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In Innocent Spouse Tax Cases, How You Tell Your Story Matters

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David Gair, Dallas Partner and Chair of Locke Lord's Tax Controversy Practice Group, authored an article for Bloomberg Law outlining the opportunities and potential pitfalls when pursuing innocent spouse tax relief. Gair explains that married people who file their taxes jointly typically choose this option because of its tax advantages. But when a spouse commits a misdeed, both parties are still jointly responsible for the payment of taxes, unless one of them qualifies for innocent spouse relief. In the article, Gair outlines the many factors for consideration of innocent spousal relief: "It is important to be divorced from your spouse before submitting a request. At a minimum, you want to have the divorce case started."

He goes on to note, "If paying the tax would cause your client an economic hardship, you have a good fact...If your clients' bank records don't match their income, then you have a problem. Be ready to explain."

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Married people who file their taxes jointly typically choose this option because of its tax advantages. But when a spouse commits a misdeed, you're still jointly and severally responsible for the payment of taxes.

But what happens when you're innocent? A 2024 Tax Court case, [Thomas v. Commissioner](#), demonstrates that the way you tell your story to the IRS matters.

Innocent Spouse Provision

In *Thomas v. Commissioner*, the court dealt with the application of [Section 6015\(f\)](#) of the tax code—relief from liability on joint tax returns. Sydney Ann Chaney Thomas had favorable facts such as being a widow and a finding she suffered from abuse in her marriage.

These good facts were overshadowed by seemingly living lavishly while tax liabilities accrued. Examples included buying a European SUV, owning a ski home in Lake Tahoe, and gifting a Dior bag to her daughter.

When courts look at whether someone is an [innocent spouse](#), a key factor is whether that person received a significant benefit in excess of normal support. The court cited several examples of significant benefits that

Thomas enjoyed while her tax liabilities remained unpaid. This included two properties in desirable areas and, along with her husband, she took early retirement distributions to keep paying the mortgages.

The record also disclosed vacations to Europe, Hawaii, and elsewhere; education expenses for her children; and a five-carat diamond ring.

When the record shows you have lavish expenses at a time when you know you are incurring tax problems, it doesn't bode well for a win in court.

The court used [IRS Rev. Proc. 2013-34](#), which sets out seven nonexclusive factors to be considered in determining whether a spouse is entitled to relief as an innocent spouse, when making its decision.

Those factors include the taxpayer's marital status, whether the requesting spouse will suffer economic hardship absent relief, and the mental or physical health of the requesting spouse.

The Tax Court said it weighed all the facts and circumstances and found Thomas wasn't entitled to relief, specifically focusing on the significant benefit factor—which says that significant benefits received by a requesting spouse received “will not weigh against relief (will be neutral) if the nonrequesting spouse abused the requesting spouse or maintained financial control and made the decisions regarding living a more lavish lifestyle.”

Greater deference also was given to the presence of abuse, which can outweigh or negate other factors. The court noted that if the nonrequesting spouse controlled the household and business finances, or if there were abuse such that the nonrequesting spouse made the decision on spending for a lavish lifestyle, then this factor would be neutral.

In *Thomas v. Commissioner*, the court said that the abuse Thomas suffered weighed in favor of relief as to the knowledge factor. Interestingly, the court didn't reach the same conclusion with the significant benefit factor. It is unusual to have facts that can support abuse for one factor and not another.

Practice Pointers

To submit a request for innocent spouse relief, you must understand the factors and exceptions to them and practice the art of effective persuasion. There are several good rules of thumb to follow.

Economic hardship. If paying the tax would cause your client an economic hardship, you have a good fact. You must do an in-depth analysis of their financial situation and not rely on what you are told. Look at tax returns, pay stubs, and bank records. If your clients' bank records don't match their income, then you have a problem. Be ready to explain.

Marital status. It is important to be divorced from your spouse before submitting a request. At a minimum, you want to have the divorce case started. Also, it is a great fact to have the “guilty” spouse agree to the payment of any past due taxes in the divorce agreement.

Education. Having someone who is a CPA or a lawyer isn't helpful. Clients with financial expertise have a

tougher row to hoe because the courts will expect more from someone with sophisticated training in financial or legal matters.

Honesty. It seems clear that the judge questioned Thomas' credibility. It is vital in any case that your client be credible. There are always problem facts in any case. Presenting the problem honestly while minimizing the damage is an art.

Abuse. If there is one area I would have focused on more heavily for Thomas, it would have been in her allegations of abuse. Rev. Proc. 2013-34 makes the presence of abuse vitally important, noting that it "can be relevant with respect to the analysis of other factors and can negate the presence of certain factors."

Abuse can take many forms. Physical abuse is the easiest to physically see but not the most common and maybe not the most damaging. Verbal and emotional abuse can be very bad as well, and you should advocate that point. Financial control is also common and must be revealed.

To do so, you must have more than the self-serving testimony of your client. Obtain letters from friends or family. Ask a therapist to write a letter. Get examples of the abuse from text messages, voice mails, and affidavits.

[IRS Form 8857](#) provides a good template for what the IRS or courts look for when reviewing requests. Unfortunately, it doesn't give you a method to humanize your client.

A practitioner must always endeavor to provide context and background—I always provide a narrative as an exhibit. It is hard to check the box, yes or no, for things such as abuse and succeed. A narrative helps to highlight good facts and neutralize bad facts.

While she may have received an economic benefit, the abuse Thomas suffered could have turned this from a bad fact to a neutral fact. Thomas' case may have turned out differently if she had told her story better.

The case is [Thomas v. Commissioner](#), T.C., 12982-20, 1/30/24.

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