

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

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.

IRC § 6015(e)(1)(a) provides that an individual who seeks relief from joint liability may, “in addition to any other remedy provided by law,” petition the United States Tax Court to determine the appropriate relief available. The Tax Court generally has jurisdiction to decide the innocent spouse claim if the petition is filed within 90 days from the date the IRS issues its final notice of determination.

Statutory provisions and judicial precedent make clear that taxpayers may raise innocent spouse relief in deficiency proceedings arising under IRC § 6213, in collection due process hearings arising under IRC §§ 6320 and 6330, in refund suits arising under IRC § 7422, and in bankruptcy proceedings arising under title 11 of the United States Code.

Reasons for Change

While one district court was willing to consider a taxpayer’s innocent spouse claim as a defense in an action under IRC § 7402 to reduce federal tax assessments to judgment and under IRC § 7403 to foreclose tax liens on real property, some district courts have refused to allow the defense in these collection suits. These inconsistent decisions have created confusion as to whether the defense is allowed and have resulted in different treatment of similarly situated taxpayers. Moreover, the refusal to allow the innocent spouse defense in collection suits may create hardships because a taxpayer may be left without any forum in which to seek innocent spouse relief prior to having a financially damaging court judgment entered against him or her, or to losing 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 determine innocent spouse claims and that district courts are also authorized to consider, in collection suits, whether innocent spouse relief should be granted.

Recommendation

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