

#52 CLARIFY THAT THE SCOPE AND STANDARD OF JUDICIAL REVIEW OF DETERMINATIONS UNDER IRC § 6015 ARE *DE NOVO*

Present Law

Taxpayers who file joint federal income tax returns are jointly and severally liable for any deficiency or tax due with respect to their joint returns. IRC § 6015, sometimes referred to as the “innocent spouse” rules, provides relief from this joint and several liability. If “traditional” relief from a deficiency is unavailable under subsection (b) and “separation of liability” from a deficiency is unavailable under subsection (c), a taxpayer may qualify for “equitable” innocent spouse relief from deficiencies and underpayments under subsection (f). Relief under IRC § 6015(f) is appropriate when, taking into account all the facts and circumstances of a case, it would be inequitable to hold a joint filer liable for the unpaid tax or deficiency. If the IRS denies relief under any subsection of IRC § 6015, the taxpayer may petition the Tax Court.

In 2008, the Tax Court held that the *scope* of its review in IRC § 6015(f) cases, like its review in IRC § 6015(b) and (c) cases, is *de novo*, meaning that it may consider evidence introduced at trial that was not included in the administrative record.¹⁷⁰ In 2009, the Tax Court held that the *standard* of review in IRC § 6015(f) cases is also *de novo*, meaning that the Tax Court will consider the case anew, without deference to the agency’s determination to deny relief.¹⁷¹

In 2009, the IRS Office of Chief Counsel (Chief Counsel) issued guidance to its attorneys instructing them to argue, contrary to the Tax Court’s holdings, that the scope of review in all IRC § 6015(f) cases is limited to issues and evidence presented before the IRS Appeals or Examination functions and that the proper standard of review is abuse of discretion.¹⁷² In 2011, the National Taxpayer Advocate recommended that Congress amend IRC § 6015 to reflect the Tax Court’s holdings.

In June 2013, following an appellate court decision affirming the Tax Court’s holdings, Chief Counsel issued guidance instructing its attorneys to cease arguing that the scope and standard of review in IRC § 6015(f) cases is not *de novo*.¹⁷³ In June 2013, Chief Counsel also issued an Action on Decision stating that although the IRS disagrees that section 6015(e)(1) provides for both a *de novo* standard of review and a *de novo* scope of review, the IRS will no longer argue that the Tax Court should limit its review to the administrative record or review section 6015(f) claims solely for an abuse of discretion.¹⁷⁴

Reasons for Change

Although Chief Counsel issued an Action on Decision and issued instructions to its attorneys to stop arguing that Tax Court review in section 6015(f) cases should be limited to the administrative record and for an abuse of discretion, Chief Counsel could change its position in the future. To eliminate ambiguity and preclude

¹⁷⁰ *Porter v. Comm’r*, 130 T.C. 115 (2008).

¹⁷¹ *Porter v. Comm’r*, 132 T.C. 203 (2009) (a continuation of the same case that produced the 2008 holding, discussed above, that Tax Court review of denials of relief under IRC § 6015(f) is not limited to the administrative record).

¹⁷² Notice CC-2009-021, *Litigating Cases Involving Claims for Relief From Joint and Several Liability Under Section 6015(f): Scope and Standard of Review* (June 30, 2009).

¹⁷³ Notice CC-2013-011, *Litigating Cases that Involve Claims for Relief From Joint and Several Liability Under Section 6015* (June 7, 2013).

¹⁷⁴ Action on Decision (AOD) 2012-07, I.R.B. 2013-25 (June 17, 2013), issued in response to *Wilson v. Comm’r*, 705 F.3d 980 (9th Cir. 2013), *aff’g* T.C. Memo. 2010-134. An AOD is a formal memorandum prepared by Chief Counsel that announces the future litigation position the IRS will take with regard to the court decision addressed by the AOD.

future changes in the IRS's litigating position, the statute should be amended to clarify that courts may consider all relevant evidence in IRC § 6015 cases and that the standard of review is *de novo*.

Recommendation

Amend IRC § 6015 by adding flush language after subsection (e)(A)(iii) providing that that in any proceeding in a court with jurisdiction over a case, the scope and standard of review of determinations under IRC § 6015 is *de novo*.¹⁷⁵

¹⁷⁵ See Taxpayer First Act, H.R. 5444, 115th Cong. § 11303 (2018); Taxpayer First Act of 2018, S. 3246, 115th Cong. § 1003 (2018); Strengthening Taxpayer Rights Act, H.R. 3340, 115th Cong. § 202 (2017); Taxpayer Protection Act, S. 3156, 114th Cong. § 113 (2016); Taxpayer Rights Act, H.R. 4128 and S. 2333, 114th Cong. § 303 (2015). While these bills are similar to our recommendation, they differ in one important respect. All five of these bills would amend IRC § 6015(e) to add a new numbered paragraph providing that “[a]ny review of a determination under this section shall be reviewed *de novo* by the Tax Court.” This proposed language could be construed as conferring exclusive jurisdiction on the Tax Court to hear innocent spouse claims, which would preclude innocent spouse relief in collection, bankruptcy, and refund cases litigated in other federal courts and would be inconsistent with IRC § 6015(e)(1)(A) (conferring Tax Court jurisdiction “in addition to any other remedy provided by law”). It would also be inconsistent with the legislative recommendations, *Clarify that Taxpayers May Raise Innocent Spouse Relief As a Defense in Collection Proceedings and in Bankruptcy Cases*, *infra* and *Clarify that Taxpayers May Seek Innocent Spouse Relief in Refund Suits*, *infra*.