

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 66, 6015)

Rev. Proc. 2003-61

SECTION 1. PURPOSE AND SCOPE

01. Purpose. This revenue procedure provides guidance for a taxpayer seeking equitable relief from income tax liability under section 66(c) or section 6015(f) of the Internal Revenue Code (a "requesting spouse"). Section 4.01 of this revenue procedure provides the threshold requirements for any request for equitable relief. Section 4.02 of this revenue procedure sets forth the conditions under which the Internal Revenue Service ordinarily will grant equitable relief under section 6015(f) from an underpayment of income tax reported on a joint return. Section 4.03 of this revenue procedure provides a nonexclusive list of factors for consideration in determining whether relief should be granted under section 6015(f) because it would be inequitable to hold a requesting spouse jointly and severally liable for an underpayment of income tax on a joint return where the conditions of section 4.02 are not met, or for a deficiency. The factors in section 4.03 also will apply in determining whether to relieve a spouse from income tax liability resulting from the operation of community property law under the equitable relief provision of section 66(c).

.02 Scope. This revenue procedure applies to spouses who request either equitable relief from joint and several liability under section 6015(f), or equitable relief under section 66(c) from income tax liability resulting from the operation of community property law.

SECTION 2. BACKGROUND

.01 Section 6013(d)(3) provides that married taxpayers who file a joint return under section 6013 will be jointly and severally liable for the income tax arising from that joint return. For purposes of section 6013(d)(3) and this revenue procedure, the term "tax" includes penalties, additions to tax,

and interest. See sections 6601(e)(1) and 6665(a)(2).

.02 Section 3201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 734 (RRA), enacted section 6015, which provides relief in certain circumstances from the joint and several liability imposed by section 6013(d)(3). Section 6015(b) and (c) specifies two sets of circumstances under which relief from joint and several liability is available. If relief is not available under section 6015(b) or (c), section 6015(f) authorizes the Secretary to grant equitable relief if, taking into account all the facts and circumstances, the Secretary determines that it is inequitable to hold a requesting spouse liable for any unpaid tax or any deficiency (or any portion of either). Section 66(c) provides relief from income tax liability resulting from the operation of community property law to taxpayers domiciled in a community property state who do not file a joint return. Section 3201(b) of RRA amended section 66(c) to add an equitable relief provision similar to section 6015(f).

.03 Section 6015 provides relief only from joint and several liability arising from a joint return. If an individual signs a joint return under duress, the election to file jointly is not valid and there is no valid joint return. The individual is not jointly and severally liable for any income tax liabilities arising from that return. Therefore, section 6015 does not apply.

.04 Under section 6015(b) and (c), relief is available only from a proposed or assessed deficiency. Section 6015(b) and (c) does not authorize relief from an underpayment of income tax reported on a joint return. Section 66(c) and section 6015(f) permit equitable relief for an underpayment of income tax. The legislative history of section 6015 provides that Congress intended for the Secretary to exercise discretion in granting equitable relief if a requesting spouse "does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse's benefit." H.R. Conf. Rep. No. 105-599, at 254 (1998). Congress also intended for the Secretary to exercise the equitable relief authority under section 6015(f) in other situations if, "taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return." Id.

SECTION 3. CHANGES

This revenue procedure supersedes Revenue Procedure 2000-15, changing the following:

.01 Section 4.01 of this revenue procedure adds a new threshold requirement under section 4.01(7).

.02 Section 4.03(2)(a)(iii) of this revenue procedure revises the weight given to the knowledge or reason to know factor.

.03 Section 4.04 of this revenue procedure broadens the availability of refunds if equitable relief is granted under section 66(c) or section 6015(f).

SECTION 4. GENERAL CONDITIONS FOR RELIEF

.01 Eligibility for equitable relief. A requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under section 6015(f). With the exception of conditions (1) and (2), a requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under section 66(c). The Service may relieve a requesting spouse who satisfies all the applicable threshold conditions set forth below of all or part of the income tax liability under section 66(c) or section 6015(f), if, taking into account all the facts and circumstances, the Service determines that it would be inequitable to hold the requesting spouse liable for the income tax liability. The threshold conditions are as follows:

(1) The requesting spouse filed a joint return for the taxable year for which he or she seeks relief.

(2) Relief is not available to the requesting spouse under section 6015(b) or (c).

(3) The requesting spouse applies for relief no later than two years after the date of the Service's first collection activity after July 22, 1998, with respect to the requesting spouse. See Treas. Reg. § 1.6015-5(b)(2)(i) for the definition of collection activity.

(4) No assets were transferred between the spouses as part of a fraudulent scheme by the spouses.

(5) The nonrequesting spouse did not transfer disqualified assets to the requesting spouse. If the nonrequesting spouse transferred disqualified assets to the requesting spouse, relief will be available only to the extent that the income tax liability exceeds the value of the disqualified assets. For

this purpose, the term "disqualified asset" has the meaning given the term by section 6015(c)(4)(B).

(6) The requesting spouse did not file or fail to file the return with fraudulent intent.

(7) The income tax liability from which the requesting spouse seeks relief is attributable to an item of the individual with whom the requesting spouse filed the joint return (the "nonrequesting spouse"), unless one of the following exceptions applies:

(a) Attribution solely due to the operation of community property law. If an item is attributable or partially attributable to the requesting spouse solely due to the operation of community property law, then for purposes of this revenue procedure, that item (or portion thereof) will be considered to be attributable to the nonrequesting spouse.

(b) Nominal ownership. If the item is titled in the name of the requesting spouse, the item is presumptively attributable to the requesting spouse. This presumption is rebuttable. For example, H opens an individual retirement account (IRA) in W's name and forges W's signature on the IRA in 1998. Thereafter, H makes contributions to the IRA and in 2002 takes a taxable distribution from the IRA. H and W file a joint return for the 2002 taxable year, but do not report the taxable distribution on their joint return. The Service later proposes a deficiency relating to the taxable IRA distribution and assesses the deficiency against H and W. W requests relief from joint and several liability under section 6015. W establishes that W did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if W were the owner of the IRA. W thereby rebutted the presumption that the IRA is attributable to W.

(c) Misappropriation of funds. If the requesting spouse did not know, and had no reason to know, that funds intended for the payment of tax were misappropriated by the nonrequesting spouse for the nonrequesting spouse's benefit, the Service will consider granting equitable relief although the underpayment may be attributable in part or in full to an item of the requesting spouse. The Service will consider relief in this case only to the extent that the funds intended for the payment of tax were taken by the nonrequesting spouse.

(d) Abuse not amounting to duress. If the requesting spouse establishes that he or she was the victim of abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's retaliation, the Service will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item

of the requesting spouse.

.02 Circumstances under which the Service ordinarily will grant equitable relief under section 6015(f) with respect to underpayments on joint returns.

(1) If an income tax liability reported on a joint return is unpaid, the Service ordinarily will grant equitable relief under section 6015(f) (subject to the limitations of paragraph (2) below) in cases in which all of the following elements are satisfied:

(a) On the date of the request for relief, the requesting spouse is no longer married to, or is legally separated from, the nonrequesting spouse, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date of the request for relief.

(b) On the date the requesting spouse signed the joint return, the requesting spouse had no knowledge or reason to know that the nonrequesting spouse would not pay the income tax liability. The requesting spouse must establish that it was reasonable for the requesting spouse to believe that the nonrequesting spouse would pay the reported income tax liability. If a requesting spouse would otherwise qualify for relief under this section, except for the fact that the requesting spouse's lack of knowledge or reason to know relates only to a portion of the unpaid income tax liability, then the requesting spouse may receive relief to the extent that the income tax liability is attributable to that portion.

(c) The requesting spouse will suffer economic hardship if the Service does not grant relief. For purposes of this revenue procedure, the Service will base its determination of whether the requesting spouse will suffer economic hardship on rules similar to those provided in Treas. Reg. § 301.6343-1(b)(4). After the requesting spouse is deceased, there can be no economic hardship. See Jonson v. Commissioner, 118 T.C. 106, 126 (2002), appeal docketed, No. 02-9009 (10th Cir. May 24, 2002) (taxpayer appeal filed on other grounds).

(2) Relief under this section 4.02 is subject to the following limitation: If the Service adjusts the joint return to reflect an understatement of income tax, relief will be available only to the extent of the income tax liability shown on the joint return prior to the Service's adjustment.

.03 Factors for determining whether to grant equitable relief.

(1) Applicability. This section 4.03 applies to requesting spouses who did not file a joint return in a community property state, who request relief under section 66(c), and satisfy the applicable threshold conditions of section 4.01. This section

4.03 also applies to requesting spouses who filed a joint return, request relief under section 6015, and satisfy the threshold conditions of section 4.01, but do not qualify for relief under section 4.02.

(2) Factors. The following is a nonexclusive list of factors that the Service will consider in determining whether, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for all or part of the unpaid income tax liability or deficiency, and full or partial equitable relief under section 66(c) or section 6015(f) should be granted. No single factor will be determinative of whether to grant equitable relief in any particular case. Rather, the Service will consider and weigh all relevant factors, regardless of whether the factor is listed in this section 4.03.

(a) Factors that may be relevant to whether the Service will grant equitable relief include, but are not limited to, the following:

(i) Marital status. Whether the requesting spouse is separated (whether legally separated or living apart) or divorced from the nonrequesting spouse. A temporary absence, such as an absence due to incarceration, illness, business, vacation, military service, or education, shall not be considered separation for purposes of this revenue procedure if it can be reasonably expected that the absent spouse will return to a household maintained in anticipation of his or her return. See Treas. Reg. § 1.6015-3(b)(3)(i) for the definition of a temporary absence.

(ii) Economic hardship. Whether the requesting spouse would suffer economic hardship (within the meaning of section 4.02(1)(c) of this revenue procedure) if the Service does not grant relief from the income tax liability.

(iii) Knowledge or reason to know.

(A) Underpayment cases. In the case of an income tax liability that was properly reported but not paid, whether the requesting spouse did not know and had no reason to know that the nonrequesting spouse would not pay the income tax liability.

(B) Deficiency cases. In the case of an income tax liability that arose from a deficiency, whether the requesting spouse did not know and had no reason to know of the item giving rise to the deficiency. Reason to know of the item giving rise to the deficiency will not be weighed more heavily than other factors. Actual knowledge of the item giving rise to the deficiency, however, is a strong factor weighing against relief. This strong factor may be overcome if the factors in favor of equitable relief are particularly compelling. In those limited situations, it may be appropriate to grant relief under section 66(c) or section 6015(f) even though the requesting

spouse had actual knowledge of the item giving rise to the deficiency.

(C) Reason to know. For purposes of (A) and (B) above, in determining whether the requesting spouse had reason to know, the Service will consider the requesting spouse's level of education, any deceit or evasiveness of the nonrequesting spouse, the requesting spouse's degree of involvement in the activity generating the income tax liability, the requesting spouse's involvement in business and household financial matters, the requesting spouse's business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

(iv) Nonrequesting spouse's legal obligation. Whether the nonrequesting spouse has a legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement. This factor will not weigh in favor of relief if the requesting spouse knew or had reason to know, when entering into the divorce decree or agreement, that the nonrequesting spouse would not pay the income tax liability.

(v) Significant benefit. Whether the requesting spouse received significant benefit (beyond normal support) from the unpaid income tax liability or item giving rise to the deficiency. See Treas. Reg. § 1.6015-2(d).

(vi) Compliance with income tax laws. Whether the requesting spouse has made a good faith effort to comply with income tax laws in the taxable years following the taxable year or years to which the request for relief relates. (b) Factors that, if present in a case, will weigh in favor of equitable relief, but will not weigh against equitable relief if not present in a case, include, but are not limited to, the following:

(i) Abuse. Whether the nonrequesting spouse abused the requesting spouse. The presence of abuse is a factor favoring relief. A history of abuse by the nonrequesting spouse may mitigate a requesting spouse's knowledge or reason to know.

(ii) Mental or physical health. Whether the requesting spouse was in poor mental or physical health on the date the requesting spouse signed the return or at the time the requesting spouse requested relief. The Service will consider the nature, extent, and duration of illness when weighing this factor.

.04 Refunds.

(1) Deficiency cases. In a case involving a deficiency, a requesting spouse is eligible for a refund of certain payments made pursuant to an installment agreement that the requesting spouse entered into with the Service, if the requesting spouse has not defaulted on the installment agreement. Only

installment payments made after the date the requesting spouse filed the request for relief are eligible for refund. Additionally, the requesting spouse must establish that he or she provided the funds for which he or she seeks a refund. For purposes of this revenue procedure, a requesting spouse is not in default if the Service did not issue a notice of default to the requesting spouse or take any action to terminate the installment agreement.

(2) Underpayment cases. In a case involving an underpayment of income tax, a requesting spouse is eligible for a refund of separate payments that he or she made after July 22, 1998, if the requesting spouse establishes that he or she provided the funds used to make the payment for which he or she seeks a refund. A requesting spouse is not eligible for refunds of payments made with the joint return, joint payments, or payments that the nonrequesting spouse made.

(3) Other limitations. The availability of refunds is subject to the refund limitations of section 6511.

SECTION 5. PROCEDURE

A requesting spouse seeking equitable relief under section 66(c) or section 6015(f) must file Form 8857, Request for Innocent Spouse Relief (and Separation of Liability, and Equitable Relief), or other similar statement signed under penalties of perjury, within two years of the first collection activity against the requesting spouse. See Treas. Reg. § 1.6015-5(b)(2)(i) for the definition of collection activity.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2000-15, 2000-1 C.B. 447, is superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for requests for relief filed on or after November 1, 2003. In addition, this revenue procedure is effective for requests for relief pending on November 1, 2003, for which no preliminary determination letter has been issued as of November 1, 2003.

DRAFTING INFORMATION

The principal author of this revenue procedure is Robin M. Tuczak of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this revenue

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