



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

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MEMORANDUM FOR District Counsel,

FROM: DEBORAH A. BUTLER
Assistant Chief Counsel (Field Service)
CC:DOM:FS

SUBJECT:

This Field Service Advice responds to your memorandum. 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:

Taxpayer 1 =

Taxpayer 2 =

ISSUE:

Whether a claim for equitable relief under section 6015(f) is reviewable.

CONCLUSION:

Judicial review of an innocent spouse claim is limited to elections under subsection (b) and (c); the Secretary's refusal to exercise his discretion and grant equitable relief under section 6015(f) is not subject to judicial review.

FACTS:

In two related cases, the taxpayers are seeking innocent spouse relief. Claimants' spouses were business associates. At issue in both cases is whether each of the claimants' spouses skimmed receipts from their retail stores which they did not report as income on their respective joint income tax returns.

Based upon a determination that each failed to report significant amounts skimmed from their business during each of the years at issue, joint notices of deficiency were issued to each couple. Each respective notice also determined that the civil fraud penalty was due from the retailer and that the negligence penalty was due from the claimant. Neither taxpayer claimed to be an innocent spouse during consideration of the case by the Examination Division nor was any evidence relevant to the innocent spouse claim presented during that period.

In the case of Taxpayer 1, the couple filed joint Tax Court petitions from each of the notices issued to them. In those petitions, which were filed prior to the enactment of the Restructuring and Reform Act of 1998, the claimant sought relief from all deficiencies and additions thereto as an innocent spouse under I.R.C. § 6013(e). Based upon the evidence then available, the respondent, in his Answer, denied that the claimant was an innocent spouse under section 6013(e).

Taxpayer 2 is now divorced. Taxpayer 2's former spouse filed a Chapter 7 bankruptcy petition, but did not file a timely petition with the Tax Court following his Chapter 7 discharge (based upon such default the Service is in the process of assessing the deficiencies and civil fraud penalties). Taxpayer 2 filed a petition with the Tax Court from each of the notices of deficiency, contesting the proposed assessment of all tax and penalties on the basis that of the innocent spouse provisions under I.R.C. § 6013(e). Based upon the information available at the time, the respondent, in his Answer, denied that Taxpayer 2 is an innocent spouse under section 6013(e).

The same attorney represents all three taxpayers in each of the cases.

Following joinder of the issue, the cases were referred to Appeals with a memorandum indicating that the cases were closely related. The cases were assigned to two separate appeals officers. After consideration, Appeals conceded that Taxpayer 2 met the requirements for relief under section 6013(e) (and thus would qualify under new section 6015(b)) for each of the four years at issue; Taxpayer 2's cases are now closed with no deficiency or addition to tax due. Since Appeals granted innocent spouse relief, the substantive issues regarding the determination of the deficiency due were not addressed in those cases. Appeals did not agree that Taxpayer 1 was entitled to innocent spouse relief and returned that case to District Counsel for trial preparation.

Shortly after receiving the case from Appeals, respondent's counsel met with taxpayers' counsel. During that meeting, taxpayers' counsel opined that Taxpayer 1 was as deserving, if not more deserving, of innocent spouse treatment than Taxpayer 2 and that he was proceeding to trial seeking innocent spouse relief under new I.R.C. § 6015(f). Taxpayers' counsel asserts that because these cases are so interrelated, granting relief in one case must be considered by the court as a relevant "fact and circumstance" in determining whether for purposes of section 6015(f) it would be inequitable to hold Taxpayer 1 liable.

LAW AND ANALYSIS

Under the new statutory scheme, relief from joint and several liability can be obtained one of three ways: under the more liberalized innocent spouse provisions of section 6015(b); limiting liability to the portion of the deficiency attributable to items allocable to the taxpayer under section 6015(c)¹; and by a grant of equitable relief from the Secretary under section 6015(f).

Section 6015(f) provides that under procedures prescribed by the Secretary if the taxpayer does not qualify for relief under sections 6015(b) or (c), the Secretary may grant equitable relief.

By expressly providing rules applicable to subsections (b) and (c), but not (f), the new statute read in its entirety, manifests a Congressional intention of leaving (f) relief in the sole domain of the agency. For example, in order to invoke section 6015(b) or (c) the statute requires that an election be made. While we may establish such a requirement administratively, the statute does not require the filing of an election before the Secretary may grant equitable relief. Unlike elections under (b) and (c), the Service is not required to give notice of, and an opportunity to participate in any administrative hearing to the other spouse with respect to the granting or denial of equitable relief under subsection(f). Section 6015(g)(2).

Most significantly, in establishing the scope of Tax Court jurisdiction under sections 6015(e)(1)(A) and 6015(e)(3)(B), the statute specifically limits judicial review to denials of elections under subsection (b) and (c), thus making clear that the Secretary's refusal to exercise discretion and grant equitable relief under section 6015(f) is not subject to judicial review. This conclusion is further supported by the notice requirements of section 6015(e)(4) which correspond to the court's jurisdiction. Pursuant to that section, the Tax Court is to establish rules which provide the individual

¹ While all joint filers may seek relief under section 6015(b), relief under subsection (c) is only available to taxpayers who at the time the election is filed are no longer married, legally separated or have not been a member of the same household as the other spouse for the 12-month period ending on the date the election is filed.

filing a joint return but not making an election under subsection (b) or (c) with adequate notice and an opportunity to become a party to a proceeding under either subsection².

Thus, should the taxpayer ask the Court for relief under subsection (f), we will maintain that the Secretary's refusal to exercise his discretion and grant equitable relief under section 6015(f) is not subject to judicial review.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:



By: /s/ Richard L. Carlisle
Richard L. Carlisle
Chief
Income Tax & Accounting Branch

² See new Title XXXI of the Tax Court Rules.