

CC-2013-011

June 7, 2013

Litigating Cases that Involve Claims  
for Relief From Joint and Several  
**Subject:** Liability Under Section 6015

Upon incorporation  
**Cancel Date:** into the CCDM

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## Purpose

This Notice provides Chief Counsel attorneys with guidance regarding the standard and scope of review that the Tax Court applies when reviewing requests for section 6015(f) relief from joint and several liability. This Notice also provides litigation guidance for cases that involve claims for relief under section 6015. This Notice obsoletes Chief Counsel Notice CC-2009-021 (June 30, 2009) and Chief Counsel Notice CC-2004-26 (July 12, 2004).

## Discussion

In Wilson v. Commissioner, 705 F.3d 980 (9th Cir. 2013), aff'g T.C. Memo. 2010-134, the Ninth Circuit held that “determine,” as used in section 6015(e)(1)(A), provides a de novo standard and scope of review in section 6015(f) cases petitioned to the Tax Court. The Service issued an action on decision acquiescing in the court’s holding. [AOD 2012-07](#), I.R.B. 2013-25 (June 17, 2013).

### A. Standard and Scope of Review in Section 6015(f) Cases

In all section 6015(f) cases, the scope of review is de novo as provided in Porter v. Commissioner, 130 T.C. 115 (2008), and the standard of review is de novo as provided in Porter v. Commissioner, 132 T.C. 203 (2009). Chief Counsel attorneys should no longer argue that the Tax Court should review the Service’s section 6015(f) determinations for abuse of discretion or that the court should limit its review to evidence in the administrative record. Although Chief Counsel attorneys are no longer required to preserve the standard and scope of review issues for appeal, they should continue to work with petitioners to stipulate to evidence in the administrative record that is relevant to the court’s determination regarding section 6015 relief.

### B. Requests to CCISO for a Determination Regarding Relief

Although the Tax Court makes the final determination regarding a petitioner’s entitlement to relief under section 6015(b), (c), or (f), it is still appropriate for the Service to have the first opportunity to make a determination regarding relief. If the Service has not made a determination regarding a petitioner’s entitlement to section 6015 relief before the petitioner filed a petition, the trial attorney

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must request a determination from the Cincinnati Centralized Innocent Spouse Operations (CCISO) unit.<sup>1</sup> This can occur in two situations. First, section 6015(e)(1) provides the Tax Court with jurisdiction when a taxpayer files a petition six months after filing a request for relief with the Service but before a determination is issued. Second, section 6213(a) provides the Tax Court with jurisdiction over innocent spouse issues before the Service makes a determination when a taxpayer raises section 6015 relief for the first time in a petition from a Notice of Deficiency.

Chief Counsel attorneys who send a request to CCISO using the United States Postal Service should address the request to:

IRS-CCISO  
Stop 840F  
P.O. Box 120053  
Attn: Department One Manager  
Covington, KY 41012

If using a private delivery service, address the request to:

IRS-CCISO  
201 West Rivercenter Boulevard  
Stop 840F  
Attn: Department One Manager  
Covington, KY 41011

Requests should be marked “EXPEDITE – TAX COURT CASE PENDING” and include the Form 8857<sup>2</sup>, the Tax Court petition, and any other relevant documents and information in the attorney’s possession. If the petitioner does not provide the Form 8857, the trial attorney should still request CCISO to consider the innocent spouse issue. The request should inform CCISO that it should provide the results of its review directly to Counsel and should not issue a determination letter to the petitioner. In newly-docketed cases brought under the six-month rule of section 6015(e), the trial attorney should wait to request the administrative file until after CCISO completes its determination. If documents from the file are needed to timely answer the petition, the trial attorney should request copies of those documents from CCISO. The trial attorney should remain in close contact with CCISO while a request is pending. Chief Counsel attorneys can ask CCISO questions about submitting a request or about the status of a request by calling (866) 897-4270 (ext. 8147).

### C. Litigating Section 6015 Cases

After receiving CCISO’s determination, the trial attorney should share the determination with petitioner. If CCISO determines that a petitioner is not entitled to section 6015 relief, the petitioner may request that Appeals consider the denial of relief. The trial attorney should refer the case to Appeals under normal procedures if there is sufficient time before the trial calendar. If there is not sufficient time, but the parties agree that Appeals’ review would facilitate settlement,

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<sup>1</sup> The trial attorney should not move the Tax Court to remand these cases for a determination by the Service regarding section 6015 relief. In *Friday v. Commissioner*, 124 T.C. 220 (2005), the Tax Court held that section 6015 does not provide for remand.

<sup>2</sup> In cases brought under section 6213(a), if the petitioner has not submitted a Form 8857, “Request for Innocent Spouse Relief,” the trial attorney should request that the petitioner complete the form and submit it to the attorney.

the parties should jointly request a continuance. The trial attorney should prepare to defend CCISO's denial of relief at trial, but may settle or concede the case as appropriate.

In cases in which the nonrequesting spouse has not intervened or is not a joint petitioner, the trial attorney should, except in rare circumstances, follow the determination made by CCISO that the petitioner is entitled to relief and settle the case in accordance with CCISO's determination. In the rare circumstance that the trial attorney and the trial attorney's manager believe that evidence in the administrative file, discoverable evidence, or evidence that may be adduced at trial warrant not following CCISO's determination, the matter must be coordinated with Branches 1 or 2 of the Procedure and Administration Division. If Appeals makes the determination that the petitioner is entitled to relief, the trial attorney should follow the determination and settle the case in accordance with that determination.

If the nonrequesting spouse is a joint petitioner or an intervenor in the case, the Service cannot provide section 6015 relief or settle with the requesting spouse unless the nonrequesting spouse agrees and is a party to the settlement. Corson v. Commissioner, 114 T.C. 354 (2000). If, however, the nonrequesting spouse is not a joint petitioner or an intervenor, the Service may settle the case with the requesting spouse. Thus, in cases in which the nonrequesting spouse is a party, the trial attorney should only treat the determination by CCISO or Appeals to grant relief as a recommendation by that function (unless the nonrequesting spouse agrees that the petitioner is entitled to relief).

If the nonrequesting spouse does not agree that the petitioner is entitled to relief, the trial attorney should decide whether granting relief is appropriate. Making that decision requires the trial attorney to consider CCISO's or Appeals' determination, the evidence in the administrative file, discoverable evidence, statements and documents submitted by the nonrequesting spouse, and evidence that may be adduced at trial. Therefore, the case may require further development before a decision is made regarding whether granting relief is appropriate. If the trial attorney agrees that the petitioner is entitled to relief, the trial attorney should enter into a stipulation of settled issues with the petitioner with the understanding that the case will still need to proceed to trial on the innocent spouse issue. If the trial attorney agrees with the nonrequesting spouse that the petitioner is not entitled to relief, the trial attorney should prepare to defend CCISO's denial of relief at trial.

Questions concerning this Notice should be directed to Branch 1 or 2 of Procedure and Administration at (202) 622-4910 or (202) 622-4940, respectively.

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/s/  
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Procedure & Administration