

Department
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Internal
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Service

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CLAIMS FOR RELIEF FROM JOINT
AND SEVERAL LIABILITY -- TAX
COURT JURISDICTION,
NOTIFICATION REQUIREMENTS

January 11, 2000

Subject: AND ALLOCATION RULES

Cancel Date: UPON INCORPORATION
INTO THE CCDM

PURPOSE

The new spousal liability provisions of I.R.C. § 6015 have generated many questions. Part I of this Notice addresses questions involving Tax Court jurisdiction with respect to claims for relief under section 6015 and the notification requirements under section 6015(e). Part II of this Notice provides interim guidance regarding the standard allocation rules under section 6015(c) when eligible taxpayers elect to limit their liability under that section. Alternative allocation methods and the exceptions to the standard allocation rules, e.g., sections 6015(c)(4), 6015(d)(3)(B) and (C), are not within the scope of this Notice. The 1999 Priority Guidance Plan provides that additional published guidance on the operation of section 6015 will be forthcoming. The positions expressed herein may be modified upon issuance of that guidance. It should also be noted that a separate Notice providing guidance with respect to innocent spouse relief under section 6015(b) was previously issued on September 30, 1999 (and reissued on October 5, 1999). See N(35)(1)5-000.

BACKGROUND

Under the new spousal liability provisions of section 6015, as enacted by the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98), Pub. L. No. 105-206, there are now three ways to obtain relief. Entitlement to relief under the first two methods, innocent spouse relief applicable to all joint filers (section 6015(b)) and separate allocations for limiting liability for taxpayers no longer married or living together (section 6015(c)), may be raised in a judicial proceeding and the Service's denial of relief is subject to judicial review. Recognizing that other situations may exist where relief is warranted but not available under the first two methods described above, Congress, in section 6015(f), authorized the Secretary to grant equitable relief, under procedures prescribed by the Secretary, if a taxpayer does not qualify for relief under the other methods. The Secretary's decision not to exercise such discretion, in accordance with section 6015(f), is not subject to judicial review.

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PART I - TAX COURT JURISDICTION

A. Section 6213

Prior to the enactment of section 6015, claims for innocent spouse relief under section 6013(e) were considered by the Tax Court as part of its deficiency jurisdiction. General rules of jurisdiction and pleadings applied. With the enactment of section 6015, taxpayers and the court have questioned the effect of that section on the Tax Court's jurisdiction to consider claims for relief from joint and several liability in deficiency cases brought under section 6213. It is our position that section 6015 does not eliminate the Tax Court's jurisdiction to consider such claims in those cases. Therefore, a taxpayer may raise section 6015(b) or (c) as a defense to liability in a Tax Court deficiency proceeding in the same manner as under old law, *i.e.*, by the filing of a timely petition upon receipt of a statutory notice of deficiency or, with leave of the court, by amended petition and district counsel will not move to strike or object to such defense. In contrast, consistent with the position that claims for relief under section 6015(f) are not subject to judicial review, if such a claim is raised in a judicial proceeding, district counsel should move to strike or, if section 6015(f) is the sole issue, move to dismiss for lack of jurisdiction.

One or both spouses may petition the court raising a section 6015(b) or (c) defense. As discussed below in section C. of part I of this Notice, when a proceeding is brought under section 6015(e) by one of the spouses who filed a joint return, section 6015(e)(4) and T.C. Rule 325 impose a notification requirement with respect to the other spouse. It is unclear whether this notification requirement also applies when a spouse seeks relief under section 6015(b) or (c) in a deficiency proceeding brought under section 6213. We are not presently requiring Counsel to provide such notification in deficiency proceedings because no rights appear to be conferred on the other spouse under the statute. Nonetheless, if a petitioner raises an innocent spouse defense in the petition or during case development, Counsel should, in most cases, contact the nonpetitioning spouse early in the proceeding to ascertain whether that spouse possesses relevant information concerning the innocent spouse issue.

Where one spouse has properly invoked the Tax Court's jurisdiction under section 6213 but the period for filing a petition under section 6213 has elapsed with respect to the other spouse, the defaulting spouse may choose to file an election under section 6015(e) (*see* section C. of part I of this Notice) and then petition the court within the timeframes set forth therein. In those circumstances, Counsel should consider filing a motion to consolidate.

B. Pending Cases Initiated Prior to RRA98

Section 6013(e) was repealed by RRA98 section 3201(e)(1), effective for all liabilities arising after July 22, 1998, and liabilities arising before July 22, 1998, that were unpaid as of that date. Former section 6013(e) still applies to liabilities arising before the date of enactment that were paid as of July 22, 1998.

As a result of the effective date provisions, sections 6015(b) and (c) are applicable to many, but not all, cases pending in, and on appeal from, the United States Tax Court. Section 6015 does not apply to District Court or Court of Federal Claims cases, or appeals therefrom, filed prior to July 22, 1998, because prepayment is required to bring an action in these fora. For cases that were initiated under section 6013(e):

1. in all cases where the liability was paid as of July 22, 1998, section 6015 relief is not available. A claim for refund, however, under section 6013(e) may be filed under the established rules for filing refund claims;
2. in cases in which the liability has not been paid as of July 22, 1998, the spouse may be eligible for relief under section 6015;
3. in cases where part, but not all, of the liability has been paid as of July 22, 1998, section 6015 relief is available for the unpaid portion (i.e., the issue is subject to bifurcation).

C. Section 6015(e)

In addition to the rights conferred by section 6213, the statute provides taxpayers with the right to judicial review of an administrative denial of relief, in whole or in part, from joint and several liability. Thus, a taxpayer filing an election well after the time for filing a petition under section 6213, for example, upon notice of the first collection activity, who is denied relief, may seek judicial review of the Service's administrative denial under the new jurisdiction that was granted to the Tax Court in RRA98. Specifically, pursuant to section 6015(e), the Tax Court may now review the Service's administrative determination denying relief in whole or in part under subsections (b) or (c), or the Service's failure to act upon the election. As provided above, however, the court's jurisdiction does not extend to denials of relief under subsection (f).

Section 6015(e)(1)(A) provides that the petition must be filed during the 90-day period "**beginning on** the date on which the Secretary mails by certified or registered mail" a notice to such individual of the Secretary's determination of relief available to such individual or, if the Service fails to act upon the election, at any time after six months after the election was filed. Section 6213(a), in contrast, provides that the petition must be filed within 90 days **after** the date the notice of deficiency is mailed by certified or registered mail. Because the language of section 6015(e)(1)(A) is susceptible of being interpreted as counting the day of mailing as the first day for filing the petition, arguably giving the taxpayer only 89 days, the Service has proposed a technical correction requesting that section 6015 be amended to make it consistent with the 90-day period provided in section 6213. Since there is no indication that Congress intended to create a different rule for these cases, a motion to dismiss should not be filed based on a petition that may appear to be filed one day late under the interpretation described above.

When two petition periods for seeking judicial review are potentially applicable, taxpayers will be allowed the benefit of the longer period. This can arise, for example, where a taxpayer, seeking relief from joint and several liability, requests a section 6330 Collection Due Process (CDP) hearing. Section 6330 provides a 30-day period for seeking judicial review as opposed to the 90-day period provided under section 6015(e). Thus, when entitlement to relief from joint and several liability is properly at issue in a CDP hearing, and the taxpayer receives a determination letter but does not file an appeal for judicial review within the 30-day period prescribed under section 6330(d)(1), the taxpayer will be allowed to file a petition under section 6015(e) within the time remaining in the 90-day period for seeking judicial review of a denial of relief from joint and several liability provided under section 6015(e)(1)(A). The only CDP determination that is subject to judicial review under those circumstances, however, is the denial, in whole or in part, of relief under sections 6015(b) or 6015(c). Temp. Treas. Reg. § 301.6330-1T(f)(2), Q&A-F2.

Similar to claims for refund, a claim disallowance (or 6 month administrative inaction) is a statutory prerequisite to Tax Court review of the Service's administrative denial in cases brought under section 6015(e).

Pursuant to T.C. Rule 321, petitions for redetermination of the Service's administrative denial are to be entitled "Petition for Determination of Relief from Joint and Several Liability on a Joint Return" thereby distinguishing such cases from petitions filed pursuant to section 6213.

Pursuant to the statutory directive of section 6015(e)(4), the Tax Court has established interim rules to provide the nonelecting spouse adequate notice and an opportunity to become a party to a section 6015(e) proceeding reviewing the Service's denial of relief, in whole or in part, under sections 6015(b) or (c). Specifically, T. C. Rule 325 requires that the Commissioner serve notice of the filing of the petition on the other signatory to the joint return. Notice should be sent to that individual's last known address and, if the electing spouse provides another address, notice should also be sent to that additional address. Counsel is required to specifically state in the Answer that such notice has been provided. See T.C. Rule 324(a)(2). Neither the statute nor the Tax Court Rules require identification of the address to which the notice was sent. Inasmuch as many divorced taxpayers may object to the disclosure of this information to their former spouse, the Answer should state that notice was sent to the individual's last known address and to additional addresses, if applicable, but the statement **should not** reveal the actual address(es) to which the notice was sent. T.C. Rule 325(b) provides that if the other individual filing the joint return desires to intervene, that individual must file a notice of intervention with the court not later than 60 days after service of the notice by the Commissioner of the filing of the petition.

If the nonelecting spouse intervenes, it is anticipated that the court will accord the intervening spouse the traditional rights of a party, e.g., calling witnesses, cross-examining witnesses, etc. As under prior law, however, one party should not be permitted to interfere with the government's decision to settle with another party, see Estate of Ravetti v. Commissioner, T.C. Memo. 1989-45; Garvey v. Commissioner, T.C.

Memo. 1993-354, nor should the court consider an objection of one spouse to the resolution of the other spouse's liability. In order to better understand the manner in which the court will be handling these intervenor cases and to work with the field in developing appropriate procedures, District Counsel is to contact the Income Tax & Accounting Branch, Field Service Division, upon the intervention of the other spouse.

PART II - SECTION 6015(c) ALLOCATION RULES

GENERAL

Part II of this Notice is intended to illustrate the standard allocation rules for section 6015(c). By allocating the deficiency as if the electing spouse had filed a separate return, section 6015(c) provides for a separate, or limited, liability for the year or years in question. The electing spouse may only seek to have those items giving rise to the deficiency that are solely attributable to the other spouse, separately allocated to that spouse. The electing spouse will remain liable for items attributable to the electing spouse and for the electing spouse's share of those items that are attributable to the husband and wife jointly. The scope of this part of the Notice is limited to the standard allocation rules and does not address the exceptions to those rules, e.g., sections 6015(c)(4), 6015(d)(3)(B) and (C), nor alternative allocation methods, which will be the subject of future guidance.

To qualify to make an election under section 6015(c), the electing spouse must: (1) no longer be married to the nonelecting spouse at the time the electing spouse makes the election; (2) be legally separated from the nonelecting spouse at the time the electing spouse makes the election; or (3) must not have been a member of the same household as the nonelecting spouse for the 12-month period ending on the date the election is filed.

Unlike section 6015(b) and former section 6013(e), section 6015(c) is not an "innocent spouse" provision as that term has been traditionally understood. Rather, section 6015(c) allows qualifying individuals to limit their liability by allocating the deficiency to the spouse to whom the item is attributable in accordance with the allocation rules of section 6015(d) or alternative methods provided by regulations. See 6015(g)(1).

Each of the spouses may be an electing spouse for a portion of the deficiency for the same year. When both spouses elect to allocate the liability, there can be three types of items: items allocable solely to the husband, items allocable solely to the wife, and items allocable to the husband and wife jointly. Both spouses will be jointly and severally liable for any deficiency items that are allocated to both the husband and the wife. For example, a deficiency is determined because \$10,000 of income is omitted from a return. Each spouse elects under section 6015(c) and agrees that the wife was responsible for \$5,000 of the unreported income and the husband was responsible for \$4,000 of the unreported income, and that the remaining \$1,000 was attributable to unreported interest on an account of the husband's of which the wife had actual knowledge. Assuming that all of the other elements of section 6015(c) are satisfied, the wife could elect to limit her separate liability to 50% of the deficiency and the husband

could elect to limit his separate liability to 40% of the deficiency and each would remain jointly and severally liable for 10%. If one of the spouses fails to make the election, that spouse will remain jointly and severally liable for the entire deficiency.

If the election is valid, and none of the exceptions are applicable, see, e.g., section 6015(d)(3)(B), the spouse's liability for the deficiency is allocated as if the spouses had filed separate returns. The allocation must be made according to the procedures contained in section 6015(d), which are summarized as follows:

a. Steps to Allocate

- (1) **Step 1 - Compute the total deficiency for the joint return with all adjustments.**
- (2) **Step 2 - Identify and allocate separate treatment items** (credits and taxes). See section b, below.
- (3) **Step 3 - Determine the allocable deficiency.** This is the joint deficiency (Step 1) reduced by the separate treatment items (Step 2).
- (4) **Step 4 - Allocate all adjustment items between the spouses.** The items include the following, discussed in further detail below:
 - Items of income
 - Items of deduction
 - Other nonseparate deductions
 - Tax benefit limitation
- (5) **Step 5 - Determine the allocable deficiency for each spouse.**

Allocable deficiency (Step 3)
× Adjustment items allocable to the spouse (Step 4)
÷ Total of all allocable adjustment items
= Portion of deficiency allocable to spouse
- (6) **Step 6 - Consider special rules.** These include the following:
 - Actual knowledge
 - Disqualified assets
 - Fraud
 - Child's liability

(7) **Step 7 - Compute the total deficiency allocable to each spouse:**

- Separate treatment items (Step 2)
- + Deficiency allocable to spouse (Step 5)
- +/- Special considerations (Step 6)
- = Total deficiency allocable to spouse

Note: The sum of each spouse's allocated liability plus the remaining joint liability should equal the total deficiency before any allocation.

b. Separate Treatment Items

Separate treatment items are **credits and taxes only** and reduce the deficiency dollar for dollar in the allocation computation:

- (1) Certain credits attributable to one spouse, per section 6015(d)(2)(A), and
- (2) Any tax required to be included on the joint return, other than income or alternative minimum tax under sections 1 and 55, that is attributable to one spouse, per section 6015(d)(2)(B). (An example is self-employment (SE) tax attributable to earnings from one spouse's Schedule C income.)

c. Adjustment Items and Allocation

In the allocation computation, adjustment items are allocated to each spouse in the same manner as they would have been if the spouses had filed separate returns. See section 6015(d)(3)(A).

d. Items of Income

Income adjustments will be allocated to the person who earned the income or owned the business or investment producing the income.

- (1) Items of income from jointly-owned businesses or investments will be allocated in the same proportion as the ownership of the business or investment.
- (2) Income from a business owned as joint tenants will be allocated equally unless clear and convincing evidence supports a different allocation. See S. Rep. No. 105 -174, RRA98 § 3201.

Note: Notwithstanding the above, a spouse may remain jointly and severally liable for the deficiency attributable to the portion of the income item (or disallowed deduction) relating to a jointly-owned asset that was not allocable to them, if the spouse had actual knowledge of the item.

e. Items of Deduction

- (1) Allocation of adjustments to **business deductions** will follow ownership of the business.
- (2) Adjustments to **personal deductions** will be allocated equally between the spouses unless the evidence shows that a different allocation is appropriate. See S. Rep. No. 105-174, RRA98 § 3201.
- (3) Adjustments to **miscellaneous itemized deductions** will be allocated without reduction for the 2% AGI limitation. See H.R. Conf. Rep. No. 105-599, RRA98 § 3201.

f. Schedule C

- (1) Schedule C adjustment items are allocable to the spouse whose name appears on the schedule.
- (2) If both names appear on the schedule, each spouse is presumed to be responsible for 50% of the Schedule C adjustment, unless the taxpayer can rebut the presumption by clear and convincing evidence.

Note: As was previously stated with respect to items of income, a spouse may remain jointly and severally liable for the deficiency attributable to the portion of the Schedule C adjustment that was not allocable to them, if the spouse had actual knowledge of the item giving rise to the adjustment.

- (3) The corrected SE tax, a separate treatment item, would be allocated similarly.

g. Items Limited or Disallowed Solely Because of Separate Return

- (1) Under section 6015(d)(4), if a deduction or credit would not be allowed if the taxpayer had filed a separate return, the deduction or credit should be computed as it would for a joint return and then allocated between the spouses. Examples of credits that are generally not allowed on separate returns are the child and dependent care credit, the credit for the elderly, the adoption credit, the Hope and Lifetime Learning credits, and the earned income credit.
- (2) A similar rule applies to income and deductions (such as taxable social security benefits and the IRA deduction) that are subject to special limitations on a separate return. The item should be computed based on a joint return and then allocated between the spouses.

