

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2007-013

June 8, 2007

Procedures for How to Handle Tax
Court Cases Involving Review of
Section 6015(f) Claims Affected by

Subject: Amendments to Section 6015

Upon incorporation
into CCDM

Cancel Date:

I. Purpose

This Notice updates the procedures to follow in Tax Court cases involving relief from joint and several liability under section 6015(f) when the court's jurisdiction is predicated on section 6015(e) and the Service has not determined a deficiency against the taxpayer. Revised procedures are necessary due to recent amendments to section 6015 by Section 408, Division C, Title IV, of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922, 3061 (2006). This Notice supersedes Chief Counsel Notice CC-2006-020 (August 25, 2006) and modifies Chief Counsel Notice CC-2005-011 (May 20, 2005) with respect to the discussion on the suspension of the statute of limitations on collection.

II. Background

Chief Counsel Notice CC-2006-020 (August 25, 2006) instructed Chief Counsel attorneys to file motions to dismiss for lack of jurisdiction in Tax Court cases when the court's jurisdiction is predicated on section 6015(e) and the Service had not determined a deficiency against the taxpayer. This position was based on a plain reading of the statute and several court opinions.

Since Chief Counsel Notice CC-2006-020 was issued, the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, 120 Stat. 2922, was enacted on December 20, 2006. Section 408 of the Act, Division C, Title IV, amends section 6015(e)(1) to confer jurisdiction on the Tax Court to review the Service's denial of relief in cases when taxpayers have requested equitable relief under section 6015(f), without regard to whether the Service has determined a deficiency. The Act also contains conforming amendments to section 6015(e)(1)(A)(i)(II), (e)(1)(B)(i), (e)(1)(B)(ii), (e)(4), (e)(5), (g)(2), and (h)(2), that adds references to requests for relief under subsection (f) throughout relevant parts of section 6015.

Section 408(c) provides that the amendments apply to "liability for taxes arising or remaining unpaid on or after the date of enactment," which was December 20, 2006. The amendments apply to any taxable year when (1) a liability for tax arose after December 20, 2006, or (2) a liability for tax arose on or before December 20, 2006, but remained unpaid as of that date.

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Generally, if only interest and/or penalties remained unpaid as of December 20, 2006, then the amendments will apply. Each taxable year is analyzed separately to determine if the amendments apply. If a case has multiple years at issue, the amendments may apply to one or more years in the case but not all of the years. If the amendments do not apply to a particular taxable year, attorneys should analyze that year under former section 6015. For example, if a liability arising before December 20, 2006 was paid in full before that date and the Service has not determined a deficiency for the tax year at issue, then the Tax Court does not have jurisdiction over that tax year. E.g., Bock v. Commissioner, T.C. Memo. 2007-41. All cases in which only interest and/or penalties remained unpaid as of December 20, 2006, must be referred to Procedure and Administration, Branch 1 or 2.

With respect to jurisdiction, two issues should be noted. First, if the amendments apply to a taxable year, the Tax Court has jurisdiction to review the Service's determination with respect to the entire liability for that taxable year, and not just the amount that remained unpaid as of December 20, 2006. Second, if the Service cleared the liability on the account for a taxable year before December 20, 2006, either because the statute of limitations on collection for that year expired or the liability for that year was discharged in bankruptcy, the liability for that year is considered to remain unpaid for purposes of whether the amendments apply to that year. A taxable year in which the liability has been cleared may be moot depending on the particular facts and circumstances of the case. For information on mootness in a case when the collection statute has expired, see Chief Counsel Notice CC-2005-011, Q&A #17.

III. Procedures for Handling Tax Court Cases

In cases pending in the Tax Court, if the amendments apply to all the years at issue, motions to dismiss for lack of jurisdiction, as provided in Chief Counsel Notice CC-2006-020, should not be filed. Attorneys who already filed motions to dismiss for lack of jurisdiction in these cases will need to examine their cases to determine whether the amendments apply to any of the years at issue. If the amendments apply, a pending motion to dismiss may have to be withdrawn. For cases in which the amendments do not apply to any of the years at issue and no motion to dismiss is pending, motions to dismiss for lack of jurisdiction should be filed. Similarly, if the amendments only apply to some of the years at issue in the case, motions to dismiss for lack of jurisdiction and to strike with respect to the years for which the amendments do not apply should be filed. To the extent the Tax Court has jurisdiction, the merits of the case should be argued and decided.

All dispositive section 6015 motions (including but not limited to jurisdictional motions) must be coordinated with Procedure and Administration. In addition, responses to court orders regarding jurisdiction must be coordinated with Procedure and Administration, except as discussed below. The use of sample responses that have been pre-approved by Procedure and Administration that do not vary from those sample responses, aside from case-specific facts, as appropriate, do not need to be reviewed by Procedure and Administration prior to filing. The following documents, however, must be submitted to Procedure and Administration for pre-review prior to filing: (1) any sample responses that have been altered beyond the necessary facts, (2) all dispositive motions (even if dispositive for only some of the years at issue), even if samples were used, (3) cases that involve issues not addressed in the samples, and (4) cases in which only interest and/or penalties remained unpaid as of December 20, 2006.

IV. Suspension of the Statute of Limitations on Collection

As a result of the amendment to section 6015(e)(1)(B), the Service is now prohibited from

pursuing certain collection activities against taxpayers who request relief under section 6015(f) and the statute of limitations on collection under section 6502 now is suspended while these cases are pending. It should be noted that for section 6015(f) only claims filed before December 20, 2006, the statute of limitations on collection will be suspended beginning December 20, 2006, and not on the date the claim was originally filed with the Service. Chief Counsel Notice CC-2005-011, Q&A #10 – 13, explained that under former section 6015, the Service was prohibited from pursuing certain collection activities while the taxpayer's claim was pending only when the taxpayer requested relief under section 6015(b) or (c). Similarly, the statute of limitations on collection was only suspended during the pendency of the taxpayer's claim if the taxpayer requested relief under section 6015(b) or (c). Because of the amendments to section 6015(e), Q&A #10 – 13 of Chief Counsel Notice CC-2005-011 are no longer applicable to cases to which the amendments apply. Accordingly, that portion of Chief Counsel Notice CC-2005-011 is modified.

V. Attorneys Should Preserve the Administrative Record Issue

The Tax Court reviews the Service's section 6015(f) determinations under an abuse of discretion standard. Cheshire v. Commissioner, 115 T.C. 183, 198 (2000), aff'd, 282 F.3d 326 (5th Cir. 2002), cert. denied, 537 U.S. 881 (2002). As discussed in Chief Counsel Notice CC-2006-020, the United States Court of Appeals for the Ninth Circuit vacated Ewing v. Commissioner, 122 T.C. 32 (2004), in which the Tax Court held it could look beyond the administrative record in reviewing the Service's section 6015(f) determinations under an abuse of discretion standard. Commissioner v. Ewing, 439 F.3d 1009 (9th Cir. 2006), petition for reh'q en banc denied (May 10, 2006). As a result, the procedures set forth in Chief Counsel Notice CC-2004-026 (July 12, 2004), concerning the administrative record issue should be followed in all section 6015(f) cases, except that motions for remand should no longer be filed. For more information, see Chief Counsel Notice CC-2005-011, Part V.

Any questions regarding this Notice should be addressed to Branch 1 or 2 of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-4910 or (202) 622-4940.

/s/
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