

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct liability.

(Also: sections 66, 6015)

Rev. Proc. 2013-34

SECTION 1. PURPOSE AND SCOPE

.01 Purpose. This revenue procedure provides guidance for a taxpayer seeking equitable relief from income tax liability under section 66(c) or section 6015(f) of the Internal Revenue Code (a “requesting spouse”). Section 4.01 of this revenue procedure provides the threshold requirements for any request for equitable relief. Section 4.02 of this revenue procedure sets forth the conditions under which the Internal Revenue Service will make streamlined relief determinations granting equitable relief under section 6015(f) from an understatement of income tax or an underpayment of income tax reported on a joint return, or the operation of community property law under section 66(c). Section 4.03 of this revenue procedure provides a nonexclusive list of factors for consideration in determining whether relief should be granted under section 6015(f) because it would be inequitable to hold a requesting spouse jointly and severally liable

when the conditions of section 4.02 are not met. The factors in section 4.03 also will apply in determining whether to relieve a spouse from income tax liability resulting from the operation of community property law under the equitable relief provision of section 66(c).

.02 Scope. This revenue procedure applies to spouses who request either equitable relief from joint and several liability under section 6015(f), or equitable relief under section 66(c) from income tax liability resulting from the operation of community property law.

SECTION 2. BACKGROUND

.01 Section 6013(d)(3) provides that married taxpayers who file a joint return under section 6013 will be jointly and severally liable for the income tax arising from that joint return. For purposes of section 6013(d)(3) and this revenue procedure, the term “tax” includes penalties, additions to tax, and interest. See sections 6601(e)(1) and 6665(a)(2).

.02 Section 3201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 734 (RRA), enacted section 6015, which provides relief in certain circumstances from the joint and several liability imposed by section 6013(d)(3). Section 6015(b) and (c) specify two sets of circumstances under which relief from joint and several liability is available in cases involving understatements of tax. Section 6015(b) is modeled after former section 6013(e), the prior innocent spouse statute, and section 6015(c) provides for separation of liability for taxpayers who are no longer married to, are legally separated from, or not living

together with the person with whom they filed a joint return. If relief is not available under section 6015(b) or (c), section 6015(f) authorizes the Secretary to grant equitable relief if, taking into account all the facts and circumstances, the Secretary determines that it is inequitable to hold a requesting spouse liable for any unpaid tax or any deficiency (or any portion of either).

Section 66(c) provides relief from income tax liability resulting from the operation of community property law to taxpayers domiciled in a community property state who do not file a joint return. Section 3201(b) of the RRA amended section 66(c) to add an equitable relief provision similar to section 6015(f).

.03 Section 6015 provides relief only from joint and several liability arising from a joint return. If an individual signs a joint return under duress, the election to file jointly is not valid and there is no valid return with respect to the requesting spouse. The individual is not jointly and severally liable for any income tax liabilities arising from that return. In that case, section 6015 does not apply and is not necessary for obtaining relief. If an individual files a claim for relief under section 6015, but also maintains that there is no valid joint return due to duress, the Service will first make a determination as to the validity of the joint return and may accordingly deny the request for section 6015 relief based on the fact that no joint return was filed (and thus, relief is not necessary). If it is ultimately determined that a valid joint return was filed, the Service will then consider whether the individual would be entitled to relief from joint and several liability on the merits.

.04 Under section 6015(b) and (c), relief is available only from an understatement or a deficiency. Section 6015(b) and (c) do not authorize relief from an underpayment of income tax reported on a joint return. Section 66(c) and section 6015(f) permit equitable relief from an underpayment of income tax or from a deficiency. The legislative history of section 6015 provides that Congress intended for the Secretary to exercise discretion in granting equitable relief from an underpayment of income tax if a requesting spouse “does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse’s benefit.” H.R. Conf. Rep. No. 105-599, at 254 (1998). Congress also intended for the Secretary to exercise the equitable relief authority under section 6015(f) in other situations if, “taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return.” *Id.*

SECTION 3. SIGNIFICANT CHANGES

On January 5, 2012, the Department of Treasury and the Service released Notice 2012-8, 2012-4 I.R.B. 309, which set forth a proposed revenue procedure to update and revise Rev. Proc. 2003-61, 2003-2 C.B. 296. Notice 2012-8 also modified and clarified the criteria for equitable relief, and it eliminated the two-year rule for filing a claim for relief as set forth in Notice 2011-70, 2011-2 C.B.135. Notice 2012-8 invited public comment regarding the proposed revenue procedure. A total of 54 comments were received, 45 of which were general comments either in support of the revisions, asking for assistance in specific cases, or totally unrelated to innocent spouse relief.

The nine substantive comments ranged from discussing one or two discrete issues to commenting on all aspects of the proposed revenue procedure and innocent spouse relief in general. Treasury and the Service considered all comments received, and the proposed revenue procedure has been modified to take into account many of the concerns raised.

This revenue procedure supersedes Rev. Proc. 2003-61. The structure and format of this revenue procedure generally follows that of Rev. Proc. 2003-61 with the following significant changes:

.01 This revenue procedure gives greater deference to the presence of abuse than Rev. Proc. 2003-61. The Service recognizes that the issue of abuse can be relevant with respect to the analysis of other factors and can negate the presence of certain factors. This change is intended to give greater weight to the presence of abuse when its presence impacts the analysis of other factors.

.02 The timeliness threshold condition in section 4.01(3) of this revenue procedure provides that a request for equitable relief under section 6015(f) or section 66(c) must be filed before the expiration of the period of limitation for collection under section 6502 to the extent the taxpayer seeks relief from an outstanding liability, or before the expiration of the period of limitation for credit or refund under section 6511 to the extent the taxpayer seeks a refund of taxes paid. This is a significant change to the requirement in Rev. Proc. 2003-61, section 4.01(3), and Treas. Reg. § 1.6015-5(b)(1) (TD 9003), that the requesting spouse's claim for equitable relief must be filed no later than two years after the date of the Service's first collection activity. See Notice 2011-

70, 2011-2 C.B. 135. In response to a comment received with respect to Notice 2012-8, section 4.01(3)(a) refers to the period of limitation for collection as its commonly used IRS term – Collection Statute Expiration Date or CSED.

.03 The attribution threshold condition in section 4.01(7) of this revenue procedure adds a new exception in paragraph (e) to the requirement that the income tax liability must be attributable to an item of the nonrequesting spouse. Under section 4.01(7)(e) of the revenue procedure, relief would not be precluded for an item attributable to the requesting spouse if the nonrequesting spouse's fraud gave rise to the understatement of tax or deficiency.

.04 Streamlined determinations under section 4.02 of this revenue procedure now apply to understatements of income tax instead of only underpayments as under Rev. Proc. 2003-61. Section 4.02 also now applies to claims for equitable relief under section 66(c).

.05 Section 4.03(2) of this revenue procedure clarifies that no one factor or a majority of factors necessarily controls the determination. Therefore, depending on the facts and circumstances of the case, relief may still be appropriate if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief may still be appropriate if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief.

.06 The economic hardship factor in section 4.03(2)(b) of this revenue procedure now provides minimum standards based on income, expenses, and assets, for determining whether the requesting spouse would suffer economic hardship if relief is

not granted. Section 4.03(2)(b) also now provides that the lack of a finding of economic hardship does not weigh against relief, as it did under Rev. Proc. 2003-61, and instead will be neutral.

.07 The knowledge factor for understatement cases in section 4.03(2)(c)(i) of this revenue procedure clarifies how the factor works in cases involving equitable relief under section 66(c), in addition to cases involving equitable relief under section 6015(f). Section 4.03(2)(c)(i)(A) provides that actual knowledge of the item giving rise to an understatement or deficiency will no longer be weighed more heavily than other factors, as it did under Rev. Proc. 2003-61. Further, section 4.03(2)(c)(i)(A) clarifies that, for purposes of this factor, if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, then that abuse or financial control will result in this factor weighing in favor of relief even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency.

.08 The knowledge factor for underpayment cases in section 4.03(2)(c)(ii) of this revenue procedure now provides that, in determining whether the requesting spouse knew or had reason to know that the nonrequesting spouse would not pay the tax reported as due on the return, the Service will consider whether the requesting spouse reasonably expected that the nonrequesting spouse would pay the tax liability at the time the return was filed or within a reasonable period of time after the filing of the

return. In response to comments received with respect to Notice 2012-8, section 4.03(2)(c)(ii) provides that a requesting spouse may be presumed to have reasonably expected that the nonrequesting spouse would pay the liability if a request for an installment agreement to pay the tax was filed by the later of 90 days after the due date for payment of the tax, or 90 days after the return was filed. Further, section 4.03(2)(c)(ii) clarifies that for purposes of this factor, if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to question the payment of the taxes reported as due on the return or challenge the nonrequesting spouse's assurance regarding payment of the taxes for fear of the nonrequesting spouse's retaliation, then that abuse or financial control will result in this factor weighing in favor of relief even if the requesting spouse knew or had reason to know that the nonrequesting spouse would not pay the tax liability. Finally, section 4.03(2)(c)(ii) provides that if the requesting spouse did not reasonably expect that the nonrequesting spouse would pay the tax liability reported on an amended return that was based on items not properly reported on the original return, the Service will also consider whether the requesting spouse knew or had reason to know of the understatement on the original return.

.09 The legal obligation factor in section 4.03(2)(d) of this revenue procedure clarifies that a requesting spouse's legal obligation to pay outstanding tax liabilities is a factor to consider in determining whether equitable relief should be granted, in addition

to whether the nonrequesting spouse has a legal obligation to pay the tax liabilities.

.10 The significant benefit factor in section 4.03(2)(e) of this revenue procedure provides that any significant benefit a requesting spouse may have received from the unpaid tax or understatement will not weigh against relief (will be neutral) if the nonrequesting spouse abused the requesting spouse or maintained financial control and made the decisions regarding living a more lavish lifestyle. Further, section 4.03(2)(e) provides that if only the nonrequesting spouse significantly benefitted from the unpaid tax or understatement, and the requesting spouse had little or no benefit, or the nonrequesting spouse enjoyed the benefit to the requesting spouse's detriment, this factor will weigh in favor of relief. Section 4.03(2)(e) also provides that if the amount of unpaid tax or understatement of tax was small such that neither spouse received a significant benefit, then this factor is neutral. In response to comments received with respect to Notice 2012-8, section 4.03(2)(e) provides that the determination that the tax liability was small such that neither spouse received a significant benefit will vary depending on the facts and circumstances of each case.

.11 The compliance with the income tax laws factor in section 4.03(2)(f) of this revenue procedure now provides that a requesting spouse's subsequent compliance with all Federal income tax laws is a factor that may weigh in favor of relief, instead of always being neutral under Rev. Proc. 2003-61.

.12 Section 4.04 of this revenue procedure broadens the availability of refunds in cases involving deficiencies by eliminating the rule in section 4.04(1) of Rev. Proc. 2003-61 that limited refunds in cases involving deficiencies to payments made by the

requesting spouse pursuant to an installment agreement.

SECTION 4. GENERAL CONDITIONS FOR RELIEF

.01 Eligibility for equitable relief. A requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under section 6015(f). With the exception of conditions (1) and (2), a requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under section 66(c). The Service may relieve a requesting spouse who satisfies all the applicable threshold conditions set forth below of all or part of the income tax liability under section 66(c) or section 6015(f) if, taking into account all the facts and circumstances, the Service determines that it would be inequitable to hold the requesting spouse liable for the income tax liability. The threshold conditions are as follows:

(1) The requesting spouse filed a joint return for the taxable year for which he or she seeks relief.

(2) Relief is not available to the requesting spouse under section 6015(b) or (c).

(3) The claim for relief is timely filed:

(a) If the requesting spouse is applying for relief from a liability or a portion of a liability that remains unpaid, the request for relief must be made on or before the Collection Statute Expiration Date (CSED). The CSED is the date the period of limitation on collection of the income tax liability expires, as provided in section 6502. Generally, that period expires 10 years after the assessment of tax, but it may be extended by other provisions of the Internal Revenue Code.

(b) Claims for credit or refund of amounts paid must be made before the expiration of the period of limitation on credit or refund, as provided in section 6511. Generally, that period expires three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

(4) No assets were transferred between the spouses as part of a fraudulent scheme by the spouses.

(5) The nonrequesting spouse did not transfer disqualified assets to the requesting spouse. For this purpose, the term “disqualified asset” has the meaning given the term by section 6015(c)(4)(B). If the nonrequesting spouse transferred disqualified assets to the requesting spouse, relief will be available only to the extent that the income tax liability exceeds the value of the disqualified assets. Even if there was a transfer of disqualified assets, the requesting spouse may be eligible for relief if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse’s access to financial information, or the requesting spouse did not have actual knowledge that disqualified assets were transferred.

(6) The requesting spouse did not knowingly participate in the filing of a fraudulent joint return.

(7) The income tax liability from which the requesting spouse seeks relief is attributable (either in full or in part) to an item of the nonrequesting spouse or an underpayment resulting from the nonrequesting spouse’s income. If the liability is partially attributable to the requesting spouse, then relief can only be considered for the

portion of the liability attributable to the nonrequesting spouse. Nonetheless, the Service will consider granting relief regardless of whether the understatement, deficiency, or underpayment is attributable (in full or in part) to the requesting spouse if any of the following exceptions applies:

(a) Attribution solely due to the operation of community property law. If an item is attributable or partially attributable to the requesting spouse solely due to the operation of community property law, then for purposes of this revenue procedure, that item (or portion thereof) will be considered to be attributable to the nonrequesting spouse.

(b) Nominal ownership. If the item is titled in the name of the requesting spouse, the item is presumptively attributable to the requesting spouse. This presumption is rebuttable. For example, H opens an individual retirement account (IRA) in W's name and forges W's signature on the IRA in 2006. Thereafter, H makes contributions to the IRA and in 2008 takes a taxable distribution from the IRA. H and W file a joint return for the 2008 taxable year, but do not report the taxable distribution on their joint return. The Service later determines a deficiency relating to the taxable IRA distribution. W requests relief from joint and several liability under section 6015. W establishes that W did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if W were the owner of the IRA. W, thereby, rebuts the presumption that the IRA is attributable to W.

(c) Misappropriation of funds. If the requesting spouse did not know, and had no reason to know, that funds intended for the payment of tax were misappropriated by the

nonrequesting spouse for the nonrequesting spouse's benefit, the Service will consider granting equitable relief although the underpayment may be attributable in part or in full to an item of the requesting spouse. The Service will consider granting relief in this case only to the extent that the funds intended for the payment of tax were taken by the nonrequesting spouse.

(d) Abuse. If the requesting spouse establishes that he or she was the victim of abuse prior to the time the return was filed, and that, as a result of the prior abuse, the requesting spouse was not able to challenge the treatment of any items on the return, or was not able to question the payment of any balance due reported on the return, for fear of the nonrequesting spouse's retaliation, the Service will consider granting equitable relief even though the deficiency or underpayment may be attributable in part or in full to an item of the requesting spouse.

(e) Fraud committed by nonrequesting spouse. The Service will consider granting relief notwithstanding that the item giving rise to the understatement or deficiency is attributable to the requesting spouse, if the requesting spouse establishes that the nonrequesting spouse's fraud is the reason for the erroneous item. For example, W fraudulently accesses H's brokerage account to sell stock that H had separately received from an inheritance. W deposits the funds from the sale in a separate bank account to which H does not have access. H and W file a joint Federal income tax return for the year, which does not report the income from the sale of the stock. The Service determines a deficiency based on the omission of the income from the sale of the stock. H requests relief from the deficiency under section 6015(f). The

income from the sale of the stock normally would be attributable to H. Because W committed fraud with respect to H, however, and because this fraud was the reason for the erroneous item, the liability is properly attributable to W.

.02. Circumstances under which the Service will make streamlined determinations granting equitable relief under sections 66(c) and 6015(f).

If a requesting spouse who filed a joint return, or a requesting spouse who did not file a joint return in a community property state, satisfies the threshold conditions of section 4.01, the Service will consider whether the requesting spouse is entitled to a streamlined determination of equitable relief under section 66(c) or section 6015(f) under this section 4.02. If a requesting spouse is not entitled to a streamlined determination because the requesting spouse does not satisfy all the elements in this section 4.02, the requesting spouse is still entitled to be considered for relief under the equitable factors in section 4.03. The Service will make streamlined determinations granting equitable relief under section 66(c) or section 6015(f), in cases in which the requesting spouse establishes that the requesting spouse:

(1) Marital status. Is no longer married to the nonrequesting spouse as set forth in section 4.03(2)(a);

(2) Economic hardship. Would suffer economic hardship if relief were not granted as set forth in section 4.03(2)(b); and

(3) Knowledge or reason to know.

(a) Section 6015(f) cases. Did not know or have reason to know that there was an understatement or deficiency on the joint income tax return, as set forth in section

4.03(2)(c)(i), or did not know or have reason to know that the nonrequesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return, as set forth in section 4.03(2)(c)(ii). If the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return, or to question the payment of the taxes reported as due on the joint return or challenge the nonrequesting spouse's assurance regarding payment of the taxes, for fear of the nonrequesting spouse's retaliation, then the abuse or financial control will result in this factor being satisfied even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency or knew or had reason to know that the nonrequesting spouse would not pay the tax liability.

(b) Section 66(c) cases. Did not know or have reason to know of an item of community income properly includible in gross income, which, under the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse.

.03. Factors for determining whether to grant equitable relief.

(1) Applicability. This section 4.03 applies to a requesting spouse who requests relief under section 66(c) or section 6015(f), and who satisfies the threshold conditions of section 4.01, but does not qualify for streamlined determinations granting relief under section 4.02.

(2) Factors. In determining whether it is inequitable to hold the requesting spouse liable for all or part of the unpaid income tax liability or deficiency, and whether

full or partial equitable relief under section 66(c) or section 6015(f) should be granted, all the facts and circumstances of the case are to be taken into account. The factors listed below are designed as guides and not intended to comprise an exclusive list. Other factors relevant to a specific claim for relief may also be taken into account in making the determination. In evaluating a claim for relief, no one factor or a majority of factors necessarily determines the outcome. The degree of importance of each factor varies depending on the requesting spouse's facts and circumstances. Abuse or the exercise of financial control by the nonrequesting spouse is a factor that may impact the other factors, as described below. Factors to consider include the following:

(a) Marital status. Whether the requesting spouse is no longer married to the nonrequesting spouse as of the date the Service makes its determination. If the requesting spouse is still married to the nonrequesting spouse, this factor is neutral. If the requesting spouse is no longer married to the nonrequesting spouse, this factor will weigh in favor of relief. For purposes of this section, a requesting spouse will be treated as being no longer married to the nonrequesting spouse only in the following situations:

(i) The requesting spouse is divorced from the nonrequesting spouse,

(ii) The requesting spouse is legally separated from the nonrequesting spouse under applicable state law,

(iii) The requesting spouse is a widow or widower and is not an heir to the nonrequesting spouse's estate that would have sufficient assets to pay the tax liability,

or

(iv) The requesting spouse has not been a member of the same household as

the nonrequesting spouse at any time during the 12-month period ending on the date the Service makes its determination. For these purposes, a temporary absence (e.g., due to incarceration, illness, business, military service, or education) is not considered separation if the absent spouse is expected to return to the household. See Treas. Reg. § 1.6015-3(b)(3)(i). A requesting spouse is a member of the same household as the nonrequesting spouse for any period in which the spouses maintain the same residence.

(b) Economic hardship. Whether the requesting spouse will suffer economic hardship if relief is not granted. For purposes of this factor, an economic hardship exists if satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable to pay reasonable basic living expenses. Whether the requesting spouse will suffer economic hardship is determined based on rules similar to those provided in Treas. Reg. § 301.6343-1(b)(4), and the Service will take into consideration a requesting spouse's current income and expenses and the requesting spouse's assets. In determining the requesting spouse's reasonable basic living expenses, the Service will consider whether the requesting spouse shares expenses or has expenses paid by another individual (such as a family member, including a current spouse). If denying relief from the joint and several liability will cause the requesting spouse to suffer economic hardship, this factor will weigh in favor of relief. If denying relief from the joint and several liability will not cause the requesting spouse to suffer economic hardship, this factor will be neutral.

In determining whether the requesting spouse would suffer economic hardship if

relief is not granted, the Service will compare the requesting spouse's income to the Federal poverty guidelines (as updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2)) for the requesting spouse's family size and will determine by how much, if at all, the requesting spouse's monthly income exceeds the spouse's reasonable basic monthly living expenses. This factor will weigh in favor of relief if the requesting spouse's income is below 250% of the Federal poverty guidelines, unless the requesting spouse has assets out of which the requesting spouse can make payments towards the tax liability and still adequately meet the requesting spouse's reasonable basic living expenses. If the requesting spouse's income exceeds 250% of the Federal poverty guidelines, this factor will still weigh in favor of relief if the requesting spouse's monthly income exceeds the requesting spouse's reasonable basic monthly living expenses by \$300 or less, unless the requesting spouse has assets out of which the requesting spouse can make payments towards the tax liability and still adequately meet the requesting spouse's reasonable basic living expenses. If the requesting spouse's income exceeds 250% of the Federal poverty guidelines and monthly income exceeds monthly expenses by more than \$300, or if the requesting spouse qualifies under either standard but has sufficient assets to make payments towards the tax liability and still adequately meet the requesting spouse's reasonable basic living expenses, the Service will consider all facts and circumstances (including the size of the requesting spouse's household) in determining whether the requesting spouse would suffer economic hardship if relief is not granted. If the requesting spouse is deceased, this factor is

neutral.

(c) Knowledge or reason to know.

(i) Understatement cases.

(A) Section 6015(f) cases. Whether the requesting spouse knew or had reason to know of the item giving rise to the understatement or deficiency as of the date the joint return (including a joint amended return) was filed, or the date the requesting spouse reasonably believed the joint return was filed. If the requesting spouse did not know and had no reason to know of the item giving rise to the understatement, this factor will weigh in favor of relief. If the requesting spouse knew or had reason to know of the item giving rise to the understatement, this factor will weigh against relief. Actual knowledge of the item giving rise to the understatement or deficiency will not be weighed more heavily than any other factor. Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in section 4.03(2)(c)(iv)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, this factor will weigh in favor of relief even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency.

(B) Section 66(c) cases. Whether the requesting spouse knew or had reason to know of an item of community income properly includible in gross income, which, under

the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse.

(ii) Underpayment cases. In the case of an income tax liability that was properly reported but not paid, whether, as of the date the return was filed or the date the requesting spouse reasonably believed the return was filed, the requesting spouse knew or had reason to know that the nonrequesting spouse would not or could not pay the tax liability at that time or within a reasonable period of time after the filing of the return. This factor will weigh in favor of relief if the requesting spouse reasonably expected the nonrequesting spouse to pay the tax liability reported on the return. A reasonable expectation of payment will be presumed if the spouses submitted a request for an installment agreement to pay the tax reported as due on the return. To benefit from the presumption, the request for an installment agreement must be filed by the later of 90 days after the due date for payment of the tax, or 90 days after the return was filed. The request must detail the plan for paying the tax, interest, and penalties, satisfy the liability within a reasonable time, and it must not be unreasonable for the requesting spouse to believe that the nonrequesting spouse will be able to make the payments contemplated in the requested installment agreement.

This factor will weigh against relief if, based on the facts and circumstances of the case, it was not reasonable for the requesting spouse to believe that the nonrequesting spouse would or could pay the tax liability shown on the return. For example, if prior to the return being filed, or the date the requesting spouse reasonably believed the return was filed, the requesting spouse knew of the nonrequesting

spouse's prior bankruptcies, financial difficulties, or other issues with the Service or other creditors, or was otherwise aware of difficulties in timely paying bills, then this factor will generally weigh against relief.

Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in section 4.03(2)(c)(iv)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to question the payment of the taxes reported as due on the return or challenge the nonrequesting spouse's assurance regarding payment of the taxes for fear of the nonrequesting spouse's retaliation, this factor will weigh in favor of relief even if the requesting spouse knew or had reason to know about the nonrequesting spouse's intent or ability to pay the taxes due.

With respect to an underpayment of tax on an amended return that reports a liability based on items not properly reported on the original return, the initial inquiry is whether, as of the date the amended return was filed, or the date the requesting spouse reasonably believed the amended return was filed, the requesting spouse reasonably expected that the nonrequesting spouse would pay the tax within a reasonable period of time. If so, this factor will weigh in favor of relief. However, if it was not reasonable for the requesting spouse to expect that the nonrequesting spouse would pay the tax, the requesting spouse's knowledge or reason to know of the understatement on the original return will also be considered. If the requesting spouse knew or had reason to know of the item giving rise to the understatement on the original return, then this factor will

weigh against relief. If the requesting spouse did not know or have reason to know of the item, then this factor will weigh in favor of relief.

(iii) Reason to know. The facts and circumstances that are considered in determining whether the requesting spouse had reason to know of an understatement, or reason to know whether the nonrequesting spouse could or would pay the reported tax liability, include, but are not limited to, the requesting spouse's level of education, any deceit or evasiveness of the nonrequesting spouse, the requesting spouse's degree of involvement in the activity generating the income tax liability, the requesting spouse's involvement in business or household financial matters, the requesting spouse's business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

(iv) Abuse by the nonrequesting spouse. For purposes of this revenue procedure, if the requesting spouse establishes that he or she was the victim of abuse (not amounting to duress, see Treas. Reg. § 1.6015-1(b)), then depending on the facts and circumstances of the requesting spouse's situation, the abuse may result in certain factors weighing in favor of relief when otherwise the factor may have weighed against relief. Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws. All the facts and circumstances are considered in determining whether a requesting spouse was abused. The impact of a nonrequesting spouse's alcohol or drug abuse is also considered in

determining whether a requesting spouse was abused. Depending on the facts and circumstances, abuse of the requesting spouse's child or other family member living in the household may constitute abuse of the requesting spouse.

(d) Legal obligation. Whether the requesting spouse or the nonrequesting spouse has a legal obligation to pay the outstanding Federal income tax liability. For purposes of this factor, a legal obligation is an obligation arising from a divorce decree or other legally binding agreement. This factor will weigh in favor of relief if the nonrequesting spouse has the sole legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement. This factor, however, will be neutral if the requesting spouse knew or had reason to know, when entering into the divorce decree or agreement, that the nonrequesting spouse would not pay the income tax liability. This factor will weigh against relief if the requesting spouse has the sole legal obligation. The fact that the nonrequesting spouse has been relieved of liability for the taxes at issue as a result of a discharge in bankruptcy is disregarded in determining whether the requesting spouse has the sole legal obligation. This factor will be neutral if, based on an agreement or consent order, both spouses have a legal obligation to pay the outstanding income tax liability, the spouses are not separated or divorced, or the divorce decree or agreement is silent as to any obligation to pay the outstanding income tax liability.

(e) Significant benefit. Whether the requesting spouse significantly benefited from the unpaid income tax liability or understatement. See Treas. Reg. § 1.6015-2(d). A significant benefit is any benefit in excess of normal support. For example, if the

requesting spouse enjoyed the benefits of a lavish lifestyle, such as owning luxury assets and taking expensive vacations, this factor will weigh against relief. If, however, the nonrequesting spouse controlled the household and business finances or there was abuse (as described in section 4.03(2)(c)(iv)) such that the nonrequesting spouse made the decision on spending funds for a lavish lifestyle, then this mitigates this factor so that it is neutral. If only the nonrequesting spouse significantly benefitted from the unpaid tax or understatement, and the requesting spouse had little or no benefit, or the nonrequesting spouse enjoyed the benefit to the requesting spouse's detriment, this factor will weigh in favor of relief. If the amount of unpaid tax or understatement was small such that neither spouse received a significant benefit, then this factor is neutral. Whether the amount of unpaid tax or understatement is small such that neither spouse received a significant benefit will vary depending on the facts and circumstances of each case.

(f) Compliance with income tax laws. Whether the requesting spouse has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief relates.

(i) If the requesting spouse is compliant for taxable years after being divorced from the nonrequesting spouse, then this factor will weigh in favor of relief. If the requesting spouse is not compliant, then this factor will weigh against relief. If the requesting spouse made a good faith effort to comply with the tax laws but was unable to fully comply, then this factor will be neutral. For example, if the requesting spouse timely filed an income tax return but was unable to fully pay the tax liability due to the

requesting spouse's poor financial or economic situation after the divorce, then this factor will be neutral.

(ii) If the requesting spouse remains married to the nonrequesting spouse, whether or not legally separated or living apart, and continues to file joint returns with the nonrequesting spouse after requesting relief, then this factor will be neutral if the joint returns are compliant with the tax laws, but will weigh against relief if the returns are not compliant.

(iii) If the requesting spouse remains married to the nonrequesting spouse but files separate returns, this factor will weigh in favor of relief if the requesting spouse is compliant with the tax laws and will weigh against relief if the requesting spouse is not compliant with the tax laws. If the requesting spouse made a good faith effort to comply with the tax laws but was unable to fully comply, then this factor will be neutral. For example, if the requesting spouse timely filed an income tax return but was unable to fully pay the tax liability due to the requesting spouse's poor financial or economic situation as a result of being separated or living apart from the nonrequesting spouse, then this factor will be neutral.

(g) Mental or physical health. Whether the requesting spouse was in poor physical or mental health. This factor will weigh in favor of relief if the requesting spouse was in poor mental or physical health at the time the return or returns for which the request for relief relates were filed (or at the time the requesting spouse reasonably believed the return or returns were filed), or at the time the requesting spouse requested relief. The Service will consider the nature, extent, and duration of the condition,

including the ongoing economic impact of the illness. If the requesting spouse was in neither poor physical nor poor mental health, this factor is neutral.

.04. Refunds. In both understatement and underpayment cases, a requesting spouse is eligible for a refund of separate payments made by the requesting spouse after July 22, 1998, if the requesting spouse establishes that the funds used to make the payment for which a refund is sought were provided by the requesting spouse. A requesting spouse is not eligible for refunds of payments made with the joint return, joint payments, or payments that the nonrequesting spouse made. A requesting spouse, however, may be eligible for a refund of the requesting spouse's portion of the requesting and nonrequesting spouse's joint overpayment from another tax year that was applied to the joint income tax liability to the extent that the requesting spouse can establish that the requesting spouse provided the funds for the overpayment. The availability of refunds is subject to the refund limitations of section 6511.

SECTION 5. PROCEDURE

A requesting spouse seeking equitable relief under section 66(c) or section 6015(f) must file Form 8857, Request for Innocent Spouse Relief (and Separation of Liability, and Equitable Relief), or other similar statement signed under penalties of perjury, within the applicable period of limitation as set forth in section 4.01(3) of this revenue procedure.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003-61, 2003-2 C.B. 296, is modified and superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for requests for relief filed on or after September 16, 2013. In addition, this revenue procedure is effective for requests for equitable relief pending on September 16, 2013 whether with the Service, the Office of Appeals, or in a case docketed with a Federal court.

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Nancy Rose and Sheida Lahabi of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure contact Branches 1 or 2 of Procedure and Administration on (202) 622-4910 or (202) 622-4940 (not a toll free call).