



Recent Developments in Equitable Innocent Spouse Relief

Equitable innocent spouse relief is made more available with a de novo standard of review and no longer being subject to a two-year statute of limitations in the regulations.

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A taxpayer who files a joint return with his or her spouse is "jointly and severally" liable for tax on the couple's income regardless of who earned it. Recognizing the inequity of holding one spouse liable for the tax on the other spouse's income — at least in cases in which the spouse does not know of or benefit from the income — Congress enacted the relief provisions of Code Section 6015. These provisions are complex, narrow in scope and burdensome for taxpayers and as a result, continue to be subject to ongoing litigation and administrative and congressional clarification. Recent Tax Court cases have made it easier for a spouse seeking equitable relief from joint and several liabilities. This article will first discuss the innocent spouse provisions and then the changes made by recent Tax Court decisions.

Innocent Spouse Provisions of Section 6015

Code Section 6015 provides three ways for a spouse filing a joint return to obtain relief. Under Section 6015(b) innocent spouse relief is available if the understatement of tax is attributable to erroneous items of one spouse and the other spouse claiming innocent spouse relief did not know or have reason to know of the understatement of tax and taking into consideration all of the facts and circumstances it would be inequitable to hold that spouse liable. Under Section 6015(c) innocent spouse relief is available for taxpayers who are no longer married, are legally separated or not living together. If Section 6015(c) relief is granted, the liability of each spouse is computed separately as if the spouses had filed separate returns for the taxable year. Section 6015(f) provides for general equity relief, if taking into consideration all of the facts and circumstances, it is inequitable to hold one spouse liable for any understatement or any underpayment and if relief is not available under Sections 6015(b) and (c). Sections 6015(b) and (c) are applicable to understatements of tax, while Section 6015(f) is applicable to understatements and underpayments of tax.

Two-Year Statute of Limitations for Equitable Relief Invalidated

The spouse seeking innocent spouse relief must file Form 8857, *Request for Innocent Spouse Relief*, requesting relief under any one or more of the provisions. To be eligible under Section 6015(b) or (c), the statute explicitly provides that the requesting spouse must elect relief not later than the date that is two years after Internal Revenue Service (IRS) commencement of collection activities against that spouse. Although there is no such time limit in Section 6015(f), the IRS promulgated Reg. 1.6015-5(b)(1), imposing a two-year limitations period from the date of first collection activity against the spouse seeking equitable relief. The Tax Court — in *Lantz v. Commissioner*, 132 T.C. No. 8 (2009) and *Mannella v. Commissioner*, 132 T.C.

No.10 (2009), both reviewed by the Tax Court and over strong dissents — has concluded that this regulation was an improper interpretation of Section 6015(f). The Tax Court reasoned that Congress, by explicitly creating a two-year limitations period in Sections 6015(b) and (c), but not in subsection (f), had spoken by its audible silence to not include the two-year limitations period in claiming equitable relief. Consequently, the regulations failed to give effect to the unambiguously expressed intent of Congress.

Chief Counsel Position on Statute of Limitations

In Chief Counsel Notice CC 2009-012 (2009), the IRS disagrees with the *Lantz* and *Mannella* holding and has advised IRS attorneys to continue to argue that relief under Section 6015(f) is unavailable if the spouse claiming relief files for relief outside the two-year limitations period. Chief Counsel Attorneys are advised to raise the two-year limitations issue in pretrial memos, at trial and on brief, but not in motions for summary judgment. Most recently, Carol Nachman, branch-two senior technical reviewer, IRS Office of Chief Counsel in an address before the ABA Section of Taxation meeting in Washington, D.C. said that the IRS has decided to revise the regulations governing Section 6015.

De Novo Standard of Review Innocent Spouse Equitable Relief Claim

Previously it was unclear as to the standard of review of the IRS's denial of a claim for equitable relief by a spouse. Under Sections 6015 (b) and (c), the claimant is entitled to a *de novo* hearing in which the claimant may seek to introduce evidence not presented at the administrative review phase. The IRS position has been that a court reviewing a denial of an equitable relief claim is limited to reviewing the administrative record, while taxpayers have argued for a *de novo* review. The Tax Court has twice rejected the IRS's argument in reviewed opinions. In *Ewing v. Commissioner*, 122 T.C. No. 32(2004) reversed and vacated on other grounds, 439 F. 3d 1009(C.A. 9th, 2006), the Tax Court held that a taxpayer seeking review of the IRS's denial of equitable relief is entitled to a trial *de novo* at which evidence not introduced in the administrative record could be introduced in the Tax Court proceeding. In *Porter v. Commissioner*, 130 T.C. No. 11(2009), the Tax Court again held that a taxpayer seeking review of the IRS's denial of an equitable relief claim is entitled to a trial *de novo* at which the taxpayer can introduce evidence that was not included in the administrative record. The Eleventh Circuit, over a dissent, has upheld the Tax Court's position that a spouse whose equitable relief claim is denied by the IRS is entitled to a trial *de novo* and evidence not introduced in the administrative record could be introduced. See *Commissioner v. Ruth E. Neal*, 103 AFTR2d 2009-801 (C.A. 11th, 2009).

Chief Counsel Position on Standard of Review

The Chief Counsel disagreeing with the Porter decision, issued CC-2009-021 (2009), instructing all IRS attorneys to continue to argue that the abuse of discretion standard is the proper scope of review and that the Tax Court's review is limited to issues and evidence presented at the administrative level and to raise the scope and standard of review arguments whenever appropriate, *e.g.* the pretrial memo, at trial, introduction of evidence and on brief.

No Notice That Innocent Spouse Limited to Administrative Level Materials

It should be noted that neither IRS Publication 971 (Rev. 4-2008), the instructions to Form 8857 nor the IRS Web site mention the possibility that a taxpayer may not be able to introduce evidence at a court hearing that was not provided to the IRS at the administrative level. As a result, taxpayers are unlikely to make a concerted effort to present all available evidence at the administrative level. Furthermore, claimants may not be able to present third-party evidence at the administrative level, since the claimant does not have the ability to subpoena evidence to present at the administrative level. As a result, under the IRS position, the claimant would be foreclosed from presenting this evidence to a court reviewing the IRS denial. This creates a significant risk of unfairness and hardship on claimants seeking equitable relief.

Conclusion

Although a spouse claiming equitable relief will not be foreclosed by a two-year statute of limitations, a spouse seeking equitable relief may be denied a trial *de novo* until the matter is resolved by legislation or by Supreme Court review.

About the Author

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