

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

N o t i c e
+ ,

N(35)000-173
-
.

October 17, 2000

Claims for Relief from Joint and Several
Liability -- Update on Notification

Upon incorporation

Subject: Requirements Following King v. Commissioner **Cancel Date:** into the CCDM

I. Purpose:

This Notice updates the procedures that should be followed in all proceedings in which a taxpayer raises a claim for relief from joint liability under section 6015 and the other spouse (or former spouse) who signed the joint return for the year(s) at issue is not a party to the case.

II. Claims for Relief from Joint and Several Liability - Notification Requirement:

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, when a proceeding is brought under section 6015(e) by one of the spouses who filed a joint return, section 6015(e)(4) and Interim Tax Court Rule 325 impose a notification requirement with respect to the other spouse. Until recently, it was unclear whether this notification requirement also applied when a spouse sought relief from joint liability in a deficiency proceeding brought under section 6213.

In King v. Commissioner, 115 T.C. No. 8 (filed August 10, 2000), the Tax Court set forth new procedures with respect to the notification of a nonpetitioning spouse in a deficiency case where the petitioning spouse is claiming relief from joint and several liability under section 6015. Counsel will follow the notification requirements, as set forth below, in all proceedings where a taxpayer raises a claim for relief from joint liability under section 6015 and the other spouse (or former spouse) who signed the joint return for the taxable year(s) at issue is not a party to the case, not just cases brought pursuant to section 6015(e)(1)(A). The new procedures are effective immediately. This change in procedures was made public through the release of an action on decision (AOD) acquiescing in the Tax Court's opinion in King. See King v. Commissioner, AOD CC-2000-007 (September 20, 2000).

III. Updated Procedures for Notification to Nonpetitioning Spouse:

Until the Tax Court Rules relating to relief from joint and several liability-such as Title XXXI-are amended, the procedures set forth below should be followed:

Filing Instructions: Binder Part (35) Master Sets: NO X RO X

NO: Circulate Distribute X to: All Personnel X Attorneys In: all divisions

RO: Circulate Distribute X to: All Personnel X Attorneys In: all divisions

Other National and Regional FOIA Reading Rooms

Electronic Filename: King173.pdf Original signed copy in: CC:FM:PM:P

- ! In any proceeding before the Tax Court [e.g., deficiency proceeding, stand-alone proceeding, or collection due-process proceeding] in which a taxpayer raises a claim for relief from joint liability under section 6015, and the other spouse (or former spouse) is not a party to the case, respondent must serve notice of the claim on the other individual who filed the joint return for the year(s) in issue.

- ! In any case other than a stand-alone case brought pursuant to section 6015(e), if respondent does not believe that the claim for relief under section 6015 is properly before the court, respondent may defer notifying the nonpetitioning spouse of the claim for relief from joint liability until respondent files a motion with the court regarding the matter and the motion is ruled upon by the court. In the motion, respondent shall advise the court that the nonpetitioning spouse has not been notified of the claim for relief pending the court's resolution of the motion.

- ! In stand-alone cases brought under section 6015(e), Interim Tax Court Rule 324(a)(2) does not permit respondent to file an answer and defer giving notice to the nonpetitioning spouse, even if respondent believes that there is a jurisdictional defect. Accordingly, if respondent believes that there is a jurisdictional defect in a stand-alone case, but respondent is unable to file a jurisdictional motion before the answer due date, respondent should file a motion to extend the time within which to file an answer. By doing so, jurisdictional issues can be resolved before respondent files an answer, which triggers the notification requirement.

- ! The notice shall advise such other individual of his or her opportunity to file a notice of intervention for the sole purpose of challenging the petitioning individual's entitlement to relief from joint liability pursuant to section 6015.

- ! A copy of Interim Tax Court Rule 325 shall be included with the notice.

- ! In cases pending before the court in which an answer has already been filed, respondent shall promptly provide the required notice to the nonpetitioning spouse and concurrently file with the court a certification that the required notice has been given to the nonpetitioning spouse.

- ! In cases in which no answer is required to be filed (e.g., S cases):
 - ! respondent shall promptly provide the required notice to the nonpetitioning spouse in those cases that are currently pending before the court, and
 - ! provide the required notice to the nonpetitioning spouse in future cases.
- In both pending and future cases in which no answer is required to be filed, respondent shall file with the court a certification that the required notice has been given to the nonpetitioning spouse at the same time that the required notice is served on the nonpetitioning spouse.
- ! In stand-alone cases brought under section 6015(e)(1)(A), and other cases in which an answer has not already been filed, respondent shall state in the answer that the required notice has been provided to the nonpetitioning spouse. See Interim Tax Court Rule 324(a)(2).
- ! Any intervention by the nonpetitioning spouse shall be made in accordance with the provisions of Interim Tax Court Rule 325(b).

These procedures are effective immediately and are applicable to all cases, including small tax cases.¹

This notice supersedes the general discussion regarding notification in a deficiency proceeding in the second paragraph under the heading **A. Section 6213** and augments those set forth under the heading **C. Section 6015(e)** in Chief Counsel Notice N(35)000-170, entitled Claims For Relief From Joint and Several Liability - Tax Court Jurisdiction, Notification Requirements and Allocation Rules, dated January 11, 2000.

The following documents are attached as Attachments 1, 2, 3, and 4, respectively: 1) a sample letter giving notice to the nonpetitioning spouse of the filing of the claim for relief from joint liability; 2) a certification of service of notice of the claim for relief; 3) sample language to be used in answers filed in stand-alone cases brought under section 6015(e)(1)(A); and 4) sample language to be used in answers filed in all other cases involving claims for relief from

¹ See slip op. at 13-14 & n.7.

Attachment 1

[USE APPROPRIATE LETTERHEAD]

Symbols: TL Number
Attorney's Initials and Last Name

VIA CERTIFIED MAIL

Jane Doe
Street Address
City, State Zip Code

Re: John Doe v. Commissioner
Docket No. _____

Dear Mrs. Doe:

This letter constitutes service of Notice of Filing of Petition, as required by Interim Tax Court Rule 325(a), that Mr. Doe has filed a petition with the United States Tax Court, alleging, in part, that he is an innocent spouse who should be relieved of joint tax liabilities for the years 1, 2, and 3, for which taxable years you and he filed joint federal income tax returns.

Please be further advised that under Interim Tax Court Rule 325(b), you have a right to intervene in this matter for the sole purpose of challenging Mr. Doe's entitlement to relief from joint liability. If you wish to exercise that right, you should file a notice of intervention with the United States Tax Court no later than 60 days after the date of this Notice. If you elect to file a notice of intervention, the Interim Tax Court Rule requires you to attach to your notice a copy of this letter. Enclosed for your information is a copy of Interim Tax Court Rule 325.

If you have any questions concerning this matter, please direct them to the undersigned at the above address or telephone number.

Sincerely,

xxx xxxxx
Associate Area Counsel

By: _____

yy yyy
Attorney
T.C. Bar No.

Enclosure:
Interim Tax Court Rule 325

UNITED STATES TAX COURT

JOHN DOE,)	
)	
)	Petitioner,
)	
v.)	Docket No.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
)	Respondent.

CERTIFICATION OF SERVICE OF NOTICE OF CLAIM FOR RELIEF FROM JOINT AND SEVERAL LIABILITY

This is to certify that, on _____, respondent provided notice of the filing of a claim for relief from joint and several liability in the above-captioned case, as required by Interim Tax Court Rule 325, as amplified by King v. Commissioner, 115 T.C. No. 8 (filed August 10, 2000), to petitioner's [former] spouse, Jane Doe, with whom petitioner filed joint returns for the years before the Court.

STUART L. BROWN
Chief Counsel
Internal Revenue Service

Dated:

By: _____

XXX XXXXX
Associate Area Counsel
T.C. Bar No.
Street Address
City, State Zip Code

OF COUNSEL:
YYY YYYYY
Area Counsel
Small Business/Self Employed Division

Docket No.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing CERTIFICATION OF SERVICE OF NOTICE OF CLAIM FOR RELIEF FROM JOINT AND SEVERAL LIABILITY was served on petitioner by mailing the same on _____ in a postage paid wrapper addressed as follows:

John Doe
Street Address
City, State Zip Code

Date: _____

xxx xxx
Attorney
Tax Court Bar No.

Attachment 3

**ANSWER TO PETITION FOR DETERMINATION OF RELIEF FROM
JOINT AND SEVERAL LIABILITY ON A JOINT RETURN¹**

7. FURTHER ANSWERING the petition, and in compliance with Interim Tax Court Rule 325, respondent alleges:

(a) On _____, respondent gave notice of the filing of the petition in the instant case requesting relief from joint liability, to petitioner's [former] spouse, Jane Doe, with whom petitioner filed joint returns for the years before the Court.

WHEREFORE, it is prayed that the relief sought in the Petition for Determination of Relief from Joint and Several Liability on a Joint Return be denied and that Respondent's determination denying relief from joint and several liability be in all respects approved.

¹The sample language set forth above should be used in answers filed in all stand-alone cases brought under section 6015(e)(1)(A). For sample language to be used in all other cases involving claims for relief from joint liability, see Attachment 4.

Attachment 4

ANSWER¹

7. FURTHER ANSWERING the petition, and in compliance with Interim Tax Court Rule 325, as amplified by King v. Commissioner, 115 T.C. No. 8 (filed August 10, 2000), respondent alleges:

(a) On _____, respondent gave notice of the filing of a claim for relief from joint and several liability, to petitioner's [former] spouse, Jane Doe, with whom petitioner filed joint returns for the years before the Court.

WHEREFORE, it is prayed that the relief sought in the Petition be denied and that Respondent's determination be in all respects approved.

¹The sample language set forth above should be used in answers filed in all cases involving claims for relief from joint liability other than stand-alone cases brought under section 6015(e)(1)(A). For sample language to be used in section 6015(e)(1)(A) cases, see Attachment 3.