

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2009-003

October 17, 2008

Applicability of Small Tax Case
Procedures to Cases Under I.R.C.

Upon incorporation
into the CCDM

Subject: §§ 6320, 6330 and 6015

Cancel Date:

Purpose

This Notice explains how to determine whether a case filed as a lien or levy action under section 6320(c) (liens) or section 6330(d)(1) (levies) or a review of a denial of relief from joint and several liability under section 6015(e) qualifies for Small Tax Case status under section 7463 under Schwartz v. Commissioner, 128 T.C. 6 (2007) (CDP case), Leahy v. Commissioner, 129 T.C. 71 (2007) (CDP case), and Petrane v. Commissioner, 129 T.C. 1 (2007) (innocent spouse case).

I. Background

Section 7463(a) provides that a Tax Court petition for redetermination of a deficiency qualifies as an "S" case if the amount in dispute does not exceed \$50,000 for any one taxable year or period. If multiple years or periods are at issue in the petition, the case can be conducted under the "S" case rules if the amount in dispute for each year or period is \$50,000 or less, even if the total amount in dispute exceeds \$50,000. I.R.C. § 7463(a)(1).

Sections 7463(f)(1) and (2) provide the rules for determining whether, respectively, relief from joint and several liability cases under section 6015(e) and lien or levy review cases under sections 6320 and 6330 qualify for "S" status. Section 7463(f)(2) provides for "S" case status in the case of "an appeal under section 6330(d)(1)(A)¹ to the Tax Court of a determination in which the unpaid tax does not exceed \$50,000." Section 7463(f)(1) provides for "S" case status in the case of "a petition to the Tax Court under section 6015(e) in which the amount of relief sought does not exceed \$50,000."

In Schwartz, Leahy, and Petrane, the Tax Court held that the dollar limitations in section 7463(f)(1) and (f)(2) are expressed as the total amount in dispute aggregated for all years at issue. Individual tax year amounts are not considered separately. Additionally, because the relevant amounts are calculated at a particular point in time, the ability to qualify for "S" case status will not change as the case progresses in the court.

Specifically, in Schwartz the Tax Court held that the "unpaid tax" in section 7463(f)(2) refers to the total amount of unpaid tax the Commissioner has determined to collect in a lien or levy case. In Leahy, the court further explained that the \$50,000 limit refers to the total unpaid tax as of the date of the Notice of

¹ In light of the legislative amendment to section 6330 eliminating district court jurisdiction and the subsections under (d)(1), the reference to (d)(1)(A) should be interpreted as a reference to (d)(1).

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Determination (NOD) issued by Appeals. In this context, the term “tax” includes all assessed interest and penalties and all accrued but unassessed interest and penalties as of the date of the NOD.

In Petrane, the Tax Court similarly held the \$50,000 limit in section 7463(f)(1) refers to the total amount of relief from joint and several liability sought in the petition. The court explained that the amount of relief sought includes the amount of paid and unpaid tax, interest, and penalties, including accrued but unassessed interest and penalties. This is because in certain situations relief under section 6015 can result in a credit or refund of paid taxes. The court held that the date of filing a petition under section 6015(e) is the date on which the amount of relief sought should be calculated.

II. Procedures for Handling Petitions Under Sections 6320, 6330 and 6015(e)

A. Petitions under Sections 6320 and 6330

Appeals is required to issue a NOD in all cases when a taxpayer has timely requested a hearing under sections 6320 and 6330. Treas. Reg. §§ 301.6320-1(f)(1), 301.6330-1(f)(1). The taxpayer can appeal the NOD to the Tax Court. I.R.C. §§ 6320(c) and 6330(d)(1). The NOD does not generally state the amount of tax due (and Appeals will not be changing its procedures in this regard). As a result, attorneys handling petitions filed under sections 6320 and 6330 when “S” case status is elected must independently verify that the total unpaid tax at issue, including accrued and assessed interest and penalties, as of the date of the NOD, is \$50,000 or less.

The Notice of Intent to Levy and Right to a Hearing or the Notice of Federal Tax Lien Filing and Right to a Hearing (either one being a “CDP notice”) and a current IDRS transcript showing payments, credits, and additional assessments must be reviewed. Accrued but unassessed amounts up to the date of the NOD should be considered. Amounts paid, credited, or assessed after the date of the NOD should not be taken into account. In many cases, it will be clear from the CDP notice and the current transcript that the total unpaid tax is \$50,000 or less. In these cases, establishing the exact amount unpaid as of the date of the determination will not be necessary.

If the CDP notice and transcripts do not clearly indicate that the case qualifies for “S” case status, an INTST transcript for each of the tax years at issue with interest and penalties calculated to the date of the NOD should be requested. The INTST transcripts will establish the exact amount of total unpaid tax, interest and penalties, including all accruals, due as of the date of the NOD.

If the case does not qualify for “S” case status, a motion should be filed to remove the “S” case designation, with the CDP notice and pertinent transcript included as exhibits. A sample Motion to Remove Small Tax Case Designation is attached as Exhibit A. If the case is not currently designated as an “S” case and the petitioner moves to request “S” case designation, an opposition to the motion should be filed. If a case has jurisdictional defects in addition to an improper “S” case designation, motions regarding the other jurisdictional defects should be filed first so that any years not properly before the court are dismissed before determining whether the \$50,000 limit is exceeded.

B. Section 6015(e) stand-alone cases

The following procedures should be followed in Tax Court stand-alone cases petitioned under section 6015(e). If, however, a petitioner raises section 6015 as a defense in response to a statutory notice of deficiency, the procedures below should not be followed because section 7463(a), and not section 7463(f)(1), controls whether the case may be conducted under the “S” case procedures. In addition, if a petitioner raises section 6015 as part of a lien or levy case in the Tax Court, the procedures for those types of cases discussed in section A, above, should be followed.

To determine whether stand-alone section 6015(e) cases may otherwise qualify for “S” case status, the amount of relief sought in the case as of the date of the petition should be determined. Except as noted below, the amount of relief sought equals the total of all assessed tax, interest, and penalties and accrued but unassessed interest and penalties for all years at issue. In a case involving an understatement, the

amount of relief sought only includes the additional tax assessed after the issuance of a statutory notice of deficiency or math error notice. In a case involving an underpayment, the amount of relief sought includes only that part of the assessment based on a joint return that was not paid by withholding, estimated tax payments, and any payments made with the return or extension of time to file the return. The amount of relief sought is **not** reduced by the amount of any payments made after the tax was assessed because the amount of relief sought will include refunds the petitioner may be eligible for if it is determined that the petitioner is eligible for relief under section 6015.

To determine the amount of assessed tax, interest, and penalties, a transcript of account for each year at issue in the case should be analyzed rather than relying on the current balance on this transcript as it might reflect payments made against the liability. The complete transcript for each year should be reviewed to determine the assessed amounts and dates of assessment. In determining eligibility for "S" case status, the amount of relief sought is determined as of the date of the petition; any assessment made after that date should not be included in determining the amount of relief sought. If the total amount of all assessed tax, interest, and penalties for all the years at issue is less than the \$50,000 "S" case limitation, the amount of accrued interest and penalty from the date of the last assessment until the date of the petition should be determined. An INTST transcript with interest and penalties calculated to the date of the petition should be obtained. The accrued interest and penalties should be added to the assessed tax, interest, and penalties to establish the amount of relief sought for a particular tax year. Once the amount of relief sought has been calculated for each year at issue, a determination should be made to ascertain if these amounts, in the aggregate, exceed the \$50,000 "S" case limitation.

In determining eligibility for "S" case status, there are several additional issues that must be considered. First, a requesting spouse is not eligible to receive refunds of payments made by the nonrequesting spouse and/or joint payments. Even if these payments have been made and the resulting relief for which the petitioner is eligible (relief from liability plus payments that can be refunded to the petitioner) is \$50,000 or less, an "S" case designation is not appropriate if the assessed liability plus the accrued but unassessed liability aggregated for all years at issue exceeds the \$50,000 limitation. In such situations, the relief the petitioner is seeking includes the refunds and, therefore, the relief sought exceeds \$50,000. Refunds of payments that are barred by the period of limitations on refund or credit do not reduce the amount of relief sought by the petitioner. If a petitioner's request for relief is specifically limited (e.g., does not ask for any refund but only for relief from additional liability), eligibility for "S" case status may be affected. If this issue is identified in a case, the attorney should coordinate with Branches 1 and 2 of the Office of Associate Chief Counsel (Procedure & Administration) for assistance in determining the amount of relief sought.

If it is determined that the amount of relief sought exceeds \$50,000, a motion to remove the "S" case designation should be filed. A Sample Motion to Remove Small Tax Case Designation is attached as Exhibit B. If the case is not currently designated as an "S" case and the petitioner moves for "S" case designation, then an opposition to the motion should be filed. If a case has jurisdictional defects in addition to an improper "S" case designation, motions regarding those other jurisdictional defects should be filed first so that any years not properly before the court are dismissed before determining whether the \$50,000 limit is exceeded.

Questions regarding lien or levy cases should be directed to Branch 3 or 4 of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-3600 or (202) 622-3630. Questions regarding section 6015 cases should be directed to Branch 1 or 2 of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-4910 or (202) 622-4940.

/s/
Deborah A. Butler
Associate Chief Counsel
(Procedure & Administration)

EXHIBIT A

UNITED STATES TAX COURT

JANE DOE,)	
)	
Petitioner,)	
)	
v.)	Docket No. XXXX-XXX
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

MOTION TO REMOVE SMALL TAX CASE DESIGNATION

RESPONDENT MOVES, pursuant to Tax Court Rules 50 and 171(c), that the Court enter an order removing the small case designation from this case and that these proceedings be conducted under the Court's regular case procedures.

IN SUPPORT THEREOF, respondent respectfully states:

1. On or about _____, respondent sent petitioner a **(select the applicable letter)** [*A Final Notice-Notice of Intent to Levy and Notice of Your Right to Request a Hearing under I.R.C. § 6330*] [*Notice of Federal Tax Lien Filing and Your Right to a Hearing under I.R.C. § 6320*] (CDP Notice). A copy of the CDP Notice is attached hereto as Exhibit A.

2. In response to the CDP Notice, petitioner timely submitted a Form 12153, Request for a Collection Due Process or Equivalent Hearing, which lists the taxable periods as [*list periods*]. A copy of the Form 12153 is attached hereto as Exhibit B.

3. Appeals issued a Notice of Determination covering the years listed on the hearing request. A copy of the Notice of Determination is attached hereto as Exhibit C. Petitioner subsequently filed a timely petition with the Court covering the years listed on the Notice of Determination.

4. Section 7463(f)(2) provides that a CDP case may be conducted under "S case" procedures with respect to "a determination in which the unpaid tax does not exceed \$50,000." Section 7463(f)(2) requires that the total unpaid tax, not just the amount of tax in dispute, as of the date of the determination must not exceed \$50,000.00 for a CDP case to qualify for small case status. Leahy v. Commissioner, 129 T.C. 71 (2007); Schwartz v. Commissioner, 128 T.C. 6 (2007). The term "tax" includes all accrued and unassessed interest and penalties on the underlying tax liability, as well as all assessed interest and penalties. See Schwartz v. Commissioner, 128 T.C. 6, n.1 (2007); see also I.R.C. §§ 6601(e)(1) and 6665(a)(2).

Select the paragraph 5 that applies to your case: Use the first paragraph when there is no question that the total unpaid tax as of the Determination exceeded \$50,000. Use the second paragraph when the amount of total unpaid tax is close to \$50,000 and so an INTST transcript must be obtained to establish the actual total unpaid tax as of the Determination.

5. As of the date listed on the CDP notice, the amount of unpaid tax for the year(s) at issue exceeded \$50,000. See Exhibit A. Between the date the Internal Revenue Service calculated the amount due in Exhibit A and the date the Notice of Determination was issued, petitioner has **(select correct option)** [*made no payments toward the tax liabilities at issue.*] [*made payments in*

the amount of only \$_____ toward the tax liabilities at issue.]
See Exhibit D, the transcript of account. **(Generally Forms 4340 are preferred, but if time does not permit obtaining certified transcripts, IDRS transcripts should suffice.)** Thus, the total unpaid tax for the case at issue as of the date of the Notice of Determination was greater than \$50,000.00, and this case is not eligible for small case designation.

6. Attached as Exhibit D is an INTST transcript for the year(s) at issue. According to the INTST transcript, the total unpaid tax for the case at issue as of the date of the Notice of Determination is \$_____. Thus, this case is not eligible for small case designation.

7. Respondent contacted petitioner regarding this Motion, and petitioner said that he/she **(select correct option)** [objects/does not object] to the granting of this motion.

WHEREFORE, it is prayed that this Motion be granted.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

Date: _____

Attorney's Name
Senior Attorney
(Small Business/Self-
Employed)
Tax Court Bar No. YYYYYY
Street Address
City, State Zipcode
Telephone Number

OF COUNSEL:
THOMAS R. THOMAS
Division Counsel
(Small Business/Self-Employed)
AREA COUNSEL'S NAME
Area Counsel
(Small Business/Self-Employed)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO REMOVE SMALL TAX CASE DESIGNATION was served on counsel for petitioner by mailing the same on [insert date] in a postage paid wrapper addressed as follows:

[insert petitioner's address]

Date: _____

[insert attorney]
Attorney (SBSE)
Tax Court Bar No. xxxxxx

EXHIBIT B

UNITED STATES TAX COURT

JANE DOE,)	
)	
Petitioner,)	
)	
v.)	Docket No. XXXX-XXX
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

MOTION TO REMOVE SMALL TAX CASE DESIGNATION

RESPONDENT MOVES, pursuant to Tax Court Rules 50 and 171(c), that the Court enter an order removing the small case designation from this case and that these proceedings be conducted under the Court's regular case procedures.

IN SUPPORT THEREOF, respondent respectfully states:

1. On [insert date], petitioner filed a petition seeking review of respondent's Notice of Determinations dated [insert date], denying petitioner's request for relief under section 6015 from joint and several liability for the taxable years [insert tax years at issue].

2. In the petition, petitioner elected to file this case as a small tax case under section 7463(f)(1).

3. Section 7463(a) provides that a case concerning a redetermination of a deficiency is eligible for small tax case treatment if the amount in dispute does not exceed \$50,000 for any one taxable year or period. In contrast, section 7463(f)(1) provides that if a petitioner files "a petition to the Tax Court

under section 6015(e) in which the amount of relief sought does not exceed \$50,000" the case may be conducted under "S case" procedures. The dollar limitation in section 7463(f)(1) references an aggregate amount, rather than an amount determined by reference to a discrete taxable year. Accordingly, for a case under section 6015(e) to come within the dollar limitation prescribed in section 7463(f)(1), the entire amount of relief sought must not exceed \$50,000 for all years at issue combined, regardless of whether the amount of relief sought for each year is under \$50,000. Petrane v. Commissioner, 129 T.C. 1, 6 (2007).

4. The amount of relief sought includes interest, penalties, and the amount of any payments the individual has made towards the joint liability. Id. at 5.

5. The amount of relief sought should be determined as of the date the petition is filed with this Court. Id. at 7.

[SELECT APPROPRIATE PARAGRAPH, EITHER (1): Attached as Exhibits A and B, respectively, are transcripts of account that show the assessed tax, interest, and penalties as well as the accrued unassessed interest and penalties (as of the date of the petition) for the years at issue. **(Generally Forms 4340 are preferred, but if time does not permit obtaining certified transcripts, IDRS transcripts should suffice. In this example INTST transcripts would also be attached.)** As evidenced by the transcripts, the amount of tax, penalties and interest for which relief is sought for each year at issue is as follows: **OR (2):** Attached as Exhibit A are transcripts of account. **(In this**

example no INTST transcript would be attached.) As evidenced by the transcripts, the assessed amount of tax, penalties and interest for which relief is sought for each year at issue is as follows:]

Tax Year	Assessed Tax²	Assessed Interest & Penalties	Accrued Unassessed Interest & Penalties³	Total Amount of Relief Requested
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Totals:	\$0.00	\$0.00	\$0.00	\$0.00

6. **[INCLUDE THIS PARAGRAPH IF PAYMENTS HAVE BEEN MADE AGAINST THE LIABILITY]** The total amount of relief requested includes payments totaling \$XXX.XX for Tax Year 1 and \$YYY.YY for Tax Year 3. As petitioner may be eligible for a refund if it is determined that he/she is eligible for relief under section 6015, this amount is included in the amount of relief sought.

7. The amount of relief sought for the case at issue as of the date of the petition is greater than \$50,000.00, and therefore, this case is not eligible for small case designation.

² The "Assessed Tax" will either consist, in the case of an underpayment, of the amount of tax reported on the return, but not paid with the return, or the amount of an understatement that has been assessed. DO NOT INCLUDE THIS FOOTNOTE IN MOTION.

³ If the amount of tax and assessed interest and penalties for all the years at issue exceed \$50,000, then it is not necessary to separately list the amount of accruals, and the second paragraph 5 above should be selected. DO NOT INCLUDE THIS FOOTNOTE IN MOTION.

8. Respondent contacted petitioner regarding this Motion, and petitioner said that he/she **(select correct option)** [objects/does not object] to the granting of this motion.

WHEREFORE, it is prayed that this Motion be granted.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

Date: _____

Attorney's Name
Senior Attorney
(Small Business/Self-Employed)
Tax Court Bar No. YYYYYY
Street Address
City, State Zipcode
Telephone Number

OF COUNSEL:
THOMAS R. THOMAS
Division Counsel
(Small Business/Self-Employed)
AREA COUNSEL'S NAME
Area Counsel
(Small Business/Self-Employed)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION TO REMOVE SMALL TAX CASE DESIGNATION was served on counsel for petitioner by mailing the same on [insert date] in a postage paid wrapper addressed as follows:

[insert petitioner's address]

Date: _____

[insert attorney]
Attorney (SBSE)
Tax Court Bar No. xxxxxx