

Injured Spouse Relief

Background

The IRS may intercept a refund owed to a taxpayer as payment of that taxpayer's prior federal or child support debt. When a joint return is filed and only one spouse owes such a debt incurred before the current marriage, the other spouse may believe that a portion of the refund was attributable to her own financial activity and should be paid to her. Such a spouse may be considered an "injured spouse" and may request a division of the refund. The request is made by filing Form 8379, *Injured Spouse Allocation*.

Foundation Communities Policy

VITA volunteers may assist an injured spouse in completing Form 8379 if the client confirms that:

- 1) She will file or has filed a return with Married Filing Joint as the filing status; and
- 2) She did not receive a refund or expects to have a refund withheld by the IRS; and
- 3) The refund was or will be used to pay child support, tax debt, or other federal debt owed by her spouse from before their marriage.

Further, the spouse seeking injured spouse relief must be eligible to make the claim:

- 1) The injured spouse does not owe the debt; and
- 2) The injured spouse reported some type of income on a joint tax return; and
- 3) The injured spouse reported some type of income tax payment (e.g. withholding, refundable tax credit, estimated tax payments) on a joint tax return.

From the Training Guide page 5-4:

These conditions must apply unless the injured spouse lived in a community property state at any time during the tax year. In community property states, the injured spouse must meet only the first condition.

If the taxpayer meets these requirements, Form 8379 can be e-filed with the joint return.

Note: According to the IRS, there may be an 11-14 week delay in receiving your refund when filing Form 8379, *Injured Spouse Allocation*.

IRS instructions for Form 8379 are found here: <https://www.irs.gov/pub/irs-pdf/i8379.pdf>

How To Assist Tax Clients

To request her portion of a joint refund, an injured spouse must file Form 8379.

You should prepare the tax return normally and then add Form 8379 to the return. Answer the questions for that form. You may attempt to specify an allocation of the income, credits and withholding to the injured spouse. Keep in mind the IRS will review this allocation and make the final determination, so advise your client that the refund or balance owed may change.

Note: If the injured spouse's claim is for a refund from a prior tax year or the current year and a tax return has already been filed that year, then the spouse must mail a paper copy of Form 8379 separately from a tax return. Download Form 8379 from the IRS website, assist the client in completing it, and instruct her to mail the form to:

Internal Revenue Service Center
Austin, TX 73301

Alert your client that it will take at least eight weeks, and maybe more, for the IRS to process Form 8379.

Tax issues related to an *injured* spouse should be distinguished from those related to an *innocent* spouse, that is, a spouse seeking relief from joint liability. Refer clients seeking assistance with innocent spouse claims to Texas RioGrande Legal Aid (512-374-2700) or a professional tax preparer.