



INJURED SPOUSE CLAIM FACT SHEET



What is an 'Injured Spouse' Claim?

An injured spouse claim can help you get back your part of a tax refund from a joint tax return. It applies where the IRS has intercepted the refund to offset a debt owed by your spouse, but **not by you**. The types of debt most commonly encountered are:

- a debt for **taxes** (Federal or State) owed by your spouse
- a default on federal **student loans**
- a debt for past due **child support**

You might have an injured spouse claim if your spouse:

- had student loans from before your marriage
- fell behind in making child support payments for children from another relationship
- owed federal or state income tax from a prior year

How do I qualify for an Injured Spouse Claim?

To qualify for an injured spouse claim, you must meet **all three** following conditions:

You are not required to pay the past-due amount. This means that the debt is one which your spouse incurred before you got married or that the debt is one for which only your spouse is liable. **Examples** include past-due child support, defaulted student loans, foreclosures on federal loans, unpaid state income tax, and any federal debt.

You reported income on the joint tax return. Some or all of the income on the joint return whose refund was withheld must be your own income from a job, self-employment, or investments. **(If your income for the tax year in question is \$0.00, then your "share" of any refund is also \$0.00).**

Remember: For this purpose, food stamps, TANF, and child support are not income. Neither are SSI, SSDI, GA, or social security

You made and reported payments on the joint return. Payments include federal income tax withheld from your wages, estimated tax payments, and refundable tax credits, such as the earned income tax credit or additional child tax credit.

How does the IRS determine my share of the refund amount?

In general, your share of a refund consists of the payments you made plus a pro-rated portion of any refundable credits. If you had federal income tax withheld from your paycheck (or if you made estimated tax payments on your self-employment income), the portion of the joint refund represented by those payments will be included in your share. Any additional child tax credits will also be included in your share. Any earned income tax credit will be apportioned between you and your spouse based on each person's contribution to the joint adjusted gross income.

How do I request an Injured Spouse Claim?

Make a claim by filing **IRS Form 8379**. You can find [Form 8379](#) at www.irs.gov .

- If you have not yet filed your joint tax return, complete your return and attach Form 8379 when you file it. Write "Injured Spouse" in the upper left corner of the first page of the return.
- If you have already filed the joint return, complete Form 8379 and mail it to the IRS Center at which you filed your tax return. (If you lived in Maine when you filed the joint tax return, mail it to the Andover, MA service center.)
- Attach to Form 8379 copies of all W-2 and 1099 forms received by you or your spouse.
- Get [Form 8379](#) online.

If an agency notifies either you or your spouse that your tax refund will be withheld to pay your spouse's debt, you may file the injured spouse claim with your joint tax return. Complete Form 8379 and attach it to your next tax return. The inclusion of Form 8379 on a tax return will not prevent electronic filing of that return.

If you received no notice in advance of the interception of the refund, then you may file Form 8379 as soon as you know the refund has been intercepted.

What if I don't agree with the amount of my Injured Spouse Claim?

You may contact the IRS to request a copy of the Injured Spouse Claim Worksheet.



Office of the Staff Judge Advocate
Legal Assistance Office
6930 Morrison Avenue
Bldg 130
Fort Benning, GA 31905
706-545-3281

January 2014