[T.D. 9003, 67 FR 47285, July 18, 2002]

§ 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. A spouse or former spouse may be relieved of joint and several liability for Federal income tax 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 Internal Revenue Service will 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 in the absence of an affirmative election made by the requesting spouse under either of those sections. If in the course of reviewing a request for relief only under § 1.6015–4, the IRS determines that the requesting spouse may qualify for relief under § 1.6015–2 or 1.6015–3 instead of § 1.6015–4, the Internal Revenue Service will correspond with the requesting spouse to see if the requesting spouse would like to amend his or her request to elect the application of § 1.6015–2 or 1.6015–3. If the requesting spouse chooses to amend the claim for relief, the requesting spouse must submit an affirmative election under § 1.6015–2 or 1.6015–3. The amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

(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*—(1) *In general.* 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 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.

(2) *Exception for agreements relating to TEFRA partnership proceedings.* The rule in paragraph (c)(1) of this section regarding the unavailability of relief from joint and several liability when the liability to which the claim for relief relates was the subject of a prior closing agreement entered into by the requesting spouse, shall not apply to an agreement described in section 6224(c) with respect to partnership items (or any penalty, addition to tax, or additional amount that relates to adjustments to partnership items) that is entered into while the requesting spouse is a party to a pending partnership-level proceeding conducted under

the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding). If, however, a requesting spouse enters into a closing agreement pertaining to any penalty, addition to tax, or additional amount that relates to adjustments to partnership items, at a time when the requesting spouse is not a party to a pending TEFRA partnership proceeding (*e.g.*, in connection with an affected items proceeding), then the provisions of paragraph (c)(1) shall apply. Similarly, if a requesting spouse enters into a closing agreement with respect to both partnership items (including affected items) and nonpartnership items, while the requesting spouse is a party to a pending TEFRA partnership proceeding, the provisions of paragraph (c)(1) shall apply to the portion of the closing agreement that relates to nonpartnership items and the provisions of this paragraph (c)(2) shall apply to the remainder of the closing agreement.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. H and W file joint returns for taxable years 2002–2004, on which they claim losses attributable to H's limited partnership interest in Partnership A. In January 2006, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) regarding Partnership A's 2002–2004 taxable years, and sends H and W a notice under section 6223(a)(1). In September 2007, H files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge in April 2008. In August 2008, H and W enter into a closing agreement with the Internal Revenue Service, in which H and W agree to the disallowance of some of the claimed losses from Partnership A for taxable years 2002 through 2007. W may not later claim relief from joint and several liability under section 6015 as to the disallowed losses attributable to Partnership A for taxable years 2002 to 2007. This is because at the time W entered into the closing agreement, H's partnership items attributable to Partnership A had converted to nonpartnership items as a result of H's filing of the bankruptcy petition. The conversion of H's items also terminated W's status as a partner in the TEFRA partnership proceeding regarding Partnership A. Consequently, the closing agreement did not pertain to partnership items and W was not a party to a pending partnership-level proceeding regarding Partnership A when she entered into the closing agreement. Accordingly, the exception in paragraph (c)(2) of this section for agreements relating to TEFRA partnership proceedings does not apply.

Example 2. H and W file a joint return for taxable year 2002, on which they claim $25,000 in losses attributable to H's general partnership interest in Partnership B. In November 2003, the Service proposes a deficiency in tax relating to H's and W's 2002 joint return arising from omitted taxable interest income in the amount of $2,000 that is attributable to H. In July 2005, the Internal Revenue Service commences a TEFRA partnership proceeding regarding Partnership B's 2002 and 2003 taxable years, and sends H and W a notice under section 6223(a)(1). In March 2006, H and W enter into a closing agreement with the Service. The closing agreement provides for the disallowance of the claimed losses from Partnership B in excess of H's and W's out-of-pocket expenditures relating to Partnership B for taxable year 2002 and any subsequent year(s) in which H and W claimed losses from Partnership B. In addition, H and W agree to the imposition of the accuracy-related penalty under section 6662 with respect to the disallowed losses attributable to partnership B. In the closing agreement, H and W also agree to the deficiency resulting from the omitted interest income for taxable year 2002. W may not later claim relief from joint and several liability under section 6015 as to the deficiency in tax attributable to the omitted income of $2,000 for taxable year 2002, because this portion of the closing agreement pertains to nonpartnership items. In contrast, W may claim relief from joint and several liability as to the disallowed losses and accuracy-related penalty attributable to Partnership B for taxable year 2002 or any subsequent year(s). This is because this portion of the closing agreement pertains to partnership and affected items and was entered into at a time when W was a party to the pending partnership-level proceeding regarding Partnership B. Consequently, W never had the opportunity to raise the innocent spouse defense in the course of that TEFRA partnership proceeding. (See § 1.6015–5(b)(5) relating to premature claims).

(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. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Service or another third party, including, but not limited to,

creditors, ex-spouses, and business partners.

(e) *Res judicata and collateral estoppel.* A requesting spouse is barred from relief from joint and several liability under section 6015 by res judicata for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in that proceeding and could have raised relief under section 6015. A requesting spouse has not meaningfully participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. Also, any final decisions rendered by a court of competent jurisdiction regarding issues relevant to section 6015 are conclusive and the requesting spouse may be collaterally estopped from relitigating those issues.

(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) *Scope of this section and §§1.6015–2 through 1.6015–9.* This section and §§1.6015–2 through 1.6015–9 do not apply to any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of law or rule of law.

(h) *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. 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. In addition, a deduction for an expense that is personal in nature that results in an understatement or deficiency in tax is an erroneous item of deduction. 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). Penalties and interest are not erroneous items. Rather, relief from penalties and interest will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, see §1.6015–3(d)(4)(iv)(B).

(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 paragraphs (h)(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 solely 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.

(i) [Reserved]

(j) *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 (j):

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 will 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 section 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.

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§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(h)(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 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 understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of 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 understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous 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