

Legislative Recommendation #49**Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection, Bankruptcy, and Refund Cases****SUMMARY**

- *Problem:* Some federal courts have allowed taxpayers to make requests for innocent spouse relief in collection, bankruptcy, and refund cases, while others have not. As a result, similarly situated taxpayers are treated inconsistently, and some taxpayers are left without any forum in which to seek innocent spouse relief before a court enters a financially damaging judgment.
- *Solution:* Clarify that U.S. district courts, bankruptcy courts, and the U.S. Court of Federal Claims have jurisdiction to grant innocent spouse relief in collection, bankruptcy, and refund 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 the community income on their separate returns. As an exception, 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 must 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.

The U.S. Tax Court has jurisdiction to determine the appropriate relief if a taxpayer files a petition: (1) within 90 days from the date the IRS issues its final notice of determination, or (2) if the IRS fails to issue a notice of determination, no earlier than six months after the request for innocent spouse relief.¹ Under IRC § 6015(e)(1)(A), the Tax Court’s jurisdiction to decide innocent spouse claims does not appear to be exclusive.² IRC § 6015(e)(1)(A) provides that an individual may petition the Tax Court for review of an innocent spouse determination “[i]n addition to any other remedy provided by law.”

The Tax Court is the only prepayment judicial forum in which a taxpayer may obtain review of an adverse IRS determination. However, there is no right to a jury trial in Tax Court. Moreover, while the standard of review of a denial of a claim for innocent spouse relief under IRC § 6015 is *de novo*, the scope of the Tax Court’s review is limited to “(A) the administrative record established at the time of the determination, and (B) any additional newly discovered or previously unavailable evidence.”³

The Tax Court does not have jurisdiction over collection suits arising under IRC §§ 7402 or 7403, over bankruptcy proceedings arising under Title 11 of the United States Code, or over refund suits arising under IRC § 7422. Some federal courts with jurisdiction in these cases have considered taxpayers’ innocent spouse claims, which is consistent with IRC § 6015(e)(1)(A).⁴

1 The Tax Court may also have jurisdiction where the taxpayer requests innocent spouse relief as an affirmative defense. See e.g., *Van Arsdalen v. Comm’r*, 123 T.C. 135 (2004) (deficiency proceeding); *Estate of Wenner v. Comm’r*, 116 T.C. 284 (2001) (interest abatement proceeding).

2 Under IRC § 6015(e)(3), the Tax Court loses jurisdiction in refund cases. See *Coggin v. Comm’r*, 157 T.C. 12 (Dec. 8, 2021).

3 IRC § 6015(e)(7). This provision was enacted as part of the Taxpayer First Act, Pub. L. No. 116-25, § 1203, 133 Stat. 981, 988 (2019). The National Taxpayer Advocate recommends revising IRC § 6015(e)(7) to remove this limitation on the Tax Court’s scope of review. See *Provide That the Scope of Judicial Review of “Innocent Spouse” Determinations Under IRC § 6015 Is De Novo*, *supra*.

4 See, e.g., *United States v. Diehl*, 460 F. Supp. 1282 (S.D. Tex. 1976), *aff’d per curiam*, 586 F.2d 1080 (5th Cir. 1978) (IRC § 7402 suit to reduce an assessment to judgment); *In re Pendergraft*, 119 A.F.T.R.2d (RIA) 1229 (Bankr. S.D. Tex. 2017) (bankruptcy proceeding); *In re Bowman*, 129 A.F.T.R.2d (RIA) 909 (Bankr. E.D. La. 2022) (bankruptcy proceeding); and *Hockin v. United States*, 400 F. Supp. 3d 1085, 1092 n.2 (D. Or. 2019) (refund suit).

However, other federal courts have held that the Tax Court’s jurisdiction to decide innocent spouse claims is exclusive and have declined to consider such claims in collection, bankruptcy, and refund cases.⁵

REASONS FOR CHANGE

Inconsistent decisions about whether taxpayers may seek innocent spouse relief in collection, bankruptcy, and refund cases have created confusion and resulted in inconsistent treatment of similarly situated taxpayers. In addition, treating the Tax Court as having exclusive jurisdiction over innocent spouse claims may deprive some taxpayers of their day in court. If the federal courts that decide collection, bankruptcy, and refund cases cannot consider innocent spouse claims, taxpayers in those cases may be left without any forum in which to seek innocent spouse relief before a court enters a financially damaging judgment or, in rare cases, a taxpayer loses his or her home to foreclosure. At the same time, taxpayers forced to raise their innocent spouse claims in Tax Court will be deprived of a *de novo* scope of review that would be available in other federal courts.

Legislation is needed to clarify that the statutory language of IRC § 6015, which confers 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 U.S. district courts, bankruptcy courts, and the U.S. Court of Federal Claims may also consider whether innocent spouse relief should be granted.⁶

RECOMMENDATION

- Amend IRC §§ 6015 and 66 to clarify that taxpayers are entitled to raise innocent spouse relief as a defense in proceedings brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, 7403, and 7422) and in cases arising under Title 11 of the United States Code.

5 *United States v. Boynton*, 99 A.F.T.R.2d (RIA) 920 (S.D. Cal. 2007) (IRC § 7402 suit to reduce an assessment to judgment); *United States v. Cawog*, 97 A.F.T.R.2d (RIA) 3069 (W.D. Pa. 2006) (IRC § 7403 suit to foreclose on federal tax liens); *In re Mikels*, 524 B.R. 805 (Bankr. S.D. Ind. 2015) (bankruptcy proceeding); *Chandler v. United States*, 338 F. Supp. 3d 592 (N.D. Tex. 2018) (refund suit); and *Geary v. United States*, 650 B.R. 486 (Bankr. W.D. Pa. 2023) (bankruptcy proceeding).

6 As noted above, IRC § 6015(e)(7) provides that “[a]ny review of a determination under this section shall be reviewed *de novo* by the Tax Court and shall be based upon – (A) the administrative record established at the time of the determination, and (B) any additional newly discovered or previously unavailable evidence.” The National Taxpayer Advocate agrees that the standard and scope of Tax Court review of innocent spouse cases should be *de novo*. However, the new provision could be construed as conferring exclusive jurisdiction on the Tax Court to hear innocent spouse claims, which would be inconsistent with IRC § 6015(e)(1)(A). For this reason, the National Taxpayer Advocate recommends clarifying that the scope and standard of review are *de novo* in innocent spouse cases adjudicated by the Tax Court “or other court of competent jurisdiction,” thereby avoiding the inference that the Tax Court has exclusive jurisdiction over innocent spouse claims. See *Provide That the Scope of Judicial Review of “Innocent Spouse” Determinations Under IRC § 6015 Is De Novo*, *supra*.