



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.15.19

MARCH 22, 2022

EFFECTIVE DATE

(03-22-2022)

PURPOSE

- (1) This transmits revised IRM 25.15.19, Relief From Joint and Several Liability, Non-Qualifying Requests for Relief and Complex Account Issues.

MATERIAL CHANGES

- (1) IRM 25.15.19.1.7 - Corrected the table from IRM 25.15.12 to IRM 8.7.12 - Appeals Innocent Spouse Case Procedures.
- (2) Editorial changes and reference updates have been made

EFFECT ON OTHER DOCUMENTS

IRM 25.15.19 dated October 23, 2019 is superseded.

AUDIENCE

Cincinnati Centralized Innocent Spouse Operation (CCISO) employees resolving taxpayer issues which do not involve making a determination of innocent spouse relief.

Lori L. Caskey
Director, Examination - Field and Campus Policy
Small Business/Self Employed Division

25.15.19

Non-Qualifying Requests for Relief & Complex Account Issues

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25.15.19.1
(10-23-2019)
Program Scope and Objectives

- (1) Purpose: IRM 25.15.19 provides procedures for CCISO employees processing innocent spouse cases when a request is determined to be non-qualifying but the taxpayer account requires resolution or corrections. A request is non-qualifying if it fails to meet certain basic requirements for relief under IRC 6015 or IRC 66(c).
- (2) Audience: Small Business/Self-Employed (SB/SE) Division employees in CCISO processing non-qualifying requests for innocent spouse relief and resolving complex account problems that caused the taxpayer to request relief.
- (3) Policy Owner: The innocent spouse program is under the jurisdiction of the SB/SE Director, Examination - Field and Campus Policy.
- (4) Program Owner: The program owner is SB/SE Campus Exam and Field Support.
- (5) Program Goals: The program goals are to timely and accurately process Forms 8857.

25.15.19.1.1
(10-23-2019)
Background

- (1) IRM 25.15.19 provides guidance for resolving taxpayer issues when the Form 8857, Request for Innocent Spouse Relief, does not qualify for consideration, yet the taxpayer has other account issues which require resolution.
- (2) CCISO specialists process taxpayer requests that do not qualify for innocent spouse relief under IRC 6015 or IRC 66(c), but require account corrections.
- (3) IRM 25.15.18.5.1.11 lists conditions that cause a request to be non-qualifying, which means the request cannot be considered. Also see IRM 25.15.3.6, Special Considerations, for additional information on non-qualifying conditions.
- (4) The specialists follow the procedures in IRM 25.15.18.5.1.11, Non-Qualifying Requests, to close the request for relief.
- (5) The specialists follow the procedures in this IRM to correct accounts when needed.

25.15.19.1.2
(10-23-2019)
Authority

- (1) IRC 66(c), Spouse Relieved of Liability in Certain Other Cases.
- (2) The Code of Federal Regulations (CFR) at 26 CFR sections 1.66-1 through -5, contains guidance on requests for relief from federal income tax liability resulting from the operation of community property law.
- (3) IRC 6015, Relief from joint and several liability on joint return.
- (4) 26 CFR sections 1.6015-1 through -9, and related proposed regulations, including 78 FR 49242 (issued on August 13, 2013) and 80 FR 72649-01 (issued November 20, 2015). These regulations provide guidance on requests for relief from joint and several liability.
- (5) Rev. Proc. 2013-34, guidelines for taxpayers seeking equitable relief from income tax liability under section 66(c) or section 6015(f).

25.15.19.1.3
(10-23-2019)
**Roles and
Responsibilities**

- (1) The Director, Examination - Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the field and campus examination process. See IRM 1.1.16.3.5.1, Field and Campus Policy, for additional information.
- (2) Campus Exam and Field Support, which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing Servicewide policy guidance on compliance processes that relate to campus examination operations and support Field Exam and Specialty Programs in SB/SE and Large Business & International (LB&I). See IRM 1.1.16.3.5.1.5, Campus Exam and Field Support, for additional information.
- (3) CCISO falls under the responsibility of the Director, Examination - Campus, with the Director, Examination - Field and Campus Policy, providing oversight to the innocent spouse processing IRMs.
- (4) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see the web page *Taxpayer Bill of Rights FAQs*.

25.15.19.1.4
(10-23-2019)
**Program Management
and Reviews**

- (1) Management in CCISO oversees employees processing Forms 8857, including creating and updating the Innocent Spouse Tracking System (ISTS) records, creating and maintaining cases on the Accounts Management System (AMS)/ Innocent Spouse Application (ISA) Database, and making account adjustments needed to resolve complex account issues, when requests for relief are non-qualifying. Management uses reports generated through IDRS, ISTS and AMS to account for cases within the operation, and measure program effectiveness.
- (2) Policy does program reviews periodically on CCISO to evaluate whether case procedures comply with the IRM and to do risk analysis. Operational reviews are conducted periodically by Director, Examination - Campus.

25.15.19.1.5
(10-23-2019)
Terms

- (1) The following is a list of common terms used in this IRM section:

Term	Description
Area Office Innocent Spouse Co-ordinator	The employee in Planning and Special Programs (PSP) assigned the innocent spouse program for the Field Examination Area.
Determinations	With regard to innocent spouse relief, the Service determines whether to allow relief in full, or deny relief in part or in full, based on the application of the facts to the law under IRC 6015, Relief from joint and several liability on joint return, or under IRC 66(c) for relief from Community Property laws.

Term	Description
First Read	The teams located in CCISO that are responsible for screening relief requests, and building or non-qualifying requests as applicable.
Full Scope	CCISO teams of Financial Technicians (FT) that are responsible for making determinations of relief based on the facts applied to the law of each tax year request.
Lead	A designated team member that acts as an assistant to the team manager.
MFT 31	Master file accounts created to hold separate spousal assessments and mirrored joint accounts.
Mirroring	The process of duplicating a joint account into two MFT 31 accounts, one for each spouse.
PSP Innocent Spouse Coordinator	Employee in Planning and Special Programs (PSP) in each Area assigned the innocent spouse program.
Reason Code	The reason code input for the main reason a request for relief is non-qualified.
Request for Innocent Spouse Relief, also known as an Innocent Spouse Claim	A Form 8857, Request for Innocent Spouse Relief, or similar statement submitted by the taxpayer under penalty of perjury, requesting relief from a joint or community income liability.
Stage	The stage of a claim in ISTS indicates the status of the request for relief. For instance, Stage 01 indicates the date the request was received by the Service, and Stage 29 indicates a request is non-qualifying and can't be considered. See IRM 25.15.14, Innocent Spouse Tracking System, for more information.

Term	Description
Technical Referral	Technical referrals are used by CCISO teams to refer cases with complex account problems to the Technical team.
Technical Unit or Technical Team	CCISO team consisting of Specialists that evaluate the most complex and technical of relief requests, and assist other CCISO teams through a Technical Referral process.
Technician	A general term used for any of the various CCISO employees involved in processing and making determinations on relief requests.

25.15.19.1.6
(10-23-2019)
Acronyms

- (1) The following table lists commonly used acronyms and their definitions used throughout this IRM:

Acronym	Description
AC	Action Code (most often associated with a transaction code (TC))
ACCURINT	Electronic Research service used to gather information from public databases
AM	Accounts Management
AMS	Account Management Services
ASED	Assessment Statute Expiration Date
ASFR	Automated Substitute For Return
AUR	Automated Underreporter
CC	Command Code or Closing Code
CCEO	Compliance Campus Examination Operations
CCISO	Cincinnati Centralized Innocent Spouse Operation
CSED	Collection Statute Expiration Date
DLN	Document Locator Number
EITC	Earned Income Tax Credit

Acronym	Description
ESTAB	IDRS command code used to order documents associated with transactions on an account.
FS	Filing Status
IDRS	Integrated Data Retrieval System
IMFOLE	A command code used in IDRS to retrieve taxpayer entity data.
IMFOLT	A command code used in IDRS to retrieve taxpayer account data for specific tax period.
IMF	Individual Master File
ISO-AR or ISOAR	Innocent Spouse Operation - Adjustment Request
ISTS	Innocent Spouse Tracking System
ISTSR	Innocent Spouse Tracking System Record
MFS	Married Filing Separate
MFT	Master File Tax
NMF	Non Master File
NRS	Non-Requesting Spouse
POA	Power Of Attorney
PSP	Planning and Special Programs
REQ77	An IDRS command code used to input specific information.
RS	Requesting Spouse
RSED	Refund Statute Expiration Date
SFR	Substitute for Return
SSN	Social Security Number
STAUP	IDRS Command Code used to request suspension of collection notices.
TC	Transaction Code
TXI	Taxable Income
TXMOD	IDRS command code used to obtain a transcript of a specific tax account.

25.15.19.1.7
(03-22-2022)

Related Resources

- (1) The table below includes references for related Internal Revenue Manuals (IRMs).

IRM	Purpose
IRM 21.5.2, Adjustment Guidelines	Provides guidance on adjusting IMF accounts.
IRM 25.15.1, Introduction	General procedures for all functions.
IRM 25.15.2, General Procedures/ Employees With Taxpayer Contact	General procedures for all functions.
IRM 25.15.3, Technical Provisions of IRC 6015	Technical provisions of IRC 6015, Relief from Joint and Several Liability on Joint Return.
IRM 25.15.5, Relief from Community Property Laws	Technical provisions of IRC 66(c), Treatment of Community Property.
IRM 25.15.6, Field Examination Procedures	Field examination procedures for working innocent spouse cases.
IRM 25.15.7, Innocent Spouse Shared Processing Responsibilities	Provides guidance for coordination between CCISO and other functions of the Service.
IRM 25.15.8, Revenue Officer Procedures for Working Innocent Spouse Relief Cases	Field collection procedures for working innocent spouse cases.
IRM 25.15.9, Account Processing of Requests for Relief from Joint and Several Liability	Processing procedures for adjusting accounts and closing innocent spouse cases.
IRM 8.7.12, Appeals Innocent Spouse Case Procedures	Appeals technical and procedural guidelines for considering innocent spouse cases.
IRM 25.15.14, Innocent Spouse Tracking System	Innocent Spouse Tracking System (ISTS) procedures used to track innocent spouse cases.
IRM 25.15.15, Mirror Modules for Requests for Relief from Joint and Several Liability	Mirror modules for requests for relief from joint and several liability.
IRM 25.15.17, Reconsiderations	Reconsideration procedures for innocent spouse cases.

IRM	Purpose
IRM 25.15.18, Innocent Spouse Relief Processing Procedures	Procedures for processing Form 8857, Request for Innocent Spouse Relief.

25.15.19.2
(10-23-2019)
Account Issues and Resolutions

- (1) An account problem may be identified by either a First Read or Full Scope technician while researching the taxpayer's account. Account problems are normally identified by the taxpayer but a technician may notice misapplied payments or multiple accounts for the same tax period (joint account and separate).
- (2) Simple account problems should be addressed within the team.
- (3) Complex account problems are referred to the technical team. The technical referral should include:
 - a. Entire case file.
 - b. Documentation of the account problem described on the Innocent Spouse Technical Referral Form.
 - c. Be in the appropriate colored folder.
 - d. Control or re-control TXMOD with activity code "ACCTPROB" using the Form 8857, Request for Innocent Spouse Relief, received date.
 - e. If applicable, update ISTS and the ISTSR Input Record to the appropriate stage with activity code "TECH" and input a comment entry on ISTS of "Account Problem."
- (4) Certain account problems may be referred to other areas:
 - Requests for abatement of assessments made by Exam or AUR should be referred to the Audit Reconsideration Unit.
 - Returns filed after an ASFR assessment should be referred for processing. See IRM 21.5.1.5.5, Processing/Reprocessing CIS Tax Returns, and IRM 21.3.3.3.5, Submission Processing Consolidation (Rampdown), for more information.
 - Amended returns filed for original assessments should be referred to AM.

Note: Standard practice is to issue Interim Letters at 240 day intervals; however in account problem cases that interval may be expanded up to 260 days.

25.15.19.2.1
(10-23-2019)
Freeze Codes

- (1) Specific freeze codes require extra consideration before processing a request for relief. This section identifies some of the codes that require consideration.

25.15.19.2.1.1
(10-23-2019)
Duplicate or Amended Return Posted (-A Freeze)

- (1) If there is an -A freeze on the account, it must be resolved prior to any determination of eligibility for innocent spouse relief, or any determination of innocent spouse relief.

Caution: Do not non-qualify any module which contains an -A Freeze.

- (2) Follow the procedures at IRM 25.15.7.2.1, Amended Returns, to resolve the -A freeze prior to determination of eligibility or relief.
- (3) Suspend the request for relief until the -A freeze is resolved. See IRM 21.5.6.4.2, -A Freeze, for additional information.

25.15.19.2.1.2
(10-23-2019)

Combat Zone (-C Freeze)

- (1) The -C freeze stays on the account even after the taxpayer is no longer in the Combat Zone.
 - The tax account will reflect a TC 500 with a two-digit CC XX to reflect the date a combat zone was entered.
 - A second TC 500 CC XX will reflect the exit date.
 - On IMFOLT the CSED-CD is either a "P" or "S" to indicate which taxpayer is deployed.
 - When researching an account that contains a "-C" freeze, additional research is required to determine the taxpayer's combat status.
 - Research CC IMFOLE (entity module) for the combat indicator on Line 11.
- (2) CC IMFOLE and IMFOLT must be used to determine the status of both taxpayers. See IRM 5.19.10.7.2.2, Combat Zone Research, for more information.
- (3) If Combat indicator is "1" then the taxpayer is still serving in a combat zone:
 - Send Letter 3659-C, Requesting Spouse Initial Contact, to Requesting Spouse (RS).
 - Combat Zone cases are suspended until both taxpayers are available to participate.
 - Update claim to Stage 26 in ISTS using activity code "COMB" and input a history item to indicate "Combat Zone RS" or "Combat Zone NRS". NRS means Non-Requesting Spouse. See IRM 25.15.19.1.6, Acronyms, for additional information.
 - If Combat indicator is "2", then the taxpayer is no longer in a combat zone. Follow normal IRM procedures to work the case.
- (4) If contacted by a taxpayer or family member advising the taxpayer is in a combat zone, ask for documentation of the deployment. Once received:
 - Use the date of deployment to input TC 500 CC 56 on the account to cease enforcement activity.
 - Suspend the claim until the taxpayer returns.
- (5) If the TC 500 CC 53, 55, or 57 is not present, send Letter 2761-C, Request for Combat Zone Service Dates, to the taxpayer requesting the combat zone exit date.
 - Once the exit date is provided, input the date using CC REQ77.
 - Input TC 500 using the appropriate closing code releasing the combat zone freeze code.
 - See IRM 5.19.10.6.5.1, Combat Zone IMF Procedures, for appropriate code.

25.15.19.2.1.3
(10-23-2019)

Disaster Freezes (-O or -S Freeze)

- (1) Disaster freezes limit IRS activities and often cases are suspended.
- (2) See IRM 21.5.6.4.30, -O Freeze, and IRM 21.5.6.4.37, -S Freeze, for specific information on these freeze codes.
- (3) Additional information can be found in IRM 25.16, Disaster Assistance and Emergency Relief.
- (4) If the case is suspended, ensure follow up every six months to determine status of the freeze code.

25.15.19.2.1.4
(10-23-2019)

Criminal Investigation Freeze (Z-, -Z)

- (1) First Read or Full Scope technicians will suspend cases with “Z-” or “-Z” freezes.
 - Follow up every six months to determine the status of the Criminal Investigation (CI) case per IRM 25.15.18.5.1.9, Criminal Investigation (CI) Cases.
 - Document all contacts made with CI.

25.15.19.2.2
(10-23-2019)

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25.15.19.2.2.1
(10-23-2019)

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25.15.19.2.3
(10-23-2019)
Erroneous Refunds

- (1) Instructions to work erroneous refunds can be found in IRM 21.4.5, Erroneous Refunds.
- (2) An erroneous refund is the receipt of money from the IRS to which the recipient is not entitled. Examples of erroneous refunds are:
 - Misapplied payments that refunded.
 - A credit refund the taxpayer is not entitled to receive.
 - An incorrect tax assessment or adjustment causing an incorrect refund.
 - Taxpayer files a claim for a lost refund, receives replacement check and then finds the original and keeps both.
 - Barred statute refunds.
 - A taxpayer makes an advance payment against a pending tax increase and the money refunds before the tax assessment posts.
 - A taxpayer receives both a manual (TC 840) and computer generated (TC 846) refund for the same overpayment.

25.15.19.2.4
(10-23-2019)
**Joint Returns -
Invalidated**

- (1) This section of the IRM provides guidance to resolve invalidated joint returns.
- (2) There are three situations where a joint return is invalid:
 - a. Invalid election - One of the individuals on the joint return did not elect to file a joint return.
 - b. Forgery - One spouse did not sign the return.
 - c. Unlawful - Taxpayers had no legal right to file jointly.

Note: Tacit consent is a factor to consider for invalid elections and forgery allegations. See IRM 25.15.19.2.4.1, Tacit Consent Factors, for more information.

25.15.19.2.4.1
(10-23-2019)

Tacit Consent Factors

- (1) In the absence of written documentation indicating the joint filing status was elected by the RS - for instance no signature for an electronically filed return - we can use the concept of tacit consent to establish the joint election. Tacit consent is a silent, implied or inferred consent to file the tax return jointly. The factors below are considered.
- (2) Did the RS have a filing requirement? Consult Pub 17, Your Federal Income Tax (For Individuals), for the year at issue to determine if the RS had a filing requirement. The filing requirement is not determined by whether or not the RS has taxable income. Did the RS file a Married Filing Separate (MFS) return?

Note: Generally, in a community property state, both spouses are required to report their share of the community property income, not just their own income, on a MFS return.

- (3) Check the filing status for prior and subsequent tax years.
- (4) Did the RS participate in the preparation of the return by providing return information such as Forms W-2 and/or Forms 1099?
- (5) Was there a tax benefit to filing jointly, such as reduced income tax or Earned Income Tax Credit?
- (6) Check the entire return for signature, forms filed after the return was filed, extension requests, and installment agreements.
- (7) Check the entire return for schedules that belong to or include the RS. Were there any gains or losses belonging to the RS?
- (8) Did RS have another reason to file jointly: for example, due to a divorce decree, or for immigration purposes or other reason?

25.15.19.2.4.2
(10-23-2019)

Determining if Joint Election is Valid

- (1) Filing a joint return is an election. Generally a joint return must be signed under penalty of perjury by both taxpayers to be a valid election for joint filing status.

Note: Substitute for Return (SFR) and Automated SFR (ASFR) filed by the Service are never a joint return, however, a joint return can be filed after the assessments (associated with the SFR or ASFR) have posted.

- (2) Many returns will not have signatures since many returns are now filed electronically, so tacit consent must be considered in determining the validity of the joint filing status shown on the return.
- (3) A joint return may contain an invalid joint filing status election if:
 - An original or amended joint return was filed and processed with only one signature on a paper filed return.
 - The return was signed, however, it is established that the signature was forged and there was no tacit consent.

- The return was signed under duress.
- One of the individuals filed a timely return using Single, MFS, or Head of Household (HOH) filing status.

Reminder: Remember to complete IDRS and AMS research on both taxpayers' SSNs.

- (4) To determine if the taxpayers resided in a state that recognizes common law marriage see IRM 25.18.1.3.2, Marriage.
- (5) If the election is valid, continue processing the request for innocent spouse relief by returning the request back to First Read with appropriate documentation as to the validity of the joint election on the return.

25.15.19.2.4.3
(10-23-2019)

Joint Election is Invalid

- (1) Invalid elections are often complicated by actions taken on the account by other IRS operations or action taken by one of the spouses.
- (2) If a joint return is determined to be invalid then the request for innocent spouse relief is non-qualifying. Immediately close the ISTS record as non-qualified. Open an IDRS control using employee IDRS number with activity "INVA" to correct the account.
 - Update ISTS and the ISTSR Input Record to Stage 29 with activity code "INVA" and then to Stage 30 with activity code "ACCTCORR".
- (3) Determine if the return should be referred for examination (exam) in the Field or in CCEO. See IRM 25.15.19.3, Exam Referrals, for exam criteria.
- (4) If exam referral criteria are not met consider fraud before correcting the account or accounts. See IRM 4.19.10.4, Fraud Referrals, for more information.
- (5) To correct the account or accounts consider the following:
 - Determine the appropriate Filing Status (FS).
 - Determine the appropriate tax on the filed return as corrected.
 - Correct tax to the extent possible based on the tax currently assessed.
 - Overpayments on the original return: for example in the event of TOP offset, single taxpayer benefit. Consider not adjusting the refund generated by the original filing or following erroneous refund procedures.
 - Ensure statute dates are correct.
 - Leave dependents on both returns if unable to correct tax and/or credits.
 - Determine appropriate EITC based on FS.

Caution: Each situation is different and all scenarios cannot be addressed in the IRM. All accounts should be corrected using the facts and knowledge of the case. All decisions, facts, or findings must be documented.

- (6) Follow IRM 21.6.7, Adjusting Individual Tax Accounts, when there are no additional adjustments on the account(s).

25.15 Relief from Joint and Several Liability

- (7) The following table identifies account corrections and action needed based on the various scenarios where the joint return is invalid and the account reflects additional adjustments:

IF	THEN
<ul style="list-style-type: none"> Primary filed return without secondary's knowledge. Additional assessment based on secondary income. Secondary does not have a filing requirement. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Only decrease tax if applicable. Adjust credits, if applicable. Adjust gross income and Taxable Income (TXI), if applicable Refund only payments that are identified as made by secondary.
<ul style="list-style-type: none"> Primary filed return without Secondary's knowledge. Additional assessment based on secondary income. Secondary has a filing requirement. Secondary did not file. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Only decrease tax if applicable. Refund only payments that are identified as secondary's. Notify secondary of the filing requirement. Determine if an exam referral is needed. See IRM 25.15.19.3, Exam Referrals, for exam criteria and how to make a referral if warranted.
<ul style="list-style-type: none"> Primary filed return without secondary's knowledge. Additional assessment based on secondary income. Secondary has filing requirement. Secondary filed. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Only decrease tax if applicable. Refund only payments that are identified as secondary's. Secondary's return - verify return was properly processed.
<ul style="list-style-type: none"> Primary filed return without secondary's knowledge. Additional assessment based on secondary's income or income from both. Secondary has filing requirement. Secondary filed, but return is not processed. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Only decrease tax if applicable. Refund only payments that are identified as secondary's. Check CC TRDBV for potential electronic return that may have been rejected. If found, notify taxpayer to file a paper return. Determine if an exam referral is needed. See IRM 25.15.19.3, Exam Referrals, for exam criteria and how to make a referral if warranted. If paper return available send to receipt and control for processing. Consider ASER if paper return is filed.
<ul style="list-style-type: none"> One spouse files using the other as primary (filing individual is secondary). Primary has no knowledge. Additional assessment based on primary's income. Primary has filing requirement and filed a separate return. 	<ul style="list-style-type: none"> Move the filed return to the secondary SSN. See IRM 21.5.2.4.23, Reprocessing Returns/Documents. Monitor reprocessed return to ensure correct posting. Adjust primary account per separate return by posting appropriate codes. Correct the received date to ensure statutes are accurate.

IF	THEN
<ul style="list-style-type: none"> One spouse files using the other as primary (filing individual is secondary). Primary has no knowledge. Additional assessment based on primary's income. Primary has filing requirement and did not file. 	<ul style="list-style-type: none"> Move the filed return to the secondary SSN. See IRM 21.5.2.4.23, Reprocessing Returns/Documents. Leave the additional assessment on the primary as is. <p>Note: Do not issue any refunds to primary.</p> <ul style="list-style-type: none"> Notify primary of filing requirement. Determine if an exam referral is needed. See IRM 25.15.19.3, Exam Referrals, for exam criteria and how to make a referral if warranted.
<ul style="list-style-type: none"> One spouse files using the other as primary (filing individual is secondary). Primary has no knowledge. Additional assessment based on primary's income. Primary does not have a filing requirement. 	<ul style="list-style-type: none"> Move the filed return to secondary SSN. See IRM 21.5.2.4.23, Reprocessing Returns/Documents. Monitor the secondary return for posting. Back out the tax and/or credits reflected on the primary account after the secondary account is processed.

(8) The following table identifies account corrections and action needed based on the various scenarios where the joint return is invalid and the account does NOT reflect additional adjustments:

IF	THEN
<ul style="list-style-type: none"> Primary filed without secondary's knowledge. Secondary does not have a filing requirement. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Refund only payments that are identified as secondary's.
<ul style="list-style-type: none"> Primary filed return without secondary's knowledge. Secondary has filing requirement. Secondary did not file. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Only decrease tax if applicable. Refund only payments that are identified as secondary's unless payment appears to be an estimated payment. Move estimated payments to secondary SSN MFT 30 for the year where the payment posted. Notify secondary of filing requirement. Determine if an exam referral is needed. See IRM 25.15.19.3, Exam Referrals, for exam criteria and how to make a referral if warranted.

IF	THEN
<ul style="list-style-type: none"> Primary filed return without secondary's knowledge. Secondary has filing requirement. Secondary filed their own return. 	<ul style="list-style-type: none"> Adjust the joint account to correct FS. Only decrease tax if applicable. Transfer payments that are identified as secondary's. <p>Caution: The same payments should not be reflected on both accounts and primary account may need to have payment reversed and not moved.</p>
<ul style="list-style-type: none"> One spouse files using the other as primary (filing individual is secondary). Primary has no knowledge. Primary has filing requirement and filed their own return. 	<ul style="list-style-type: none"> Move the filed "joint" return to the secondary SSN. See IRM 21.5.2.4.23, Reprocessing Returns/Documents. Ensure the primary return has been properly processed or process posting appropriate codes if ASED is still open. Correct the received date on both entities to ensure statutes are accurate. Correct primary account to reflect the primary filed return. Send the primary return to classification with a note "DIF By-Pass".
<ul style="list-style-type: none"> One spouse files using the other as primary (filing individual is secondary). Primary has no knowledge. Primary does not have a filing requirement. 	<ul style="list-style-type: none"> Move the filed return to secondary SSN. See IRM 21.5.2.4.23, Reprocessing Returns/Documents. Ensure secondary return is properly processed. Back out filed joint return on the primary.

Note: Input CC STAUP on taxpayers to prevent collection activity while the account is being corrected.

Note: If the ASED is expired, use Form 12810, Account Transfer Request Checklist, to move the accounts. Accounting processes this form.

25.15.19.2.5
(10-23-2019)
Forgery

- (1) Individuals who allege that their spouse forged an electronic return or signed a paper return on their behalf may not be true forgery cases, provided there is tacit consent. The individual, in the course of the relationship, provided their personal information to their spouse. Requests for relief involving a RS who alleges the other spouse forged their signature should be considered under IRM 25.15.19.2.4.1, Tacit Consent Factors, IRM 25.15.19.2.4.2, Determining if a Joint Election is Valid, and IRM 25.15.19.2.4.3, Joint Election is Invalid, but not IRM 25.15.19.2.5.1, Forgery with Elements of Fraud.
- (2) The burden of proof is on the taxpayer to prove forgery and no intent to file a joint return.

- Compare the signature on the return or assessment document with the signature on Form 8857, Request for Innocent Spouse Relief. If the return was filed electronically and the signature comparison cannot be done, “tacit consent” factors should be considered. Refer to IRM 25.15.19.2.4.2, Tacit Consent Factors.
- If it appears that the taxpayer alleging forgery signed the return or assessment document, or if the taxpayer intended to file a joint return (due to tacit consent), then advise the taxpayer and continue processing the claim for relief.

Note: Signatures often change over the years. Documentation can be requested showing signatures; for example, a copy of a driver’s license, social security card or other documents containing the taxpayer’s signature. If “tacit consent” factors apply, however, this may not be necessary.

- (3) There is a distinction between alleged forgery between two spouses and forgery with criminal intent, described below.

25.15.19.2.5.1
(10-23-2019)

Forgery with Elements of Fraud

- (1) If there is a determination of forgery with elements of fraud, do not correct the account. These types of cases should be referred to the fraud coordinator or the field for audit. See IRM 25.1.2.3, Indicators of Fraud, for more information on identifying elements of fraud.

Note: Consider identity theft before referring case.

- Input TC 470 to stop account actions, prevent offsets, set W- freeze, and hold the account for 9 cycles.
- If account is in status 22, 24 or 26, notify the appropriate collection office that there are serious account issues.
- Prepare memo for the field or fraud referral.
- Issue Letter 3657-C, No Consideration Innocent Spouse, to non-qualify the claim.
- Update ISTS to Stage 29 using activity code “ACTP” and then to Stage 30 using activity code “ACCTCORR.”

25.15.19.2.6
(10-23-2019)
Unlawful

- (1) Unlawful returns are returns filed when the taxpayers were not legally married at the end of the tax year, but both parties willingly filed using the joint filing status. This distinguishes these types of returns from invalid joint election returns.

Note: If the taxpayers resided in a common law marriage state and presented themselves as married, then they can make a legal joint election and file a joint return. The joint election could be invalid, however, based on the facts and circumstances, the same as any other married couple, and would not be unlawful due to their common law marriage.

- (2) Obtain the following information if available:
- ESTAB for all tax returns identified on the claim for relief.
 - Secure copy of court or legal documents showing that the couple was divorced, or the marriage was invalid or annulled.

- Consider alternative documentation that might support the taxpayer's signed statement that there was no marriage or no valid marriage. For example, look at ACCURINT to determine if property is in both names, marriage certificates, divorce decrees, or other information that may be available for that taxpayer.
- (3) Once established that the return is unlawful, tax returns showing an underpayment can be allocated between the two taxpayers and adjusted. Refund returns should not be adjusted, only subsequent assessments. Allocate subsequent assessment items between the two taxpayers.
- Allocate items of income and expense using CC IRPTR when possible.
 - Attribution of property generating income (for example rental property, farms, partnerships, capital gains/losses) may be resolved by using ACCURINT when possible. If unknown, allocate items fifty percent to each taxpayer.
 - Income from jointly owned assets can be divided evenly unless there is an indication that one individual owns a higher percentage, or a court document assigns the asset to one of the taxpayers.
 - Once the tax liability of each taxpayer is computed. Adjust accounts or initiate account transfers accordingly. Refund returns should not be adjusted.

Caution: When correcting the account on the primary taxpayer the filing status must be changed to a status other than Married Filing Joint (filing status 2). The entity information must be changed concurrently as needed. For the secondary taxpayer an entity account must be present, or established, prior to any needed account transfer.

25.15.19.3
(10-23-2019)
Exam Referrals

- (1) Cases involving invalid elections may need to be referred to Exam (field, campus examination or fraud coordinator) for audit.
- Returns processed to an incorrect SSN must be corrected before referring to Exam. See IRM 21.5.1.5.5, Processing/Reprocessing CIS Tax Returns, and IRM 21.3.3.3.5, Submission Processing Consolidation (Rampdown), for more information.
 - Cases with short statutes cannot be referred unless approved by the Exam Coordinator.
 - Determine who to refer the case to depending on the complexity of the issues and whether there are indicators of fraud.
 - Do not classify the return for issues but prepare a memo stating the facts of the case and any areas of concern. The Exam Referral Memo template can be found on the Innocent Spouse Operation (ISO) Sharepoint site at *ISO Home Page*.

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- (6) If an exam referral is warranted, prepare the Exam Referral Memo, and submit to the lead or manager for review and approval. Once approved for referral, the case can be submitted to one of the following:
 - Field Exam Case Selection: contact the appropriate analyst which can be found at *Field Case Selection Contacts*, to determine the best way to make the referral (fax, email, mail).
 - Campus Exam case selection: fax to 855-869-6990 or email to *SBSE EEF Exam CCS CWI.

25.15.19.4
(10-23-2019)
General Information

- (1) This section describes other potential issues that could arise as the result of a request for innocent spouse relief.

25.15.19.4.1
(10-23-2019)
Community Property Overview

- (1) Married taxpayers who live in community property states report income based on state law. If separate returns are filed each spouse reports 50% of the total community property income regardless of which spouse acquired the income. In addition, each spouse is taxed on 100% of their separate property income. If the taxpayers filed a joint return, then relief under IRC 66(c) is not an issue. See Treas. Reg. 1.66-4(a)(1)(i) for more information.
- (2) If the RS requested relief for a year for which there is no issue to consider under IRC 66(c), then non-qualify case for filing status. See IRM 25.15.18.5.1.11, Non-Qualifying Requests, for more information.
 - Update ISTS and ISTSR Input Record through Stage 29 with Activity Code "FS" and a history item "NO COMM PROP.", or something similar.
 - These cases require a TC 290 for .00. See IRM 25.15.9, Account Processing of Requests for Relief from Joint and Several Liability, for more information.

25.15.19.4.2
(10-23-2019)

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25.15.19.4.3
(10-23-2019)
Unable to Secure Administrative File

- (1) If unable to secure the administrative file:
 - a. Request a special search for the administrative file.
 - b. Research IDRS and ACCURINT for the information to determine ownership of income or expenses.

- c. If unable to obtain the information and the claim cannot be worked without it, attempt to secure the information from the RS.
- d. If still unable to determine whom the income or deductions are attributable to, leave the item(s) on the joint account. The RS has the burden to establish to whom the income or deduction belongs.