

CC-2011-017

July 25, 2011

Change in Litigating Position on the
Two-Year Deadline to Request
Subject: Section 6015(f) Equitable Relief

Effective until further
Cancel Date: notice

Purpose

On July 25, 2011, the Service issued Notice 2011-70, 2011-32 I.R.B. 135, which enlarges the period of time for taxpayers to request equitable relief under section 6015(f). Specifically, Notice 2011-70 provides that the Service will no longer require taxpayers to submit requests for equitable relief within two years from the date that the Service takes initial collection activity against the requesting spouse with respect to the joint tax liability at issue. This change in position was adopted by the Service in the interest of tax administration and is not reflective of any doubt concerning the authority of the Service to impose the two-year deadline, which was upheld by three circuit courts as a valid exercise of the Service's rulemaking authority under sections 7805(a) and 6015(f). See Lantz v. Commissioner, 607 F.3d 479 (7th Cir. 2010); Mannella v. Commissioner, 631 F.3d 115 (3d Cir. 2011); Jones v. Commissioner, 642 F.3d 459 (4th Cir. 2011). In light of Notice 2011-70, this Chief Counsel Notice provides a change in litigating position concerning the two-year deadline to request equitable relief and provides direction for handling cases docketed with the Tax Court that involve the two-year deadline. This Notice supersedes Chief Counsel Notices CC-2009-012 (April 17, 2009), CC-2010-005 (March 12, 2010), and CC-2010-011 (June 18, 2010).

Background

Section 6015(b), (c), and (f) prescribe the bases for relief from joint and several tax liability. When relief is not available under section 6015(b) or (c), a taxpayer may obtain relief under section 6015(f) if it would be inequitable under the facts and circumstances to hold the taxpayer liable. By statute, a taxpayer must request relief under section 6015(b) or (c) no later than two years from the date of the Service's first collection activity. See section 6015(b)(1)(E) and (c)(3)(B). Beginning in 1998, the Department of Treasury and the Service incorporated the two-year deadline into published guidance, including ultimately the section 6015 regulations, and applied the rule to requests for equitable relief under subsection (f). Treas. Reg. § 1.6015-5(b)(1).

In Lantz v. Commissioner, 132 T.C. 131 (2009), the Tax Court held that the two-year deadline to request equitable relief was an invalid interpretation of section 6015(f). The Service appealed the decision, and the Court of Appeals for the Seventh Circuit reversed and upheld the Service's authority to establish a two-year deadline. Lantz v. Commissioner, 607 F.3d 479 (7th Cir. 2010). Two additional circuit courts have upheld the validity of the two-year deadline as a valid exercise of the Service's rulemaking authority under sections 7805(a) and 6015(f). See Mannella v.

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