

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, § 66, 6015.)

Rev. Proc. 2000-15

SECTION 1. PURPOSE

This revenue procedure provides guidance for taxpayers seeking equitable relief from federal tax liability under § 6015(f) or 66(c) of the Internal Revenue Code (a “requesting spouse”). Section 4.01 of this revenue procedure provides the threshold conditions that must be satisfied for any request for equitable relief to be considered. Section 4.02 of this revenue procedure sets forth the conditions under which relief under § 6015(f) will ordinarily be granted. Section 4.03 of this revenue procedure provides a partial list of factors to be considered in determining whether it would be inequitable to hold a requesting spouse jointly and severally liable for a liability that was properly reported but not paid where the conditions of section 4.02 are not met, or for a deficiency. The factors in section 4.03 will also be used to determine whether equitable relief should be granted under § 66(c).

SECTION 2. BACKGROUND

.01 Section 6013(d)(3) provides that married taxpayers who file a joint return under § 6013 will be jointly and severally liable for the tax arising from that return. For purposes of § 6013(d)(3), and this revenue procedure, the term “tax” includes additions to tax, interest, and penalties. See §§ 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.742 (RRA), enacted § 6015 of the Code, which provides relief in certain circumstances from the joint and several liability imposed by § 6013(d)(3). Sections 6015(b) and 6015(c) specify two sets of circumstances under which relief from joint and several liability is available. Where relief is not available under § 6015(b) or 6015(c), § 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 3201(b) of RRA amended § 66(c) to add an equitable relief provision similar to § 6015(f). Section 66(c) applies to married individuals with community property income, and provides certain conditions under which an individual may be relieved of separate return liability for items of community income attributable to the individual’s spouse. The enactment of § 6015 and the amendment of § 66(c) are effective with respect to any liability for tax arising after July 22, 1998, and any liability for tax arising on or before July 22, 1998, that is unpaid on that date.

.03 Under § 6015(b), a requesting spouse may elect relief from joint and several liability if the following five conditions are met: (1) a joint return was filed; (2) on the

return there was an understatement of tax attributable to erroneous items of the spouse with whom the requesting spouse filed the return (“nonrequesting spouse”); (3) the requesting spouse establishes that in signing the return, the requesting spouse had no knowledge or reason to know that there was an understatement of tax; (4) taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for the understatement; and (5) the requesting spouse elects the application of § 6015(b) no later than two years after the date of the first collection activity after July 22, 1998, with respect to the requesting spouse. If all five conditions would be met except for the fact that the requesting spouse had no knowledge or reason to know of only a portion of the understatement, then the requesting spouse may be granted relief to the extent of that portion of the understatement.

.04 Under § 6015(c), a requesting spouse may elect to allocate a deficiency if the following four conditions are met: (1) a joint return was filed; (2) at the time of the election, the requesting spouse is no longer married to, is legally separated from, 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 the election was filed; (3) the requesting spouse elects the application of § 6015(c) no later than two years after the date of the first collection activity after July 22, 1998, with respect to the requesting spouse; and (4) the deficiency remains unpaid. Relief under § 6015(c) is subject to several limitations. First, an election under § 6015(c) is invalid if the Service establishes that assets were transferred between the requesting spouse and the nonrequesting spouse as part of a fraudulent scheme (and § 6013(d)(3) shall apply to

the joint return). Second, relief is not available to the extent that the Secretary demonstrates that the requesting spouse had actual knowledge of an item giving rise to a deficiency at the time the return was signed. Third, relief will only be available to the extent that the liability exceeds the value of any disqualified assets (as defined in § 6015(c)(4)(B)) transferred to the requesting spouse by the nonrequesting spouse.

.05 Section 6015 provides for relief only from joint and several liability arising from a joint return. If an individual signs a joint return under duress, the signature is not valid and a joint return is not made. The individual is not jointly and severally liable for liabilities arising from such a return. Therefore, § 6015 does not apply.

.06 Under both §§ 6015(b) and 6015(c), relief is available only from proposed or assessed deficiencies. Neither § 6015(b) nor § 6015(c) authorizes relief from liabilities that were properly reported on the return but not paid. However, equitable relief under § 6015(f) or 66(c) may be available for such liabilities. The legislative history of the RRA indicates that Congress intended for the Secretary to exercise discretion in granting equitable relief when 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. 599, 105th Cong., 2d Sess. 254 (1998). Congress also intended for the Secretary to exercise the equitable relief authority under § 6015(f) in other situations where, “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.*

.07 Notice 98-61, 1998-51 I.R.B. 13 (Dec. 21, 1998), provided interim guidance to taxpayers seeking equitable relief under § 6015(f) or 66(c). In Notice 98-61, the Service and Treasury Department requested comments from the public by April 30, 1999, regarding the interim guidelines. Notice 99-29, 1999-21 I.R.B. 8 (May 24, 1999), extended the deadline for submitting comments on Notice 98-61 to June 30, 1999.

SECTION 3. SCOPE

This revenue procedure applies to a spouse who requests either equitable relief from joint and several liability under § 6015(f), or relief from separate liability under § 66(c) that arises due to the operation of community property law, with respect to any liability for tax arising after July 22, 1998, or any liability for tax arising on or before July 22, 1998, that was unpaid on that date.

SECTION 4. GENERAL CONDITIONS FOR RELIEF

.01 Eligibility to be considered for equitable relief. All the following threshold conditions must be satisfied before the Service will consider a request for equitable relief under § 6015(f). In addition, with the exception of conditions (1) and (2), all of the following threshold conditions must be satisfied before the Service will consider a claim for equitable relief under § 66(c). The threshold conditions are as follows:

- (1) The requesting spouse filed a joint return for the taxable year for which relief is sought;
- (2) Relief is not available to the requesting spouse under § 6015(b) or 6015(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;

(4) Except as provided in the next sentence, the liability remains unpaid. A requesting spouse is eligible to be considered for relief in the form of a refund of liabilities for: (a) amounts paid on or after July 22, 1998, and on or before April 15, 1999; and (b) installment payments, made after July 22, 1998, pursuant to an installment agreement entered into with the Service and with respect to which an individual is not in default, that are made after the claim for relief is requested;

(5) No assets were transferred between the spouses filing the joint return as part of a fraudulent scheme by such spouses;

(6) There were no disqualified assets transferred to the requesting spouse by the nonrequesting spouse. If there were disqualified assets transferred to the requesting spouse by the nonrequesting spouse, relief will be available only to the extent that the liability exceeds the value of such disqualified assets. For this purpose, the term "disqualified asset" has the meaning given such term by § 6015(c)(4)(B); and

(7) The requesting spouse did not file the return with fraudulent intent.

A requesting spouse satisfying all the applicable threshold conditions set forth above may be relieved of all or part of the liability under § 6015(f) or 66(c), if, taking into account all the facts and circumstances, the Service determines that it would be inequitable to hold the requesting spouse liable for such liability.

.02 Circumstances under which equitable relief under § 6015(f) will ordinarily be granted.

(1) In cases where a liability reported on a joint return is unpaid, equitable relief under § 6015(f) will ordinarily be granted (subject to the limitations of paragraph (2) below) in cases where all of the following elements are satisfied:

(a) At the time relief is requested, 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 relief was requested;

(b) At the time the return was signed, the requesting spouse had no knowledge or reason to know that the tax would not be paid. The requesting spouse must establish that it was reasonable for the requesting spouse to believe that the nonrequesting spouse would pay the reported liability. If a requesting spouse would otherwise qualify for relief under this section, except for the fact that the requesting spouse had no knowledge or reason to know of only a portion of the unpaid liability, then the requesting spouse may be granted relief only to the extent that the liability is attributable to such portion; and

(c) The requesting spouse will suffer economic hardship if relief is not granted. For purposes of this section, the determination of whether a requesting spouse will suffer economic hardship will be made by the Commissioner or the Commissioner's delegate, and will be based on rules similar to those provided in § 301.6343-1(b)(4) of the Regulations on Procedure and Administration.

(2) Relief under this section 4.02 is subject to the following limitations:

(a) If the return is or has been adjusted to reflect an understatement of tax, relief will be available only to the extent of the liability shown on the return prior to any such adjustment; and

(b) Relief will only be available to the extent that the unpaid liability is allocable to the nonrequesting spouse.

.03 Factors for determining whether to grant equitable relief. This section 4.03 applies to requesting spouses who filed separate returns in community property states, request relief under § 66(c), and satisfy the applicable threshold conditions of section 4.01. This section 4.03 also applies to requesting spouses who filed joint returns and satisfy the threshold conditions of section 4.01, but do not qualify for relief under section 4.02. The Secretary may grant equitable relief under § 6015(f) or 66(c) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for all or part of the unpaid liability or deficiency. The following is a partial list of the positive and negative factors that will be taken into account in determining whether to grant full or partial equitable relief under § 6015(f) or 66(c). No single factor will be determinative of whether equitable relief will or will not be granted in any particular case. Rather, all factors will be considered and weighed appropriately. The list is not intended to be exhaustive.

(1) Factors weighing in favor of relief. The factors weighing in favor of relief include, but are not limited to, the following:

(a) Marital status. The requesting spouse is separated (whether legally separated or living apart) or divorced from the nonrequesting spouse.

(b) Economic hardship. The requesting spouse would suffer economic hardship (within the meaning of section 4.02(1)(c) of this revenue procedure) if relief from the liability is not granted.

(c) Abuse. The requesting spouse was abused by the nonrequesting spouse, but such abuse did not amount to duress.

(d) No knowledge or reason to know. In the case of a liability that was properly reported but not paid, the requesting spouse did not know and had no reason to know that the liability would not be paid. In the case of a liability that arose from a deficiency, the requesting spouse did not know and had no reason to know of the items giving rise to the deficiency.

(e) Nonrequesting spouse's legal obligation. The nonrequesting spouse has a legal obligation pursuant to a divorce decree or agreement to pay the outstanding liability. This will not be a factor weighing in favor of relief if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonrequesting spouse would not pay the liability.

(f) Attributable to nonrequesting spouse. The liability for which relief is sought is solely attributable to the nonrequesting spouse.

(2) Factors weighing against relief. The factors weighing against relief include, but are not limited to, the following:

(a) Attributable to the requesting spouse. The unpaid liability or item giving rise to the deficiency is attributable to the requesting spouse.

(b) Knowledge, or reason to know. A requesting spouse knew or had reason to know of the item giving rise to a deficiency or that the reported liability would be unpaid at the time the return was signed. This is an extremely strong factor weighing against relief. Nonetheless, when the factors in favor of equitable relief are unusually strong, it may be appropriate to grant relief under § 6015(f) in limited situations where a requesting spouse knew or had reason to know that the liability would not be paid, and in very limited situations where the requesting spouse knew or had reason to know of an item giving rise to a deficiency.

(c) Significant benefit. The requesting spouse has significantly benefitted (beyond normal support) from the unpaid liability or items giving rise to the deficiency. See § 1.6013-5(b).

(d) Lack of economic hardship. The requesting spouse will not experience economic hardship (within the meaning of section 4.02(1)(c) of this revenue procedure) if relief from the liability is not granted.

(e) Noncompliance with federal income tax laws. The requesting spouse has not made a good faith effort to comply with federal income tax laws in the tax years following the tax year or years to which the request for relief relates.

(f) Requesting spouse's legal obligation. The requesting spouse has a legal obligation pursuant to a divorce decree or agreement to pay the liability.

SECTION 5. PROCEDURE

A requesting spouse seeking equitable relief under § 6015(f) or 66(c) 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 2 years of the first collection activity against the requesting spouse. If a requesting spouse has already filed an application for relief under § 6015(b) or 6015(c), the Service will consider whether equitable relief under § 6015(f) is appropriate for the portion of the liability for which relief under § 6015(b) or § 6015(c) is not available. A subsequent filing of a request for equitable relief under § 6015(f) is not necessary.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Notice 98-61 is modified and, as modified, is superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective on January 18, 2000.

DRAFTING INFORMATION

The principal author of this revenue procedure is Bridget E. Finkenaur of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Finkenaur on (202) 622-4940 (not a toll-free call).