



2019.20 Training

Subject: Injured Spouse | Talking Points

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Don't be thrown by the name applied to this tax-specific situation – a taxpayer's status as an "injured spouse" has nothing to do with a physical injury or ailment. Rather, the label is strictly financial.

What is an injured spouse?

An injured spouse is a spouse who has filed jointly, then had some or all of their refund applied to their husband or wife's delinquent debts.

If a married couple files a joint return and one spouse has a delinquent debt that can be collected by reducing a tax refund, the IRS and/or the Bureau of Fiscal Services (BFS) may keep the refund and reduce the unpaid debt. The IRS collects delinquent federal taxes directly and then releases any remaining refund to the Bureau of Financial Services, who then checks their records to see if any delinquent accounts have been turned over to the Treasury Offset Program (TOP). The types of debts that can be collected through the TOP program include; unpaid child support, delinquent state and local taxes, and student loans. Any remaining refund is then released to the taxpayer(s). If only one spouse owes the debt, the other spouse is an injured spouse because they didn't get their share of the refund.

Which form should I fill out to make an injured spouse claim?

When a joint refund is seized (or when you expect it to be seized) by the government to pay one spouse's debt, the other spouse – known as the injured spouse – can attempt to recover his or her portion of the joint refund by filing Form 8379, the Injured Spouse Allocation form.

Form 8379 can be filed along with the couple's joint return.

How long does it take to get a joint refund?

If an injured spouse files Form 8379 along with the couple's joint tax return, it usually takes about 14 weeks (or 11 weeks if the return is filed electronically) for the injured spouse allocation request to be processed. If Form 8379 is filed after the joint return is processed, the request will be processed in roughly eight weeks.

The difference between an innocent spouse and injured spouse

If a married couple files a joint return and one spouse under reports income, or over reports deductions, the IRS will penalize both taxpayers on the joint return to collect the money, even if they are no longer married to each other. This individual is considered the "innocent" spouse.

When this happens, the "innocent" spouse can attempt to be exempted from the taxes, penalties, and interest owed by completing Form 8857, *Request for Innocent Spouse Relief*.

How can an innocent spouse request relief from their partner's unpaid taxes?

There are several requirements an innocent spouse must meet before they request relief:

- The married couple filed a joint return on which one party made an error resulting in an understatement of, or intentionally understated, taxes owed.
 - At the time the tax return was signed, the innocent spouse did not know, and had no reason to know, about this understatement.
 - It would be unfair, given the circumstances, for the IRS to demand tax payments from the innocent spouse.
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- The innocent spouse applies for relief within two years after the IRS begins trying to collect the taxes owed. If these requirements have been met, an innocent spouse can petition the IRS for relief by filing Form 8857, *Request for Innocent Spouse Relief*. The innocent spouse should file this form as soon as they become aware of taxes for which their spouse or former spouse should be held liable – though the innocent spouse has up to two years after the IRS first attempts to collect the taxes to file Form 8857. The innocent spouse must meet the requirements listed above in order to be granted relief from their spouse's tax liability: There must be an "erroneous item" on the joint return; a lack of knowledge of the error and the resulting tax liability; the error and associated tax liability must be proved; and the situation must be proved inequitable for the innocent spouse, meaning it would not be fair to hold the innocent spouse liable for their partner's error.