

Part III - ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS

Interim Guidance for Equitable Relief from Joint and Several Liability

Notice 98-61

SECTION 1. PURPOSE

The Treasury Department and the Internal Revenue Service are in the process of developing guidance for taxpayers seeking equitable relief from federal tax liability under § 6015(f) or 66(c) of the Internal Revenue Code. This notice provides interim guidance. The Treasury Department and the Service also request comments from the public to aid in the development of final guidance.

SECTION 2. BACKGROUND

.01 Section 3201(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat.742 (RRA), enacted new § 6015, which provides for relief in certain circumstances from joint and several liability for tax, interest, penalties and other amounts arising from a federal joint income tax return. (Any reference hereinafter to “tax” includes interest, penalties and other amounts.) Sections 6015(b) and 6015(c) specify two sets of circumstances under which relief is available. In addition, where relief is not available under § 6015(b) or 6015(c), § 6015(f) authorizes the Secretary to grant relief if, taking into account all the facts and circumstances, it is inequitable to hold a taxpayer liable for any unpaid tax or any

deficiency. 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 can be relieved from separate return liability for items of community income attributable to his or her 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.

.02 Under § 6015(b), relief with respect to a deficiency will be granted to an individual if the following five conditions are met: (1) a joint return was made; (2) there was an understatement of tax attributable to erroneous items of the individual's spouse; (3) in signing the return, the individual did not know, and had no 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 individual liable for the deficiency in tax; and (5) the individual elects to apply 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 individual. If all five conditions would be met except for the fact that the individual did not know and had no reason to know of only a portion of the deficiency, then the individual can be granted relief to the extent that the liability is attributable to such portion.

.03 Relief with respect to a deficiency allocable to the other spouse will be granted to an individual under § 6015(c) if the following four conditions are met: (1) a joint return was made; (2) at the time relief is elected, the individual is no longer married to, is legally separated from, or has been living apart at all times for at least 12

months from his or her spouse or former spouse; (3) the individual elects to apply 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 individual; and (4) the liability remains unpaid at the time relief is elected. Relief under § 6015(c) is subject to several limitations. First, relief under § 6015(c) is not available if assets were transferred between the spouses as part of a fraudulent scheme. Second, if an individual has actual knowledge that an item on a return is incorrect, relief is not available to the extent any deficiency is attributable to such item. Third, relief will only be available to the extent that the liability exceeds the value of any disqualified assets transferred to the individual by the nonrequesting spouse. See § 6015(c)(4)(B).

.04 Section 6015 provides for relief only from joint and several liabilities arising from a joint return. If an individual signed a joint return involuntarily while under duress, the signature is not valid and a joint return was not made. The individual is not jointly and severally liable for liabilities arising from such a return and, therefore, § 6015 does not apply.

.05 Under both §§ 6015(b) and 6015(c), relief is limited to relief from liability for 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) may be available for such liabilities. The legislative history of the RRA indicates that Congress intended the Secretary to exercise the equitable relief authority under § 6015(f) when a 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." House Conf. Rep. No. 599 at 254.

SECTION 3. INTERIM GUIDANCE FOR EQUITABLE RELIEF UNDER SECTION 6015(f)

This notice provides interim guidance to taxpayers seeking equitable relief under § 6015(f) in three areas. First, section 3.01 of this notice provides threshold conditions that must be satisfied in order for an individual to be considered for relief under § 6015(f). Second, section 3.02 of this notice sets forth the circumstances in which relief under § 6015(f) will ordinarily be granted in the situation where an individual did not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the spouse for the spouse's benefit. Third, for all other requests for relief under § 6015(f), and all requests for relief under § 66(c), section 3.03 of this notice provides a partial list of factors to be considered in determining whether it would be inequitable to hold an individual liable for a deficiency or unpaid liability.

.01 Eligibility to be considered for equitable relief. All the following threshold conditions must be met for an individual to be considered for relief under § 6015(f) from liability for tax. These threshold conditions apply to all requests for relief under

§ 6015(f) (i.e., those relating to liabilities for deficiencies and those relating to liabilities that were properly reported on the return but not paid):

(1) The individual made a joint return for the taxable year for which relief is sought;

(2) Relief is not available to the individual under § 6015(b) or 6015(c);

(3) The individual 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 individual;

(4) Except as provided in the next sentence, the liability remains unpaid at the time relief is requested. An individual 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 individuals filing the joint return as part of a fraudulent scheme by such individuals;

(6) There were no disqualified assets transferred to the individual by the nonrequesting spouse. If there were disqualified assets transferred to the individual 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 individual did not file the joint return with fraudulent intent.

An individual satisfying all the above threshold conditions may be relieved of the liability under § 6015(f) if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for all or part of a tax liability. See section 3.02 of this notice for circumstances under which relief will ordinarily be granted, and section 3.03 of this notice for factors used to determine whether to grant equitable relief.

.02 Circumstances under which equitable relief will ordinarily be granted. The following are the circumstances under which equitable relief from tax liability for a taxable year will ordinarily be granted to an individual requesting relief under § 6015(f):

- (1) The liability reported on a joint return for such year was unpaid at the time such return was filed;
- (2) At the time relief is requested, the individual is no longer married to, or is legally separated from, the spouse with whom such individual filed the joint return to which the request for relief relates, or has at no time during the 12-month period ending on the date relief is requested, been a member of the same household as the spouse with whom such joint return was filed;
- (3) At the time the return was filed, the individual did not know, and had no reason to know, that the tax would not be paid. The individual must establish that it was reasonable for such individual to believe that the nonrequesting spouse would pay the reported liability. If an individual would otherwise qualify for relief under section 3.02 of this notice, except for the fact that the individual did not know, and had no reason to know, of only a portion of the unpaid liability, then the individual will be granted relief to the extent that the liability is attributable to such portion; and

(4) The individual would suffer undue hardship if relief from the liability were not granted. For this purpose, the term “undue hardship” has the meaning given to such term under § 1.6161-1(b) of the Income Tax Regulations.

Relief under section 3.02 of this notice 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 attributable to the nonrequesting spouse.

.03 Factors for determining whether to grant equitable relief. Section 3.03 of this notice applies to married individuals filing separate returns in community property states who request relief under § 66(c), and individuals who meet the threshold conditions of section 3.01 of this notice but who do not qualify for relief under section 3.02 of this notice. Such individuals may qualify for relief from tax liability for a taxable year under § 6015(f) or 66(c) if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for the unpaid liability or deficiency. The following are partial lists of the positive and negative factors that will be taken into account in determining whether to grant equitable relief under § 6015(f) or 66(c). The list is not intended to be exhaustive.

(1) Factors weighing in favor of relief:

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

(b) Hardship. The individual requesting relief will suffer hardship if the relief is not granted, even if such hardship does not constitute undue hardship within the meaning of § 1.6161-1(b);

(c) Abuse. The individual requesting relief was abused by his or her spouse (but such abuse did not amount to duress); and

(d) Spouse's legal obligation. The nonrequesting spouse has a legal obligation pursuant to a divorce decree or agreement to pay the liability.

(2) Factors weighing against relief:

(a) Attribution. If any unpaid liability or item giving rise to a deficiency is attributable to the individual requesting relief, that is a factor weighing against relief from such unpaid liability or deficiency;

(b) Knowledge, or reason to know. An individual's knowledge or reason to know of an unpaid liability or deficiency 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 an individual knew or had reason to know of an unpaid liability, and in very limited situations where an individual knew or had reason to know of a deficiency; and

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

(d) Individual's legal obligation. The individual requesting relief has a legal obligation pursuant to a divorce decree or agreement to pay the liability.

SECTION 4. REQUEST FOR COMMENTS

The Treasury Department and the Service invite public comment on the matters addressed by this notice, particularly regarding the following specific topics: (1) the circumstances set forth in section 3.02 of this notice under which § 6015(f) relief will ordinarily be available; (2) the factors set forth in section 3.03 of this notice to be taken into account in determining whether § 6015(f) equitable relief may be available; (3) situations in which relief under § 6015(f) or 66(c) should be available even though an individual knew, or had reason to know of, a deficiency or unpaid liability; and (4) situations in which relief under § 6015(f) or 66(c) should be available even though the unpaid liability or item giving rise to the deficiency is attributable to the individual requesting relief. Written comments should be submitted by April 30, 1999, either to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Attn: CC:DOM:CORP:R, Room 5228 (IT&A:Br4)

or electronically via:

http://www.irs.ustreas.gov/prod/tax_regs/comments.html

(the Service's Internet site).

SECTION 5. EFFECTIVE DATE

The interim guidance contained in this notice is effective on December 7, 1998, and may be relied upon until permanent guidance is issued. No inference should be made that the interim guidance contained in this notice will, or will not, be incorporated into the permanent guidance.

DRAFTING INFORMATION

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