



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

OFFICE OF  
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR ROBERT D. HEITMEYER  
ASSOCIATE AREA COUNSEL (SBSE), AREA 4, DETROIT,  
MICHIGAN CC:NER:MIC

FROM: Assistant Chief Counsel (Administrative Provisions and  
Judicial Practice) CC:PA:APJP

SUBJECT: Deceased Taxpayers and Elections Under I.R.C. § 6015(b)  
and (c).

This Chief Counsel Advice responds to your undated memorandum sent to us as an attachment to an e-mail dated October 17, 2000. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

W =  
H =  
W's executor =  
X =  
Y =

ISSUE

May an executor of a deceased spouse's estate elect the application of I.R.C. § 6015 (b) and (c) (pertaining to relief from joint and several liability) on behalf of a deceased individual?

CONCLUSION

An executor has authority under § 6903 to make an election pursuant to § 6015(b) and (c) on behalf of a deceased spouse. Therefore, W's executor may elect relief from joint liability under these sections on behalf of W's estate.

FACTS

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W and H were married and filed joint returns for 1982 through 1985. During 1982 through 1985, W and H claimed deductions on the joint returns relating to H's partnership interest. H died on February 6, 1986 and W died thereafter on November 10, 1997. When W died, she left an estate valued at approximately X. In February 2000, the Service made TEFRA adjustments to W and H's joint returns for 1982 through 1985. The adjustments total approximately Y. On May 24, 2000, W's executor filed Form 8857, "Request for Innocent Spouse Relief," electing relief under §§ 6015(b) and 6015(c). W's executor signed the Form 8857 on W's behalf. The claim alleges that W was unaware of H's partnership interests. The claim also indicates that H invested in the partnerships pursuant to a financial planner's advice.

### LAW AND ANALYSIS

Section 6013(a) (with exceptions not applicable here) allows a husband and wife to elect to file a joint individual income tax return. If a joint return is made, then the liability with respect to the tax shall be joint and several. See I.R.C. § 6013(d)(3). Section 6013 also specifically provides rules for the availability of the joint election in the case of death of one spouse or both spouses. See I.R.C. § 6013(a)(3), (c), (d)(1)(B), and (f)(4).

The Restructuring Act revised and expanded the relief available to joint filers by striking subsection (e) from § 6013 and by promulgating in its place a new section 6015. See RESTRUCTURING ACT SEC. 3201(a), (e)(1), 112 STAT. 734, 740. Section 6015 was intended to provide better protection for the innocent spouse than was afforded by its predecessor. See S. REP. NO. 105-174, at 55 (1998). Both § 6015(b) and (c) offer relief to certain joint filers from liability that arises as a result of a deficiency. The individual seeking relief under § 6015(b) or 6015(c) must affirmatively elect relief under those sections. See I.R.C. § 6015(b)(1)(E) and (c)(1).

Section 6903 provides that upon notice to the Secretary any person acting for another person in a fiduciary capacity shall assume the powers, rights, duties, and privileges of such other person with respect to tax imposed by this title.

The term "fiduciary" is defined in §7701(a)(6) as a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

The terms "executor" and "administrator" will be used throughout this Chief Counsel Advice to represent the types of fiduciaries making decisions on behalf of an estate. In general, an executor and an administrator perform the same duties and have the same responsibilities. An executor (or executrix) is an individual named in a decedent's will to administer the estate and distribute properties as the decedent has directed. The primary duties of an executor are to collect all the decedent's

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assets, pay the creditors, and distribute the remaining assets to the heirs or other beneficiaries. The executor must also file any income tax return and the estate tax return when due. An administrator (or administratrix) is usually appointed by the court if no will exists, if no executor was named in the will, or if the named executor cannot or will not serve.

There are a myriad of election options available to executors and administrators. These options relate to every aspect of decedent's income and gift taxes, estate tax, and income taxes of the estate and its beneficiaries. Some elections are granted by statute, others are steps the executor or beneficiary may take at an appropriate time and manner in order to obtain desired results on behalf of the estate.

Elections by the executor or administrator on behalf of an estate include, but are not limited to, the following:

- Filing a Joint Return with the Surviving Spouse - I.R.C. §6013(a)(2)
- Request for Prompt Assessment and Discharge from Personal Liability - I.R.C. § 6501(d)
- Splitting Gifts with the Surviving Spouse - Treas. Reg. § 25.2513-2(c)
- Election to Treat Revocable Trust as Part of Estate - I.R.C. § 645
- Election of Alternative Valuation Date Election - I.R.C. § 2032
- Qualified Terminal Interest Property (QTIP) Estate Tax Election - § 2056(b)(7).
- Election to Choose Income Tax or Estate Tax Deduction for Administration Expenses or Losses - Treas. Reg. § 1.642(g)-1
- Election to Extend the Time for Payment of Estate Tax - I.R.C. § 6166
- Postponing Estate Tax attributable to Reversionary or Remainder Interests - I.R.C. § 6163(a)
- Selecting a Fiscal Year - I.R.C. § 443(a)
- Election to Recognize Gain or Loss of Distributions of Property in Kind - I.R.C. § 643(e)
- Election of S-corporation Status - I.R.C. § 1362

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Section 6015 does not expressly provide for the executor or the administrator of a decedent who filed a joint return to elect relief on behalf of the decedent. Nevertheless, the broad grant of authority granted to fiduciaries by § 6903, and the general remedial intent of the Code enables the executor or administrator to make various elections on behalf of an estate. Therefore, W's executor may seek relief under § 6015(b) or 6015(c) on behalf of the deceased spouse. The Service would then apply the normal criteria to determine whether the estate was entitled to relief.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any further questions about this matter, please contact Lisa R. Neuder at (202) 622-4940