

CALIFORNIA LAWYERS ASSOCIATION
TAXATION SECTION
WASHINGTON D.C., DELEGATION
2018 PAPER TOPIC PROPOSAL

EXTENDING THE STATUTE OF LIMITATIONS FOR
CLAIMING INNOCENT SPOUSE RELIEF (IRC § 6015)

BRINGING CONSISTENCY TO § 6015(b), § 6015(c) and § 6015(f)

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EXECUTIVE SUMMARY

Section 6015 allows a taxpayer who filed a joint return to obtain relief from joint and several liability for an underpayment of tax in three situations. This relief is commonly referred to as innocent spouse relief. For two of those situations, i.e., §6015 (b) and §6015 (c), the statute imposes two years from the date collection efforts commence as the period within which a spouse may elect relief. The statute does not expressly state the period within which relief may be sought in the third situation (§ 6015 (f), equitable relief). The Service successfully argued that the two-year period applied to § 6015(f), but in Notice 2011-70 it ruled that the period within which relief may be elected under § 6015(f) extends to the close of the period during which the IRS may collect the tax; i.e., at least ten years.

The paper proposes that a person claiming to be entitled to relief as an innocent spouse under § 6015(b), § 6015 (c) or § 6015 (f) be allowed to elect relief at any time during which the IRS can collect the underpayment.

Enforcement of the two-year period for seeking relief under § 6015(b) and § 6015(c) can result in unduly harsh consequences for taxpayers who are entitled to relief but do not seek relief within the statutory two-year period. This is especially true where the spouses do not divorce or become legally separated until after the two-year period, or begin living in separate households more than one year after collection activity begins. The earliest statutory versions of relief from joint and several liability for innocent spouses did not include a two-year limitation on the request period. Inexplicably, the two-year period was included with other, more expansive revisions to § 6015 relief in 1998.

Enactment of this simple statutory amendment would bring consistency and increased fairness to eligibility for § 6015 relief. The change would allow a requesting spouse who is otherwise

eligible for innocent spouse relief to elect relief at any time the IRS can take collection action against the requesting spouse. It also ensures that the IRS does not reverse its position on the time period for electing equitable relief. The change will allow the IRS to focus on collecting unpaid liabilities from the person whose actions created the liability, and the person who, under § 6015, should be accountable for satisfying the liability. Further, this proposal is consistent with the spirit of Congressional intent to provide relief from joint and several liability to all qualifying requesting spouses to whom erroneous tax items are attributed solely on the grounds of a jointly filed tax return. A truncated period to request relief under two of the three § 6015 subsections is at odds with the long-standing beneficial Congressional intent that is the foundation of § 6015.

Reviewers

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