

**701—38.15 (422) Relief of innocent spouse for substantial understatement of tax attributable to other spouse.** Married taxpayers are generally jointly and severally liable for the total tax, penalty, and interest from a joint return or from a return where the spouses file separately on the combined return form. However, a married person who meets the criteria for an innocent spouse established in Section 6015 of the Internal Revenue Code may be relieved of liability for an understatement of tax that is attributable to erroneous items of the other spouse.

**38.15(1) *Filing status for return with an innocent spouse.*** For state income tax purposes, a married taxpayer filing a return with a spouse can qualify as an innocent spouse only if the taxpayers file a joint return or file separately on the combined return form. A married taxpayer who files a separate return that has been accepted by the state will not be eligible for innocent spouse status.

**38.15(2) *Scope of relief for Iowa income tax purposes.*** An understatement of the tax is the excess of the tax required to be shown over the tax actually shown on the return. An erroneous item is any item resulting in an understatement or deficiency in Iowa taxes to the extent that the item is omitted from, or improperly reported or characterized on, an Iowa tax return, including Iowa deductions and tax credits that would not be included on a federal return.

**38.15(3) *Presumption and burden of proof when requesting innocent spouse relief.***

*a. Presumption.* The department shall presume that a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief for the relevant tax years shows that the innocent spouse granted relief by that document qualifies for innocent spouse relief for Iowa income tax purposes for those tax years. If the person seeking innocent spouse relief does not provide the department with a final determination letter or other document issued by the Internal Revenue Service approving a request for innocent spouse relief within the time frame set forth in subrule 38.15(4), the department shall presume that the person seeking innocent spouse relief does not meet the criteria to qualify for innocent spouse relief for Iowa income tax purposes and shall deny the request. The burden is on the person seeking innocent spouse relief to rebut this presumption with other evidence.

*b. Request without Internal Revenue Service approval.* If the department denies a claim for innocent spouse relief, the person seeking innocent spouse relief may protest the department's determination under 701—Chapter 7. The department will evaluate the protest by applying the criteria set forth in Section 6015 of the Internal Revenue Code and the related regulations. The department will defer to federal court cases, letter rulings, and revenue rulings in interpreting Section 6015 of the Internal Revenue Code and the related regulations. The provisions of Sections 6015(c) and 6015(f) of the Internal Revenue Code regarding relief for separation of liabilities and equitable relief, respectively, are applicable for Iowa income tax purposes for tax years beginning on or after January 1, 2002. The burden is on the person seeking innocent spouse relief to show that the person meets the federal criteria for innocent spouse relief.

**38.15(4) *Time period for requesting innocent spouse relief.*** For tax periods beginning on or after January 1, 2004, innocent spouse relief must be requested within two years after the date the department initiates collection action against the person claiming innocent spouse relief. However, an extended time period to request equitable relief for innocent spouses under Section 6015(f) of the Internal Revenue Code can be granted under the provisions of Internal Revenue Service Notice 2011-70, which became effective July 25, 2011.

This rule is intended to implement Iowa Code section 422.21 as amended by 2002 Iowa Acts, House File 2116.