

Financial Misconduct

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Party suspects other party of concealing assets. If a party suspects that the other party has assets that are hidden, extensive discovery may be necessary. If the suspicions are unfounded, a great deal of resources will be spent with no return. In the big dollar case, a forensic accountant may be helpful. Even if you are not going to hire a forensic accountant you should obtain banking, credit card and brokerage accounts directly from the third parties. You may hire a private investigation firm to perform an asset check. If you discover that the opposing party is hiding assets you will need to strategize how you will handle and confront the opposing party with the information.

If a party discovers that another party was hiding assets or income after a settlement or final decree is entered, the party may be able to set aside the judgment. A motion to set aside may be brought to set aside a judgment base upon fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant. O.C.G.A. § 9-11-60(d).

Fraudulent Conveyances.

If a spouse conveys property to a third party in a fraudulent attempt to defeat a claim for alimony or child support, the other spouse may join as third party defendant the party to whom the transfer was made. O.C.G.A. § 9-11-19(a)(1); see also O.C.G.A. §§ 18-2-70 et. seq.

Party failed to report income properly for tax purposes.

The filing of a joint return makes both parties liable jointly and severally for all taxes due. An innocent spouse may be relieved of liability under certain circumstances. Additionally, a former spouse may elect to limit his or her liability under a joint return to the liability that would have been attributable to them individually had the parties filed separately. I.R.C. § 6015. The previous "innocent spouse" rule under I.R.C. § 6013 (e) was difficult to satisfy. The new I.R.C. § 6015 offers three methods for relief against joint and several liability.

I.R.C. § 6015 (b) Innocent Spouse Relief- provides an election for relief from an understatement of tax liability. If a spouse qualifies for innocent spouse relief, such spouse can be relieved of responsibility for paying tax, interest and penalties if their spouse or former spouse improperly reported or omitted items on a tax return. The tax, interest and penalties that qualify

would only be collected from the non-innocent spouse. The innocent spouse would be jointly liable for any tax, interest, and penalties that do not qualify. An innocent spouse must meet the following conditions:

1. Joint return filed which has understatement of tax due to erroneous items of non-innocent spouse.
2. At the time innocent spouse signed the joint return, such spouse did not know and had no reason to know that there was an understatement.
3. It would be unfair to hold innocent spouse liable.
4. Innocent spouse relief will not be granted if IRS proves that the spouse transferred property to one another as part of a fraudulent scheme. Fraudulent scheme includes attempt to defraud IRS, another third party such as a creditor, ex-spouse or business partner.

I.R.C. § 6015 (c) Separation of Liability- provides an election to allocate a deficiency. The understatement of tax on a joint return is allocated between the spouses. Here a spouse is not entitled to relief if there was a fraudulent transfer, the spouse seeking relief has actual knowledge of the erroneous items causing the deficiency or the spouse seeking relief received property from the other spouse to avoid tax or payment of tax.

I.R.C. § 6015 (f) - Equitable Relief- provides IRS with discretion to grant equitable relief from deficiencies and underpayments if the relief under I.R.C. § 6015 (b) or (c) do not apply. Each type of relief has different requirements.