[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-106446-98]

RIN 1545-AW64

Relief From Joint and Several Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code. The regulations reflect changes in the law made by the IRS Restructuring and Reform Act of 1998. The regulations provide guidance to married individuals filing joint returns who may seek relief from joint and several liability. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronically generated comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for May 30, 2001, must be received by April 27, 2000.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-106446-98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-106446-98), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via

the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bridget E. Finkenaur, 202-622-4940; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Guy Traynor, 202-622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 19, 2001. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §1.6015-5. Individuals may request relief from joint and several liability by timely filing Form 8857, "Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)," or a written statement that contains the information required on Form 8857, that is signed under penalties of perjury. This collection of information is required in order for an individual to request relief from joint and several liability. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The reporting burden contained in §1.6015-5 is reflected in the burden of Form 8857. The estimated burden is: learning about the law or the form, 17 min.; preparing the form, 17 min.; and copying, assembling, and sending the form to the IRS, 20 min. The reporting burden contained in §1.6015-5 for the statement

signed under penalties of perjury is estimated as: learning about the law, 20 min.; preparing the statement signed under penalties of perjury, 30 min.; and copying, assembling, and sending the statement to the IRS, 20 min.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 6013(d)(3) provides that spouses who file a joint Federal income tax return are jointly and severally liable for liabilities with respect to tax arising from that return. The term tax includes additions to tax, penalties, and interest. See sections 6665(a)(2) and 6601(e)(1). Joint and several liability allows the IRS to collect the entire liability from either spouse signing the joint return, without regard to whom the items of income, deduction, credit, or basis that gave rise to the liability are attributable. Before the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685) (1998) (RRA), section 6013(e) provided

the only relief from joint and several liability, and it only applied in very limited circumstances.

Section 3201 of the RRA repealed section 6013(e) and replaced it with section 6015. Section 6015 applies to liabilities that arise after July 22, 1998, and liabilities that arose prior to July 22, 1998, which remained unpaid as of that date. The provisions of section 6015 expand the relief available to spouses or former spouses who wish to be relieved from all or a portion of the joint and several liability arising from a joint individual Federal income tax return. Section 6015 makes the requirements for relief from joint and several liability, formerly in section 6013(e), less restrictive (section 6015(b)), and adds two other relief provisions. One provision, section 6015(c), permits the allocation of a deficiency between certain estranged spouses or former spouses in proportion to their respective erroneous items or in accordance with other allocation rules. The other provision, section 6015(f), gives the Secretary equitable discretion to grant relief from joint and several liability. The three relief provisions have different eligibility requirements and provide different types of relief.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that are necessary to carry out the provisions of section 6015. The proposed regulations provide detailed guidance on the three types of relief from joint and several liability under section 6015.

Explanation of Provisions

In General

To qualify for relief from joint and several liability, a requesting spouse (as defined in the regulations) must elect the application of section 6015(b) or 6015(c), or request equitable relief under section 6015(f), within 2 years of the first collection activity after July 22, 1998, with respect to the requesting spouse. Relief under section 6015 is only available for income taxes required under Subtitle A (including self-employment taxes). Relief is not available for other taxes reported on a taxpayer's income tax return (e.g., domestic services employment taxes under section 3510).

The proposed regulations define several terms, some of which are unique to specific provisions, and others of which are generally applicable to section 6015. One generally applicable term is an item. An item is generally defined as that which is required to be separately reported on an individual income tax return. However, amounts received from investments that are required to be separately reported on an individual income tax return and that are from the same source are aggregated and treated as one item. For example, assume an individual receives $700 in dividends and $1,000 in interest from X Co. Although dividends and interest are required to be separately reported on the individual's income tax return, they are considered one item

for purposes of section 6015 because the dividends and interest are both from X Co. Items include, but are not limited to, gross income, deductions, credits, and basis. An erroneous item is defined as any item resulting in an understatement or deficiency in tax to the extent such item is omitted from, or improperly reported (including improperly characterized) on, an individual income tax return.

Innocent Spouse Relief Under Section 6015(b)

In enacting section 6015, Congress focused, in part, on the limitations of section 6013(e). H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 249 (1998). Thus, certain limitations under section 6013(e) have been eliminated in section 6015. For example, section 6013(e) required that there be a *substantial understatement* attributable to a *grossly erroneous* item, whereas section 6015(b) only requires that there be an *understatement* of an *erroneous* item. Another difference is that, unlike section 6013(e), section 6015(b) expressly provides for partial relief if a requesting spouse did not know, and had no reason to know, of only a portion of the understatement. One procedural difference is that a requesting spouse must now elect the application of section 6015(b).

Otherwise, section 6015(b) provides the same type of relief as was available under section 6013(e). In addition, as with section 6013(e), if a requesting spouse qualifies for relief

under section 6015(b), refunds are available for amounts that the requesting spouse paid toward the liability for which relief was granted. Much of the language in section 6015(b) is identical to that of section 6013(e). Accordingly, the case law interpreting this language under section 6013(e) will be applied in interpreting the same language under section 6015(b).

The proposed regulations define understatement by reference to section 6662(d)(2)(A). Consistent with the interpretation of section 6013(e), the proposed regulations also clarify that "knowledge or reason to know" of an understatement exists only when either the requesting spouse actually knew of the erroneous item giving rise to the understatement, or a reasonable person in similar circumstances would have known of the item.

Allocation of Deficiency Under Section 6015(c)

Section 6015(c) is one of the new relief provisions added by section 3201 of the RRA. Section 6015(c) basically provides relief for an estranged or former spouse by allowing the requesting spouse to elect to limit the requesting spouse's liability for a deficiency to the portion of the deficiency allocated to the requesting spouse. As with section 6015(b), the relief under section 6015(c) must be elected. Unlike section 6015(b), refunds are not available under section 6015(c).

Of the three relief provisions in section 6015, section 6015(c) comes closest to being a mechanical test. Unlike the other two relief provisions, section 6015(c) does not require a

determination that it would be inequitable to hold the requesting spouse liable in order for the requesting spouse to obtain relief. Several objective tests apply to determine whether a requesting spouse qualifies for relief. Among the requirements for relief under section 6015(c) is the requirement that the requesting spouse be divorced, widowed, or legally separated, or not have been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. The proposed regulations provide rules for determining whether spouses are members of the same household in particular situations.

Relief under section 6015(c) is not available for the portion of a deficiency attributable to an erroneous item of the nonrequesting spouse if the Secretary demonstrates that the requesting spouse had actual knowledge of that item at the time the requesting spouse signed the joint return. If the requesting spouse had actual knowledge of only a portion of the erroneous item, partial relief may be available for the amount of the deficiency attributable to the portion of the item of which the requesting spouse did not have actual knowledge. Reason to know of an erroneous item or a portion thereof is not sufficient to disqualify a requesting spouse from relief under section 6015(c). Hence, it may be easier to qualify for relief under this provision than under section 6015(b).

Knowledge of an item means knowledge of the receipt or

expenditure. It does not mean knowledge of the proper tax treatment of the item or how (or whether) it was actually reported on the return. This knowledge standard is consistent with the knowledge standard adopted by the United States Tax Court and other courts. See Cheshire v. Commissioner, 115 T.C. No. 15 (August 30, 2000) (knowledge requirement under section 6015(c) does not require requesting spouse to possess knowledge of the tax consequences arising from the erroneous item or that the item reported on the return is incorrect; rather the statute requires only a showing that the requesting spouse actually knew of the erroneous item); Wiksell v. Commissioner, 215 F.3d 1335 (9th Cir. 2000) (knowledge inquiry in section 6015(c) focuses on whether the taxpayer had knowledge of the erroneous item, not the tax consequences of that item). Also, under the proposed regulations, a requesting spouse could have actual knowledge of an erroneous item without necessarily knowing its source. Thus, if W knew that H received $1,000 of interest income, W would have actual knowledge of that item even if W thought that the interest was tax-exempt, or even if W did not know from whom the interest was received. Similarly, W would have actual knowledge of the item even if W had thought (incorrectly) that H had included the interest income on the return. A requesting spouse's failure to review a completed joint return will not negate a demonstration by the Secretary that the requesting spouse had actual knowledge of an item.

To demonstrate that a requesting spouse had actual knowledge of an erroneous item, the Secretary may rely upon all of the facts and circumstances. One relevant factor is whether the requesting spouse made an effort to be shielded from liability by deliberately avoiding learning about an item. Another relevant factor is whether the requesting spouse had an ownership interest in the property that gave rise to the item. The proposed regulations provide that joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item.

The proposed regulations also provide that the portion of the deficiency for which the requesting spouse remains liable is increased (up to the entire amount of the deficiency) by the value of any disqualified assets transferred to the requesting spouse by the nonrequesting spouse. Disqualified assets are defined as those assets transferred for the principal purpose of avoidance of tax or payment of tax. Any assets transferred during the period beginning 12 months before the mailing date of the first letter of proposed deficiency and continuing to the present are presumed to be disqualified assets. However, the requesting spouse can rebut the presumption by showing that the principal purpose of the transfer was not the avoidance of tax or payment of tax. In addition, the presumption does not apply to transfers of assets pursuant to a divorce or separate maintenance or child support agreement. The IRS and Treasury Department are

particularly interested in receiving comments on whether there should be a de minimis exception to the presumption, and if so, the appropriate amount for such an exception.

If a requesting spouse qualifies to elect the application of section 6015(c), section 6015(d) generally provides that erroneous items are allocated between the spouses as if they had filed separate returns. In addition, section 6015(g) directs the Secretary to establish alternative methods of allocating erroneous items, other than the method in section 6015(d). Under the proposed regulations, erroneous income items are generally allocated to the spouse who earned the income or who owned the investment or business producing the income. If both spouses had an ownership interest in an investment or business, an erroneous income item from that investment or business is allocated between them in proportion to their respective ownership interests. Erroneous business or investment deductions are generally allocated to the spouse who owned the business or investment. If both spouses had an ownership in the business or investment, an erroneous deduction related to that business or investment is allocated between them in proportion to their respective ownership interests. Personal deductions are generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

Section 6015(d) also provides rules for allocating a deficiency. Under the proposed regulations, a portion of the

deficiency is allocated under the "proportionate allocation method," that is, in proportion to each spouse's share of erroneous items. The proposed regulations provide additional rules regarding the allocation of other portions of the deficiency. First, any portion of the deficiency attributable to certain disallowed credits and taxes (other than income tax and alternative minimum tax) is allocated entirely to one spouse or the other. Second, any portion of the deficiency attributable to the liability of the child of the requesting or nonrequesting spouse is allocated under special rules. Third, any portion of the deficiency attributable to the alternative minimum tax under section 55 is allocated between the spouses in proportion to their individual shares of the total alternative minimum taxable income as defined under section 55(b)(2). Fourth, any portion of the deficiency attributable to accuracy-related penalties under section 6662 and fraud penalties under section 6663 is allocated to the spouse to whom the item giving rise to the penalty is allocable.

The proposed regulations provide one alternative allocation method, which must be used in place of the general allocation method when there are erroneous items taxed at different rates. This method ensures that the allocation of the liability is not skewed, for example, when the deficiency items consist of ordinary income items and capital gains.

Equitable Relief Under Section 6015(f)

Section 6015(f) is the other new relief provision that was added by section 3201 of the RRA. Section 6015(f) authorizes the Secretary to grant equitable relief from joint and several liability to requesting spouses who do not qualify for relief under section 6015(b) or 6015(c). The proposed regulations provide that the Secretary has the discretion to grant equitable relief and that the discretion may be exercised if it would be inequitable to hold the requesting spouse jointly and severally liable. Equitable relief is only available to requesting spouses who fail to qualify for relief under sections 6015(b) and 6015(c). However, section 6015(f) may not be used to circumvent the "no refund" rule of section 6015(c). Therefore, equitable relief under section 6015(f) is not available to refund liabilities already paid, for which the requesting spouse would otherwise qualify for relief under section 6015(c).

Section 6015(f) directs the Secretary to prescribe procedures regarding when equitable relief may be granted. These proposed regulations provide general information on section 6015(f) and refer individuals seeking more detailed guidance to the relevant revenue rulings, revenue procedures, or other published guidance issued on this topic. The detailed guidance on section 6015(f) is currently provided in Revenue Procedure 2000-15 (2000-5 I.R.B. 447).

Other Considerations

In addition to the three types of relief from joint and several liability, section 6015 has many provisions that are relevant when a requesting spouse elects relief under section 6015(b) or 6015(c), or requests relief under section 6015(f). The proposed regulations provide detailed guidance on these other provisions:

1. Types of Relief Considered.

There are certain statutory consequences to electing the application of section 6015(b) or section 6015(c) (e.g., suspension of the statute of limitations on collection). Therefore, the IRS will not automatically consider such relief unless the requesting spouse affirmatively elects the application of at least one of those sections. If a spouse requests relief under section 6015(f) alone, relief will only be considered under that section. However, if a requesting spouse elects the application of either section 6015(b) or 6015(c), the IRS will automatically consider whether the requesting spouse qualifies for relief under the other relief provisions of section 6015.

2. Time and Manner of Requesting Relief.

Relief under section 6015 must be elected or requested within two years from the first collection activity (as defined in the proposed regulations) after July 22, 1998, against the requesting spouse with respect to the joint and several liability. In addition, relief may be elected or requested before the commencement of collection activity. However, the

election may not be made, nor may relief be requested, before the taxpayer receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to the joint return. The proposed regulations provide that the Secretary will not consider premature claims.

3. Determinations.

The proposed regulations provide that a requesting spouse generally only receives one final determination of relief under section 6015. However, a second election under section 6015(c) may be considered, and a final determination may be rendered on that election, if, at the time of the second election, but not at the time of the first election, the requesting spouse is divorced, legally separated, widowed, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date the election was filed.

4. Community Property.

Under section 6015 and the proposed regulations, the operation of community property law is not considered in determining to which spouse an erroneous item is allocable.

5. Duress.

The proposed regulations amend §1.6013-4 to clarify that if a spouse asserts and establishes that he or she signed a joint return under duress, then the return is not a joint return, and he or she is not jointly and severally liable for the liability

arising from that return. Therefore, in such a case, relief from joint and several liability under section 6015 is not necessary and inapplicable.

Highlighted Issues

These proposed regulations contain detailed guidance on the three types of relief available under section 6015, as well as the other provisions contained in section 6015. Although public comment is sought on all of the issues in the proposed regulations, the IRS and Treasury Department are particularly interested in receiving comments on the issues highlighted below. These issues present the most challenge in administering section 6015(c).

1. Knowledge: The contrasting standards of the relief provisions are most evident in the respective knowledge limitations. Under section 6015(b), relief is not available unless the requesting spouse demonstrates that he or she had no knowledge or reason to know of the item giving rise to the understatement at the time the joint return was signed. In contrast, section 6015(c) provides that, assuming all of the qualifications are met, relief is available unless the Secretary demonstrates that the requesting spouse had actual knowledge of the item giving rise to the deficiency. Actual knowledge cannot be inferred from the requesting spouse's reason to know of the erroneous item. The Secretary bears the burden of proof with respect to the knowledge limitation of section 6015(c). In

contrast, the requesting spouse bears the burden of proof with respect to the knowledge and reason to know limitations of section 6015(b). The IRS and Treasury Department are specifically seeking comments on the definition of item, because it is knowledge of an item that will disqualify a requesting spouse from receiving relief under sections 6015(b) and 6015(c).

2. Alternative Allocation Methods: Section 6015(g)(1) directs the Secretary to prescribe regulations providing alternative allocation methods, and the proposed regulations provide one that is discussed above. The proposed regulations also provide that additional alternative allocation methods may be provided in subsequent guidance. The IRS and Treasury Department are specifically interested in receiving comments about the alternative allocation method provided in the proposed regulations, and any other allocation methods that should be considered.

3. Interests of the Nonrequesting Spouse: It is anticipated that relief under section 6015 will be granted more frequently than it was under section 6013(e). Accordingly, section 6015 provides safeguards to protect nonrequesting spouses from erroneous determinations granting relief to their respective requesting spouses. The proposed regulations provide that the Secretary must give a nonrequesting spouse notice that the requesting spouse filed a claim for relief and an opportunity to participate in the determination of whether relief is

appropriate.

In fashioning these safeguards, the IRS and Treasury Department are attempting to balance the rights and interests of both the requesting spouse and the nonrequesting spouse. A spouse who signs a joint return is jointly and severally liable for the entire liability, and the Secretary may collect the entire liability from either spouse. Therefore, a determination that one spouse is relieved of joint and several liability may have no legal effect on the amount of the other spouse's liability. However, a nonrequesting spouse does have a practical interest in the outcome of an innocent spouse determination because if the requesting spouse is relieved of liability, the IRS's only recourse is to collect that liability from the nonrequesting spouse. The IRS and Treasury Department recognize that Congress intended that the IRS take into account the nonrequesting spouse's views when it makes a determination of relief. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 251, 255 (1998). In addition, information provided by a nonrequesting spouse is helpful in many cases to determine the appropriate amount of relief, if any.

Under the proposed regulations, a nonrequesting spouse will have an opportunity to participate in any administrative or judicial determination of relief. At the administrative level, the nonrequesting spouse may submit information relevant to the determination to the IRS employee making the determination. In

addition, if the requesting spouse files a petition with the Tax Court, the nonrequesting spouse will be notified, and have an opportunity to become a party to the proceeding. See Interim Tax Court Rule 325.

Nonetheless, the IRS and Treasury Department recognize that some spouses may be reluctant to apply for relief from joint and several liability, or submit information regarding the other spouse's request for relief, due to privacy concerns or for fear of the other spouse's reprisal. To address this concern, the proposed regulations provide that, at the request of one spouse, the Secretary will omit from shared documents any information (e.g., new name, address, employer) that would reasonably identify that spouse's location.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the regulations are adopted as final regulations, consideration will be given to any written and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations, on how the proposed regulations can be made easier to understand, and on the highlighted issues. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 30, 2001, at 10 a.m., in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed at the time to be devoted to each topic (signed original and eight (8) copies) by April 27, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the regulations is Bridget E. Finkenaur of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§1.6015-1 also issued under 26 U.S.C. 6015(g).
§1.6015-2 also issued under 26 U.S.C. 6015(g).
§1.6015-3 also issued under 26 U.S.C. 6015(g).
§1.6015-4 also issued under 26 U.S.C. 6015(g).
§1.6015-5 also issued under 26 U.S.C. 6015(g).
§1.6015-6 also issued under 26 U.S.C. 6015(g).

§1.6015-7 also issued under 26 U.S.C. 6015(g).
§1.6015-8 also issued under 26 U.S.C. 6015(g).
§1.6015-9 also issued under 26 U.S.C. 6015(g). * * *

Par. 2. In §1.6013-4, paragraph (d) is added to read as follows:

§1.6013-4 Applicable rules.

* * * * *

(d) Return signed under duress. If an individual asserts and establishes that he or she signed a return under legal duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d). Section 6212 applies to the assessment of any deficiency in tax on such return.

Par. 3. Sections 1.6015-0 through 1.6015-9 are added to read as follows:

§1.6015-0 Table of contents.

This section lists captions contained in §§1.6015-1 through 1.6015-9.

§1.6015-1 Relief from joint and several liability on a joint return.

(a) In general.
(b) Duress.
(c) Prior closing agreement or offer in compromise.
(d) Fraudulent scheme.
(e) Res judicata and collateral estoppel.

§1.6015-1 Relief from joint and several liability on a joint return.

(a) In general. (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return with another individual is jointly and severally liable for the joint Federal income tax liabilities for that year. However, a spouse or former spouse may be relieved of joint and several liability for any Federal income tax, self-employment tax, penalties, additions to tax, and interest for that year under the following three relief provisions:

(i) Innocent spouse relief under §1.6015-2.

(ii) Allocation of deficiency under §1.6015-3.

(iii) Equitable relief under §1.6015-4.

(2) A requesting spouse may submit a single claim electing relief under both or either §§1.6015-2 and 1.6015-3, and requesting relief under §1.6015-4. However, equitable relief under §1.6015-4 is available only to a requesting spouse who fails to qualify for relief under §§1.6015-2 and 1.6015-3. If a

requesting spouse elects the application of either §1.6015-2 or 1.6015-3, the Secretary may consider whether relief is appropriate under the other elective provision and, to the extent relief is unavailable under either, under §1.6015-4. If a requesting spouse seeks relief only under §1.6015-4, the Secretary may not grant relief under §1.6015-2 or 1.6015-3. A requesting spouse must affirmatively elect the application of §1.6015-2 or 1.6015-3 in order for the Secretary to grant relief under one of those sections.

(3) Relief is not available for liabilities that are required to be reported on a joint Federal income tax return but are not income taxes imposed under Subtitle A of the Internal Revenue Code (e.g., domestic service employment taxes under section 3510).

(b) Duress. For rules relating to the treatment of returns signed under duress, see §1.6013-4(d).

(c) Prior closing agreement or offer in compromise. A requesting spouse is not entitled to relief from joint and several liability under §1.6015-2, 1.6015-3, or 1.6015-4 for any tax year for which the requesting spouse has entered into a closing agreement (other than an agreement entered into pursuant to section 6224(c) relating to partnership items) with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from joint and several liability

under §1.6015-2, 1.6015-3, or 1.6015-4 for any tax year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(d) Fraudulent scheme. If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015, and section 6013(d)(3) applies to the return.

(e) Res judicata and collateral estoppel. A requesting spouse is not entitled to relief from joint and several liability under §1.6015-2 or 1.6015-3 for any tax year for which a court of competent jurisdiction has rendered a final determination on the requesting spouse's tax liability if the requesting spouse materially participated in the proceeding. A requesting spouse has not materially participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. However, any final determinations made by a court of competent jurisdiction regarding issues relevant to §1.6015-2, 1.6015-3, or 1.6015-4 are conclusive and may not be reconsidered, provided the requesting spouse materially participated in the prior court proceeding.

(f) Community property laws––(1) In general. In determining whether relief is available under §1.6015-2, 1.6015-3, or 1.6015-4, items of income, credits, and deductions are generally

allocated to the spouses without regard to the operation of community property laws. An erroneous item is attributed to the individual whose activities gave rise to such item. See §1.6015-3(d)(2).

(2) Example. The following example illustrates the rule of this paragraph (f):

Example. (i) H and W are married and have lived in State A (a community property state) since 1987. On April 15, 2003, H and W file a joint Federal income tax return for the 2002 taxable year. In August 2005, the Internal Revenue Service proposes a $17,000 deficiency with respect to the 2002 joint return. A portion of the deficiency is attributable to $20,000 of H's unreported interest income from his individual bank account, the remainder of the deficiency is attributable to $30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own ½ of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that ½ of the interest income is W's, for purposes of relief under this section, the $20,000 unreported interest income is allocable to H, and the $30,000 disallowed deduction is allocable to W. The community property laws of State A are not considered in allocating items for this purpose.

(g) Definitions--(1) Requesting spouse. A requesting spouse is an individual who filed a joint return and elects relief from Federal income tax liability arising from that return under §1.6015-2 or 1.6015-3, or requests relief from Federal income tax liability arising from that return under §1.6015-4.

(2) Nonrequesting spouse. A nonrequesting spouse is the individual with whom the requesting spouse filed the joint return for the year for which relief from liability is sought.

(3) Item. An item is that which is required to be

separately listed on an individual income tax return or any required attachments, subject to one exception: Amounts received from investments that are required to be separately reported on an individual income tax return and that are from the same source are aggregated and treated as a single item. Items include, but are not limited to, gross income, deductions, credits, and basis.

(4) Erroneous item. An erroneous item is any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. For example, unreported income from an investment asset resulting in an understatement or deficiency in tax is an erroneous item. Similarly, ordinary income that is improperly reported as capital gain resulting in an understatement or deficiency in tax is also an erroneous item. An erroneous item is also an improperly reported item that affects the liability on other returns (e.g., an improper net operating loss that is carried back to a prior year's return).

(5) Election or request. A qualifying election under §1.6015-2 or 1.6015-3, or request under §1.6015-4, is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A qualifying election also includes a requesting spouse's second election to seek relief from joint and several liability for the same tax year under §1.6015-3 when the additional qualifications of paragraph

(g)(5)(i) and (ii) of this section are met--

(i) The requesting spouse did not qualify for relief under §1.6015-3 when the Internal Revenue Service considered the first election because the qualifications of §1.6015-3(a) were not satisfied; and

(ii) At the time of the second election, the qualifications for relief under §1.6015-3(a) are satisfied.

(h) Transferee liability--(1) In general. The relief provisions of section 6015 do not negate liability that arises under the operation of other laws. Therefore, a requesting spouse who is relieved of joint and several liability under §1.6015-2, 1.6015-3, or 1.6015-4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws. For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder. In addition, the requesting spouse's property may be subject to collection under Federal or state property laws.

(2) Example. The following example illustrates the rule of this paragraph (h):

Example. H and W timely file their 1998 joint income tax return on April 15, 1999. H dies in March 2000, and the executor of H's estate transfers all of the estate's assets to W. In July 2001, the Internal Revenue Service assesses a deficiency for the 1998 return. The items giving rise to the deficiency are attributable to H. W is relieved of the liability under § 6015, and H's estate remains solely liable. The Internal Revenue Service may seek to collect the deficiency from W to the extent permitted under Federal or state transferee liability or property

laws.

§1.6015-2 Relief from liability applicable to all qualifying joint filers.

(a) In general. A requesting spouse may be relieved of joint and several liability for tax (including additions to tax, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse elects the application of this section in accordance with §§1.6015-1(g)(5) and 1.6015-5, and--

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the item giving rise to the understatement; and

(4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) Understatement. The term understatement has the meaning given to such term by section 6662(d)(2)(A) and the regulations thereunder.

(c) Knowledge or reason to know. A requesting spouse has knowledge or reason to know of an erroneous item if he or she either actually knew of the item giving rise to the understatement, or if a reasonable person in similar circumstances would have known of the item giving rise to the understatement. For rules relating to a requesting spouse's

actual knowledge, see §1.6015-3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an erroneous item. The facts and circumstances that are considered include, but are not limited to, the nature of the item and the amount of the item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(d) Inequity. All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life

insurance proceeds) from the nonrequesting spouse that is traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account include the fact that the nonrequesting spouse has not fulfilled support obligations to the requesting spouse or the fact that the spouses have been divorced, legally separated, or not been members of the same household for at least the 12 months directly preceding the election. For more information on factors relevant to determining whether it is inequitable to hold a requesting spouse liable, see Rev. Proc. 2000-15 (2000-5 I.R.B. 447), or guidance subsequently published by the Secretary as described in §1.6015-4(c).

(e) Partial relief--(1) In general. If a requesting spouse had no knowledge or reason to know of only a portion of an erroneous item, the requesting spouse may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) Example. The following example illustrates the rules of this paragraph (e):

Example. H and W are married and file their 2004 joint income tax return in March 2005. In April 2006, H is convicted of embezzling $2 million from his employer during 2004. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. However, each month during 2004, H transferred $10,000 from the individual account to H and W's joint bank account. W paid the household expenses using this joint account, and regularly received the bank statements relating to the account. W had no knowledge or reason to know of H's embezzling activities.

However, W did have knowledge and reason to know of $120,000 of the $2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account. Therefore, W may be relieved of the liability arising from $1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from $120,000 of the unreported embezzlement income of which she knew and had reason to know.

§1.6015-3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.

(a) Election to allocate deficiency. A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. Subject to the restrictions of paragraph (c) of this section, an eligible requesting spouse who elects the application of this section in accordance with §§1.6015-1(g)(5) and 1.6015-5 generally may be relieved of joint and several liability for the portion of any deficiency that is allocated to the nonrequesting spouse pursuant to the allocation methods set forth in paragraph (d) of this section. Relief may be available to both spouses filing the joint return if each spouse is eligible for and elects the application of this section.

(b) Definitions--(1) Divorced. A requesting spouse is divorced if the requesting spouse has a divorce decree that is

recognized in the jurisdiction in which the requesting spouse resides.

(2) Legally separated. A requesting spouse is legally separated if the separation is recognized under the laws of the jurisdiction in which the requesting spouse resides.

(3) Not members of the same household--(i) Temporary absences. A requesting spouse and a nonrequesting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, hospitalization, business travel, vacation travel, military service, or education away from home.

(ii) Separate dwellings. A husband and wife who reside in the same dwelling are considered members of the same household. However, a husband and wife who reside in two separate dwellings, whether or not part of the same structure, are not considered members of the same household unless one is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) Limitations--(1) No refunds. Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under

this section.

(2) Actual knowledge. (i) If the Secretary demonstrates that the requesting spouse had actual knowledge at the time the return was signed of an erroneous item that is allocable to the nonrequesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. For example, assume W received $5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received $5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (i.e., $5,000 of unreported dividend income from X Co.), and no relief is available under this section for the deficiency attributable to the dividend income from X Co. If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W's dividend income from X Co. was taxable, but knew

that W received the dividend income. Relief is not available under this provision. In addition, a requesting spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W's dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under this provision.

(ii) Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H's knowledge of W's ownership in X Co. is not sufficient to establish that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse's actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H's knowledge of W's ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know.

(iii) To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the Secretary may rely upon all of the facts and circumstances. One factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is

whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item. Another factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. For purposes of this paragraph, a requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse had a direct interest in the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of state A, W owns ½ of the bank account. However, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(iii) because

the account is not held in her name and there is no other indication that she has a direct interest in the item.

(3) Disqualified asset transfers--(i) In general. The portion of the deficiency for which a requesting spouse is liable is increased (up to the entire amount of the deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) Disqualified asset defined. A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties, and interest).

(iii) Presumption. Any asset transferred from the nonrequesting spouse to the requesting spouse during the 12-month period before the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonrequesting spouse to the requesting spouse after the mailing date of the first letter of proposed deficiency. However, the presumption does not apply if the requesting spouse establishes that the asset was transferred pursuant to a divorce decree or separate maintenance agreement.

In addition, a requesting spouse may rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

(4) Examples. The following examples illustrate the rules in this paragraph (c):

Example 1. Actual knowledge of an erroneous item. (i) H and W file their 2001 joint Federal income tax return on April 15, 2002. On the return, H and W report W's self-employment income, but they do not report W's self-employment tax on that income. In August 2003, H and W receive a 30-day letter from the Internal Revenue Service proposing a deficiency with respect to W's unreported self-employment tax on the 2001 return. On November 4, 2003, H, who otherwise qualifies under paragraph (a) of this section, files an election to allocate the deficiency to W. The erroneous item is the self-employment income, and it is allocable to W. H knows that W earned income in 2001 as a self-employed musician, but he does not know that self-employment tax must be reported on and paid with a joint return.

(ii) H's election to allocate the deficiency to W is invalid because, at the time H signed the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

Example 2. Actual knowledge not inferred from a requesting spouse's reason to know. (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps a separate bank account, but she does not know whether he has any winnings because H does not tell her, and she does not otherwise know of H's bank account transactions. H and W file their 2001 joint Federal income tax return on April 15, 2002. On October 31, 2003, H and W receive a 30-day letter proposing a $100,000 deficiency relating to H's unreported gambling income. In February 2003, H and W divorce, and in March 2004, W files an election under section 6015(c) to allocate the $100,000 deficiency to H.

(ii) While W may have had reason to know of the gambling income because she knew of H's gambling habit and separate account, W did not have actual knowledge of the erroneous item

(i.e., the gambling winnings). The Internal Revenue Service may not infer actual knowledge from W's reason to know of the income. Therefore, W's election to allocate the $100,000 deficiency to H is valid.

Example 3. Actual knowledge of return reporting position. (i) H and W are legally separated. In February 1999, W signs a blank joint Federal income tax return for 1998 and gives it to H to fill out. The return was timely filed on April 15, 1999. In September 2001, H and W receive a 30-day letter proposing a deficiency relating to $100,000 of unreported dividend income received by H with respect to stock of ABC Co. owned by H. W knew that H received the $100,000 dividend payment in August 1998, but she did not know whether H reported that payment on the joint return.

(ii) On January 30, 2002, W files an election to allocate the deficiency from the 1998 return to H. W claims she did not review the completed joint return, and therefore, she had no actual knowledge that there was an understatement of the dividend income. W's election to allocate the deficiency to H is invalid because she had actual knowledge of the erroneous item (dividend income from ABC Co.) at the time she signed the return. The fact that W signed a blank return is irrelevant. The result would be the same if W had not reviewed the completed return or if W had reviewed the completed return and had not noticed that the item was omitted.

(iii) Assume the same facts as in paragraph (i) of this Example 3 except that, instead of receiving $100,000 of unreported dividend income, H received $50,000 of interest income from ABC Co. during the year (properly reported on the return) and $25,000 of dividend income from ABC Co. (omitted from the return). W knew that H received both dividend and interest income from ABC Co. but did not know the total was greater than $50,000. W's election to allocate to H the deficiency attributable to the omitted dividend income is valid. Although interest and dividend income are required to be separately stated on a joint Federal income tax return, they are one item in this case because the dividend and interest income are investment income received from the same source (ABC Co.). The erroneous item is the total dividend and interest income from ABC Co. W did not have actual knowledge of the erroneous item (combined dividend and interest income from ABC Co. greater than $50,000). Therefore, her election to allocate to H the deficiency attributable to the erroneous item is valid.

Example 4. Actual knowledge of an erroneous item of income. (i) H and W are legally separated. In June 2004, a deficiency is proposed with respect to H and W's 2002 joint Federal income tax return that is attributable to $30,000 of unreported income from

H's plumbing business that should have been reported on a Schedule C. No Schedule C was attached to the return. At the time W signed the return, W knew that H had a plumbing business but did not know whether H received any income from the business. W's election to allocate to H the deficiency attributable to the $30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this Example 4 except that, at the time W signed the return, W knew that H received $20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the $20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $10,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iii) Assume the same facts as in paragraph (i) of this Example 4 except that, at the time W signed the return, W did not know the exact amount of H's plumbing income. W did know, however, that H received at least $8,000 of plumbing income. W's election to allocate to H the deficiency attributable to $8,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the remaining $22,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iv) Assume the same facts as in paragraph (i) of this Example 4 except that H reported $26,000 of plumbing income on the return and omitted $4,000 of plumbing income from the return. At the time W signed the return, W knew that H was a plumber, but she did not know that H earned more than $26,000 that year. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income is valid because she did not have actual knowledge that H received plumbing income in excess of $26,000.

(v) Assume the same facts as in paragraph (i) of this Example 4 except that H reported only $20,000 of plumbing income on the return and omitted $10,000 of plumbing income from the return. At the time W signed the return, W knew that H earned at least $26,000 that year as a plumber. However, W did not know that, in reality, H earned $30,000 that year as a plumber. W's election to allocate to H the deficiency attributable to the $6,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

Example 5. Actual knowledge of a deduction that is an erroneous item. (i) H and W are legally separated. In February 2005, a deficiency is asserted with respect to their 2002 joint

Federal income tax return. The deficiency is attributable to a disallowed $1,000 deduction for medical expenses H claimed he incurred. At the time W signed the return, W knew that H had not incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is invalid because W had actual knowledge that H had not incurred any medical expenses.

(ii) Assume the same facts as in paragraph (i) of this Example 5 except that, at the time W signed the return, W did not know whether H had incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this Example 5 except that the Internal Revenue Service disallowed $400 of the $1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred medical expenses (in excess of the floor amount under section 213(a)) of more than $600.

(iv) Assume the same facts as in paragraph (i) of this Example 5 except that H claims an medical expense deduction of $10,000 and the Internal Revenue Service disallows $9,600. At the time W signed the return, W knew H had incurred some medical expenses but did not know the exact amount. W also knew that H incurred medical expenses (in excess of the floor amount under section 213(a)) of no more than $1,000. W's election to allocate to H the deficiency attributable to the portion of the overstated deduction of which she had actual knowledge ($9,000) is invalid. W's election to allocate the deficiency attributable to the portion of the overstated deduction of which she had no knowledge ($600) is valid.

Example 6. Disqualified asset presumption. (i) H and W are divorced. In May 1999, W transfers $20,000 to H, and in April 2000, H and W receive a 30-day letter proposing a $40,000 deficiency on their 1998 joint Federal income tax return. The liability remains unpaid, and in October 2000, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items are allocable to W, and 25% of the net amount of erroneous items are allocable to H.

(ii) In accordance with the proportionate allocation method (see paragraph (d)(4) of this section), H proposes that $30,000 of the deficiency be allocated to W and $10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the $20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the $20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable ($10,000) is increased by the value of the disqualified asset ($20,000). H is relieved of liability for $10,000 of the $30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining $30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

Example 7. Disqualified asset presumption inapplicable. On May 1, 2001, H and W receive a 30-day letter regarding a proposed deficiency on their 1999 joint Federal income tax return relating to unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to the divorce decree, H must transfer ½ of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of ½ of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a divorce decree.

(d) Allocation--(1) In general. (i) An election to allocate a deficiency limits the requesting spouse's liability to that portion of the deficiency allocated to the requesting spouse pursuant to this section. Unless relieved of liability under §1.6015-2 or 1.6015-4, the requesting spouse remains liable for that portion of the deficiency allocated to the requesting spouse pursuant to this section.

(ii) Only a requesting spouse may receive relief. A nonrequesting spouse who does not also elect relief under this

section remains liable for the entire amount of the deficiency, unless the nonrequesting spouse is relieved of liability under §1.6015-2 or 1.6015-4. If both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.

(2) Allocation of erroneous items. For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following four exceptions:

(i) Benefit on the return. An erroneous item that would otherwise be allocated to the nonrequesting spouse is allocated to the requesting spouse to the extent that the requesting spouse received a tax benefit on the joint return.

(ii) Fraud. The Secretary may allocate any item appropriately between the spouses if the Secretary establishes that the allocation is appropriate due to fraud by one or both spouses.

(iii) Erroneous items of income. Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the job producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the

spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (c) of this section. In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. For information regarding the effect of community property laws, see §1.6015-1(f) and paragraph (c)(2)(iii) of this section.

(iv) Erroneous deduction items. Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. Personal deduction items are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) Burden of proof. Except for establishing actual

knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The requesting spouse must also establish the proper allocation of the erroneous items.

(4) General allocation method--(i) Proportionate allocation.

(A) The portion of a deficiency allocable to a spouse is the amount that bears the same ratio to the deficiency as the net amount of erroneous items allocable to the spouse bears to the net amount of all erroneous items. This calculation may be expressed as follows:

$$\frac{X}{\text{deficiency}} = \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

where X = the portion of the deficiency allocable to the spouse. Thus,

$$X = (\text{deficiency}) * \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

(B) The proportionate allocation applies to any portion of the deficiency other than--

(1) Any portion of the deficiency attributable to erroneous items allocable to the nonrequesting spouse of which the requesting spouse had actual knowledge;

(2) Any portion of the deficiency attributable to separate

treatment items (as defined in paragraph (d)(4)(ii) of this section);

(3) Any portion of the deficiency relating to the liability of a child (as defined in paragraph (d)(4)(iii) of this section) of the requesting spouse or nonrequesting spouse;

(4) Any portion of the deficiency attributable to alternative minimum tax under section 55;

(5) Any portion of the deficiency attributable to accuracy-related or fraud penalties;

(6) Any portion of the deficiency allocated pursuant to alternative allocation methods authorized under paragraph 6 of this section.

(ii) Separate treatment items. Any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or an addition to tax (other than tax imposed by section 1 or section 55) that is required to be included with a joint return (a separate treatment item) is allocated separately to that spouse. Once the proportionate allocation is made, the liability for the requesting spouse's separate treatment items is added to the requesting spouse's share of the liability.

(iii) Child's liability. Any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse is generally allocated jointly to both spouses. However, if one of the spouses had sole custody of the

child for the entire tax year for which the election relates, such portion of the deficiency is allocated solely to that spouse. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse.

(iv) Allocation of certain items--(A) Alternative minimum tax. Any portion of the deficiency attributable to alternative minimum tax under section 55 is allocated between the spouses in the same proportion as each spouse's share of the total alternative minimum taxable income, as defined in section 55(b)(2).

(B) Accuracy-related and fraud penalties. Any portion of the deficiency attributable to accuracy-related or fraud penalties under section 6662 or 6663 is allocated to the spouse whose item generated the penalty.

(5) Examples. The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse. The examples are as

follows:

Example 1. Allocation of erroneous items. (i) H and W file a 2003 joint Federal income tax return on April 15, 2004. On April 28, 2006, a deficiency is assessed with respect to their 2003 return. Three erroneous items give rise to the deficiency--

(A) Unreported interest income, of which W had actual knowledge, from H and W's joint bank account;

(B) A disallowed business expense deduction on H's Schedule C;

(C) A disallowed Lifetime Learning Credit for W's post-secondary education; and

(ii) H and W divorce in May 2006, and in September 2006, W timely elects to allocate the deficiency. The erroneous items are allocable as follows:

(A) The interest income would be allocated ½ to H and ½ to W, except that W has actual knowledge of it. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W remains jointly and severally liable for it.

(B) The business expense deduction is allocable to H.

(C) The Lifetime Learning Credit is allocable to W.

Example 2. Proportionate allocation. (i) W and H timely file their 2001 joint Federal income tax return on April 15, 2002. On August 16, 2004, a $54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency--

(A) A disallowed $15,000 business deduction allocable to H;

(B) $20,000 of unreported income allocable to H;

(C) A disallowed $5,000 deduction for educational expense allocable to H;

(D) A disallowed $40,000 charitable contribution deduction allocable to W; and

(E) A disallowed $40,000 interest deduction allocable to W.

(ii) In total, there are $120,000 worth of erroneous items, of which $80,000 are attributable to W and $40,000 are attributable to H.

W's items	H's items
$40,000 charitable deduction	$15,000 business deduction
$40,000 interest deduction	$20,000 unreported income
	$ 5,000 education deduction
$80,000	$40,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 2/3 ($80,000/$120,000). W's liability is limited to $36,000 of the deficiency (2/3 of $54,000). The Internal Revenue Service may collect up to $36,000 from W and up to $54,000 from H (the total amount collected, however, may not exceed $54,000). If H also made an election, there would be no remaining joint and several liability, and the Internal Revenue Service would collect $36,000 from W and $18,000 from H.

Example 3. Proportionate allocation with joint erroneous item. (i) On September 4, 2001, W elects to allocate a $3,000 deficiency for the 1998 tax year to H. Three erroneous items give rise to the deficiency--

(A) Unreported interest in the amount of $4,000 from a joint bank account;

(B) A disallowed deduction for business expenses in the amount of $2,000 attributable to H's business; and

(C) Unreported wage income in the amount of $6,000 attributable to W's second job.

(ii) The erroneous items total $12,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W and H remain jointly and severally liable for this portion. Assume that this portion is $1,000. W may allocate the remaining $2,000 of the deficiency.

H's items	W's items
$2,000 business deduction	$6,000 wage income

Total allocable items: $8,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 3/4 ($6,000/$8,000). W's liability is limited to $1,500 of the deficiency (3/4 of $2,000) allocated to her. The Internal Revenue Service may collect up to $2,500 from W (3/4 of the total allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest) and up to $3,000 from H (the total amount collected, however, cannot exceed $3,000).

(iv) Assume H also elects to allocate the 1998 deficiency. H is relieved of liability for 3/4 of the deficiency, which is allocated to W. H's relief totals $1,500 (3/4 of $2,000). H remains liable for $1,500 of the deficiency (1/4 of the allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest).

Example 4. Separate treatment items (STIs). (i) On September 1, 2006, a $28,000 deficiency is assessed with respect to H and W's 2003 joint return. The deficiency is the result of 4 erroneous items--

(A) A disallowed Lifetime Learning Credit of $2,000 attributable to H;

(B) A disallowed business expense deduction of $8,000 attributable to H;

(C) Unreported income of $24,000 attributable to W; and

(D) Unreported self-employment tax of $14,000 attributable to W.

(ii) H and W both elect to allocate the deficiency.

(iii) The $2,000 Lifetime Learning Credit and the $14,000 self-employment tax are STIs totaling $16,000. The amount of erroneous items included in computing the proportionate allocation ratio is $32,000 ($24,000 unreported income and $8,000 disallowed business expense deduction). The amount of the deficiency subject to proportionate allocation is reduced by the amount of STIs ($28,000-$16,000 = $12,000).

(iv) Of the $32,000 of proportionate allocation items, $24,000 is allocable to W, and $8,000 is allocable to H.

W's share of allocable items	H's share of allocable items
3/4 ($24,000/$32,000)	1/4 ($8,000/$32,000)

(v) W's liability for the portion of the deficiency subject

to proportionate allocation is limited to $9,000 (3/4 of $12,000) and H's liability for such portion is limited to $3,000 (1/4 of $12,000).

(vi) After the proportionate allocation is completed, the amount of the STIs is added to each spouse's allocated share of the deficiency.

W's share of total deficiency	H's share of total deficiency
$ 9,000 allocated deficiency	$3,000 allocated deficiency
$14,000 self-employment tax	$2,000 Lifetime Learning Credit
$23,000	$5,000

(vii) Therefore, W's liability is limited to $23,000 and H's liability is limited to $5,000.

Example 5. Allocation of the alternative minimum tax. (i) H and W file their 2004 joint Federal income tax return on April 15, 2005. During 2004, W's total alternative minimum taxable income was $120,000, and H's total alternative minimum taxable income was $30,000. All of H's income was from his business and was reported on Schedule C. Everything on the 2004 return was properly reported, and there was no alternative minimum tax liability. In 2005, H experienced a net operating loss of $25,000 for regular tax purposes. H did not have a net operating loss for alternative minimum tax purposes. In February 2006, H and W file an amended return for 2004 claiming the net operating loss that was carried back from 2005. The loss is a proper deduction, but it results in an alternative minimum tax liability, which H and W do not report on the amended return. In December 2007, a $5,500 deficiency is assessed on their 2004 joint Federal income tax return resulting from the unreported alternative minimum tax liability.

(ii) W and H divorce in January 2008, and W elects to allocate the deficiency.

W's AMT income for 2004: $120,000
H's AMT income for 2004: $ 30,000
Total AMT income for 2004: $150,000

W's share of AMT income for 2004: 4/5 ($120,000/$150,000)
H's share of AMT income for 2004: 1/5 ($30,000/$150,000)

(iii) W's liability is limited to $4,400 (4/5 x $5,500). H remains liable for the entire deficiency because he did not make an election to allocate the deficiency.

Example 6. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item. (i) In 2001, H earns gross income of $4,000 from his business, and W earns $50,000 of wage income. On their 2001 joint Federal income tax return, H deducts $20,000 of business expenses resulting in a net loss from his business of $16,000. H and W divorce in September 2002, and on May 22, 2003, a $5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's $20,000 of deductions.

(ii) Since H used only $4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other $16,000 of the disallowed deductions used to offset her wage income. Therefore, $4,000 of the disallowed deductions are allocable to H and $16,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,160 (4/5 of $5,200). If H also elected to allocate the deficiency, H's election to allocate the $4,160 of the deficiency to W would be invalid because H had actual knowledge of the erroneous items.

Example 7. Calculation of requesting spouse's benefit on the joint return when the nonrequesting spouse's erroneous item is partially disallowed. Assume the same facts as in example 6, except that H deducts $18,000 for business expenses on the joint return, of which $16,000 are disallowed. Since H used only $2,000 of the $16,000 disallowed deductions to offset gross income from his business, W received benefit on the return from the other $14,000 of the disallowed deductions used to offset her wage income. Therefore, $2,000 of the disallowed deductions are allocable to H and $14,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,550 (7/8 of $5,200).

(6) Alternative allocation methods--(i) Allocation based on applicable tax rates. If a deficiency arises from two or more erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency is allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate

allocation method of paragraph (d)(4) of this section.

(ii) Allocation methods provided in subsequent published guidance. The Secretary may prescribe alternative methods for allocating erroneous items under section 6015(c) in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) Example. The following example illustrates the rules of this paragraph (d)(6):

Example. Allocation based on applicable tax rates. H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a $5,100 deficiency is assessed with respect to H and W's 1998 return. Of this deficiency, $2,000 results from unreported capital gain of $6,000 that is attributable to W and $4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining $3,100 of the deficiency is attributable to $10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items ($10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the $2,000 deficiency attributable to these items (or $1,200) is allocated to W. The remaining 40% of this portion of the deficiency ($800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for $3,900 of the deficiency ($800 + $3,100), and W is liable for the remaining $1,200.

§1.6015-4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under §1.6015-2 or 1.6015-3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a

requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of §1.6015-3(c)(1) (i.e., no refunds under §1.6015-3). Therefore, relief is not available under this section to refund liabilities already paid, for which the requesting spouse would otherwise qualify for relief under §1.6015-3.

(c) The Secretary will provide the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section in revenue rulings, revenue procedures, or other published guidance.

§1.6015-5 Time and manner for requesting relief.

(a) Requesting relief. To elect the application of §1.6015-2 or 1.6015-3, or to request equitable relief under §1.6015-4, a requesting spouse must file Form 8857, “Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief)”; submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner as may be prescribed by the Secretary in relevant revenue rulings, revenue procedures, or other published guidance.

(b) Time period for filing a request for relief--(1) In general. To elect the application of §1.6015-2 or 1.6015-3, or to request equitable relief under §1.6015-4, a requesting spouse

must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) Definitions--(i) Collection activity. For purposes of this paragraph (b), collection activity means an administrative levy or seizure described by section 6331 to obtain property of the requesting spouse; an offset of an overpayment of the requesting spouse against a liability under section 6402; the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; or the filing of a claim by the United States in a court proceeding in which the requesting spouse is a party or which involves property of the requesting spouse. Collection activity does not include a notice of intent to levy under sections 6330 and 6331(d); the filing of a Notice of Federal Tax Lien; or a demand for payment of tax. The term property of the requesting spouse, for purposes of this paragraph, means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

(ii) Date of levy or seizure. For purposes of this paragraph (b), if tangible personal property or real property is seized and is to be sold, a notice of seizure is required under section 6335(a). The date of levy or seizure is the date the

notice of seizure is given. For more information on the rules regarding notice of seizure, see section 6502(b) and the regulations thereunder. For purposes of this paragraph (b), if a levy is made on cash or intangible personal property that will not be sold, the date of levy or seizure is the date the notice of levy is made. For more information on the rules regarding levy, see section 6331 and the regulations thereunder. For purposes of this paragraph (b), if a notice of levy is served by mail, the date of levy or seizure is the date of delivery of the notice of levy to the person on whom the levy is made. For more information on notices of levy served by mail, see §301.6331-1(c) of this chapter.

(3) Requests for relief made before commencement of collection activity. An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return, or pursuant to the pre-levy collection due process (CDP) hearing procedures pursuant to sections 6320 and 6330. For more information on the rules regarding pre-levy collection due process, see §§301.6320-1T(e)(1) and (2), and 301.6330-1T(e)(1) and (2) of this chapter. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

(4) Examples. The following examples illustrate the rules of this paragraph (b):

Example 1. On January 11, 2000, a notice of intent to levy is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's employer on June 5, 2000. The Internal Revenue Service levies on H's employer on July 10, 2000. W must elect or request relief by June 5, 2002, which is two years after the Internal Revenue Service levied on her wages. H must elect or request relief by July 10, 2002, which is two years after the Internal Revenue Service levied on his wages.

Example 2. The Internal Revenue Service levies on W's bank, in which W maintains a savings account, to collect a joint liability for 1995 on January 12, 1998. The bank complies with the levy, which only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2000, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not taken any collection activity after July 22, 1998; therefore, the two-year period has not commenced.

Example 3. Assume the same facts as in Example 2, except that the Internal Revenue Service delivers a second levy on the bank on July 23, 1998. W's election is untimely because it is filed more than two years after the first collection activity after July 22, 1998.

Example 4. H and W do not remit full payment with their timely filed joint Federal income tax return for the 1989 tax year. No collection activity is taken after July 22, 1998, until the United States files a suit against both H and W to reduce the tax assessment to judgment and to foreclose the tax lien on their jointly held residence on July 1, 1999. H elects relief on October 2, 2000. The election is timely because it is made within two years of the filing of a collection suit by the United States against H.

Example 5. W files a Chapter 7 bankruptcy petition on July 10, 2000. On September 5, 2000, the United States files a proof of claim for her joint 1998 income tax liability. W elects relief with respect to the 1998 liability on August 20, 2002. The election is timely because it is made within two years of the date the United States filed the claim in W's bankruptcy case.

(5) Premature requests for relief. The Secretary will not consider premature claims for relief under §1.6015-2, 1.6015-3, or 1.6015-4. A premature claim is a claim for relief that is

filed for a tax year prior to the receipt of a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. A premature claim is not considered an election or request under §1.6015-1(g)(5).

(c) Effect of a final administrative determination--(1) In general. A requesting spouse is entitled to only one final administrative determination of relief under §1.6015-1 for a given assessment, unless the requesting spouse properly submits a second request for relief that is described in §1.6015-1(g)(5).

(2) Example. The following example illustrates the rule of this paragraph (c):

Example. In January 2001, W invests in tax shelter P, and in February 2001, she starts her own business selling crafts, from which she earns $100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim $20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service opens an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H and W's 2001 joint return regarding the omitted self-employment tax. H may file a claim for relief from joint and several liability for the self-employment tax liability because he has received a notification of an audit indicating that there may be an outstanding liability on the joint return. However, his claim for relief regarding the TEFRA partnership proceeding is premature under paragraph (b)(5) of this section. H will have to wait until the Internal Revenue Service sends him a notice of computational adjustment or assesses the liability from the TEFRA partnership proceeding on H and W's joint return before he files a claim for relief with respect to any such liability. The

assessment relating to the TEFRA partnership proceeding is separate from the assessment for the self-employment tax; therefore, H's subsequent claim for relief for the liability from the TEFRA partnership proceeding is not precluded by his previous claim for relief from the self-employment tax liability under this paragraph (c).

§1.6015-6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.

(a) In general. (1) When the Secretary receives an election under §1.6015-2 or 1.6015-3, or a request for relief under §1.6015-4, the Secretary must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. A nonrequesting spouse is not required to submit information under this section. The Secretary has the discretion to share with one spouse any of the information submitted by the other spouse. At the request of one spouse, the Secretary will omit from shared documents the spouse's new name, address, employer, telephone number, and any other information that would reasonably indicate the other spouse's location.

(2) The Secretary must notify the nonrequesting spouse of the Secretary's final determination with respect to the requesting spouse's claim for relief under section 6015. However, the nonrequesting spouse is not permitted to appeal such

determination.

(b) Information submitted. The Secretary will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following–-

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting spouse's knowledge of the erroneous items or underpayment;

(3) The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;

(4) The requesting spouse's education level;

(5) The extent to which the requesting spouse benefitted from the erroneous items;

(6) Any asset transfers between the spouses;

(7) Any indication of fraud on the part of either spouse;

(8) Whether it would be inequitable, within the meaning of §§1.6015-2(d) and 1.6015-4(b), to hold the requesting spouse jointly and severally liable for the outstanding liability;

(9) The allocation or ownership of items giving rise to the deficiency; and

(10) Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) Effect of opportunity to participate. The failure to submit information pursuant to paragraph (b) of this section does not affect the nonrequesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the nonrequesting spouse submits pursuant to paragraph (b) of this section is relevant in determining whether relief from joint and several liability is appropriate for the nonrequesting spouse should the nonrequesting spouse also submit an application for relief.

§1.6015-7 Tax Court review.

(a) In general. Requesting spouses may petition the Tax Court to review the denial of relief under §1.6015-1.

(b) Time period for petitioning the Tax Court. Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review a denial of relief under §1.6015-1 within the 90-day period beginning on the date the final determination letter is mailed. If the Secretary does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files an election under §1.6015-2 or 1.6015-3, the requesting spouse may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period beginning on the mailing date of the final determination letter. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under section 6213(a) or 6330(d). For rules

regarding petitioning the Tax Court under section 6213(a) or 6330(d), see §§301.6213-1, 301.6330-1T(f), and 301.6330-1T(g) of this chapter.

(c) Restrictions on collection and suspension of the running of the period of limitations--(1) Restrictions on collection under §1.6015-2 or 1.6015-3. Unless the Secretary determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse electing the application of §1.6015-2 or 1.6015-3 for the collection of any assessment to which the election relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. Notwithstanding the preceding sentence, if the requesting spouse appeals the Tax Court's determination, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date of the Tax Court's determination unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) Suspension of the running of the period of limitations--(i) Relief under §1.6015-2 or 1.6015-3. The running of the

period of limitations in section 6502 on collection against the requesting spouse of the assessment to which an election under §1.6015-2 or 1.6015-3 relates is suspended for the period during which the Commissioner is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter.

(ii) Relief under §1.6015-4. If a requesting spouse seeks only equitable relief under §1.6015-4, the restrictions on collection of paragraph (c)(1) of this section do not apply. The request for relief does not suspend the running of the period of limitations on collection.

(3) Definitions--(i) Levy. For purposes of this paragraph (c), levy means an administrative levy or seizure described by section 6331.

(ii) Proceedings in court. For purposes of this paragraph (c), proceedings in court means suits filed by the United States for the collection of Federal tax. Proceedings in court does not refer to the filing of pleadings and claims and other participation by the Commissioner or the United States in suits not filed by the United States, including Tax Court cases, refund suits, and bankruptcy cases.

(iii) Assessment to which the election relates. For purposes of this paragraph (c), the assessment to which the election relates is the entire assessment of the deficiency to which the election relates, even if the election is made with

respect to only part of that deficiency.

§1.6015-8 Applicable liabilities.

(a) In general. Sections 6015(b), 6015(c), and 6015(f) apply to liabilities that arise after July 22, 1998, and to liabilities that arose prior to July 22, 1998, that were not paid on or before July 22, 1998.

(b) Liabilities paid on or before July 22, 1998. A requesting spouse seeking relief from joint and several liability for amounts paid on or before July 22, 1998, must request relief under section 6013(e) and the regulations thereunder.

(c) Examples. The following examples illustrate the rules of this section:

Example 1. H and W file a joint income tax return for 1995 on April 15, 1996. There is an understatement on the return attributable to an omission of H's wage income. On October 15, 1998, H and W receive a 30-day letter proposing a deficiency on the 1995 joint return. W pays the outstanding liability in full on November 30, 1998. In March 1999, W files Form 8857, requesting relief from joint and several liability under section 6015(b). Although W's liability arose prior to July 22, 1998, it was unpaid as of that date. Therefore, section 6015 is applicable.

Example 2. H and W file their 1995 joint income tax return on April 15, 1996. On October 14, 1997, a deficiency is assessed regarding a disallowed business expense deduction attributable to H. On June 30, 1998, the Internal Revenue Service levies on W's bank account in full satisfaction of the outstanding liability. On August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998, and it was paid as of July 22, 1998. Therefore, section 6015 is not applicable and section 6013(e) is applicable.

§1.6015-9 Effective date.

Sections 1.6015-0 through 1.6015-9 are applicable for all elections under §1.6015-2 or 1.6015-3 or any requests for relief under §1.6015-4 filed on or after the date final regulations are published in the **Federal Register**.