

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

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March 02, 2006

Litigating Position Regarding the Ability
of Taxpayers to Elect Married Filing
Joint Return Status Under Section

Subject: 6013(b)

Cancel Date: Effective Until Further
Notice

PURPOSE

This Notice alerts Chief Counsel attorneys to our position regarding the impact of *Glaze v. United States*, 641 F.2d 339 (5th Cir. 1981), on the ability of taxpayers to elect "married filing joint return" status under I.R.C. § 6013(b).

BACKGROUND

Section 6013(b)(1) provides that an individual who has filed a "separate return" for a taxable year for which the individual could have filed a joint return may nevertheless file a joint return with the individual's spouse after the expiration of the time for filing a return, subject to the limitations in section 6013(b)(2). Section 6013(b)(2)(A) provides that an individual may not elect to file a joint return under paragraph (b)(1) after the expiration of three years from the last date prescribed by law for filing the return for the taxable year (determined without regard to any extension of time granted to either spouse). Section 6013(b)(2)(B) prohibits an election to file a joint return after a notice of deficiency for that year was mailed to either spouse, if the spouse files a petition with the Tax Court within the time prescribed in section 6213 with respect to that year.

In *Glaze v. United States*, 641 F.2d 339 (5th Cir. 1981), the court held that the reference in section 6013(b) to "separate return" refers only to a married person who elects to file as "married filing separately," and not to individuals who erroneously filed as "single" taxpayers. Under the rationale of *Glaze*, taxpayers who have previously filed tax returns claiming either "single" or "head of household" filing status are not subject to the "married filing joint return" election limitations of section 6013(b)(2). In *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981), the Eleventh Circuit adopted as its own all existing Fifth Circuit precedent thereby making *Glaze* precedential throughout both the Fifth and Eleventh Circuits.

The Office of Chief Counsel announced that it would not follow *Glaze* in *Action on Dec.*, 1981-140 (June 2, 1981); the Service announced it would not follow *Glaze* in Rev. Rul. 83-183, 1983-

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