



Injured Spouse Relief Fact Sheet

Introduction

If you file a joint return and all or part of your refund is applied against your spouses' past-due federal tax, state income tax, child support, spousal support, or federal nontax debt, such as a student loan, you might be entitled to "injured spouse relief." If you qualify, an Injured Spouse Allocation will allow you to receive all or part of a tax refund that might otherwise have been used to pay your spouse's tax debt or other federal debt.

Injured Spouse vs. Innocent Spouse

Injured spouse relief allows you to recover a portion of a refund you should have received but was used to satisfy a liability belonging solely to your spouse. Innocent spouse relief, on the other hand, allows you to obtain relief from a liability on a joint return if you meet certain different criteria. File for injured spouse if you feel the refund you were due to receive was instead used to pay for a debt which you do not owe, but your spouse does.

Applying

Fill out Form 8379, either with your tax return (electronically or otherwise) or separately. Be sure to fill out all information on the form correctly, and expect four to six months for processing time. You should file for this Injured Spouse Allocation as soon as possible. It is better to file Form 8379 with the original tax return.

Refunds

The refund you can receive when the Form 8379 is processed will be a calculated share of the joint refund. This is determined and applied as if you and your spouse each filed a separate, independent tax return, including wages, self-employment income, expenses, and credits, although the joint return remains. The Internal Revenue Service (IRS), not the taxpayer, makes the calculation.

Qualifying

To qualify for injured spouse relief, you must have made and reported tax payments, such as federal income tax withheld from wages or estimated tax payments, or claimed a refundable tax credit, such as the Earned Income Tax Credit or additional child tax credit, on the joint return. Furthermore, you must not be legally obligated to pay the past-due amount of debt owed by your spouse.

Special Rules

If you live in a community property state, special rules apply. For more information about the factors used to determine whether you are subject to community property laws, see IRS Publication 555, "Community Property."

Income Restrictions

Any person who files a tax return is eligible if they meet the requirements to be an injured spouse, regardless of income.

Qualifying as a Spouse

Your spouse to whose debt your refund was improperly applied is the person who you filed a joint return with. Both same-sex and opposite-sex married couples receive the same state and federal benefits and burdens. This includes the right to apply for injured spouse relief should you meet the criteria listed above.

Filing

If you file Form 8379 separately, do not include a copy of your joint tax return. The IRS already received your original return. Enclosing copies of all Forms W-2 and W-2G for both spouses, and any Forms 1099 showing income tax withheld, may help.

If you file Form 8379 with your joint tax return or amended joint tax return, enter "Injured Spouse" in the upper left corner of page one of your joint return.

Any dependency exemptions must be entered in whole numbers. Do not use fractions. Items of income, expenses, credits, and deductions must be allocated to the spouse who would have entered the item on their separate return.

Make sure the debt is subject to offset (for example, a legally enforceable past-due federal tax, state income tax, child or spousal support, state unemployment compensation debts, or other federal nontax debt, such as a student loan).

For more information, visit [irs.gov](https://www.irs.gov), Form 8379.

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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