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THE TAX LAWYER

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### IRS To Give Innocent Spouse A Facelift

As I noted [here](#), the Tax Court is telling the IRS loud and clear to stop being stingy with innocent spouse relief. [Everyday](#), it appears the Tax Court is taking its scalpel to the IRS's arguments. Finally, the IRS is listening.

The topic of innocent spouse relief is sensitive. Most taxpayers file returns [jointly](#), and don't think about a lying, cheating or disappearing spouse until they are left holding the bag when the IRS asserts joint liability. Breaking that joint liability presumption is hard and often requires the expense of going to court. Even then, you'll lose if you don't act [in time](#).

The IRS has a take-no-prisoners attitude in its regulations and a tough litigation policy, refusing to be moved by thieving spouses, innocence of wrongdoing and even outright spousal abuse. The U.S. Tax Court has repeatedly come to the rescue of abused women and relieved their tax debts despite joint returns. But even then, the IRS goes to appellate court and usually wins. See [Mannella v. Commissioner](#) and [Lantz v. Commissioner](#).

In a rare—some would say uncharacteristic—show of tenderness, though, the IRS Commissioner has announced an IRS review of its bright line rule that calls for denying innocent spouse relief anytime the poor woman—the requester is almost always the wife—asks for innocent spouse treatment more than two years after the first IRS attempt to collect tax.

In an April 29, 2011 [letter](#) to lawmakers, IRS Commissioner Doug Shulman promises review of the two-year rule. The IRS letter comes on the heels of a [letter](#) from Senators Max Baucus (D-MT), Sherrod Brown (D-OH) and Tom Harkin (D-IA), calling for less restrictive deadlines for innocent spouse relief. Many House members also asked the IRS to withdraw its two-year rule.

Keep in mind that when you owe taxes, the IRS has ten years to collect. The IRS statute of limitations to audit is usually three years, but once taxes are assessed, IRS can pursue you for ten years. See [What Triggers IRS Statute Of Limitations?](#) Restricting innocent spouse claims to the first two years of this long ten years seems at odds with the purpose of the innocent spouse statute.

Indeed, the Senate letter makes it clear this is supposed to be a relief provision. All the circumstances are supposed to be relevant, including the equities of the situation. Besides, they noted, the tax code *itself* does not set a time limit for equitable relief. The absence of a deadline certainly implies that it could be equitable to give relief any time during the IRS's long ten-year collection statute of limitations. The two-year rule is being used to deny relief to the very innocent spouses the law was designed to protect.

Given this groundswell of support, perhaps the IRS now has no choice. In any event, IRS Commissioner promises review as part of its "Fresh Start" program for taxpayers who can't pay the tax they owe. For details, see [IRS "Fresh Start" for Tax Liens and Installment Deals?](#)

The tenor of the IRS letter suggests that the two year bright line the IRS has defended so vigorously and for so long is about to go out the window. If so, it's about time!

For more, see:

[IRS Accused Of Unfeeling Treatment Of Abused Spouses](#)

[Tax Court To IRS: "Stop Denying Innocent Spouse Relief!"](#)

[IRS Publication 971 Innocent Spouse Relief](#)

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