

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel **Notice**

N(35)000-338
UIL 6015.00-00

June 5, 2000

Upon Incorporation

Subject: Change in Litigating Position **Cancellation Date:** Into the CCDM

PURPOSE

The purpose of this Notice is to announce a change in the Service's litigating position with respect to whether the Service's determination that a spouse is not entitled to relief from joint and several liability under I.R.C. § 6015(f) is reviewable by any court. The Service now agrees that the Tax Court, the United States district courts (including the bankruptcy courts) and the Court of Federal Claims have jurisdiction to consider whether the Service abused its discretion in denying equitable relief under I.R.C. § 6015(f).

Section 3201 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98), Pub. L. No. 105-206, repealed I.R.C. § 6013(e) effective for all liabilities arising after July 22, 1998, and liabilities arising before July 22, 1998, that were unpaid as of that date, replacing that provision with new section 6015. Under the new statutory scheme, relief from joint and several liability can be obtained in one of three ways: under the more liberalized innocent spouse provisions of section 6015(b); under section 6015(c), limiting liability to the portion of the deficiency attributable to items allocable to the taxpayer; and, where a spouse fails to qualify under either of those subsections, by a grant of equitable relief from the Secretary under section 6015(f).

The Service unsuccessfully argued in the Tax Court that the Service's denial of a claim for equitable relief under section 6015(f) was not subject to judicial review by any court in Butler v. Commissioner, 114 T.C. No. 19 (filed April 28, 2000); Fernandez v. Commissioner, 114 T.C. No. 21 (filed May 10, 2000); and Charlton v. Commissioner, 114 T.C. No. 22 (filed May 16, 2000). The Service will no longer contest the jurisdiction of the Tax Court, the United States district courts (including the bankruptcy courts) or the Court of Federal Claims to review, under an abuse of discretion standard, the Service's denial of equitable relief under section 6015(f). This change in litigating position was made public through the release of an action on decision (AOD) on May 12, 2000, acquiescing in the Tax Court's opinion in Fernandez v. Commissioner, AOD CC-2000-06 (May 12, 2000). This Notice is intended to clarify that the change in the Service's litigating position extends to all claims for relief under section 6015(f), regardless of whether an election has been made under section 6015(b) or (c).

Filing Instructions: Binder Part (35) _____ Master Sets: NO RO
NO: Circulate ___ Distribute to: All Personnel ___ Attorneys ___ In: all divisions _____
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Electronic Filename: 6015(f).pdf _____ Original signed copy in: _____

The Tax Court does not consider a withdrawn motion as one that extends the time to answer under T.C. Rule 25(c). Accordingly, in light of the change in the Service's litigating position described above, in cases presently pending before the Tax Court in which respondent has filed a motion to dismiss (in whole or in part) for lack of jurisdiction with respect to the spouse's section 6015(f) claim prior to answer or in lieu of answer, district counsel attorneys should promptly file a Notice of No Objection to the Denial of Respondent's Motion to Dismiss For Lack of Jurisdiction stating that respondent no longer contests the Tax Court's jurisdiction with respect to the spouse's section 6015(f) claim and requesting the court to deny our motion. A sample Notice of No Objection is attached as Exhibit A. If the case has already been answered, then a Motion to Withdraw Respondent's Motion to Dismiss For Lack of Jurisdiction may be filed.

With respect to cases presently pending before the United States district courts (including the bankruptcy courts) or the Court of Federal Claims in which a motion to dismiss (in whole or in part) for lack of jurisdiction with respect to the spouse's section 6015(f) claim has been filed by the government, district counsel attorneys should send a letter to the Department of Justice requesting that the Department of Justice take all steps necessary to implement the Service's change in litigating position described in this Notice, such as withdrawing its motion to dismiss for lack of jurisdiction.

District counsel attorneys are now authorized to make determinations regarding a spouse's entitlement to relief under section 6015(f) in cases within Counsel's jurisdiction.

Please contact the Procedural Branch of the Field Service Division at (202) 622-7950 if you have any questions regarding this Notice.

/s/
MARLENE GROSS
Deputy Chief Counsel (Operations)

Attachment (1)

Exhibit A

UNITED STATES TAX COURT

JOHN AND MARY DOE,)
)
 Petitioners,)
)
 v.) Docket No. 0000-00
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

NOTICE OF NO OBJECTION TO DENIAL OF
RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION
[AND TO STRIKE]

RESPONDENT NOTIFIES the Court that respondent has no objection to the denial of respondent's Motion to Dismiss for Lack of Jurisdiction [and to Strike], filed in the above-entitled case on _____.

IN SUPPORT THEREOF, respondent respectfully states:

1. On _____, respondent filed a Motion to Dismiss for Lack of Jurisdiction [and to Strike] on the ground that the Tax Court lacks jurisdiction to review respondent's determination that a spouse is not entitled to equitable relief under the provisions of I.R.C. § 6015(f).

2. Subsequent to the filing of respondent's motion, this Court in Butler v. Commissioner, 114 T.C. No. 19 (April 28, 2000), held that, in a case involving a petition for a redetermination of a deficiency, the Court has jurisdiction to

review for abuse of discretion respondent's determination to deny a petitioner's request for equitable relief pursuant to section 6015(f). See also Charlton v. Commissioner, 114 T.C. No. 22 (May 16, 2000). Similarly, in Fernandez v. Commissioner, 114 T.C. No. 21 (May 10, 2000), the Court held that it had jurisdiction to review a determination denying section 6015(f) equitable relief in a case involving a petition for relief from joint and several liability brought under the provisions of I.R.C. § 6015(e).

3. Respondent recently announced that the Internal Revenue Service acquiesces in the holding of the Court in Fernandez, supra, and stated that respondent will no longer contest the Tax Court's jurisdiction to review a request for innocent spouse relief under section 6015(f), when the requirements of section 6015(e) have been met. Fernandez v. Commissioner, AOD CC-2000-06 (May 12, 2000).

4. Accordingly, it is respondent's position that the Court has properly acquired jurisdiction in the instant case to review respondent's determination of petitioner's entitlement to section 6015(f) relief. It follows that respondent's motion to dismiss for lack of jurisdiction [and to strike] should be denied.

5. Respondent's counsel has notified petitioners [petitioners' counsel] that respondent has modified his position with respect to the jurisdictional issue presented by respondent's motion to dismiss. Petitioners [Petitioners' counsel] has authorized respondent to represent that petitioners agree that respondent's motion should be denied on the basis set forth above.

Exhibit A

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WHEREFORE, it is prayed that respondent's Motion to Dismiss for Lack of Jurisdiction [and to Strike], filed _____, be denied.

STUART L. BROWN
Chief Counsel
Internal Revenue Service

By: _____
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Address Line 1
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Telephone No.

Assistant District Counsel
Internal Revenue Service
T.C. Bar No.
Address Line 1
Address Line 2
Telephone No.

OF COUNSEL:
Regional Counsel
District Counsel

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was served on _____ by mailing the same in a postage paid wrapper addressed as follows:

Petitioner [petitioners' counsel]
Address Line 1
Address Line 2

Dated: _____

By: _____
Attorney
Internal Revenue Service
T.C. Bar No.