THE CALIFORNIA LAWYERS ASSOCIATION
TAXATION SECTION
TAX PROCEDURE AND LITIGATION COMMITTEE

PROTECTING CHILDREN FROM TAX-DODGING ADULTS: PROPOSING INNOCENT DEPENDENT RELIEF

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[1] The comments contained in this paper are the individual views of the authors who prepared them, and do not represent the position of the California Lawyers Association.
[2] Although the authors and/or presenters of this paper might have clients affected by the rules applicable to the subject matter of this paper and have advised such clients on applicable law, no such participant has been engaged by a client to participate on this project.

EXECUTIVE SUMMARY[3]

In this proposal, the authors advocate for the creation of a new law that would provide protection under the Internal Revenue Code to dependents — primarily minors, but adult dependents could qualify as well — who become unfairly burdened by tax liabilities due to the actions of their parents or guardians. We refer to such protection as "innocent dependent relief," and it would parallel the "innocent spouse relief" already enshrined in Section 6015 of the Internal Revenue Code. Section 6015 applies to individuals that filed joint returns with their spouse and thereby became liable for understatements of tax attributable to an erroneous tax return item of their spouse. If an affected individual did not know that there was an understatement of tax on the return, and if it would be inequitable to hold the individual liable for the tax deficiency, Section 6015 relieves the individual of the liability.

Section 6015 is a critical protection in the Internal Revenue Code, and the relief it affords has substantially improved the lives of countless innocent spouses since it was enacted in 1998. However, section 6015 only applies to a limited subset of family relationships and tax filings: married individuals and the joint returns they file with their spouse. Its protections do not extend to dependents who may be liable for understatements of tax on their individual returns due to their parent's or guardian's actions. And such, dependents likely have even less knowledge or control over their returns than an innocent spouse.

As a result, a child whose parent erroneously attributes income to them on the child's return, or a disabled adult dependent whose guardian erroneously claims deductions on the dependent's return, have no recourse if they become liable for an understatement of tax due to these actions. In fact, under current law, there appears to be no mechanism for relief in even more egregious cases, for instance those involving the fraudulent activities of parents or guardians conducting business or filing tax returns using the dependent's name and social security number. Our proposed innocent dependent relief would remedy this unfortunate protection gap. Through innocent dependent relief, a qualifying dependent or minor taxpayer required to file a federal tax return shall be relieved of liability for additional tax, penalties, interest, and other amounts attributable to erroneous items on a return prepared by a parent, legal guardian, trustee, or other qualifying adult.

Mechanically, innocent dependent relief would work similarly to innocent spouse relief. The dependent or minor taxpayer or his or her representative would first submit a request for innocent dependent relief to the Internal Revenue Service ("IRS") for administrative review. If the IRS accepts the taxpayer's innocent dependent relief request, the taxpayer would be relieved of additional tax, penalties, interest, and other amounts attributable to the erroneous items on a return prepared by a responsible party. If the IRS denies the taxpayer's request or fails to

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respond to it within six months of submission, the taxpayer would have the option of petitioning the United States Tax Court for review.

DISCUSSION

I. INTRODUCTION

At common law, minors (under 18) generally lack full legal capacity to contract. The general principle is that contracts entered into by minors are not absolutely void, but are voidable at the minor's option. This means that a minor may choose to honor the contract or may disaffirm (void) it, either during minority or within a reasonable time after reaching the age of majority. The rationale is to protect minors from their lack of experience and judgment, while also allowing them to enter into contracts that may be beneficial or necessary.

Notwithstanding the common law, a minor is required by federal law to file a tax return with the IRS if their income meets certain thresholds or if specific circumstances apply. The filing requirements for minors are generally the same as for other individuals, but there are special rules for dependents (which most minors are). The key factors are the type and amount of income the minor receives, their filing status, and whether they can be claimed as a dependent on another taxpayer's return.

If a minor is not a dependent (for example, they provide more than half their own support), the general filing thresholds for single filers apply. For 2024, a single filer under age 65 must file if their gross income is at least $14,600. Most minors are dependents on their parents' or guardians' tax returns, however, and the filing requirements for dependents are different. For 2024 (and expected to be similar for 2025), a dependent must file their own return if any of the following apply:[4]

- Unearned income (such as interest, dividends, capital gains) was more than $1,300.
- Earned income (such as wages, salaries, tips) was more than $14,600.
- Gross income was more than the larger of:
  - $1,300, or
  - Earned income (up to $14,150) plus $450.

In sum, minors and dependents (whether minor or adult) do not have to earn especially much to trigger individual tax return filing obligations. But if they do trigger such an obligation, they are responsible for what is reported on their return and are liable for any underpayment of tax that results. This, despite a minor's lack of experience and judgment and the fact that, in most cases, a minor's return will be prepared by their parent or guardian.

[4] If the dependent is an adult age 65 or older or blind, higher thresholds apply.

II. INNOCENT DEPENDENT RELIEF

Taxpayers, including minors, have a right to pay no more than the correct amount of tax. At their heart, tax returns are the distillation of economic activity, reported on a uniform form. This form contains line items and numbers that are supposed to represent a taxpayer's income for the tax year, the deductions they are entitled to under the Internal Revenue Code, and the tax that results from that income minus the deductions.

Given this complexity, it is unsurprising that many taxpayers find themselves reviewing a prior year return only to realize that it contains errors. If the taxpayer understands the errors and has control over their own tax filings, they can amend their return. Or if they are audited, they can address the errors through that IRS's administrative processes. And if the taxpayer is an innocent spouse, they can submit a request for innocent spouse relief. But as discussed in the previous section, such taxpayers also include minors and dependents who triggered an individual return filing obligation but had little to no knowledge or involvement in the preparation of the tax return itself. And if they realize their return contains an error — or if the IRS does — they are both unlikely to be in a position to resolve it themselves and unable to get relief from liability for tax understatements arising from such errors.

Our proposed innocent dependent relief would give such dependents the opportunity to request relief from those liabilities that arose through no fault of the dependent's own. A taxpayer seeking innocent dependent relief would begin by assessing whether an understatement of tax for which they are liable resulted from errors, omissions, or misconduct attributable to a responsible party. A responsible party is a guardian, parent, custodian, or individual legally obligated to manage the dependent's financial affairs.

The dependent would need to demonstrate that they had no knowledge or reason to know of the errors, omissions, or misconduct that caused the understatement of tax. The dependent would also have to demonstrate that it would be inequitable to hold them responsible, considering factors such as their age, cognitive capacity, and whether they received any significant benefit from the error.

To initiate the process, the dependent would file a designated IRS form — paralleling Form 8857 used for innocent spouse relief — providing detailed explanations and supporting documentation to substantiate their lack of knowledge and the unfairness of imposing liability on them. Upon submission, the IRS would review the application, potentially request additional information, and notify the responsible party to allow their participation in the process. The IRS would then evaluate the facts and circumstances, including the dependent's financial situation and degree of involvement, before making a determination.

If the request for relief is granted, the dependent would be relieved from liability for the understatement of tax. The IRS could then seek to impose that liability on the responsible party through existing IRS procedures. If the request for relief is denied, the dependent would have the right to appeal the decision to the IRS Independent Office of Appeals or petition the U.S. Tax Court within a specified period, where the case would be reviewed anew. Throughout this process, the IRS would consider not only the dependent's knowledge and benefit from the error, but also broader issues of fairness and equity in line with the principles applied in innocent spouse relief cases.

III. PROPOSED STATUTORY PROVISIONS

The authors of this paper propose the creation of a law that would protect such taxpayers — both minors and dependents (whether minor or adult) — under new Internal Revenue Code section 6016, titled “Relief from liability on dependent’s return.” The language of this section would parallel that of section 6015, as follows:

Section 1: Short Title

This Act may be cited as the "Dependent Tax Fairness Act of 2025."

Section 2: Purpose

To provide federal tax liability relief for minors and adult dependents (as defined in 26 U.S.C. § 152) who face tax obligations arising from errors or misconduct by guardians, custodians, or financially responsible parties.

Section 3: Definitions

- Dependent: An individual qualifying as a dependent under 26 U.S.C. § 152, including:
    - Qualifying children (under 19; under 24 if a full-time student, or permanently disabled).
    - Qualifying relatives (meeting age, residency, and support tests).
- Responsible Party: A guardian, parent, custodian, or individual legally obligated to manage the dependent’s financial affairs.
- Erroneous Item: Incorrect income reporting, deductions, credits, or other tax-related actions attributable to the responsible party.

Section 4: Relief Provisions

Subsection (a) – Innocent Dependent Relief

A dependent shall be relieved of liability for tax if:

1. The dependent’s return was prepared by or at the direction of a responsible party;
2. On such return there is an understatement of tax attributable to erroneous items the inclusion of which on the return is attributable to the actions of the responsible party;
3. A request for relief from liability for such an understatement of tax is filed within two years of the dependent becoming aware of the understatement of tax;

4. The dependent establishes he or she did not know, and had no reason to know, that there was such an understatement (considering the dependent's age, cognitive capacity, and financial literacy); and

5. Taking into account all the facts and circumstances, it would be inequitable to hold the dependent liable for the deficiency in tax for such taxable year attributable to such understatement. Factors to be relied upon include but are not limited to:

   - Whether the dependent received a significant benefit beyond basic support.
   - Evidence of financial abuse, coercion, or deceit by the responsible party.
   - Economic hardship or disability status.

Subsection (c) – Equitable Relief

The IRS may grant discretionary relief for underpayments or deficiencies not covered under (a) if:

1. The dependent acted in good faith and lacked control over tax filings;

2. Relief would not undermine tax compliance; and

3. The IRS determines that relief aligns with public policy goals (e.g., protecting vulnerable populations).

Section 5: Procedural Requirements

- Filing: Claims must be submitted via Form 8857-D (newly created for dependents).
- Timeline: The IRS must issue determinations within 270 days of submission.
- Appeals: Current or former dependents have the ability to appeal the denial of their innocent dependent claim to the IRS Independent Office of Appeals.
- Judicial Review: Current or former dependents may petition the United States Tax Court after 270 days of submission of the claim without an acceptance or denial of the claim by the IRS or petition the United States Tax Court after a denial of the claim by IRS Examination or Appeals.

Section 6: Protections for Dependents

- Trusts and Educational Accounts: Tax liens or levies may not attach to:
   - 529 plans or Coverdell ESAs.
   - Property held in trust for the dependent, unless the liability stems from the dependent's direct actions.

- Temporary Absences: Relief eligibility is not affected by absences for education, medical care, or military service.

Section 7: Interaction with Existing Law

- Transferee Liability: Relief under this Act does not negate liability under 26 U.S.C. §§ 6901–6904 (transferee rules).

- Coordination with § 6015: Dependents who are also spouses may elect relief under either this Act or § 6015, but not both.

Section 8: Effective Date

This Act applies to tax years beginning after December 31, 2025.

IV. CONCLUSION

The creation of innocent dependent relief would fill a critical gap in the tax system by extending the equitable principles underlying innocent spouse relief to minor and adult dependents who are unfairly burdened by tax liabilities arising from the actions or omissions of those responsible for their care or finances. Currently, innocent spouse relief recognizes that it is fundamentally unjust to hold a spouse liable for tax liabilities resulting from errors or misconduct they neither knew of nor benefited from, especially when the spouse lacked meaningful control over the couple's financial affairs. Yet, dependents — who by definition are financially reliant on others and often lack legal or practical authority over tax filings — face similar, if not greater, vulnerabilities. Without a parallel form of relief, minor and adult dependents may be exposed to the full weight of tax enforcement for liabilities they neither created nor had the capacity to prevent. Instituting innocent dependent relief would acknowledge the realities of dependency, protect the most vulnerable taxpayers from undue financial harm, and further the tax system's commitment to fairness and individualized justice. Such a measure would also align with established IRS practices of considering knowledge, benefit, and equity in granting relief, ensuring that dependents are not penalized for circumstances beyond their control.