

GIL 24-19-2 Income Tax: Innocent Spouse Relief

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August 6, 2019

Dear XXXX,

Guidance has been requested from several taxpayers about whether the Nebraska Department of Revenue (DOR) allows innocent spouse relief for Nebraska individual income tax liability, consistent with the IRS innocent spouse relief for federal income tax liability. This issue arises frequently when a taxpayer successfully obtains an innocent spouse relief determination from the IRS, and then attempts to obtain similar relief from Nebraska when the taxpayer receives a balance due.

GILs address general questions; provide analysis of issues; and direct taxpayers to the Nebraska statutes, Department regulations, revenue rulings, or other sources of information to help answer a question. A GIL is a statement of current DOR policy, and taxpayers may rely on DOR to follow the principles or procedures described in a GIL until it is rescinded or superseded. You may also find current regulations, revenue rulings, information guides, taxpayer rulings, and other GILs at revenue.nebraska.gov that may be helpful to you.

The IRS allows a taxpayer to apply for relief from federal income tax liability, termed “innocent spouse relief” using the IRS Form 8857, Request for Innocent Spouse Relief. This relief may be obtained when a spouse believes they should not be liable for a joint liability resulting from filing a joint return where the liability is due to understated tax attributable to erroneous items, of which the spouse had no knowledge. Upon application, the IRS will issue a preliminary determination letter and a final determination letter if the request is approved.

The Nebraska Revenue Act does not specifically provide for Innocent Spouse Relief; however, under [Neb. Rev. Stat. §§ 77-2792\(3\)](#) and [77-3907\(2\)](#), the Tax Commissioner has authority to compromise outstanding liabilities. In circumstances where an offer in compromise may otherwise be considered, DOR may agree to a settlement of a delinquent tax account under [316 Neb. Admin. Code, Ch. 36 § 017.01](#) where a taxpayer has received a final determination of IRS Innocent Spouse relief. Offers in compromise sought based on IRS Innocent Spouse relief, may be considered in circumstances such as older unresolved accounts, hardship cases, and retired or limited income taxpayers. To request relief due to an Innocent Spouse situation, a taxpayer should make an offer of settlement to DOR, in writing, indicating the settlement offer and the amount of IRS Innocent Spouse relief. The taxpayer should also submit a copy of the IRS preliminary and final determination letters. If the offer is approved, DOR will send the taxpayer a letter of acceptance.

Please note that although Form 8857 is titled “Request for Innocent Spouse Relief, it is used not only to apply for the specific innocent spouse relief, but also to apply for “separation of liability relief”, “community property relief”, and “equitable relief”. Taxpayers should be aware that DOR does not consider settlements based on these other types of IRS relief.

For the Tax Commissioner

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