

Has the IRS kept your federal tax refund because your husband or wife owes money?



An Injured Spouse Claim may help you get part or all of the refund.

Who can file an Injured Spouse Claim?

Did the IRS keep your tax refund or say they were going to? You might be able to file an Injured Spouse Claim. To get your part of the refund, **ALL** four of these things must be true:

1. **You filed or plan to file a joint tax return with your husband or wife.**
2. **You don't owe the money.** Your husband or wife is the **only** one who owes the money. The IRS may have kept the tax refund because your husband or wife owes money for:

- Child support
- Public benefit over-payments
- Student loans
- Unemployment debt
- Taxes from before you were married
- Taxes filed on a separate return
- Federal loans

NOTE: If you **both** owe back taxes jointly, an Injured Spouse Claim will not help you. You might want to talk to a tax expert. Ask if you should file for "Innocent Spouse Relief" on Form 8857 instead.

3. **You earned some of the income shown on your joint tax return.** This could be money from a job even if you are self-employed. Self-employed includes things like baby-sitting or cleaning houses.

4. **You paid part of the taxes shown on your joint tax return.** This can be federal income tax withheld from your paychecks or estimated tax payments. Or from your refundable credits such as:

- Earned Income Tax Credit **or**
- Additional Child Tax Credit **or**



- American Opportunity Tax Credit **or**
- Premium Tax Credit

Example 1: Mary and John

Mary is married to John. Mary earned \$10,000 last year and John earned \$5,000. Mary had taxes taken out of her paycheck. They have a joint tax return. They are supposed to get a \$1,200 tax refund.



John is behind on his child support payments to another parent. John and Mary got a letter. The letter said their tax refund would be kept to pay John's child support.

Mary should file an Injured Spouse Claim. She can get her part of the tax refund because:

- Mary files a joint tax return.
- Mary does not have to pay John's past due child support.
- Mary earned part of the income they showed on their joint tax return.
- Mary had taxes taken out of her pay.

Example 2: Jane and Bob

Jane and Bob filed a joint tax return. Jane made \$5,000 as a cashier. Jane had taxes taken out of her paycheck. Bob made \$3,000 as a mechanic. Their \$400 tax refund is being taken to pay Bob's unpaid student loan.

Jane should file an Injured Spouse Claim. She can get her part of their tax refund because:

- Jane filed a joint tax return.
- Jane does not owe for Bob's student loan.
- Jane earned part of the income shown on their joint tax return.
- Jane had taxes taken out of her paychecks.

Example 3: Sue and Ron

Sue and Ron filed a joint income tax return. Last year Sue made \$6,000 and Ron made \$8,000. They are supposed to get a \$1,500 tax refund. The refund includes Earned Income Credit. But they got a letter saying they would not get it. It will be used to pay taxes Ron owed the IRS before he married Sue.



Sue should file an Injured Spouse Claim. She could get her part of the tax refund because:

- Sue filed a joint tax return.
- Sue does not owe the back taxes. Ron owed them before he married Sue.
- Sue earned part of the income shown on their joint tax return.
- Their joint tax return shows Sue had \$800 in Earned Income Tax Credit.

How do I file an Injured Spouse Claim?

- You need IRS Form 8379. Call the Tennessee Taxpayer Project at **1-866-481-3669**. Ask us to mail one to you. It's a free call. **Or** go to the internet at **www.irs.gov** for Form 8379.
- Fill out IRS Form 8379. Make sure it says **(Rev. 11-2016)** at the bottom. Don't forget to check the tax year in Part I. You need to check that you are the injured spouse in Part II.
- Make copies of all W-2, 1099-R or 1099-MISC forms. Your employer gives you these papers in January to go with your income tax return. They show how much tax was taken out of your paycheck. You need all the papers for you and your husband or wife.
- Have you **already filed** your **joint tax return**? Then sign Form 8379 on the bottom of page 2. Mail the form to the IRS Service Center where you lived when you filed the joint return. Send copies of your W-2, 1099-R and 1099-MISC forms with it. **Don't** send your tax return. You must sign IRS Form 8379.
- Are you **getting ready to file** your **joint tax return**? Then put Form 8379 with your tax return. Write "Injured Spouse" in the upper



left corner of your tax return. Mail the form and your tax return to the IRS Service Center where you file your return. You can file your tax return and Form 8379 electronically. You do not have to sign the form if you file it with your tax return. Are you filing an amended return? Then attach Form 8379 to Form 1040X.

Did you **live in Tennessee** when you filed the joint return? Then mail IRS Form 8379 to Department of the Treasury, Internal Revenue Service, Kansas City, MO 64999-0002.

You should get a letter from the IRS in about 8 to 14 weeks. The letter will say if you get your part of the refund or not.

When should I file?

File with your tax return. You can also file after the IRS keeps your tax refund. What if you did not file your return by the due date? Then you must file within 3 years of the due date or within 2 years of payment. If you filed by the due date, the IRS will go back 6 years and issue refunds.

How to get help

Do you have questions about Injured Spouse Claims? To find out if we can help or to get the form, call:

Tennessee Taxpayer Project

A Low Income Taxpayer Clinic

1-866-481-3669

It's a free call.

To get information about agency offset, call Bureau of Fiscal Services at **800-304-3107**.



Legal Aid Society
of Middle Tennessee & the Cumberland Mountains

Working Together. Doing Justice. Restoring Hope.

Have low income and legal problems?

Call Legal Aid at **1-800-238-1443**. It's a free call. Or visit us at **www.las.org** on the internet.

NOTE: This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation on a tax matter or if you have questions. 1/19