

## #26 **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 federal income tax return. IRC § 6015 (b) and (c) provide for relief from an understatement of tax if certain conditions are met. Both subsections impose a two-year time limit for requesting relief, which begins when the IRS first takes collection action 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. Unlike subsections (b) and (c), subsection (f) does not impose a two-year time limit for requesting relief. However, Treasury regulations impose a two-year time limit for requesting relief.<sup>97</sup>

In 2009, the Tax Court, in *Lantz v. Commissioner*, held that 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’s decision and upheld the validity of the two-year limit.

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 period of limitation imposed by IRC § 6511. 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. Four comments were received. None opposed removing the two-year rule. To date, however, the proposed regulations to remove the two-year rule have not been finalized.

### **Reasons for Change**

In codifying IRC § 6015, Congress placed a two-year time limit on claims made under subsections (b) and (c) but did not impose such a limit on claims made under subsection (f). In light of the differences in statutory language, the National Taxpayer Advocate believes Treasury erred in promulgating regulations that imposed a two-year time limit on claims made under subsection (f). In our view, the purpose of subsection (f) is to provide a fallback mechanism for innocent spouses to obtain relief who do not meet the requirements of subsection (b) or (c) without regard to time limitations, and the two-year time limit imposed by the IRS has prevented otherwise eligible innocent spouses from receiving relief. Although the IRS no longer imposes this two-year time limit and has published a notice to that effect, final regulations imposing the two-year time limit remain on the books, and the IRS could reimpose the two-year rule at any time.

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97 Treas. Reg. § 1.6015-5(b)(1).

**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.<sup>98</sup>

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98 For language generally consistent with this recommendation, see Taxpayer First Act, H.R. 5444, 115th Cong. § 11303 (2018); Taxpayer First Act of 2018, S. 3246, 115th Cong. § 1003 (2018); Strengthening Taxpayer Rights Act of 2017, H.R. 3340, 115th Cong. § 202 (2017); Taxpayer Protection Act of 2016, S. 3156, 114th Cong. § 113 (2016); Taxpayer Rights Act of 2015, H.R. 4128 and S. 2333, 114th Cong. § 303 (2015).