

Policy & Preparation: Injured Spouse

Background

The IRS may intercept a refund owed to a taxpayer as payment of that taxpayer's legally enforceable past-due federal tax, state income tax, state unemployment compensation debts, child support, or a federal nontax debt, such as a student loan. 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**.

Injured Spouse vs. Innocent Spouse: Tax issues related to an *injured* spouse should be distinguished from those related to an *innocent* spouse, that is, a spouse seeking relief from paying tax, interest, and penalties based on items that their spouse (or former spouse) improperly reported or omitted on a joint tax return. Refer clients seeking assistance with innocent spouse claims to Texas Rio Grande Legal Aid (210-212-3747) or a professional tax preparer.

Foundation Communities Policy

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

1. They will file or have filed a return with Married Filing Joint as the filing status; and
2. They did not receive a refund or they expect 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 the spouse from before the date of their marriage.

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

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.

If the taxpayer meets the requirements, **Form 8379** can be e-filed with the joint return. If the injured spouse lived in a community property state at any time during the tax year, the injured spouse must meet only the first condition.

Note: Texas is a community property state.

How To Assist Tax Clients

To request their portion of a joint refund, an injured spouse must file **Form 8379**, *Injured Spouse Allocation*.

- If a tax return has not yet been prepared for that tax year: Prepare the tax return normally. Add **Form 8379** to the return. (See below for instructions.) The return can be e-filed.

Note: You can't have your refund deposited into more than one account or buy paper series I savings bonds if you include **Form 8379**, *Injured Spouse Allocation* in your return.

- 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 access and complete a fillable version of **Form 8379** from the IRS website. The client must mail:
 - a stand-alone paper copy of **Form 8379**; and
 - copies of any **Form W-2s** and/or **Form 1099s** with withholding for both spouses.

Do **not** include a copy of the filed tax return. Instruct the client to mail the form to:

Internal Revenue Service Center
Austin, TX 73301

Note: Alert the client that there may be a significant delay in receiving a refund when filing **Form 8379**.

Completing Form 8379 in TaxSlayer When Preparing with a Tax Return

1. In TaxSlayer, navigate to **Federal Section** → **Miscellaneous Forms** → **Form 8379 Injured Spouse**.
2. Answer the questions on the **Form 8379 Injured Spouse Information** screen. Refer to the guide below.

- Is the Primary Taxpayer the Injured Spouse? **If the Injured Spouse is listed as primary on the return, click this checkbox.**
- If you are married to the spouse with whom you filed the joint return, do you want the refund check issued in both of your names? (if unchecked, refund check will be issued only to the injured spouse)
- Did (or will) the IRS use the joint overpayment to pay any of the following legally enforceable past-due debt(s) owed only by the non-injured spouse? **Click this checkbox.**
- Federal tax
 - State income tax
 - Child support
 - Spousal support
 - Federal nontax debt (such as a student loan)
- Is the injured spouse legally obligated to pay this past-due amount? **Click this checkbox.**
- Check here if you want any injured spouse refund mailed to an address different from the one on your joint return.
- Was the injured spouse's main home in a community property state (AZ, CA, ID, LA, NV, NM, TX, WA, or WI)? **For Texas residents, check this box and then select "Texas". No other responses will be required.**
- Did the injured spouse make and report payments, such as federal income tax withholding or estimated tax payments?
- Did the injured spouse have earned income, such as wages, salaries, or self-employment income?
- Did (or will) the injured spouse claim a refundable tax credit, such as the health coverage tax credit, or refundable credit for prior year minimum tax?
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3. The bottom of **Form 8379** is used to allocate the income, deductions, withholdings, exemptions and credits to the correct taxpayers. Follow these guidelines in attempting to allocate between the spouses :
- The wages should be allocated to each spouse as shown on their W-2 forms. The taxes withheld must also be divided as shown on the W-2 forms.
 - The Standard or Itemized deductions must be allocated so that the non-injured spouse would be able to file as if they were single. For example, the married filing joint standard deduction is currently \$24,800. At least \$12,400 must be left to the spouse with the debt. If you have itemized deductions, enter each spouse's separate deductions.

- At least one exemption must be left to the spouse with the debt. The injured spouse may claim all other exemptions.
- The child tax credit, additional child tax credit and dependent care benefits can be allocated to the spouse that claimed the qualifying child's exemption.
- Allocate self-employment tax to the spouse that earned the self-employment income.
- Allocate each adjustment to the spouse that would claim it if separate returns were filed.
- Allocate estimated tax payments any way you choose as long as you both agree. If you cannot agree, use this formula found in the instructions to figure the amount to allocate to each spouse.

$$\frac{\text{Each spouse's separate tax liability}}{\text{Both separate tax liabilities}} \times \text{Estimated tax payments}$$

Note: The IRS will review this allocation and make the final determination. Advise the taxpayer that the refund or balance owed may change.

IRS instructions for **Form 8379** are found [here](#).