

#16 **CODIFY THE RULE THAT TAXPAYERS CAN REQUEST EQUITABLE RELIEF UNDER IRC § 6015(f) ANY TIME BEFORE EXPIRATION OF THE PERIOD OF LIMITATIONS ON COLLECTION**

Present Law

Under IRC § 6015, taxpayers may obtain relief from the joint and several liability that results from filing a joint return. IRC § 6015 (b) and (c) both provide for relief from an understatement of tax if certain conditions are met. Both subsections impose a two-year period for requesting relief, which commences when the IRS first takes collection activity against the spouse seeking relief.

If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides for “equitable” relief from both understatements and underpayments. Subsection (f) does not contain a time limit for requesting relief, but Treasury Regulation § 1.6015-5(b)(1) imposes the same two-year time limit for requesting relief under subsection (f) as the statute imposes with respect to requests for relief under subsections (b) and (c).

In 2009, the Tax Court, in *Lantz v. Commissioner*, held the regulation imposing the two-year limit for requesting equitable relief under IRC § 6015(f) is invalid. The IRS appealed *Lantz* and similar decisions, and three U.S. Courts of Appeals overturned the Tax Court and upheld the validity of the two-year limit. The National Taxpayer Advocate has consistently advocated for removing the two-year rule for obtaining equitable relief.

In July 2011, the IRS changed its position and issued Notice 2011-70, which provides that taxpayers may request equitable relief within the IRC § 6502 period of limitation on collection or, for any credit or refund of tax, within the IRC § 6511 period of limitation. Proposed Treasury regulations to remove the two-year deadline consistent with Notice 2011-70 were published on August 13, 2013 (RIN 1545-BK51, 78 Fed. Reg. 49242-01), and public comment on the proposed regulations was invited. None of the four persons who submitted comments opposed removing the two-year rule, yet to date the regulations have not been finalized.

Reasons for Change

Although the IRS no longer imposes the two-year rule in section 6015(f) cases and has published guidance to that effect, the statute should be amended to make this rule permanent under the law.

Recommendation

Amend IRC § 6015(f) to provide that taxpayers may request equitable relief within the period of limitation on collection in IRC § 6502 or, for any credit or refund of tax, within the period of limitation in IRC § 6511.⁹⁰

⁹⁰ See Taxpayer Rights Act of 2015, H.R. 4128 and S. 2333, 114th Cong. § 303 (2015); Taxpayer Protection Act of 2016, S. 3156, 114th Cong. § 113 (2016); and Strengthening Taxpayer Rights Act of 2017, H.R. 3340, 115th Cong. § 202 (2017). All three of these bills contain language that is generally consistent with this recommendation.