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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DISTRICT COUNSEL, VIRGINIA-WEST VIRGINIA
(RICHMOND)

FROM: Joseph W. Clark
Acting Chief, Branch 2 (General Litigation)

SUBJECT: Bankruptcy Court Jurisdiction over Relief from Joint and Several
Liability under I.R.C. § 6015

This memorandum responds to your request for advice. This document is not to be cited as precedent.

ISSUE: Does a bankruptcy court have jurisdiction over relief from joint and several liability under I.R.C. § 6015?

CONCLUSION: The bankruptcy court has jurisdiction to consider relief from joint and several liability under subsections (b) and (c) of section 6015, even if the taxpayer has not filed an administrative request for relief with the Service. The bankruptcy court does not have jurisdiction to consider equitable relief under subsection (f), since this is within the sole discretion of the Service and is not reviewable by any court.

FACTS: You have asked whether a bankruptcy court has jurisdiction over innocent spouse relief where the issue is raised for the first time by the debtor in bankruptcy court and the debtor has never filed an administrative election with the Service.

LAW AND ANALYSIS:

I. Background

A. Relief from Joint and Several Liability

Section 3201 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA) added section 6015, which offers individuals three options for relief from liability for taxes for which they are jointly and severally liable under I.R.C. § 6013(d)(3). Section 6015(b) (referred to as innocent spouse relief), which is an expanded version of the innocent spouse relief available prior to the RRA under I.R.C. § 6013(e), permits an

individual to elect relief from liability with respect to understatements of tax on the joint return that are attributable to the non-electing spouse. Relief is available if the individual establishes that he or she did not know and had no reason to know of the understatement, and it is inequitable to hold such individual liable for the deficiency attributable to the understatement.

Section 6015(c) (referred to as allocation of liability) provides an alternative ground for obtaining relief from joint and several liability. This provision permits an individual, if the spouses are no longer married, are legally separated or have not lived together for the entire 12 month-period prior to the election, to elect to have that individual's liability for a deficiency limited to items which would be allocable to that individual if the spouses had filed separate returns.

Section 6015(f) (referred to as equitable relief) permits the Secretary to relieve an individual of liability for any unpaid tax or any deficiency, pursuant to procedures prescribed by the Secretary, if relief is not available under subsections (b) or (c) and it is inequitable to hold the individual liable. Subsection (f) is the only provision of section 6015 which permits relief in the case of an underpayment of tax which is not a deficiency (e.g., the correct amount is reported on the return, but the tax is not fully paid). The Service has issued interim guidance for equitable relief under subsection (f) effective December 7, 1998. Notice 98-61, 1998-51 I.R.B. 13. Section 3.01 contains the threshold conditions for equitable relief, which includes the condition that relief is not available to the individual under sections 6015(b) or (c). Section 3.02 lists the circumstances under which equitable relief will ordinarily be granted. These circumstances include an unpaid liability on a joint return, the individual is no longer married, is legally separated, or has not lived with the other spouse for 12 months, the individual did not know and had no reason to know that the tax would not be paid, and the individual would suffer undue hardship if relief were not granted. Section 3.03 applies to individuals who meet the threshold conditions of section 3.01 but who do not qualify for relief under section 3.02. These individuals may qualify for relief if taking into account all facts and circumstances, it is inequitable to hold the individual liable for the unpaid liability or deficiency. Section 3.03 contains a non-exhaustive list of factors to be considered in granting relief under section 3.03. 1/

1/ Factors weighing in favor of relief include: (1) the individual requesting relief is separated, (2) the individual will suffer hardship if relief is not granted, (3) the individual was abused by the other spouse, and (4) the other spouse has a legal obligation to pay the liability pursuant to a divorce decree or agreement. Factors weighing against relief include that (1) the liability is attributable to the individual, (2) the individual had knowledge or had reason to know of the liability, (3) the individual has significantly benefitted from the unpaid liability beyond normal support, and (4) the individual has a legal obligation pursuant to a divorce decree or agreement to pay the liability. Id. at 3.03.

Relief from liability under subsections (b) and (c) is only available if an individual makes an election not later than two years after the commencement of collection activities occurring after July 22, 1998, with respect to the individual making the election. I.R.C. §§ 6015(b)(1)(E), 6015(c)(3)(B); RRA 3201(g)(2). Section 6015 does not specify any period for filing for equitable relief under subsection (f). However, the Service has imposed a two-year time limitation for filing requests for equitable relief under section 6015(f). See Notice 98-61.

Section 3201(c) of the RRA requires the Secretary to develop a separate form for applying for relief under section 6015. The Service has developed Form 8857 which permits the taxpayer to elect relief under each of the three subsections of section 6015. Announcement 98-95.

Section 6015(e) provides for Tax Court review of requests for relief under subsections (b) or (c), if the electing spouse files a petition during the 90-day period beginning on the date that the Secretary mails by certified or registered mail a notice to the electing spouse of the Secretary's determination. If a notice of determination is not mailed within 6 months after the election is filed, the spouse may file a Tax Court petition at any time after the 6-month period and before the close of the 90-day period. If the taxpayer brings a suit for refund, 2/ the Tax Court loses jurisdiction to the extent the District Court or Court of Federal Claims acquires jurisdiction over the taxable years, and the District Court or Court of Federal Claims acquires jurisdiction over the innocent spouse issues. I.R.C. § 6015(e)(3)(C).

Section 6015 does not provide for any Tax Court review of the Service's determinations as to equitable relief under section 6015(f).

B. Bankruptcy Court Jurisdiction

Section 505 of the Bankruptcy Code gives a bankruptcy court jurisdiction to determine the amount and validity of a debtor's taxes. See Baker v. IRS, 74 F.3d 906 (9th Cir. 1996), cert. denied, 517 U.S. 1192 (1996); Michigan Employment Sec. Comm. v. Wolverine Radio Co., 930 F.2d 1132, 1138-40 (6th Cir. 1991); Quattrone Accountants, Inc. v. IRS, 895 F.2d 921, 924-25 (3d Cir. 1990). Section 505(a)(1) states:

Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and

2/ A taxpayer can only bring a suit for refund with respect to relief under subsection (b) since credits and refunds are only permitted with respect to subsections (b) and (f), I.R.C. § 6015(e)(3)(A), and as discussed in this memorandum, relief under (f) is not reviewable by a court.

whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

B.C. § 505(a)(1). This provision is described in the legislative history as permitting a “determination by the bankruptcy court of any unpaid tax liability of the debtor.” S. Rep. 989, 95th Cong., 2d Sess. 67, reprinted in 1978 U.S.C.C.&A.N. 5787, 5853. Section 505(a)(2), however, provides that the bankruptcy court has no jurisdiction where there has been a prior judicial determination as to the merits of the tax liability, or, with respect to the right of the estate to a tax refund, before the Government has the opportunity to administratively consider a request for a tax refund. ^{3/} See Baker, supra, 74 F.3d at 909-910.

The automatic stay prohibits the commencement or continuation of a proceeding before the Tax Court concerning the debtor after the filing of a bankruptcy petition. B.C. § 362(b)(8). The filing of a bankruptcy petition has the effect of giving the bankruptcy court concurrent jurisdiction with the Tax Court over issues involving the debtor’s tax liability. Because the bankruptcy court can lift the stay of Tax Court proceedings in its discretion, the bankruptcy court has the power to decide in which court the tax issues will be litigated. See United States v. Wilson, 974 F.2d 514 (4th Cir. 1992), cert. denied, 507 U.S. 945 (1993).

The purpose of this broad grant of jurisdiction to the bankruptcy court is to allow the bankruptcy court to resolve all tax disputes necessary for the efficient administration of the estate. Stevens v. United States, 210 BR 200 (Bankr. M.D. Fla. 1997); In re D’Alessio, 181 BR 756 (S.D. N.Y. 1995). “Congress wanted to provide a forum for the quick resolution of disputed tax claims in order to avoid any delay in the conclusion of the administration of the estate.” Stevens, supra, 210 BR at 202; In re Diez, 45 BR 137, 139 (Bankr. S.D. Fla. 1984).

II. Legal Analysis

^{3/} This provision states:

The court may not so determine –

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; or

(B) any right of the estate to a tax refund, before the earlier of –

- (i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or
- (ii) a determination by such governmental unit of such request.

B.C. § 505(a)(2).

As previously discussed, section 6015 affords three types of relief: innocent spouse relief under subsection (b), allocation of liability under subsection (c), and equitable relief under subsection (f). We first discuss relief under subsections (b) and (c). If a debtor/taxpayer is entitled to relief from liability under subsections (b) or (c), then this will reduce the debtor's tax liability. We, thus, conclude that a bankruptcy court's determination as to relief under sections 6015(b) and (c), just like any other issue affecting the amount of the taxpayer's tax liability, is a determination regarding the "amount or legality of any tax" under section 505(a) and is within the bankruptcy court's jurisdiction.

The argument has been made, however, that because section 6015 specifically gives the Tax Court jurisdiction over section 6015(b) and (c) relief, but does not confer similar jurisdiction on the bankruptcy courts, this precludes bankruptcy courts from obtaining jurisdiction. This argument, however, ignores the fact that section 505 is a general grant of jurisdiction to bankruptcy courts of jurisdiction over all matters concerning the amount or legality of the debtor's tax liability. See, e.g., Wilson, supra; United States v. Huckabee Auto Co., 783 F.2d 1546 (11th Cir. 1986). Bankruptcy court jurisdiction is not dependent on a specific grant of jurisdiction in the Internal Revenue Code. In contrast, the Tax Court is a court of limited jurisdiction, and it can exercise its jurisdiction only to the extent authorized by Congress. Halpern v. Comm., 96 T.C. 895 (1991); Naftel v. Comm., 85 T.C. 527 (1985). ^{4/}

In order to deprive a bankruptcy court of jurisdiction, section 6015 would have to be interpreted as an implied partial repeal of section 505(a). However, it is a general rule of statutory construction that repeals by implication are not favored unless the intent to repeal is clear and express. Rodriguez v. United States, 480 U.S. 522, 524 (1987); 73 Am. Jur. 2d Statutes §§ 396, 397 (2d ed. 1974). There is no indication in section 6015 that Congress intended to withdraw jurisdiction from bankruptcy courts over relief from joint and several liability. The general rule of concurrent bankruptcy court and Tax Court jurisdiction over tax matters should apply with respect to section 6015 to the same extent as it would with any other Internal Revenue Code provision.

As previously discussed, the purpose of the broad grant of jurisdiction to bankruptcy courts is to permit bankruptcy courts to efficiently resolve all matters affecting the estate. Consistent with this purpose, if the debtor contests the Service's tax claim on the ground that she is entitled to relief pursuant to sections 6015(b) and (c), it is critical that the bankruptcy court have jurisdiction over subsections (b) and (c) in order to

^{4/} For example, the Tax Court only acquires jurisdiction to determine the taxpayer's deficiency upon the filing of a proper Tax Court petition by the taxpayer after the Service issues a notice of deficiency, I.R.C. § 6213(a), and only acquires jurisdiction to review the Service's determination as to whether the taxpayer is entitled to section 6015 relief when the taxpayer files a proper petition from such determination under section 6015(e)(1)(A).

resolve all of the issues involving the debtor's tax liability. We, thus, cannot argue that the lack of an express grant of authority in section 6015 precludes the bankruptcy court from having jurisdiction over section 6015(b) and (c) relief.

The argument has also been made that section 6015 requires that the taxpayer exhaust administrative remedies within the Service before the bankruptcy court can have jurisdiction over any matter concerning section 6015 relief. While it is true that exhaustion of administrative remedies is a jurisdictional prerequisite to obtain Tax Court review of the Service's final determination as to relief under section 6015(e), see Tax Court Rule 320, this is merely a restriction on Tax Court review of the Service's final determination and does not affect bankruptcy court jurisdiction. 5/

In any case, our position is that the administrative request and issuance by the Service of a final determination under section 6015 (or failure to rule thereon) are not jurisdictional prerequisites for the Tax Court to consider relief from joint and several liability in a proceeding commenced in response to a notice of deficiency pursuant to I.R.C. § 6213. As was possible with pre-RRA innocent spouse issues raised under I.R.C. § 6013(e), a petitioner can raise section 6015 in a deficiency case. A petitioner can raise section 6015 in a deficiency case even if such case was filed before the enactment date, July 22, 1998, since section 6015 applies to unpaid liabilities for taxes arising on or before the date of enactment. While section 6015(b) and (c) require an "election" to be made, this can take any number of forms, including Tax Court pleadings or other writings, not necessarily a Form 8857. We conclude that a taxpayer can raise section 6015 relief in bankruptcy court without following the administrative procedures in section 6015 just as a taxpayer can raise section 6015 relief in a Tax Court deficiency proceeding commenced pursuant to section 6213 without following those administrative procedures.

We also note that, as previously discussed, section 505(a)(2)(B) contains an express exhaustion of administrative remedies requirement with respect to refunds. A similar

5/ As a general matter, limitations on Tax Court jurisdiction are not applicable in Bankruptcy Court. For example, the Tax Court cannot review a tax liability until the Service has first made an administrative determination by issuing a notice of deficiency. I.R.C. § 6213. In contrast, the bankruptcy court is under no such restriction; it can determine the "amount or legality of any tax" regardless of the administrative stage of the Service's consideration of the tax liability. The Service may estimate taxes on a proof of claim where no returns have been filed and an audit has not been commenced. See, e.g., United States v. Berger, 36 F.3d 996 (10th Cir. 1994). There is no question that the bankruptcy court has jurisdiction to determine such tax liabilities if a party objects to the proof of claim. See generally United States v. Wilson, 974 F.2d 514 (4th Cir. 1992).

provision in section 505 would be necessary to deprive the bankruptcy court of jurisdiction over section 6015 relief prior to a determination by the Service.

There are limitations to bankruptcy court jurisdiction over section 6015(b) and (c) relief. First, the requirement of sections 6015(b)(1)(E) and (c)(3)(B) that the taxpayer must file for relief no later than two years after the Secretary has begun collection activities with respect to the taxpayer must apply if the issue is raised for the first time in the bankruptcy case since the taxpayer is not entitled to section 6015 relief unless that requirement is met. The date that the taxpayer raises the section 6015 issue in the bankruptcy court should be considered the time the election is made for purposes of the two-year period. Our office's position is that collection activity does not commence for purposes of the two-year period until the Service makes an actual levy against property in which the electing spouse has an interest, or files a suit or a claim in a judicial proceeding (e.g., a proof of claim) against the electing spouse.

Second, the requirements of section 505(a)(2) apply. The debtor cannot raise relief from joint liability if the tax liability was previously contested and adjudicated pursuant to section 505(a)(2)(A). See Baker, supra. Note, however, that section 6015(e)(3)(B) provides that in the case of an election under subsection (b) or (c), a prior final Tax Court decision for the same taxable year for which relief is requested shall be conclusive except with respect to qualification for relief which was not an issue in the prior Tax Court proceeding. This exception to res judicata for relief from joint liability does not apply if the Tax Court determines that the individual participated meaningfully in the prior Tax Court proceeding. Although this provision appears to have been drafted with Tax Court jurisdiction in mind, when the bankruptcy court is considering relief from joint liability it is acting as an alternative forum to the Tax Court, and, thus, the same res judicata exception applicable in Tax Court should apply to the bankruptcy court. We, thus, conclude that the section 6015(e)(3)(B) exception permits a debtor to raise relief in bankruptcy court under subsections (b) or (c) despite a prior final Tax Court decision unless the bankruptcy court determines that the debtor participated meaningfully in the prior Tax Court proceeding.

While we conclude that the bankruptcy court has jurisdiction over relief under subsections (b) and (c), we conclude that the bankruptcy court does not have jurisdiction to consider equitable relief under subsection (f). Section 6015(f) states that "the Secretary may relieve such individual of such liability" (emphasis added), which indicates that equitable relief can only be granted by the Secretary. Since the word "may" rather than "shall" is used, this also indicates that the Secretary can decide whether or not to grant relief in the Secretary's sole discretion. In contrast section 6015(b) states that the individual "shall be relieved of liability" and section 6015(c)(1) states that the individual's liability "shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d)."

Section 6015(e) does not provide for any review of the Service's determination as to equitable relief under subsection (f). Section 6015(e) only permits a petition to be filed

with the Tax Court in “the case of an individual who elects to have subsection (b) or (c) apply.” We conclude that the fact that the Tax Court was not provided any jurisdiction over subsection (f) relief reflects Congressional intent that the Service’s determination as to equitable relief is within its sole discretion and not reviewable by any court. When a bankruptcy court is determining the amount or legality of a tax under section 505(a), it is acting in place of the normal judicial forum for tax controversies, e.g., Tax Court. Since the Tax Court does not have jurisdiction over equitable relief, the bankruptcy court should be similarly precluded from considering equitable relief.

Although we conclude that the bankruptcy court has jurisdiction over section 6015(b) and (c) relief, to avoid unnecessary litigation and to ensure uniformity in granting relief, any debtor requesting relief in a bankruptcy case should be urged to file an administrative request for relief with the Service, and to agree to a postponement of any proceedings to permit the Service sufficient time to consider the request and make a determination. One major advantage of administrative consideration to the taxpayer is that the Service will have the opportunity to consider equitable relief under section 6015(f), which cannot be considered by the bankruptcy court. Additionally, administrative consideration will assist in the development of a record regarding entitlement to relief. Thus, when section 6015 is raised in bankruptcy court the Service should attempt to have the matter administratively resolved before the bankruptcy court considers the issue.

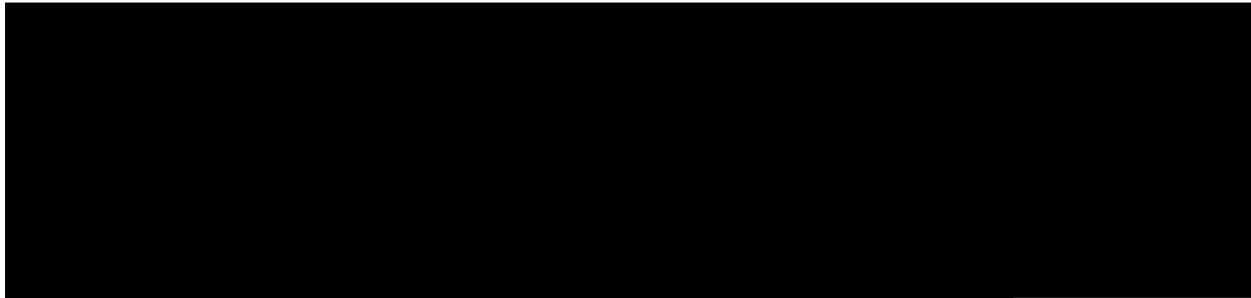
In conclusion, our position is that a bankruptcy court does have jurisdiction to consider relief under sections 6015(b) and (c), even in the absence of an administrative request for relief, although the Service should urge debtors to file administrative requests for relief and request bankruptcy courts to defer consideration of the issue until after the Service makes a determination. Our position is also that the bankruptcy court has no jurisdiction to consider equitable relief under section 6015(f) since the granting of such relief is within the sole discretion of the Service and is not reviewable by a court.

CASE DEVELOPMENTS, HAZARDS AND OTHER CONSIDERATIONS:

[REDACTED]

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6/ [REDACTED]



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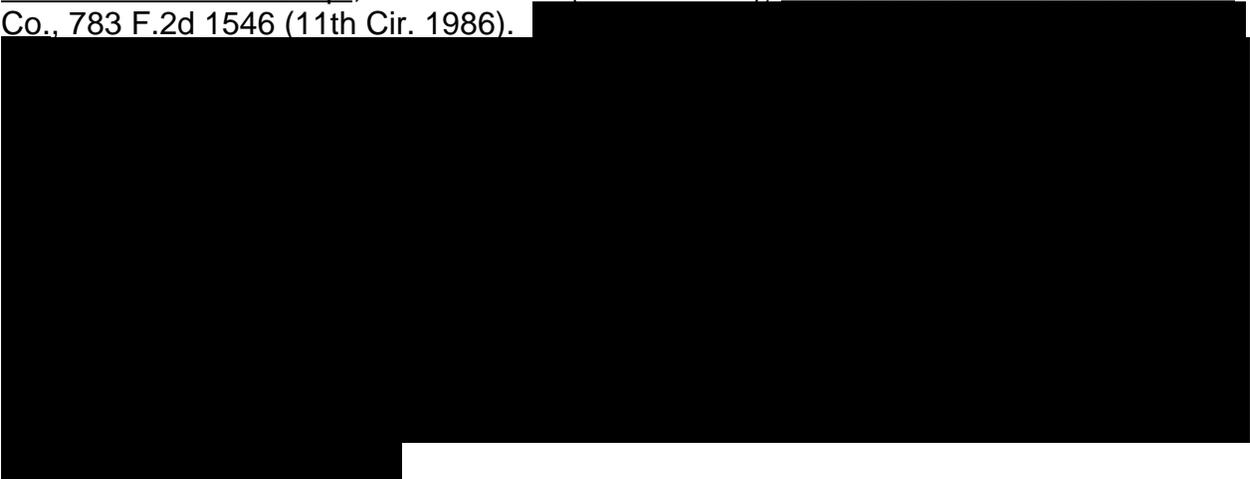
Finally, one additional issue which may arise in a bankruptcy court case in which the debtor raises section 6015 relief is the ability of the non-debtor spouse to participate,



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and the bankruptcy court's jurisdiction over the other spouse's tax liability. Section 6015 provides for notice to and participation by the other spouse in administrative and Tax Court proceedings. I.R.C. §§ 6015(e)(4), (g)(2). There is no comparable statutory authority which would permit a non-debtor spouse to have notice of and to participate in a bankruptcy case where the debtor seeks section 6015 relief. Arguably, unless the non-debtor spouse is a creditor of the debtor, the non-debtor spouse has no right to participate in the bankruptcy case.

Insofar as the bankruptcy court permits a non-debtor spouse to participate, the question arises whether the bankruptcy court has jurisdiction to determine the non-debtor spouse's entitlement to section 6015 relief. Our office's position is that a bankruptcy court has no jurisdiction over the tax liability of a non-debtor and, thus, has no jurisdiction to determine the entitlement of a non-debtor spouse to section 6015 relief. See American Principals Leasing Corp. v. United States, 904 F.2d 477 (9th Cir. 1990); In re Brandt Airflex Corp., 904 F.2d 477 (2d Cir. 1988); United States v. Huckabee Auto Co., 783 F.2d 1546 (11th Cir. 1986).



Please contact this office at (202) 622-3620 if you have any questions or comments concerning this memorandum.