

Handling section 6015 claims

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Topics

- Overview of the types of relief
- The New Form 8857 and the handling of the administrative claim
- Litigating a section 6015 claim

Joint and Several Liability

- I.R.C. § 6013(d) – married taxpayers who file joint Federal income tax returns are jointly and severally liable for the tax.
- Section 6015 provides avenues for seeking relief from an understatement of joint liability and an underpayment.

Line 11 of Form 8857

Did you sign the return?

- Threshold question in each case – was the signature valid.
- Duress or forgery may invalidate the joint election

Duress

- Return signed under duress invalidates joint election.
- To establish duress:
 - the taxpayer was unable to resist demands to sign the return; and
 - the taxpayer would not have signed the return except for the constraint applied by the other party. See, e.g. *Stanley v. Commissioner*, 45 T.C. 555 (1966); *Brown v. Commissioner*, 51 T.C. 116 (1968).

Consider the tax consequences of raising duress.

- Taxpayer may owe more tax if needs to file a separate return.
- Thus, you may not choose to pursue the issue of duress.

Forgery

- If a signature forged and no tacit consent, the joint election is invalid.
- A married filing separate tax return may need to be secured, if a return was required or if the taxpayer may have been entitled to a refund.
- Where the spouse claiming forgery failed to file despite having a filing requirement, the circumstances surrounding the alleged forgery may be investigated and an interview with the other spouse may be conducted.
- Again consider tax consequence of claiming forgery.

Understatement defined:

IRS determined taxpayer's total tax should be more than the amount actually stated on the return

I.R.C. § 6015(b) – Expanded Innocent Spouse Relief

- I.R.C. § 6015(b) –eligible for relief for an understatement of tax attributable to erroneous items of the spouse with whom the requesting spouse (RS) filed the return if the RS did not know, or have reason to know of the understatement and it would be inequitable to hold the RS liable.

Actual versus constructive knowledge

- Actual knowledge
- Constructive knowledge
- Omission of income versus overstated deductions and credits

I.R.C. § 6015(c) – Separation of Liability

A RS may elect to allocate a deficiency if the RS is no longer married to, is legally separated from, or is no longer living with, the other spouse filing the joint return.

Two additional rules

- Section 6015(c)(3)(A)(ii) – assets transferred as part of a fraudulent scheme
- Section 6015(c)(4) – Disqualified assets

I.R.C. § 6015(f) – Equitable Relief

If the RS does not qualify for relief under section 6015(b) or (c), the Commissioner may grant relief for any deficiency if it is inequitable to hold the RS liable.

Underpayment defined:

The amount properly shown on the return that has not been paid.

I.R.C. § 6015(f) – Equitable Relief for underpayment of tax

The Commissioner may grant relief for any underpayment if it is inequitable to hold the RS liable.

Filing the claim - The Form 8857

- A revised Form 8857, *Request for Innocent Spouse Relief*, was released in June 2007.
- The revised form asks for more detailed information
- It combines aspects of the old form with questions from Form 12510, a questionnaire the IRS sent to everyone who filed Form 8857

Why combine? And what does that mean to you?

- Getting more information upfront reduces the need for IRS to follow up later seeking additional information.
- When preparing the form, take your time. As there is less follow-up under this procedure, it is important to fill out the form completely
- Put your best case forward from the start.

Top reasons claims not processed

- liability fully paid/refund unavailable.
- No joint return filed for the year in which relief was requested.
- No return filed for the year in which relief was requested.
- Claim lacks tax year, SSN or signature.

Things to notice on the new Form 8857

- You can only seek relief with respect to **THREE** tax years. If you want to seek relief for more than three years, you must fill out an additional form.
- Caution: IRS must contact nonrequesting spouse (NRS)

What is the period for seeking section 6015 relief?

- Start of the period - Contacted by IRS
- End of the period - Must seek relief within two years after the IRS begins collection activities with respect to him or her.

Treas. Reg. § 1.6015-5(b)(2)

Collection activity is:

- (1) a § 6330 notice (the notice that notifies you of the IRS's intent to levy and your right to a CDP hearing;
- (2) an offset of the RS's refund against the joint liability;
- (3) the filing of a suit by the United States against the RS to collect the joint tax liability; and
- (4) the filing of a claim by the United States in a court proceeding in which the RS is a party or which involves property of the RS.

Collection activity is NOT:

- The filing of a Notice of Federal Tax Lien
- Issuance of a statutory notice of deficiency
- A demand for payment

What happens after the claim is filed

- Cincinnati Centralized Innocent Spouse Operations (CCISO) unit will consider the merits of the section 6015 claim.
- CCISO will contact the NRS.
- CCISO will not disclose personal information to the NRS that does not relate to the determination.

What comes next?

- After CCISO gets all the necessary information from the RS and NRS, it will send a preliminary determination letter to both the RS and the NRS.
- The preliminary determination letter allows both the RS and NRS to appeal the preliminary determination.

Rev. Proc. 2003-19

- After the preliminary determination, either spouse can go to Appeals.
- Note: The NRS may not petition the Tax Court from the final determination letter. If relief is denied in part or in full, and the RS petitions the Tax Court, the NRS will be given the opportunity to intervene.

In what courts may a a section 6015 claim be litigated?

- Tax Court (IRC sections 6213, 6330, or 6015(e))
- District Court (IRC section 7402, 7403, and 7422)
 - The Cawog/Boynton/Feda problem
- Bankruptcy Court (11 U.S.C.A. § 505(a)(1))

Don't forget section 6015 may be raised

- in a Collection Due Process proceeding
- in a deficiency proceeding (*Corson v. Comm'r*, 114 T.C. 354, 363 (2000))
- in a bankruptcy proceeding, 11 U.S.C.A. § 505(a)(1).

May section 6015 serve as an affirmative defense in a suit to reduce the liability to judgment commenced under § 7402 or a suit to foreclose a tax lien commenced under § 7403?

Boynton/Feda

- United States v. Boynton, 99 A.F.T.R.2d (RIA) 920 (S.D. Cal. 2007)United States v. Feda, 97 A.F.T.R.2d (RIA) 1985 (N.D. Ill. 2006).
- Taxpayers raised section 6015 as a defense in a suit to reduce the assessment to judgment. Courts held that the district court only has jurisdiction to consider a section 6015 claim in the context of a refund suit and that in all other circumstances exclusive jurisdiction lies with Tax Court.

Tax Court has a different view.

- Turner v. Commissioner, 121 T.C. 43 (2003), Tax Court held that *res judicata* barred the taxpayer from raising section 6015 as a defense in the Tax Court proceeding because the taxpayer could have raised section 6015 as a defense in a prior collection suit.

Res judicata – section 6015(g)

- RS is barred from relief by res judicata for any tax year for which a court has rendered a final decision on the RS's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the RS meaningfully participated in that proceeding and could have raised relief under section 6015.
- Treas. Reg. § 1.6015-1(e).

United States v. Cawog, 97 A.F.T.R.2d (RIA)
3069 (W.D. Pa. 2006), *appeal dismissed*
(3d Cir. July 5, 2007)

- Held that exclusive jurisdiction to review a section 6015 determination lies with the Tax Court. Thus, the court did not allow the taxpayer to raise this defense in the collection suit.
- Holding contrary to the general rule. Normally, a taxpayer can raise the merits of the underlying tax in a suit to foreclose tax liens on real property commenced under section 7403. United States v. O'Connor, 291 F.2d 520, 526-27 (2d Cir. 1961).

The stand-alone proceeding is special

- It is the only proceeding where the sole issue is the request for relief under § 6015.
- With all the other jurisdictional predicates, you are raising section 6015 as a defense to the action taken.

Tax Court Litigation

- When taxpayers petition for redetermination of a deficiency under section 6213(a), they may raise section 6015 as an affirmative defense.
- Taxpayers may raise section 6015 in a petition from a Notice of Determination in a collection due process proceeding under sections 6320 or 6330.

Stand-alone proceedings under section 6015(e)

The filing of a petition in response to the final Notice of Determination or after the claim has been pending for six months is often referred to as a “stand-alone” proceeding. In stand-alone cases, the only issue before the Court is whether the RS is entitled to relief.

Determining small case eligibility in stand-alone cases

- *Petrane v. Commissioner*, 129 T.C. No. 1 (2007).
- Held that a stand-alone case is not eligible for small tax case procedures if the total “relief sought” in the petition, i.e., the amount of tax, interest, and penalties, including accrued but unassessed interest and penalties, exceeds \$50,000 calculated as of the petition date.

Billings/Ewing Holdings

- Billings v. Comm'r, 127 T.C. 7 (2006), appeal docketed, No. 06-9006 (10th Cir. October 27, 2006), appeal vacated and case remanded (June 14, 2007), (June 14, 2007), *ruling for taxpayer on remand*, T.C. Memo. 2007-234.
- Ewing v. Commissioner, 118 T.C. 494 (2002), rev'd, 439 F.3d 1009 (9th Cir. 2006).
- Tax Court does not have jurisdiction under section 6015(e) to determine relief under section 6015(f) when there is no deficiency.

Section 6015(e) amended in response to Billings/Ewing

- Tax Relief and Health Care Act of 2006 amended § 6015(e)(1) to provide for Tax Court review “[i]n the case of an individual against whom a deficiency has been asserted and who elects to have subsection (b) or (c) apply, *or in the case of an individual who requests equitable relief under subsection (f).*” (emphasis added).
- Applies only with respect to liability for taxes arising or remaining unpaid on or after December 20, 2006.

Section 6015(e) amendment changed collection restriction rules

- Modified § 6015(e)(1)(B), the provision regarding the collection restrictions, to include § 6015(f) claims.
- IRS now prohibited by law from pursuing certain collection activity against taxpayers who request relief only under § 6015(f), and the statute of limitations on collection is likewise suspended.
- Under prior law, if an election was made under § 6015(f), collection was not suspended by law, and thus, the collection statute continued to run while the claim was pending.

Practice Point

- If a § 6015 claim was filed before the December 20, 2006 effective date of the amendment, the statute of limitations on collection will be suspended beginning on December 20, 2006, and not from the date the claim was originally filed.
- See Chief Counsel Notice, 2007-13 (June 8, 2007).

Ewing II – Record Rule

- Ewing v. Commissioner, 122 T.C. 32 (2004), vacated, 439 F.3d 1009 (9th Cir. 2006).
- Tax Court held it could look beyond the administrative record in reviewing respondent's determination under § 6015(f)
- Decision vacated in 2006. Tax Court has not reexamined the issue.

IRS's view on the record rule

- Tax Court's review of section 6015(f) claims should be limited to the administrative record
- Chief Counsel Notice 2004-26 (July 12, 2004).
- Tax Court may not consider issues or evidence other than the issues or evidence presented before Appeals or Exam in determining whether the Service abused its discretion in denying relief to the petitioner.

Principle behind the record rule

- Argument based on the principle that the IRS could not have abused its discretion by failing to consider issues or evidence the petitioner did not present to the Service during the administrative process.
- The Tax Court has recognized this principle in the context of other abuse of discretion cases.
- Giamelli v. Commissioner, 129 T.C. No. 14 (2007)- Tax Court held that it did not have the “authority” to consider section 6330(c)(2) “issues” that had not been raised before the Appeals Office.

Stay Tuned --

- Record rule and 6015(f) issue pending in the United States Court of Appeals for the 11th Circuit.
- Neal v. Commissioner, T.C. Memo. 2005-201, appeal docketed, No. 06-14357-JJ (11th Cir. August 10, 2006).
- Oral argument was held on September 19, 2007.

Administrative Record

- Form 8857
- Questionnaire for NRS
- Written Correspondence
- Documents Presented
- Notices of Determination (prelim & final)
- RAR
- ACM

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