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DEPARTMENT OF THE TREASURY
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MEMORANDUM FOR JACK HOLSTEIN

Innocent Spouse Program Manager
OP:EX:IS
Attn: Jan Boatright

FROM: Lewis J. Fernandez
Deputy Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

SUBJECT: Abatements under § 6015

This is in response to your request for advice, which was received via an e-mail dated March 9, 2000, regarding the abatement of a liability when relief from joint and several liability is granted under § 6015.

ISSUE:

Should a joint liability be abated when one spouse is relieved of the liability under § 6015, and the other spouse has been discharged in bankruptcy, is deceased and has no estate, or has entered into an offer in compromise?

CONCLUSION:

The treatment of a joint liability with respect to one spouse does not affect the treatment of the joint liability with respect to the other spouse. If one spouse receives relief from joint and several liability under § 6015, then the liability is abated with respect to that spouse when the joint liability is moved from the joint master file (MF) account to the individual nonmaster file (NMF) account of the nonrequesting spouse. If the liability has already been abated with respect to the nonrequesting spouse, then the liability is completely abated when the requesting spouse receives relief. However, the determination of whether a nonrequesting spouse's liability should be abated will not change based on whether the requesting spouse receives relief from joint and several liability.

LAW AND ANALYSIS:

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First we will discuss the issue of abatement of the liability when a spouse is discharged in bankruptcy, is deceased and has no estate, or has entered into an offer in compromise, and then we will discuss the issue of abatement of liability when a requesting spouse receives relief under § 6015.

Abatement in Bankruptcy, Decedents' Estates, and Offers in Compromise:

Section 6404 addresses the subject of abatement of a tax liability. Section 6404(a) provides that the Secretary is authorized to abate the unpaid portion of the assessment of any tax or liability associated with the tax which is either excessive in amount, assessed after the expiration of the applicable period of limitations, or erroneously or illegally assessed. In addition, § 6404(c) provides that the Secretary is authorized to abate the unpaid portion of the assessment of any tax if the Secretary determines, under uniform rules prescribed by the Secretary, that the administration and collection costs involved would not warrant collection of the amount due.

The procedures regarding abatement of tax assessments with respect to bankruptcy discharges, decedent's estates, and offers in compromise are different. With respect to bankruptcy, the Service has specific manual procedures for adjusting tax liabilities that have been discharged in bankruptcy. It is important to understand that when a debtor receives a discharge of tax debts in bankruptcy, such discharge only precludes the Service from collecting the tax as a personal liability of the debtor. See B.C. § 727(b). The discharge does not preclude the Service from collecting the tax from specific assets, either assets which are property of the estate available for distribution to creditors, or exempt or abandoned property to which a federal tax lien attaches. See B.C. § 522(c)(2)(B). Thus, the manual directs that, before adjusting any discharged liabilities, the Service must ensure that there are no assets against which the Service can collect. The factors to be considered by the Service before making adjustments to liabilities as a result of a bankruptcy discharge are discussed in IRM 5.9.12.1 through 5.9.12.8. These manual provisions permit the Service to make appropriate adjustments to a taxpayer's account if the tax liability has been discharged as a result of the bankruptcy case, and a determination has been made that there is no collection potential. Any such adjustment arguably constitutes an abatement of the tax assessment pursuant to the authority of § 6404(c).

In contrast, the procedures for decedent's estates do not appear to provide for abating the tax assessment. If the Service determines that a tax liability is not collectible because there are no assets in the decedent's estate from which to collect, a closing code is input into the account, which reports the tax assessment as currently not collectible. This has the effect of removing the assessment from the active collection inventory. IRM 105.1.8.1(2); 105.2.5.

With respect to offers in compromise, when the offer is fully paid, including paying any deferred installment payments and completing the terms of any collateral agreements, the tax liabilities are adjusted to zero, and the offer file is closed. IRM 21.9.7.4.2.8.24. However the Form 656 offer requires the taxpayer to file returns and pay taxes for five years after acceptance of the offer or until the offered amount is paid in full, whichever is longer. Form 656 (revised 1/2000), Item 8(d). Breach of this future tax compliance provision permits the Service to reinstate the original tax liability. Item 8(o). See IRM 21.9.7.4.2.9; 21.9.7.4.2.9.2. Due to the possible reinstatement of the original tax liability, the initial adjustment after full payment of the offer is not considered an actual abatement of the tax assessment.

Abatement in § 6015 Relief from Joint and Several Liability Cases:

When a requesting spouse is granted relief from joint and several liability under § 6015, the requesting spouse is no longer liable for the joint tax liability. To reflect this determination, the Service moves the portion of the assessment from which the requesting spouse was relieved to the nonrequesting spouse's nonmaster file (NMF) account. The amount of any assessment for which the spouses remain jointly and severally liable remains on the joint master file (MF) account. The joint MF account reflects a reduced liability in accordance with the § 6015 determination. For example, if the Service determines that the requesting spouse should be relieved of all of the joint liability, then the joint MF account would reflect \$0 liability, and the entire liability would be moved to the nonrequesting spouse's NMF account.

Consequently, to the extent that the requesting spouse has been relieved of joint and several liability, an assessment against the requesting spouse in excess of the redetermined amount is excessive for purposes of § 6404(a). As such, the Service has the authority to abate this excessive liability with respect to the requesting spouse, i.e., the portion of the liability that the requesting spouse no longer owes.

Abatement When Both Spouses Are Relieved of Liability:

The treatment of the assessment with regard to one spouse is not affected by the treatment of the assessment with regard to the other spouse. The normal collection procedures for accounts where a nonrequesting spouse was discharged in bankruptcy, or where the nonrequesting spouse's account is in currently not collectible or other inactive status, do not change because the requesting spouse's liability was abated under § 6015.

For example, if the nonrequesting spouse's liability was abated due to a bankruptcy discharge, or a completed offer in compromise, and the requesting spouse's entire liability was abated due to a determination of full relief under § 6015, then the entire joint liability would be abated. However, if the requesting spouse's entire liability is abated due to a determination of full relief under § 6015, and the nonrequesting

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spouse is deceased and the estate has no assets, then the liability remains on the nonrequesting spouse's NMF account in currently not collectible status.

If you have any additional questions regarding the § 6015 aspects of this memorandum, please contact Bridget Finkenaur at 622-7606. If you have any additional questions regarding the collection aspects of this memorandum, please contact Mitch Hyman at 622-3620.

By:

JUDITH M. WALL
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