

Equitable Relief

On July 25, 2011, the Internal Revenue Service (IRS) announced that it was eliminating the two-year time limit that applied to taxpayers requesting equitable relief from an income tax liability related to a spouse (or former spouse) under section 6015(f) of the Internal Revenue Code (IRC)¹. This memorandum provides information on how this federal change will affect taxpayers requesting equitable relief under section 654 of the Tax Law.

Law and background

When married taxpayers file a joint income tax return, the Tax Law makes both spouses responsible for the entire tax liability (joint and several liability). Joint and several liability applies not only to the tax liability shown on a joint return, but also to any additional income tax liability the Tax Department determines to be due for that tax year, even if the additional tax is due to the income, deductions, or credits of only one spouse (or former spouse). Taxpayers remain jointly and severally liable for taxes, and the department can collect from either spouse, even if the taxpayers' later divorce and the divorce decree states that one spouse is solely responsible for the taxes.

However, in some cases a spouse (or former spouse) will be relieved of all or a portion of the tax, interest, and penalties due on a joint income tax return under the following provisions:

- For tax years beginning before January 1, 1999, innocent spouse relief is available under former Tax Law section 651(b)(5).
- For tax years beginning on or after January 1, 1999, section 654 of the Tax Law provides for innocent spouse relief, separation of liability, and equitable relief.

Section 654 of the Tax Law incorporates the provisions of section 6015 of the IRC. This section of the IRC addresses federal relief from joint and several liability on joint returns. For federal purposes, prior to July 25, 2011, requests for equitable relief under section 6015(f) of the IRC were required to be filed within two years of the date the IRS first took collection action against the requesting spouse. Therefore, for New York State purposes, requests for equitable relief under section 654 of the Tax Law were generally required to be filed within two years of the date the Tax Department first took collection action against the requesting spouse.

¹ The IRS did not eliminate the statutory two-year deadline to request innocent spouse relief under section 6015(b) of the IRC or separation of liability under section 6015(c) of the IRC.

Elimination of two-year period to request equitable relief

Effective July 25, 2011, the Internal Revenue Service (IRS) eliminated the two-year deadline that applied to requests for equitable relief (see [IRS Notice 2011-70](#)). Based on this IRS determination, the New York State Tax Department will also eliminate the two-year deadline that applies to requests for equitable relief as follows:

- **Future requests.** Individuals may request equitable relief under section 654 of the Tax Law, without regard to when the first collection action was taken by the department, by filing [Form IT-285, Request for Innocent Spouse Relief \(and Separation of Liability and Equitable Relief\)](#). However, Form IT-285 must be filed within the period of limitation on collection in sections 174-b and 692 of the Tax Law or, for any credit or refund of tax, within the period of limitation in section 687 of the Tax Law.
- **Requests currently under review.** Individuals who have already filed Form IT-285 with the department and are waiting for a determination will be considered for equitable relief even if the request was submitted more than two years after the first collection action was taken by the department. However, the request must have been made within the period of limitation on collection in sections 174-b and 692 of the Tax Law or, for any credit or refund of tax, within the period of limitation in section 687 of the Tax Law. Individuals are not required to re-file Form IT-285.
- **Requests that were denied solely for untimeliness and not litigated.** Individuals who filed a request for equitable relief under section 654 of the Tax Law on or before July 25, 2011, and were denied by the department solely for untimeliness and did not litigate the denial may reapply for relief by filing a new Form IT-285. In considering this new request, the department will treat the original Form IT-285 as a claim for refund for purposes of the period of limitation on refunds provided by section 687 of the Tax Law. This means that any amount that was eligible to be refunded when the original Form IT-285 was filed, and any amount subsequently collected may be eligible to be refunded as a result of the department's reconsideration of equitable relief. The department can only grant relief with respect to unpaid liabilities if the period of limitation on collection under sections 174-b and 692 of the Tax Law remains open as of the date of the original application for relief.

Litigation involving requests for equitable relief

- **Requests in litigation.** In any case in litigation in which the department denied a request for equitable relief under section 654 of the Tax Law, on or before July 25, 2011, the department will take appropriate action in the case as to the timeliness issue consistent with the position announced in this memorandum. Similarly, if equitable relief under section 654 was raised for the first time in litigation and the two-year deadline was raised as a defense, the department will take appropriate action

in the case consistent with the position in this memorandum. Individuals in these cases should not re-apply for equitable relief.

- **Requests that were in litigation and that litigation is now final.** Effective July 25, 2011, the department will take no further collection activity with respect to an individual who sought equitable relief under section 654 in an administrative proceeding under the Tax Law or a judicial proceeding in which:
 - the validity of the two-year deadline to request equitable relief was at issue;
 - the decision in the case is final; and
 - the department stipulated in the proceeding that the individual's request for equitable relief would have been granted had the request been timely.

In these cases, the department will not seek to collect from the individual any portion of the underlying liability for which equitable relief would have been granted. Individuals in these cases do not need to re-apply for equitable relief. The decision not to collect is prospective only, and no refunds or credits will be available.

Note: The relief from collection described above applies only to those liabilities for which equitable relief would have been granted under section 654 and does not apply to other liabilities. The department may pursue collection of other unpaid tax liabilities. For more information, see [Publication 125](#), *The Collection Process*.

Innocent spouse relief and separation of liability

This memorandum has no effect on the two-year deadline to request innocent spouse relief or separation of liability under section 654 of the Tax Law. It also has no effect on requests for innocent spouse relief under former Tax Law section 651(b)(5) for tax years beginning prior to January 1, 1999. For more information on these types of relief, see [Publication 89](#), *Innocent Spouse Relief (And Separation of Liability and Equitable Relief)*.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.