

(4) After either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(5) After either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(c) *When return deemed filed; assessment and collection; credit or refund.* (1) For the purpose of limitations upon assessment and collection, and section 6651, relating to delinquent returns, a joint return made under section 6013(b) shall be deemed to have been filed, giving due regard to any extension of time granted to either spouse, on the following date:

(i) Where both spouses filed separate returns, prior to making the joint return under section 6013(b), on the date the last separate return of either spouse was filed for the taxable year, but not earlier than the last date prescribed by law for the filing of the return of either spouse;

(ii) Where only one spouse was required and did file a return prior to the making of the joint return under section 6013(b), on the date of the filing of the separate return, but not earlier than the last day prescribed by law for the filing of such return; or

(iii) Where both spouses were required to file a return, but only one spouse did so file, on the date of the filing of the joint return under section 6013(b).

(2) For the purpose of section 6511, relating to refunds and credits, a joint return made under section 6013(b) shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year, determined without regard to any extension of time granted to either spouse for filing the return or paying the tax.

(d) *Additional time for assessment.* In the case of a joint return made under section 6013(b), the period of limitations provided in sections 6501 and 6502 shall not be less than one year after the date of the actual filing of such joint return. The expiration of the one year is to be determined without re-

gard to the rules provided in paragraph (c)(1) of this section, relating to the application of sections 6501 and 6651 with respect to a joint return made under section 6013(b).

(e) *Additions to the tax and penalties.* (1) Where the amount shown as the tax by the husband and wife on a joint return made under section 6013(b) exceeds the aggregate of the amounts shown as tax on the separate return of each spouse, and such excess is attributable to negligence, intentional disregard of rules and regulations, or fraud at the time of the making of such separate return, there shall be assessed, collected, and paid in the same manner as if it were a deficiency an additional amount as provided by the following:

(i) If any part of such excess is attributable to negligence, or intentional disregard of rules and regulations, at the time of the making of such separate return, but without any intent to defraud, this additional amount shall be 5 percent of the total amount of the excess.

(ii) If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, this additional amount shall be 50 percent of the total amount of the excess. The latter addition is in lieu of the 50 percent addition to the tax provided in section 6653(b).

(2) For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns), the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under section 6013(b) after the filing of a separate return.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7670, 45 FR 6929, Jan. 31, 1980; T.D. 8725, 62 FR 39117, July 22, 1997]

§ 1.6013-3 Treatment of joint return after death of either spouse.

For purposes of section 21 (relating to change in rates during a taxable year), section 443 (relating to returns for a period of less than 12 months), and section 7851(a)(1)(A) (relating to the applicability of certain provisions of the Internal Revenue Code of 1954 and the Internal Revenue Code of 1939),

where the husband and wife have different taxable years because of death of either spouse, the joint return shall be treated as if the taxable years of both ended on the date of the closing of the surviving spouse's taxable year. Thus, in cases where the Internal Revenue Code of 1939 otherwise would apply to the taxable year of the decedent spouse and the Internal Revenue Code of 1954 would apply to the taxable year of the surviving spouse, this provision makes the Internal Revenue Code of 1954 applicable to the taxable years of both spouses if a joint return is filed.

§ 1.6013-4 Applicable rules.

(a) *Status as husband and wife.* For the purpose of filing a joint return under section 6013, the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined:

(1) If the taxable year of each individual is the same, as of the close of such year; and

(2) If the close of the taxable year is different by reason of the death of one spouse, as of the time of such death.

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. However, the mere fact that spouses have not lived together during the course of the taxable year shall not prohibit them from making a joint return. A husband and wife who are separated under an interlocutory decree of divorce retain the relationship of husband and wife until the decree becomes final. The fact that the taxpayer and his spouse are divorced or legally separated at any time after the close of the taxable year shall not deprive them of their right to file a joint return for such taxable year under section 6013.

(b) *Computation of income, deductions, and tax.* If a joint return is made, the gross income and adjusted gross income of husband and wife on the joint return are computed in an aggregate amount and the deductions allowed and the taxable income are likewise computed on an aggregate basis. Deductions limited to a percentage of the adjusted gross income, such as the deduction for charitable, etc., contributions and gifts, under section 170, will be al-

lowed with reference to such aggregate adjusted gross income. A similar rule is applied in the case of the limitation of section 1211(b) on the allowance of losses resulting from the sale or exchange of capital assets (see § 1.1211-1). Although there are two taxpayers on a joint return, there is only one taxable income. The tax on the joint return shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. For computation of tax in the case of a joint return, see § 1.2-1. For tax in the case of a joint return of husband and wife electing to pay the optional tax under section 3, see § 1.3-1. For the election not to show on a joint return the amount of tax due in connection therewith, see paragraph (c) of § 1.6014-1 and paragraph (d) of § 1.6014-2. For separate computations of the self-employment tax of each spouse on a joint return, see paragraph (b) of § 1.6017-1.

(c) *Definition of executor or administrator.* For purposes of section 6013 the term "executor or administrator" means the person who is actually appointed to such office and not a person who is merely in charge of the property of the decedent.

(d) *Return signed under duress.* If an individual asserts and establishes that he or she signed a return under 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) for married individuals filing separate returns. Section 6212 applies to the assessment of any deficiency in tax on such return.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7102, 36 FR 5497, Mar. 24, 1971; T.D. 9003, 67 FR 47285, July 18, 2002]

§ 1.6013-6 Election to treat non-resident alien individual as resident of the United States.

(a) *Election for special treatment—(1) In general.* Two individuals who are husband and wife at the close of a taxable year ending on or after December 31,