



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

CC-2002-05
December 9, 2002
Attachment 1

CC:PA:APJP:B02
AOD-122827-02/JBernstein

REVISED ACTION ON DECISION

SUBJECT: Robert L. Beck v. Commissioner
T.C. Memo. 2001-198 (filed July 30, 2001)
Dkt. Nos. 14577-98 and 14578-98
Decision Date: September 6, 2001

Issue:

Whether the Tax Court has jurisdiction to review the Service's determination that a spouse is not entitled to equitable relief under I.R.C. § 66(c) in a deficiency proceeding.

Discussion:

Taxpayer wife claimed in her separate petition that she was an innocent spouse. The Tax Court construed the taxpayer's contention as a prayer for relief under section 66(c), which may provide relief from income tax liability with respect to unreported community income. The Service argued that the taxpayer failed to meet the requirements for relief under section 66(c) and that the denial of relief under section 66(c) was not subject to judicial review. The Tax Court disagreed as to its authority to review the Service's denial of equitable relief under section 66(c). The Tax Court likened equitable relief under section 66(c) with that provided for in section 6015(f). Citing its previous reasoning in two section 6015(f) cases, Butler v. Commissioner, 114 T.C. 276 (2000) (deficiency proceeding) and Fernandez v. Commissioner, 114 T.C. 324 (2000) (stand alone proceeding), the Tax Court held that it had the authority to review respondent's denial of equitable relief under section 66(c) in a deficiency proceeding. The Tax Court ultimately decided, however, that the Service did not abuse its discretion in denying such relief because the taxpayer failed to establish that she met the necessary requirements for relief under section 66(c).

Following the Tax Court decision in Fernandez, the Service issued Fernandez v. Commissioner, AOD CC-2000-06 (May 11, 2000), in which it acquiesced to the Tax Court's jurisdiction to review the Service's determination that a taxpayer was not entitled

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to equitable relief under section 6015(f). We believe the Tax Court's similar treatment of section 66(c) in a deficiency proceeding is correct. The same treatment would also extend to review of a section 66(c) determination in a collection due process proceeding. Jurisdiction is conferred in those proceedings under section 6213 and section 6330, respectively. The Tax Court does not have jurisdiction to review the denial of claim for relief under section 66(c), absent an independent basis for jurisdiction. Section 66 does not contain a jurisdictional subsection comparable to section 6015(e). The Tax Court, in a proceeding where the Tax Court already has jurisdiction, such as in a deficiency or collection due process proceeding, has jurisdiction to review a claim for relief under section 66(c).

Accordingly, the Service will no longer contest the Tax Court's jurisdiction to review a request for relief under section 66(c) in a proceeding where the court already has jurisdiction.

Recommendation:

Acquiescence, and that the action on decision dated December 17, 2001, is withdrawn.

Reviewers:

JMW
CGW
DAB

Jamie G. Bernstein
Attorney, Branch 2
Administrative Provisions and Judicial
Practice

Approved:

B. JOHN WILLIAMS, JR.
Chief Counsel