

*From the desk of Jeanne M. Kerkstra, Esq., CPA*

**Viewpoint**  
**Joint Return = Joint Liability?**

It was reported last week that the wife of convicted former Congressman Randy "Duke" Cunningham entered into a closing agreement with the IRS (as did her husband, separately I believe). Her attorney stated that she had signed the joint return and so was jointly liable. However, often the spouse argues for relief as an innocent spouse, an injured spouse or cries duress. (See § 6015 of the Internal Revenue Code).

Generally speaking, *innocent spouse relief* could be granted if the spouse establishes that he (or she) did not know, and had no reason to know, that there was an understatement and to hold otherwise would be inequitable. An *injured spouse* may prevail if a refund was received on a joint return and is, or is expected to be, used to pay one spouse's past-due child and/or spousal support, a past-due federal debt or past-due state income tax. Lastly, if the non-offending spouse could prove *duress*, the signature on the joint return does not count. It is not considered a joint return, and consequently the non-offending spouse is not subject to joint and several liability.

You would have to remember that there are limitations on the relief that a non-offending spouse may seek. In general, relief must be sought within 2 years of the commencement of collection activity, and these forms of relief cannot be sought if the non-offending spouse enters into a closing agreement or an Offer in Compromise with the IRS.

<p>Jeanne M. Kerkstra, Esq., CPA KERKSTRA LAW OFFICES LLC 53 W. Jackson Blvd. Suite 1530 Chicago, IL 60604 312.427.0493 312.675.0500 (fax) <a href="mailto:jmk@kerkstralaw.com">jmk@kerkstralaw.com</a></p>	<p>KERKSTRA LAW OFFICES LLC Problem? Solved.®  asset protection • estate planning corporate work • business succession planning forensic investigation • litigation and more</p>
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