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Relief from Joint and Several Liability Under IRC § 6015

SUMMARY

A married person can elect to file a federal income tax return separately from his or her spouse, or both spouses can choose to file jointly on one return. Filing a joint return establishes joint and several liability for the spouses, for the full amount of any deficiency or tax due.¹

Accordingly, the IRS can collect the entire amount due on the joint return from either spouse, without regard to the respective tax liabilities each would have accrued if they filed separately.²

Internal Revenue Code (IRC) § 6015 provides three ways for a taxpayer to obtain partial or full relief from an IRS debt resulting from a return filed jointly with a spouse or ex-spouse. Section 6015(b) provides complete relief for deficiencies arising from a jointly filed return. Section 6015(c) provides limited relief from a joint liability for spouses who are divorced, separated, widowed, or not living together, by allocating the liability between the spouses. If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides a third opportunity for “equitable” relief from both deficiencies and underpayments.

There were 24 federal opinions identified involving relief under IRC § 6015 that were issued between June 1, 2016, and May 31, 2017. The IRS prevailed in 16 of the cases and the taxpayers prevailed in eight of the cases. Significant issues that arose this year include whether the U.S. Tax Court has exclusive jurisdiction under IRC § 6015(e) and whether the period of limitations prescribed in IRC § 6015(e)(1)(A) is jurisdictional. Additionally, the Tax Court applied the seven-factor test from Revenue Procedure 2013-34 to determine whether the taxpayer should be granted equitable relief under IRC § 6015(f).

TAXPAYER RIGHTS IMPACTED³

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

1 Internal Revenue Code (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 IRC § 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 (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the IRC. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

PRESENT LAW

Innocent Spouse Relief Applicable to All Joint Filers 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
3. Upon signing the return, the requesting spouse did not know or have reason to know of the understatement;
4. Taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable; 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 subsection (b) provided the requesting spouse made the payment and the requirements of IRC § 6511 have been met.⁶

Allocation of Liability Between Spouses 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. At the time relief was elected, the joint filers were unmarried, legally separated, widowed, or had not lived in the same household for the 12 months immediately preceding the election; and
3. The election was made within two years after the IRS began collection activities against the requesting spouse.

Relief under IRC § 6015(c) allocates to each joint filer their respective portion of the deficiency, as calculated under the allocation provisions of IRC § 6015(d). Regardless of how the deficiency is calculated under IRC § 6015(d), IRC § 6015(c) does not provide an opportunity for either of the joint filers to obtain a credit or a refund, only to avoid liability.⁷ A taxpayer is ineligible for relief under IRC § 6015(c) if the IRS demonstrates that, at the time he or she signed the return, the taxpayer

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).

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). Generally, a taxpayer must request a refund within three years from the date his or her 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).

7 IRC § 6015(g)(3).

requesting relief had “actual knowledge” of any item giving rise to the deficiency.⁸ Relief is also unavailable for amounts attributable to fraud, fraudulent schemes, or certain transfers of disqualified assets.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. Taking into account all the facts and circumstances, it would be inequitable to hold the taxpayer liable for the underpayment or deficiency.

To obtain complete relief under IRC § 6015(b) or allocation under subsection (c) a person must make the request within two years of the beginning of IRS collection actions against that person.¹¹ IRS considers requests for equitable relief under IRC § 6015(f) without regard to when the first collection activity was taken.¹²

Prior to July 2011, the IRS interpreted § 6015(f) to impose a two-year time limit on requests for equitable relief.¹³ In 2009, the Tax Court, in *Lantz v. Commissioner*, held the regulation imposing the two-year limit invalid.¹⁴ The IRS appealed *Lantz* and similar decisions, and three courts of appeals overturned the Tax Court and upheld the validity of the two-year limit.¹⁵ This created an unusual situation where the Tax Court ruled in accordance with its reasoning in *Lantz*, where permitted, and ruled in accordance with the courts of appeals’ rulings where bound to do so.¹⁶ The National Taxpayer Advocate consistently advocated for removal of the two-year rule that prevented taxpayers from obtaining equitable relief.¹⁷ In July 2011, the IRS changed its position and now considers requests for

8 IRC § 6015(c)(3)(C).

9 IRC § 6015(c)(4), (d)(3)(C).

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).

11 IRC § 6015(b)(1)(E), (c)(3)(B).

12 Notice 2011-70, 2011-2 C.B. 135 (July 25, 2011), <http://www.irs.gov/pub/irs-drop/n-11-70.pdf>. The change in position applies to requests submitted after July 25, 2011.

13 Treas. Reg. § 1.6015-5(b)(1).

14 132 T.C. 131 (2009).

15 *Manella 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).

16 Adhering to the rule in *Goldsen 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 Court 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).

17 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*); 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*).

equitable relief under IRC § 6015(f) without regard to when the first collection activity was taken.¹⁸ The IRS proposed regulations to codify the change in the two-year rule on August 13, 2013.¹⁹ Taxpayers are now able to file requests for equitable relief within the period of limitation on collection in IRC § 6502²⁰ or, for any credit or refund of tax, within the period of limitation in IRC § 6511.²¹

Factors Guiding IRS Discretion in Equitable Relief Cases

Revenue Procedure 2013-34 provides a nonexclusive list of factors that the IRS considers when determining whether equitable relief is appropriate.²² 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;
- Good-faith effort to comply with income tax laws; and
- Mental or physical health.²³

Rights of the Nonrequesting Spouse

In matters where a claim for relief is made under IRC § 6015, the parties who filed the joint return are generally referred to as the requesting spouse and the “nonrequesting spouse,” respectively. IRC § 6015 provides that the nonrequesting spouse must be notified and given an opportunity to participate in any administrative proceedings concerning a claim under IRC § 6015.²⁴ If full or partial relief is granted to the requesting spouse, the nonrequesting spouse can file a protest and receive an administrative

18 Notice 2011-70, 2011-2 C.B. 135 (July 25, 2011), <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).

19 Notice 2011-70, 2011-2 C.B. 135 (July 25, 2011), <http://www.irs.gov/pub/irs-drop/n-11-70.pdf>. The change in position applies to requests submitted after July 25, 2011. A notice of proposed rulemaking removing the two-year rule was published in the Federal Register (78 Fed. Reg. 49242) on Aug. 13, 2013, and the IRS adopted guidance implementing removal of the two-year rule on Sept. 13, 2013. See Rev. Proc. 2013-34, 2013-43 I.R.B. 397. As of the date of this report, the IRS has not promulgated a final regulation.

20 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.

21 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).

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

23 *Id.* at 400-03.

24 IRC § 6015(h)(2).

conference in the IRS Appeals function.²⁵ The nonrequesting spouse may not petition the Tax Court to appeal the IRS's administrative determination regarding IRC § 6015 relief.²⁶ However, the requesting spouse may petition the Tax Court for review of the IRS's administrative determination regarding IRC § 6015 relief, and in those situations, the nonrequesting spouse must receive notice of the Tax Court proceeding and has an unconditional right to intervene in the proceeding to dispute or support the requesting spouse's claim for relief.²⁷ An intervening spouse has no standing to appeal the Tax Court's decision to the United States Courts of Appeals.²⁸

Judicial Review

Taxpayers seeking relief under IRC § 6015 generally file Form 8857, *Request for Innocent Spouse Relief*.²⁹ After reviewing the request, the IRS issues a final notice of determination granting or denying relief in whole or in part. The taxpayer has 90 days from the date the IRS mails the notice to file a petition with the Tax Court.³⁰ The Tax Relief and Health Care Act of 2006 amended IRC § 6015(e) 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.³¹

ANALYSIS OF LITIGATED CASES

There were 24 opinions issued between June 1, 2016, and May 31, 2017. The Tax Court issued the majority of the opinions (21 opinions, or 88 percent). The IRS prevailed in full in 16 cases (67 percent) and the requesting spouse prevailed in eight cases (33 percent). Taxpayers had representation in nine cases (37.5 percent), and appeared *pro se* (*i.e.*, they represented themselves) in the remaining 15 cases (62.5 percent). *Pro se* taxpayers prevailed in full in five cases (one-third). The nonrequesting spouse intervened in nine cases (38 percent). In cases where the nonrequesting spouse intervened, the IRS prevailed in six cases (67 percent), and the requesting taxpayer prevailed in three cases (33 percent).

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

26 *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).

27 *Van Arsdalen v. Comm'r*, 123 T.C. 135 (2004).

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

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

30 IRC § 6015(e)(1)(A)(ii). Several courts of appeal have held that the ninety-day deadline in § 6015(e)(1)(A) is a jurisdictional requirement and the Tax Court lacks jurisdiction to hear untimely petitions for innocent spouse relief, regardless of whether equitable considerations supporting the extension of the prescribed time period exist. See *Matuszak v. Comm'r*, 862 F.3d 192 (2d Cir. 2017); *Rubel v. Comm'r*, 856 F.3d 301 (3d Cir. 2017), *aff'g* No. 16-9183 (T.C. July 11, 2016); *Calvo v. Comm'r*, 117 A.F.T.R.2d (RIA) 2246 (D.C. Cir. 2017). See also Legislative Recommendation: *Make Time Limits for Petitioning Tax Court and Bringing Suit in Other Federal Courts Subject to the Judicial Doctrines of Forfeiture, Waiver, Estoppel, and Equitable Tolling, and Clarify that Dismissal of an Untimely Petition Filed in Response to a Statutory Notice of Deficiency is Not a Decision on the Merits*, *infra*. The Tax Court recently discussed whether 6015(e)(1)(A) is jurisdictional in *Vu v. Comm'r*, T.C. Summ. Op. 2016-75, and *Naufflett v. Comm'r*, No. 17-1986 (T.C. Aug. 9, 2016) (Order of Dismissal for Lack of Jurisdiction).

31 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 “stand alone” proceeding, because jurisdiction is predicated on IRC § 6015(e) and not deficiency jurisdiction under IRC § 6213.

Procedural Issues

Of the 24 cases identified, five involved procedural issues. In several cases, whether the court had jurisdiction over petitions for equitable relief filed under section 6015 was at issue. Depending on the forum where the issue is litigated, the interests of the IRS may be represented by the Department of Justice (DOJ), Tax Division, or the IRS Office of Chief Counsel. The IRS Office of Chief Counsel generally represents the Commissioner of Internal Revenue in Tax Court litigation.³² The DOJ is responsible for conducting all federal tax litigation in the federal bankruptcy, district, and appellate courts, and in state courts.³³ This dual representation sometimes creates inconsistent positions taken in litigation. The DOJ successfully argued against allowing taxpayers to raise IRC § 6015 relief as an affirmative defense in refund, collection and some bankruptcy cases, which is inconsistent with the IRS Office of Chief Counsel's position.³⁴ The Bankruptcy Court in *In re Pendergraft* determined whether the court's subject matter jurisdiction extended to innocent spouse relief requests under IRC § 6015.³⁵ The taxpayer petitioned the Bankruptcy Court to determine the validity of the IRS's lien on her homestead, and requested section 6015 innocent spouse relief. The IRS (represented by DOJ Tax) challenged the Bankruptcy Court's subject matter jurisdiction, pointing to the language of IRC § 6015(e) in support of the position that review was only available in the Tax Court.³⁶ The Bankruptcy Court rejected the IRS's argument, reading the wording of Section 6015(e) that permits taxpayers to seek "any other remedy provided by law" as validating the subject matter jurisdiction it had to determine innocent spouse claims.³⁷ However, the court stopped short of ruling on the innocent spouse claim, interpreting Section 6015(f) as granting initial subject matter jurisdiction to the Secretary of Treasury. The court ruled that in order for the bankruptcy court to provide review of an innocent spouse claim, the taxpayer must first follow the procedures prescribed in Section 6015(f) and file a Form 8857, *Request for Innocent Spouse Relief* with the IRS and wait until the IRS makes a determination, or until six months pass after making the request without the IRS issuing a determination.³⁸

In her 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.³⁹ 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."⁴⁰ The view taken by the bankruptcy court in

32 Attorneys from the IRS Office of the Chief Counsel also may be appointed as Special Assistant United States Attorneys (SAUSAs) to handle certain tax-related bankruptcy litigation.

33 See 28 C.F.R. § 0.70.

34 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. Fedra*, 97 A.F.T.R.2d 1985 (2006); *In re Mikels*, 524 B.R. 805, 807 (Bankr. S.D. Ind. 2015). However, the IRS Office of Chief Counsel supports permitting taxpayers to raise a IRC § 6015 claim in those contexts, and there has been a long-standing disagreement on this point between the DOJ Tax Division and the IRS Office of Chief Counsel.

35 *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017).

36 *Id.* The IRS cited to multiple cases in support of its argument that the Tax Court has exclusive jurisdiction over innocent spouse claims. See, e.g., *U.S. v. LeBeau*, 109 AFTR 2d (RIA) 1369 (S.D. Cal. 2012) (district court jurisdiction to decide an innocent spouse issue only exists when the taxpayer files a refund suit while an innocent spouse petition is pending with the Tax Court); *U.S. v. Boynton*, 99 AFTR 2d (RIA) 2007 (S.D. Cal. 2007) ("It is difficult to believe that Congress would have created a situation fraught with possibilities for inconsistent judgments and contrary to basic principles of judicial economy with the phrase, '[i]n addition to any other remedy provided by law.'"); *In re French*, 86 AFTR 2d (RIA) (Bankr. N.D. Ohio 2000) (bankruptcy court to be an improper forum for innocent spouse determinations).

37 *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017). This is consistent with the National Taxpayer Advocate's position that nothing in the language of IRC § 6015 confers exclusive jurisdiction on the Tax Court for innocent spouse claims. See National Taxpayer Advocate 2013 Annual Report to Congress 408-19.

38 *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017).

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

40 IRC § 6015(e).

this case is consistent with the National Taxpayer Advocate's longstanding position detailed in several legislative recommendations she made to clarify this issue.⁴¹

The Court of Appeals for the Third Circuit in *Rubel v. Commissioner*⁴² also interpreted the language of IRC § 6015(e) to determine whether the Tax Court had jurisdiction to review an IRS determination denying innocent spouse relief if the petition was filed after the ninety-day deadline prescribed by IRC § 6015(e)(1)(A). After the taxpayer missed the window statutorily prescribed for seeking Tax Court review of the IRS's unfavorable determination of her request for innocent spouse relief, the taxpayer petitioned the court to consider her claim on equitable grounds. The Court of Appeals for the Third Circuit recognized the Tax Court's jurisdiction in a plain language reading of the statute, but unless the IRS has failed to issue a notice a determination, the Tax Court's jurisdiction does not extend to petitions filed outside the 90-day timeframe regardless of equitable considerations supporting the extension of the prescribed time period. The Court of Appeals upheld the Tax Court's decision to dismiss the case.⁴³

Relief on the Merits

Nineteen cases were decided on the merits and taxpayers received full relief in eight of those cases. Whether the spouse requesting relief had knowledge that there was a deficiency or that the nonrequesting spouse would not pay the tax owed on the return was a factor in 16 of the 19 decisions, including seven of the eight decisions where taxpayers received full relief.⁴⁴ In eight of the 19 cases, the nonrequesting spouse intervened to oppose relief. Of these eight cases, the IRS prevailed in five cases, and the requesting spouse prevailed in three.

In *Okorog v. Commissioner*, the taxpayer claimed she was a victim of significant spousal abuse, and that her husband tightly controlled all aspects of finance within their marriage.⁴⁵ She sought relief from a joint liability under the innocent spouse provisions of IRC § 6015(f).⁴⁶ The taxpayer claimed that her husband routinely kept her in the dark regarding financial matters and did not allow her to review any tax return documents prior to filing.⁴⁷ She asserted that she did not recall ever signing a tax return. The taxpayer's husband intervened to oppose her claim for innocent spouse relief, and disputed the validity of the returns.⁴⁸

41. 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*).

42. *Rubel v. Comm'r*, 856 F.3d 301 (3d Cir. 2017), *aff'g* No. 16-9183 (T.C. July 11, 2016).

43. On July 5, 2017, which is outside of the reporting period for this annual report, the Circuit Court of Appeals for the Second Circuit reached the identical conclusion that the period of limitations in IRC § 6015(e)(1)(A) is jurisdictional and cited *Rubel*. See *Matuszak v. Comm'r*, 862 F.3d 192 (2d Cir. 2017).

44. 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.

45. *Okorog v. Comm'r*, T.C. Memo. 2017-53.

46. *Id.*

47. *Id.*

48. *Id.*

The court in *Okorog* applied the “tacit consent rule” to determine by inference whether the taxpayer had acquiesced to the validity of the joint returns her husband filed, despite the fact that she may have failed to sign the return.⁴⁹ The court described the tacit consent rule to be “an extension of the presumption of correctness that generally attaches to the Commissioner’s determinations. . . .”⁵⁰ The court found that although the taxpayer had no knowledge of the validity of the returns, she nonetheless tacitly consented.⁵¹ However, the taxpayer established that she suffered from constant emotional and physical abuse. The court ruled that her husband’s opposition was simply vindictive and granted her claim for innocent spouse relief.⁵²

In *Canty v. Commissioner*, the taxpayer sought relief from joint and several liability for deficiencies, penalties, and interest arising from tax returns she filed jointly with her husband in 2010 and 2011. During 2010 and 2011, the taxpayer’s husband was self-employed in a solo law practice, and he prepared and filed a Schedule C with their joint return that erroneously reported several items related to the accounting of his law practice. Beginning in 2008, the taxpayer worked at the Nuclear Regulatory Commission (NRC) as a financial management analyst and the court noted she was still an employee of the NRC when the opinion was issued. After receiving a notice of deficiency from the IRS for the 2010 and 2011 tax years, the taxpayer mailed the IRS a Form 8857, *Request for Innocent Spouse Relief*, claiming that she was not involved in the operation of her husband’s business, they did not have a joint account, and managed their finances separately. Therefore, she had no way to determine the accuracy of the numbers reported on the tax returns.⁵³ After the IRS issued a final determination denying her request for relief from joint and several liability, the taxpayer petitioned the Tax Court for review of the IRS’s determination.

The requirements for innocent spouse relief are conjunctive, meaning if the spouse requesting relief fails to meet any one of the elements, it precludes relief. The taxpayer remained married to her husband at the time she submitted her claim for relief, meaning relief was unavailable through IRC § 6015(c). The court applied the relevant factors when determining whether the taxpayer was entitled to relief under IRC § 6015(b) or (f). Section 6015(b)(1)(c) provides that in order to obtain relief, the taxpayer must prove that she did not know or have reason to know of the understatements when she signed the return. Applying a reasonable person standard, the court held that the taxpayer failed to meet the knowledge element. Although she may not have reviewed the returns prior to signing them, she was not forced to sign the returns under duress, threat of harm, or coercion, and had no mental or physical health problems which prevented her from understanding the tax returns.⁵⁴ The court noted that she held a bachelor’s degree in economics, a master’s degree in business and public administration. A basic review of the tax returns would have revealed an “obvious error,”⁵⁵ and her husband did not attempt to conceal financial or tax information from her. Therefore, the court determined that she was not entitled to relief under IRC § 6015(b).

Finally, the court in *Canty* applied the seven-factor test from Revenue Procedure 2013-34 to determine whether the taxpayer should be granted equitable relief under IRC § 6015(f). The court held that the knowledge and good-faith elements weighed against granting relief, and determined the remaining five

49 See *Harris v. Comm’r*, T.C. Memo. 1961-324.

50 *Okorogu v. Comm’r*, T.C. Memo. 2017-53.

51 *Id.*

52 *Id.*

53 *Canty v. Comm’r*, T.C. Memo. 2016-169.

54 *Id.*

55 *Id.*

factors to be neutral. The court ruled that denying innocent spouse relief would not be inequitable to the taxpayer, and ruled in favor of the IRS.⁵⁶

In *Taft v. Commissioner*, the taxpayer sought a refund of \$1,570 from her 2012 return filing. The IRS offset the funds to satisfy a liability arising from unreported taxable dividends her husband failed to include on a 2010 jointly filed return. The couple divorced in 2013 after the taxpayer discovered in late 2011 that her husband was carrying on an extramarital affair.⁵⁷ To finance his affair in secret, her husband liquidated marital assets without her knowledge and instructed their longtime accountant to electronically file their joint 2010 return without the taxpayer's approval or review. Shortly after the divorce became final, she filed her 2012 tax return, showing an overpayment of over \$5,000. The IRS offset a portion of this return to the joint tax liability resulting from her husband's unreported dividend income in 2010.⁵⁸ She filed IRS Form 8857, *Request for Innocent Spouse Relief*, requesting that the IRS relieve her of the liability resulting from the unreported dividends and that the IRS refund her money that was credited to that liability. The IRS determined that she qualified for relief from joint and several liability in the form of an allocation under Section 6015(c), but denied her relief under 6015(b).⁵⁹ Because the taxpayer was granted relief under section 6015(c), the IRS did not determine whether the taxpayer was entitled to relief under section 6015(f). In other words, the IRS was willing to relieve her of the joint liability, but refused to refund any funds that had been applied to the liability. In order to receive a refund, she would have to prove eligibility under Section 6015(b) or (f).⁶⁰ She then sought review of the IRS's determination in the Tax Court.

To determine whether the taxpayer was eligible for relief under Section 6015(b), the court applied a four-factor test⁶¹ to determine whether the taxpayer knew or had reason to know of the dividends that gave rise to the understatement of tax. The court looked to:

1. The requesting spouse's level of education;
2. The requesting spouse's involvement in the family's business and financial affairs;
3. The presence of expenditures that appear lavish or unusual when compared to the family's past levels of income, standard of living, and spending patterns; and
4. The culpable spouse's evasiveness and deceit concerning the couple's finances.

The court noted that the following facts weighed in favor of granting her relief:

1. The taxpayer held an associate's degree in nursing, worked as a registered nurse, and lacked sufficient accounting or tax knowledge;
2. At the time of filing, she and her husband maintained separate bank accounts which the other could not access;
3. She did not engage in lavish or unusual expenditures; and

56 *Canty v. Comm'r*, T.C. Memo. 2016-169.

57 *Taft v. Comm'r*, T.C. Memo. 2017-66.

58 *Id.*

59 The IRS considers relief under IRC § 6015(b) before § 6015(c) and if relief is denied in full or in part under subsection (b), the IRS then considers relief under subsection (c) for the denied amounts. Internal Revenue Manual (IRM) 25.15.3.7.7(2), *IRC 6015(b) Determination* (Dec. 12, 2016).

60 *Taft v. Comm'r*, T.C. Memo. 2017-66.

61 See *Stevens v. Comm'r*, 872 F.2d 1499, 1505 (11th Cir. 1989).

4. Her husband engaged in a deceitful practice in order to prevent her from discovering the unreported dividends.⁶²

These factors, when taken into account, adequately established that the taxpayer did not have reason to know of any understatement.⁶³ The court further held that, because of the extent of her husband's deceitfulness, it would be inequitable to hold the taxpayer liable for any deficiencies, given that Taxpayer did not receive any significant benefit from the understatement.⁶⁴ Therefore, the court determined that the taxpayer was entitled to innocent spouse relief under Section 6015(b). As the court determined that relief was available under Section 6015(b), it did not address whether she was entitled to relief under Section 6015(f).⁶⁵

CONCLUSION

The overall number of cases litigating innocent spouse issues stayed constant from the last time it made the list of most litigated issues in 2015. Jurisdiction over innocent spouse relief continued to be a commonly litigated issue.

Some courts have held that the Tax Court has exclusive jurisdiction over innocent spouse claims, even though the plain wording of the statute permits a taxpayer to petition the Tax Court "in addition to any other remedy provided by law;" other courts have recognized that taxpayers may raise innocent spouse as an affirmative defense in a district court or bankruptcy court action, provided there is separate basis for jurisdiction (*e.g.*, refund claim, bankruptcy, etc.).⁶⁶ In one case discussed in this narrative, the bankruptcy court ruled that it had jurisdiction over such a claim.⁶⁷ Greater clarity in the statutory language would likely reduce 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, and the IRS Office of Chief Counsel supports those recommendations.⁶⁸

The IRS is struggling to handle its workload while available resources continue to dwindle. As we continue to see the IRS move cases into litigation where the taxpayer prevails, it is unclear why these cases are not further developed at the administrative level. The IRS Innocent Spouse unit that processes

62 *Taft v. Comm'r*, T.C. Memo. 2017-66.

63 *Id.*

64 *Id.*

65 *Id.* The Taxpayer alternatively argued that she is entitled to relief under IRC § 6015(f), and that the Tax Court should invalidate Treas. Reg. § 1.6015-4(b), which bars refunds when the liability is paid. As the court determined that that relief was available under IRC §6015(b), it never reached the validity of the regulations argument.

66 IRC § 6015(e)(1)(A). The Department of Justice, Tax Division, has successfully 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. Fedra*, 97 A.F.T.R.2d 1985 (2006); *In re Mikels*, 524 B.R. 805, 807 (Bankr. S.D. Ind. 2015).

67 *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017).

68 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*).

IRC § 6015 claims should award relief whenever it is appropriate rather than denying relief whenever possible. When the Innocent Spouse Unit grants a taxpayer's innocent spouse relief without the need for litigation, the IRS attorneys, Appeals Officers, and other high graded employees would have more time to devote to resolving complex issues. Given courts' disagreement about jurisdiction and the ability of the requesting spouse to voluntarily withdraw such request without being penalized, we anticipate more litigation of requests for innocent spouse relief in the future.

The restrictive interpretation of IRC § 6015(e) adopted by some courts limits taxpayers' ability to seek innocent spouse relief in bankruptcy and district courts, infringing on taxpayers' *rights 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.*⁶⁹

⁶⁹ In situations where the taxpayer is unable to pay the tax, these rights are not respected. In situations where a taxpayer is already before the district court or the bankruptcy court on a separate action, being forced to litigate in another forum creates an undue burden. To address these issues, the National Taxpayer Advocate is proposing a legislative change to apply various equitable provisions to the filing date of court petitions. See Legislative Recommendation: *Make Time Limits for Petitioning Tax Court and Bringing Suit in Other Federal Courts Subject to the Judicial Doctrines of Forfeiture, Waiver, Estoppel, and Equitable Tolling, infra.*