



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.18.5

SEPTEMBER 6, 2023

EFFECTIVE DATE

(09-06-2023)

PURPOSE

- (1) This transmits revised IRM 25.18.5, *Community Property, Injured Spouse*.

MATERIAL CHANGES

- (1) Minor editorial changes have been made throughout this IRM. Also, website addresses, legal references, and IRM references were reviewed and updated as necessary. Changed reference from **his or her** to **their**, and **husband** and **wife** to **primary spouse** and **secondary spouse**. Changed citations from Treas. Reg. to CFR to facilitate proper linking.
- (2) Significant changes to this IRM are reflected in the table below.

Prior Reference	New Reference	Description
N/A	IRM 25.18.5.1 through IRM 25.18.5.1.5	Added content to provide internal controls including: background information, legal authority, responsibilities, terms, and related resources available to assist employees working cases involving community property. Subsequent subsections in this IRM have been renumbered.
IRM 25.18.5.1	IRM 25.18.5.2	Revised IRC 6402 description to differentiate the IRS is authorized to first apply a taxpayer's overpayment to any outstanding Federal tax liability, then requires the IRS to offset any remaining overpayments to satisfy certain unpaid debts.
IRM 25.18.5.2	IRM 25.18.5.3	Restructured paragraph 2 to improve readability. Substantive content and subsection date not changed.
IRM 25.18.5.3	IRM 25.18.5.4	Restructured the format of the Injured Spouse's Share of Tax Liability formula to improve readability. Substantive content and subsection date not changed.
IRM 25.18.6	IRM 25.18.5.7	Added additional information related to registered domestic partners in Wisconsin.
IRM 25.15.5.8	IRM 25.18.5.9	Restructured the format of the Spouse's Share of Payments formula to improve readability. Substantive content and subsection date not changed.
IRM 25.18.5.9	IRM 25.18.5.10	Restructured the format of the Spouse's Contribution to Earned Income Credit formula to improve readability. Substantive content and subsection date not changed. Added link to example 1, <i>Earned Income Credit Allocation</i> . Reworked example 1 with new dollar amounts to be consistent with 2020 tax laws.

Prior Reference	New Reference	Description
IRM 25.18.5.10	IRM 25.18.5.11	Added link to Example 2, <i>Debts Not Involving Federal Taxes</i> . Reworked example 2 with new dollar amount to be consistent with 2020 tax laws. Substantive content and subsection date not changed.
IRM 25.18.5.11	IRM 25.18.5.12 and IRM 25.18.5.12.1	Moved the summary of rules for each community property state from IRM 25.18.5.12 to new subsection IRM 25.18.5.12.1 to improve readability. Added a link to example 3, <i>Federal Tax Debt and IRC 6321 Statutory Lien or Claim</i> . Reworked example 3 with new dollar amounts to be consistent with 2020 tax laws.
IRM 25.18.5.12	IRM 25.18.5.13	Restructured content into paragraphs instead of an alphabetical list. Restructured the example in paragraph 9 with bullet points to improve readability. Added link to example 4, <i>Federal Tax Offsets in Texas</i> . Reworked example 4 with new dollar amounts to be consistent with 2020 tax laws.
IRM 25.18.5.13	IRM 25.18.5.14	Restructured content in paragraph 4 to improve readability. Substantive content and subsection date not changed. Added a link to Example 5, <i>Order of Application</i> . Reworked example 5 with new dollar amounts to be consistent with 2020 tax laws.
IRM 25.18.5.15	IRM 25.18.5.16	Removed and restructured the format of all examples and reworked each example with new dollar amounts to be consistent with 2020 tax laws. Added links for all examples now housed on SharePoint.
IRM 25.18.5-1	Exhibit 25.18.5-1	Removed and reformatted table to split each state into its own table. Added a link to the new exhibit now housed on SharePoint.

EFFECT ON OTHER DOCUMENTS

IRM 25.18.5 dated March 7, 2017 is superseded.

AUDIENCE

This IRM section is intended to address the needs of all IRS employees who are working cases involving married taxpayers domiciled in community property states, or cases otherwise raising community property issues.

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25.18.5
Injured Spouse

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25.18.5.1
(09-06-2023)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides technical guidance on injured spouse claims affecting taxpayers domiciled in community property states, or cases otherwise raising community property issues.
- (2) **Audience.** This IRM is intended to address the needs of all IRS employees who are working on cases involving married taxpayers domiciled in community property states, or cases otherwise raising community property issues.
- (3) **Policy Owner.** The Director, Examination Field and Campus Policy, who reports to the Director, Headquarters Examination.
- (4) **Program Owner.** Field Examination General Processes (FEGP), who reports to the Director, Examination Field and Campus Policy.
- (5) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, *Providing Feedback About an IRM Section - Outside of Clearance*.

25.18.5.1.1
(09-06-2023)
Background

- (1) IRC 6402, *Authority to Make Credits or Refunds*, authorizes the IRS to first apply a taxpayer's overpayment to any outstanding Federal tax liability, then requires any remaining overpayment be applied to any outstanding child support, other Federal non-tax debt, State income tax obligation, or unemployment compensation debt prior to crediting the overpayment to a future tax or issuing a refund. This application of a tax overpayment is called a refund offset.
- (2) When spouses file joint income tax returns, each spouse has a separate interest in the jointly reported income and in any overpayment. Offset issues arise where spouses file joint returns and only one spouse owes an IRC 6402 debt. The general practice of the IRS is to offset the entire debt. The spouse who is not liable for the debt (referred to as the "injured spouse") may file a claim for their portion of the overpayment. In this circumstance, an allocation must be made to determine the liable spouse's interest in the overpayment, the amount that can be offset for the liable spouse's debt, and the amount to be refunded to the injured spouse.
- (3) This IRM addresses the difference in the allocation process for community property states as opposed to common law adopted by states that are not community property states.

25.18.5.1.2
(09-06-2023)
Authority

- (1) Federal law determines how property is taxed, but state law determines whether, and to what extent, a taxpayer has "property" or "rights to property" subject to taxation. *Aquilino v. United States*, 363 U.S. 509 (1960); *Morgan v. Commissioner*, 309 U.S. 78 (1940). Accordingly, Federal tax is assessed and collected based upon a taxpayer's state created rights and interest in property.
- (2) IRC 6402, *Authority to Make Credits or Refunds*, gives the IRS the ability to offset overpayment to satisfy certain unpaid debts.
- (3) IRC 6321, *Lien for Taxes*, provides the IRS with a statutory lien or claim attaching all a taxpayer's property or rights to property for the amount of the federal tax debt.

25.18.5.1.3
(09-06-2023)
Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for SB/SE Examination employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.5.5, *Headquarters Examination*, for additional information.
- (2) The Director, Examination Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the examination process. See IRM 1.1.16.5.5.1, *Examination Field and Campus Policy*, for additional information.
- (3) Field Examination General Processes (FEGP), reports to the Director, Examination Field and Campus Policy, and is responsible for providing policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.5.5.1.1, *Field Examination General Processes*, for additional information.
- (4) Employees are responsible for properly applying the laws of the applicable community property state fairly and consistently.
- (5) Employees and their managers should thoroughly acquaint themselves with the information contained in this IRM, as well as other resources, such as those listed in IRM 25.18.5.1.5, *Related Resources*, below.

25.18.5.1.4
(09-06-2023)
Terms

- (1) The following table contains a list of terms used throughout this IRM:

Term	Definition
Amount Refunded	The injured spouse's portion of the overpayment that is refunded after the injured spouse claim is processed.
Amount Retained	The amount of the overpayment the IRS keeps after the injured spouse claim is processed.
Common Law	The dominant property system in the United States adopted by the 41 states that are not community property states. Each spouse is treated as an individual with separate legal and property rights. Generally, each spouse owns and is taxed upon income that he or she earns. See IRM 25.18.1.2.1, <i>Common Law</i> , for more information.
Community Property	Generally, defined as all property acquired during marriage that is not established to be separate property. Community property is the default characterization of all marital assets. See IRM 25.18.1.3.10, <i>Definition of Community Property</i> , for additional information.
Community Property Income	Income earned by either or both spouses in a community property state that is not deemed separate property by other rules, or agreements between the spouses to maintain a separate property ownership regime. Community property income is typically taxed 50% to each spouse. See IRM 25.18.1.2.5, <i>Tax Assessment and Collection under Community Property Laws</i> , and IRM 25.18.2.2, <i>Income Reporting Considerations of Community Property</i> , for more information.

Term	Definition
Community Property Law	A property system where the presumption is that each spouse contributes income and assets to the “community” of the spouses, and shares equally in any earnings, assets, and debts of the community. See IRM 25.18.1.2.2, <i>Community Property Law</i> , for more information.
Community Property States	States that use community property law as their property system. Each state’s law can vary based on the individual state statutes. See IRM 25.18.1.2.2, <i>Community Property Law</i> , for more information.
Injured Spouse	When spouses file a joint return, and the IRS applies (offsets) the overpayment to an IRC 6402 debt owed by one spouse, the other spouse can file an injured spouse claim for their share of the overpayment.
Joint Management Community Property (JMCP)	Under Texas law, there are two types of community property: Joint Management Community Property (JMCP) and Sole Management Community Property (SMCP). JMCP is all community property which is not SMCP. The spouses are joint managers and may not represent each other in dealing with JMCP. For example, funds in a joint bank account are JMCP. See below for definition of SMCP and IRM 25.18.5.13 for more information.
Primary Spouse	Spouse listed first on a jointly filed Form 1040.
Refund Offset	IRC 6402 authorizes the IRS to first apply a taxpayer’s overpayment to any outstanding Federal tax liability on the part of the person who made the overpayment, then requires any remaining overpayment to be applied to any outstanding child support, Federal non-tax debt, State income tax obligation, or unemployment compensation debt prior to crediting the overpayment to a future tax or issuing a refund. See IRM 25.18.5.2 for more information.
Registered Domestic Partners	Two individuals who are in registered domestic partnerships, under the laws of California, Nevada, and Washington, and are subject to state community property laws in the same manner as married couples. Registered domestic partners, civil unions or other non-marital relationships that are not denominated as marriages under state law are not married for federal tax purposes. Therefore, individuals in these non-marital relationships may not file “married filing jointly” or “married filing separately” Federal income tax returns. See IRM 25.18.1.3.3, <i>Registered Domestic Partners</i> , and IRM 25.18.5.7 for more information.
Secondary Spouse	Spouse listed second on a jointly filed Form 1040.
Separate Property	Generally, all property acquired before the creation or after termination of the community property estate and property acquired by one spouse during marriage through gift, inheritance, or an award for personal injury damages. See IRM 25.18.1.3.11, <i>Definition of Separate Property</i> , and IRM 25.18.1.3.16, <i>Sale or Exchange of Separate Property</i> , for additional information on the character of property purchased with separate property.

Term	Definition
Sole Management Community Property (SMCP)	Under Texas law, there are two types of community property: Joint Management Community Property (JMCP) and Sole Management Community Property (SMCP). SMCP is property that a spouse is given the sole right to manage, control, or dispose of. SMCP is the property the spouse would have owned if single. For example, wages are the SMCP of the spouse who earned the wages. JMCP is all community property which is not SMCP. See above for definition of JMCP and IRM 25.18.5.13 for more information.
Spouses	Two individuals married to each other.

25.18.5.1.5
(09-06-2023)

Related Resources

- (1) The following IRMs provide additional information regarding community property:
 - IRM 25.18.1, *Basic Principles of Community Property Law*.
 - IRM 25.18.2, *Income Reporting Considerations of Community Property*.
 - IRM 25.18.4, *Collection of Taxes in Community Property States*.
 - IRM 25.15.5, *Relief from Joint and Several Liability, Relief from Community Property Laws*.
- (2) Also see IRM 21.4.6, *Refund Offset*, for additional information on injured spouse procedures and the refund offset program.
- (3) Helpful information can be found on the following page: *Knowledge management, Community Property—Exam Technical Services*.

25.18.5.2
(03-07-2017)

IRC 6402 Offset

- (1) IRC 6402 authorizes the IRS to first apply a taxpayer's overpayment to any outstanding Federal tax liability on the part of the person who made the overpayment, then requires the IRS to **offset** any remaining overpayments to satisfy certain unpaid debts. These debts include:
 - a. Past due child support.
 - b. Past due non-tax debts owed to Federal agencies.
 - c. Past due legally enforceable State income tax obligations owed to a state.
 - d. Past due unemployment compensation obligations.
- (2) **Creation of the Right to Offset for Debts.** Past due debts owed to other federal agencies, past due child support, past due legally enforceable state income tax, and past due unemployment compensation obligations become eligible for offset after receipt by the Secretary of the Treasury of a notification from the federal agency or the state. See IRC 6402(c), IRC 6402(d)(1), IRC 6402(e)(1), and IRC 6402(f)(1). Unpaid federal tax liabilities are eligible for IRC 6402 offset upon assessment. No preliminary notices are required before an offset can be made. *Fulgoni v. United States*, 23 Cl. Ct. 119, 91-1 U.S.T.C. ¶50,256, 67 A.F.T.R.2d ¶91-462 (1991).
- (3) **How Offset Issues Arise.** When spouses file joint income tax returns, each spouse has a separate interest in the jointly reported income and in any overpayment. See Rev. Rul. 74-611, 1974-2 C.B. 399, amplified by, Rev. Rul. 85-70, 1985-1 C.B. 361. If both spouses are liable for a debt described in IRC

6402, the entire overpayment may be offset. Offset issues arise where spouses file joint returns and only one spouse owes an IRC 6402 debt. The general practice of the IRS is to offset the entire debt. See Rev. Rul. 84-171, 1984-2 C.B. 310. However, under well-settled law, where spouses file joint returns and report a refund or overpayment, the spouses have separate interests in the joint overpayment. See Rev. Rul. 80-7, 1980-1 C.B. 296, amplified by Rev. Rul. 87-52, 1987-1 C.B. 347. The spouse who is not liable for the debt (referred to as the “injured spouse”) may file a claim for their portion of the refund (referred to as an “injured spouse claim”). In this circumstance, an allocation must be made to determine the liable spouse’s interest in the overpayment, the amount that can be offset for the liable spouse’s debt, and the amount to be refunded to the injured spouse. See Rev. Rul. 80-7. Injured spouse issues can arise in all U.S. jurisdictions. However, due to different property rights in income tax and withholding and other credits, there is a difference in the allocation process for community property states as opposed to the other states. See Rev. Rul. 85-70.

- (4) **Injured Spouse Claims.** If spouses file a joint income tax return and an obligation described in IRC 6402 is owed by one of the spouses, the IRS will generally offset the entire overpayment. See Rev. Rul. 84-171. If the injured spouse files a claim for their share of the overpayment, the IRS is required to refund the portion of the overpayment to which the injured spouse is legally entitled. See IRM 21.4.6.5.10.5, *Injured Spouse Refund—Tax Offset*, 31 CFR 285.2(f), 31 CFR 285.3(f), and 31 CFR 285.8(f). An injured spouse obtains their portion of the overpayment by filing a Form 8379, *Injured Spouse Allocation*. See IRM 21.4.6.5.8, *Form 8379 Injured Spouse Allocation*. An injured spouse claim can also be filed with an original return. As will be discussed below, in some circumstances the IRS may have the right under IRC 6402 to offset all or part of the community property portion of the overpayment. The interest a liable spouse has in the community property portion of the overpayment varies from state to state. Exhibit 25.18.5-1, contains examples of the application of injured spouse rules in various states and for various types of liabilities.
- (5) **Amount Retained and Amount Refunded.** As discussed above, if spouses file a joint return and one of them owes an IRC 6402 debt, the IRS will offset the entire overpayment, and only refund the injured spouse’s share of the refund if an injured spouse claim is filed. However, if the injured spouse files a claim with the joint return and the claim is allowed, the IRS will refund the injured spouse’s share of the overpayment. For purposes of IRM 25.18.5, the amount of the overpayment the IRS keeps after an injured spouse claim is filed in either situation is referred to as the “amount retained.” The injured spouse’s portion of the overpayment that is refunded after the injured spouse claim is filed is referred to as the “amount refunded.”
- (6) **Injured Spouse v. Innocent Spouse.** Injured spouse status and innocent spouse status are frequently confused with each other. Innocent spouse status relieves a spouse of the responsibility for paying taxes that are owed jointly and severally with the other spouse. See IRM 25.15.1, *Relief from Joint and Several Liability—Introduction*, IRC 66 and IRC 6015. Injured spouse status involves obtaining a refund of a spouse’s interest in an overpayment that has been offset under IRC 6402.

25.18.5.3
(03-07-2017)
IRS Procedures After an Injured Spouse's Claim is Filed

- (1) **Offsets for Debts Other Than Federal Taxes.** If an injured spouse claim is filed by a spouse in a community property state, the IRS needs to determine how much will be refunded. If the debt to which the offset was applied is not a federal tax liability, the IRS determines what portion of the overpayment represents the injured spouse's share of the overpayment and refunds it.
- (2) **Offsets for Federal Tax Debts.** If the debt involved is a federal tax liability, the IRS goes through a *two-part* procedure to determine how much will be refunded to the injured spouse. See Rev. Rul. 85-70.
 - a. **First**, determine each spouse's community property share of the overpayment. Also determine the liable spouse's separate property share of the overpayment. If the non-liable spouse files an injured spouse claim, and the claim is allowed, the minimum amount the IRS will retain is the liable spouse's community property and separate property share of the overpayment.
 - b. **Second**, look to state law to determine if there is a right to retain more than 50% of the community property portion of the overpayment. Some states allow creditors to reach more than 50% of community property to satisfy the separate liability of one of the spouses. If state law gives the liable spouse a property interest in more than 50% of the community property, the IRS may apply their greater than 50% share of community property portion of the overpayment to the separate tax liability. See Rev. Rul. 85-70.

As will be discussed below, if an injured spouse claim is filed, no portion of the injured spouse's share of the community property portion of the overpayment can be retained for an IRC 6402 debt not relating to federal taxes, such as child support, state income taxes or unemployment compensation (under IRC 6402(c), (d), (e), or (f)). The second part of the procedure only applies to claims for federal taxes (under IRC 6402(a)).

25.18.5.4
(03-04-2011)
Calculating the Injured Spouse's Share of the Overpayment

- (1) **Injured Spouse's Share of the Overpayment.** The injured spouse's share of the overpayment is computed by subtracting that spouse's share of the joint liability, determined in accordance with the separate tax formula, from that spouse's contribution of credits toward the joint liability. The amount credited cannot exceed the amount of the joint overpayment.
- (2) **Separate Tax Formula.** Under the separate tax formula, a spouse's share of the joint liability is computed using the separate tax formula, as follows:

Injured Spouse's Separate Tax Liability	÷	Total of Spouses' Separate Tax Li- abilities	×	Joint Tax Liability Shown on Return	=	Injured Spouse's Share of Tax Liability
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See Rev. Rul. 85-70; Rev. Rul. 80-7, amplified by Rev. Rul. 87-52, incorporating by reference 26 CFR 20.2053-6(f). As the formula shows, it is necessary to calculate each spouse's separate tax liability.

- (3) **Injured Spouse's Separate Tax Liability.** To determine the injured spouse's separate tax liability for purposes of the separate tax formula, each spouse's tax liability must be determined as if they filed separate returns. Rev. Rul. 80-7, amplified by Rev. Rul. 87-52; 26 CFR 1.6654-2(e)(5)(ii)(B). This requires an allocation of income and deductions between the spouses.

- (4) **Allocating Credits.** After determining each spouse's share of the tax under the separate tax formula, it is necessary to allocate and apply the credits (for example, withholding, estimated tax, and earned income credits) to each spouse's tax liability to determine their share of the overpayment. Under no circumstances can an injured spouse be refunded more than the joint overpayment. Thus, for example, it is possible under this formula for the liable spouse to not have sufficient credits to cover their share of the tax liability, and for the injured spouse's share of the credits (when applied to their liability) to exceed the joint refund. In this circumstance, the injured spouse is entitled to a refund only to the extent of the overpayment on the joint return. See Rev. Rul. 85-70.
- (5) **State Community Property Law Presumptions.** State community property laws create a presumption that property received by spouses is community property. Therefore, in allocating income the IRS will assume that the items on the return are community property unless the taxpayers prove otherwise or the law provides that particular items of income, deductions or credits are the separate property of one of the spouses. See Rev. Rul. 85-70.

25.18.5.5
(02-15-2005)
**Allocating Items in
Community Property
States**

- (1) **Generally.** As previously discussed, to do the calculation based on the separate tax formula, the income, deductions and other tax items must be allocated between the spouses and separate tax liabilities must be determined. With respect to spouses in community property states, there are special rules that apply to income and deductions. These rules are more fully set forth earlier in IRM 25.18.1, *Basic Principles of Community Property Law*, but some common issues that arise are discussed in this section.
- (2) **Allocating Income.** As previously discussed, state community property laws presume that property acquired by spouses is community property. However, the IRS will not treat an item as community property if it is clear from the face of the return that federal or other law requires that the item be treated as separate property. See discussion below for examples of items treated as separate property income by law. If items are community property income, each spouse is considered to be the recipient of half of the item. In an injured spouse allocation, items of community property income should be allocated 50% to each spouse.
- (3) **Deductions.** Deductions associated with income are generally characterized in the same manner as the income. Therefore, for example, if Schedule C income is treated as community property and allocated to both spouses, any Schedule C deductions are also treated as community property and split. Deductions that are not related to income (such as, medical, charitable contributions, property taxes, state taxes) are split, unless it is established that they were paid with separate property, in which case they would be deductible by the spouse whose separate property was used to pay them. *Powell v. Commissioner*, T.C. Memo. 1967-32; *Hunt v. Commissioner*, 47 B.T.A. 829 (1942); *Bishop v. Commissioner*, 152 F.2d 389 (9th Cir. 1945); *Commissioner v. Newcombe*, 203 F.2d 128 (9th Cir. 1953); *Keeter v. United States*, 97-2 U.S.T.C. ¶ 50,940, 80 A.F.T.R.2d ¶ 97-5640 (E.D. Cal. 1997). These rules apply to allocations of deductions for injured spouse calculations.
- (4) **Effect When All Items Are Community Property.** When all items on the return are community property, each spouse will be entitled to half of the overpayment. This happens frequently where all of the income on the return is from wages.

25.18.5.6
(03-07-2017)
Same-Sex Marriage

- (1) **Same-sex marriage.** On June 26, 2015, in *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court held that:
 - a. State laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples, and
 - b. All states must recognize same-sex marriages performed in other states.

As a result, same-sex married couples receive the same state and federal benefits and burdens as opposite-sex married couples. Therefore, same-sex married couples who domicile in a community property state are subject to community property rules in the same manner as opposite-sex married couples.

25.18.5.7
(09-06-2023)
Registered Domestic Partners

- (1) **Registered Domestic Partners.** Under the laws of California, Nevada, and Washington, registered domestic partners are subject to state community property laws in the same manner as married couples. Cal. Fam. Code 297.5(a); Nev. Rev. Stat. 122A.200; Wash. Rev. Code 26.16.030. However, since registered domestic partners are not married, they cannot file “married filing joint” or “married filing separate” federal income tax returns. If a registered domestic partner in California, Nevada or Washington files their individual federal income tax return reporting an overpayment, the overpayment is available to satisfy the separate tax debt of the other registered domestic partner in the same manner it would be available to satisfy a separate debt of a married individual in those states. See IRM 25.18.5.15, *Offsets Without a Joint Return*. Thus, all or part of the overpayment may be offset and applied to the other registered partner’s debt.
- (2) Wisconsin law allows couples to file a declaration of domestic partnership with the state and be recognized under state law as domestic partners (see Wis. Stat. 770.01 et. seq.). However, this does not subject them to Wisconsin marital property statutes. Accordingly domestic partners in Wisconsin do not report income under community property principles and are not subject to tax collection under community property principles.

25.18.5.8
(02-15-2005)
Items of Separate Property

- (1) In spite of the state community property law presumption, some items of income, deduction or tax may be separate property. This usually occurs because the spouses have provided proof that the items are separate property or because federal law dictates that the items are separate property. When this happens, the affected items should be allocated to the spouse who owns them. Common circumstances where items are separate property include the following:
 - a. **Marital Agreements.** The spouses may have entered into an agreement under state law characterizing all or part of their income as separate property. This would require proof by the spouses of the agreement and compliance with state laws governing such agreements.
 - b. **Income from Separate Property.** In some states, dividends, interest or rents from separate property are separate property. These states include Arizona, California, New Mexico, Nevada and Washington. This requires proof by the spouses that the source of the income was separate property. This is not true in the other community property states.
 - c. **Capital Gains from Separate Property.** Generally, market appreciation in the value of separate property is also separate property. Accordingly,

capital gain income may be separate property. This would require proof by the spouses that the property sold was separate property.

- d. **Distributions Deemed Separate Property Under Federal Law.** Federal law deems some items separate property, including IRA withdrawals, railroad retirement benefits, U.S. savings bonds and ERISA funds. If these items appear on the return, they must be allocated to the spouse who owns them. This does not require any proof by the spouses, since these items are deemed separate property as a matter of law.

25.18.5.9
(03-04-2011)
**Allocating Withholding
and Estimated Tax
Payments**

- (1) **Wage Withholding.** Withholding credits from community property income are community property and are allocated 50% to each spouse. See 26 CFR 1.31-1(a); *Gilmore v. United States*, 290 F.2d 942 (Ct. Cl. 1961), rev'd on other grounds, 372 U.S. 39 (1963). If it is established that the underlying wages are not community property, the withholding should be characterized consistently with the wages.
- (2) **Estimated Tax Payments.** Where spouses make estimated tax payments and subsequently file a joint return with an overpayment subject to an IRC 6402 offset, the estimated tax payments should be allocated in proportion to the spouses' separate tax liabilities. The formula for this is as follows:

Spouse's Separate Tax Liability	÷	Total of Spouses' Separate Tax Li- abilities	×	Total Estimated Tax Payments	=	Spouse's Share of Payments
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Therefore, if the spouses establish that the source of the payment was community property, the payment should be split evenly. If they establish that it is the separate property of one of the spouses, it should be allocated to that spouse. See Rev. Rul. 80-7, amplified by Rev. Rul. 87-52, incorporating by reference then 26 CFR 1.6015(b)-1(b). This formula only applies as a presumption. Ownership of estimated tax payments in the context of a joint return is determined by their source. *Elam v. United States*, 112 F.3d 1036 (9th Cir. 1997); *Gens v. United States*, 673 F.2d 366 (Ct. Cl. 1981), cert. denied, 459 U.S. 906 (1982).

25.18.5.10
(02-15-2005)
**Items With Special
Allocation Rules**

- (1) **Taxes and Credits.** Some taxes and credits are allocated to spouses without regard to community property. These items are exceptions to the community property presumption and are not split. These include the earned income credit and self-employment tax.
- (2) **Earned Income Credit.** Under IRC 32(c)(2)(B)(i), the amount of earned income for purposes of the earned income credit is calculated without regard to community property laws. If only one spouse has earned income, the credit is allocated to that spouse. If, however, both spouses have earned income and are eligible for the credit, each spouse's share must be determined. See Rev. Rul. 80-7, amplified by Rev. Rul. 87-52. Under IRC 32(b), the credit is phased out as certain income levels are reached. Therefore, for purposes of determining each spouse's contribution toward an overpayment, the credit cannot be allocated on a dollar-for-dollar basis. The allocated amount is arrived at by using the earned income tax credit tables to determine the hypothetical separate earned income tax credit that would have been available to each

spouse if that spouse had filed a separate return (and if the earned income credit were available on a separate return) and then using the following formula:

Spouse's Contribution to Earned Income Credit	=	Spouse's Hypothetical Separate Earned Income Credit	÷	Sum of the Hypothetical Separate earned Income Credits for Both Spouses	×	Joint Earned Income Credit (from joint return)
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See Rev. Rul. 87-52. For purposes of determining the hypothetical separate credit, each spouse should use the same number of qualifying children as were used to determine the actual joint credit. In addition, because the earned income tax credit is determined without regard to community property laws, it cannot be characterized as community property for purposes of the allocation. This would mean that the injured spouse's share of earned income tax credit would not be available for set-off, since it is the injured spouse's separate property. See *Example 1, Earned Income Credit Allocation*.

- (3) **Self-Employment Tax.** The self-employment tax with respect to self-employment income (net income from a trade or business, other than a partnership) is allocated to the spouse who has management and control over the trade or business. See 26 CFR 1.1402(a)-8(a); *Heidig v. Commissioner*, T.C. Memo. 1986-411; *Tolotti v. Commissioner*, T.C. Memo. 1987-13. Management and control means actual management and control, not management and control imputed from husband to wife under community property laws. See 26 CFR 1.1402(a)-8. Therefore, the self-employment tax is allocated to the spouse actually carrying on the trade or business. For purposes of the injured spouse calculation, self-employment tax should be allocated in accordance with this rule. Similarly, the self-employment tax attributable to a partnership that is a trade or business is allocated to the spouse who is the partner, even if part of the income is otherwise attributable to the other spouse for income tax purposes. See 26 CFR 1.1402(a)-8(b).

25.18.5.11
(03-07-2017)
**Determining How Much
Can Be Offset**

- (1) **Generally.** To determine how much to refund after an injured spouse claim is filed in a community property state, the IRS must first determine each spouse's community property share of the overpayment and any separate property. See Rev. Rul. 85-70. Since the payments are frequently all community property, this will usually be 50% of the overpayment.
- (2) **Offsets for Debts Other Than Federal Taxes.** If the IRC 6402 debt is for a liability other than federal taxes, then other federal law applies and the amount of the community property portion of the overpayment that may be retained, if a claim is filed, is limited to the liable spouse's share of the community property, without regard for the state-law rule giving the liable spouse an interest in the community property above 50%, and any portion of the refund that is the liable spouse's separate property. *Oatman v. Secretary of the Treasury*, 34 F.3d 787 (9th Cir. 1994). The liable spouse's property interest in the community property portion of the overpayment is not altered by any right that a creditor may have under state law to reach the non-liable spouse's share of the joint refund. In the context of IRC 6402(c), (d), (e), and (f), the IRS is not a creditor of the liable spouse because the debt being collected is

not a tax debt. Instead, the IRS is acting as a conduit. The IRS follows this position in all community property states. Therefore, in offsets not involving federal tax debts, the IRS will refund the injured spouse's community property share of the overpayment and any part of the refund that is the injured spouse's separate property. See *Example 2, Debts Not Involving Federal Taxes*.

- (3) **Offsets for Federal Tax Debts.** If the liability is for federal taxes, however, the amount allocable to the liable spouse's share of the overpayment is the minimum amount that will be retained to apply to the debt. If the applicable state law allows a creditor to reach an additional portion of community property to satisfy the separate liability of one of the spouses, the IRS can exercise this right and retain a larger portion of the overpayment. See Rev. Rul. 85-70.

25.18.5.12
(09-06-2023)
**IRC 6321 Right to
Property as Defined by
State Law**

- (1) State law defines property. IRC 6321 provides the IRS with a statutory lien or claim attaching all a taxpayer's property or rights to property for the amount of the federal tax debt. As discussed previously, some state community property laws define the property reachable by creditors to include more than half of community property for satisfaction of the separate liability of one of the spouses. In the case of an offset, relating to the separate statutory lien for the federal tax debt of one of the spouses, these state laws give the liable spouse a property interest in more than one half of the community property. The IRS can rely on these state property laws for attachment of the IRS's statutory lien to and retention of more than half of the community property interest in an overpayment. These rules are complex and care must be taken in applying them. It is often necessary to know when the spouses were married. IRS personnel working these claims often do not have this information, therefore they should assume that the liabilities were incurred during marriage unless the taxpayer establishes otherwise. See IRM 25.18.5.12.1, *Summary of Right to Property Rules in Community Property States*, below for a brief summary of the rules in each community property states. These rules are also summarized in Exhibit 25.18.5-1.

25.18.5.12.1
(09-06-2023)
**Summary of Right to
Property Rules in
Community Property
States**

- (1) **Arizona.** Premarital tax debts may be satisfied from 100% of community property traceable to or contributed by the liable spouse and 50% of all other community property (for example, 100% of the withholding attributable to the liable spouse and 50% of the withholding attributable to the non-liable spouse would be available). See Rev. Rul. 2004-71, 2004-30 I.R.B. 74; Ariz. Rev. Stat. 25-215(B); *Prater v. U.S.*, 268 F. Supp. 754 (D. Ariz. 1967); *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). If any portion of the overpayment is the separate property of the liable spouse, 100% of that portion may be retained to satisfy a premarital obligation. Whatever is leftover would be refunded to the non-liable spouse. Post-marital obligations that are not community obligations may be satisfied from 50% of community property. The IRS takes the position that tax liabilities are community debts. Contact Counsel if the taxpayer challenges the treatment of a post-marital tax debt as a community obligation. Thus, the IRS may retain 100% of the community property portion of the overpayment to satisfy tax debts in Arizona. See IRM 25.18.4.9, *Collecting Post-Marital Liabilities*; *Hyde v. United States*, 72 A.F.T.R.2d ¶ 93-5298 (D. Ariz. 1993). If any portion of the overpayment is the separate property of the liable spouse, 100% of that portion may be retained to satisfy a post-marital obligation. The non-liable spouse would be refunded the portion of the overpayment that is the non-liable spouse's separate property.

- (2) **California, Idaho and Louisiana.** Both premarital and post-marital tax debts may be satisfied from 100% of community property. Therefore, the IRS may retain 100% of the community property portion of the overpayment. See Rev. Rul. 2004-72, 2004-30 I.R.B. 77. If any portion of the overpayment is the separate property of the liable spouse, the IRS may also retain 100% of that portion. The non-liable spouse would be refunded the portion of the overpayment that is the non-liable spouse's separate property. See *Example 3, Federal Tax Debt and IRC 6321 Statutory Lien or Claim*.
- (3) **New Mexico, Nevada and Washington.** Premarital tax debts may be satisfied from 50% of the community property portion of the overpayment. See Rev. Rul. 2004-73, 2004-30 I.R.B. 80. If any portion of the overpayment is the separate property of the liable spouse, the IRS may also retain 100% of that portion to satisfy a premarital obligation. For post-marital tax debts, the IRS may retain 100% of the community property portion of the overpayment. If any portion of the overpayment is the separate property of the liable spouse, the IRS may retain 100% of that portion to satisfy a post-marital obligation. Whatever is left over would be refunded to the non-liable spouse.
- (4) **Texas.** All pre- and post-marital tax debts of one spouse may be satisfied with 100% of the liable spouse's sole management community property (for example, any withholding attributable to the liable spouse's wages), 100% of any part of the overpayment that is attributable to the liable spouse's separate property, and 100 % of any joint management community property (if any property can be characterized as such). See Rev. Rul. 2004-74, 2004-30 I.R.B. 84. Also, the IRS may retain 50% of the non-liable spouse's sole management community property (for example, any withholding attributable to the non-liable spouse); *Id.*; *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989). This remedy applies to both pre- and post-marital federal tax obligations. Whatever is left over would be refunded to the non-liable spouse. For a discussion of what constitutes sole management and joint management community property, see IRM 25.18.4.6, *Management and Control and Collection*. For a discussion of the impact of characterizing property as sole or joint management on tax collection generally, see IRM 25.18.4.5, *Levies Against a Non-liable Spouse to Reach a Liable Spouse's Share of Community Property*. For a more thorough discussion of processing non-liable spouse claims in Texas, see IRM 25.18.5.13.
- (5) **Wisconsin.** Wisconsin debts are classified based on whether they were incurred before or after the **determination date**. The determination date is the first day after all of the following have occurred: the marriage; January 1, 1986; and both spouses domiciling in Wisconsin. For predetermination date tax debts, the IRS may retain 100% of the community property portion that would have been the liable spouse's but for the community property law (for example, any withholding attributable to the liable spouse's wages) and 50% of other community property (for example, any withholding attributable to the non-liable spouse) and 100% of any part of the overpayment that is the liable spouse's separate property. If any portion of the overpayment is the separate property of the liable spouse, the IRS may retain 100% of that portion to satisfy a premarital obligation. See Rev. Rul. 2004-71. If one spouse has a separate post-determination-date tax debt, their property interest in community property depends on whether the debt was incurred in the interest of the marriage and family (for example, have a 'family purpose'). See Rev. Rul. 2004-71. For post-determination-date family purpose obligations, the IRS may retain 100% of the community property portion of the overpayment. If the obligation was incurred

after the determination date, but not in the interest of the marriage and family, the IRS may retain half of community property portion of the overpayment and 100% of any portion of the overpayment that is the separate property of the liable spouse. See Rev. Rul. 2004-71. Whatever is left over would be refunded to the non-liable spouse. Most tax obligations have a family purpose. *Hyde v. United States*, 72 A.F.T.R.2d ¶ 93-5298 (D. Ariz. 1993). Wisconsin law presumes debts incurred after the determination date are family purpose. The IRS takes the position that tax liabilities incurred after the determination date in Wisconsin are family purpose debts. Contact Counsel if the taxpayer challenges the treatment of a tax debt as a family purpose obligation.

25.18.5.13
(09-06-2023)
**Injured Spouse Claims
Involving Federal Tax
Offsets in Texas**

- (1) Because of complexities in Texas community property law, it is important to discuss with Counsel how to handle injured spouse claims involving federal tax offsets in Texas.
- (2) **Management Control of Community Property in Texas.** Under Texas law, there are two types of community property: **Joint Management Community Property** (JMCP) and **Sole Management Community Property** (SMCP). SMCP is property that a spouse is given the sole right to manage, control, or dispose of. SMCP is the property the spouse would have owned if single. Tex. Fam. Code Ann. 3.102(a). The property includes, but is not limited to:
 - a. Personal earnings
 - b. Revenue from separate property
 - c. Recoveries for personal injuries
 - d. Increase and mutations of, and the revenue from, all SMCP

A spouse can dispose of their SMCP without the consent or agreement of the other spouse. *Massey v. Massey*, 807 S.W. 2d 391 (Tex. Civ. App. - Houston 1991). Property held in a spouse's name is presumed to be SMCP of that spouse. Third parties may rely on this presumption in dealing with the spouse, so long as the third party is not a party to a fraud being conducted, or does not have actual or constructive notice that the spouse lacks authority to deal with the property. Tex. Fam. Code Ann. 3.104(b). JMCP is all community property which is not SMCP. The spouses are joint managers and may not represent each other in dealing with JMCP. For example, funds in a joint bank account are JMCP. Tex. Fam. Code Ann. 3.102(b); *Cooper v. Texas Gulf Industries, Inc.*, 513 S.W.2d 200 (Tex. 1974).

- (3) **Separate Property in Texas.** As in other community property states, Texas also recognizes the existence of separate property. This includes all property owned prior to marriage, property acquired during marriage by gift or inheritance, and the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage. Neither spouse has an interest in the other spouse's separate property. See Tex. Fam. Code Ann. 3.001.
- (4) **Collection From Separate and Community Property in Texas.** Texas state law defines a spouse's interest in separate and community property subject to collection of federal taxes. *Broday v. United States*, 455 F.2d 1097, 1099-1100 (5th Cir. 1972). Where one spouse owes a liability, all of the separate property of the liable spouse, all of the SMCP of the liable spouse, and all of the JMCP are subject to the payment of that separate liability. See Tex. Fam. Code Ann. 3.202. The IRS may also reach half of the SMCP of the non-liable spouse to collect a spouse's separate tax liability. Under Texas law, the SMCP of a

spouse is not subject to any liabilities that the other spouse incurred before marriage, or for any nontortious liabilities the other spouse incurs during marriage. See Tex. Fam. Code Ann. 3.202. Nevertheless, the IRS can reach half of the SMCP, because it is community property and state law has given the liable spouse a half interest in it. State law restrictions and exemptions placed on normal creditors do not apply to the IRS. *Medaris v. United States*, 884 F.2d 832 (5th Cir. 1989); *Broday v. United States*, 455 F.2d 1097 (5th Cir. 1972). The IRS cannot reach the separate property of the non-liable spouse. Unlike some other community property states, the IRS's collection remedy for unpaid taxes in Texas is not affected by whether the liability was incurred before or during marriage.

- (5) **Processing Injured Spouse Claims in Texas.** The tax collection principles cited in paragraph 4, above, also apply in offsetting overpayments for tax debts under IRC 6402 in Texas. If there is a federal tax debt, the IRS may retain 100% of any JMCP, 100% of any portion of an overpayment that is the liable spouse's SMCP (for example, any withholding attributable to the liable spouse's wages) and 50% of the injured spouse's SMCP (such as, any withholding attributable to the injured spouse), and 100% of any part of the overpayment that is the liable spouse's separate property. See Rev. Rul. 2004-74. The remainder would be refunded. However, before an offset can be made, it is necessary to determine what portion of the overpayment can be characterized as separate property, JMCP, and SMCP.
- (6) **Calculating the Liability of Each Spouse.** The first step in determining how much of an overpayment can be offset is to determine the injured spouse's share of the overpayment. To do this, each spouse's separate tax liability must be calculated. If all of the items on the return are community property, then the tax on the return will simply be allocated 50% to each spouse. Otherwise, it may be necessary to allocate income and deductions between the spouses, determine each spouse's separate tax, and go through the separate tax formula. See IRM 25.18.5.4 through IRM 25.18.5.9.
- (7) **Applying the Credits.** Once each spouse's portion of the tax liability has been calculated, then a determination must be made as to each spouse's share of the tax and payment credits. If all of the credits on the return are community property, then the credits on the return will simply be allocated 50% to each spouse. Otherwise, it may be necessary to allocate the credits between the spouses. See IRM 25.18.5.9.
- (8) **Offsetting the Overpayments.** Once the amount of each spouse's overpayment has been determined, the IRS will establish the amount retained. Note in every case, the IRS can retain the entire amount of the liable spouse's overpayment. As discussed in IRM 25.18.5.11 (2),
 - If the liability is a **non-tax debt**, the IRS will refund the injured spouse's entire overpayment attributable to them.
 - If the liability is a **tax debt**, then the IRS can look to state law property rights to determine if the IRS can retain any portion of the injured spouse's overpayment.

With respect to spouses residing in Texas, as discussed in paragraph 5 above,

- the IRS can retain any portion of the injured spouse's overpayment that is attributable to the liable spouse's SMCP or is JMCP.

- The IRS cannot retain any portion of the injured spouse's overpayment that is attributable to the injured spouse's separate property.
- In addition, the IRS should not retain more than half of the overpayment that is attributable to the injured spouse's SMCP.

In the steps described in paragraphs 6 and 7 above, the portions of the overpayment that are community property are allocated 50-50 to each spouse.

- In this division, the liable spouse's overpayment includes 50% of the injured spouse's SMCP, from which the IRS is permitted to collect to pay the liable spouse's separate liability.
- The IRS need not retain any portion of the injured spouse's refund that is their SMCP because the 50% has already been included in the steps described in paragraphs 6 and 7.
- In addition, in the steps described in paragraphs 6 and 7 the portions of the overpayment attributable to separate property will also have been allocated to each spouse.

However, the injured spouse's overpayment includes 50% of the liable spouse's SMCP and 50% of the JMCP, which the IRS is permitted to retain to pay the liable spouse's tax debt. To determine the portion of the injured spouse's overpayment attributable to 50% of the liable spouse's SMCP and 50% of the JMCP, it is necessary to **characterize** the liable spouse's and injured spouse's community property portions of the overpayment under Texas law.

- (9) **Characterizing the Injured Spouse's Overpayment Under Texas Law.** To characterize the injured spouse's overpayment, it is necessary to first characterize the various payment credits that have been applied to the injured spouse's side of the overpayment ledger. As discussed above, generally, a spouse's wages are considered to be their SMCP and therefore, any withholding attributable to a particular spouse's wages should be considered their SMCP. *Wynne v. United States*, 306 F. Supp. 2d 660, 2004 U.S. Dist. LEXIS 3574, 93 A.F.T.R.2d 692, 2004-1 U.S.T.C. ¶ 50,184 (N.D. Tex. 2004). Any earned income credit or estimated tax paid on a separate declaration is separate property. The presumption under Texas law is that items are JMCP, unless they are classified otherwise. Accordingly, the presumption with respect to other credits is that they are JMCP. Each spouse's share of the overpayments is the same proportion each spouse's payment credit bears to the total payments made. *Gens v. United States*, 673 F.2d 366 (Ct. Cl. 1981), cert. denied, 459 U.S. 906 (1982); *Glaubke v. United States*, 78-1 U.S.T.C. ¶ 9206, 41 A.F.T.R.2d 759 (E.D. Va. 1978). Thus, characterize the total payments, the overpayment should have the same proportionate character as the payments. For example:

- Assume the payment credits total \$1,000, the tax liability is \$900, and the overpayment is \$100.
- Further assume the total payment credits include: \$100 withheld from the sale of the injured spouse's separate property stock, \$600 of the injured spouse's wage withholding, and \$300 of the liable spouse's withholding.
- The total payments are: 10% – injured spouse's separate property (withheld from sale of stock), 60% – injured spouse's SMCP, and 30% – liable spouse's SMCP.

Apply the overpayment to the tax in the same proportion as the payments.

- Thus, the \$900 liability is paid with: \$90 of the injured spouse's separate property (10%), \$540 of the injured spouse's SMCP (60%), and \$270 of the liable spouse's SMCP (30%).
- The overpayment is from: \$10 separate property of the injured spouse (10%), \$60 SMCP of the injured spouse (60%), and \$30 SMCP of the liable spouse (30%).

The IRS should retain \$60 of the overpayment: of which \$30 represents the liable spouse's SMCP (the liable spouse's withholding) and \$30 represents one-half of the injured spouse's SMCP (the injured spouse's wage withholding). The IRS will refund the remaining \$40: of which \$10 represents the injured spouse's separate property (sale of separate property stock) and \$30 represents one-half of the injured spouse's SMCP (the injured spouse's wage withholding). See IRM 25.18.5.16 (5). See *Example 4, Federal Tax Offsets in Texas*.

25.18.5.14
(03-07-2017)

**Multiple Obligations:
Order of Application**

- (1) Where there are liabilities for unpaid federal taxes and other liabilities described in IRC 6402, the offset should first be applied to the federal tax liabilities. See IRC 6402(f)(2) and 26 CFR 301.6402-5(d)(1). If there is any amount left over after this application, it would then be applied to the other liabilities. If an injured spouse claim is filed, the IRS cannot offset more than 50% of a community property overpayment to satisfy a child support obligation, a debt to another federal agency, a state income tax liability, or unemployment compensation liability pursuant to IRC 6402.
- (2) If unpaid federal tax liabilities **exceed** 50% of the portion of the overpayment that is community property and there are other liabilities not involving federal taxes, the IRS can only apply the overpayment to the extent of the federal tax debt. Any excess cannot be applied to the other obligations, but should be refunded. This is because offset under IRC 6402 for the payment of non-tax obligations may not exceed 50% of the community property. The IRS will have already taken the maximum amount (50%) of the refund and applied it to the tax obligation.
- (3) If the tax debt is **less than** 50% of the community property portion of the joint overpayment, then the IRS can retain the full amount of the tax debt. The IRS can retain the difference between the tax offset and 50% of the overpayment and apply this amount to the liable spouse's other IRC 6402 debt. In this case, the remaining 50% of the joint overpayment must be refunded to the injured spouse.
- (4) The priority of offset between IRC 6402 obligations after federal taxes is as follows:
 - a. Past due child support,
 - b. Past-due non-tax debts owed to federal agencies,
 - c. State income tax obligations, and
 - d. Unemployment compensation liabilities.

See IRC 6402(f)(2). Priority between multiple debts owed to federal agencies is determined by the order in which the debts accrued. See IRC 6402(d)(2). Priority between multiple debts owed to a state or states will be determined by the order in which the debts accrued. See IRC 6402(e)(3) and IRC 6402(f)(2). See *Example 5, Order of Application*.

25.18.5.15
(03-07-2017)
**Offsets Without a Joint
Return**

- (1) The IRS may legally offset under IRC 6402 a spouse's overpayment to satisfy an unpaid tax liability of the other spouse, even though the overpayment was reported on a separate return. *Eaves v. United States*, 433 F.2d 1296 (10th Cir. 1970). Assuming that the non-liable spouse who filed the return reported their portion of the community income correctly, an offset is only permissible to the extent that state law gives the liable spouse a property interest in the overpayment reported on the non-liable spouse's separate return. The portion of the overpayment that is separate property is not subject to offset because the liable spouse has no property interest. The portion of the overpayment that is community property may be retained to the extent state law permits collection against the non-liable spouse's half of community property for an obligation of the liable spouse. Presumably, in filing a separate return, the non-liable spouse has already made the allocation, and the reported overpayment would represent their share of the overpayment but for state law giving the liable spouse a property interest in it. However, the examiner should verify that the income was reported properly under community property principles.

25.18.5.16
(09-06-2023)
**Injured Spouse
Examples**

- (1) **Earned Income Credit Allocation.** See *Example 1, Earned Income Credit Allocation*.
- (2) **Debts Not Involving Federal Taxes.** See *Example 2, Debts Not Involving Federal Taxes*.
- (3) **Federal Tax Debt and IRC 6321 Statutory Lien or Claim.** See *Example 3, Federal Tax Debt and IRC 6321 Statutory Lien or Claim*.
- (4) **Federal Tax Offsets in Texas** See *Example 4, Federal Tax Offsets in Texas*.
- (5) **Order of Application.** See *Example 5, Order of Application*.

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Exhibit 25.18.5-1 (09-06-2023)**Amount of Overpayment That Can Be Offset To Satisfy an IRC 6402 Debt**

This exhibit contains a set of tables providing information for each community property state. See *Exhibit 25.18.5-1, Amount of Overpayment the IRS can Offset to Satisfy IRC 6402 Debt*.

