



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

OFFICE OF
CHIEF COUNSEL

November 26, 2001

Number: **200210015**
Release Date: 3/8/2002
CC:PA:APJP:B2 : GL-147146-01

UILC: 6511.00-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL, SACRAMENTO
CC:SBSE:7:SAC:1

FROM: Assistant Chief Counsel (Administrative Provisions and
Judicial Practice) CC:PA:APJP

SUBJECT: Application of section 6511(h) to a Joint Return Filed in a
Community Property State, Where one Spouse was not
Financially Disabled.

This Chief Counsel Advice responds to your memorandum dated September 20, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

TPH = taxpayer-husband ()

TPW = taxpayer-wife ()

ISSUES

1. When taxpayer-husband ("TPH") and taxpayer-wife ("TPW") file a joint income tax return more than 3 years after the extended due date, will the period in section 6511(b)(2)(A) be suspended under section 6511(h)(1) when only one spouse (TPH) was financially disabled within the meaning of section 6511(h)(2)?
2. If section 6511(h) applies, how is the amount of the allowable refund determined when TPH and TPW reside in California, a community property state?

CONCLUSIONS

GL-147146-01

1. Section 6511(h) will apply when only one spouse is financially disabled. Thus, the IRS should not completely disallow the refund claim. Rather, it should disallow the portion of the refund allocable to TPW.
2. Based on the information presented and certain assumptions, we conclude that half of the refund claimed is allocable to each spouse under community property law principles. Section 6511(h) applies only to TPH and the IRS should therefore disallow the half of the refund allocable to TPW. If the joint return correctly reports the amounts shown thereon, the IRS should issue a refund for half the amount claimed.

FACTS

TPH suffered from malignant and between and 2000. He underwent major surgery in July, 1996, and began chemotherapy.

Although they requested and were granted an extension of time to file the 1995 tax return until August 15, 1996, TPH and TPW did not file their joint 1995 tax return until January 11, 2000, which is several months after the extended due date. On the 1995 return, they reported total tax of \$, income tax withholding of \$, and an overpayment of \$. The IRS determined that the period of limitations for filing a refund claim had expired and sent a formal notice of claim disallowance to TPH and TPW. They were advised that their claim was disallowed and that they have two years from the date of the notice of claim disallowance to file a refund suit in federal court.

TPH sought to have the refund statute of limitation suspended under section 6511(h). He provided statements from two doctors who stated that TPH was physically and mentally incapable of handling his financial affairs between 1996 and 2000. He also provided his own statement that during his disability no person, including TPW, was authorized to act on his behalf in financial matters. The Service Center's position is that when a husband and wife file a joint return, both husband and wife must be "financially disabled" in order to qualify for relief under section 6511(h).

At all times between 1996 and the present, both TPH and TPW have resided in California, a community property state. They separated in , and were divorced in mid- .

On their joint 1995 return, TPH and TPW reported the following income:

Wages, TPH	\$
Wages, TPW	\$
Interest	\$
Pension income, TPH	\$

GL-147146-01

Rental loss	<\$	>
Farm loss	<\$	>
TOTAL	\$	
Moving expenses	<	>
AGI	\$	
Itemized deductions	<\$	>
Exemptions	<\$	>
TAXABLE INCOME	\$	

They reported 1995 income tax of \$, a premature IRA distribution penalty of \$, and a total tax liability of \$. The taxpayers claimed an overpayment, and refund, on their 1995 tax return in the amount of \$.

Taxes were withheld from TPH's wages and pension. No tax was withheld from TPW's wages. It appears that neither spouse made any estimated tax payments.

LAW AND ANALYSIS

Section 6511(a) provides that a taxpayer must file a claim for credit or refund within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

Section 6511(b)(2)(A) limits the amount of a refund or credit, where a claim was filed within the time prescribed in section 6511(a), to the amount of tax paid within three years (plus the period of any extension of time for filing) before the filing of the claim. Section 6511(b)(2)(A) operates as a period of limitation because it bars a refund claim filed more than three years (plus the extension period) after the tax was paid.

The taxpayers' claim for refund made on their joint return was timely filed under section 6511(a). The refund claim was filed within 3 years of the return because the return and the refund claim were filed simultaneously. See Rev. Rul. 76-511, 1976-2 C.B. 428; Weisbart v. United States, 222 F.3d 93, 95 (2d Cir. 2000).

Unless section 6511(h) applies, however, section 6511(b)(2)(A) will bar any refund. This is because the tax withheld from TPW's wages and pension is deemed paid on the due date of the return determined without regard to extension (see section 6513(b)(1)) and the joint return was filed more than three years after the extended due date.

Effective for claims which were not barred as of July 22, 1998, section 6511(h) suspends the running of the periods of limitations specified in sections 6511(a), (b), and (c) during the period that an individual is "financially disabled." To be financially disabled, an individual must be unable to manage his financial affairs by reason of a medically determinable physical or mental impairment, which can be expected to result in death or which has lasted (or can be expected to last) for a

GL-147146-01

continuous period of not less than 12 months. An individual shall not be considered to have such an impairment unless proof of the existence thereof is furnished in such form and manner as the Secretary may require. An individual shall not be treated as financially disabled during any period in which the individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.

Rev. Proc. 99-21, 1999-1 C.B. 960, describes the information that must be furnished as proof of financial disability. The revenue procedure, by its terms, "applies to individual taxpayers for any period of financial disability" so long as the claim for refund was not barred as of July 22, 1998, the date of enactment of section 6511(h). The revenue procedure requires that the taxpayer provide (1) a physician's statement certifying the taxpayer's disability and (2) the taxpayer's statement that no person was authorized to act on behalf of the taxpayer in financial matters during the period of disability.

When a joint return is filed, the applicability of section 6511(h) to each spouse must be separately determined. Section 6511(h) applies to individuals and TPH and TPW are separate individuals. We therefore reach the following conclusions.

Under the plain language of section 6511(h), TPH qualifies for relief. The IRS cannot deny section 6511(h) relief to TPH merely because the spouses filed a joint return and no relief is available to TPW. Each spouse's claim must be separately considered.

TPW does not qualify for relief under section 6511(h) because she does not claim to have been financially disabled at any time between the original return due date and the expiration of the usual 3-year period of limitations. There is no basis for treating TPW's refund claim as timely under section 6511(h) simply because she and TPH filed a joint return and the period of limitations is suspended with respect to TPH's refund claim. In this respect, we note that section 6511(h) operates differently from section 7508. Under section 7508(c), the spouse of a person serving in a combat zone is also entitled to a postponement of time to perform certain acts. The relief is not limited to the individual serving in the combat zone. Section 6511(h) does not contain any similar provision. Thus, the section 6511(b)(2)(A) limitation period applies in the normal fashion to TPW and her refund is barred under that section.

Finally, it is well-established that each spouse has a separate interest in the overpayment shown on the joint return. The overpayment must be divided or allocated between TPH and TPW based on each spouse's contribution to the overpayment. See Rev. Rul. 74-611, 1974-2 C.B. 399. Therefore, relief under section 6511(h) is limited to the portion of the overpayment allocable to TPH. TPW does not qualify for relief, and the portion of the overpayment allocable to TPW cannot be refunded.

GL-147146-01

Because the taxpayers reside in a community property state, each spouse is required to include in his or her income half of their community income and all of that spouse's separate income, if any. Under California law, earnings of a spouse during marriage are presumed to be community property. Cal. Fam. C. § 760. Based on the facts presented, it does not appear that either spouse has any separate income or separately owned property. We assume that all the income reported on the return (wages, interest, and pension income) is community income. We further assume that the rental and farm losses are allocable equally to the spouses. In addition, in the absence of any relevant information, we assume that the IRA premature distribution penalty may be allocated equally to the spouses. Under Treas. Reg. § 1.31-1, each spouse in a community property state is entitled to half of the credit for taxes withheld from the other spouse's wages. We assume that the each spouse is also entitled to half of the credit for taxes withheld from TPH's pension. Finally, because the spouses did not make estimated tax payments for the year at issue, the IRS need not be concerned with the allocation of estimated tax payments between the spouses.

Based on these assumptions, we conclude that half of the refund is allocable to each spouse. TPH's refund claim was timely, but TPW's refund claim was untimely. Therefore, assuming the parties filed an accurate joint return correctly reporting all items shown thereon, half of the claimed refund is allowable.

As indicated above, we have made factual and legal assumptions as to the allocation of items on the return between the spouses. You may determine that our assumptions are incorrect and that one or more items are allocated entirely to one spouse, rather than equally between the spouses. In that case, more or less than half of the claimed refund may be allowable.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions regarding this response, please contact Branch 2 of the Administrative Provisions & Judicial Practice Division at (202) 622-4940.

CURT G. WILSON
By: Michael L. Gompertz
Assistant to the Branch Chief, Branch 2