2011

IRS Nationwide TaxFORUM

Advocating for Your Client in Innocent Spouse Cases

Joint & Several Liability

IRC 6013(a): Married taxpayers may file joint returns

Each spouse **individually** responsible for

- Accuracy and completeness of the return
- Payment of the tax

Community Property

Poe v. Seaborn: Each spouse taxed on half of community income

IRS may collect either spouse's tax debt from community assets

IRC § 6015: Types of Relief

§ 6015(b): understatement relief

§ 6015(c): understatement relief

- no longer married
- legally separated
- not living together

§ 6015(f): understatement **or** underpayment relief

IRC § 66(c) Relief

- Relief from operation of community property laws
- Similar to § 6015, but important differences
- Publication 971

6015(b) “Traditional Relief”

- Erroneous item(s) of non-requesting spouse (NRS)
- Requesting Spouse (RS) did not know and had no reason to know of the understatement when return was signed
- Inequitable to hold the RS liable
- Timely request - 2 year rule
- Refund available

6015(c)

- Erroneous item(s) of NRS
- Divorced, widowed, legally separated, or living apart from NRS for the past 12 months
- Timely request – 2 year rule
- No refunds

6015(f) "Equitable Relief"

Inequitable to hold the RS liable for unpaid tax **or** deficiency

Relief not available under 6015(b) or (c)

Rev. Proc. 2003-61

6015(f) “Equitable Relief” (continued)

Timely Request - 2-year rule in Treas. Reg.

Refund available

How to Request Relief

Form 8857, filed in Covington, KY

Publication 971, Innocent Spouse Relief

2011 TaxFORUM IRS Nationwide

Form 8857

Form **8857**
(Rev. September 2010)
Department of the Treasury
Internal Revenue Service (99)

Request for Innocent Spouse Relief

► See separate instructions.

OMB No. 1545-1596

Important things you should know

- **Do not file this form with your tax return.** See *Where To File* in the instructions.
- Answer all the questions on this form that apply, attach any necessary documentation, and sign on page 4. Do not delay filing this form because of missing documentation. See instructions.
- By law, the IRS must contact the person who was your spouse for the years you want relief. There are no exceptions, even for victims of spousal abuse or domestic violence. Your personal information (such as your current name, address, and employer) will be protected. However, if you petition the Tax Court, your personal information may be released, unless you ask the Tax Court to withhold it. See instructions for details.
- If you need help, see *How To Get Help* in the instructions.

Part I **Should you file this form?** You **must** complete this part for each tax year.

		Tax Year 1		Tax Year 2		Tax Year 3*	
1	**Enter each tax year you want relief.** It is important to enter the correct year. For example, if the IRS used your 2009 income tax refund to pay a 2007 tax amount you jointly owed, enter tax year 2007, not tax year 2009 ► **Caution.** The IRS generally cannot collect the amount you owe until your request for each year is resolved. However, the time the IRS has to collect is extended. See *Collection Statute of Limitations* on page 3 of the instructions.						
2	**Check the box for each year you would like a refund if you qualify for relief.** You may be required to provide proof of payment. See instructions ►	☐		☐		☐	
		Yes	No	Yes	No	Yes	No
3	**Did the IRS use your share of the joint refund to pay any of the following past-due debts of your spouse: federal tax, state income tax, child support, spousal support, or federal non-tax debt such as a student loan?** • If "Yes," **stop here;** do not file this form for that tax year. Instead, file Form 8379, Injured Spouse Allocation. See instructions. • If "No," go to line 4 ►	☐	☐	☐	☐	☐	☐
4	**Was a return claiming married filing jointly status filed for the tax year listed on line 1? See instructions.** • If "Yes," skip line 5 and go to line 6. • If "No," go to line 5 ►	☐	☐	☐	☐	☐	☐
5	**If a joint return for that tax year was not filed, were you a resident of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin?** • If "Yes," see *Community Property Laws* on page 2 of the instructions. • If "No" on both lines 4 and 5, **stop here.** Do not file this form for that tax year ►	☐	☐	☐	☐	☐	☐

*If you want relief for more than 3 years, fill out an additional form.

Part II **Tell us about yourself**

6	Your current name (see instructions)	**Your social security number**
	Your current mailing address (number and street).	Apt. no. **County**
	City, town or post office, state, and ZIP code. If a foreign address, see instructions.	Best daytime phone number

Part III **Tell us about you and your spouse for the tax years you want relief**

6015(f) Threshold Reqs. (summary)

- Liability attributable to NRS
- Relief not available under 6015(b) or (c)
- No fraudulent transfers, transfers of disqualified assets, or fraudulent returns
- Timely request

6015(f) Two-Year Rule

Treas. Reg.§ 1.6015-5(b)(1)

- Two years to request 6015(f) relief

Lantz, Mannella, and Jones cases

- Tax Court held regulation invalid
- reversed by 7th, 3rd, and 4th Circuits

Appeals pending in various Circuits

6015(f) Claims Filed After 2 Years

- Suspend claim; or
- Receive determination letter denying relief

6015(f) Relief

- No longer married, legally separated, or different households prior 12 months
- No knowledge or reason to know, when signing the return, that NRS would not pay
- Economic hardship if relief not granted

6015(f) Equitable Factors

Marital Status

Economic Hardship

Knowledge or Reason to Know

NRS’s Legal Obligation to Pay

6015(f) Equitable Factors, cont'd

Significant Benefit

Compliance with Income Tax Laws

Abuse

Mental or Physical Health

Stephenson v. Comm’r

6015(f) relief denied as untimely

In Tax Court, IRS argued it would not be inequitable to hold RS liable

Stephenson Abuse Arguments

IRS: no abuse because no documentation; RS had duty to inquire of NRS whether the taxes had been paid

Tax Court: RS was abused throughout the marriage - inquiry would have exposed her to risk of more abuse

Unrecognized Abuse

Victim behaviors that may perplex:

- failing to tell anyone about the abuse
- failing to file (or subsequently withdrawing) charges against the abuser
- continuing to live with the abuser

What Happens Next

RS notified by IRS within 30-45 days of receipt of Form 8857

NRS is notified by IRS

Collection and period of limitations on collection suspended

Processing Times

Normally 3 to 6 months for allowed claims

Partially allowed claims or denied claims take up to a year.

Reconsiderations

RS submits new information

IRS failed to address information previously sent

Statute of limitation (collection or refund) still open

Tax Court – 90 Days to File

De novo standard of review – Tax Court considers the facts of the case anew

De novo scope of review- not limited to administrative record

Assisting Your Client

If client is RS

– Verify appropriateness of filing

– Verify that claim can be processed

If client is NRS

– Can participate in admin proceedings

– Can intervene in Tax Court case

Assisting Abused Spouses - TAS Tips

E-file single or head of household

Change abused spouse's SSN

Police report of stolen identity

IRS ID Theft Line

Informant report with the IRS

How TAS Can Help

Determine the status of claim and whether timeframes are being met

Ask IRS to reconsider a denial or to review at a higher level

Contact IRS

Asking tax questions. Call the IRS with tax questions at 1-800-829-1040.

TeleTax topics. Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.

Visit IRS website at IRS.gov.

Contact TAS

Visit www.IRS.gov/advocate

Call 1.877.777.4778

Jill MacNabb, Attorney Advisor
Jill.MacNabb@irs.gov