



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

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MEMORANDUM FOR DISTRICT COUNSEL, BROOKLYN

CC:NER:BRK

Attn: Jody Tancer

FROM: Acting Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

SUBJECT: Significant Service Center Advice Regarding TEFRA and
Innocent Spouse Relief

This responds to your request for Significant Service Center Advice in connection with a question posed by the TEFRA coordinator of the Brookhaven Service Center. We have restated your questions and renumbered their order to better address the issues raised by your request.

ISSUES:

1. How does § 6015 (the new innocent spouse provision) as added by § 3201 of the Internal Revenue Restructuring and Reform Act of 1998 (RRA98), Pub. L. No. 105-206, affect innocent spouse claims for computational adjustments in proceedings under the partnership provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248?

2. Whether there is a statute of limitations problem when the Service: (1) makes a joint assessment within the one year period prescribed by § 6229(d)(2); (2) subsequently receives a claim for innocent spouse relief under § 6230(a)(3) within the sixty day period prescribed by § 6230(a)(3)(A) but after the one year limitations period of § 6229(d)(2); (3) abates the assessment as to the electing spouse and consequently transfers the joint assessment from master file to a single liability

against the nonelecting spouse on nonmaster file; and (4) within the sixty day period prescribed by § 6230(a)(3)(A) issues a statutory notice of deficiency to the electing spouse to resolve the § 6013(e) innocent spouse claim in the Tax Court.

3. Can a notice of deficiency be issued to the electing spouse in TEFRA cases if the one year assessment date under § 6229 has already expired when a timely claim for relief under § 6230(a)(3)(A) is received?

CONCLUSIONS:

1. Section 6015 provides both a prepayment and refund forum for innocent spouse claims in both TEFRA and non-TEFRA cases. Unlike innocent spouse claims under former § 6013(e), the innocent spouse provisions of § 6015 apply to both TEFRA and non-TEFRA innocent spouse claims. Thus the TEFRA innocent spouse provisions (§§ 6230(a)(3) and (c)(5)) are unnecessary under § 6015.

2. A statute of limitations problem does not exist with regard to the nonelecting spouse when the joint assessment is removed from master file and transferred to the individual nonmaster file solely against the nonelecting spouse after the assessment period has expired because the transfer from master file to nonmaster file is a bookkeeping entry only, not a new assessment outside the statute of limitations.

3. Section 6230(a)(3)(A) suspends the statute of limitations for sixty days from the date of abatement. Section 6503(a)(1) provides that the issuance of a statutory notice of deficiency during this period would also suspend the statute of limitations. There should be no future timely claims under § 6230(a)(3)(A) since they require assertion of § 6013(e) which has been repealed.

LAW AND ANALYSIS

Issue 1

Prior to the enactment of §§ 6230(a)(3) and 6230(c)(5) in the Taxpayer Relief Act of 1997 (TRA97), Pub. L. No. 105-34, spouses who wanted to raise the innocent spouse defense to a TEFRA partnership computational adjustment in a judicial forum were precluded from doing so. Subsequent to the enactment of TRA97, but prior to the enactment of section 6015 by Congress in RRA98, spouses who wanted to raise an innocent spouse defense to a TEFRA partnership computational adjustment in a judicial forum were required to follow the rules in §§ 6230(a)(3) or 6230(c)(5).

With the enactment of § 6015 in RRA98, Congress amended § 6230(c)(5) by striking the reference to § 6013(e) and replacing it with § 6015. However, Congress

neither repealed nor amended § 6230(a)(3). The resulting overlap of the TEFRA and non-TEFRA innocent spouse provisions created some confusion about the procedures necessary to raise an innocent spouse defense in the context of a TEFRA partnership computational adjustment. You have raised the question of how the new rules of § 6015 interact with the TEFRA innocent spouse rules. We have concluded that § 6015 applies to all claims for relief from joint and several liability (including claims for relief relating to TEFRA computational adjustments) for liabilities arising prior to July 22, 1998 (the date of enactment of RRA98) and remaining unpaid as of that date, as well as any liabilities arising after that date. In order to understand how we arrived at this conclusion, we will begin this discussion with a review of the innocent spouse rules prior to the enactment of § 6015.

Prior law:

Former § 6013(e) provided relief from liability for tax of one spouse (who had filed a joint return) to the extent the liability was attributable to a substantial understatement of tax attributable to a grossly erroneous item about which that spouse did not know, or had no reason to know, and where it would be inequitable, taking into account all the circumstances, to hold that spouse liable for the deficiency in tax. Section 6013(e) was repealed by § 3201(e)(1) of the RRA98, effective for liabilities that were unpaid as of July 22, 1998.

If an electing spouse did not resolve the § 6013(e) innocent spouse claim administratively, he or she could file suit in certain circumstances. A taxpayer generally has two types of judicial forums in which to dispute the Service's determination of the taxpayer's liability for a particular item or tax year. As a general rule a taxpayer may choose either a prepayment or refund forum to resolve a dispute with the Service. The jurisdictional requirements of each forum are different and we take this opportunity to review them.

Often the preferred forum to resolve a tax dispute with the Service is the United States Tax Court (Tax Court) because taxpayers can litigate their claim before payment of the tax. The Tax Court's jurisdiction is generally limited to the resolution of prepayment tax disputes between the Service and taxpayers where a taxpayer files a petition in the Tax Court within ninety days (150 days if the notice is addressed to a person outside the United States) of the mailing of a statutory notice of deficiency. Section 6213(a). Many § 6013(e) innocent spouse claims that were not resolved administratively were litigated in the Tax Court after the issuance of a notice of deficiency by the Service and the filing of a petition in the Tax Court by the taxpayer.

Like other tax disputes between taxpayers and the Service, a TEFRA partnership adjustment may be litigated in the Tax Court. In a TEFRA case, the Service issues a notice of the final partnership administrative adjustment (FPAA).

The FPAA is similar to a statutory notice of deficiency in that it permits the tax matters partner of a TEFRA partnership to file a petition for readjustment within ninety days after the day on which an FPAA is mailed to the tax matters partner. Section 6226(a). If the tax matters partner does not file a petition, any notice partner or any five-percent group may, within sixty days after the close of the ninety-day period, file a petition for readjustment. If a petition is timely filed by the tax matters partner, a notice partner, or a five-percent group, the partnership adjustment may be litigated. Section 6226(b). Section 6226(f) limits the court's jurisdiction in a TEFRA proceeding to the determination of all partnership items of the partnership for the partnership taxable year to which the FPAA adjustment relates, the proper allocation of such items among the partners, and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item. Since the § 6013(e) innocent spouse claim is not a partnership item the court does not have jurisdiction to rule on an innocent spouse claim in a TEFRA proceeding. See *e.g.*, *Dynamic Energy, Inc. v. Commissioner*, 98 T.C. 48 (1992)¹. See also, *Carmel v. Commissioner*, 98 T.C. 265 (1992).

Since the jurisdiction in TEFRA matters is limited, the court cannot adjudicate disputes between parties involving matters outside the court's jurisdiction even if those disputes involve federal taxation issues. Under former § 6013(e) an electing spouse could only proceed to Tax Court for a determination on the merits of an innocent spouse claim if the Service issued a statutory notice of deficiency. However, a notice of deficiency is not issued for a computational adjustment in a TEFRA proceeding. Thus, under former § 6013(e) a nonpartner spouse did not have an opportunity to raise the innocent spouse claim in court because: 1) the court lacked jurisdiction to decide an innocent spouse claim in a TEFRA proceeding; and 2) the Service did not issue a notice of deficiency with respect to a TEFRA computational adjustment.

Section 1346(a)(1) of Title 28 of the United States Code provides that the United States District Courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims over any civil action against the United States for the recovery of any internal-revenue tax paid by a taxpayer. In general, any taxpayer who is precluded from seeking the Tax Court's prepayment forum may consider a refund suit in either of these courts. In TEFRA proceedings, however, refund suits are only permitted in very limited circumstances. Section 7422(h) precludes a TEFRA refund suit other than as provided in §§ 6228(b) or 6230(c). Prior to the enactment of § 6230(c) in 1997, an electing spouse who was denied

¹ Note that *Dynamic Energy, Inc.* was an S corporation subject to TEFRA corporate level audit procedures similar to the TEFRA partnership level audit procedures.

innocent spouse relief under former § 6013(e) by the Service for a TEFRA computational adjustment did not have a judicial forum in which to resolve the claim.

Since no judicial forum was available under TEFRA for a determination of the merits of an innocent spouse claim, Congress enacted § 1237 of TRA97 to provide potential innocent spouses with an opportunity to have their day in court. Section 1237 of TRA97 added §§ 6230(a)(3) and 6230(c)(5) to the Internal Revenue Code. Section 6230(a)(3) provides a prepayment forum in which to raise an innocent spouse claim, while § 6230(c)(5) provides a refund forum in which to raise an innocent spouse claim. Section 1237(d) provides these provisions are effective retroactively as if originally included in § 402 of TEFRA.²

Section 6230(a)(3)(A) provides that if the spouse of a partner asserts that § 6013(e), the repealed innocent spouse provision, applies with respect to a liability attributable to a partnership item, that spouse may file a request for abatement within 60 days after the notice of computational adjustment is mailed to the spouse. The Service is then required to abate the assessment and to send a notice of deficiency to the spouse within 60 days after the abatement. Section 6230(a)(3)(B) provides that if the electing spouse files a petition in Tax Court in response to that notice of deficiency, the Tax Court shall only have jurisdiction to determine whether the requirements of § 6013(e), the repealed innocent spouse section, have been satisfied. Section 6230(a)(3) was not repealed by RRA98. Its continued reference to § 6013(e) rather than § 6015 is intentional. As discussed below, § 6230(a)(3) is only applicable to cases arising under § 6013(e).

Section 6230(c)(5) permits an electing spouse to file a claim for refund within six months of the mailing of the computational adjustment. Section 6230(c)(5) was amended by RRA98 by striking the reference to § 6013(e) and replacing it with § 6015. Section 6230(c)(5) applies to timely innocent spouse refund claims filed under § 6013(e) or § 6015.

As discussed below, Congress intentionally amended § 6230(c)(5) in RRA98 effectively providing two remedies for nonpartner TEFRA spouses claiming innocent spouse relief under § 6015. A nonpartner spouse may seek relief under: 1) § 6230(c)(5); or 2) the general relief provisions of § 6015 like any other person seeking relief from joint and several liability.

Current Law:

² The TEFRA partnership audit procedures generally apply to partnership taxable years beginning after September 3, 1982.

Section § 3201(a) of RRA98 added new § 6015 to the Code. Section 6015 expands the former innocent spouse protection contained in § 6013(e). Section 6015 provides three types of relief from joint liability to spouses who filed a joint return.

To request relief under § 6015, an electing spouse must file a Form 8857, "Request for Innocent Spouse Relief" or other similar statement signed under penalties of perjury. In the absence of a statutory notice of deficiency, § 6015(e)(1) provides that an electing spouse can petition the Tax Court for review of the Secretary's determination of relief available to the individual under § 6015(b) or (c) within ninety days of the mailing date of the notice of determination or after six months from the date the Form 8857 or other statement was filed with the Service. Section 6015(e)(3)(C) provides that if a suit for refund is begun by either individual filing the joint return, the court acquiring jurisdiction shall have jurisdiction over the petition filed to review the determination of relief.

Under § 6015 an electing spouse has a prepayment forum in the Tax Court to raise the innocent spouse claim with respect to a TEFRA computational adjustment. Accordingly, § 6230(a)(3) is no longer necessary to provide a nonpartner TEFRA spouse with a prepayment forum to adjudicate an innocent spouse claim. Section 6230(a)(3) was not amended in RRA98 by design. Section 6015 is effective for any liability for tax arising after July 22, 1998, and **any liability for tax arising on or before such date but remaining unpaid as of such date**. Since § 6230(a)(3) provided prepayment Tax Court jurisdiction for unpaid liabilities, it is no longer needed because taxpayers with unpaid liabilities on July 22, 1998, are covered by § 6015 and can, accordingly, proceed to Tax Court within 90 days of the mailing of an administrative denial of relief under § 6015 or after six months have passed since the filing of their claim for relief.

Relief under § 6015 in TEFRA matters is not limited to prepayment suits. As discussed above, § 6013(e) refund claims for TEFRA adjustments were precluded by § 7422(h) prior to enactment of § 6230(c)(5) in TRA97. However, the § 7422(h) prohibition on TEFRA refunds is not a bar to refund claims under § 6015. Relief from joint and several liability in the form of a refund under § 6015(b) can also be sought pursuant to § 6015(e)(3) in the Tax Court. Section 6015(e)(3) provides that **notwithstanding any other law or rule of law** (other than § 6512(b), 7121, or 7122) a credit or refund shall be allowed for certain claims for relief under § 6015. Thus, the refund suit limitation of § 7422(h) is trumped by § 6015(e)(3) which permits refunds under § 6015(b) in the Tax Court. In addition, § 6230(c)(5) permits refund suits under § 6015(b) in the district courts and the United States Court of Federal Claims.

The innocent spouse rules contained in §§ 6230(a)(3) and (c)(5) were enacted to provide a forum to persons who could not obtain their day in court to

adjudicate an innocent spouse claim under former § 6013(e)(3) for claims relating to TEFRA computational adjustments. Section 6015 now provides these taxpayers with both a prepayment and refund forum in which to assert the innocent spouse claim. Since § 6015 provides both a prepayment and refund forum for innocent spouse claims involving TEFRA partnership computational adjustments, innocent spouse claims involving TEFRA partnerships should be processed using the same procedures as any other § 6015 innocent spouse claim. While an electing spouse may choose relief under either § 6230(c)(5) or § 6015, we believe that it would be to the spouse's benefit to file under 6015 due to the longer period of time within which to file a claim.

Issue 2

The first question you posed in your request for Significant Service Center Advice was, whether the separate "assessment" against the nonelecting spouse may be made if the one year assessment date under § 6229 has already expired when one of the spouses files a timely claim for innocent spouse relief. The simple answer to this question is that a tax may not be assessed against the nonelecting spouse after the one year limitation period of § 6229(d)(2) has expired irrespective of whether an innocent spouse claim is made by an electing spouse. However, upon an examination of District Counsel's response, we believe that the question posed is more complex than originally stated.

As discussed above § 6230(a)(3) was effectively repealed by RRA98 and, accordingly, this discussion is only applicable to the claims that were controlled by § 6013(e). We believe that the underlying question posed by the TEFRA coordinator is, whether there is a statute of limitations problem when the Service: (1) makes a joint assessment within the one year period prescribed by § 6229(d)(2); (2) subsequently receives a claim for innocent spouse relief under § 6230(a)(3) within the sixty day period prescribed by § 6230(a)(3)(A) but after the one year limitations period of § 6229(d)(2); (3) abates the assessment as to the electing spouse and consequently transfers the joint assessment from master file to a single liability against the nonelecting spouse on nonmaster file; and (4) within the sixty day period prescribed by § 6230(a)(3)(A) issues a statutory notice of deficiency to the electing spouse to resolve the § 6013(e) innocent spouse claim in the Tax Court. We believe that the use of an example would best answer this question.

Example

ABC Partnership (ABC) is a TEFRA partnership for purposes of the TEFRA audit procedures. The Service follows the TEFRA audit procedures as prescribed by the Code and issues an FPA on April 14, 1995 for tax year 1991. The tax matters partner of ABC timely files a petition in the Tax Court. On June 28, 1996, the decision of the Tax Court becomes final. Z is a partner of ABC. Z is married to

Y who is not a partner in ABC. Z and Y filed a joint income tax return for taxable year 1991. On June 23, 1997, the Service mails a computational adjustment and assesses the tax relating to Z and Y's 1991 joint income tax return. Y files a Form 8857 claim for innocent spouse relief with the Service on August 18, 1997. The Service promptly abates the assessment on August 18, 1997, with respect to Y. In order to accomplish this the Service transfers the joint assessment on master file to the nonmaster file individual account of Z in the entire amount. On October 13, 1997, the Service issues a statutory notice of deficiency to Y.

We agree with District Counsel's conclusion that the assessment statute of limitations with regard to the nonelecting spouse is not impacted by the abatement and issuance of a statutory notice of deficiency to the electing spouse. Section 6203 provides that an assessment is made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. In the example above, the original joint assessment was timely made against Z and Y on June 23, 1997. Due to the lateness of the assessment within the one year limitations period, Y's sixty day period for claiming innocent spouse relief extended beyond the original one year assessment date. Y's subsequent filing of relief based on § 6013(e) required the Service to abate the assessment as to Y. Prior to this abatement Z and Y were jointly and severally liable for the tax due. However, after the abatement as to Y, the assessment is transferred to nonmaster file in order to reflect the change from joint to individual liability. Z was at that time solely responsible for the tax due. This change from a joint liability against Z and Y on master file to individual liability against Z only on nonmaster file is not an assessment against Z within the meaning of § 6203 that would otherwise be outside the § 6229(d)(2) period of limitations. It was not a new assessment as to Z; it is merely an internal bookkeeping change. The assessment as to Z occurred on June 23, 1997, within the one year limitations period. Section 6230(a)(3)(A) provides that the period for limitations as to the electing spouse shall not expire before sixty days after the date of the abatement as to the electing spouse. The issuance of the statutory notice of deficiency to Y on October 13, 1997, is timely because it was made within the sixty day period prescribed by § 6230(a)(3)(A). The issuance of the statutory notice of deficiency also extends the statute of limitations. § 6503(a)(3)(A).

Issue 3

As discussed above § 6230(a)(3) was effectively repealed by RRA98. However, to the extent that it is applicable to open cases before the Service, the one year assessment date of § 6229 will not bar the issuance of a notice of deficiency so long as the notice is issued within sixty days of the date of abatement. Section 6230(a)(3)(A). Section 6503(a)(1) provides that the issuance of a statutory notice of deficiency during this period would also suspend the statute.

To illustrate this point we will assume the same facts in the example in issue 2 above. The decision of the Tax Court became final on June 28, 1996. The Service had until June 28, 1997, (one year from the date on which the decision of the Tax Court became final) to assess any tax imposed by Subtitle A with respect to any person which is attributable to any partnership item. The Service timely mailed the computational adjustment and assessed the tax due within the one year period on June 23, 1997. On August 5, 1997, TRA97 was enacted. Y had until August 22, 1997, to file for relief from joint and several liability (sixty days from the date of the mailing of the computational adjustment). Y timely filed for relief of joint liability on August 18, 1997. The Service abated the assessment against Y on August 18, 1997. Section 6230(a)(3)(A) provides that the Service shall have sixty days after the date of the abatement to reassess as to an electing spouse. In other words, the one year statute of limitations is extended to sixty days after the date of abatement of the joint liability. The Service had until October 17, 1997, to reassess against Y or issue a statutory notice of deficiency. On October 13, 1997, the Service issued a statutory notice of deficiency thereby tolling the sixty day limitations period of § 6230(a)(3)(A). Accordingly, the issuance of the statutory notice of deficiency to Y, although mailed after the original one year limitations period ending on June 28, 1997, is timely due to the tolling of the statute of limitations by § 6230(a)(3)(A). The issuance of the statutory notice of deficiency continues to toll the statute of limitations on assessment. Section 6503(a)(1).

If you have any further questions, please call Marc C. Porter at (202) 622-4940.

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