

Part III - Administrative, Procedural, and Miscellaneous

Equitable Relief Under Section 6015(f)

Notice 2011-70

PURPOSE

This notice expands the period within which individuals may request equitable relief from joint and several liability under section 6015(f) of the Internal Revenue Code. Specifically, this notice provides that the Internal Revenue Service will consider requests for equitable relief under section 6015(f) if the period of limitation on collection of taxes provided by section 6502 remains open for the tax years at issue. If the relief sought involves a refund of tax, then the period of limitation on credits or refunds provided in section 6511 will govern whether the IRS will consider the request for relief for purposes of determining whether a credit or refund may be available. This notice also provides certain transitional rules to implement this change.

BACKGROUND

In the case of married individuals who file joint income tax returns, each spouse is jointly and severally liable, under section 6013(d), for the tax that is due for the taxable year for which the joint return is filed. Section 6015 provides for relief from joint

and several liability in certain circumstances. Section 6015(f) provides for equitable relief from understatements and underpayments when relief is not available under section 6015(b) or (c). By regulation, the Department of Treasury and the Internal Revenue Service established a two-year deadline to request equitable relief under subsection (f), to encourage the prompt resolution of liability determinations and to consider evidence relevant to a request while the evidence remained available. Whether this regulation was a valid exercise of rulemaking authority has been challenged in litigation. Circuit courts that have decided the issue have upheld the validity of the two-year deadline to request equitable relief set forth in the regulations under section 6015(f). 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).

Notwithstanding these court decisions, Treasury and the IRS have concluded that the regulations issued under section 6015 should be revised so that individuals who request equitable relief under section 6015(f) will no longer be required to submit a request for equitable relief within two years of the IRS's first collection activity against the requesting spouse with respect to the joint tax liability.

TRANSITIONAL RULES

Pending modification of the Treasury regulations under section 6015(f) to formally remove the two-year deadline for requests for equitable relief, individuals may rely on this notice, and the following transitional rules will apply:

- **Future Requests**

Individuals may request equitable relief under section 6015(f) after the date of this notice without regard to when the first collection activity was taken. Requests must be filed within the period of limitation on collection in section 6502 or, for any credit or refund of tax, within the period of limitation in section 6511.

- **Requests Pending With the IRS**

For individuals who have already submitted requests for relief under section 6015(f) that the IRS has under consideration or in suspense, the IRS will consider the request for equitable relief even if the request was submitted more than two years after the first collection activity was taken, so long as the applicable period of limitation under section 6502 or section 6511 was open when the request for equitable relief was filed with the IRS. Individuals with cases under consideration or in suspense should not reapply for relief under section 6015(f).

- **Requests that Were Denied Solely for Untimeliness and Not Litigated**

Individuals whose requests for equitable relief under section 6015(f) were denied by the IRS solely for untimeliness and were not litigated may reapply for relief under section 6015(f) after the effective date of this notice by filing a new Form 8857, Request for Innocent Spouse Relief. In considering this request for relief, the IRS will treat the original Form 8857 as a claim for refund for purposes of the period of limitation on refunds provided by section 6511. This means that any amount for which a refund was available as of the date that the original Form 8857 was filed and any amount subsequently collected may be eligible for refund if warranted by the IRS's reconsideration of equitable relief. The IRS can only grant relief with respect to unpaid

liabilities if the period of limitation on collection, under section 6502, remains open as of the date of the reapplication for relief.

- **Requests in Litigation**

In any case in litigation in which the IRS denied a request for equitable relief under section 6015(f) as untimely, the IRS or the United States will take appropriate action in the case as to the timeliness issue consistent with the position announced in this notice. Similarly, if equitable relief under section 6015(f) was raised for the first time in litigation and the two-year deadline was raised as a defense, the IRS or the United States will take appropriate action in the case consistent with the position in this notice. Individuals in these cases should not reapply for equitable relief.

- **Requests that Were in Litigation and that Litigation Is Now Final**

The IRS will, in the circumstances set forth below, take no further collection activity with respect to an individual who sought equitable relief under section 6015(f) in a judicial proceeding in which the validity of the two-year deadline to request equitable relief was at issue and the decision in the case is final. If the IRS stipulated in the court proceeding that the individual's request for equitable relief would have been granted had the request been timely, the IRS will not seek, after the effective date of this notice, to collect from the individual any portion of the underlying liability for which equitable relief would have been granted. Individuals in these cases do not need to reapply for equitable relief. The decision not to collect is prospective only, and no refunds or credits will be available. The relief from collection provided in this notice applies only to those liabilities for which equitable relief would have been granted under section 6015(f) and does not apply to other liabilities, so the IRS may pursue collection of other unpaid

tax liabilities. In cases in which section 6015(f) relief is not provided, individuals may be able to avoid enforced collection activity, such as a levy on the individual's wages or property, if they qualify for a collection alternative, such as an offer in compromise or an installment agreement. See Publication 594, The IRS Collection Process, or visit www.irs.gov, for more information.

This notice only addresses the time period within which individuals may request equitable relief from joint and several liability under section 6015(f). It has no effect on the statutory two-year deadline to elect relief under section 6015(b) or (c). For more information about equitable relief under section 6015(f) or innocent spouse relief in general, see Publication 971, Innocent Spouse Relief.

EFFECTIVE DATE

This notice is effective on July 25, 2011. The transitional rules set forth in this notice may be relied upon until final regulations modifying the two-year rule are published in the **Federal Register** or other published guidance is issued that alters the applicability of this notice.

DRAFTING INFORMATION

The principal author of this notice is Stuart Murray of the Office of Associate Chief Counsel, Procedure and Administration. For further information regarding this notice, contact Stuart Murray at (202) 622-4940 (not a toll-free number).