

**Comments of the National Women's Law Center  
on IRS Form 8888, Direct Deposit of Refund**  
September 21, 2006

The National Women's Law Center ("Center") appreciates the opportunity to comment on draft Form 8888, Direct Deposit of Refund, which would allow taxpayers to split their refunds among multiple bank accounts. The Center welcomes the split-refund initiative, which has the potential to facilitate savings by low- and moderate-income tax filers. However, the Center is concerned that draft Form 8888—and the procedures for implementing the split-refund program that it reflects—may deprive non-debtor spouses of the ability to recover their share of joint tax refunds when those refunds are offset to collect past-due child support owed by their spouses. The recommendations in these comments are designed to ensure that both the tax refund offset program—a vital tool for the collection of past-due child support—and the split refund program can be implemented fairly, effectively, and in compliance with legal requirements.

Federal law governing the child support tax refund offset program requires that notification be given both before and after an offset occurs to protect the rights of non-debtor spouses entitled to a share of a joint tax refund. Before a State child support agency refers a past-due child support debt to the Secretary of the Treasury for collection through the tax refund offset process, it must provide the individual believed to owe the debt with notice of the possible withholding and procedures for contesting the debt. This notice also must provide information about the procedures that may be followed, in the case of a joint return, to protect the share of the refund which may be payable to the spouse (42 U.S.C. §664(a)(3)(A)(ii); 31 CFR §285(c)(4)). Whether this notice effectively apprises a non-debtor spouse of the procedures for asserting her or his rights will depend on the circumstances, including whether the debtor spouse chooses to communicate the information. Consequently, federal law also requires post-offset notice (42 U.S.C. §664(a)(3)(B)). If an offset is applied to a tax refund payment based upon a joint return, the Financial Management Service (FMS) of the Department of Treasury must issue a notice to the debtor that "also will advise any non-debtor who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund" (31 CFR §285(e)(1)(ii)).

A non-debtor spouse may secure her or his proper share of a refund on a joint return by filing Form 8379, the "Injured Spouse Allocation Form." Form 8379 may be filed with the joint tax return or at a later date, allowing spouses to assert their rights before or after the offset has occurred.

It is clear from draft Form 8888 that the IRS considered interaction between the split-refund initiative and the tax refund offset program. However, the procedures set out in the draft fail to adequately protect the rights of non-debtor spouses, especially if they must be asserted after the offset—and the allocation to multiple accounts—has occurred.

The general instructions for Form 8888 list the types of accounts to which deposits can be made, then state: “You cannot have your refund deposited into more than one account if you file Form 8379.” The name and purpose of Form 8379 is not explained, nor is this statement set apart or highlighted in any way. The specific instructions state that by filing a joint return and completing and attaching Form 8888: “You are appointing your spouse as an agent to receive the refund. This appointment cannot be changed later.” The instructions also describe how direct deposits will be adjusted if an offset is applied to the refund: if the taxpayer owes amounts other than past-due federal taxes that are subject to offset by the FMS, such as past-due child support, the past-due amounts will be deducted from the refund first from the account with the lowest routing number, then moving in sequence to accounts with higher routing numbers.

The Center assumes that the statement that “you cannot have your refund deposited into more than one account if you file Form 8379” means that if a taxpayer should file Form 8379, the Injured Spouse Allocation, along with Form 8888, deposits to the accounts specified in draft Form 8888 would not occur. This would protect the rights of non-debtor spouses who are sufficiently aware of their spouse’s obligations and their own rights to file Form 8379 at the time they file the joint return, because current procedures would govern; there would be no allocation among multiple accounts.

However, the rights of non-debtor spouses who are unaware of their spouse’s debts or the option to file Form 8379 until after the offset occurs are at risk under the procedures implied by draft Form 8888. A non-debtor spouse who files Form 8888 but fails to file Form 8379 could find that the offset has been deducted from the deposit to her or his account rather than the debtor’s, if the non-debtor spouse’s account has the lower routing number. It is unclear from draft Form 8888 what remedies—if any—are available to the non-debtor spouse at that point. Indeed, the combination of the language permanently appointing the spouse as agent to receive the refund, the caution against filing both Forms 8888 and 8379, and the lack of any indication that Form 8379 can be filed after Form 8888 has been filed, suggest that Form 8379 may *not* be filed—and that a spouse who files Form 8888 is without a post-offset remedy to recover his or her share of a tax refund. Such a result would be inconsistent with statutory requirements for post-offset notice and recovery procedures and the requirements of due process.

The Center recommends the following changes to draft Form 8888 to protect the rights of non-debtor spouses while promoting the effective implementation of the split-refund initiative and the tax-refund offset program:

1. Clearly provide a post-offset remedy to non-debtor spouses who must file Form 8379 after filing Form 8888. The language of the appointment clause should be changed to provide an exception for non-debtor spouses who file Form 8379.
2. To reduce the number of the situations in which tax filers will have to submit Form 8379 after filing Form 8888, prominently and explicitly advise joint filers to avoid filing Form 8888 if there is any possibility that one spouse may have a debt subject to offset. In addition to referring to Form 8379 by number, give the name and purpose of the form and put the information in a separate paragraph, highlighted as a “Note” or “Tip.”

The Center looks forward to working with the IRS as it implements this important new initiative. If you have questions or if the Center can otherwise be of assistance, please contact Joan Entmacher, Vice President and Director, Family Economic Security, at (202)588-7606 or [jentmacher@nwlc.org](mailto:jentmacher@nwlc.org).