

Notice of Proposed Rulemaking

Treatment of Community Income for Certain Individuals Not Filing Joint Returns

REG-115054-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of community income under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

DATES: Written or electronically generated comments and requests for a public hearing must be received by April 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-115054-01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-115054-01), room 5226, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslst.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robin M. Tuczak, 202-622-4940; concerning submissions of comments and requests for a public hearing, Guy Traynor, 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by March 25, 2002.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.66-4. An individual who wishes to be relieved of the operation of community property law under § 1.66-4 must request relief from joint and several liability by timely filing

Form 8857, "Request for Innocent Spouse Relief" (or other specified form), or a written statement, signed under penalties of perjury, indicating why he or she should be relieved of the operation of community property law. This collection of information is required for an individual to request relief from the operation of community property law. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The burden contained in § 1.66-4 is reflected in the burden of Form 8857.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

For married taxpayers living in community property states, income that is community property under the laws of the state or jurisdiction in which the spouses reside is generally taxed in equal shares to the husband and the wife. Thus, if a husband and wife do not elect to file a joint individual Federal income tax return (joint return) under section 6013, each spouse is generally required to report one-half of the community income on his or her married filing separate individual Federal income tax return (separate return). Section 66 contains four exceptions to the general rule that community income is taxed in equal shares to the husband and the wife.

Section 66(a) provides rules for the treatment of community income when the spouses live apart and do not share income for the entire taxable year. Section 66(b) authorizes the Secretary to disregard community property laws where one spouse is not notified of the nature and amount of items of community income. Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law in certain other cases. This

provision is analogous to the relief provision in section 6015(b) relating to joint filers. Section 66(c) also authorizes the Secretary to grant equitable relief from the operation of community property laws where the other requirements of section 66(c) are not met. This provision is analogous to the equitable relief provision in section 6015(f) relating to joint filers.

The four exceptions in section 66 apply to community income that spouses receive while they are married. Thus, community income that is received during any taxable year in which the spouses are married at any time during that taxable year, including the taxable year during which the spouses divorce, may be subject, in whole or in part, to the provisions of section 66. If spouses file a joint return for a taxable year, section 66 does not apply to their community income for that taxable year. If a spouse files a joint return with a new spouse in the same year that the spouse divorces his or her former spouse, section 66 may be applicable to any community income of the spouse and former spouse earned prior to their divorce. For rules regarding relief from joint and several liability when a joint return is filed, see section 6015 and the regulations thereunder.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that are necessary to carry out the provisions of section 66.

Explanation of Provisions

Treatment of Community Income Under Section 66(a) Where Spouses Live Apart

Section 879(a) provides that under certain circumstances, community income is taxed to the spouse who earned the income rather than according to community property laws. Under section 66(a), a spouse may report community income in accordance with the rules provided by section 879(a) if the following requirements are satisfied: (1) the spouses must have been married to each other at some time during the calendar year; (2) the spouses must have lived apart at all times during the calendar year; (3) the spouses must not have filed a joint return under section 6013 for a taxable year beginning or ending in the calendar year; (4) at least one of the spouses must have earned income during the taxable year that is

community income; and (5) the spouses must not have transferred any of the income (directly or indirectly) to each other before the close of the calendar year. The proposed regulations provide that *de minimis* amounts are not considered transfers for purposes of section 66(a). In addition, the proposed regulations provide that amounts that are transferred or paid to, or on behalf of, the couple's child are not considered indirect transfers to one spouse merely because such transfers satisfy a support obligation of that spouse. See H.R. Rep. No. 96-1278, 96th Cong., 2d Sess. 7 (1980).

Denial of Benefits of Community Property Law Under Section 66(b) Where Spouse Not Notified of Community Income

Section 66(b) provides the Secretary with the authority to deny the benefits of community property law to a spouse who does not notify the other spouse of the nature and amount of an item of community income and who acts as if solely entitled to such income. The proposed regulations provide that in such a case, the item of community income will be included in the gross income of the spouse for whom the benefits of community property law were denied.

Request for Relief From the Operation of Community Property Law Under Section 66(c)

Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law (specific relief) if: (1) the requesting spouse files a separate return for a taxable year; (2) the requesting spouse does not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse; (3) the requesting spouse establishes that he or she did not know, and had no reason to know, of the item of community income; and (4) taking into account all of the facts and circumstances, it is inequitable to include the item of community income in the gross income of the requesting spouse.

The proposed regulations provide that if a requesting spouse is relieved of the operation of community property law under section 66(c) for an item of community income, the item will be included in the gross income of the nonrequesting spouse, and not in the gross income of the requesting spouse. In addition, the proposed regulations provide that when a requesting spouse is granted relief from the operation of community property law under section 66(c), community income will be treated in accordance with the rules provided by section 879(a). The proposed regulations also provide that relief under section 66(c) is not available if one spouse transferred assets to the other spouse as part of a fraudulent scheme, or if the requesting spouse signed a closing agreement or offer in compromise for the taxable year for which relief from the operation of community property law is sought.

Request for Equitable Relief Under Section 66(c)

Section 66(c) also authorizes the Secretary to grant equitable relief from the operation of community property law to requesting spouses who do not otherwise meet the qualifications for relief set forth in section 66(c). This provision, which was added by section 3201(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, is only available for liabilities that were unpaid as of July 22, 1998, or that arise after July 22, 1998.

Section 66(c) directs the Secretary to prescribe procedures regarding when equitable relief may be granted. Such procedures are detailed in Revenue Procedure 2000-15 (2000-1 C.B. 447). The proposed regulations provide general information on the equitable relief provision in section 66(c) and refer individuals seeking more detailed guidance to the relevant revenue rulings, revenue procedures, or other published guidance issued on this topic.

Time and Manner of Requesting Relief

Under the proposed regulations, a spouse seeking specific relief from the operation of community property law under section 66(c) generally may only seek relief after a deficiency for such year has been asserted. A deficiency is consid-

ered “asserted” on the date that the requesting spouse either receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year.

The requesting spouse must notify the Secretary of the spouse’s request for treatment under section 66(c) in a timely manner so that the Secretary can assess the tax on the community income against the nonrequesting spouse before the statute of limitations on making such an assessment under section 6501 expires. Thus, the proposed regulations provide that a requesting spouse seeking relief from the operation of community property law under section 66(c) must request such relief no later than 6 months before the statute of limitations on assessment of section 6501 expires with regard to the nonrequesting spouse. The proposed regulations further provide that if the examination of the requesting spouse’s return commences during that 6 month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

A spouse seeking equitable relief from the operation of community property law under section 66(c) for a liability that was properly reported but not paid may seek relief on or after the date the return for such year is filed.

In order to request either specific or equitable relief from the operation of community property law under section 66(c), the requesting spouse must file Form 8857, “*Request for Innocent Spouse Relief*” (or other specified form), or a written statement, signed under penalties of perjury, with the Secretary indicating why such treatment or relief is appropriate. The statement must also include the name of the nonrequesting spouse and the taxpayer identification number of the nonrequesting spouse, as well as any other information reasonably requested by the Secretary that will help the Secretary identify and locate the nonrequesting spouse.

Interests of the Nonrequesting Spouse

The legislative history of section 6015 indicates that the Secretary must consider the nonrequesting spouse’s views when making a determination of relief from joint liability under that section. See H.R.

Conf. Rep. No. 599, 105th Cong., 2d Sess. 251, 255 (1998). Because the liability of the requesting spouse under section 66 will shift from the requesting spouse to the nonrequesting spouse, notification and participation requirements similar to those in section 6015 are appropriate for section 66 cases. In addition, information provided by a nonrequesting spouse may help to determine the appropriate amount of relief, if any.

The proposed regulations provide that the Secretary must notify the nonrequesting spouse of the requesting spouse’s claim for relief and provide the nonrequesting spouse with an opportunity to participate in the administrative determination of whether relief is appropriate. The nonrequesting spouse may submit relevant information to the IRS employee making the determination.

In fashioning rules regarding the notification and participation of the nonrequesting spouse, the IRS and Treasury Department attempted to balance the rights and interests of both the requesting spouse and the nonrequesting spouse. The IRS and Treasury Department recognize that some spouses may be reluctant to apply for relief from the operation of community property law, or submit information regarding the other spouse’s request for relief, due to privacy concerns or for fear of reprisal by the other spouse. To address this concern, the Internal Revenue Manual provides that the Service will omit from shared documents any information that could reasonably identify a spouse’s location.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations, and on how the proposed regulations can be made easier to understand. Although public comment is sought on all of the issues in the proposed regulations, the IRS and Treasury Department are particularly interested in receiving comments on the timing limitations that would be imposed on a request for relief under § 1.66-4(g)(2). All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the regulations are Robin M. Tuzak and Bridget E. Finkenaur of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.66-4 also issued under 26 U.S.C. 66(c). * * *

Par. 2. Sections 1.66-1 through 1.66-5 are added to read as follows:

§ 1.66-1 Treatment of community income.

(a) *In general.* Married individuals in community property states who do not elect to file a joint individual Federal income tax return under section 6013 generally are required to report one-half of the total community income earned by the spouses during the taxable year unless one of the following exceptions applies:

(1) When the spouses live apart and meet the qualifications of § 1.66-2.

(2) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66-3, because the nonrequesting spouse failed to notify the requesting spouse of the nature and amount of the income prior to the due date for filing the return.

(3) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66-4(a).

(4) When a requesting spouse qualifies for equitable relief from the operation of community property law under § 1.66-4(b).

(b) *Marital status.* The rules of this section apply to the community income earned during a marriage for any taxable year beginning or ending during a calendar year in which the spouses are married, including the calendar year in which the spouses divorce. Section 66 does not apply to income earned after the spouses divorce.

(c) *Transferee liability.* The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to income tax on community income under § 1.66-2 or 1.66-4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

§ 1.66-2 Treatment of community income where spouses live apart.

(a) Income of spouses residing in a community property state will be treated in accordance with the rules provided by

section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;

(3) The spouses each file a separate Federal income tax return for a taxable year beginning or ending in the calendar year on which the taxpayer reports his or her income in accordance with section 66(a);

(4) One or both spouses have earned income for the calendar year which is community income and which was earned during the spouses' marriage; and

(5) No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the taxable year.

(b) *Transferred income.* For purposes of this section, transferred income does not include a *de minimis* amount of earned income that is transferred between the spouses. In addition, any amount of earned income transferred or paid to, or for the benefit of, the spouses' child will not be treated as an indirect transfer to one spouse solely because the payment or transfer satisfies an obligation of support imposed on that spouse.

§ 1.66-3 Denial of benefits of community property law where spouse not notified.

The Secretary may deny the benefits of community property law to any spouse with respect to any item of community income if that spouse acted as if he or she was solely entitled to the item of income and failed to notify the other spouse of the nature and amount of the income before the due date (including extensions) for filing the return for the taxable year in which the income was derived. Such item of community income will be included, in its entirety, in the gross income of the spouse for whom the benefits of community property law were denied. The tax liability arising from such item of community income must be assessed in accordance with section 6212 against the spouse for whom the benefits of community property law were denied.

§ 1.66-4 Request for relief from the operation of community property law.

(a) *Specific relief*—(1) *In general.* A requesting spouse will be relieved of the operation of community property law for an item of community income if—

(i) The requesting spouse filed a separate return for the taxable year for which relief is sought;

(ii) The requesting spouse did not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse;

(iii) The requesting spouse establishes that he or she did not know of, and had no reason to know of, such item of community income; and

(iv) Taking into account all of the facts and circumstances, it is inequitable to include such item of community income in the requesting spouse's individual gross income.

(2) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she either actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(3) *Inequitable.* All of the facts and circumstances are also considered in determining whether it is inequitable to

hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefited, directly or indirectly, from the omitted income. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For more information on factors relevant to determining whether it is inequitable to hold a requesting spouse liable, see Revenue Procedure 2000-15 (2000-1 C.B. 447), or other guidance subsequently published by the Secretary. Relief under this paragraph (a) only applies to deficiencies arising out of items of omitted income.

(b) *Equitable relief.* Equitable relief may be available when the four requirements of paragraph (a) of this section are not satisfied but it would be inequitable to include the item of community income in the requesting spouse's gross income. For the criteria to be used in making a determination under this paragraph, see Revenue Procedure 2000-15 (2000-1 C.B. 447), and other guidance subsequently published by the Secretary. Relief under this paragraph (b) applies only to deficiencies arising out of items of omitted income or any unpaid tax arising from community income attributable to the nonrequesting spouse and is only available for liabilities that were unpaid as of July 22, 1998, and for liabilities that arise after July 22, 1998.

(c) *Effect of relief.* (1) When the requesting spouse qualifies for relief under paragraph (a) or (b) of this section,

the item of community income will be included in the nonrequesting spouse's individual gross income and will not be included in the requesting spouse's individual gross income. The tax liability arising from such item of community income must be assessed against the nonrequesting spouse in accordance with section 6212.

(2) If a requesting spouse is granted relief from the operation of community property law with respect to an item of community income under paragraph (a) or (b) of this section, any community income of the spouses will be treated in accordance with the rules provided by section 879(a). Thus, if a requesting spouse is granted relief under paragraph (a) or (b) of this section, any item of community income that is attributable to the requesting spouse will be included, in its entirety, in the requesting spouse's gross income for such taxable year, and will not be included in the nonrequesting spouse's gross income for such taxable year. If additional tax were to result upon granting relief under this section, the requesting spouse may withdraw his or her request for relief.

(3) *Example.* The following example illustrates the rule of this paragraph (c):

Example. H and W are married and live in State Z (a community property state). Both H and W file returns for taxable year 2002 as "married filing separately" on April 15, 2003. H earns \$56,000 in wages, and W earns \$46,000 in wages in 2002. H reports half of his wage income as shown on his Form W-2, in the amount of \$28,000, and half of W's wage income as shown on her Form W-2, in the amount of \$23,000. W reports half of her wage income as shown on her W-2, in the amount of \$23,000, and half of H's wage income as shown on his Form W-2, in the amount of \$28,000. Neither H nor W reports W's income from her sole proprietorship of \$34,000 or W's investment income of \$5,000 for taxable year 2002. The Internal Revenue Service proposes deficiencies with respect to H's and W's taxable year 2002 returns due to the omission of W's income from her sole proprietorship and investments. H timely files a claim for relief under section 66(c). Because the Internal Revenue Service determines that H satisfies the four requirements of section 66(c) with respect to W's omitted income, the Internal Revenue Service grants H's claim for relief. Thus, the income of H and W will be treated in accordance with the rules provided by section 879(a). H is liable for the tax on his earned income, as shown on his Form W-2, in the amount of \$56,000. (See section 879(a)(1).) W is liable for the tax on her earned income, as shown on her Form W-2, in the amount of \$46,000, and on the trade or business income from her sole proprietorship, in the amount of \$34,000. (See section 879(a)(1) and (2).) W's investment income will be treated as provided

under the community property laws of State Z. (See section 879(a)(3) and (4).)

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under this section. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Secretary or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who does not file a joint individual Federal income tax return with the nonrequesting spouse for the taxable year in question, and who requests relief from the operation of community property law under this section for the portion of the liability arising from his or her share of community income for such taxable year.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual to whom the requesting spouse was married when the community income which gave rise to the claim for relief was earned.

(f) *Effect of prior closing agreement or offer in compromise.* A requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into a closing agreement (other than an agreement entered into pursuant to section 6224(c) relating to partnership items) with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(g) *Time and manner for requesting relief*—(1) *Requesting relief.* To request relief from the operation of community property law under this section, a requesting spouse must file, within the time period prescribed in paragraph (g)(2) of this section, Form 8857, “*Request for Innocent Spouse Relief*” (or other specified form), or other written request, signed under penalties of perjury, indicating why such relief is appropriate. The

requesting spouse must include the nonrequesting spouse’s name and taxpayer identification number in the written request. The requesting spouse must also comply with any of the Secretary’s reasonable requests for information that will assist the Secretary in identifying and locating the nonrequesting spouse.

(2) *Time period for filing a request for relief*—(i) *Specific relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (a) of this section for an amount that was underreported on, or omitted from, the requesting spouse’s separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. The latest time for requesting relief under paragraph (a) of this section is 6 months before the expiration of the statute of limitations on assessment, including extensions, against the nonrequesting spouse for the taxable year that is the subject of the claim for relief, unless the examination of the requesting spouse’s return commences during that 6-month period. If the examination of the requesting spouse’s return commences during that 6-month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

(ii) *Equitable relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (b) of this section for an amount that was underreported on, or omitted from, the requesting spouse’s separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. Requests for equitable relief from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid may be submitted with the requesting spouse’s individual Federal income tax return, or after the requesting spouse’s individual Federal income tax return is filed.

(iii) *Premature requests for relief.* (A) The Secretary will not consider premature claims for relief under this section. In the case of a claim for specific relief, a premature claim is a claim for relief from an item of community income that is omitted from the requesting spouse’s individual

Federal income tax return that is filed for a taxable year prior to the date that a deficiency for such year is asserted. A deficiency is considered asserted as of the date the requesting spouse receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings.

(B) In the case of a claim for equitable relief, a premature claim is a claim for relief from an item of community income that is received prior to the date that the requesting spouse files an individual Federal income tax return for the taxable year in question.

(h) *Nonrequesting spouse’s notice and opportunity to participate in administrative proceedings*—(1) *In general.* When the Secretary receives a request for relief from the operation of community property law under this section, the Secretary must send a notice to the nonrequesting spouse’s last known address that informs the nonrequesting spouse of the requesting spouse’s claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from the operation of community property law. The Secretary will share with both spouses the information submitted by the other spouse, unless the Secretary determines that the sharing of such information will impair tax administration.

(2) *Information submitted.* The Secretary will consider all of the information (as relevant to the particular relief provision) that the nonrequesting spouse submits in determining whether relief from the operation of community property law under this section is appropriate.

§ 1.66–5 Effective date.

Sections 1.66–1 through 1.66–4 are applicable on the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,
Deputy Commissioner of
Internal Revenue.