Request for Innocent Spouse Relief and Separation of Liability and Equitable Relief

Arizona Form 200

For information or help, call one of the numbers listed:

Phoenix	(602) 255-3381
From area codes 520 and 928, toll-free	(800) 352-4090

Tax forms, instructions, and other tax information

If you need tax forms, instructions, and other tax information, go to the department's website at **www.azdor.gov.**

Income Tax Procedures and Rulings

These instructions may refer to the department's income tax procedures and rulings for more information. To view or print these, go to our website and click on *Reports and Legal Research* then click on *Legal Research* and select a *Document Type* and *Category* from the drop down menus.

Publications

To view or print the department's publications, go to our website and click on *Reports and Legal Research* and then click on *Publications*.

General Information

We know that some of the questions on this form involve sensitive subjects, but we need this information to determine whether you qualify for relief.

Purpose of Form

Use Arizona Form 200 to request relief from liability for tax, plus related penalties and interest, that you think only your spouse (or former spouse) should pay. You may be allowed one or more of these three types of relief.

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

For a request for separation of liability, you must have filed a joint return that has an understatement of tax due to an item of your spouse.

For a request for innocent spouse relief, you must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse.

For a request for equitable relief, you must have filed a return that has either an understatement or an underpayment of tax; or you were issued a joint assessment for you and your former spouse.

You do not need to figure the tax, interest, and penalties that qualify for relief. We will figure these amounts for you. For more information, see the department's publication, Pub. 300.

If you are an Injured Spouse

NOTE: ***Do not*** *use Form 200 to make an injured spouse claim.* ***You are an injured spouse if*** *your share of an* ***overpayment*** *shown on your joint return was, or is expected to be, applied against your spouse's past-due state taxes, child support or spousal maintenance, or debts owed to another Arizona state agency, the Internal Revenue Service (IRS), or a court.*

If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment.

Taxable years ending on or before December 31, 2016

For information about amounts held for:

1. **Past-due state taxes**, call one of the phone numbers listed on this page.
2. **Child support or spousal maintenance**, contact the Arizona Department of Economic Security.
3. **Another Arizona state agency**, contact that agency.
4. **The IRS**, contact the IRS.
5. **A court**, contact that court.
6. **An Arizona city or town**, contact that city or town.

Taxable years beginning on and after January 1, 2017

A taxpayer **must** use Arizona Form 203 to make an injured spouse claim. The taxpayer and spouse **must** file a joint income tax return **and** include a completed Form 203 with the tax return, when filed. For more information, see Form 203 and its instructions.

When and Where to File Form 200

File Form 200 as soon as you become aware of an unpaid tax liability that you think your spouse (or former spouse) should pay. The following are some of the ways you may become aware of such a liability:

- We have examined your tax return.
- We sent you a notice.

Do not file Form 200 with your tax return. Mail Form 200 to:

Individual Income Tax Audit - Attention Form 200
Arizona Department of Revenue
PO Box 29084
Phoenix, AZ 85038-9084

Mail Form 200 to the above address, even if you are working with a department employee due to an audit, an appeal or collection.

What Happens After You File Form 200

We will review your form to make sure it is complete. We will contact your spouse or former spouse to ask if he or she wants to take part in the process. Once we have all of the information needed to make a decision, we will send a determination letter to you and your spouse or former spouse. If you or your spouse does not appeal the decision within 90 days, the decision will become final.

Refunds Under Relief

The amount that may be refunded may be limited by the statute of limitations. In the following situations, you are eligible to receive a refund of certain payments you made.

Underpaid tax. If you are granted relief for an underpaid tax, you are eligible for a refund of separate payments that you made. You are not eligible for refunds of payments made with the joint return, joint payments, or payments that your spouse (or former spouse) made. For example, withholding tax and

estimated tax payments cannot be refunded because they are considered joint payments made on the joint return.

Understated tax. If you are granted relief for an understated tax, you are eligible for a refund of certain payments made under an installment agreement that you entered into with the department if you have not defaulted on the installment agreement. Only installment payments made after the date you filed Form 200 are eligible for a refund.

Line-by-Line Instructions

NOTE: *You must have filed an Arizona income tax return for each year for which you are requesting relief.*

Name and Address Information

- Enter your name in the spaces provided.
- Enter your Social Security Number (SSN). Make sure you enter your SSN correctly.
- Enter your current home address.

  If you have a 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. Do not abbreviate the country name.
- Enter your daytime phone number.

You must complete lines 1 through 4 of Form 200. When you complete lines 3a through 3c, be sure to read the instructions for those lines. Be sure you complete any required statements for the type of relief you are requesting. Also be sure you include those required statements with Form 200 when you submit it. See the instructions for lines 3a through 3c to determine which statements you must include with Form 200.

If you completed federal Form 8857, you only need to complete lines 1 through 4 of Form 200. You may skip lines 5 through 20. In this case, do the following:

- Check the box to indicate you completed federal Form 8857.
- Include all required statements for the type of relief you are requesting.
- Include a copy of your completed federal Form 8857.
- Sign page 5 of Form 200.
- Mail Form 200 to the address shown on page 1.

NOTE: *If you were granted relief by the IRS, please include a copy of the IRS letter with your Form 200.*

Part 1 - Type of Relief

Line 1 - Relief Year(s)

Enter each tax year you want relief. If you are asking for relief for more than one tax year, you need to file only one Form 200. If you are asking for relief for more than three tax years, you must include a separate schedule.

Line 2 - Are You Asking for a Refund?

Check the box for each year you would like a refund, if you qualify for relief. You may have to provide proof of payment. We will only refund payments you made with your own money. You must provide proof that you made the payment with your own money. Examples of proof are a copy of your bank statement or a canceled check. No proof is required if your individual refund was used by the department to pay tax you owed on a joint tax return for another year.

Lines 3a through 3c - Type of Relief Being Claimed

You may request innocent spouse relief for an understatement of tax no matter how small the amount. If you are divorced, separated, or no longer living with your spouse, you may request separation of liability between you and your spouse (or former spouse) for an understatement of tax on a joint return. Also, the department will consider your request for equitable relief in situations where it would be unfair to hold you liable for tax that should be paid only by your spouse (or former spouse).

On lines 3a through 3c, check the box for the type of relief you are claiming. Check all boxes that apply. Before, you check the box(es) for the type of relief you are claiming, you should understand the following terms.

- Joint and several liability
- Understatement of tax
- Underpayment of tax

Joint and Several Liability

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 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 200 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 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.

Underpayment of Tax

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

Community Property Laws

You must generally follow community property laws when filing a tax return if you are married. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or your spouse (or former spouse) for purposes of requesting any relief from liability.

Line 3a - 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). You can request to do so if you and that person:

- are no longer married,
- are legally separated, or
- have lived apart at all times during the 12-month period prior to the date you file Form 200.

NOTE: *A widow or widower is considered no longer married.*

Even if you meet the above requirements, the department will not grant your request for separation of liability if any of the following applies:

- You and your spouse (or former spouse) transferred assets as part of a fraudulent scheme.
- At the time you signed your joint return (unless signed under duress), you had actual knowledge that items giving rise to the deficiency and allocable to your spouse were incorrect.
- You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax.

Requesting Separation of Liability

If you are asking for separation of liability, check box 3a.

Required documentation (even if you included a completed federal Form 8857).

If you checked box 3a, include a statement with Form 200 that shows the total amount of the understatement of tax. For each item that resulted in an understatement of tax, 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.

Line 3b - 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 **all** of the following apply:

- 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).
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.

Erroneous Items

Erroneous items are either of the following:

- **Unreported income.** This is any gross income item received by your spouse that is not reported.
- **Incorrect deduction, credit, or basis.** This is any improper deduction, credit, or property basis claimed by your spouse.

The following are examples of erroneous items:

- The expense for which the deduction was taken was never made. For example, your spouse deducted $10,000 of advertising expenses on federal Schedule C, but never paid for any advertising.
- The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of $10,000 that was for the payment of state fines: fines are not deductible.
- No legal argument can be made to support the deductibility of the expense. For example, your spouse claimed $4,000 for security costs related to a home office, which were actually veterinary and food costs for your family's two dogs.

Any income, deduction, or credit is an erroneous item if **all** of the following apply:

- it is omitted from or incorrectly reported on the joint return,
- it is attributable to your spouse (or former spouse),
- it results in an understatement of tax, and
- you did not know and had no reason to know about the understatement or the extent of it (see **Partial Innocent Spouse Relief** next).

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 part of the understatement. Explain in the statement you include with Form 200, how much you knew and why you did not know, and had no reason to know, the full extent of the item(s).

Requesting Innocent Spouse Relief

If you are asking for innocent spouse relief, check box 3b.

Required documentation (even if you included a completed federal Form 8857)

If you checked box 3b, include a statement with Form 200 explaining why you believe you qualify. The statement will vary depending on your circumstances, but should include **all** of the following:

1. 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.
2. The amount of the understatement of tax for which you are liable and are seeking relief.
3. Why you believe it would be unfair to hold you liable for the understatement of tax.

Line 3c - 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 be allowed equitable relief only 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.

Requesting Equitable Relief

If you are asking for equitable relief, check box 3c.

Required documentation (even if you included a completed federal Form 8857)

If you checked box 3c, 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 including a statement for separation of liability or innocent spouse relief, include only the additional information you believe supports your request for equitable relief.

Part 2 - Information About You and Your Spouse (or Former Spouse)

Line 5 -

The department must contact your spouse (or former spouse.) There are no exceptions, even for victims of spousal abuse or domestic violence.

We will inform your spouse (or former spouse) that you filed Form 200 and will allow him or her to participate in the process. If you are asking for relief from joint and several liability on a joint return, we must also inform him or her of our determination regarding your request for relief.

To protect your privacy, we will not disclose your personal information like your current name, address or phone number. We will not disclose information about your employer, your income or assets, or any other information that does not relate to making a determination about your request for relief from liability.

On line 5, enter the current name and SSN of the person to whom you were married at the end of the year(s) listed on line 1. If the name of your spouse (or former spouse) shown on that year's tax return(s) is different from the current name, enter it in parentheses after the current name. For example: Joan Oak (formerly Joan Pine). Enter the current address and phone number if you know it.

Lines 6 through 10 -

Answer questions 6 through 10.

Part 3 - Your Financial and Return Preparation Involvement

Lines 11 through 17 -

Answer questions 11 through 17.

By law, if a person's name is signed to a return, it is presumed to be signed by that person. You must prove that your signature on the joint return was forged or that you signed under duress (threat of harm or other form of coercion).

Include a statement explaining why you believe your signature was forged or why you signed under duress.

Forged Signature

Your signature on a joint return is considered to be forged if it was not signed by you and you did not authorize (give tacit consent) the signing of your name to the return.

Tacit Consent

Tacit consent means that, based on your actions at the time the joint return was filed, you agreed to the filing of the joint return. You may be considered to have given tacit consent if any of the following apply:

- You gave tax information (such as Forms W-2 and 1099) to your spouse.
- You did not object to the filing.
- You did not have a valid reason to refuse to file jointly.
- There was an apparent advantage to you in filing a joint return.

We will also consider whether you filed joint returns with your spouse (or former spouse) in prior years and whether you filed a separate income tax return for that year.

Signed Under Duress

You are considered to have signed under duress (threat of harm or other form of coercion) if you were unable to resist demands to sign the return and you would not have signed the return except for the constraint applied by your spouse (or former spouse.) The duress must be directly connected with the signing of the joint return.

Part 4 - Your Current Financial Situation

Lines 18 through 20 -

Complete lines 18 through 20.

Sign and Date Form 200 -

Sign Form 200 in the space provided. We cannot consider your Form 200 if you do not sign it. If you do not sign it, we will return it to you. Also be sure to date it.

Paid Preparer Must Sign Form 200 -

Anyone that you pay to prepare Form 200 for you must sign the Form 200 in the space provided. The preparer must give you a copy of the completed Form 200 for your records. Someone who prepares Form 200 but does not charge you should not sign Form 200.

If you pay someone else to prepare your Form 200, that person must also include an identification number where requested.

A paid preparer may use any of the following:

- his or her PTIN,
- his or her SSN; or
- the EIN for the business.

A paid preparer who fails to include the proper identification numbers may be subject to a penalty.