

Legislative Recommendation #48**Provide That the Scope of Judicial Review of “Innocent Spouse” Determinations Under IRC § 6015 Is *De Novo*****SUMMARY**

- *Problem:* If the IRS denies a taxpayer’s request for equitable relief in an innocent spouse case, the taxpayer may request judicial review of the IRS’s denial, but in doing so, the taxpayer is generally prohibited from presenting evidence to a judge that the taxpayer did not previously present to the IRS unless the evidence is “newly discovered” or previously unavailable. This is true even if the requesting spouse was subjected to domestic violence or psychological abuse that caused him or her not to present the evidence to the IRS. This limitation on introducing evidence can prevent taxpayers who otherwise qualify for innocent spouse relief from receiving it. It can fall particularly hard on unrepresented taxpayers who did not understand this requirement when they were dealing with the IRS.
- *Solution:* Revise IRC § 6015 to allow courts to consider all relevant evidence in reviewing requests for equitable relief in innocent spouse cases.

PRESENT LAW

Taxpayers who file joint federal income tax returns are jointly and severally liable for any deficiency or tax due in connection with their joint returns. IRC § 6015, sometimes referred to as the “innocent spouse” rules, provides relief from joint and several liability under certain circumstances. If “traditional” relief from a deficiency is unavailable under subsection (b) and “separation of liability” relief from a deficiency is unavailable under subsection (c), a taxpayer may qualify for “equitable” relief from deficiencies and underpayments under subsection (f). Relief under IRC § 6015(f) is appropriate when, considering all the facts and circumstances of a case, it would be inequitable to hold a joint filer liable for the unpaid tax or deficiency. If the IRS denies relief under any subsection of IRC § 6015 or a request for relief has gone unanswered for six months, the taxpayer may file a petition with the U.S. Tax Court under IRC § 6015(e).

In recent years, there has been uncertainty regarding both the scope of review and the standard of review that the Tax Court should apply in innocent spouse cases. In 2008, the Tax Court held that the scope of its review in IRC § 6015(f) cases, like its review in IRC § 6015(b) and (c) cases, is *de novo*, meaning it may consider evidence introduced at trial that was not included in the administrative record.¹ In 2009, the Tax Court held that the standard of review in IRC § 6015(f) cases, like its review in IRC § 6015(b) and (c) cases, is also *de novo*, meaning that the Tax Court will consider the case anew, without deference to the IRS’s determination.²

In 2009, the IRS Office of Chief Counsel (Chief Counsel) issued guidance to its attorneys instructing them to argue, contrary to the Tax Court’s holdings, that review in all IRC § 6015(f) cases is limited to issues and evidence presented before the IRS Appeals or Examination functions and that the proper standard of review is “abuse of discretion.”³ In 2011, the National Taxpayer Advocate recommended that Congress amend IRC § 6015 to reflect the Tax Court’s holdings and reject the IRS’s position.

1 *Porter v. Comm’r*, 130 T.C. 115 (2008).

2 *Porter v. Comm’r*, 132 T.C. 203 (2009) (a continuation of the same case that produced the 2008 holding, discussed above, that the Tax Court’s review of denials of relief under IRC § 6015(f) is not limited to the administrative record).

3 IRS Chief Counsel Notice CC-2009-021, Litigating Cases Involving Claims for Relief From Joint and Several Liability Under Section 6015(f): Scope and Standard of Review (June 30, 2009).

In June 2013, following an appellate court decision affirming the Tax Court’s holdings, Chief Counsel issued guidance instructing its attorneys to cease arguing that the scope and standard of review in IRC § 6015(f) cases are not *de novo*.⁴ In June 2013, Chief Counsel also issued an Action on Decision stating that although the IRS disagrees that IRC § 6015(e)(1) provides for both a *de novo* standard of review and a *de novo* scope of review, the IRS would no longer argue that the Tax Court should limit its scope of review in IRC § 6015(f) cases to the administrative record or its standard of review in IRC § 6015(f) claims solely for an abuse of discretion.⁵

In 2019, Congress added paragraph (7) to IRC § 6015(e). It provides that “any review of a determination made under this section is *de novo* by the Tax Court.”⁶ However, this *de novo* review is limited to consideration of “(A) the administrative record established at the time of the determination, and (B) any additional newly discovered or previously unavailable evidence.” The provision does not define the terms “newly discovered”⁷ or “previously unavailable.”

REASONS FOR CHANGE

IRC § 6015(e)(7), which limits the Tax Court’s scope of review, applies to determinations made “under this section” (*i.e.*, IRC § 6015). Thus, the provision supersedes Tax Court jurisprudence regarding the review not only in IRC § 6015(f) cases, but also in cases involving the application of IRC § 6015(b) and (c).

The provision may be intended to encourage the IRS and taxpayers to compile a complete administrative record or resolve cases without litigation.⁸ In some cases, however, taxpayers – particularly taxpayers not represented by counsel – may not understand the significance of certain evidence or the consequences of failing to present it to the IRS. In other cases, taxpayers may present relevant evidence during trial to a neutral third party – the judge – that they are reluctant to share with the IRS, such as evidence of the other joint filer’s domestic violence or abuse.⁹

It is difficult to imagine a state law that bars victims of domestic violence from introducing evidence at trial that goes beyond what they initially told police and was included in police records. The requirement that the Tax Court generally limit itself to considering evidence included in the administrative record – even where the requesting spouse suffered from domestic violence and otherwise meets the innocent spouse requirements – is similarly wrong. To enable the Tax Court to make the correct decision based on the merits of an innocent spouse claim, the National Taxpayer Advocate believes the court should be permitted to consider all evidence, whether or not it could have been provided to the IRS in a prior administrative proceeding.

4 IRS Chief Counsel Notice CC-2013-011, Litigating Cases That Involve Claims for Relief From Joint and Several Liability Under Section 6015 (June 7, 2013).

5 Action on Decision (AOD) 2012-07, I.R.B. 2013-25 (June 17, 2013), issued in response to *Wilson v. Comm’r*, 705 F.3d 980 (9th Cir. 2013), *aff’g* T.C. Memo. 2010-134. An AOD is a formal memorandum prepared by Chief Counsel that announces the litigation position the IRS will take in the future regarding the issue addressed in the AOD.

6 Taxpayer First Act, Pub. L. No. 116-25, § 1203, 133 Stat. 981 (2019). In other cases, such as where a taxpayer raises innocent spouse as a defense in a deficiency case, the Tax Court’s scope and standard of review will continue to be *de novo*. See *Eze v. Comm’r*, No. 17486-19S (T.C. Jan. 21, 2022), a non-precedential case in which the court relied on *Porter v. Comm’r*, 132 T.C. 203 (2009).

7 The Tax Court defines “newly discovered” as “recently obtained sight or knowledge of for the first time.” See *Thomas v. Comm’r*, 160 T.C. No. 4 (Feb. 13, 2023).

8 See Treasury Inspector General for Tax Administration, Ref. No. 2024-300-001, *The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers* 5-6 (2023), <https://www.tigta.gov/sites/default/files/reports/2023-10/2024300001fr.pdf> (IRS did not fully develop facts and circumstances in 22 percent of examined cases; underdeveloped factors included domestic abuse, knowledge test, compliance, economic hardship, and mental/physical health).

9 Abuse that prevented a taxpayer from challenging the treatment of an item on a joint return out of fear the other spouse might retaliate would weigh in favor of granting relief. *Stephenson v. Comm’r*, T.C. Memo. 2011-16, is an example of a case in which the Tax Court’s finding that the petitioner was physically and verbally abused by her husband was largely based on evidence produced at trial because the issue of abuse was not fully developed administratively.

Finally, some taxpayers who wish to obtain review by a federal court that is *de novo* in scope may pay the asserted tax and bring a refund suit before a U.S. district court or the U.S. Court of Federal Claims. But this approach carries the risk that these courts may conclude they lack jurisdiction to hear innocent spouse claims.¹⁰ To address these cases, and in recognition that innocent spouse claims often follow domestic violence or emotional abuse, the National Taxpayer Advocate recommends the statute be amended to allow all courts with jurisdiction over IRC § 6015 cases to consider all relevant evidence.

RECOMMENDATION

- Remove IRC § 6015(e)(7)(A) and (B) and revise IRC § 6015(e)(7) to provide: “The standard and scope of review of any petition or request for relief filed under this section in the Tax Court or other court of competent jurisdiction shall be *de novo*.”¹¹

10 The National Taxpayer Advocate recommends that Congress address this risk. See *Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy and Refund Cases, infra*.

11 This recommendation averts the possibility that the language in IRC § 6015(e)(7) that “[a]ny review of a determination under this section shall be reviewed *de novo* by the Tax Court” could be construed as conferring exclusive jurisdiction on the Tax Court to hear innocent spouse claims, which would preclude innocent spouse relief in collection, bankruptcy, and refund cases litigated in other federal courts and would be inconsistent with IRC § 6015(e)(1)(A) (conferring Tax Court jurisdiction “in addition to any other remedy provided by law”). Such an interpretation would also be inconsistent with the legislative recommendation *Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy and Refund Cases, infra*.