

#53 CLARIFY THAT TAXPAYERS MAY RAISE INNOCENT SPOUSE RELIEF AS A DEFENSE IN COLLECTION PROCEEDINGS AND IN BANKRUPTCY CASES¹⁷⁶

Present Law

Married taxpayers who file joint returns are jointly and severally liable for any deficiency or tax due. Spouses who live in community property states and file separate returns are generally required to report half of the community income on their separate returns. IRC §§ 6015 and 66, sometimes referred to as the “innocent spouse” rules, provide relief from joint and several liability and from the operation of community property rules. Taxpayers seeking innocent spouse relief generally file Form 8857, *Request for Innocent Spouse Relief*. After reviewing the request, the IRS issues a final notice of determination granting or denying relief in whole or in part.

If the taxpayer files a petition within 90 days from the date the IRS issues its final notice of determination, the United States Tax Court has jurisdiction to determine the appropriate relief. The Tax Court’s jurisdiction to decide innocent spouse claims does not appear to be exclusive; IRC § 6015(e)(1)(A) provides that an individual may petition the Tax Court for review of an innocent spouse determination “in addition to any other remedy provided by law.”

The Tax Court does not have jurisdiction over collection suits arising under IRC §§ 7402 or 7403 or over bankruptcy proceedings arising under Title 11 of the United States Code. Some federal courts with jurisdiction over these cases have considered taxpayers’ claims that they are entitled to innocent spouse relief, which is consistent with IRC § 6015(e)(1)(A).¹⁷⁷ Notwithstanding the language of IRC § 6015(e)(1)(A), however, some federal courts have held that the Tax Court’s jurisdiction to decide innocent spouse claims *is* exclusive and have declined to consider innocent spouse claims in these collection or bankruptcy cases.¹⁷⁸

Reasons for Change

Inconsistent decisions about whether taxpayers may raise innocent spouse relief as a defense in collection suits and bankruptcy proceedings have created confusion and have resulted in different treatment of similarly situated taxpayers. Moreover, the effect of treating the Tax Court as having exclusive jurisdiction over innocent spouse claims may be to create economic hardships. If the federal courts that decide collection suits and bankruptcy proceedings cannot consider innocent spouse claims, taxpayers in those cases may be left without any forum in which to seek innocent spouse relief before a court enters a financially damaging court judgment or, in rare cases, the taxpayer loses his or her home to foreclosure.

Legislation is needed to clarify that the statutory language of IRC § 6015 conferring Tax Court jurisdiction “in addition to any other remedy provided by law” does not give the Tax Court exclusive jurisdiction to

¹⁷⁶ Our recommendation that Congress clarify taxpayers may seek innocent spouse relief in collection proceedings and bankruptcy cases addresses issues similar to those discussed in our recommendation that Congress clarify taxpayers may seek innocent spouse relief in refund cases.

¹⁷⁷ See, e.g., *U.S. v. Diehl*, 460 F. Supp. 1282 (S.D. Tex. 1976), *aff’d per curiam*, 586 F.2d 1080 (5th Cir. 1978) (IRC § 7402 suit to reduce an assessment to judgment); and *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017) (bankruptcy proceeding).

¹⁷⁸ *U.S. v. Boynton*, 99 A.F.T.R.2d (RIA) 920 (S.D. Cal. 2007) (IRC § 7402 suit to reduce an assessment to judgment); *U.S. v. Cawog*, 97 A.F.T.R.2d (RIA) 3069 (W.D. Pa. 2006), appeal dismissed (3d Cir. July 5, 2007) (IRC § 7403 suit to foreclose on federal tax liens); and *In re Mikels*, 524 B.R. 805 (Bankr. S.D. Ind. 2015) (bankruptcy proceeding).

determine innocent spouse claims and that U.S. District Courts and bankruptcy courts are also authorized to consider whether innocent spouse relief should be granted.¹⁷⁹

Recommendation

Amend IRC §§ 6015 and 66 to clarify that taxpayers are entitled to raise innocent spouse relief as a defense in a proceeding brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) and in cases arising under Title 11 of the United States Code.

¹⁷⁹ Related to this recommendation, some proposed amendments to IRC § 6015 address the scope and standard of Tax Court review in innocent spouse cases. See, e.g., Taxpayer First Act, H.R. 5444, 115th Cong. § 11303 (2018) and Taxpayer First Act of 2018, S. 3246, 115th Cong. § 1003 (2018), proposing to add a new subsection to IRC § 6015(e) to provide that “[a]ny review of a determination under this section shall be reviewed de novo by the Tax Court.” The National Taxpayer Advocate agrees that the standard and scope of Tax Court review of innocent spouse cases should be *de novo*. However, the proposed amendments as written could be construed as conferring exclusive jurisdiction on the Tax Court to hear innocent spouse claims, which would be inconsistent with IRC § 6015(e)(1)(A). It would also be inconsistent with this recommendation relating to raising innocent spouse as a defense in collection suits and bankruptcy proceedings, and with the recommendation to *Clarify That Taxpayers May Seek Innocent Spouse Relief in Refund Suits, infra*. For this reason, the National Taxpayer Advocate recommends adding flush language about scope and standard of review to IRC § 6015(e)(A)(iii), thereby avoiding the inference that the Tax Court has exclusive jurisdiction over innocent spouse claims. See *Clarify that the Scope and Standard of Judicial Review of Determinations Under IRC § 6015 Are De Novo, supra*.