

Office of Chief Counsel  
Internal Revenue Service  
**Memorandum**

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JLMcPherson

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to:  
Advisor  
Technical Support Group 1

from: JEREMY L. McPHERSON  
Attorney (SBSE)

subject:

This memorandum responds to your request for assistance dated . This memorandum should not be cited as precedent.

### ISSUE

Whether a representative of the Estate of may challenge in state probate court an entered, final Tax Court decision which provided that was relieved from joint and several liability with for income taxes for the through tax years.

### CONCLUSION

No, a representative of the Estate of may not challenge the entered, final Tax Court decision in 's case. That decision is final and binding on the estate.

### FACTS

On , and (through their attorneys, and ) petitioned the Tax Court from a statutory notice of deficiency regarding the through tax years.

On , through her then-attorney , lodged her motion for leave to file amendment to petition and "Petitioner 's Amendment to Petition" in the case. On , the Court granted the motion for leave and filed 's amendment to petition. In her amendment to petition, alleged her entitlement to innocent spouse relief. According to the Certificate of Service attached, the amendment to petition was served on , attorney (at that time) for both and , on .

The Tax Court case was called for hearing on , and trial was held on . On , 's attorney, , moved to sever from the case as it related to her innocent spouse defense. and , attorneys for , were both present in Tax Court on , when the Court granted 's motion to sever. Counsel for

petitioner did not object to the severance of petitioner's portion of the case. The following exchange occurred on December 15, , between Judge and Mr. (

's attorney), in the presence of attorneys and :

THE COURT: So, my understanding is the purpose of severing is to permit Mr. to try his case, and to give Mrs.

, the opportunity to assert a collateral case involving the innocent spouse concept?

MR. : That's correct, Your Honor. And the case has been transferred by respondent back to the appeals office, and it's now being considered at that level for the first time.

THE COURT: And that will be considered under the new law, which may have some effect on it.

Transcript page 5, dated Tuesday, , United States Tax Court, In the Matter of:

, Petitioners, v. Commissioner of Internal Revenue, Respondent, Docket No. .

On , the Tax Court granted the motion by attorneys and to withdraw as counsel for

's innocent spouse claim was considered in Appeals, and it was agreed that qualified for innocent spouse relief. The IRS did not give formal notice of 's innocent spouse proceeding or indicate that had a right to participate in 's proceeding.

did not in fact participate in 's proceeding. However, as stated above, 's attorney received direct notice of

's amendment to petition in which she raised the innocent spouse defense, and 's attorney was present in Tax Court when the Court granted 's motion to sever herself from the case as it related to her innocent spouse defense.

On , the Tax Court entered a stipulated decision, signed

by counsel for the IRS and by 's attorney , which stated that, pursuant to I.R.C. § 6013(e), was not liable for any deficiencies for the through tax years. (The citation to I.R.C. § 6013(e) was erroneous, because I.R.C. § 6015 replaced former I.R.C. § 6013(e), effective for liabilities arising before, but remaining unpaid as of July 22, .)

On , the Tax Court issued an opinion in 's case, T.C. Memo. , holding that was not entitled to deductions claimed in taxable years through . (Outside the Tax Court proceedings, and IRS agreed that the deductions were allowable in .) A decision in 's Tax Court case for the through tax years was entered on .

Edwin died in . His estate is in probate in , Case No. . The Service filed a claim in the probate court for the through income tax deficiencies, in the amounts determined in the Tax Court decision which had been entered on .

The accountant for the estate now argues that (and thus his estate) was denied due process because, contrary to the requirements of I.R.C. § 6015, was not given notice of

's innocent spouse proceedings, and was not allowed to participate in consideration of her innocent spouse claim at the administrative or judicial level.

#### **ANALYSIS**

As part of the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress added I.R.C. § 6015, effective for tax liabilities arising after July 22, 1998, or arising on or before July 22, 1998, but remaining unpaid as of that date. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3201(g)(1), 112 Stat. 685, 740 (1998).

Section 6015(e)(4) contains the following provision:

(4) Notice to Other Spouse. - The Tax Court shall establish rules which provide the individual filing a joint return but not making the [an innocent spouse] election under subsection (b) or (c) with adequate notice and an opportunity to become a party to a proceeding under either such subsection.

On January 26, 1999, the Tax Court issued interim rules

regarding the new innocent spouse relief (Title XXXI, ACTIONS FOR DETERMINATION OF RELIEF FROM JOINT AND SEVERAL LIABILITY ON A JOINT RETURN, Interim Rules 320 through 325 of the Tax Court Rules of Practice and Procedure). Interim Rule 325(a) required the Commissioner to serve notice of the filing of the [Tax Court] petition [seeking relief from joint and several liability] on the other individual filing the joint return. Interim Rule 325(b) allowed the non-requesting spouse to file a notice of intervention with the Tax Court within 60 days after service of the notice by the Commissioner of the filing of the [innocent spouse] petition.

In this case, petitioners and

jointly petitioned from a notice of deficiency and Edwin was already a party to the case. Petitioner 's attorneys had actual notice of 's request for innocent spouse relief. 's amended petition raising that issue was served on 's attorneys in , and 's attorneys were present in Tax Court in , when the Court severed from the case for the express purpose of allowing her to pursue her innocent spouse defense.

Although the Internal Revenue Service did not provide formal written notice to of 's innocent spouse claim, such notice would have been superfluous on the facts of this case.

was at all times during 1998 and until at least , represented by attorneys who were aware of

's innocent spouse claim. Counsel for petitioner could have objected to petitioner 's motion to sever or alternatively, could have asserted that had a right to intervene in 's Tax Court case, as provided in Interim Tax Court Rule 325. Counsel for elected not to do so.

Under former I.R.C. § 6013(e), the spouse not claiming relief lacked standing to challenge the innocent spouse relief granted to his or her spouse in a judicial proceeding. Thus, under the law existing when and filed their petition on

, it is clear that

would have had no right to challenge 's claim for innocent spouse relief. See Garvey v. Commissioner, T.C. Memo 1993-354; Himmelwright v. Commissioner, T.C. Memo 1988-114.

Under I.R.C. § 6015, however, the spouse not claiming relief has standing to challenge the granting of relief from joint and several liability to his or her spouse in a judicial proceeding. In Corson v. Commissioner, 114 T.C. 354, 365 (2000), the Tax Court held that the language of I.R.C. § 6015(e)(4) "was intended to confer some participatory entitlement" by the spouse not electing relief from joint and several liability under I.R.C. § 6015. Petitioner's attorney, , moved to sever from the case as it related to her innocent spouse defense on , almost months after the enactment of I.R.C. § 6015. and , counsel for , were both present in Tax Court on , when the Court granted 's motion to sever. Counsel for could have objected to the severance of the case and asserted that had a right to participate in the litigation of

's claim for relief from joint and several liability under the newly enacted I.R.C. § 6015, but did not do so.

Additionally, the Tax Court has also held that when a spouse raises a claim for relief under I.R.C. § 6015 in any judicial proceeding before the Tax Court, and the other spouse is not a party to the case, the IRS must notify the nonpetitioning spouse of his or her right to intervene. King v. Commissioner, 115 T.C. 118 (2000). In this case, however, petitioner

was already party when petitioner raised the claim for relief under I.R.C. § 6015 in the Tax Court proceeding. Thus, respondent was not required under I.R.C. § 6015 to notify of 's claim for relief and 's right to intervene in 's case. The fact the counsel for

did not object to the severance of 's case or assert 's right to participate 's determination of relief does not create a responsibility on respondent to notify of his right to become a party to the case again.

Note that in this case Mr. had actual knowledge of 's innocent spouse proceeding and was a party to that proceeding as he jointly petitioned. Also, was at all times represented by counsel.

If the Estate of wishes to challenge the Tax Court's grant of innocent spouse relief to , then the Estate must

either move for reconsideration of the decision in

's case or move to vacate the decision; either such motion would have to be filed in the Tax Court. Based upon the discussion above, it is unlikely that the Tax Court would reconsider or vacate its decision in 's case.

The probate court lacks jurisdiction to override or overrule the Tax Court's judgment in 's case. The United States Courts of Appeal have exclusive jurisdiction to review decisions of the Tax Court. I.R.C. § 7482(a)(1). The probate court is required under principles of comity and federalism to honor the judgment of the Tax Court. (Judicial comity is "[t]he respect a court of one state or jurisdiction shows to another state or jurisdiction in giving effect to the other's laws and judicial decisions." Black's Law Dictionary 262 (7<sup>th</sup> ed. 1999).)

If, nonetheless, the probate court were to assert jurisdiction and rule that is jointly and severally liable with for the through income tax deficiencies, the Internal Revenue Service could not collect from

individually. This is so because the Tax Court relieved her of liability, and the Service is bound by the Tax Court's decision. The Internal Revenue Service could, however, collect from as transferee of assets from 's estate. And, of course, the Estate of

is liable for the full amount of the deficiencies regardless of whether is or is not relieved of liability.

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