



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR ROBERTA L. SHUMWAY  
ACTING ASSOCIATE AREA COUNSEL CC:SB:6:AUS

FROM: Pamela W. Fuller  
Senior Technician Reviewer CC:PA:APJP:B01

SUBJECT: Injured Spouse

This Chief Counsel Advice responds to your memorandum dated January 24, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUES

1. Where an injured spouse and a liable spouse reside in Texas, and file a joint return in Year 1 claiming an overpayment, what is the proper amount of the overpayment the IRS may offset towards Liable Spouse's separate liability pursuant to I.R.C. § 6402(a)?
2. Where an injured spouse and a liable spouse reside in Texas, and file a joint return in Year 1 claiming an overpayment, what is the proper amount of the overpayment the IRS must offset towards Liable Spouse's separate liability pursuant to I.R.C. § 6402(c), (d) and/or (e)?
3. Whether there is a conflict between Medaris v. United States, 884 F.2d 832 (5<sup>th</sup> Cir. 1989) and Ragan v. Commissioner, 135 F.3d 329, 332 (5<sup>th</sup> Cir. 1998) with respect to the Fifth Circuit's treatment of Texas community property laws.

CONCLUSIONS

1. Under Texas community property law, the IRS may offset the entire portion of the overpayment that is attributable to liable spouse, as well as 50 percent of the overpayment that is attributable to injured spouse.
2. The IRS is required to offset the liable spouse's share of the Year 1 overpayment. Under Texas law, the liable spouse has a 50 percent interest in

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the Year 1 overpayment. Accordingly, the IRS is required to offset 50 percent of the overpayment.

3. There is no conflict between Medaris and Ragan. In each case, the Fifth Circuit applied Texas community property law to a separate federal statute.

### FACTS

You have provided two separate factual situations and have asked our office to apply the I.R.C. § 6402 offset rules. Each situation is discussed separately.

#### *Situation 1*

Liabe Spouse and Injured Spouse are married and living in Texas. In Year 1, the Spouses filed a income tax return (Form 1040), using the filing status of “married filing joint return.” They reported the following items on their return:

Adjusted Gross Income	\$18,000.00
Federal Income Tax Withheld	\$4,000.00
Total Tax	\$799.00
Amount that was Overpaid	\$3,201.00

The Spouses’ adjusted gross income was derived from income earned by both Liabe and Injured Spouse. The Spouses individually earned the following income:

	Liabe Spouse	Injured Spouse
Wages	\$10,000.00	\$7,000.00
Taxable Interest	\$500.00	\$500.00
Federal Income Tax Withheld	\$2,000.00	\$2,000.00

The \$1,000.00 of taxable interest was earned from an account held jointly by Liabe and Injured Spouse.

Liabe and Injured Spouse requested on their Form 1040 that the IRS refund the entire \$3,201.00 overpayment.

At the time Liabe and Injured Spouse filed their Form 1040 for Year 1, Liabe Spouse owed \$3,000.00 in federal income tax. This liability was for a tax year that is prior to Liabe and Injured Spouse’s marriage.

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Had Liable and Injured Spouse filed their Year 1 tax return using the “married filing separate return” filing status, Liable Spouse would have a tax liability of \$600.00 and Injured Spouse would have a tax liability of \$400.00.

You have asked how much of the \$3,201.00 overpayment can be offset by the IRS pursuant to I.R.C. § 6402(a).

### *Situation 2*

The same facts as Situation 1, except instead of a \$3,000.00 federal income tax liability, Liable Spouse has debts totaling \$3,000.00 of past-due support (I.R.C. § 6402(c)), non-tax federal debts (I.R.C. § 6402(d)) and/or past-due legally enforceable state income tax obligations (I.R.C. § 6402(e)). You have asked how much of the \$3,201.00 overpayment can be offset by the IRS pursuant to I.R.C. § 6402(c), (d) and/or (e).

In Situations 1 and 2, Injured Spouse is not liable for any liabilities described in I.R.C. § 6402, and is therefore entitled to her portion of the Year 1 refund. It is assumed for both situations that Injured Spouse took all appropriate actions required by law to secure her portion of the Year 1 refund.

### LAW AND ANALYSIS

#### *I.R.C. § 6402*

I.R.C. § 6402(a) provides that in:

the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e) refund any balance to such person.

Where a state has notified the Secretary that a taxpayer owes past-due support (as defined in § 464(c) of the Social Security Act), I.R.C. § 6402(c) instructs the Secretary to reduce the overpayment by the amount of past-due support, and remit that portion of the overpayment to the notifying state.

Similarly, where a Federal agency has notified the Secretary that a taxpayer has a past-due legally enforceable debt, I.R.C. § 6402(d) instructs the Secretary to reduce the taxpayer's overpayment by the amount of the debt, and remit such portion of the overpayment to the notifying agency.

Finally, where a state has notified the Secretary that a taxpayer has a past-due legally enforceable state income tax obligation, I.R.C. § 6402(e) instructs the Secretary to reduce the taxpayer's overpayment by the amount of the obligation, and remit that portion of the overpayment to the notifying state.

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### *Community Property in Texas*

State law governs the determination of Injured Spouse's interest in a joint refund. See Aquilino v. United States 363 U.S. 509 (1960). Once Injured Spouse's interest has been determined, federal law dictates the consequences for federal tax collection purposes. United States v. Bess, 357 U.S. 51 (1958). Here, the relevant state is Texas. Accordingly, Texas law governs in determining Injured Spouse's interest in the Spouses' Year 1 refund.

Texas is a community property state. "Community property" is defined under Texas law as "property, other than separate property, acquired by either spouse during marriage." Tex. Fam. Code Ann. § 3.002 (West 1997). Both Liable and Injured Spouse have an equal and present vested interest in all community property. See Brodway v. United States, 455 F.2d 1097 (5<sup>th</sup> Cir. 1972).

Personal earnings are generally classified as community property that is subject to the earning spouse's "sole management, control, and disposition". Tex. Fam. Code Ann. § 3.102(a)(1) (West 1997). Community property that is not classified as property subject to a spouse's sole management, is property that is subject to "joint management, control, and disposition of the spouses". Tex. Fam. Code Ann. § 3.102(c) (West 1997).

Here, there are three sources of taxable income: Liable Spouse's wages, Injured Spouse's wages, and interest earned from a jointly held bank account. Both Liable and Injured Spouses' wages are personal earnings and are therefore community property that is subject to the respective spouse's sole management and control. The interest income is from a jointly held account and is therefore community property that is subject to the joint management and control of the spouses.

To the extent that the overpayment "is attributable to one spouse's sole management community property, the refund from the excess tax on that income is the sole management community property of that spouse." Ragan v. Commissioner, 135 F.3d 329, 332 (5<sup>th</sup> Cir. 1998). Here, the overpayment is attributable to withholding from both Liable and Injured Spouse's respective wages. Accordingly, the \$3,201.00 refund is a combination of community property that is subject to Liable Spouse's sole management, control and disposition and community property that is subject to Injured Spouse's sole management, control and disposition.

#### *Situation 1*

#### Process for Determining Liable Spouse's Portion of the Year 1 Overpayment

Rev. Rul. 85-70, 1985-1C.B. 361, amplified by Rev. Rul. 87-52, provides a two-step process for determining the amount of a joint overpayment that may be offset by the IRS to pay the separate tax liability of a spouse.

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The first part of the two-part process is to treat each spouse as having received 50 percent of the income and to credit each spouse with 50 percent of the withholding credits. This is true regardless of the actual income earned by the respective spouses. Accordingly, each spouse has a 50 percent interest in the overpayment. Therefore, if one spouse has an outstanding tax liability the IRS is entitled to offset, at a minimum, 50 percent of the overpayment.

The second part of the two-part process is to look to state law to determine if more than 50 percent of the overpayment may be offset by the IRS. Id. In a state where a creditor can reach an additional portion of community property to satisfy the separate liability of one of the spouses, the IRS can exercise this right, and claim a larger portion of the overpayment. Id.

In this Situation, the Spouses live in Texas. For Year 1, Liable Spouse and Injured Spouse together had an adjusted gross income of \$18,000.00 and had federal tax withheld of \$4,000.00. The Spouses' Year 1 joint tax liability was \$799.00. Accordingly, the Spouses had a \$3,201.00 overpayment for Year 1.

#### Part 1

Applying the first part from Rev. Rul. 85-70, Liable and Injured Spouse are considered to have each received 50 percent of the Year 1 income, and are both entitled to a credit of 50 percent of the Year 1 tax payments. Accordingly, both of the Spouses are treated as having each received \$9,000.00 in taxable income, and are both credited with \$2,000.00 in withholding. Accordingly, Liable and Injured Spouse are entitled to 50 percent of the 3,201.00 overpayment. Therefore, the IRS may offset at least \$1,600.50 of the Year 1 overpayment.

#### Part 2

Next, the IRS must apply the second part to determine if it can offset any additional portion of the Spouses' Year 1 overpayment. Under Texas community property laws, \$10,000.00 of the income received in Year 1 is community property that is subject to the sole management of Liable Spouse. See Tex. Fam. Code Ann. § 3.102(a)(1) (West 1997). In addition, where only one spouse is personally liable for a debt, Texas law allows creditors to reach all community property other than community property that is subject to the non-liable spouse's sole management, control and disposition. Tex. Fam. Code Ann. § 3.202(b).

The IRS, when collecting a federal tax debt, enjoys the same rights under Texas state law as any other creditor. See Medaris v. United States, 884 F.2d 832, 835 (5<sup>th</sup> Cir. 1989). Accordingly, the IRS can use Texas state law to offset the entire portion of the overpayment that is community property subject to Liable Spouse's sole management, control and disposition. Id. "The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage." Tex. Fam. Code Ann. § 3.202(c) (West 1997)

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Texas law exempts the portion of the overpayment that is community property subject to Injured Spouse's sole management, control, and disposition, from the liabilities solely incurred by Liable Spouse. Tex. Fam. Code Ann. § 3.202(b) (West 1997). This exemption, however, is a state created exemption and such exemption is inapplicable to the collection of a federal tax debt. See United States v. Mitchell, 403 U.S. 190 (1971); Medaris v. United States, 884 F.2d 832 (5<sup>th</sup> Cir. 1989); Brodsky at 1100, 1101. Accordingly, the IRS is able to collect Liable Spouse's community property share of the overpayment that is subject to Injured Spouse's sole management, control and disposition. The IRS cannot, however, reach Injured Spouse's community property share of the overpayment that is subject to Injured Spouse's sole management, control and disposition. Therefore, 50 percent of the overpayment that is subject to Injured Spouse's sole management, control and disposition cannot be touched by the IRS pursuant to I.R.C. § 6402(a).

Liable Spouse owes the IRS \$3,000.00 in tax from a prior tax year and the Spouses have a Year 1 overpayment of \$3,201.00. Because the IRS can reach the entire portion of the overpayment that is subject to Liable Spouse's sole management, control and disposition, as well as 50 percent of the overpayment that is subject to Injured Spouse's sole management, control and disposition, we must also determine how much of the Spouses' Year 1 overpayment is community property subject to the sole management, control and disposition of the respective Spouses.

#### Computing Liable and Injured Spouses' Portion of the Overpayment

Rev. Rul. 80-7, 1980-1 C.B. 296, amplified by Rev. Rul. 85-70, 1985-1 C.B. 361, clarified by Rev. Rul. 87-52, 1987-1 C.B. 347, describes the proper method for computing the amount of an overpayment shown on a joint return that can be credited to one spouse's unpaid separate tax liability from a prior year for purposes of I.R.C. § 6402(a).

Step one is to compute each spouse's separate tax liability using the married filing separately table from I.R.C. § 1(d).

For this Situation, the respective income items and tax liabilities are as follows:

	Injured Spouse	Liable Spouse
Adjusted Gross Income	\$10,500.00	\$7,500.00
Federal Income Tax Withheld	\$2,000.00	\$2,000.00
Separate Tax Liability	\$600.00	\$400.00

In addition, using the married filing jointly table, the Spouses have a joint tax liability of \$799.00.

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Step 2, the separate liabilities must be placed into fractions to compute each Spouse's share of the overpayment. For Liable Spouse's ("LS") portion of the overpayment, Liable Spouse's separate tax liability is the numerator, and the sum of Liable Spouse's and Injured Spouse's ("IS") separate tax liability is the denominator. The fraction is then multiplied by the joint liability reported on the joint return. To illustrate:

$$\frac{\text{LS separate liability}}{\text{LS separate liability} + \text{IS separate liability}} \times \text{Joint Liability} = \text{LS share of joint liability}$$

Accordingly, Liable Spouse's share of the Year 1 joint liability is computed as follows:

$$\frac{\$600.00}{\$600.00 + \$400.00} \times \$799.00 = \$479.00$$

Thus, Liable Spouse's share of the joint liability is \$479.00

Finally, Step 3 subtracts Liable Spouse's portion of the joint liability from Liable Spouse's share of the tax payments for that year to get Liable Spouse's share of the overpayment.

Accordingly:

Liable Spouse's Payments	\$2,000.00
<u>Minus Liable Spouse's Joint Liability</u>	<u>(\$479.00)</u>
Liable Spouse's Share of Overpayment	\$1,521.00

Therefore, Liable Spouse's share of the Year 1 overpayment is \$1,521.00.

Now, Step 2 and 3 must be applied to determine Injured Spouse's share of the Year 1 overpayment. In applying Step 2, the formula from Rev. Rul. 80-7 is applied as follows:

$$\frac{\$400.00}{\$600.00 + \$400.00} \times \$799.00 = \$320.00$$

Accordingly, Injured Spouse's share of the joint liability is \$320.00.

Step 3 for Injured Spouse is illustrated as follows:

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Injured Spouse's Payments	\$2,000.00
<u>Minus Injured Spouse's Joint Liability</u>	<u>(\$320.00)</u>
Injured Spouse's Share of Overpayment	\$1,680.00

Therefore, Injured Spouse's share of the Year 1 overpayment is \$1,680.00.

As discussed above, the IRS is entitled to offset the entire portion of the Year 1 overpayment that is subject to Liable Spouse's sole management, control and disposition. Based on the formula provided by Rev. Rul. 80-7, \$1,521.00 of the Year 1 overpayment is subject to Liable Spouse's sole management. Therefore, pursuant to I.R.C. § 6402(a), the IRS can offset \$1,521.00 of the Year 1 overpayment to satisfy Liable Spouse's \$3,000.00 tax debt.

In addition, the IRS may also offset 50 percent of the portion of the Year 1 overpayment that is subject to Injured Spouse's sole management, control and disposition. This 50 percent represents Liable Spouse's community property interest in Injured Spouse's share of the Year 1 overpayment. Based on the formula provided by Rev. Rul. 80-7, \$1,680.00 of the Year 1 overpayment is subject to Injured Spouse's sole management. Therefore, the IRS can offset an additional \$840.00 of the Year 1 overpayment against Liable Spouse's \$3,000.00 tax debt.

In sum, of the \$3,201.00 overpayment, the IRS may offset a total of \$2,361.00 (\$1,521.00 + \$840.00) towards Liable Spouse's \$3,000.00 federal tax liability.

### *Situation 2*

Instead of owing \$3,000.00 federal income tax from a prior tax year, Liable Spouse is liable for a \$3,000.00 debt described in I.R.C. §§ 6402(c), (d) or (e).

Where taxpayers file a joint return and only one of the spouses is liable for a past-due debt pursuant to I.R.C. § 6402(c),(d) or (e), the IRS is required to reduce a refund even though the return has been filed jointly. See I.R.C. § 6402(e)(1)(flush language); Treas. Reg. § 301.6402-6(i); Emily Oatman v. Department of Treasury, 34 F.3d 787 (9<sup>th</sup> Cir. 1994). The IRS, however, is obligated to pay the non-liable spouse his/her share of the refund where the non-liable spouse takes the appropriate steps to preserve his/her interest. See Treas. Reg. § 301.6402-6(i)(2); 42 U.S.C. § 664(a)(3)(C); Oatman at 789.

The offsetting of the liable spouse's portion of the joint overpayment is not subject to review by any court of the United States. I.R.C. § 6402(f).

As discussed above, state law determines the extent of a taxpayer's interest in a joint refund. In Texas, a spouse has an undivided 50 percent interest in all of the community property. In Situation 2 the Spouses' Year 1 overpayment is community property. Accordingly, both Liable and Injured Spouse have a 50 percent interest in their Year 1 overpayment.



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Because the IRS may only offset the liable spouse's portion of a joint refund, and each spouse has a 50 percent interest in an overpayment from a joint return, the IRS is entitled to offset 50 percent of the overpayment from a joint return.

In this case, the Spouses filed a Year 1 joint return reflecting an overpayment of \$3,201.00. Because Liable and Injured Spouse each have a 50 percent interest in the Year 1 overpayment, the IRS is, pursuant to I.R.C. § 6402(c), (d) or (e), required to offset Liable Spouse's share of the overpayment, which is \$1,600.50.

Under Texas law, community property that is subject to a non-liable spouse's sole management, control and disposition is exempt from the liabilities of the liable spouse. Tex. Fam. Code Ann. § 3.202(b). This exemption appears to conflict with I.R.C. § 6402(c), (d) and (e). Where there is a conflict between federal and state law, the Supremacy Clause of the United States Constitution requires that federal law control. See U.S. Const. Art. VI, cl. 2; Bosarge v. United States Department of Education, 5 F.3d 1414, 1415 (11<sup>th</sup> Cir. 1993), cert. denied, 512 U.S. 1226 (1994).

In Bosarge, the plaintiff, Clarence Bosarge, had student loan payments that were past due. For his 1990 tax year, Mr. Bosarge was entitled to a \$1,225.87 refund of federal tax that was withheld throughout 1990. Id. Mr. Bosarge lived in Alabama and the Code of Alabama allowed a state resident to designate up to \$3,000.00 worth of personal property that can be claimed as "exempt from levy and sale under execution or other process for the collection of debts." Id. at 1418, quoting Ala. Code § 6-10-6 (1975). Relying on this section, Mr. Bosarge, on March 11, 1991, filed a notarized Declaration and Claim of Exemption with the Mobile County Probate Court, claiming his 1990 federal income tax refund as exempt from debt collectors. Id. at 1415, 1416.

Subsequent to Mr. Bosarge filing his claim with the probate court, the Department of Education gave notice to the IRS that Mr. Bosarge was liable for a past-due, legally enforceable debt. Id. at 1416. The IRS informed Mr. Bosarge that his 1990 tax refund of \$1,225.87 was being offset to the Department of Education. Id.

Mr. Bosarge brought suit in United States District Court seeking an injunction preventing the offset. Relying on Alabama law, Mr. Bosarge argued that his 1990 tax refund was exempt from being offset by the IRS. On appeal, the Eleventh Circuit held the following:

Bosarge argues that . . . Alabama state law restricts the federal government's statutory right to intercept federal income tax refunds. But the laws are in direct conflict, as the federal statutes provide that an agency owed a debt 'shall' so notify the IRS, which 'shall' pay the debtor's federal income tax refund to the agency, while the Code of Alabama prohibits any 'process for the collection of debts.' Thus, under the doctrine of preemption, which is based upon the Supremacy Clause of the United States Constitution, the federal law must control.

Id. at 1419, (footnote omitted).

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In this case, under Texas law, Liable Spouse has a 50 percent interest in the Spouses' Year 1 overpayment. Classifying a portion of the overpayment as community property subject to Injured Spouse's sole management, control and disposition does not reduce Liable Spouse's interest in the Spouses' Year 1 overpayment. Instead, it places a limitation on what Liable Spouse's creditors can reach. Tex. Fam. Code Ann. § 3.202 (West 1997). As the IRS is required to offset Liable Spouse's portion of the Year 1 overpayment, to the extent that Liable Spouse owes a debt described in I.R.C. § 6402(c), (d) and (e), Tex. Fam. Code Ann. § 3.202(b) conflicts with I.R.C. § 6402. Accordingly, I.R.C. § 6402 controls.

Assuming the elements of I.R.C. § 6402(c), (d) and/or (e) have been met, the IRS is required to offset \$1,600.50 of the Spouses' Year 1 overpayment to such creditor.

Unlike Situation 1, the IRS cannot offset all of Liable Spouse's portion of the Year 1 overpayment. As explained in Situation 1, Tex. Fam. Code Ann. § 3.202(c) allows Liable Spouse's creditors to reach all community property that is subject to either Liable Spouse's joint or sole management, control and disposition. In the context of I.R.C. § 6402(c), (d) and (e), the IRS is not a creditor of Liable Spouse. Instead, the IRS is acting as a conduit, simply reducing the Spouses' Year 1 overpayment to the extent that Liable Spouse owes money to a creditor described in I.R.C. § 6402(c), (d) and (e), and then paying that amount to such creditor.

For purposes of I.R.C. § 6402(c), (d) and (e), the IRS can offset 50 percent of the Spouses' Year 1 overpayment. Accordingly, the IRS can offset \$1,600.50 of the \$3,201.00 Year 1 overpayment.

### *Medaris v. Ragan*

Finally, you are concerned that there is a conflict between the United States Court of Appeals, Fifth Circuit's holding in Medaris v. United States, 884 F.2d 832 (5<sup>th</sup> Cir. 1989), and its holding in Ragan v. Commissioner, 135 F.3d 329 (5<sup>th</sup> Cir. 1998).

### Medaris

Michael Medaris was married to Karleen Medaris. Medaris at 833. Both Mr. and Mrs. Medaris lived in Texas and they each received income that was community property subject to the sole management, control and disposition of the respective spouse. Id. at 833, 835. Texas state law provided an exemption that shielded community property subject to Mrs. Medaris' sole management, control and disposition from Mr. Medaris' creditors. Id. at 834.

Mr. Medaris had not filed a tax return since 1981. Id. at 833. The IRS assessed the tax owed by Mr. Medaris. Mrs. Medaris was not liable for such tax. The IRS levied all of Mr. Medaris' income and 50 percent of Mrs. Medaris' income to collect the tax owed by Mr. Medaris. Mrs. Medaris apparently agreed that the IRS could levy 50 percent of her income, but brought suit, arguing that the IRS could only levy 50 percent of Mr. Medaris' income. Id.

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The district court held that the IRS was only entitled to levy 50 percent of Mr. Medaris' income and 50 percent of Mrs. Medaris' income. Id.

On appeal, the Fifth Circuit reversed the district court's holding that the IRS could only levy 50 percent of Mr. Medaris' income. The Fifth Circuit found that under Texas state law, Mr. Medaris' creditors could reach all community property that was subject to Mr. Medaris' sole management, control and disposition. Accordingly, the court held that the IRS was entitled to all rights given to any other creditor pursuant to Texas law. Id. The IRS could therefore levy all of Mr. Medaris' income.

In addition, the Fifth Circuit affirmed the district court's holding that Mr. Medaris had a 50 percent interest in Mrs. Medaris' income, and that Texas state exemptions are not effective against the United States. Id. at 835.

### Ragan

David and Jackie Ragan were husband and wife who resided in Texas. Ragan at 331. In April 1985, the Ragans filed an amended return for their 1980 tax year, carrying back a net operating loss from their 1984 tax year and claiming a refund of \$108,935.00. Id. The Ragan's 1980 income was derived solely from wages earned by Mr. Ragan. Id. at 333.

In August 1985, Mr. Ragan filed a voluntary petition in bankruptcy. Id. at 331. Mrs. Ragan was not a party to this petition. One asset that Mr. Ragan listed as a part of his bankruptcy estate was the 1980 refund. The IRS paid the entire refund to Mr. Ragan's bankruptcy estate. Id.

An issue before the Fifth Circuit was Mrs. Ragan's interest in the 1980 tax refund under Texas community property law. Under 11 U.S.C. § 541(a), Mr. Ragan's bankruptcy estate "included 'all interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is under the sole, equal, or joint management and control of the debtor.'" Id. at 333, quoting 11 U.S.C. § 541(a)(2). The Fifth Circuit determined that Mrs. Ragan would only be entitled to some of the 1980 tax refund if she could show that a portion of the refund was community property subject to her sole management and control. Id.

Mrs. Ragan, relying on Rev. Rul. 74-611 and 80-7, argued that each spouse has a separate interest in jointly reported income and the corresponding overpayment, and each spouse is considered the recipient of 50 percent of the wages and entitled to 50 percent of the withholding credits. Accordingly, 50 percent of a refund is community property subject to her sole management and control. Ragan at 333.

The court rejected this argument, and held that the 1980 refund derived solely from wages earned by Mr. Ragan. Id. Under Texas law, wages are community property subject to the earning spouse's sole management and control. The excess withholding from such income retains the same character as the income itself. Id. Accordingly, the entire 1980 tax refund is community property subject to Mr. Ragan's sole management

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and control. “A joint income tax return does not create new property interests for the husband or wife in each other’s income tax overpayment.” Id. The court held that Mrs. Ragan was not entitled to any portion of the 1980 refund.

Our office does not believe that there is a conflict between Medaris and Ragan. Each case interprets a separate federal statute. In Ragan, the Fifth Circuit’s holding was based on the Bankruptcy Code’s (11 U.S.C. § 541(a)) definition of which property is included in a bankruptcy estate. The Bankruptcy Code specifically recognized a state exemption for community property subject to a liable spouse’s sole management and control. In contrast, in Medaris, the Fifth Circuit was faced with interpreting I.R.C. § 6334(c), which identifies property exempt from IRS levy. Citing the Supreme Court, the Fifth Circuit concluded that the Texas community property exemption was not effective against the United States because section 6334(c) did not have a special exception for spouses in community property states. Medaris at 835. Without specifically recognizing a state exemption, the United States is not bound by such exemption.

Please call if you have any further questions.

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CC:PA:APJP:B01