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From: [REDACTED]
Sent: Wednesday, March 28, 2018 2:22:41 PM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: FW: Section 6013(a)(3) issue

Hi ,

You asked us whether the executrix can disaffirm the amended returns filed for tax years , , and under IRC 6013(a)(3) or whether she is barred by a deadline. Our interpretation of IRC 6013(a)(3) is that it does not apply in the present case and that the executrix cannot disaffirm the amended returns filed by the decedent's wife for those years.

The definition of "surviving spouse" given in IRC 2(a) states that a surviving spouse is a taxpayer "whose spouse died during either of his two taxable years immediately preceding the taxable year." In , , and , the husband was still alive, so the wife is not considered a surviving spouse as to those years. Because IRC 6013(a)(3) allows the executrix to disaffirm returns made only by a surviving spouse, and because the wife is not considered to be a surviving spouse as to tax years , , and , the executrix will not be able to disaffirm the amended returns filed by the wife. This reading of IRC 6013(a)(3) is consistent with the one year deadline provided in IRC 6013(a)(3) for the executrix to disaffirm a joint return, which will apply to the return filed in because the wife is considered to be a surviving spouse as to that year.

Thanks,