

INTERNAL REVENUE SERVICE

Number: **200117034**
Release Date: 4/27/2001

March 6, 2001

CC:PA:CBS:Br2
GL-131927-00
UIL # 42.00.00-00
9999.98-00

MEMORANDUM FOR ASSISTANT COMMISSIONER (EXAMINATION)
Attention: Jack G. Holstein, Innocent Spouse Project Manager

FROM: Joseph W. Clark, Senior Technical Reviewer, Branch 2
(Collection, Bankruptcy & Summonses)

SUBJECT: CP-71 Annual Reminder Notice
When Innocent Spouse Relief Requested

This constitutes our response to your December 8, 2000, request for advice on several issues pertaining to the Service's sending of certain annual reminder notices to taxpayers who have requested innocent spouse relief pursuant to I.R.C. § 6015. ^{1/} As is discussed below, our opinion is that sending the annual reminder notices does not violate the prohibition with respect to levies and court proceedings imposed by I.R.C. § 6015(e)(1)(B)(i). Moreover, although the Service generally is required by statute to send a reminder notice to any taxpayer with a tax delinquent account, the Service's participation in resolving a taxpayer's request for innocent spouse relief constitutes a legally valid substitute for sending the notice to that taxpayer.

- ISSUES:
- 1) If the Service continues to send CP-71 annual reminder notices to a taxpayer who has filed a request for innocent spouse relief, is the Service violating the prohibition on certain collection activity which is imposed, once such a request is filed, by I.R.C. § 6015(e)(1)(B)(i)?
 - 2) Given that the annual reminder notices are required to be sent pursuant to I.R.C. § 7524, can the Service legally decide not to send them to a taxpayer who has filed a request for innocent spouse relief?

- CONCLUSIONS:
- 1) Sending CP-71 annual reminder notices does not violate the prohibition imposed by I.R.C. § 6015(e)(1)(B)(i) since this activity is not among those prohibited.
 - 2) Although the Service is required to send the annual

^{1/} Your request for advice was directed to the Chief, Branch 2 (Administrative Provisions and Judicial Practice), who subsequently forwarded the request to Branch 2 (Collection, Bankruptcy & Summonses) for disposition.

reminder notices to any taxpayer who has a delinquency, the Service's participation in proceedings involving a taxpayer's request for innocent spouse relief constitutes a legally valid substitute for sending the notice while the taxpayer's request is pending.

STATUTORY AND FACTUAL BACKGROUND: The Internal Revenue Service Restructuring and Reform Act of 1998 eased the requirements for obtaining relief from joint and several liability on a tax return jointly filed by a husband and wife. The new provisions are set forth in the current version of I.R.C. § 6015.

Section 6015(b) provides that, with respect to a jointly-filed return, an individual may be partially or fully relieved of liability for an understatement of tax, if: 1) the understatement is attributable to erroneous items of the individual's spouse; 2) the spouse seeking relief establishes that in signing the return he or she did not know, and had no reason to know, that the understatement existed; 3) taking into account all the facts and circumstances, it would be inequitable to hold the spouse seeking relief liable for the deficiency in tax attributable to such understatement; and 4) relief is sought within two years of the date the Service has commenced collection activities with respect to the spouse seeking the relief. Alternative avenues of relief available to spouses filing jointly are afforded by Section 6015(c) and Section 6015(f). These provisions, respectively, limit liability for taxpayers no longer married, legally separated, or no longer living together (Section 6015(c)) and allow for potential relief on an equitable basis where subsections (b) and (c) do not afford relief (Section 6015(f)).

Section 6015(e)(1)(A) provides for Tax Court review of the Service's determination on a request for innocent spouse relief made pursuant to Section 6015(b) or (c). Section 6015(e)(1)(B), entitled "Restrictions Applicable to Collection of Assessment," states, in pertinent part:

- (i) **IN GENERAL.** – ... [N]o levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subsection (b) or (c) for collection of any assessment to which such election relates until the expiration of the 90-day period described in subparagraph (A), or, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

I.R.C. § 6015(e)(1)(B)(i). Section 6015(e)(2) provides for suspension of the statute of limitations on collection during the period the prohibition imposed by

Section 6015(e)(1)(B)(i) is in effect. 2/

The remaining statutory provision which is relevant here is I.R.C. § 7524. This provision was added to the Internal Revenue Code, through the second Taxpayer Bill of Rights, in 1996, and it states:

Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.

Section 7524 applies to tax years after 1996. H.R. Rep. No.104-506, at 46-47 (1996), reprinted in 1996 U.S.C.C.A.N. 1143, 1169-1170.

In your request for advice, you specifically address the use of Form CP-71. This form is a notice which has been used for Collection for many years and is the notice which is currently sent pursuant to Section 7524. 3/

ANALYSIS: Your questions pertain to the juxtaposition of two Internal Revenue Code provisions, Section 6015(e)(1)(B)(i) and Section 7524. Specifically, you are concerned with the potential conflict between Section 6015(e)(1)(B)(i), which could be construed as prohibiting the Service from sending annual reminder notices such as those embodied by Form CP-71, and Section 7524, which appears to require, without qualification, that the Service issue such notices.

We have previously addressed the scope of the prohibition imposed by Section 6015(e)(1)(B)(i). In advice given to the Assistant Commissioner (Examination) and the Assistant Commissioner (Collection) approximately two years ago, we took the position that because the express terms of the statute refer only to innocent spouse activities relating to levies and proceedings in court for collection, activities such as issuing notices demanding payment, which are not encompassed within either of these categories, are not prohibited by Section 6015(e)(1)(B)(i). Thus, the type of notices at issue here, annual notices informing taxpayers of continuing tax delinquencies, also would not be prohibited by Section 6015(e)(1)(B)(i). As we noted in our former advice, the Service could,

2/ As a matter of policy, the Service refrains from engaging in the activities prohibited by Section 6015(e)(1)(B)(i) even where innocent spouse relief has been sought pursuant to Section 6015(f). See IRM Handbook 104.5.1.7. However, because the Service is not prohibited by statute from undertaking these activities where relief has been sought under Section 6015(f), the statute of limitations on collection continues to run during the applicable period.

3/ The current version of the Internal Revenue Manual does not appear to set forth the purpose of Form CP-71. A prior version of the Manual, however, stated that this form was used as a "reminder of tax due" to Individual Master File taxpayers, on "deferred" and "currently not collectible" accounts. See IRM 6(762.1) (1993), 6(11)00-51 (1992).

as a matter of policy, decide to refrain from engaging in activities in addition to those prohibited by statute while a request for innocent spouse relief is pending; however, in response to your specific question, there is no legal prohibition on issuing CP-71 annual reminder notices during the pendency of such a request.

If the Service were to decide that policy considerations relevant to Section 6015 warranted refraining from issuing the type of annual notices contemplated by Section 7524, the question which would then arise is whether the Service could do so given the apparent mandatory nature of the language contained in the latter provision. We have previously taken the position that sending these notices is, as a general matter, required. However, the House Report in the legislative history of Section 7524 reflects that the purpose of the statutorily-required notice is to serve as a reminder to the taxpayer that, regardless of whether the Service is actively pursuing a given delinquency at a given time, the taxpayer still owes the amount at issue. See H.R. Rep. No. 95-595, supra. For this reason, we have taken the position that certain actions on the part of the Service and/or taxpayers with delinquencies may be tantamount to the Service's constructive compliance with the Section 7524 requirement that reminder notices be sent annually. These actions may include, but are not limited to, the parties' participation in ongoing litigation pertaining to the delinquency. In the litigation scenario, it is generally unnecessary to send out notices since the affected parties presumably are aware of the existence and the amount of the asserted liability as a result of the pleadings or other relevant documents filed in the litigation. Thus, where the amount of the liability alleged by the Service to be delinquent is set forth in some sort of litigation-related document, this documentation serves as a legally adequate substitute for sending the Section 7524 required annual notice of delinquency.

We believe that proceedings pertaining to a request for innocent spouse relief constitute, for this purpose, a litigation scenario. Moreover, in this context the taxpayer, by virtue of initiating a request for innocent spouse relief with respect to a given delinquency, presumably is aware of the continuing existence of the delinquency. Accordingly, where a request for innocent spouse relief either is under consideration by the Service or has been disposed of by the Service and is on appeal to the Tax Court, the Service's participation in the proceedings constitute constructive compliance with the annual notice requirement of Section 7524. As a result, the Service can legally refrain from sending out the annual reminder notice embodied by Form CP-71. 4/

Thank you for soliciting our advice on this matter. If you have further questions, please call 202/622-3620.

4/ If the nonpetitioning spouse were not a party to the disposition of the request for innocent spouse relief, however, the Service presumably would still be required to provide him or her with the annual notice required by I.R.C. § 7524, since he or she would continue to be jointly and severally liable for the same liability. See I.R.C. § 6013(d)(3).