

# Issue 4: Injured Spouse Relief

P. 220

- **Injured Spouse**
  - Does not receive his/her share of joint refund because refund applied (or expected to be applied) to other spouse's debt
  - File request for relief with original return or separately after return filed
- **Offset Debts**
  - Unpaid federal tax liability (IRS)
  - Unpaid federal non-tax debt (BFS through TOP)
  - Past-due child support (BFS through TOP)
  - Past-due legally enforceable state income tax obligations (BFS through TOP)
  - Unemployment compensation debts (BFS through TOP)

# Issue 4: Injured Spouse Relief

PP. 220-  
221

## **Debt Priority**

1. All federal tax debt – priority within tax debts listed p. 220
2. Past-due child support
3. Debt owed to other federal agencies
4. Past-due legally enforceable state income tax obligations
5. Unemployment compensation

## **Practitioner Note (p.221):**

Information on offsets from BFS's TOP call center

# Issue 4: Injured spouse

PP. 221-  
222

- **Must meet all three of the following:**
  1. Filed a joint return
  2. Not liable for spouse's past-due debt to which overpayment applied
  3. Made & reported payments or claimed refundable credits on return

**IRS interactive assistant to determine if qualified – Figure 6.4**

**File Form 8379 with return or separately**

**Form 8379 with return:**

- Note “Injured Spouse” in upper left of page 1
- Attach to return based on sequence number
- May be filed with paper or electronic returns

# Issue 4: Injured spouse

P. 222

## **Form 8379 filed separately:**

- Attach copy of all W-2s and 1099s showing federal withholding
- Do NOT attach copy of joint return
- Both spouses' TINs in the same order as on joint return
- Injured spouse signs the form
- File by later of 3 years from return due date (w/ext.) or 2 years from date tax paid that was later offset
- To IRS service center where original return filed or if electronic return, to IRS service center for where TP lives
- Cannot be filed at a Taxpayer Assistance Center

# Issue 4: Injured spouse

P. 223

## Form 8379 Allocations

- Joint overpayment allocated to each based on contribution to overpayment
- Share of joint liability based on each spouse's MFS liability
- Must allocate all joint return items between spouses – Form 8379, Part III
  - Use joint return amounts even if item limited or not allowable on MFS
  - If taxpayer does not allocate, IRS will allocate 50/50
- **Noncommunity Property Allocations**
  - Income:
    - Wages - Allocate as would for MFS returns
    - Joint income - TP chooses allocation
    - Other income – Allocate as would for MFS returns
    - Must identify the type and amount of income

1.

# Issue 4: Injured spouse

PP. 223-  
224

- **Noncommunity Property Allocations**
  - Deductions and Adjustments:
    - Allocate as would for MFS returns (includes itemized deductions)
    - Joint deductions - TP chooses allocation
    - Standard deduction allocated 50/50
    - QBI allocated to spouse with the business income
  - Credits
    - All credits allocated except EIC (IRS will allocate)
    - Credits follow claim for dependent, based on interest in business, or TP's choice

# Issue 4: Injured spouse

P. 224

- **Noncommunity Property Allocations**
  - Taxes:
    - SE tax to spouse with SE income
    - Excess APTC repayment allocated as TP chooses
    - NII tax allocated as net investment income allocated
  - Tax Payments:
    - Withholding to spouse who paid the withholding (income, excess soc. sec., tier 1 RR retirement, additional Medicare tax)
    - Separate estimates allocated to paying spouse
    - Joint estimates allocated however spouses agree (if not, formula p. 224)

# Issue 4: Injured spouse

PP. 224-  
227

- **Example 6.1 – Form 8379 Allocations**
  - George & Lena Short – \$1,700 refund offset for George's past-due child support
  - Two children – ages 1 and 3
  - Figure 6.5 shows joint return amounts
    - Wages: George \$33,000 – Lena \$20,000
    - IRA: George's IRA contribution
    - Interest income on joint account
    - Jointly owned real estate rental loss (\$1800)

Figure 6.6 – Page 226 - Form 8379, Parts I and II (Note items 11 and 12)

Figure 6.6 – Page 227 – Form 8379, Part III



# Issue 4: Injured spouse

P. 228

- **Community Property Allocations**
  - Items allocated equally unless derived from separate property
  - State laws differ on amount of joint overpayment to apply to federal tax debt of one
  - Figure 6.7 – P. 228 – Table of revenue ruling guidance for community property states
  - See also Revenue Ruling 85-70 and I.R.M. 25.18.5
- **IRS determines injured spouse's refund**
  - Can request copy of the Injured Spouse Claim Worksheet

# Issue 4: Injured spouse

PP. 228-  
229

- **Example 6.2 – Injured Spouse Claim Amount**
  - Joint liability of **\$13,004**      Refund \$2,996
  - Art: withholding of \$6,000    Bea: withholding of \$2,000
  - Joint estimated payment of **\$8,000**
  - Art's unpaid federal tax liability prior to their marriage: \$5,000
  - Tax liabilities if MFS: **Art - \$10,302    Bea - \$3,334 (Total: \$13,636)**
  - Figure 6.8 – P. 229 – allocation of estimated payment, computation of each spouse's contribution and share of joint liability
  - Share of refund = Contribution less share of liability

# Issue 4: Injured spouse – Example

## 6.2

P. 229

- Estimated payment allocation (using MFS liabilities):

**Bea:**  $3,334 / (10,302 + 3,334) \times \$8,000 = \$1,956$

**Art:**  $10,302 / (10,302 + 3,334) \times \$8,000 = \$6,044$

### Contributions:

**Bea:** \$2,000 w/hg + \$1,956 est. = \$3,956    **Art:** \$6,000 w/hg + \$6,044 est. = \$12,044

### Share of Joint Liability (using MFS liabilities):

**Bea:**  $3,334 / (10,302 + 3,334) \times \$13,004 = \$3,179$     **Art:** \$9,825 (same formula)

### Share of \$2,996 Refund:

**Bea:**  $\$3,956 - \$3,179 = \$777$

**Art:**  $\$12,044 - \$9,825 = \$2,219 = \text{Joint overpayment amount for offset}$