



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Deborah A. Butler  
Assistant Chief Counsel CC:DOM:FS

SUBJECT: Method To Resolve Action In Tax Court Seeking I.R.C. §  
6015 Relief.

This Field Service Advice responds to your memorandum dated June 8, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

Electing Spouse:  
Taxpayer  
Year 1:  
Partnership  
a  
b  
Date 1  
c  
Date 2  
d  
Date 3  
Date 4  
Year 2  
Year 3  
Year 4  
Year 5

Year 6  
Date 5  
Date 6

ISSUES:

1. Whether Electing Spouse is entitled to innocent spouse relief under I.R.C. § 6015 when no liability for tax remained unpaid on July 22, 1998, the date of enactment of section 3201 of the I.R.S. Restructuring and Reform Act of 1998.

2. What language should a stipulated decision contain to reflect that the petitioner is not relieved from joint and several liability on the joint return filed for the taxable year in suit?

CONCLUSION:

1. Section 6015 does not apply to a liability which was fully paid on the date of the enactment of the Act.

2. While the CCD Manual contains no sample decision document for Actions for Determination of Relief From Joint And Several Liability on a Joint Return, we suggest that the decision document contain a statement to the effect that Electing Spouse is not entitled to relief from joint and several liability pursuant to section 6015.

FACTS:

Electing Spouse filed a joint return for Year 1 with her then-spouse, Taxpayer, reflecting a tax liability of \$a. Thereafter, the Commissioner assessed an additional tax liability of \$b on Date 1, and abated \$c on Date 2, refunding the principal and interest thereon. The last payment made on that account was \$ , made on Date 3. Since the Date 2 refund, there has been a zero balance. Nothing on the masterfile account for that tax year reflects any extension of the period of limitations on credit or refund under section 6511, or of the limitations period on assessment and collection, under section 6501. Apart from the Form 8857 filed with respect to this litigation, no other claim for refund has been filed with respect to Year 1.

Electing Spouse separated from Taxpayer in Year 5 and the divorce became final in Year 6. On Date 4, Electing Spouse filed Form 8857, "Request for Innocent

Spouse Relief," seeking innocent spouse relief for Year 1.<sup>1</sup> In the claim, Electing Spouse identified the erroneous item on the Year 1 return as a deduction attributable to an investment in Partnership. According to the claim, Taxpayer purchased the partnership interest without consulting Electing Spouse and Taxpayer is listed as the sole owner of the interest in Partnership.

For the tax periods ending Year 2, Year 3, and Year 4, Partnership is subject to the unified audit procedures set forth at I.R.C. § 6221-6229. These tax years were the subject of a docketed Tax Court case. The parties ultimately agreed to settle those years by making two adjustments to Partnership's return. Although the Commissioner has made assessments with respect to at least one of the later years, you have indicated that there have been no adjustments made with respect to the Year 1 partnership tax year and that none are under consideration.

On Date 5, the Commissioner sent a notice of claim disallowance concerning the election seeking innocent spouse relief to Electing Spouse, citing the following reason below:

Internal Revenue Code Section 6511(a) provides for a refund of an overpayment if a claim is filed within three years from the time the return was filed or two years from the date the tax was paid, whichever is later. Your request for Relief from Joint and Several Liability was not filed within the required time.

On Date 6, Electing Spouse filed a petition with the Tax Court for determination of the appropriate relief available to Electing Spouse under section 6015 for Year 1. Hence, the petition was timely filed within 90 days of the mailing of the notice of determination, as required by section 6015(e)(1)(A).

### LAW AND ANALYSIS

In 1998, Section 3201(e)(1) of the I.R.S. Restructuring and Reform Act of 1998, Pub. L., ("the Act"), amended the Code to liberalize the innocent spouse relief available to taxpayers. Under Section 6015, the Tax Court has been given jurisdiction to review denials of innocent spouse relief. Pursuant to section 6015(e)(1)(A), the Tax Court shall have jurisdiction to determine "the appropriate relief available" under this Code section when a petition is filed during the 90-day

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<sup>1</sup> Simultaneously with the filing of this request for innocent spouse relief, Electing Spouse filed identical requests for the tax year prior to Year 1 as well as for Year 2 and Year 3. To our knowledge, the Service has not yet issued its determination concerning these claims, nor has Electing Spouse filed petitions seeking Tax Court review.

period beginning on the date on which notice of determination is mailed to an individual making an election.

Section 3201(e)(1) of the Act applies “to any liability for tax arising after the date of the enactment of this Act and any liability for tax arising on or before such date but remaining unpaid as of such date.” According to the transcript of account, on the date of enactment, July 22, 1998, there was no liability for tax remaining unpaid with respect to the Year 1 tax liability of Taxpayer and Electing Spouse. Hence, section 6015 does not apply to Electing Spouse for Year 1. See also New Title XXXI of the Rules of Practice and Procedure of the United States Tax Court. Moreover since the section 6511 period of limitation has apparently expired with respect to the Year 1 tax return, Electing Spouse has no justiciable refund claim for section 6013 relief.

Counsel for Electing Spouse does not dispute the fact that there is no unpaid tax for Year 1. The Form 8857 for Year 1 was filed protectively along with the elections for relief for other years. The parties are now ready to file a stipulated decision indicating no innocent spouse relief is available to Electing Spouse. While the CCD Manual contains no sample decision document for Actions for Determination of Relief From Joint And Several Liability on a Joint Return, we suggest that the decision document contain a statement to the effect that Electing Spouse is not entitled to relief from joint and several liability pursuant to section 6015.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



