

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:WI:BTombul
POSTS-150507-06

date: December 4, 2006

to: Jim Grimes
Director of Compliance
Wage and Investment

from: Carol A. Campbell 
Division Counsel
(Wage & Investment)

subject: Collection of Liability on Section 6015(f) Innocent Spouse Cases

The purpose of this memorandum is to inform you of a development regarding § 6015(f) cases. The Tax Court recently held that it does not have jurisdiction to review IRS denials of relief under I.R.C. § 6015(f) for underpayment cases (cases where the liability was properly reported but not paid).¹ Even so, all § 6015(f) cases are not being dismissed for lack of jurisdiction; some Tax Court judges are holding the cases. This may have negative implications with regard to IRS collections in these cases.

Background

Equitable Relief from Joint and Several Liability

Section 6015(f) authorizes the IRS to relieve taxpayers of the joint and several liability imposed by section 6013(d) in cases where the IRS, in its discretion, determines that it would be inequitable to hold one of the spouses jointly and severally liable for an understatement of tax (i.e., liabilities that were not properly reported on the joint tax return) or an underpayment of tax (i.e., a liability properly reported on the joint return but not paid).² Relief under section 6015(f) is discretionary. Therefore, the IRS established standards to determine when a taxpayer should be granted equitable relief from joint and several liability.³

¹ *Billings v. Commissioner*, 127 T.C. No. 2 (July 25, 2006).

² Section 6013(d)(3) provides that married couples who elect to file a joint return are jointly and severally liable for the tax liability arising from that return. Section 6015, however provides three avenues of relief from the joint and several liability imposed by section 6013(d)(3): "innocent spouse relief" under section 6015(b); "allocation of liability for divorced or separated taxpayers" under section 6015(c); and "equitable relief" under section 6015(f). Relief from joint and several liability under sections 6015(b) and 6015(c) is statutory (i.e., if the taxpayer meets the provisions of the statute, then the taxpayer is entitled to relief) and is only available for understatements of tax.

³ The IRS's standards for determining when equitable relief is appropriate are outlined in Revenue

Tax Court Jurisdiction

The Tax Court is a court of limited jurisdiction. Therefore, the Tax Court only has jurisdiction to review issues for which Congress grants the Tax Court jurisdiction by statute. Under section 6015(e), the Tax Court only has jurisdiction to review a denial of relief in section 6015(f) cases when the taxpayer is seeking equitable relief from an understatement of tax, and the taxpayer is also seeking relief under § 6015(b) or 6015(c) for the understatement of tax.⁴ The jurisdiction provided in § 6015(e), however, does not apply to cases where the taxpayer is seeking only equitable relief for an underpayment of tax under § 6015(f).

Until recently, the Tax Court held that it had jurisdiction to review cases in which the IRS denied the taxpayer's request for equitable relief for an underpayment of tax. See, e.g., *Fernandez v. Commissioner*, 114 T.C. 324, (2000), and *Ewing v. Commissioner*, 118 T.C. 494 (2002). In July of this year, however, following the holding in two U.S. Circuit Court of Appeals cases⁵, the Tax Court held that it does not have jurisdiction over § 6015(f) cases where the taxpayer seeks relief for an underpayment of tax. See *Billings v. Commissioner*, 127 T.C. No. 2 (July 25, 2006).

Collection Suspended While § 6015(f) Cases are Being Considered

When a taxpayer requests relief only under § 6015(f), the statute of limitations on collecting the assessment continues to run.⁶ Although the IRS is not prohibited by statute from collecting amounts due from a taxpayer while the taxpayer's request for relief under § 6015(f) is pending, the IRS currently has an administrative policy not to pursue collection against such taxpayers while their claims are pending.

Under the current IRS policy regarding collection in § 6015(f) cases, the IRS will pursue collection against taxpayers who request relief under § 6015(f) only if the collection of the tax liability is in jeopardy due to an expiring statute of limitations on collection.

[REDACTED]

b(7)(E)

Procedure 2003-61, 2003-2 C.B. 296.

⁴ Section 6015(e)(1) generally provides that in the case of an individual against whom a deficiency has been asserted and who elects to have section 6015(b) or 6015(c) apply, the Tax Court has jurisdiction to determine the appropriate relief available under section 6015. Deficiencies are only asserted in cases where there is an understatement of tax. Therefore, if the taxpayer seeks relief from an understatement under sections 6015(b) or 6015(c) in addition to section 6015(f), then the Tax Court has jurisdiction to hear the section 6015(f) argument.

⁵ See *Commissioner v. Ewing*, 439 F. 3d 1009 (9th Cir. 2006), petition for reh'g en banc denied (May 10, 2006) and *Bartman v. Commissioner*, 446 F. 3d 785 (8th Cir. 2006), petition for reh'g en banc denied (Aug. 3, 2006).

⁶ Section 6015(e)(2) suspends the period of limitations on collecting an assessment while a claim for relief under section 6015(b) or 6015(c) is pending, plus 60 days. Section 6015(e)(2), however, does not apply to cases where the taxpayer is seeking relief only under § 6015(f).

The Development Causing Concern

In response to the decision in the *Billings* case, some Tax Court judges are dismissing cases where a taxpayer petitions for review of the IRS's denial of relief under § 6015(f) for an underpayment of tax due to a lack of jurisdiction. Other judges, however, are not dismissing the cases but holding them indefinitely pending the outcome of a bill that is currently circulating in Congress which would grant the Tax Court jurisdiction to review § 6015(f) underpayment cases. Under the IRS policy, the IRS is not pursuing collection in § 6015(f) cases until the decision from the Tax Court becomes final. If the IRS continues with this approach for § 6015(f) underpayment cases, however, the IRS's ability to collect the liability from the taxpayer may be jeopardized in cases where the Tax Court judge is suspending the case indefinitely.

Suggestions

The decision of when and whether to collect from a taxpayer in a § 6015(f) case is an administrative one, not a legal one. Although there is nothing in the Internal Revenue Code that prohibits the IRS from collecting a liability from a taxpayer who requests relief only under § 6015(f), we understand that there are public policy reasons why the IRS would want to suspend collection in these cases until a final decision is made regarding whether relief is appropriate. However, in § 6015(f) cases where the statute of limitations for collection continues to run and the Tax Court has suspended the case, the following options are available:

[REDACTED]

[REDACTED]

[REDACTED]

This memorandum is provided to you for your information and consideration only. If you have any questions, or if we can be of any further assistance in this matter, please contact Bridget Tombul of my staff at 202-622-7679.