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MEMORANDUM FOR M. K. MORTENSEN
ASSOCIATE DISTRICT COUNSEL, SALT LAKE CITY
CC:WR:RMD:SLC
Attn: Mark H. Howard

FROM: George J. Blaine
Chief CC:DOM:IT&A:1

SUBJECT: Request for Significant Service Center Advice on Allocation
of Joint Estimated Tax Payments

This is in response to your request for significant service center advice dated October 15, 1999, regarding the proper allocation of joint estimated tax payments by spouses who subsequently file separate returns. The Ogden Service Center questions whether the current Internal Revenue Manual procedures satisfactorily resolve all the allocation issues.

As your memorandum points out, former section 6015(c) of the Internal Revenue Code (the Code) permitted the division of estimated tax payments by spouses who had filed a joint estimated tax declaration but then chose not to file joint returns. Section 1.6015(b)-1(b) of the Income Tax Regulations was promulgated setting forth rules for dividing the joint estimated tax payments. Pursuant to that regulation, joint estimated tax payments may be treated as payments on account of the tax liability of either the husband or wife for the taxable year, or may be divided between them in such manner as they agree. Thus, if the spouses agree to an allocation of the payments, as evidenced by their claiming the payments on their respective separate tax returns, the Service will accept the allocation.

The regulation provides that if the spouses do not agree to the allocation of the payments, the Service will allocate the payments in proportion to their separate tax. A formula is provided for computing the allocation in that case.

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As you state in your memorandum, section 6015 of the Code was repealed in 1984 (current section 6015 is the innocent spouse provision). However, the Service has continued to use the allocation rules set forth in section 1.6015(b)-1(b). Those rules set forth a rational means of dividing the joint estimated tax payments.

In United States v. Bell, 818 F. Supp. 444, 447, n.6 (D. Mass. 1993), the Service argued that § 1.6015(b)-1(b) of the regulations still governed the proper division of estimated tax payments filed jointly but claimed separately. The district court stated that insofar as the regulation represents a facially rational method for dealing with the problem of jointly made but separately claimed estimated tax payments, the IRS is entitled to employ that regulation to determine the proper method of allocating credits against such payments.

In addition, although the regulations under section 6654 of the Code do not contain rules for allocating joint estimated tax payments where the taxpayers file separate returns, they refer to the section 6015 allocation rules. Section 1.6654-2(e)(1) of the Regulations states “For rules with respect to the allocation of joint payments of estimated tax, see section 6015(b) and § 1.6015(b)-1(b).”¹

The current Internal Revenue Manual provision, IRM 21.6.3.4.2.3.3 (formerly IRM 21.6.2.3.3.3) uses the same basic rules, allowing the spouses to agree on an allocation and defaulting to the §1.6015(b)-1(b) allocation formula in the absence of such agreement. As your memo points out, the IRM provision asks the taxpayer to submit the computation under the formula in the event they cannot agree on an allocation. However, the manual does not explain what to do in the event both spouses disagree or claim all the estimated tax payments on their separate returns.

Likewise, Publication 505, Tax Withholding and Estimated Tax (Rev. November 1998), expects the spouses to agree on an allocation. On page 34 of the publication, under the heading Separate Returns, the publication reads:

If you and your spouse made separate estimated tax payments for 1998 and you file separate returns, you can take credit only for your own payments.

¹Section 1.6654-2(e)(1) of the Regulations provides for a similar allocation formula to determine the preceding year’s tax (for purposes of the § 6654(d)(1)(B)(ii) safe harbor) in the case of married taxpayers who are filing separate returns but filed jointly last year. See also § 20.2053-6(f) of the Estate Tax Regulations, which sets forth a similar allocation formula to determine spouses’ separate tax, and refers to § 1.6015(b)-1(b) of the Regulations to compute the decedent-spouse’s contribution to joint tax, in order to determine the decedent’s share of a refund.

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If you made joint estimated tax payments, you must decide how to divide the payments between your returns. One of you can claim all of the estimated tax paid and the other none, or you can divide it in any other way you agree on. If you cannot agree, you must divide the payments in proportion to each spouses's individual tax as shown on your separate returns for 1998.

The instructions for Form 1040, page 37, under 1999 Estimated Tax Payments, state the following:

If you and your spouse paid joint estimated tax but are now filing separate income tax returns, either of you can claim all of the amount paid. Or you can each claim part of it. See **Pub. 505** for details on how to report your payments.

Although the IRM provision and Publication 505 do not state that the Service will determine the allocation of joint estimated tax payments if the taxpayer-spouses disagree on the allocation, the Service does have the authority to do so pursuant to the § 6015 regulation. Therefore, if the spouses' separate returns each claim 100 percent of the joint payments, or if the two returns together claim more than 100 percent, the Service should treat this as unagreed and divide the payments pursuant to the formula in the regulation.

Note that in either instance, agreement of the spouses or allocation per formula, the source of the joint estimated tax payment is not relevant under § 1.6015(b)-1(b) of the regulations. As your memorandum points out, this may effectively ignore local law. One spouse may have to resort to suing the other in state court.

As noted above, the regulations under section 6654 of the Code refer to §1.6015(b)-1(b) of the Regulations for guidance in the case of spouses filing separate returns who have made joint estimated tax payments. As you suggest, it would be beneficial if the section 6654 regulations provided the rules for allocating such payments. There is no current controlled project to amend the section 6654 regulations; however, we will consider proposing such a project for the next Business Plan. Until we issue further guidance, the Service should continue current administrative practice, based on the section 6015 regulations.

If you have further questions, please call Nancy Rose at (202) 622-4910.