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**From:** [REDACTED]

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**Subject:** FW: Tax Court Jurisdiction in SNOD cases

When I was in Procedure & Administration we looked into this question and determined that the Tax Court would have jurisdiction to consider innocent spouse relief for an underpayment in a case that was before the court on a petition from a SNOD pursuant to the court's broad authority in sections 6213 and 6214. In addition, the Tax Court has always given itself wide authority over defenses raised in a deficiency proceeding. In Naftel v. Commissioner, 85 T.C. 527, 533 (1985), the court held that where a taxpayer files a petition for a redetermination of a deficiency, the court has jurisdiction over the entire tax liability, not just the items determined to be erroneous in the notice of deficiency. Consequently, where a taxpayer raises an affirmative defense to a deficiency determination, the court needs no additional basis for the authority to render an opinion on such issues because the affirmative defense is part of the deficiency proceeding over which the court has jurisdiction. Applying this thinking to innocent spouse, the Tax Court in Butler v. Commissioner, 114 T.C. 276, 287-288 (2000), held that when a taxpayer raised her request for relief under section 6015(f) in a petition for redetermination filed with the Tax Court pursuant to section 6213(a), it had jurisdiction to review the Commissioner's (f) determination. The Tax Court reasoned that because affirmative defenses to a deficiency are within the Tax Court's general jurisdiction, denials of equitable relief under section 6015(f) should be as well.

However, in Sykes v. Commissioner, T.C. Memo. 2009-197, the court brought a similar issue up on their own, looking to see whether the court had jurisdiction over innocent spouse relief for the underpayment pursuant to section 6015(e) as the case was before the court pursuant to a petition from a SNOD. The court correctly concluded that it did not have jurisdiction under section 6015(e) based on the facts of the case. The court, however, never considered whether it would have jurisdiction under sections 6213 and 6214. We did not brief this issue because we did not think it was an issue and the court never asked for the parties input, instead raising this issue in the opinion.

Other practicalities also lead to a conclusion that innocent spouse relief for the underpayment be considered in the deficiency case. If the underpayment isn't

considered, then the RS would have to file an administrative claim and wait at least six months or until a final determination letter was issued to file another petition. At that point it might be too late to join the deficiency case, or the deficiency case could be over. This is very burdensome to the RS and doesn't promote judicial economy. Further, a subsequent innocent spouse case for the underpayment might result in collateral estoppel issues.

As Sykes is only a memorandum opinion and doesn't completely address the issue as it did not consider the breadth of sections 6213 and 6214 instead only focusing on section 6015(e), it should not be controlling. We should be on the lookout for another case that presents this issue so that we could argue that the court has jurisdiction, distinguishing Sykes. As such, as we discussed, I agree that we should put something out that this issue should be coordinated with this group.

If anyone has any questions or wishes to discuss this further please give me a call.