

Injured Spouse Guidance Is Not Consistent

October 2004

Reference Number: 2005-40-001

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

October 7, 2004

MEMORANDUM FOR COMMISSIONER, WAGE AND INVESTMENT DIVISION

Gordon C. Milbourn III

FROM: Gordon C. Milbourn III
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Injured Spouse Guidance Is Not Consistent
(Audit # 200440021)

This report presents the results of our review of injured spouse claim processing. The overall objective of this review was to assess the Internal Revenue Service's (IRS) efforts to minimize taxpayer burden relating to injured spouse claim processing.

Internal Revenue Code Section 6402¹ requires the IRS to apply a taxpayer's tax refund (overpayment) to any past-due Federal tax, child or spousal support, Federal agency nontax debt (such as a student loan), or state income tax obligation before crediting the overpayment to a future tax period or making a refund. This application of a tax overpayment is called a refund offset. If a taxpayer files a joint tax return resulting in a refund, that refund may be used to pay the past-due amount of either spouse's debt. However, the IRS can refund all or a portion of the overpayment if the taxpayer qualifies as an injured spouse. An injured spouse is a taxpayer who files a joint tax return and all or part of his or her share of the tax refund was, or is expected to be, applied against the other spouse's past-due debt.²

The IRS recognizes that tax refund offsets can create problems for taxpayers and increase taxpayer burden. To assist taxpayers, the IRS developed a claim form, Injured Spouse Claim and Allocation (Form 8379), to help them understand the claim process and assist them in filing injured spouse claims. A taxpayer qualifies as an injured spouse if he or she (1) is not required to pay the past-due amount; (2) has reported income on a joint tax return; and (3) has made and reports payments such as Federal income tax withheld from wages or estimated tax payments, or has claimed the Earned

¹ Internal Revenue Code Section 6402 (2002).

² Both spouses can have their refunds applied to past-due debts.

Income Tax Credit or other refundable credits, on the joint tax return.³ If a taxpayer believes he or she qualifies as an injured spouse, he or she can prepare and submit Form 8379 to the IRS to claim his or her share of the refund. As of the end of Calendar Year 2003, the IRS had received 251,192 injured spouse claims⁴ relating to Tax Year 2002.

The IRS does not provide taxpayers with consistent information necessary to ensure they can easily and correctly comply with injured spouse provisions. Specifically, the guidance we reviewed was not always complete or accurate. For example, Form 8379 does not advise taxpayers that injured spouse claims can be filed for prior years or that there is a 6-year statute of limitations on filing these claims for a nontax debt and a 3-year statute of limitations on a tax debt. Guidance documents state different time periods by which the IRS processes injured spouse claims. In addition, the forms and publications available at the Taxpayer Assistance Centers⁵ are not always current, and the IRS does not provide *Injured Spouse Claims* (Publication 4183) to the taxpaying public.

Each year, approximately 50 million taxpayers file joint tax returns and may need to reference injured spouse guidance should the situation arise. To ensure taxpayers can easily and correctly comply with injured spouse provisions, we recommended the Commissioner, Wage and Investment Division, make Publication 4183 available to all of the taxpaying public; review both it and the instructions for Form 8379 to ensure the guidance provided is current, complete, and accurate; and identify all IRS documents containing injured spouse information and revise them to refer taxpayers to either Publication 4183 or the instructions for Form 8379.

Management's Response: IRS management agreed with our conclusion that the IRS could improve consistency of injured spouse information and that limiting the key information to one or two documents as reference points will aid the IRS in delivering information that is consistent, current, and comprehensive. IRS management also agreed with two of our three recommendations, and plans to update and revise all documents that contain injured spouse information to refer taxpayers to the instructions for Form 8379. However, the IRS did not agree with our recommendation to make Publication 4183 available to all taxpayers. Instead, the IRS intends to enhance and

³ If a taxpayer lives in a community property state, the taxpayer has to meet only the first condition. Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

⁴ This includes only those claims received within Calendar Year 2003.

⁵ An IRS office where employees answer questions, provide assistance, and resolve account-related issues face-to-face.

expand the information in the instructions of Form 8379. We agree that this alternative use of an enhanced Form 8379 will accomplish the intent of our recommendation.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Michael R. Phillips, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 927-0597.

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Injured Spouse Guidance Is Not Consistent

Background

Internal Revenue Code Section 6402¹ requires the Internal Revenue Service (IRS) to apply a taxpayer's tax refund (overpayment) to any past-due Federal tax, child or spousal support, Federal agency nontax debt (such as a student loan), or state income tax obligation before crediting the overpayment to a future tax period or making a refund. This application of a tax overpayment is called a refund offset.

If a taxpayer files a joint tax return resulting in a refund, the refund may be used to pay the past-due amount of either spouse's debt. However, the IRS can refund all or a portion of the overpayment if the taxpayer qualifies as an injured spouse. An injured spouse is a taxpayer who files a joint tax return and all or part of his or her share of the tax refund was, or is expected to be, applied against the other spouse's past-due debt.²

A taxpayer qualifies as an injured spouse if he or she meets all of the following criteria:

1. Is not required to pay the past-due amount.
2. Has reported income on a joint tax return.
3. Has made and reports payments such as Federal income tax withheld from wages or estimated tax payments, or has claimed the Earned Income Tax Credit or other refundable credits, on the joint return.³

If a taxpayer believes he or she qualifies as an injured spouse, he or she can prepare and submit an Injured Spouse Claim and Allocation (Form 8379) to the IRS to claim his or her share of the refund. Table 1 shows the injured spouse claims the IRS received in Calendar Years (CY) 2000 through 2002.⁴

¹ Internal Revenue Code Section 6402 (2002).

² Both spouses can have their refunds applied to past-due debts.

³ If a taxpayer lives in a community property state, the taxpayer has to meet only the first condition. Community property states include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

⁴ Claims may be filed 6 years from the date of the offset if for a nontax debt and 3 years if for a Federal tax debt; therefore, receipts for CY 2002 include claims received for prior tax years.

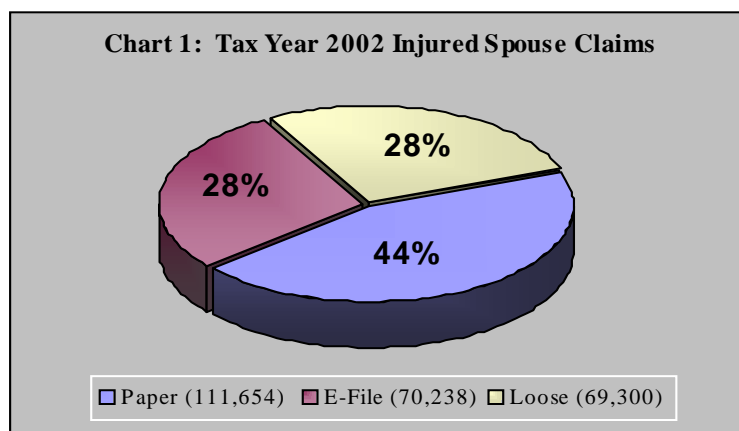
Injured Spouse Guidance Is Not Consistent

Table 1: Injured Spouse Receipts

Calendar Year	Number of Claims Received
2000	367,261
2001	379,370
2002	373,434

Source: *The IRS Program Analysis Report*.⁵

To make an injured spouse claim, the IRS instructs a taxpayer to attach a Form 8379 to his or her original tax return, either when submitting a paper tax return or when filing electronically (*e-filing*). If a claim was not filed with the original tax return, the IRS instructs a taxpayer to submit a Form 8379 by paper to one of seven IRS campuses,⁶ based on where the taxpayer filed the original return. This is referred to as a loose filing of Form 8379. Chart 1 provides a breakdown of how the 251,192 Tax Year (TY) 2002 injured spouse claims were submitted to the IRS.



Source: *Treasury Inspector General for Tax Administration (TIGTA) analysis of IRS TY 2002 Master File data*.⁷

⁵ These data were provided by the IRS and were not validated for accuracy and reliability.

⁶ Campuses that process injured spouse claims include those in Fresno, California; Atlanta, Georgia; Andover, Massachusetts; Kansas City, Missouri; Philadelphia, Pennsylvania; Memphis, Tennessee; and Austin, Texas.

⁷ The Master File is the IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.

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Once an injured spouse claim is received by the IRS, it is forwarded to the Accounts Management function, which is responsible for resolving injured spouse claims. If a claim is sent with the original tax return, the Accounts Management function must wait until the tax return is processed before work on the claim can begin. This is necessary because the information included on the tax return is needed to properly compute the amount to be refunded to the injured spouse. The resolution of these claims includes analyzing, researching, and making adjustments to taxpayer accounts and may also include contacting the taxpayer by telephone or correspondence.

This review was performed at the Wage and Investment (W&I) Division Headquarters in Atlanta, Georgia; the IRS National Headquarters in New Carrollton, Maryland; and the campuses in Atlanta, Georgia, and Andover, Massachusetts, during the period December 2003 through June 2004. The audit was conducted in accordance with *Government Auditing Standards*. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

The Internal Revenue Service Does Not Provide Taxpayers With Consistent Information Necessary to Ensure They Can Easily and Correctly Comply With Injured Spouse Provisions

The IRS recognizes that tax refund offsets can create problems for taxpayers and increase taxpayer burden. To assist taxpayers, the IRS developed Form 8379 to help them understand the claim process and assist them in filing injured spouse claims. To continue to help minimize burden for taxpayers filing injured spouse claims, the IRS has automated the process used to calculate the amount to be refunded to the injured spouse. The IRS indicated that automating this process will help decrease processing time while helping to ensure the amount to be refunded is accurate.

However, the IRS does not provide taxpayers with consistent information necessary to ensure they can easily and correctly comply with injured spouse provisions. Guidance contained in the 16 documents⁸ reviewed was not always complete or accurate. For example:

⁸ These documents included forms, instructions, letters, notices, and publications.

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- Form 8379 instructions do not inform taxpayers that claims can be filed for prior years or that there is a 6-year statute of limitations on filing injured spouse claims for a nontax debt and a 3-year statute of limitations for a tax debt. Ensuring the instructions contain the key provisions is critical because 15 of the 16 documents we reviewed refer taxpayers to Form 8379.
- Only *Injured Spouse Claims* (Publication 4183) informs taxpayers that Form 8379 can be *e-filed*, which can reduce the time necessary for the IRS to process claims.
- Publication 4183 dated May 2003, incorrectly informed taxpayers living in community property states that only one of the three injured spouse eligibility conditions must be met to qualify. This is incorrect because the only required condition for a taxpayer who lives in a community property state is that the individual is not required to pay the past-due amount. After alerting the Director, Accounts Management, of this issue, the IRS revised Publication 4183 in May 2004 to correctly inform taxpayers that only the first condition must be met to qualify as an injured spouse.
- The forms and publications available at the Taxpayer Assistance Centers (TAC)⁹ are not always current. *Divorce, An IRS Perspective* (Publication 1819), dated June 1994, was found at a TAC in Connecticut but is no longer published or available to the public. Also, the Form 8379 dated December 1999 was found in some TACs, but the current version is dated December 2002.

Processing time periods are not consistent throughout guidance documents. Form 8379 instructions state the IRS will process the injured spouse claim before the offset occurs and the refund may be delayed by 6 to 8 weeks. Similarly, Publication 4183 dated May 2003, states that processing may add 6 to 8 weeks if the claim is filed with the tax return. On the other hand, the United States Individual Income Tax Return (Form 1040) instructions state the processing time

⁹ IRS offices where employees answer questions, provide assistance, and resolve account-related issues face-to-face.

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period for the taxpayer's refund will be 11 weeks when *e-filed* and 14 weeks when filed with a paper tax return. Likewise, the revised Publication 4183 dated May 2004, informs taxpayers that the time period for processing an injured spouse claim may be up to 11 weeks from the date the tax return is filed electronically and up to 14 weeks from the date the paper tax return is filed.

In addition, some of these key guidance documents understate the time period necessary to process injured spouse claims. Table 2 provides the average processing time periods based on an analysis of the 181,892 claims¹⁰ filed with a TY 2002 tax return.

Table 2: Processing Time Periods for Injured Spouse Claims Filed With TY 2002 Tax Returns

Method of Filing Claim	Number of Claims	Total Weeks in Process ¹¹
<i>E-filed</i>	70,238	10
Submitted on Paper	111,654	11
Total	181,892	11

Source: TIGTA analysis of IRS TY 2002 Master File data.

Several factors contributed to the inconsistencies

The IRS was not aware of the number of documents that contained injured spouse guidance and has not reviewed them for consistency, completeness, and accuracy. In the Fiscal Year (FY) 2002 Annual Report to Congress, the National Taxpayer Advocate (NTA) raised concerns regarding the time period to process injured spouse claims and how it causes hardship on taxpayers. The report noted that taxpayers were contacting the Taxpayer Advocate Service when the time to process their claims exceeded 8 weeks. Subsequent to our review, IRS management developed an action plan to address the NTA's concerns, which includes addressing inconsistent time periods in the

¹⁰ Claims that were filed loose and shown in Chart 1 were not included in Table 2. This table includes only those injured spouse claims filed with original tax returns.

¹¹ The number of weeks is calculated from the date of the IRS' receipt of the injured spouse claim to the date the claim is resolved.

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injured spouse guidance documents such as Form 8379 and instructions for Form 1040.

*The IRS has not adopted a best practices approach similar to the one it has for the Innocent Spouse Program. To qualify as an innocent spouse, a taxpayer believes he or she is not liable for the spouse's tax liability and must submit a Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief) (Form 8857) and explain why he or she is not liable for the tax liability. The tax liability may result from an examination of the taxpayer's tax return or from an understatement of the taxpayer's income that results in additional tax owed. To ensure a consistent message is being delivered, the IRS Innocent Spouse Program has developed two key documents, *Innocent Spouse Relief (And Separation of Liability and Equitable Relief)* (Publication 971) and Form 8857, including instructions. Although innocent spouse information is provided in a number of other IRS documents, the IRS has ensured these documents refer to Publication 971 and Form 8857. The NTA's FY 2002 Annual Report to Congress highlighted the Innocent Spouse Program as an "IRS success story."*

The IRS already produces Publication 4183, which outlines the qualifications and requirements to claim injured spouse. However, this publication is only distributed to tax preparers attending IRS Nationwide Tax Forums¹² and is not available to the taxpaying public or tax return preparers that do not attend the forums. Injured spouse guidance documents we reviewed did not contain all pertinent information on the qualifications and injured spouse provisions. Taxpayers are not referred to one source containing all the necessary information, as they are for innocent spouse claims.

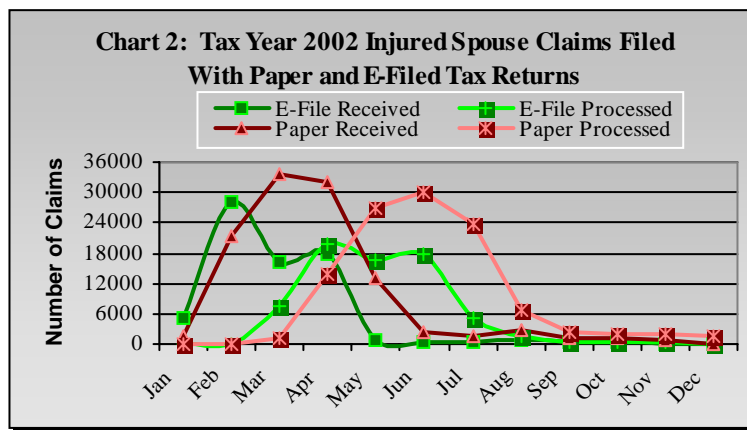
When inaccurate and incomplete information is provided to taxpayers, they may not be able to easily and correctly comply with injured spouse provisions. Each year approximately 50 million taxpayers file joint tax returns and, should the situation arise, they may need injured spouse guidance. Taxpayers that misunderstand the process

¹² The IRS Nationwide Tax Forum is an outreach program to help educate and serve tax professionals.

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for filing an injured spouse claim, or the time period necessary for the IRS to work these claims, may make unnecessary contacts with the IRS.

In addition, taxpayers should be educated on the option and advantages associated with *e-filing* their claims, including how *e-filing* reduces the time necessary for the IRS to process injured spouse claims. Chart 2 provides a comparison of injured spouse claims receipts versus closures for tax returns *e-filed* and submitted on paper.



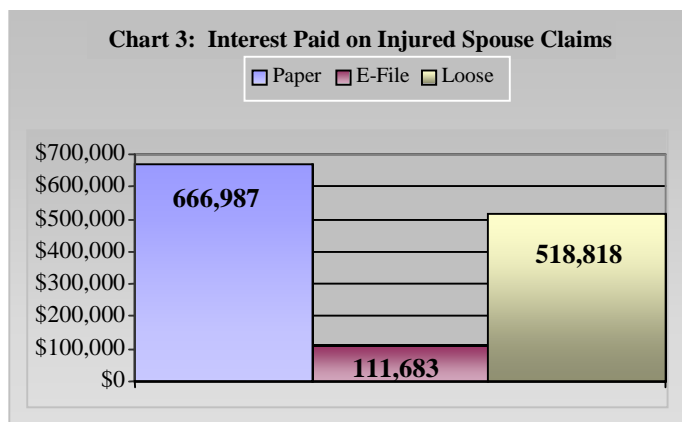
Source: TIGTA analysis of IRS TY 2002 Master File data.

Currently, the Accounts Management function is notified of injured spouse claims associated with both *e-filed* and paper tax returns in the same way. However, the IRS is initiating a change in the way the Accounts Management function is notified of injured spouse claims associated with *e-filed* tax returns that will further reduce processing time for injured spouse claims by an estimated 1 week.

The IRS will also realize savings in the amount of interest paid on tax refunds resulting from injured spouse claims. The law mandates that the IRS pay interest on a tax refund amount due if a claim is filed after the due date of the tax return. For example, for claims filed with the original tax return, the IRS will pay interest starting 45 days after the due date of April 15 or from when the tax return is filed, if subsequent to April 15. For loose claims (those submitted on paper and filed subsequent to the filing of the tax return), the IRS starts to pay interest after the tax return due date. Because *e-filed* claims are received and processed earlier, interest paid is substantially less than the interest paid relative to claims included with a paper filed tax return or a

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claim filed loose. Chart 3 provides a breakdown of interest paid on TY 2002 injured spouse claims.



Source: TIGTA analysis of IRS TY 2002 Master File data.

In addition, better educating taxpayers on the benefits of *e-filing* injured spouse claims with their original tax returns may ultimately result in a reduction of the volume of claims filed with paper tax returns and claims filed loose. It would also save the IRS on the interest it pays on these claims and allow taxpayers to obtain their refunds more quickly. Claims filed with paper tax returns accounted for 44 percent of the total TY 2002 claims we reviewed and 51 percent of the total TY 2002 interest paid. Loose filings of Form 8379 represented 28 percent of the claims and 40 percent of the interest paid. Comparatively, *e-filed* claims represented 28 percent of the claims filed, but only 9 percent of the interest paid.

Recommendations

The Commissioner, W&I Division, should:

1. Make Publication 4183 available to all of the taxpaying public.

Management's Response: IRS management disagreed with this recommendation and believes it is not practical to modify Publication 4183 for public use as it is targeted to the tax practitioner community. Instead, the IRS believes it is more practical and cost-effective to enhance and expand the information in the instructions for Form 8379. Using Form 8379 as a comprehensive reference point will be convenient for taxpayers since pertinent information will be in a single document.

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Office of Audit Comment: While the IRS disagreed with our recommendation to make Publication 4183 available for public use, we agree that its alternative use of an enhanced Form 8379 will accomplish the intent of our recommendation.

2. Review Publication 4183 and the instructions for Form 8379 to ensure guidance is current, complete, and accurate.

Management's Response: The IRS has completed the annual update of Publication 4183. Form 8379 will be updated and enhanced by November 15, 2005.

3. Identify all IRS documents containing injured spouse information and revise them to refer taxpayers to either Publication 4183 or the instructions for Form 8379.

Management's Response: The IRS will enhance the instructions for Form 8379 to provide comprehensive information on injured spouses. Other tax forms and publications that contain injured spouse information will be revised to refer taxpayers to the instructions for Form 8379.

Detailed Objective, Scope, and Methodology

The overall objective of this review was to assess the Internal Revenue Service's (IRS) efforts to minimize taxpayer burden relating to injured spouse claim processing. To accomplish this objective, we conducted the following tests:

- I. Determined whether the IRS effectively educates taxpayers on injured spouse claims.
 - A. Interviewed IRS management and responsible analysts to determine the various initiatives and vehicles used to educate taxpayers.
 - B. Reviewed Injured Spouse Claim and Allocation (Form 8379) and instructions.
 - C. Identified and reviewed publications, forms, and letters to determine what other IRS information and guidance are provided to inform and educate the taxpayer.
 - D. Determined information available to taxpayers at Taxpayer Assistance Centers¹ in Connecticut and Texas. These offices were visited while conducting testing for another Treasury Inspector General for Tax Administration review.
 - E. Identified improvements that, if any, could be made to better inform and educate the taxpayer on injured spouse claims.
- II. Determined whether injured spouse claims are processed timely and efficiently to help minimize taxpayer burden.
 - A. Met with IRS Headquarters management and responsible analysts to discuss injured spouse claim processing.
 - B. Met with personnel in the Taxpayer Advocate Service to obtain information regarding the National Taxpayer Advocate's concern about long delays in processing injured spouse claims.
 - C. Obtained an extract from the Treasury Inspector General for Tax Administration Data Center Warehouse of Tax Year 2002² accounts and identified injured spouse claims filed with original tax returns and injured spouse claims filed alone (loose). From this extract we:

¹ IRS offices where employees answer questions, provide assistance, and resolve account-related issues face-to-face.

² This includes only Tax Year 2002 injured spouse claims received in Calendar Year 2003.

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1. Determined the number of claims filed with original tax returns (electronically-filed and submitted on paper) and claims filed loose.
2. Determined the number of days taken to process claims from receipt to closure.
3. Determined the amount of interest paid to taxpayers.

Major Contributors to This Report

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Appendix IV

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

RECEIVED

SEP 15 2004

SEP 16 2004

MEMORANDUM FOR GORDON C. MILBORN III
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Henry O. Lamar, Jr. *Henry O. Lamar, Jr.*
Commissioner, Wage and Investment Division

SUBJECT: Draft Audit Report – Injured Spouse Guidance Is Not Consistent
(Audit No. 200440021)

We are required to apply a taxpayer's overpayment to any past-due Federal tax, child or spousal support, Federal agency nontax debt, or state income tax obligation before issuing a refund or applying the overpayment to a future tax period. We can refund all or a portion of the overpayment if the non-debtor taxpayer qualifies as an injured spouse. A taxpayer who files a joint tax return and all or part of his or her share of the tax refund was, or is expected to be, applied against the other spouse's past-due debt is considered to be an injured spouse. If the non-debtor taxpayer meets certain qualifying criteria, they may receive injured spouse relief by filing Injured Spouse Claim and Allocation (Form 8379). Approximately 375,000 of these claims are processed annually resulting in refunds to injured spouse claimants. We have assisted taxpayers claiming this relief by:

- Streamlining the processing steps to speed-up refunds when a claim is received with an e-filed return.
- Automating the difficult calculations required to determine the correct refund amount.
- Educating the practitioner community on proper procedures for filing these claims and noting the errors and omissions that result in processing delays. Practitioners file approximately 67 percent of all injured spouse claims filed with returns.

I am glad that your report recognized some of these pro-active actions. We will continue to look for opportunities to further reduce taxpayer burden for those negatively impacted by this method of debt collection.

We agree with your conclusion that we could improve the consistency of our information contained in all of the numerous forms and publications that mention injured spouse claims. I believe that your suggestion to limit key information to one or two documents as reference points for all other forms and publications will aid us in

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delivering information that is consistent, current, and comprehensive. We considered your recommendation to expand the distribution of Injured Spouse Claims (Publication 4183) and determined that making it available for general distribution was not cost effective and potentially would require taxpayers to use more than one reference when seeking information on injured spouse claims. Our approach will be to enhance the instructions for Form 8379 so that it may serve as a comprehensive source of information.

Our comments to your recommendation are attached.

If you have any questions, please call me or members of your staff may call David Medeck, Director, Customer Account Services, at (404) 338-8910.

Attachment

Injured Spouse Guidance Is Not Consistent

Attachment

RECOMMENDATION 1

The Commissioner, W&I Division, should:
Make Publication 4183 available to all of the taxpaying public.

CORRECTIVE ACTION

We disagree with this recommendation. We carefully considered this recommendation and determined that it is not practical to modify Publication 4183 for public use. This publication was specifically designed to be used at the IRS Nationwide Tax Forums and is targeted to the tax practitioner community. It was not intended for general distribution. It is more practical and cost effective to enhance and expand the information in the instructions of Form 8379, Injured Spouse Claim and Allocation. Using Form 8379 as a comprehensive reference point will be convenient for taxpayers since pertinent information will be in this single document.

IMPLEMENTATION DATE

N/A

RESPONSIBLE OFFICIAL

N/A

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 2

The Commissioner, W&I Division, should:
Review Publication 4183 and the instructions for Form 8379 to ensure guidance is current, complete, and accurate.

CORRECTIVE ACTION

We agree with this recommendation. We have completed the annual update of Publication 4183. Form 8379 will be updated and enhanced to provide comprehensive information to taxpayers by November 15, 2005.

IMPLEMENTATION DATE

Update Publication 4183 – Completed – May 2004

Update Form 8379 – November 15, 2005

RESPONSIBLE OFFICIAL

Director, Accounts Management, W&I CAS
Director, Media and Publication, W&I CARE

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CORRECTIVE ACTION MONITORING PLAN

We will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 3

The Commissioner, W&I Division, should:

Identify all documents containing injured spouse information and revise them to refer taxpayers to either Publication 4183 or the instructions for Form 8379.

CORRECTIVE ACTION

We agree with this recommendation. We will enhance the instructions for Form 8379 to provide comprehensive information. Other tax forms and publications that contain injured spouse information will be revised to refer taxpayers to the instructions for Form 8379.

IMPLEMENTATION DATE

January 15, 2006

RESPONSIBLE OFFICIAL

Director, Accounts Management, W&I CAS
Director, Media and Publication, W&I CARE

CORRECTIVE ACTION MONITORING PLAN

We will monitor this corrective action as part of our internal management control system.