Department of the Treasury

Internal Revenue Service

Office of Chief Counsel

Notice

CC-2003-015

May 14, 2003

Claims for Relief from Joint and Several Liability – Update on Requirements for Subject: Notification of Nonpetitioning Spouse

Upon incorporation

Cancellation Date: into CCDM

I. Purpose

This Notice updates the procedures to follow in proceedings before the Tax Court in which a taxpayer raises a claim for relief from joint and several liability under section 6015 and the other spouse (or former spouse) who signed the joint return for the year(s) at issue is not a party to the case. This Notice also obsoletes N(35)000-173 (October 17, 2000).

II. Claims for Relief from Joint and Several Liability – Notification Requirement

In accordance with Interim T.C. Rules 325 and 324(a), respectively, the Commissioner shall serve notice of the filing of the petition requesting relief under section 6015 on the other individual filing the joint return and certify in the answer to the petition that notice has been provided to the other spouse.

Recently, the Tax Court issued orders in several 6015 cases requiring respondent to file with the Court a copy of the notice of the filing of the petition, showing proof of service, in cases in which Counsel has already provided notice to the nonpetitioning spouse and certified that fact in the answer. This requirement stems from an expected change to Interim T.C. Rule 325 that will require the filing of a separate certification with the Court instead of merely certifying in the answer that notice has been provided. This notification to the other spouse will result in a separate entry on the docket sheet.

Filing Instructions: Binder Part () Master Sets: NO X RO X
NO: CirculateDistribute X to: All PersonnelAttorneys In: all divisions
RO: CirculateDistribute X to: All PersonnelAttorneys _In: all divisions
Other National FOIA Reading Rooms
Electronic Filename: NonpSpou.pdf Original signed copy in: CC:F&M:P&A

III. Updated Procedures for Notification to Nonpetitioning Spouse

A. <u>Cases in Which Counsel Has Already Notified the Nonpetitioning Spouse and</u> Provided Certification in the Answer.

In response to orders that require respondent to file a copy of the notice of the filing of the petition previously provided to the nonpetitioning spouse, one document, entitled "Certification of Service of Notice of Filing of Petition Raising Relief from Joint and Several Liability," (Attached as Exhibit 1) should be filed and served in the following manner:

- A copy of the Certification should be mailed to the petitioner and should include <u>only</u> a certificate of service with the petitioner's address.
- A copy of the Certification should be mailed to the nonpetitioning spouse and should include <u>only</u> a certificate of service with the nonpetitioning spouse's address.
- The <u>original</u> Certification should be sent to the Court with <u>both original</u> certificates of service sent to the respective spouses attached.
- Care should be taken to ensure that the separate certificates of service are properly attached to the respective service copies of the Certification in order that address information of each spouse is not disclosed to the other.

For cases in which Counsel has already filed a Certification of Service of Notice of Claim for Relief from Joint and Several Liability (e.g., S cases or situations where notice was provided after the filing of the answer), nothing further needs to be done. If a trial attorney receives an order where this type of certification has already been filed, please contact Branch 2 of Administrative Provisions and Judicial Practice at (202) 622-4940 for further guidance.

B. New Cases and Cases in Which the Answer Has Not Been Filed.

For new cases and cases in which an answer has not been filed (including S cases), one document, entitled "Notice of Filing of Petition and Right to Intervene," (Attached as Exhibit 2) should be filed and served, prior to filing the answer, in the following manner:

- A copy of the Notice should be mailed to the petitioner and should include <u>only</u> a certificate of service with the petitioner's address.
- A copy of the Notice should be mailed to the nonpetitioning spouse and should include only a certificate of service with the nonpetitioning spouse's address.

- The <u>original</u> Notice should be sent to the Court with <u>both original</u> certificates of service sent to the respective spouses attached.
- Care should be taken to ensure that the separate certificates of service are properly attached to the respective service copies of the Notice in order that address information of each spouse is not disclosed to the other.
- Respondent should also send a cover letter with the Notice to the nonpetitioning spouse (Attached as Exhibit 3).
- In accordance with Interim T.C. Rule 324(a), respondent should continue to certify in his answer that he has provided notice to the nonpetitioning spouse (Attached as Exhibit 4).

IV. Providing Notice in Cases in Which There Is a Possible Jurisdictional Defect

Non Stand-alone Cases

• In any case, other than a stand-alone case brought pursuant to section 6015(e), if it is determined that there is a jurisdictional defect in the case, notification of the nonpetitioning spouse of the claim for relief from joint liability may be deferred until a motion regarding the jurisdictional defect is filed and ruled upon by the court. The motion should contain a statement that the nonpetitioning spouse has not been notified of the claim for relief pending the court's resolution of the jurisdictional motion.

Stand-alone Cases

In stand-alone cases brought under section 6015(e), in accordance with Interim T.C. Rule 324(a)(2), the answer must state that the notice has been provided to the nonpetitioning spouse. In cases where there is a jurisdictional defect and a jurisdictional motion cannot be filed before the answer due date, a motion to extend the time within which to file an answer should be filed. By doing so, jurisdictional issues can be resolved before the answer, which triggers the notification requirement, is filed.

V. Other Issues Relating to Providing Notice to the Nonpetitioning Spouse

• <u>Defective Notification</u>. If the notification to the nonpetitioning spouse is returned with a notation of undeliverable or incorrect address, an attempt to find a more recent/correct address should be made and the Notice resent. In many cases, the original notice may be resent, without restarting the 60-day intervention period or recertifying the notification to the Tax Court. In cases in which there are less than 30

days remaining in the intervention period, it is recommended that a second notice be sent with a new intervention period commencing on the date of the second notice. In determining whether to restart the 60-day intervention period, the facts and circumstances of the case should be considered, including, but not limited to, the following: whether the original notice was sent to the nonpetitioning spouse's last known address, how many days remain in the intervention period, and how many days remain prior to the calendar call.

- <u>Deceased Nonpetitioning Spouse</u>. In cases in which the nonpetitioning spouse is deceased, the personal representative of the nonpetitioning spouse's estate should be served with the Notice of Filing of Petition and Right to Intervene. If there is no personal representative for the estate, there is no need to provide this notice. Instead a "Notice of Filing of Petition And Right to Intervene" (Attached as Exhibit 5) should be filed with the Court and served on the petitioner. Similar language should be used as when certifying in the answer, in accordance with Interim T.C. Rule 324(a).
- Motion to Continue and Shorten the Time for Intervention. If the intervention period in the original notice or the subsequent notice expires after the calendar call, a motion for continuance and a motion to shorten the time period for intervention should be filed. The motion for continuance should be filed concurrently with the motion to shorten the time period for intervention. Each motion should cross-reference the other and state that they are in the alternative. Generally, the motions should be filed if the calendar call is more than 30 days, but less than 60 days, from the date the notice is sent to the nonpetitioning spouse. Interim T.C. Rule 325(b) provides that the nonpetitioning spouse has 60 days to file a notice of intervention, unless the Court directs otherwise. Thus, the Tax Court may direct that the intervention period be shortened, if necessary, to ensure that the case is resolved within the trial session, while allowing adequate time for the nonpetitioning spouse to intervene. If the case is calendared less than 30 days from the date the notice is sent to the nonpetitioning spouse, attorneys should contact Branch 2 of Administrative Provisions and Judicial Practice for further guidance.

Any questions with regard to this Chief Counsel Notice should be addressed to Branch 2 of Administrative Provisions and Judicial Practice at (202) 622-4940.

_______/s/
DEBORAH A. BUTLER
Associate Chief Counsel
(Procedure & Administration)

Attachment: Exhibits 1 through 5

Exhibit 1

UNITED STATES TAX COURT

JANE D	OOE,)			
			Pet	citioner,)			
V	7.)	Docket	No.	XXXX-XX
COMMIS	SSIONER	OF	INTERNAL	REVENUE,)			
			Res	spondent.)			

CERTIFICATION OF SERVICE OF NOTICE OF FILING OF PETITION RAISING RELIEF FROM JOINT AND SEVERAL LIABILITY

PURSUANT TO THE COURT'S ORDER dated ______, respondent provides the following certification:

This is to certify that, on _______, respondent provided notice of the filing of a petition that raised relief from joint and several liability as an issue in the above-captioned case, as required by Interim T.C. Rule 325, and King v. Commissioner, 115 T.C. 118 (2000), to petitioner's [former] spouse, John Doe, with whom petitioner filed joint returns for the years before the Court.

B. JOHN WILLIAMS, JR. Chief Counsel Internal Revenue Service

AREA COUNSEL ATTORNEY'S NAME

Senior Attorney (Small Business/Self-Employed) Tax Court Bar No. YYYYY Street Address City, State Zipcode Telephone Number

OF COUNSEL:
KEVIN M. BROWN
Division Counsel
(Small Business/Self-Employed)
AREA COUNSEL'S NAME
Area Counsel

(Small Business/Self-Employed:Area Z)

This is to certify that a copy of the foregoing
CERTIFICATION OF SERVICE OF NOTICE OF FILING OF PETITION
RAISING RELIEF FROM JOINT AND SEVERAL LIABILITY was served or
petitioner by mailing the same on in a
postage paid wrapper addressed as follows:
Jane Doe Street Address City, State Zipcode
Date: AREA COUNSEL ATTORNEY'S NAME Senior Attorney

(Small Business/Self-Employed)

This is to certify that	a copy of the foregoing
CERTIFICATION OF SERVICE OF N	OTICE OF PETITION RAISING RELIEF
FROM JOINT AND SEVERAL LIABIL	ITY was served on John Doe by
mailing the same on	in a postage paid
wrapper addressed as follows:	
John Doe Street Address City, State Zip	ocode
Date:	AREA COUNSEL ATTORNEY'S NAME
	Senior Attorney
	(Small Business/Self-Employed)

Exhibit 2

UNITED STATES TAX COURT

JANE	DOE,)				
			Pet	titioner,)				
	v.)	Docket	No.	XXXX-X	ΧX
COMMI	ISSIONER	OF	INTERNAL	REVENUE,)				
			Res	spondent.)				

NOTICE OF FILING OF PETITION AND RIGHT TO INTERVENE

v. Commissioner, 115 T.C. 118 (2000), hereby provides Notice of the filing of a petition raising relief from joint and several liability on a joint return by the above-named petitioner, and right to intervene, to petitioner's [former] spouse, John Doe, the other individual filing joint returns with petitioner for the years in issue, as follows:

- 1. On _______, petitioner Jane Doe filed a petition with the United States Tax Court for determination of relief from joint and several liability on joint returns for tax years 1, 2, and 3.
- 2. John Doe, petitioner's [former] spouse, filed joint returns with petitioner for the years in issue.
 - 3. Under Interim T.C. Rule 325(b), John Doe has a right

to intervene in this matter for the sole purpose of challenging petitioner's entitlement to relief from joint and several liability. John Doe may exercise that right by filing a notice of intervention with the Tax Court no later than 60 days after service of this Notice and attaching a copy of this Notice to any notice of intervention filed with the Tax Court.

B. JOHN WILLIAMS, JR. Chief Counsel
Internal Revenue Service

Date:	Dx7 •
Date.	БУ•

Attorney's Name
Senior Attorney
(Small Business/SelfEmployed)
Tax Court Bar No. YYYYY
Street Address
City, State Zipcode
Telephone Number

OF COUNSEL:
KEVIN M. BROWN
Division Counsel
(Small Business/Self-Employed)
AREA COUNSEL'S NAME
Area Counsel
(Small Business/Self-Employed:Area Z)

This is to certify that a copy of the foregoing	NOTICE	OF					
FILING OF PETITION AND RIGHT TO INTERVENE was served	on						
petitioner by mailing the same on							
postage paid wrapper addressed as follows:							

Jane Doe Street Address City, State Zipcode

Date:		

AREA COUNSEL ATTORNEY'S NAME Senior Attorney (Small Business/Self-Employed) Tax Court Bar No. YYYYY

	This	is	to	cert	ify	that	a	сору	of	the	for	egoi	ng	NOT	ICE	OF
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Date	:															
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								Small			_	elf-	Emp	loy	ed)	

Exhibit 3

[USE APPROPRIATE LETTERHEAD]

CC:SBSE:X:XXX:X ABCoe

John Doe Street Address City, State Zip Code

Re: Jane Doe v. Commissioner

<u>Docket No.</u>

Dear Mr. Doe:

Attached to this letter is a Notice of Filing of Petition and Right to Intervene in the above-referenced matter. Jane Doe has filed a petition with the United States Tax Court, alleging, in part, that she should be relieved of joint tax liabilities for the years 1, 2, and 3, for which you and she filed joint federal income tax returns. The Tax Court Rules afford you the right to intervene in this matter. If you wish to exercise that right, please follow the instructions in the attached notice. If you have any questions concerning this matter, please direct them to the undersigned at the above address or telephone number.

Sincerely,

Associate Area Counsel's Name Associate Area Counsel

By: _____

Attorney's Name
Attorney
T.C. Bar No. YYYYY

Enclosures:

Notice of Filing of Petition and Right to Intervene Interim T.C. Rule 325

ANSWER TO PETITION RAISING RELIEF FROM JOINT AND SEVERAL LIABILITY ON A JOINT RETURN

7. FURTHER ANSWERING the petition, and in compliance with Interim T.C. Rule 325, respondent alleges:

On ______, respondent gave notice of the filing of the petition in the instant case requesting relief from joint liability, to petitioner's [former] spouse, John Doe, with whom petitioner filed joint returns for the years before the Court.

WHEREFORE, it is prayed that the relief sought in the Petition....

UNITED STATES TAX COURT

JANE	DOE,)			
			Pet	titioner,)			
	v.)	Docket	No.	XXXX-XX
COMM	ISSIONER	OF	INTERNAL	REVENUE,)			
			Res	spondent.)			

NOTICE OF FILING OF PETITION AND RIGHT TO INTERVENE

Respondent is unable to provide notice of the filing of a claim for relief from joint and several liability in the above-captioned case, as required by Interim T.C. Rule 325, to petitioner's [former] spouse, John Doe, with whom petitioner filed joint returns for the years before the Court, because John Doe is deceased. Respondent determined that [INSERT FACTS THAT INDICATE HOW RESPONDENT DETERMINED THAT JOHN DOE WAS DECEASED AND THAT THERE IS NO PERSONAL REPRESENTATIVE].

B. JOHN WILLIAMS, JR. Chief Counsel Internal Revenue Service

Attorney's Name
Senior Attorney
(Small Business/SelfEmployed)
Tax Court Bar No. YYYYY
Street Address
City, State Zipcode
Telephone Number

OF COUNSEL:
KEVIN M. BROWN
Division Counsel
(Small Business/Self-Employed)
AREA COUNSEL'S NAME
Area Counsel
(Small Business/Self-Employed:Area Z)

This is to certify that a copy of the foregoing NOTICE	OI
FILING OF PETITION AND RIGHT TO INTERVENE was served on	
petitioner by mailing the same on in a	
postage paid wrapper addressed as follows:	
Jane Doe Street Address City, State Zipcode	
Date: AREA COUNSEL ATTORNEY'S NAME Senior Attorney (Small Business/Self-Employed)	