

STATE OF HAWAII — DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM N-379
REQUEST FOR INNOCENT SPOUSE RELIEF
(And Separation of Liability and Equitable Relief)

(NOTE: References to “married,” and “spouse” are also references to “in a civil union,” and “civil union partner,” respectively.)

GENERAL INSTRUCTIONS

Purpose of Form N-379

Use Form N-379 to request relief from liability for tax, plus related penalties and interest, that you believe should be paid only by your spouse (or former spouse). You generally must have filed a joint return for the year(s) for which you are requesting relief. The Department of Taxation (Department) will evaluate your request and tell you if you qualify. *If you are requesting relief from the non-tax obligations of your spouse, please contact the agency with which your spouse has the obligation directly (i.e., For child support, contact the Child Support Enforcement Agency).* You may be allowed one or more of these three types of relief:

- Separation of liability,
- Innocent spouse relief, or
- Equitable relief.

Attach a statement to Form N-379 explaining why you qualify for relief. Complete the statement using the best information you have available. The Department will ask you for additional information if needed, or you may provide additional information at any time.

Additional Information

See federal Publication 971 for more details.

When and Where To File

You must file Form N-379 as soon as you become aware of an unpaid tax liability that you believe should be paid only by your spouse (or former spouse). The following are some of the ways you may become aware of such a liability:

- The Department has examined your tax return.
- The Department sends you a notice.

You generally must file Form N-379 no later than two years after the first Department attempt to collect the tax from you. Examples of attempts to collect the tax from you include garnishment of your wages or applying your income tax refund to the tax due.

Exception for equitable relief. The period of time in which you may request equitable relief has been expanded. For more information, see Department of Taxation Announcement No. 2011-28.

Do not file Form N-379 with your tax return. Instead:

- If you are meeting with a Department employee for an examination, examination appeal, or collection, file Form N-379 with that employee.
- If you received a Department notice of deficiency, and the 30-day period specified in the notice has not expired, file Form N-379 with the Department employee named in the notice. Attach a copy of the notice to Form N-379. Before the end of the 30-day period, you should file a petition with the Board of Review or the Tax Appeal Court, (collectively the Court) as explained in the notice. By doing so, you preserve your rights if the Department is unable to properly consider your request before the end of the 30-day period. Include the information that supports your position, including when and why you filed Form N-379, in your petition to the Court. The time for filing with the Court is not extended while the Department is considering your request.

If none of the situations above apply to you, file Form N-379 with the Hawaii Department of Taxation at P.O. Box 259, Honolulu, HI 96809-0259.

Court Review of Request

You may petition (ask) the Court to review your request for innocent spouse relief or separation of liability (but not equitable relief) if:

- The Department sends you a determination notice denying, in whole or in part, your request, **or**
- You do not receive a determination notice from the Department within six months from the date you filed Form N-379.

You may petition the Court to review your case no later than the end of the 90-day period that begins on the date the Department mails you a determination notice. Contact your District Tax Office for more information regarding petitioning the Court to review your request.

Joint and Several Liability

Generally, joint and several liability applies to all joint returns. This means that both you and your spouse (or former spouse) are liable for any **underpayment of tax** (tax shown on a return but not paid) plus any **understatement of tax** (defined next) that may become due later. This is true even if a divorce decree states that your former spouse will be responsible for any amounts due on previously filed joint returns. Form N-379 allows you to request that joint and several liability not apply to part or all of any unpaid tax.

Understatement of Tax

An understatement of tax, or deficiency, is generally the difference between the total amount of tax that the Department determines should have been shown on the return and the amount that actually was shown on the return.

Example. You and your spouse (or former spouse) file a joint return showing \$5,000 of tax, which was fully paid. The Department later audits the return and finds \$10,000 of income that your spouse earned but did not report. With the additional income, the total tax becomes \$6,500. You and your spouse are both liable for the \$1,500 understatement of tax.

Underpayment of Tax

An underpayment of tax is tax that is properly shown on the return, but has not been paid.

Example. You filed a joint return that properly reflects your income and deductions, but showed an unpaid balance due of \$5,000. You and your spouse were getting divorced. You gave your spouse \$2,500 and your spouse promised to pay the full \$5,000, but did not. You and your spouse are both liable for the \$5,000 underpayment of tax.

Spousal Notification

The Department is required to inform your spouse (or former spouse) if you request a separation of liability or innocent spouse relief, and to allow your spouse (or former spouse) to provide information that may assist in determining the amount of relief from liability. The Department of Taxation will not provide information to your spouse or former spouse that could infringe on your privacy. The Department will not provide your new name, address, information about your employer, phone number, or any other information that does not relate to a determination about your request for relief from liability.

Separation of Liability

If you filed a joint return for the year(s) entered on line 1, you may be able to separate liability for any understatement of tax on

the return(s) between you and your spouse (or former spouse). Generally, you can request to do so if that person died or you and that person:

- Are no longer married, or
- Are legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file Form N-379.

Separation of liability applies only to amounts owed that are not paid. The Department cannot give you a refund of amounts already paid.

Innocent Spouse Relief

If you qualify for separation of liability, you may not need to request innocent spouse relief. The amount of relief allowed by requesting separation of liability will usually be equal to or greater than the amount allowed by requesting innocent spouse relief. However, you may still request innocent spouse relief if you wish.

You may be allowed innocent spouse relief if:

- You filed a joint return for the year(s) entered on line 1,
- There is an understatement of tax on the return(s) that is due to erroneous items of your spouse (or former spouse),
- You can show that when you signed the return(s) you did not know and had no reason to know that the understatement of tax existed (or the extent to which the understatement existed), and
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

Erroneous Items

Any income, deduction, or credit is an erroneous item if it is omitted from or incorrectly reported on the joint return.

Partial Innocent Spouse Relief

If you knew about any of the erroneous items, but not the full extent of the item(s), you may be allowed relief for the part of the understatement you did not know about. Explain in the statement you attach to Form N-379 how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

Equitable Relief

You may be allowed equitable relief if, taking into account all the facts and circumstances, it would be unfair to hold you liable for any understatement or underpayment of tax that should be paid only by your spouse (or former spouse),

You can only be allowed equitable relief for an underpayment of tax, or part or all of any understatement of tax, that does not qualify for either separation of liability or innocent spouse relief. You should request separation of liability or innocent spouse relief for any understatement of tax, unless you are sure you are not eligible. The Department will consider equitable relief if it determines that innocent spouse relief and separation of liability do not apply.

SPECIFIC INSTRUCTIONS

Your Current Name and Home Address

Name. Enter your current name. If your current name is different from your name as shown on your tax return for any year for which you are requesting relief, enter it in parentheses after your current name. For example, enter "Malia Malama (formerly Malia Aloha)."

P.O. Box. Enter your box number only if your post office does not deliver mail to your home.

Foreign address. Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please do not abbreviate the country name.

Line 1

If you want to request relief for more than one tax year, you only need to file one Form N-379. If you are filing Form N-379 for multiple years, clearly indicate in the statement(s) you attach the type(s) of relief you are requesting for each year.

Line 2

If you have requested innocent spouse relief from the Internal Revenue Service, you will receive a determination letter detailing the relief you are granted. If you have received this final determination letter from the IRS, check the first box and attach a copy of that letter to this form. If you have not yet received the letter, check the second box. If you did not request relief from the Internal Revenue Service, check the third box and see the instructions for line 4.

Line 4

Copies of federal Form 8857 and your written statement must be attached to your Form N-379. This form and your statement will provide the Department with the information needed to make a determination regarding your request for relief. You must provide a completed copy of the federal form even if you have not requested innocent spouse relief from the Internal Revenue Service. This form is available on the IRS website at www.irs.gov. Your written statement should include an indication of what kind of relief you are requesting, an explanation of why you believe you qualify for relief, and information regarding the hardship (financial or personal loss) that you would incur if you were required to pay the liability.

Note: If you are a civil union partner, you must provide a completed copy of federal Form 8857 even if you cannot request innocent spouse relief from the Internal Revenue Service.

If you are requesting **separation of liability**, your statement must show the total amount of the understatement of tax. For each item that resulted in an understatement of tax, you must explain whether the item is attributable to you, your spouse (or former spouse), or both of you. For example, unreported income earned by your spouse (or former spouse), would be allocated to that person. An overstated deduction of home mortgage interest on a home you owned jointly that was paid from a joint checking account would, generally, be allocated equally between both of you. See federal Publication 971 for more details. If, at the time you signed the joint return, you knew about any item that would result in part or all of the understatement, then your request will not apply to that part of the understatement.

If you are requesting **innocent spouse relief**, your statement must include an explanation of why you believe you qualify for relief. The statement will vary depending on your circumstances, but should include the following:

- The amount and a detailed description of each erroneous item, including why you had no reason to know about the item or the extent to which you knew about the item,
- The amount of the understatement of tax for which you are liable and are seeking relief, and
- Why you believe it would be unfair to hold you liable for the understatement of tax.

If you are requesting **equitable relief**, include an explanation of why you believe it would be unfair to hold you liable for the tax instead of your spouse (or former spouse). If you are attaching a statement for separation of liability or innocent spouse relief, include only any additional information you believe supports your request for equitable relief.