

IRM PROCEDURAL UPDATE

DATE: 02/13/2015

NUMBER: WI-21-0215-0324

SUBJECT: Issuing Refunds to the Injured Spouse Due to Change on Form 8379

AFFECTED IRM(s)/SUBSECTION(s): 21.4.6

CHANGE(s):

IRM 21.4.6.5.8.3(11)(a)&(b), Updated instructions for issuing the refund to the Injured Spouse due to the change to Part II, Line 11 on Form 8379.

11. On all Forms 8379, issue the Injured Spouse's portion of the refund in "**one name only**" regardless of what revision of the Form 8379 is filed.
 - a. If the injured spouse is the primary taxpayer and Part II, line 11, box is checked, issue the refund in both names. Input a TC 290 for .00 with Reference Number (RN) 808 and the dollar amount of the allocated refund. If line 11 is not checked on Form 8379, input a TC 290 for .00 with RN 810 and the dollar amount of the allocated refund, or
 - b. If the injured spouse is the secondary taxpayer and Part II, line 11, box is checked, issue the refund in both names. Input a TC 290 for .00 with reference number RN 809 and the dollar amount of the allocated refund. If line 11 is not checked on Form 8379, input a TC 290 for .00 with reference number RN 811 and the dollar amount of the allocated refund.

This results in the systemic generation of 2 refunds (TC 846). The appropriate Bypass Indicator (BPI) will automatically be set with the input of the RN 808/RN 810 or RN 809/RN 811. Do not make an entry in the Amended Claims Date (AMD-CLMS-DT) field.

IRM 21.4.6.5.8.3(17), Updated instructions for issuing the manual refund to the Injured Spouse unless Part II, Line 11 box is checked.

17. Issue the manual refund in the Injured Spouse's name unless the "Issue in both names" box is checked on Form 8379, *Injured Spouse Allocation*.

IRM 21.4.6.5.8.4(8)(a)&(b), Removed references to the one name only box.

8. When the wrong spouse is identified as the injured spouse on Form 8379, *Injured Spouse Allocation*, and the form contains both taxpayer's signatures, work the form without contacting the taxpayer if either the following apply:
- You can determine, without doubt, who the injured spouse is.
 - The taxpayer's main home was in a community property state.

IRM 21.4.6.5.8.5(8), IF/AND/THEN Chart 8th box, updated to include contact if taxpayer checked "yes".

8. Review question 5 on Form 8379 to determine if the taxpayer resides in a community property state.

CAUTION: The domicile of a person does not change merely because of entry into the military and being stationed in another jurisdiction. For further information, see IRM 25.18.1.2.1, *Domicile*.

If	And	Then
Question 5 is checked "yes" or "no"	Box checked is correct for state taxpayer resides	Process Form 8379 based upon box checked.
Checked "yes"	A non-community property state is entered on line 5	Process Form 8379 without regard to community property laws.
Checked "yes"	A community property state is entered and the address on ENMOD is a non-community property state	Process Form 8379 based upon the box checked and state provided.
Checked "no"	A community property state is entered	Process Form 8379 based upon community property laws of that state.
Checked "no"	Information indicates taxpayer resided solely in a community property state	Process Form 8379 based upon community property laws of that state.
Left blank	Information on return, W-2s, or entity indicates taxpayer resided solely in a non-community property state	Process Form 8379 without regard to community property laws.
Left blank	Information indicates taxpayer resided solely in a community property state	Process Form 8379 according to community property laws of that state.

Left blank or checked "yes"	Information indicates taxpayer may have resided in both types of states, or in two or more community property states	<ol style="list-style-type: none"> 1. Attempt to telephone taxpayer. See IRM 21.4.6.5.8.6(2), <i>Incomplete Form 8379 Signed or Filed with Original Return.</i> 2. Accept an oral response to line 5. 3. If unable, to reach taxpayer by telephone see IRM 21.4.6.5.8.8, <i>Form 8379, No Consideration Procedures.</i>
Checked "Yes" or "No"	Information indicates taxpayer resided solely in a community property state and taxpayers provided a signed premarital agreement.	Accept the taxpayer's allocation of income and other items on the Form 8379 and process Form 8379 without regard to community property laws.
Checked "Yes" or "No"	Information indicates taxpayer resided solely in a community property state and taxpayers mention premarital agreement, but did not provide the signed agreement.	<p>Send a 3179C letter to request the signed premarital agreement and suspend the case for 40 days.</p> <ol style="list-style-type: none"> a. If a signed premarital agreement is received, process Form 8379 without regard to community property laws. b. If no response is received, process Form 8379 based upon community property laws of that state.

[REDACTED]

IRM 21.4.6.5.8.5(10)(a)&(b), Removed references to the one name only box.

10. When the wrong spouse is identified as the injured spouse on Form 8379, *Injured Spouse Allocation*, and the form is filed with the original signed return, work the form without contacting the taxpayer if either the following apply:
 - a. You can determine without doubt who is the injured spouse.
 - b. The taxpayer's main home was in a community property state.

IRM 21.4.6.5.10.5(2), Updated instructions for issuing the refund to the Injured Spouse due to the change to Part II, Line 11 on Form 8379.

2. A manual refund is required on most injured spouse refunds of tax offsets to keep the credit from offsetting back to the same tax debt. Issue the manual refund in the Injured Spouse's name unless the "issue in both names" box is checked on Form 8379, *Injured Spouse Allocation*. The manual refund must also have a BPI applicable to the injured spouse to show ownership of the refund for TOP offset eligibility. See IRM 21.4.6.4.2.1, *TOP Offset Bypass Indicator (BPI)*.

EXCEPTION: See IRM 21.4.6.5.8.3(18), *Form 8379 Filed with Original Return*, for exceptions to manual refunds for tax debts.

IRM 21.4.6.5.10.6(1), Updated instructions for issuing the refund to the Injured Spouse due to the change to Part II, Line 11 on Form 8379.

1. All injured spouse refunds must be issued in the Injured Spouse's name unless the "issue in both names" box is checked on Form 8379, *Injured Spouse Allocation*. When issuing a manual refund to the injured spouse, do not input both names on the 2nd name line of the Form 5792, *Request for IDRS Generated Refund (IGR)*.

IRM 21.4.6.5.13(3) (4) Note, Updated instructions for issuing the refund to the Injured Spouse due to the change to Part II, Line 11 on Form 8379.

3. Follow the procedures below to reverse a tax offset when a clear determination is made that a portion of the injured spouse's refund has been applied to a tax liability for which he/she is not responsible.
 1. Input the appropriate credit transfer using CC ADD24/CC ADC24 to reverse the portion of the offset applicable to the injured spouse's share of the refund.
 2. Use a TC 570 on the credit portion of the transfer.

3. Transfer the credit to a liability of the injured spouse and/or issue a manual refund to prevent the credit from offsetting back to the same debt.
4. When issuing a manual refund, use the applicable BPI to assign ownership of the refund to the injured spouse. See IRM 21.4.6.4.2.1, *Top Offset Bypass Indicators*.

NOTE: The manual refund is issued in the injured spouse's name only unless the injured spouse requested in writing or on Form 8379, *Injured Spouse Allocation*, that it be issued in both names.