

**#54 CLARIFY THAT TAXPAYERS MAY SEEK INNOCENT SPOUSE RELIEF IN REFUND SUITS<sup>180</sup>****Present Law**

IRC §§ 6015 and 66, sometimes referred to as the “innocent spouse” rules, provide relief from the joint and several liability that arises from filing a joint federal income tax return and from the operation of community property rules. Taxpayers may request that the IRS grant innocent spouse relief, and if a request is denied, they may seek judicial review.

**United States Tax Court**

Under IRC § 6015(e), the Tax Court has jurisdiction to review the IRS’s denial of a claim for innocent spouse relief and to determine the appropriate relief.

Until the Tax Court’s decision in a deficiency case becomes final, interest and penalties continue to accrue with respect to the entire unpaid liability, if any, ultimately determined to be owed. A taxpayer who obtains innocent spouse relief in Tax Court may be entitled to a refund to the extent permitted by IRC § 6015(g). Interest on any refund would be payable at the rate of three percentage points above the Federal short-term rate. A taxpayer may, without waiting for the outcome in Tax Court, stop the accrual of interest and penalties in a deficiency case by making a deposit under IRC § 6603, and if the taxpayer ultimately prevails in the Tax Court litigation, the deposit will be returned. However, interest will be paid at the Federal short-term rate.

There is no right to a jury trial in Tax Court.

**Other Federal Courts**

Taxpayers who pay a proposed deficiency and whose claims for tax refunds have been denied by the IRS cannot bring refund suits in the Tax Court, but they may seek refunds by filing suit in a United States District Court or in the U.S. Court of Federal Claims.

IRC § 6015(e) states that a taxpayer’s right to petition the Tax Court for innocent spouse relief is provided “[i]n addition to any other remedy provided by law.” Despite this language, a U.S. District Court recently concluded in the case of *Chandler v. United States* that it lacked jurisdiction to consider a taxpayer’s innocent spouse claim in a refund suit arising under IRC § 7422.<sup>181</sup>

A jury trial is available if a refund suit is brought in a U.S. District Court. If an individual taxpayer ultimately prevails in the refund suit, his or her payment will be refunded together with interest at the Federal short-term rate plus three percent.

<sup>180</sup> This recommendation that Congress clarify that taxpayers may seek innocent spouse relief in refund cases addresses issues similar to those discussed in our recommendation *Clarify that Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection Proceedings and in Bankruptcy Cases*, *infra*.

<sup>181</sup> *Chandler v. U.S.*, 2018 U.S. Dist. LEXIS 173880 (N.D. Tex. 2018) *adopting* 2018 U.S. Dist. LEXIS 174482 (N.D. Tex. 2018). The decision quoted *U.S. v. Elman*, 2012 U.S. Dist. LEXIS 173026 (N.D. Ill. 2012), which stated that “although the statute itself does not address whether the Tax Court’s jurisdiction is exclusive, courts interpreting the statute have concluded that it is.”

### Reasons for Change

The *Chandler* decision is inconsistent with decisions by other federal courts that for decades have allowed taxpayers to seek innocent spouse relief in refund suits.<sup>182</sup> The decision in *Chandler*, by foreclosing district court review of innocent spouse claims, leaves taxpayers with only one forum—the Tax Court—in which to seek review of an adverse IRS determination. Because there is no right to a jury trial in the Tax Court, the *Chandler* decision circumvents taxpayers’ right to have their cases decided by a jury. The *Chandler* decision also means that taxpayers who are willing to pay the asserted liability prior to litigation must forego three percentage points of interest. They cannot seek a refund in a district court (where any refund would be paid with interest at the Federal short-term rate plus three percentage points), but may make a deposit pending the outcome in the Tax Court (which would be repaid with interest at the short-term Federal rate).

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 determine innocent spouse claims and that U.S. District Courts and the Court of Federal Claims are also authorized to consider whether innocent spouse relief should be granted in refund suits. Clarification will prevent further confusion as to whether seeking innocent spouse relief is allowable in those courts and will provide uniformity among all federal courts.<sup>183</sup>

### Recommendation

Amend IRC §§ 6015 and 66 to clarify that taxpayers are entitled to assert a claim for innocent spouse relief in refund suits arising under IRC § 7422.

<sup>182</sup> See, e.g., *Sanders v. U.S.*, 509 F.2d 162 (5th Cir. 1975) *aff’d* 369 F. Supp. 160 (N.D. Ala. 1973); *Mlay v. IRS*, 168 F. Supp. 2d 781 (S.D. Ohio 2001); *Flores, v. U.S.*, 51 Fed. Cl. 49 (2001).

<sup>183</sup> Several recent bills would amend IRC § 6015 to 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). They would also be inconsistent with this recommendation relating to seeking innocent spouse relief in refund suits and with the recommendation to *Clarify that Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection Proceedings and in Bankruptcy Cases*, *supra*. 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 is De Novo*, *supra*.