

Department  
of the  
Treasury

Internal  
Revenue  
Service

Office of  
Chief Counsel

# Notice

CC-2009-012

April 17, 2009

**Subject:** Tax Court Cases with the Lantz  
Two-Year Rule Issue

**Cancel Date:** Effective until further  
notice

---

## Purpose

This Notice provides direction for cases docketed with the Tax Court when the petitioner requests relief under section 6015(f) more than two years after the first collection activity.

## Discussion

A spouse must request relief from joint and several liability under section 6015(b) or (c) no later than two years from the date of the Service's first collection activity against the requesting spouse ("two-year rule") taken on or after July 22, 1998. See section 6015(b)(1)(E) and (c)(3)(B). The two-year rule has been incorporated into Treas. Reg. § 1.6015-5(b)(1) and extended to claims for equitable relief under section 6015(f). In Lantz v. Commissioner, 132 T.C. No. 8 (April 7, 2009), the Tax Court held that the regulation's application of a two-year rule to claims for relief under section 6015(f) is an invalid interpretation of section 6015(f). Under Lantz, the Tax Court now will consider whether a requesting spouse is entitled to relief under section 6015(f) regardless of the time elapsed between the collection activity and the filing of the claim for relief.

### A. Motions for Summary Judgment

Pending further notice, Chief Counsel attorneys should not file motions for summary judgment arguing that the petitioner's claim for relief under section 6015(f) was untimely under section 1.6015-5(b)(1). If the petitioner also requested relief under section 6015(b) or (c), attorneys should file a motion for partial summary judgment based on section 6015(b)(1)(E) or (c)(3)(B), respectively. See Mannella v. Commissioner, 132 T.C. No. 10 (April 13, 2009).

### B. Trial of Section 6015(f) Issues

---

Distribute to:  All Personnel  
 Electronic Reading Room

Filename: CC-2009-012 File copy in: CC:FM:PF

Chief Counsel attorneys should continue to argue that relief under section 6015(f) is unavailable in all section 6015(f) cases in which the petitioner's claim for relief under section 6015(f) was filed more than two years after the Service's first collection activity against the petitioner. Attorneys should raise the two-year rule issue whenever appropriate (e.g., in the pre-trial memo, at trial, and on brief), noting the Service's disagreement with the holding in the Lantz opinion.

Attorneys should request that the Cincinnati Centralized Innocent Spouse Operations (CCISO) unit consider the merits of the section 6015(f) claims in any docketed cases when the Service's denial of section 6015(f) relief was based solely on the two-year rule, without consideration of the merits of the claim for relief. The request for CCISO to make a determination regarding relief should be sent to:

IRS- CCISO  
Stop 840F  
P.O. Box 120053  
Attn: Department One Manager  
Covington, KY 41012

If overnight mail is used, the file should be sent to the following street address:

IRS- CCISO  
201 West Rivercenter Boulevard  
Stop 840F  
Attn: Department One Manager  
Covington, KY 41011

Requests should be marked "EXPEDITE-TAX COURT CASE PENDING" and include the Form 8857, the Tax Court petition, and any other relevant documents. The request should specify that CCISO provide the results of their consideration directly to Counsel and should not issue a new determination letter.

In newly-docketed cases, if the administrative file has not yet been requested and the two-year rule issue is present, the administrative file should be requested only after CCISO completes its determination on the merits. During the pendency of CCISO's determination, attorneys should request that CCISO telefax the claim for relief from joint and several liability (Form 8857) with all the attachments, along with the Final Notice of Determination, so that a timely answer can be filed.

Questions regarding submitting requests for determinations and the status of the requests can be made by telephoning CCISO at (859) 669-3477. If a case is on a trial calendar less than 60 days away, a Motion for Continuance may be appropriate in order to give the Service sufficient time to review the merits of the claim.

If CCISO determines the petitioner is entitled to relief, the attorney should consult with Branch 1 or 2 of Procedure and Administration concerning the best course of action. If

