*, N. MEX. TAXATION & REVENUE, <http://www.tax.newmexico.gov/Individuals/collections.aspx?6d98d2c65bcf421d92eb4ba14a059f76blogPostId=b500e4667a9f49e2a3a7ed4addcdff2e> (last visited Mar. 28, 2016); *Innocent Spouse (Relief from Joint Liability)*, N.Y. DEP'T OF REVENUE (Feb. 10, 2016), https://www.tax.ny.gov/pit/file/innocent_spouse.htm; *Offer In Compromise*, OHIO ATT'Y GEN., <http://www.ohioattorneygeneral.gov/Business-and-Non-Profits/Collections/Offer-in-Compromise> (last visited Mar. 28, 2016); *Innocent Spouse Relief Eligibility Explorer*, PENN. DEP'T OF REVENUE, <http://www.revenue.pa.gov/GetAssistance/TaxpayersRightsAdvocate/Pages/Innocent%20Spouse%20Relief.aspx#.VvsqIUVJfww> (last visited Mar. 28, 2016); *Innocent or Injured Spouse*, UTAH STATE TAX COMM'N (Dec. 13, 2012), <http://tax.utah.gov/extension/innocent>.

223. See, e.g., *Innocent Joint Filer Tax Liability Relief*, *supra* note 177.

Table 3.

Webpage	No Webpage
12	19

4. Offer-in-Compromise

Similar to the federal government, several states have an offer-in-compromise program as an alternative or in addition to innocent spouse relief.²²⁴ Eight of the nine states that do not have innocent spouse relief programs have an offer-in-compromise or equivalent program.²²⁵ In an offer-in-compromise program, a taxpayer can make an offer of a sum of tax to pay in order to settle the tax due bill.²²⁶ In Arkansas, the offer-in-

224. See, e.g., ARK. DEP'T OF FIN. & ADMIN., FORM 2000-4 (Apr. 2012), http://www.dfa.arkansas.gov/offices/policyAndLegal/Documents/2000_4_form.pdf; CAL. FRANCHISE BOARD, FTB 4905 PIT BOOKLET—OFFER IN COMPROMISE FOR INDIVIDUALS (Apr. 2009), <https://www.ftb.ca.gov/forms/misc/4905pit.PDF>; *Offer in Compromise*, DEL. (Jan. 25, 2013), http://revenue.delaware.gov/services/Collections/Offer_In.shtml; *Offers in Compromise Forms and Instructions*, COMPTROLLER OF MD., http://taxes.marylandtaxes.com/Resource_Library/Tax_Forms_and_Instructions/Tax_Compliance_Forms/Offer_in_Compromise_Forms_and_Instructions.shtml (last visited Mar. 28, 2016); *Offer in Compromise*, MO. DEP'T OF REVENUE, <http://dor.mo.gov/pros/compromise.php> (last visited Mar. 28, 2016); *Rules for the Collection of Delinquent Taxes*, NEB. DEP'T OF REVENUE, <http://www.revenue.nebraska.gov/legal/regs/collections.html> (last visited Mar. 28, 2016); *Request for Offer in Compromise*, NEV. DEP'T OF TAXATION, <http://tax.nv.gov/Forms/OIC/> (last visited Mar. 28, 2016); *Form 906—Closing Agreement Request*, N.J. DIV. OF TAXATION (Feb. 2012), http://www.state.nj.us/treasury/taxation/pdf/other_forms/special_pro/906.pdf; *Offer in Compromise Program*, N.Y. DEP'T OF REVENUE (July 11, 2014), <https://www.tax.ny.gov/enforcement/collections/oic.htm>; OHIO ATT'Y GEN., *supra* note 222; *Settlement Offers*, OR. DEP'T OF REVENUE, <https://www.oregon.gov/DOR/programs/individuals/Pages/settlement-offers.aspx> (last visited Mar. 28, 2016); *Offer in Compromise*, R.I. DEP'T OF REVENUE (Dec. 2012), <http://www.tax.ri.gov/forms/2013/Collections/Offer%20In%20Compromise.pdf>; *Offer in Compromise—Individual Request for Settlement*, VA. DEP'T OF TAXATION, <http://www.tax.virginia.gov/sites/tax.virginia.gov/files/taxforms/Business/Miscellaneous/OIC-Ind.pdf> (last visited Mar. 28, 2016); *Offer in Compromise*, W. VA. STATE TAX DEP'T (Apr. 2005), <http://tax.wv.gov/Documents/TaxForms/cd3.pdf>.

225. These states are: Arkansas, Delaware, Maryland, Nebraska, New Jersey, Rhode Island, Virginia, and West Virginia.

226. See *supra* note 225.

compromise cannot be “zero or practically zero.”²²⁷ In Missouri, the amount of the offer-in-compromise must be greater than the collection potential of the taxpayer’s tax due.²²⁸

5. State Appeals Process

The appeals process for offers-in-compromise and innocent spouse relief determinations differ significantly. Offers-in-compromise cannot be appealed by the taxpayer.²²⁹ The agreement she makes and signs, binds the taxpayer.²³⁰ However, generally, the taxpayer may appeal innocent spouse relief determinations.²³¹ In several states, the taxpayer can appeal by requesting a formal hearing.²³² In Hawaii and Minnesota, the taxpayer may petition the court for a review of the determination.²³³ However, in Ohio, just like the offer-in-compromise, an innocent spouse relief determination is not appealable.²³⁴

IV. LIMITATIONS OF THE INNOCENT SPOUSE RELIEF IN MICHIGAN

Although Michigan’s innocent spouse relief has its own limitations related to its process for granting innocent spouse relief and the information regarding Michigan innocent spouse relief, Michigan also suffers from the inherent limitations from the federal innocent spouse relief. Michigan inherits the federal innocent spouse relief limitations because Michigan’s innocent spouse relief is directly connected to the federal innocent spouse relief provisions.²³⁵ Michigan’s innocent spouse relief compounds the problems with the federal innocent spouse relief. However, Michigan additionally has issues relating to the accessibility of its innocent spouse relief information.

227. FORM 2000-4, *supra* note 224.

228. MO. DEP’T OF REVENUE, *supra* note 224.

229. *See, e.g.*, FORM 2000-4, *supra* note 224.

230. *See, e.g., id.*

231. *See, e.g., Innocent Joint Filer Tax Liability Relief, supra* note 177.

232. *See, e.g., id.; SN 99(15) Innocent Spouse Relief, Separation of Liability, and Equitable Relief, supra* note 222.

233. *Instructions for Form N-379 Request for Innocent Spouse Relief, supra* note 191; *Innocent Spouse Program, supra* note 222.

234. *Offers in Compromise—Frequently Asked Questions*, OHIO ATT’Y GEN., http://www.ohioattorneygeneral.gov/Files/Forms/Forms-for-Business-and-Nonprofit/Collections-Forms/Offer-in-Compromise/2011-3-25_OICFAQ_CE-pdf.aspx (last visited Mar. 28, 2016).

235. REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138 (stating an applicant should look to federal provisions and laws to determine filing requirements).

The two-year filing time restriction hurts innocent spouses who are unaware of collection efforts against them, the former spouse deceived the innocent spouse, or she is too intimidated to take action.²³⁶ For domestic violence survivors who fear their former spouse or are focused on life activities (such as finding a new home and new employment), two years is not enough time to file for relief. Furthermore, in Michigan, in order to apply for innocent spouse relief, the survivor must seek IRS approval of her federal application for innocent spouse relief before applying to Michigan.²³⁷ After IRS approval, the survivor may send in the federal approval plus explanatory information to Michigan, but must do so before the two-year filing time restriction ends.²³⁸ Therefore, the survivor may lose out on relief from Michigan if the collection efforts begin in Michigan and she is unaware of it, and she must file for relief from the federal government first. The survivor does not receive a stay of the Michigan filing time restriction while trying to seek federal relief.

For example, Michigan began sending tax deficiency notices in an attempt to collect the tax liability to the former house of the woman in the introduction, Sarah. Joe still lives in the house but has been disregarding the notices. Sarah is unaware of the notices because she neither lives in the house and, even if Joe did know where Sarah currently lives, Joe would not tell Sarah about the tax deficiency. Therefore, after six months of notices, when Michigan began garnishing Sarah's wages from her job, she received her first actual notice of the deficiency. At that point, Sarah will have to file for federal innocent spouse relief quickly before she can file in Michigan. However, the filing time restriction for Michigan has already elapsed by six months.

Additionally, innocent spouse relief is not well known to taxpayers.²³⁹ So, even if the domestic violence survivor is aware of collection efforts, she may not be aware of her rights regarding innocent spouse relief, especially if she is not financially literate or particularly versed in tax law.²⁴⁰ In fact, if she could not protect herself in the first place from her former spouse's tax fraud, she probably does not

236. Alistair M. Nevius, *Two-Year Innocent Spouse Limitation Period Upheld Again*, THE TAX ADVISOR (Aug. 1, 2011), <http://www.thetaxadviser.com/issues/2011/aug/newsnotes-aug2011.html>.

237. REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138, at 2.

238. *Id.*

239. After presenting in Professor Brenner's Domestic Violence class on November 30, 2015, this fact was made more apparent to me. I received comments such as: "I didn't know that kind of relief existed," "That's a good thing to know for my future clients," and "Oh my, how am I going to navigate that form for my clients?!"

240. Book, *supra* note 79, at 520.

understand tax laws or procedures regarding how to protect herself from the tax liability after the IRS informed her of the tax deficiency.²⁴¹

Even though Sarah did not complete the finances while married to Joe, Sarah now uses an online tax no-cost program to file her taxes. She can follow the prompts of the tax program to complete her taxes, but anything outside of what the tax program asks her to input, she does not know what to do to solve her situation. Many low-cost programs cannot walk an individual through filing an innocent spouse relief form.²⁴² After researching relief options for one month and finding the innocent spouse relief form, she begins to think that she might need professional assistance because she does not understand what she needs to do for Michigan's innocent spouse relief. Now, a total of seven months have elapsed in the filing time restriction period.

Although the IRS provides step-by-step instructions regarding how to navigate Form 8857, the domestic abuse survivor may need to seek help from a tax-attorney or CPA. The IRS looks for certain facts and circumstances to weigh in favor of granting relief. A tax-attorney or CPA will have the requisite knowledge to help navigate the form and correctly fill it out.²⁴³ However, Michigan does not have a form to fill out or explicit instructions regarding filing for innocent spouse relief; a domestic violence survivor will need to seek the advice of a professional versed in Michigan innocent spouse relief tax law in order to properly file for relief.

However, tax attorneys and CPAs are expensive. In 2013, a tax-attorney's billable rate in Michigan ranged from \$250–\$500 per hour.²⁴⁴ In 2014, a CPA's billable rate in the United States ranged from \$125–\$312 per hour.²⁴⁵ If a domestic violence survivor cannot afford the tax

241. *Id.* at 524–25.

242. *H&R Block More Zero*, H&R BLOCK, <https://www.hrblock.com/online-tax-filing/free-online-tax-filing/> (last visited Mar. 29, 2017) (limiting the free assistance to 1040EZ, 1040A, and 1040 with Schedule A); *Supported Federal Forms*, TAX SLAYER, <https://www.taxslayer.com/Links/FederalForms> (last visited Mar. 29, 2017) (listing Form 8379-Injured Spouse but not Form 8857-Innocent Spouse Relief). *But see TurboTax FAQ*, INTUIT TURBOTAX, <https://ttlc.intuit.com/questions/1901549-what-is-an-innocent-spouse-and-how-does-it-differ-from-an-injured-spouse> (last visited Mar. 29, 2017) (stating how to access the innocent spouse relief form in the TurboTax software).

243. Pareja, *supra* note 8, at 275.

244. *Economics of Law Practice 2014*, STATE BAR OF MICH. (Jul. 2014), <http://www.michbar.org/file/pmr/articles/0000151.pdf>.

245. 2014 *National Map Survey—Commentary*, AICPA, <http://www.aicpa.org/InterestAreas/PrivateCompaniesPracticeSection/FinancialAdminOperations/NationalMAPSurvey/DownloadableDocuments/national%20map-survey%20commentary.pdf> (last visited Dec. 4, 2015).

liability deficiency, she likely cannot afford to pay a tax attorney or CPA their billable rates to help her.

In the case of Sarah, all her minimum wage earnings go to paying for her apartment and bills. She does not have surplus in her budget to pay for legal or tax help. One hour from a tax-attorney or a CPA could cost her a half-month of rent. Sarah searches for three months—because she does not have many personal days from her minimum wage job she can use—for an affordable CPA or tax-attorney. She has been taking advantage of firm's free initial consultations, but each time she asks about subsequent fees, she discovers the professional rates are just too high for her already stretched budget. Sarah probably believes that she would be better off with help from a CPA or tax-attorney, but because she cannot afford it, she will just have to risk navigating the forms and procedures herself. By now, ten months have elapsed in the Michigan filing time restriction.

Furthermore, the IRS and Michigan procedures for weighing the facts and circumstances are not transparent to taxpayers. The facts and circumstances inquiry does not allow prospective innocent relief spouses to determine, before they file, if they will be granted relief.²⁴⁶ The innocent spouse does not know before filing how many factors she needs or how detailed she should explain the factors in order to be granted relief.²⁴⁷ The domestic violence survivor will have to hope that the IRS agent reviewing her application believes that her factors are enough to grant relief. But, do all IRS agents review the applications the same way, affording the same weight to the same factors between different people? The process is not transparent in that regard. Two similarly situated innocent spouses may get two different outcomes, but they will not know why.

Similarly, Michigan's process is not transparent; it is even less so than the federal process. Michigan's innocent spouse relief information is a four-page bulletin.²⁴⁸ Other than stating Michigan follows the Internal Revenue Code, it does not state exactly how a determination is decided.²⁴⁹

A domestic violence survivor's anonymity and confidentiality are lost because the non-requesting party has a right to participate in the federal relief process.²⁵⁰ The IRS must contact the other spouse, and

246. McMahon, *supra* note 11, at 151.

247. Taxpayers can apply for federal relief more than once, but it takes additional time from the filing time restriction.

248. REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138.

249. *See id.*

250. Pareja, *supra* note 8, at 275.

inform the spouse that an application for innocent spouse relief has been filed.²⁵¹ Many victims may forgo the innocent spouse relief process to avoid contact with their abuser.²⁵² Even if the IRS can keep the information confidential, if the domestic violence survivor receives an unfavorable determination from the IRS, they may forgo appealing the determination because petitioning spouses do not have their information automatically marked confidential by the tax court.²⁵³ This is a limitation because abusers may be able to obtain the contact information of the survivor, and harass, stalk, or commit violence against them.

Michigan's innocent spouse relief does not contain a statement regarding confidentiality of information. Should a domestic violence survivor assume that because Michigan follows the Internal Revenue Code and IRS promulgations, Michigan also follows the same confidentiality provisions? No, confidentiality protections should be explicit; especially when the applicant is a survivor of domestic abuse.

For instance, Sarah has been anxiously debating whether or not to file for innocent spouse relief. She does not want to pay the \$5,000 tax deficiency, but she also does not want to potentially anger Joe by filing and making him pay it. She has been able to quietly move across town and Joe does not know exactly where she lives. Sarah thinks that if she files for relief, Joe will put more effort into locating her new apartment and harass her. After four months of debating with herself, Sarah decides to file for innocent spouse relief because she cannot spare a dime to pay for the tax deficiency. By this time, a total of fourteen months have elapsed since Michigan started sending tax deficiency notices.

The IRS denies relief to a spouse who has a reason to know there was an understatement of tax.²⁵⁴ In evaluating the "reason to know" standard, the IRS asks whether "[a] reasonable person in similar circumstances would have known of the understated tax."²⁵⁵ It is difficult to evaluate what "a reasonable person" in regards to domestic violence would do because domestic violence survivors do not all act the same way.²⁵⁶ Reasonable person standards in the context of domestic violence largely disregard the actualities of the survivor's position.²⁵⁷ Feminist

251. IRS, PUBLICATION 971, 3 (October 2014), <http://www.irs.gov/pub/irs-pdf/p971.pdf>.

252. Pareja, *supra* note 8, at 275.

253. *Id.*

254. *Id.*

255. *Id.*

256. Michigan State College of Law Domestic Violence Class Discussion: Battered Women as Defendants: Available Defenses (Nov. 2, 2015).

257. See Naomi R. Cahn, *Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398, 1402 (1992).

theory scholars argue that the reasonable person standard reflects gender bias by ignoring the differences between men and women.²⁵⁸ Michigan's innocent spouse relief compounds this inherent limitation in the federal innocent spouse relief by adopting the federal innocent spouse relief as a whole and not explaining the reasonable person standard it uses to evaluate the application for relief.

Although Form 8857 has specific sections regarding domestic violence, the procedures regarding filing for relief are not conducive to domestic violence survivors. The filing time restriction is too short; the form is unmanageable to people who are not financially literate; there are confidentiality issues and fears regarding the abuser learning about the request for relief; and the process regarding facts and circumstances is not transparent before filing for relief. Domestic abuse survivors are a unique group of people, and they have special interests and need special procedures designed for their unique situations.²⁵⁹ In the case of Sarah, her prospects of both timely filing for Michigan innocent spouse relief and properly navigating the IRS and Michigan procedures for filing innocent spouse relief are very low. If her limited tax knowledge can help her file Form 8857 correctly, by the time she receives a determination, the filing time restriction for Michigan may have already expired.

Furthermore, the limitations of the innocent spouse relief program in Michigan are more prominent in emotional, psychological, and financial abuse situations. It is unclear how undocumented psychological, emotional, financial abuse factors into the domestic violence factor of innocent spouse relief. Physical abuse victims can clearly substantiate the abuse with police reports, medical documents, and photographs. However, nonviolent abuse victims do not have the same documentation to substantiate their claims. It is unclear how the IRS and Michigan respond to claims of nonviolent abuse and factor it into its innocent spouse relief determination.

For example, taxpayer Anna has medical records and police reports of the physical abuse she endured by the hands of her husband. The Internal Revenue Manual states agents must follow certain procedures, such as confidentiality and use of a taxpayer advocate to respond to the former spouse, when the filing spouse, through the application or other correspondence, presents domestic violence information with the filer.²⁶⁰ However, it does not address the amount of weight given to a domestic violence determination—and specifically a nonviolent domestic violence

258. *Id.* at 1401.

259. *Id.* at 1411.

260. INTERNAL REVENUE MANUAL, *supra* note 86, at § 25.15.6.3.1.

situation. Additionally, Michigan does not have a Michigan Revenue Manual to clarify its position regarding tax issues—specifically domestic violence and its innocent spouse relief determinations. Although Sarah and Anna suffered different domestic violence situations, the trauma—whether physical or mental—is life altering regardless of how it was inflicted upon them.

The IRS states it may take up to six months for a claim to be processed and a decision rendered.²⁶¹ Sarah may get a final decision regarding her application for innocent spouse relief from the IRS after twenty months since Michigan began collection efforts against her. If Sarah does not receive a favorable decision from the IRS, therefore requiring her to appeal, she might not be able to apply for innocent spouse relief before the Michigan statute of limitations expires. As mentioned above, the two-year filing time restriction hurts innocent spouses who are unaware of collection efforts against them or other circumstances prevent her from seeking timely relief. Two years is not enough time to file for innocent spouse relief.

V. MICHIGAN SHOULD REVISE ITS INNOCENT SPOUSE RELIEF PROGRAM

Michigan's innocent spouse relief provision has several inherent limitations.²⁶² Michigan should revise its innocent spouse relief to be more conducive to the needs of the people it is supposed to benefit by increasing the filing time restriction, adopting specific state-wide standards, educating Treasury tax advisors, and creating an innocent spouse relief form with step-by-step instructions. Additionally, Michigan should revise how the information is presented in order to make it user-friendly and accessible for those searching for how to obtain innocent spouse relief in Michigan.

The Michigan Legislature should amend the Income Tax chapter of the Michigan Code to include a statutory provision allowing for spouses to avoid joint liability if they qualify for innocent spouse relief. Although most states with innocent spouse relief statutes direct filers to the requirements of Internal Revenue Code Section 6015,²⁶³ Michigan should develop an independent statutory innocent spouse relief program. An independent innocent spouse relief program will cater to the specific needs of Michigan residents. Michigan will not have to wait for an amendment to the Internal Revenue Code in order for the program to reflect the current and future social environments.

261. *Innocent Spouse Questions & Answers*, *supra* note 85.

262. *See* Part II.

263. *See supra* note 152.

If Michigan continues to model Section 6015 by specially mentioning Section 6015 in its statute, like the majority of states statute do, Michigan should adopt language that specifically addresses situations where no federal tax liability exists. Like Kansas and Kentucky, Michigan should include a clause that states: where an innocent spouse relief filer does not seek federal innocent spouse relief because a federal liability does not exist, the Michigan Department of Treasury will consider factors similar to Section 6015 as if a federal determination would have been made.²⁶⁴ Some filers do not have federal tax liabilities. Describing the procedures for Michigan relief in that kind of situation clarifies Michigan tax position by addressing a common tax situation.

Addressing the procedural requirements of the innocent spouse relief program within the statute, similar to Massachusetts, also clarifies for taxpayers how relief will be granted and the steps the taxpayer must follow in order to apply for relief.²⁶⁵ The procedural requirements should state the filing time restriction and the documents the taxpayer's application should contain. Furthermore, Michigan should clarify its determination process by stating who, within the Department of Treasury, is responsible for making the final determination.

Michigan should create an innocent spouse relief form with step-by-step instructions for filers to follow.²⁶⁶ A form with instructions would present the requirements of Michigan's innocent spouse relief in a clear manner.²⁶⁷ A person without a CPA or law license should be able to navigate the form if the step-by-step instructions are detailed enough. The form and instructions should be written in a manner that a person with a high school education could read and understand it. Michigan should also simplify the application process by requiring one form to be filed for multiple years²⁶⁸ and should consider the applicant for other

264. See KAN. STAT. ANN. § 79-32,209 (West 2015); KY. REV. STAT. ANN. § 141.180 (West 2015).

265. See MASS. GEN. LAWS ANN. ch. 830, § 62C.84.1 (West 2015).

266. Michigan has a form for its Offer in Compromise program. MICH. DEP'T OF TREASURY, MICHIGAN OFFER IN COMPROMISE—FORM 5181 (Dec. 2014), http://www.michigan.gov/documents/taxes/5181_OIC_476786_7.pdf. Michigan includes instructions on how to fill out the Offer in Compromise form. *Instructions for Form 5181: Michigan Offer in Compromise*, MICH. DEP'T OF TREASURY (Apr. 2014), http://www.michigan.gov/documents/taxes/5181_Instructions_for_Offer_in_Compromise_Forms_120814_476785_7.pdf. Therefore, Michigan could create a form for its innocent spouse program, and process that innocent spouse application and form.

267. See, e.g., *Arizona Form 200—Instructions*, *supra* note 208; *Form IL-8857—Instructions*, *supra* note 173.

268. See, e.g., PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167.

forms of relief at the same as considering her for innocent spouse relief.²⁶⁹

Domestic violence survivors are very concerned about confidentiality. Michigan's innocent spouse relief publication does not mention confidentiality.²⁷⁰ Ideally, Michigan's innocent spouse relief form should contain a warning stating, for example:

Michigan Department of Treasury will contact your former spouse in order to provide additional information regarding the relief you have requested. However, the former spouse will only be told that innocent spouse relief has been requested for a specific tax year. Your name, address, income, comments made on the Form and attached documents, employer, and any other information that is not necessary to obtain additional information the Department is seeking from the former spouse, will be kept confidential.²⁷¹

The warnings should be placed on the Michigan publications, instructions, and the form itself.²⁷²

Furthermore, Michigan should impart a determination on its own merits and not on a federal determination. Filers do not have to file federally first in order to seek Michigan relief, but it is easier to get relief if the taxpayer seeks federal relief first. Michigan should give an option to file using the Michigan form or filing the federal Form 8857 with IRS determination letter with Michigan. Therefore, applicants could concurrently file in Michigan and with the IRS, or file in Michigan only. Taxpayers should not have to delay filing for Michigan relief because they are waiting for a federal determination letter. Otherwise, Michigan should change its filing time restriction if it continues the recommendation of filing with the IRS first.

Michigan should extend its filing time restriction. There is very little state interest in having a filing time restriction of two years.²⁷³ In fact, it

269. See, e.g., FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167; PUBLICATION 300—INNOCENT SPOUSE, *supra* note 167.

270. REVENUE ADMINISTRATIVE BULLETIN 2000-9, *supra* note 138.

271. See, e.g., *Arizona Form 200—Instructions*, *supra* note 208; FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITY RELIEF, *supra* note 189; FTB 705, REQUEST FOR INNOCENT JOINT FILER RELIEF, *supra* note 167.

272. See, e.g., *Arizona Form 200—Instructions*, *supra* note 208; FORM 200—REQUEST FOR INNOCENT SPOUSE RELIEF AND SEPARATION OF LIABILITY AND EQUITY RELIEF, *supra* note 189.

273. Arguably, the survivor's interest in securing a proper innocent spouse relief result while maintaining confidentiality outweighs the state's interest in having a two-year filing time restriction period.

only hurts the very group of people the provision is supposed to benefit. Preferably, Michigan should extend the filing time restriction to three years, allow the filing time restriction to toll if federal innocent spouse relief is being sought, and allow an applicant to file for Michigan relief outside of the filing time restriction if the applicant presents extenuating circumstances.²⁷⁴

Moreover, Michigan should have a webpage devoted to information regarding innocent spouse relief and have the innocent spouse relief form posted on the same webpage. Currently, an applicant must search for the bulletin in order to find Michigan's innocent spouse relief requirements. A user-friendly webpage allows applicants who might not be aware of how to search for bulletins—or even that the bulletin exists—to access all the pertinent information in one place.²⁷⁵ Also, because not every applicant understands tax law or can afford a tax attorney or CPA to assist her with applying for relief, Michigan's innocent spouse relief webpage should contain information regarding how an applicant can contact a Department of Treasury employee to assist the applicant with innocent spouse relief issues.²⁷⁶ The Department of Treasury innocent spouse relief employee should be specially trained in how to assist filers with innocent spouse relief questions and issues.

Furthermore, Michigan's innocent spouse relief should specifically address domestic violence. On the Michigan form, there should be a section that asks if the applicant was affected by domestic violence during the years she is now filing for relief, if she fears the former spouse, and if she may be in danger because of filing for innocent spouse relief.²⁷⁷ Also, Michigan should provide contact information to the National Domestic Violence hotline, Michigan Domestic Violence hotline, and the police.²⁷⁸ The unique needs of domestic violence survivors should be considered by the Michigan Department of Treasury when revising the innocent spouse relief provision. Michigan should disseminate the Michigan innocent spouse program to in-state shelters

274. For example, Michigan may consider extenuating circumstances such as: actual notice of collection efforts and domestic violence issues.

275. See, e.g., PUBLICATION 125—INJURED AND INNOCENT SPOUSE RELIEF, *supra* note 167; IN-40SP—INDIANA INNOCENT SPOUSE ALLOCATION WORKSHEET, *supra* note 217; FORM 8857—REQUEST FOR INNOCENT SPOUSE RELIEF, *supra* note 108. The IRS website has the information regarding the innocent spouse relief with examples of how to file Form 8857—Request for Innocent Spouse Relief. PUBLICATION 971—MAIN CONTENT, *supra* note 105. The website contains charts regarding the elements of innocent spouse relief and hyperlinks for quick access to the information. *Id.*

276. See, e.g., Arizona Form 200—Instructions, *supra* note 208; Form IL-8857—Instructions, *supra* note 173.

277. See, e.g., FORM 8857—REQUEST FOR INNOCENT SPOUSE RELIEF, *supra* note 108.

278. See, e.g., *id.*

and domestic violence advocacy programs in order to increase awareness about domestic abuse survivor-taxpayer's rights.

Additionally, Michigan should clearly state an appeals process for denied innocent spouse relief claims. A right of appeal is an important tax right for the filer. Michigan should allow innocent spouse relief taxpayers to appeal by informal hearing. The right of appeal ensures that people with specialized knowledge of the law are adequately assessing the taxpayer's claim. However, it is not clear whether or not taxpayers can appeal innocent spouse relief determinations in Michigan.

Also, Michigan should review and audit its innocent spouse relief program. Within the review and audit process, Michigan should make its statistics and innocent spouse relief procedures publicly transparent. Michigan does not have a Department of Treasury manual published and available to the public. A public Department of Treasury manual would improve the transparency of the revenue—and specifically, the innocent spouse relief—process.

VI. CONCLUSION

Currently, Michigan innocent spouse relief program revictimizes domestic abuse survivors because it is inaccessible, nontransparent, and difficult to apply for. Furthermore, it is difficult for a survivor of nonviolent domestic abuse to relay proper information about her abuse to adequately fulfill the domestic violence factor of innocent spouse relief. The current innocent spouse relief program—both at the federal level and in Michigan—does not address nonviolent domestic abuse situations and how that situation factors into the innocent spouse relief determination. Often nonviolent abuse situations go undocumented. Unlike violent abuse victims, nonviolent abuse victim taxpayers cannot use photographs, police reports, or medical records to substantiate the abuse they endured.

The government can be part of the solution to domestic violence tax issues. Michigan should revise its innocent spouse relief provision to be more accommodating to the needs of the people who it is supposed to benefit. The Department of Treasury website should devote a webpage to information regarding the Michigan innocent spouse relief. A user-friendly Michigan Form and step-by-step instructions will assist people who cannot afford an attorney or CPA. Furthermore, the filing time restriction should be revised because two years is not enough time to file for relief; especially if you are a domestic violence survivor like Sarah.

APPENDIX I: FIFTY STATE INNOCENT SPOUSE RELIEF CHART

	Does the State Have ISR Relief in Some Capacity?	ISR Statute	Form Number	Publications	Line-by-Line Instructions Publication	Webpage for ISR
Alabama	Yes	ALA. CODE § 40-18-27(e) (2015)				No
Alaska	N/A					No
Arizona	Yes	ARIZ. REV. STAT. ANN. § 42-2201 (2015)	Form 200	Publication 300, Form 200 Instructions	Yes; Form 200 Instructions	No
Arkansas	No					No
California	Yes	CAL. CODE REGS. tit. 18, §§ 5240-42 (West 2016)	FTB 507	FTB 705	No	Yes
Colorado	Yes	COLO. REV. STAT. ANN. § 39-22-107.5 (West 2001)				Yes
Connecticut	Yes	1999 Conn. Pub. Acts 48 § 4	Form CT-8857		Yes; Form CT-8857 Instructions	Yes
Delaware	No					
Florida	N/A					
Georgia	Yes	GA. CODE ANN., § 48-7-86 (West 2015)				Yes
Hawaii	Yes	HAW. REV. STAT. ANN. § 235-2.45 (West 2015)	Form N-379		Instructions for Form N-379	No
Idaho	Yes	IDAHO CODE ANN. § 63-3022T (West 2015)				No
Illinois	Yes	35 ILL. COMP. STAT. ANN. 5/502 (West 2014)	IL-8857	Publication 125	Yes	Yes

Indiana	Yes		IN-40SP	No	No	Yes
Iowa	Yes	IOWA CODE ANN. § 422.21 (West 2009)				No
Kansas	Yes	KAN. STAT. ANN. § 79- 32,209 (West 2015)				No
Kentucky	Yes	KY. REV. STAT. ANN. § 141.180 (West 2015)				No
Louisiana	Yes	LA. STAT. ANN. § 47:101(b)(7) (2015)				No
Maine	Yes	ME. REV. STAT. ANN. tit. 36, § 5287 (2015)				Yes
Maryland	No					No
Massachusetts	Yes	830 MASS. GEN. LAWS ANN. ch.830, § 62C.84.1 (West 2015)	Form 84		Yes	Yes
Michigan	Yes			RAB 2000-9		No
Minnesota	Yes	MINN. STAT. ANN. § 289A.31 (West 2012); MINN. R. 8160.0500 (2017)				Yes
Mississippi	Yes	MISS. CODE ANN. § 27-7-31 (West 2015)				No
Missouri	N/A					
Montana	Yes	MONT. CODE ANN. § 15-30- 2646 (West 2013)				
Nebraska	No					
Nevada	N/A					
New Hampshire	N/A					
New Jersey	No					

			Must contact local office for form			
New Mexico	Yes					Yes
New York	Yes	N.Y. TAX LAW § 654 (McKinney 2014)	IT-285	Publication 89	Form IT-285- I; Publication 89	Yes
North Carolina	Yes	N.C. GEN. STAT. ANN. § 105-153.8 (West 2014)				
North Dakota	No					
Ohio	Yes	OHIO REV. CODE ANN. § 5703.06 (West 2015)				Yes
Oklahoma	Yes	OKLA. STAT. ANN. tit. 68, § 2361 (West 2001)	Form L- 21			
Oregon	Yes	OR. REV. STAT. ANN. § 316.369 (West 2015)				No
Pennsylvania	Yes	72 PA. STAT. AND CONS. STAT. ANN. § 3310-212 (West 2002)	Form PA 8379; Election Packet (Form 8857, 12507, 12510, and Rev- 488)	PA Pub. 971- Relief from Joint Liability (Innocent Spouse Relief)	Yes; PA 8857 General Instructions	Yes
Rhode Island	No					
South Carolina	Yes		SC8857			No
South Dakota	N/A					
Tennessee	N/A					
Texas	N/A					
Utah	Yes		TC-8857			Yes
Vermont	Yes					

Virginia	No					
Washington	N/A					
West Virginia	No					
Wisconsin	Yes	WIS. STAT. ANN. § 71.10 (West 2015);				
Wyoming	N/A					