

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Steven M. Roth
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subject: Whether the tax liability is abated when relief is granted under section 6015.

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer
Spouse
Year 1
Year 2
Year 3
Date 1
Date 2
Date 3
Date 4
Date 5
Date 6
Date 7

ISSUE

Whether the assessed joint income tax liability is abated with respect to the spouse who is granted relief from joint and several liability under section 6015.

CONCLUSION

No. Relief under section 6015 does not fit within section 6404, so it does not constitute an abatement. When the Service grants relief under section 6015 it merely reduces the taxpayer's account to zero administratively to prevent it from pursuing collection activity.

FACTS

The pertinent facts are as follows: Taxpayer filed joint Federal income tax returns with her husband, Spouse, for taxable years Year 1, Year 2, and Year 3. The spouses filed the Year 1 return on Date 1, including full payment for the tax due. On Date 2, a deficiency was assessed. The spouses filed the Year 2 and Year 3 returns on Date 3 and Date 4, respectively. The spouses did not fully pay the tax due shown on those two joint returns.

On Date 5, Taxpayer filed Form 8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief), seeking relief under section 6015 for the joint income tax liabilities for all three years. In accordance with its procedures, the Service noted on the joint account that Taxpayer filed a request for relief, by entering transaction code 971 with action code 065. Then, it moved the liabilities from the joint account to separate accounts for each spouse.

After an examination, the Service determined that Taxpayer was entitled to relief from joint and several liability for the full amount of the joint liabilities for all three years based on the information Taxpayer provided on her Form 8857 and supporting questionnaire, Form 12510. The Service issued its Final Notice of Determination granting relief on Date 6. Accordingly, on Date 7, the Service adjusted its records to reflect that Taxpayer was granted relief, by entering transaction code 604, which cleared the account to zero. The Service clears the account to zero for administrative purposes to prevent it from pursuing collection activity against someone no longer liable for a liability. Spouse's separate account showed a balance due for all three years for the joint liabilities.

Subsequent to the granting of relief, Spouse submitted an offer in compromise. During the investigation, the Service personnel assigned to the case discovered evidence proving that Taxpayer made false statements on her Form 8857 and supporting questionnaire, Form 12510, with respect to the facts that supported the grant of relief. Therefore, the Service re-examined Taxpayer's case and is now considering denying relief because the facts show that she does not qualify for relief. Given that the account was reduced to zero, you wanted to make sure that, if the Service determines that it

now will deny Taxpayer relief, it will be able to adjust the account to reflect the liability since the period of limitations on assessment under section 6501 has expired.

LAW AND ANALYSIS

Taxpayers who file joint Federal income tax returns are generally jointly and severally liable for all taxes due. Section 6013(d)(3). Relief from joint liability is available in limited circumstances under section 6015. Section 6015 provides three avenues for relief. First, under section 6015(b), a requesting spouse may elect relief from joint and several liability for an understatement of tax attributable to erroneous items of the spouse with whom the requesting spouse filed the return if the requesting spouse did not know, or have reason to know of the understatement and it would be inequitable to hold the requesting spouse liable. Second, under section 6015(c), a requesting spouse may elect to allocate a deficiency if the requesting spouse is no longer married to, is legally separated from, or is no longer living with, the other spouse filing the joint return. Third, under section 6015(f), if the requesting spouse does not qualify for relief under section 6015(b) or (c), the Commissioner may grant relief from any unpaid tax or any deficiency if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable.

In order to request relief, a taxpayer files a Form 8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief). Upon receiving the form, the Service notes that the taxpayer filed a request on the spouses' joint account, by entering transaction code 971 with action code 065. Then, it moves the liabilities from the joint account to separate accounts for each spouse. This process is necessary so the Service can track each spouse's separate account activity. For example, once a claim for relief is filed under section 6015, the statute of limitations on collection for that liability for the spouse that requested relief is suspended in most cases pursuant to section 6015(e)(2); however, the collection statute is not suspended for the other spouse. In addition, the Service cannot take certain collection actions against the spouse that requested relief but may do so against the other spouse.

In this case, the taxpayer was originally granted full relief under subsection (f). When the Service grants a taxpayer full relief under section 6015, the Service enters transaction code 604 on the taxpayer's separate account, which stands for "assessed debit cleared". The Service clears the taxpayer's account to zero when relief is granted in order to prevent it from pursuing collection activity against that taxpayer. Collection activity may continue against the other spouse, so that spouse's separate account continues to reflect the entire amount of the assessed joint tax liability. If partial relief were granted the Service would reduce the taxpayer's account by the amount of relief granted, so that the balance would only reflect the amount of the joint tax liability for which that spouse continues to remain liable. This also is necessary to ensure that the Service only collects the amount of tax for which the taxpayer remains liable. As the reduction of the account is merely an administrative action so that the Service's records show the amount of tax for which the taxpayer remains liable, it is not an abatement.

Abatement only refers to action taken in accordance with section 6404. Section 6404 authorizes the Service to abate a tax or liability assessment in certain circumstances. Section 6404(a) provides the general rule, which allows the Service to abate a liability that is (1) excessive in amount, (2) assessed after the expiration of the period of limitations, or (3) erroneously or illegally assessed. Other subsections of section 6404 provide rules for abatement in specific circumstances, such as where small tax balances are involved. Generally, when a liability is abated under section 6404(a) it completely extinguishes the assessment. Crompton-Richmond Co., Inc. v. United States, 311 F. Supp. 1184, 1186 (S.D.N.Y. 1970). Therefore, if the Service later determines that the abatement was erroneous, it must reassess the liability within the applicable period of limitations on assessment under section 6501 in order to pursue collection activity. Id. Under section 6404, only certain abatements can be reinstated after the period of limitations on assessment has expired, such as abatements made as the result of inadvertent clerical error. See, e.g., Id. at 1186-87.

Relief under section 6015 does not abate the assessed tax liability. The authority for the Service to grant relief from joint and several liability comes from section 6015 itself, so the Service does not rely upon the abatement provisions provided in section 6404 to grant relief under section 6015. Furthermore, relief under section 6015 does not meet the conditions for abatement identified in section 6404. As none of the specific circumstances for abatement under section 6404 apply to relief under section 6015, we will confine our analysis to abatement under the general rule provided in section 6404(a). When relief is granted under section 6015, it is not because the original tax assessment was excessive in amount, assessed after the period of limitations expired, or erroneous or illegal. In other words, there was nothing incorrect about the original assessment. In contrast, the relief provisions under section 6015 were created generally out of a sense of equity in that, when certain conditions exist, Congress determined that it would be fair to relieve one spouse from the entire amount of the joint liability. See Section 6015; H. Conf. Rept. 105-599, at 249-55 (1998).

This result is similar to how an offer in compromise is handled, which also reduces the amount of a liability for which the Service will hold a taxpayer liable. The Service's approval of an offer in compromise does not satisfy the conditions for abatement identified in section 6404(a). The Service has authority under section 7122 to compromise any civil case not referred to the Department of Justice for prosecution or defense. Grounds for compromise are doubt as to liability, doubt as to collectibility, and the promotion of effective tax administration. Temp. Treas. Reg. § 301.7122-1T. An offer in compromise is an agreement between a taxpayer and the Service that resolves the taxpayer's tax liability. Once the taxpayer fulfills all the terms, the liability will be discharged. Thus, an offer in compromise does not establish that an assessed tax liability is excessive in amount. Such an agreement merely reflects that the parties have agreed to resolve that liability for less than its full amount, if certain conditions are satisfied. An offer in compromise similarly is no statement about the timeliness of an assessment. It also does not mean that the liability was erroneous or illegally assessed, even if the offer is predicated on doubt as to liability: such doubt is not tantamount to

actual error or illegality. In fact, if the taxpayer fails to meet any of the terms and conditions of the offer and the offer is terminated due to the taxpayer's default, the Service can file suit to collect the entire unpaid balance of the offer, file suit to collect an amount equal to the original amount of the tax liability, minus any payment already received under the terms of the offer, or file suit or levy to collect the original amount of the tax liability, without further notice to the taxpayer of any kind.

We note that a previous memorandum, CCA 200027052, noted that an assessment against a requesting spouse in excess of the redetermined liability is excessive for purposes of section 6404(a) and that the Service "has the authority to abate" this excessive liability. This memorandum is incorrect on this point for the reasons discussed above.

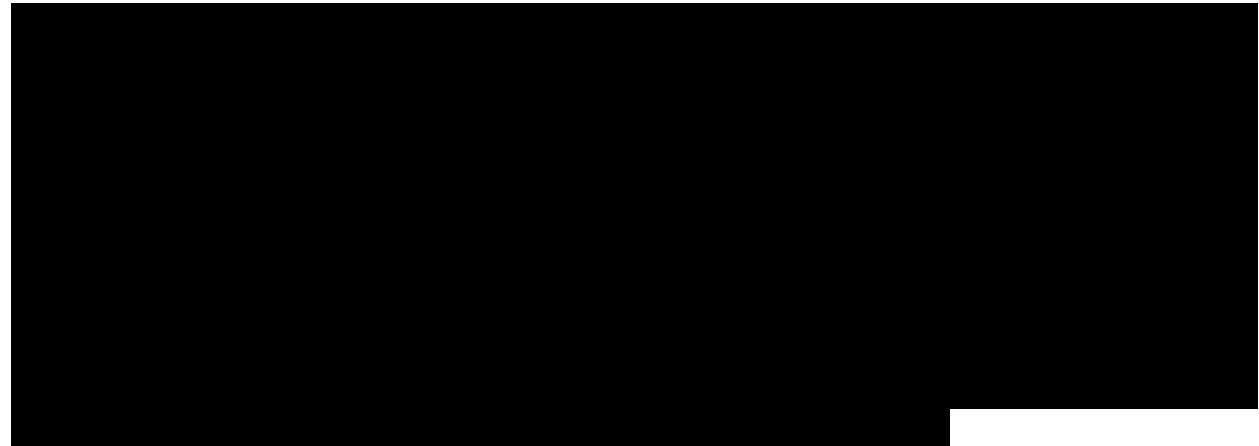
As Taxpayer's account currently reflects a zero balance due to the original grant of relief, the Service will need to reverse the grant of relief if it determines that relief was not appropriate. The Service can reverse the grant of relief by entering transaction code 605 on Taxpayer's separate account. Because the liability has not been abated, the reversal of transaction code 604, which reduced the account to zero, does not constitute a new assessment and, thus, is not prohibited by the expiration of the period of limitations on assessment. Accordingly, the period of limitations on collection under section 6502 runs from the original date of the assessment, adjusted for any suspension, such as the request for relief under section 6015.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[REDACTED]

[REDACTED]

[REDACTED]



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Please call (202) 622-4910 if you have any further questions.