

ACTION ON DECISION

SUBJECT: Diane Fernandez v. Commissioner
114 T.C. 324 (2000)
Docket No. 16710-99

Issue: Whether the Tax Court has jurisdiction, under I.R.C. § 6015(e) in a case involving an understatement of tax, to review the Service's determination to deny relief under section 6015(f).

Discussion: The taxpayer filed a request for relief from joint and several liability under section 6015(b), (c) and (f). The Service denied the taxpayer's request for relief. The taxpayer filed a petition with the Tax Court pursuant to section 6015(e) and requested that the Tax Court review the taxpayer's entitlement to relief.

The Service filed a motion to dismiss for lack of jurisdiction and to strike those portions of the petition that requested that the Tax Court review the Service's determination that the taxpayer was not entitled to relief under section 6015(f). The Service argued that section 6015(e) does not provide for judicial review of a request for relief made pursuant to section 6015(f). The Tax Court disagreed, holding that, if a taxpayer elects relief under section 6015(b) or (c) and requests equitable relief under section 6015(f), and then timely files a petition with the Tax Court, pursuant to section 6015(e), from a notice of determination, the Tax Court has jurisdiction to review the request for relief under subsections 6015 (b), (c) and (f). The Tax Court reached a similar conclusion in Butler v. Commissioner, 114 T.C. 276 (2000), that it had jurisdiction in a case where the taxpayer requested relief under subsection 6015(f) in a petition from a notice of deficiency under section 6213.

The court reasoned that the statutory language of section 6015 gave the court jurisdiction and that the legislative history also demonstrated that Congress did not intend to limit its review of section 6015. In reaching this conclusion, the court relied primarily on the following statutory language:

The individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual **under this section**. (Emphasis added).

Section 6015(e)(1)(A). The court concluded that Congress intended the term "under this section" to include all subsections of section 6015 in their entirety.

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We agree with the court's statutory construction of section 6015(e) for cases in which the Service has determined a deficiency against the taxpayer and the court's jurisdiction to review the Service's denial of relief under subsection (f) is predicated on the taxpayer's election of relief under section 6015(b) or (c). We do not agree that the court has jurisdiction, under section 6015(e), to review the Commissioner's determination under section 6015(f) in cases in which no deficiency has been asserted. Taxpayers cannot qualify for relief under either subsection (b) or (c) in cases that involve underpayments of tax reported on their joint return rather than understatements of tax. See I.R.C. § 6015(b)(1)(B) and (c)(1). The Commissioner's prior acquiescence in this case is modified to extend only to cases in which there is an understatement of tax and the Service has determined a deficiency against a taxpayer. Section 6015(e) was amended after the opinion in Fernandez was entered and now explicitly conditions Tax Court jurisdiction to cases where "a deficiency has been asserted."

Recommendation: Acquiescence in result only.

Reviewers:

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