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Relief From Joint and Several Liability Under IRC § 6015

SUMMARY

Married couples may elect to file their federal income tax returns jointly or separately. Spouses filing joint returns are jointly and severally liable for any deficiency or tax due.¹ Joint and several liability permits the IRS to collect the entire amount due from either taxpayer.²

Internal Revenue Code (IRC) § 6015 provides three avenues for relief from joint and several liability. IRC § 6015(b) provides “traditional” relief for deficiencies. IRC § 6015(c) also provides relief for deficiencies for certain spouses who are divorced, separated, widowed, or not living together by allocating the liability between the spouses. IRC § 6015(f) provides “equitable” relief from both deficiencies and underpayments but only applies if a taxpayer is not eligible for relief under IRC §§ 6015(b) or (c).

We identified 24 federal court opinions involving relief under IRC § 6015 that were issued between June 1, 2014, and May 31, 2015. Courts granted relief to the requesting spouse in seven cases (29 percent). The IRS prevailed in 15 cases (63 percent). The remaining two cases resulted in split decisions. Significant issues that arose this year include: (1) the Tax Court’s jurisdiction over requests for equitable relief, and (2) intervening spouses opposing equitable relief after the IRS conceded that requesting spouses were entitled to relief at trial.

TAXPAYER RIGHTS IMPACTED³

- *The Right to Pay No More Than The Correct Amount of Tax*
- *The Right to Challenge the IRS’s Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

PRESENT LAW

Traditional Innocent Spouse Relief Under IRC § 6015(b)

IRC § 6015(b) provides that a requesting spouse shall be partially or fully relieved from joint and several liability, pursuant to procedures established by the Secretary, if the requesting spouse can demonstrate that:

1. A joint return was filed;
2. There was an understatement of tax attributable to erroneous items of the nonrequesting spouse;⁴

1 IRC § 6013(d)(3). We use the terms “deficiency” and “understatement” interchangeably for purposes of this discussion and the case table in Appendix 3, even though IRC §§ 6015(b)(1)(D) and 6015(f) expressly use the term “deficiency” and IRC § 6015(b)(1)(B) refers to an “understatement of tax.”

2 The National Taxpayer Advocate, in the 2005 Annual Report to Congress, proposed legislation that would eliminate joint and several liability for joint filers. See National Taxpayer Advocate 2005 Annual Report to Congress 407.

3 See Taxpayer Bill of Rights, available at www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

4 An erroneous item is any income, deduction, credit, or basis that is omitted from or incorrectly reported on the joint return. See Treas. Reg. § 1.6015-1(h)(4).

3. The requesting spouse did not know or have reason to know of the understatement, upon signing the return;
4. It is inequitable to hold the requesting spouse liable, taking into account all the facts and circumstances; and
5. The requesting spouse elected relief within two years after the IRS began collection activities against him or her.⁵

A requesting spouse is eligible for a refund under this subsection, so long as the requesting spouse made the payment and the requirements of IRC § 6511 have been met.⁶

Allocation of Liability Under IRC § 6015(c)

IRC § 6015(c) provides that the requesting spouse shall be relieved from liability for deficiencies allocable to the nonrequesting spouse, pursuant to procedures established by the Secretary. To obtain relief under this section, the requesting spouse must demonstrate that:

1. A joint return was filed;
2. The joint filers were unmarried, legally separated, widowed, or had not lived in the same household for the 12 months immediately preceding the election at the time relief was elected; and
3. The election was made within two years after the IRS began collection activities with respect to the requesting spouse.

This election allocates the portion of the deficiency attributable to each joint filer as calculated under the allocation provisions of IRC § 6015(d). A taxpayer is ineligible to make an election under IRC § 6015(c) if the IRS demonstrates that, at the time he or she signed the return, the requesting taxpayer had “actual knowledge” of any item giving rise to the deficiency.⁷ Relief is not available for amounts attributable to fraud, fraudulent schemes, or certain transfers of disqualified assets.⁸ Finally, no credit or refund is allowed as a result of relief granted under IRC § 6015(c).⁹

Equitable Relief Under IRC § 6015(f)

IRC § 6015(f) provides that the Secretary may relieve a taxpayer from liability for both deficiencies and underpayments¹⁰ where the taxpayer demonstrates that:

1. Relief under IRC § 6015(b) or (c) is unavailable; and
2. It would be inequitable to hold the taxpayer liable for the underpayment or deficiency, taking into account all the facts and circumstances.

5 Not all actions that involve collection will trigger the two-year period of limitations. Under the regulations, only the following four events constitute “collection activity” that will start the two-year period: (1) an IRC § 6330 notice; (2) an offset of an overpayment of the requesting spouse against the joint income tax liability under IRC § 6402; (3) the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; and (4) the filing of a claim by the United States to collect the joint tax liability in a court proceeding in which the requesting spouse is a party or which involves property of the requesting spouse. Treas. Reg. § 1.6015-5(b)(2).

6 IRC § 6015(g)(1). See *infra* note 18 for an explanation of the general time period for filing refund claims under IRC § 6511.

7 IRC § 6015(c)(3)(C).

8 IRC §§ 6015(c)(4), (d)(3)(C).

9 IRC § 6015(g)(3).

10 An underpayment of tax occurs when the tax is properly shown on the return but is not paid. *Washington v. Comm’r*, 120 T.C. 137, 158-59 (2003).

Previously, the IRS incorporated the statutory two-year deadline found in IRC §§ 6015 (b)(1)(E) and (c)(3)(B) into the IRC § 6015 regulations and thereby imposed the two-year rule on requests for equitable relief under IRC § 6015(f).¹¹ In 2009, the Tax Court, in *Lantz v. Commissioner*, held the regulation imposing the two-year rule invalid.¹² The IRS appealed *Lantz* and similar decisions, and three courts of appeals ultimately held that the regulation was valid.¹³ In the meantime, the Tax Court continued, where permitted, to hold the regulation invalid, and the issue was appealed to other courts of appeals.¹⁴ The National Taxpayer Advocate consistently advocated for removal of the two-year rule that prevented taxpayers from obtaining equitable relief.¹⁵ In July 2011, the IRS changed its position and now considers requests for equitable relief under IRC § 6015(f) without regard to when the first collection activity was taken.¹⁶ The IRS proposed regulations to codify the change in the two-year rule on August 13, 2013.¹⁷ Taxpayers may now file requests for equitable relief within the period of limitation on collection in IRC § 6502¹⁸ or, for any credit or refund of tax, within the period of limitation in IRC § 6511.¹⁹

11 Treas. Reg. §1.6015-5(b)(1).

12 132 T.C. 131 (2009).

13 *Mannella v. Comm'r*, 631 F.3d 115 (3d Cir. 2011) *rev'g and remanding* 132 T.C. 196 (2009); *Jones v. Comm'r*, 642 F.3d 459 (4th Cir. 2011), *rev'g and remanding* T.C. Docket No. 17359-08 (May 28, 2010); *Lantz v. Comm'r*, 607 F.3d 479 (7th Cir. 2010) *rev'g and remanding* 132 T.C. 131 (2009).

14 Adhering to the rule in *Golsen v. Comm'r*, 54 T.C. 742, 757 (1970), *aff'd* 445 F.2d 985 (10th Cir. 1971), that the Tax Court will defer to a Courts of Appeals decision which is squarely on point where appeal from the Tax Court decision lies to that Court of Appeal, the Tax Court continued to hold the regulation invalid in cases appealable to other circuits. See, e.g., *Young v. Comm'r*, T.C. Docket No. 12718-09 (May 12, 2011); *Pullins v. Comm'r*, 136 T.C. 432 (2011); *Stephenson v. Comm'r*, T.C. Memo. 2011-16; *Hall v. Comm'r*, 135 T.C. 374, *appeal dismissed* (6th Cir. Aug. 2, 2011); *Buckner v. Comm'r*, T.C. Docket No. 12153-09, *appeal dismissed* (6th Cir. July 27, 2011); *Carlile v. Comm'r*, T.C. Docket No. 11567-09, *appeal dismissed* (9th Cir. Dec. 8, 2010); *Payne v. Comm'r*, T.C. Docket No. 10768-09, *appeal dismissed* (9th Cir. July 25, 2011); *Coulter v. Comm'r*, T.C. Docket No. 1003-09, *appeal dismissed* (2d Cir. Aug. 4, 2011).

15 National Taxpayer Advocate 2010 Annual Report to Congress 377 (Legislative Recommendation: *Allow Taxpayers to Request Equitable Relief Under Internal Revenue Code Section 6015(f) or 66(c) at Any Time Before Expiration of the Period of Limitations on Collection and to Raise Innocent Spouse Relief as a Defense in Collection Actions*); National Taxpayer Advocate 2010 Annual Report to Congress vol. 2, 1-12 (*Unlimit Innocent Spouse Equitable Relief*); National Taxpayer Advocate 2006 Annual Report to Congress 540 (Legislative Recommendation: *Eliminate the Two-Year Limitation Period for Taxpayers Seeking Equitable Relief under IRC § 6015 or 66*).

16 Notice 2011-70, 2011-2 C.B. 135 (July 25, 2011), available at <http://www.irs.gov/pub/irs-drop/n-11-70.pdf>. The notice provides transitional rules and applies to requests submitted on or after July 25, 2011. The notice also states that pending litigation will be managed consistently with the removal of the two-year rule. See also CC-Notice 2011-017 (July 25, 2011) (providing direction for Chief Counsel attorneys handling cases docketed with the Tax Court that involve the two-year deadline).

17 78 Fed. Reg. 49,242 (Aug. 13, 2013). Written or electronic comments were invited. Comments and requests for a public hearing were to be received by November 12, 2013. As of the date of this report, the IRS has not promulgated a final regulation.

18 The statutory period of limitations on collection is generally ten years after the date the tax is assessed. IRC § 6502(a). However, a variety of statutory provisions may extend or suspend the collection period. For example, if a court proceeding to collect the tax is brought, such as a suit to reduce a tax liability to judgment, the period of limitations on collection is extended. Therefore, the period of limitations on collection could exceed ten years, and a claim for innocent spouse relief would be valid at any point during that time.

19 Generally, taxpayers must request a refund within three years from the date their return was filed or two years from the time the tax was paid, whichever occurs later, or, if no return was filed, within two years from the time the tax was paid. IRC § 6511(a). If taxpayers meet the three-year requirement, they can recover payments made during the three-year period that precedes the date of the refund request, plus the period of any extension of time for filing the return. However, taxpayers who do not meet the three-year requirement can recover only payments made during the two-year period preceding the date of the refund request. IRC § 6511(b)(2). Senator Cardin and Representative Becerra introduced companion bills that include the National Taxpayer Advocate's recommendation to codify the removal of the two-year rule that prevented taxpayers from obtaining equitable relief. S. 2333, 114th Cong. (2015) and H.R. 4128, 114th Cong. (2015).

Revenue Procedure 2013-34 provides a nonexclusive list of factors that the IRS considers when determining whether equitable relief is appropriate.²⁰ Factors include:

- Marital status;
- Economic hardship;
- Knowledge or reason to know of the understatement or underpayment, including abuse by the nonrequesting spouse;
- Legal obligation to pay the outstanding tax liability;
- Significant benefit from the understatement or underpayment;
- Compliance with income tax laws; and
- Mental or physical health.²¹

Rights of the Nonrequesting Spouse

The individual with whom the requesting spouse filed the joint return is generally referred to as a “nonrequesting spouse” and is granted certain rights by IRC § 6015. The nonrequesting spouse must be notified and given an opportunity to participate in any administrative proceedings concerning a claim under IRC § 6015.²² Further, if during the administrative process, full or partial relief is granted to the requesting spouse, the nonrequesting spouse can file a protest and receive an administrative conference in the IRS Appeals function.²³ The nonrequesting spouse does not have the right to petition the Tax Court in response to the IRS’s administrative determination regarding IRC § 6015 relief.²⁴ If the requesting spouse files a Tax Court petition, the nonrequesting spouse must receive notice of the Tax Court proceeding, and the nonrequesting spouse has an unconditional right to intervene in the proceeding to dispute or support the requesting spouse’s claim for relief.²⁵ However, an intervening spouse has no standing to appeal the Tax Court’s decision to the United States Courts of Appeals.²⁶

Judicial Review

Taxpayers seeking relief under IRC § 6015 generally file Form 8857, *Request for Innocent Spouse Relief*.²⁷ After reviewing the request, the IRS ultimately issues a final notice of determination granting or denying relief in whole or in part.²⁸ The taxpayer has 90 days from the date the IRS mails the notice to file a petition with the Tax Court.²⁹ The Tax Relief and Health Care Act of 2006 amended IRC § 6015(e)

20 Rev. Proc. 2013-34, 2013-43 I.R.B. 397. Revenue Procedure 2013-34 superseded Revenue Procedure 2003-61, 2003-2 C.B. 296.

21 *Id.* at 400-03.

22 IRC § 6015(h)(2).

23 Rev. Proc. 2003-19, 2003-5 C.B. 371.

24 *Maier v. Comm’r*, 119 T.C. 267 (2002), *aff’d*, 360 F.3d 361 (2d Cir. 2004) (holding that there are no provisions in IRC § 6015 that allow the nonrequesting spouse to petition the Tax Court from a notice of determination).

25 *Van Arsdalen v. Comm’r*, 123 T.C. 135 (2004).

26 *Baranowicz v. Comm’r*, 432 F.3d 972 (9th Cir. 2005).

27 See IRS Form 8857, *Request for Innocent Spouse Relief, Instructions* (Sept. 2010).

28 There are several types of preliminary determination letters that the IRS may send to the requesting or nonrequesting spouse before issuing a final determination.

29 IRC § 6015(e)(1)(A)(ii).

to expressly provide that the Tax Court has jurisdiction in “stand-alone” cases to review IRC § 6015(f) determinations, even where no deficiency has been asserted.³⁰

ANALYSIS OF LITIGATED CASES

We identified 24 opinions issued between June 1, 2014, and May 31, 2015. The Tax Court issued the majority of the opinions (20 opinions, or 83 percent). The IRS prevailed in full in 15 cases (63 percent), while the requesting spouse prevailed in seven cases (29 percent). Two cases had split decisions (eight percent). Taxpayers had representation in 13 cases (54 percent) and appeared *pro se* (*i.e.*, they represented themselves) in the remaining 11 cases (46 percent). *Pro se* taxpayers prevailed in full in four cases (36 percent), while one *pro se* taxpayer obtained a split decision. The nonrequesting spouse intervened in ten cases (42 percent).

Procedural Issues

Of the 24 cases, five presented procedural issues. Courts were faced with issues such as whether a requesting spouse may voluntarily withdraw a petition to review the IRS’s denial of relief from joint liability and whether district and bankruptcy courts have jurisdiction over petitions for equitable relief filed under IRC § 6015(f).

In *Davidson v. Commissioner*, the Tax Court examined its authority to dismiss a request for relief without entering a decision in a “stand-alone” case.³¹ After the IRS denied her request for innocent spouse relief, Ms. Davidson petitioned the Tax Court for redetermination.³² However, after the IRS submitted its answer, Ms. Davidson requested to voluntarily withdraw her petition, to which the IRS did not object.³³ The court first distinguished dismissals in deficiency cases, where IRC § 7459(d) controls, with other controversies. In deficiency cases, which comprise the majority of cases before the Tax Court, a taxpayer “may not withdraw a petition to avoid a decision.”³⁴ Should the Tax Court dismiss a deficiency proceeding, the effect is a decision for the IRS, unless the dismissal is for lack of jurisdiction.³⁵ In *Davidson*, a non-deficiency case, the Tax Court looked to the Federal Rules of Civil Procedure (FRCP) for guidance, since IRC § 7459(d) did not apply.³⁶

30 Pub. L. No. 109-432, Div. C, § 408(a), (c), 120 Stat. 2922, 3061-62 (2006). Prior to amendment, IRC § 6015(e) provided for Tax Court review of determinations under IRC §§ 6015(b) or (c), but it was not clear that the Tax Court had jurisdiction to review requests for relief made only under IRC § 6015(f) when no deficiency had been asserted. The 2006 amendment followed the National Taxpayer Advocate’s recommendation that IRC § 6015(e) be amended to clarify that taxpayers have the right to petition the Tax Court for review of determinations made only under IRC § 6015(f). See National Taxpayer Advocate 2001 Annual Report to Congress 159-65 (Key Legislative Recommendation: *Joint and Several Liability Final Determination Rights*). The filing of a Tax Court petition in response to the final notice of determination or after the IRC § 6015 claim is pending for six months is often referred to as a “standalone” proceeding, because jurisdiction is predicated on IRC § 6015(e) and not deficiency jurisdiction under IRC § 6213.

31 *Davidson v. Comm’r*, 144 T.C. No. 13 (2015). A “stand-alone” case refers to a petition for redetermination that is independent of a deficiency proceeding.

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.* See also IRC § 7459(d). If a petition for redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary.

36 *Id.*

Rule 41 of the FRCP allows for voluntary dismissal by the plaintiff under certain circumstances; otherwise the voluntary dismissal must be by court order.³⁷ A court must use its discretion to “weigh the relevant equities and do justice between the parties.”³⁸ The Tax Court distinguished the present case from *Vetrano v. Commissioner*, a decision in which the Tax Court did not have authority to grant a request to withdraw a request for innocent spouse relief.³⁹ In *Vetrano*, the taxpayer requested innocent spouse relief as an affirmative defense in a petition to redetermine a deficiency, which is one of three ways a taxpayer may invoke innocent spouse relief.⁴⁰ The Tax Court held that the taxpayer was liable for the deficiency but reserved judgment on the relief issue. The taxpayer sought to withdraw her request for relief without prejudice; however, the Tax Court could not grant the request to dismiss because “the court’s final decision is conclusive with respect to an individual’s later claim for § 6015 relief.”⁴¹

In contrast, the requesting spouse in *Davidson* raised the issue of relief in a separate petition and not as a defense to a deficiency proceeding.⁴² The Tax Court held that the *res judicata* provisions in IRC § 6015 are only applicable when there is a prior proceeding.⁴³ Since there is no prior proceeding when relief is requested in a “stand-alone” case, the Tax Court found that it has authority to dismiss a “stand-alone” case if there are no objections by the other party.⁴⁴

In *United States v. Hirsch*, the District Court for the Eastern District of New York considered whether the taxpayer, Ms. Hirsch, was barred from raising innocent spouse relief as a defense in a suit to reduce assessment to judgment.⁴⁵ Prior to the suit being commenced, in September 2000, Ms. Hirsch had filed a request for innocent spouse relief with the IRS. The IRS contended it sent a notice of determination denying the request for innocent spouse relief to Ms. Hirsch in July 2003.⁴⁶ Ms. Hirsch did not petition the Tax Court for review of the IRS’s determination. On March 5, 2010, the United States initiated a civil action to obtain a judgment against Ms. Hirsch, who appeared *pro se*, for her unpaid joint income tax liabilities for 1992 through 1997.⁴⁷ Subsequently, on October 20, 2013, the government filed a motion for summary judgment arguing judgment should be entered in its favor. Ms. Hirsch objected to the motion arguing that she should be relieved of the liabilities because she was an innocent spouse. Ms. Hirsch contended that she never received a determination with respect to her request for innocent spouse relief,

37 Fed. R. Civ. P. 41(a). A plaintiff may voluntarily dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.

38 *Davidson v. Comm’r*, 144 T.C. No. 13 (2015) (quoting *McCants v. Ford Motor Co.*, 781 F.2d 855, 857 (11th Cir. 1986)).

39 *Vetrano v. Comm’r*, 116 T.C. 272 (2001).

40 *Davidson v. Comm’r*, 144 T.C. No. 13 (2015). The Tax Court has jurisdiction to review a taxpayer’s request for innocent spouse relief in only three circumstances: (1) where a stand-alone petition is filed pursuant to IRC § 6015(e)(1)(A); (2) where a petition for review of a lien or levy action is filed pursuant to collection due process provisions of IRC §§ 6230 or 6330; and (3) as an affirmative defense where a petition for redetermination of a deficiency is filed pursuant to IRC § 6213(a). See *Maier v. Comm’r*, 119 T.C. 267, 270-71 (2002), *aff’d*, 360 F.3d 361 (2d Cir. 2004); *Butler v. Comm’r*, 114 T.C. 276, 287-89 (2000); IRC §§ 6015(e)(1)(A), 6320(c), and 6330(c)(2)(A)(i). A “stand-alone” petition must be filed no later than the close of the 90th day after the Commissioner has issued a final determination. IRC § 6015(e)(1)(A)(i).

41 *Davidson v. Comm’r*, 144 T.C. No. 13 (2015). See also IRC § 6015(g)(2) (*res judicata*).

42 *Davidson v. Comm’r*, 144 T.C. No. 13 (2015).

43 *Id.*

44 *Id.*

45 114 A.F.T.R.2d (RIA) 5896 (2014). The factual background of this case is convoluted as it involves a divorce proceeding and a subsequent bankruptcy of Ms. Hirsch’s husband.

46 *U.S. v. Hirsch*, 114 A.F.T.R.2d (RIA) 5896 (E.D.N.Y. 2014). The taxpayer claims that she never received the notice of determination, but she did file an administrative appeal to the IRS appeals office prior to the final denial in July 2003.

47 *Id.*

and the parties disputed whether the notice of determination was in fact sent to Ms. Hirsch's last known address as required by law.⁴⁸

The court denied the motion for summary judgment concluding that the government did not establish that the Tax Court had jurisdiction over Ms. Hirsch's non-deficiency, stand-alone innocent spouse claim under IRC § 6015(f). Currently, IRC § 6015(e)(1) gives the Tax Court jurisdiction to hear IRC § 6015(f) claims;⁴⁹ however, that provision took effect on December 20, 2006 and only applies to tax liabilities that arise or are unpaid on or after that date.⁵⁰ Prior to the 2006 amendment, courts were unsure whether the Tax Court had jurisdiction to review "nondeficiency stand-alone petitions."⁵¹ In 2002, the Tax Court held it had jurisdiction in these cases.⁵² In 2004, however, the 2nd Circuit expressed doubt regarding whether the Tax Court had jurisdiction. In subsequent decisions, the 9th Circuit, 8th Circuit, and Tax Court held that the Tax Court lacked jurisdiction to hear IRC § 6015(f) appeals absent express statutory language.⁵³ Because Ms. Hirsch's tax liabilities arose before December 20, 2006, the court stated: "it appears that the Tax Court lacked jurisdiction to review [her innocent spouse] application."⁵⁴ The court also denied the motion because a question of material fact existed as to whether IRS actually mailed the notice of determination denying Ms. Hirsch's innocent spouse application to her last known address. This opinion is important because the decision leaves open the possibility that this district court might allow the taxpayer to raise IRC § 6015(f) as an affirmative defense in a suit to reduce an assessment to judgment, and that the Tax Court may not have exclusive jurisdiction.⁵⁵ It has been a longstanding position of the National Taxpayer Advocate that taxpayers should be able to raise innocent spouse claims as an affirmative defense in an action to reduce joint federal tax assessments to judgment or in a lien foreclosure suit.⁵⁶

In *Nunez v. Commissioner*, the 9th Circuit addressed whether the Tax Court maintains its jurisdiction when the IRS, in a change of its position, no longer opposes a request for innocent spouse relief. Ms. Nunez petitioned the Tax Court after the IRS denied her request for relief; however, before trial, the IRS changed its position and would not oppose a ruling in favor of the taxpayer.⁵⁷ Nevertheless, the Tax Court denied her motion, and the taxpayer appealed the Tax Court's denial of her motion to vacate its

48 The notice of determination must be sent to the taxpayer's last known address. IRC § 6015(e)(1)(A)(i)(I). Generally, a taxpayer's last known address is the address on the taxpayer's most recent return unless the IRS has been given clear and concise notification of a different address. Treas. Reg. § 301.6212-2(a).

49 The parties agreed that since there was no understatement, Ms. Hirsch's claim had to be under IRC § 6015(f).

50 *U.S. v. Hirsch*, 114 A.F.T.R.2d (RIA) 5896 (E.D.N.Y. 2014).

51 *Id.*

52 See *Ewing v. Comm'r*, 118 T.C. 494 (2002), *rev'd* 439 F.3d 1009 (9th Cir. 2006).

53 See *Comm'r v. Ewing*, 439 F.3d 1009 (9th Cir. 2006); *Bartman v. Comm'r*, 446 F.3d 484 (8th Cir. 2006). Upon reconsideration, the Tax Court overruled its holding in the *Ewing* case. See *Billings v. Comm'r*, 127 T.C. 7 (2006). The previous version of IRC § 6015(e) expressly granted the Tax Court jurisdiction only in IRC § 6015(b) and (c) cases. Congress amended IRC § 6015(e) in 2006 to expressly grant authorization in IRC § 6015(f) cases.

54 *U.S. v. Hirsch*, 114 A.F.T.R.2d (RIA) 5896 (E.D.N.Y. 2014). Although the court was correct in its analysis, prior to 2006, the Tax Court routinely reviewed stand-alone IRC § 6015(f) claims and made determinations on them.

55 The statute permits a taxpayer to petition the Tax Court "in addition to any other remedy provided by law." Thus, U.S. district courts and the Tax Court may have concurrent jurisdiction. IRC § 6015(e)(1)(A). However, the United States has argued that a taxpayer cannot raise innocent spouse as an affirmative defense in a district court or bankruptcy court action on jurisdictional grounds and prevailed in a number of cases. See, e.g., *U.S. v. Elman*, 110 A.F.T.R.2d (RIA) 6993 (2012); *U.S. v. Boynton*, 99 A.F.T.R.2d (RIA) 920 (2007); *U.S. v. Feda*, 97 A.F.T.R.2d 1985 (2006); *In re Mikels*, 524 B.R. 805, 807 (Bankr. S.D. Ind. 2015).

56 See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress 415-16. See also National Taxpayer Advocate 2012 Annual Report to Congress 648; National Taxpayer Advocate 2010 Annual Report to Congress 504; National Taxpayer Advocate 2009 Annual Report to Congress 487; National Taxpayer Advocate 2008 Annual Report to Congress 524; National Taxpayer Advocate 2007 Annual Report to Congress 631.

57 *Nunez v. Comm'r*, 599 F. App'x 629 (9th Cir. 2015), *aff'g* T.C. Docket No. 15168-10 (Feb. 15, 2013).

decision.⁵⁸ The taxpayer argued that because the IRS did not oppose granting her relief, the Tax Court lost jurisdiction.⁵⁹ The 9th Circuit affirmed the Tax Court, holding that “nothing in § 6015 provides that the Tax Court loses jurisdiction once the Commissioner changes his position and supports, or stops opposing, a grant of relief in the requesting or electing spouse’s favor.”⁶⁰ The Tax Court loses jurisdiction only in the case where either spouse files a refund suit in a district court, which did not happen in this instance.⁶¹ As a result, Ms. Nunez was not entitled to relief from joint and several liability for the tax years in dispute.⁶²

In *In re Mikels*, the Bankruptcy Court for the Southern District of Indiana concluded that it lacks jurisdiction to make a determination of innocent spouse relief under IRC § 6015(f). In response to deficiencies assessed for the 2008 and 2009 tax years, Mr. Mikels filed for innocent spouse relief for several tax years.⁶³ The IRS granted relief for 2008 and 2009 but denied relief for the other tax years.⁶⁴ The IRS later abated tax liabilities for 2008 and 2009; however, Mr. Mikels filed an objection to the IRS’s determinations for tax years 2003-05, 2007, and 2010, claiming that he was entitled to relief under either IRC § 6015(c) or (f), since the liability was related to his ex-wife’s daycare business.⁶⁵ The court concluded that IRC § 6015(c) did not apply, since the only deficiencies that were assessed were subsequently abated, rendering the issue of innocent spouse relief under IRC § 6015(c) moot. For Mr. Mikels’ IRC § 6015(f) relief for the remaining tax years, the court acknowledged that section “[6015(e)(1)] does not address whether the Tax Court’s jurisdiction is exclusive;” however, the court followed district court precedent concluding that the Tax Court has exclusive jurisdiction regarding stand-alone petitions for innocent spouse relief.⁶⁶

In the 2013 Annual Report to Congress, the National Taxpayer Advocate stated that nothing in the language of IRC § 6015 gives the Tax Court exclusive jurisdiction to determine innocent spouse claims.⁶⁷ Instead, the language of IRC § 6015(e) permits a taxpayer to petition the Tax Court for relief “in addition to any other remedy provided by law.”⁶⁸ The view taken by the bankruptcy court and district courts may leave taxpayers without a forum in which to raise innocent spouse relief as a defense to a collection suit. The National Taxpayer Advocate has made legislative recommendations to clarify this issue.⁶⁹

58 *Nunez v. Comm’r*, 599 F. App’x 629 (9th Cir. 2015), *aff’g* T.C. Docket No. 15168-10 (Feb. 15, 2013).

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.*

63 *In re Mikels*, 524 B.R. 805 (Bankr. S.D. Ind. 2015). Mr. Mikels sought innocent spouse relief for the 2003-2005, 2007-2009, and 2010 tax years. Mr. Mikel filed late joint returns for the years 2003-2005, 2007, and 2010 and did not file returns for the years 2008 and 2009.

64 *Id.*

65 *Id.*

66 *Id.* (citing *U.S. v. Boynton*, 99 A.F.T.R.2d (RIA) 920 (S.D. Cal. 2007)).

67 National Taxpayer Advocate 2013 Annual Report to Congress 408-19.

68 IRC § 6015(e).

69 The National Taxpayer Advocate has recommended that Congress address this issue in three Annual Reports to Congress. National Taxpayer Advocate 2010 Annual Report to Congress 377 (Legislative Recommendation: *Allow Taxpayers to Request Equitable Relief Under Internal Revenue Code Section 6015(f) or 66(c) at Any Time Before Expiration of the Period of Limitations on Collection and to Raise Innocent Spouse Relief as a Defense in Collection Actions*); National Taxpayer Advocate 2009 Annual Report to Congress 378 (Legislative Recommendation: *Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6015 and 66 as a Defense in Collection Actions*); National Taxpayer Advocate 2007 Annual Report to Congress 549 (Legislative Recommendation: *Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6015 and 66 as a Defense in Collection Actions*).

Relief on the Merits

Nineteen cases were decided on the merits. Taxpayers received full relief in five cases and partial relief in two cases. Two issues were frequently discussed in these decisions: (1) whether the requesting spouse knew or had reason to know of the underpayment, and (2) the nonrequesting spouse's right to intervene to support or oppose relief. First, the requesting spouse's knowledge that there was a deficiency or that the nonrequesting spouse would not pay the tax was a factor in 15 of the 19 decisions, including all seven of the decisions where taxpayers received full or partial relief.⁷⁰ Second, the nonrequesting spouse intervened to oppose relief in ten of the 19 cases. Of these ten cases, the IRS either originally granted relief or changed its position and determined relief was appropriate before trial in five instances.

The Tax Court reviewed both of these themes in *Molinet v. Commissioner* and *Varela v. Commissioner*. In *Molinet*, Ms. Molinet, a Cuban born taxpayer who did not have a good understanding of the United States banking system yet shared a joint bank account with her spouse who handled all of their finances, requested innocent spouse relief after her former spouse failed to pay taxes on a 401(k) distribution.⁷¹ The IRS initially denied the request for relief but conceded the issue at trial; however, the former spouse intervened and opposed the request for relief.⁷² The Tax Court reviewed Ms. Molinet's request for relief under the equitable relief provision in IRC § 6015(f) and examined her knowledge or reason to know of the underpayment as a factor in its analysis.

The Tax Court listed four factors it considered in determining whether the requesting spouse had reason to know of the underpayment:

1. The requesting spouse's level of education;
2. The requesting spouse's degree of involvement in the activity leading to the tax liability;
3. The requesting spouse's involvement in business and household financial matters; and
4. The requesting spouse's business or financial expertise.⁷³

The Court found that Ms. Molinet did not have reason to know of the underpayment for three reasons. First, she had "minimal input" in financial decisions because of her difficulty understanding the United States banking system.⁷⁴ Second, she did not agree with her former spouse's decision to take taxable distributions from his 401(k) account but "reluctantly signed" the required forms because she "did not feel she had a choice in the matter."⁷⁵ Third, she "reasonably believed that she and [her former spouse] did not have any financial problems and that [her former spouse] could pay the tax due."⁷⁶ After weighing these factors in Ms. Molinet's favor, the Tax Court found that she was entitled to relief.⁷⁷

70 All three methods of relief under IRC § 6015 contain a knowledge element. Knowledge may be actual or constructive, and the absence of knowledge weighs in favor of relief. See IRC §§ 6015(b)(1)(C), 6015(c)(3)(C); Rev. Proc. 2003-61, 2003-2 C.B. 296, §§ 4.02(1)(b) and 4.03(2)(a)(iii); see also Notice 2012-8, §§ 4.02(3) and 4.03(2)(c), 2012-4 C.B. 309.

71 *Molinet v. Comm'r*, T.C. Memo 2014-109. The IRS debt was assigned to Ms. Molinet's former spouse in their divorce settlement, and Ms. Molinet was convinced her former spouse could pay the debt.

72 *Id.*

73 *Id.* (citing Rev. Proc. 2013-34, § 4.03(2)(c)(iii), 2013-43 I.R.B. at 402).

74 *Id.*

75 *Id.*

76 *Id.*

77 *Id.*

In *Varela*, Ms. Varela petitioned for innocent spouse relief under all three provisions, and the government agreed at trial that she was entitled to full relief under IRC § 6015(b).⁷⁸ In 2003, Ms. Valera began an action to divorce her husband but discontinued the action before it was completed. Following that action, however, Ms. Varela and her former spouse separated their financial assets and responsibilities. Ms. Varela and her former spouse separated in 2009 and eventually divorced in 2012. The IRS agreed that Ms. Varela was entitled to relief, but her former spouse objected. The Tax Court found that Ms. Varela did not have knowledge or reason to know of the understatements because she did not have access to her former spouse's or the corporation's bank accounts since they separated their finances.

CONCLUSION

While the overall number of cases decreased from 2013, the last time innocent spouse relief appeared as a Most Litigated Issue, jurisdiction over innocent spouse relief continues to be an issue. Based on their interpretation of IRC § 6015(e), courts have determined that the Tax Court has exclusive jurisdiction over stand-alone claims for innocent spouse relief, when in fact the statute permits a taxpayer to petition the Tax Court “in addition to any other remedy provided by law.”⁷⁹ Greater clarity in the statutory language would likely prevent future litigation over jurisdiction and provide taxpayers additional forums in which to pursue their claims. For this reason, the National Taxpayer Advocate has made three legislative recommendations to address this issue and reiterates her position that taxpayers should be able to raise innocent spouse relief as a defense in collection actions.⁸⁰

Courts' interpretation of IRC § 6015(e) prevents innocent spouses from claiming relief in deficiency cases in any forum other than Tax Court, thus limiting their opportunity to challenge and obtain relief from tax liabilities. These restrictions impact the taxpayer's *right to challenge the IRS's position and be heard, to pay no more than the correct amount of tax, to appeal an IRS decision in an independent forum, and to a fair and just tax system.*

78 *Varela v. Comm'r*, T.C. Memo 2014-222.

79 See IRC § 6015(e)(1)(A). This is consistent with the National Taxpayer Advocate's position that nothing in the language of IRC § 6015 confers exclusive jurisdiction the Tax Court for innocent spouse claims. See National Taxpayer Advocate 2013 Annual Report to Congress 408-19.

80 The National Taxpayer Advocate has recommended that Congress address this problem in three Annual Reports to Congress. National Taxpayer Advocate 2010 Annual Report to Congress 377 (Legislative Recommendation: *Allow Taxpayers to Request Equitable Relief Under Internal Revenue Code Section 6015(f) or 66(c) at Any Time Before Expiration of the Period of Limitations on Collection and to Raise Innocent Spouse Relief as a Defense in Collection Actions*); National Taxpayer Advocate 2009 Annual Report to Congress 378 (Legislative Recommendation: *Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6015 and 66 as a Defense in Collection Actions*); National Taxpayer Advocate 2007 Annual Report to Congress 549 (Legislative Recommendation: *Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6015 and 66 as a Defense in Collection Actions*).