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From:

Sent: Friday, January 28, 2011 10:57:12 AM

To:

Cc:

Subject: RE: Advice regarding injured spouse coordination

The IRM provides allocation instructions for the child tax credit on the Form 8379, Injured Spouse Allocation. When the taxpayers live in a community property state, the child tax credit should be allocated equally in accordance with IRM section 21.4.6.5.11(2), which provides that "[i]n community property states, all joint amounts are divided equally, with the exception of EITC."

You also mentioned that you use the same proposed allocation for the recovery rebate credit and the making work pay credit. The recovery rebate credit should be allocated 50/50 between the spouses, since section 6428(f)(2) states in part that "half of such refund or credit shall be treated as having been made or allowed to each individual filing such return." The IRM provides additional guidance on the allocation of the recovery rebate credit in section 21.4.6.5.31.1.

There is no language in Code sections 36 (first-time homebuyer credit) or 36A (making work pay credit) that seems to require a certain allocation of these credits between spouses on the Form 8379. The IRM provides that the taxpayer may allocate the first-time homebuyer credit "as they determine." See IRM § 21.4.6.5.32(3). The IRM also provides guidance on the allocation of the making work pay credit in section 21.4.6.5.33. When a taxpayer resides in a community property state, both the first-time homebuyer credit and making work pay credit should be calculated based on the community property laws for that state. See IRM §§ 21.4.6.5.32(3); 21.4.6.5.33(5).

Based on the provisions in the IRM, your determination about the allocation of the first-time homebuyer credit in a community property state seems correct. The making work pay credit would have a similar allocation; if the income is community property, then the credit generated by the income should also be community property, and probably allocated 50/50, assuming that is what the state's community property laws provide.

Although the IRM provides guidance on allocation of the child tax credit, recovery rebate credit, the making work pay credit, and the first-time homebuyer credit, we do think that portions of these IRM provisions are somewhat confusing, and we are concerned that this could cause inconsistencies in processing these requests. We are coordinating with _____ to discuss whether revisions to these portions of the IRM would be appropriate to help clarify any confusion and inconsistencies in credit allocations on the form.

Please let me know if you have any questions about this advice.

Sincerely,

