

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

Example 5. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item. (i) In 2001, H reports gross income of \$4,000 from his business on Schedule C, and W reports \$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 ($\frac{4}{20}$ 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 6. 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 5, 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 ($\frac{2}{16}$ 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 will be 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.* Additional alternative methods for allocating erroneous items under section 6015(c)

may be prescribed by the Treasury and IRS 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's 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.

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

§ 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 obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015-3.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000-15 (2000-1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

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§ 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" (or other specified form); 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 prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(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 a section 6330 notice; 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 deficiency; 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 (b), 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) *Section 6330 notice.* A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the Service's intent to levy and of their right to a collection due process (CDP) hearing.

(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 a demand for payment, or pursuant to the CDP hearing procedures under section 6320 in connection with the filing of a Notice of Federal Tax Lien. For more information on the rules regarding collection due process for liens, see the Treasury regulations under section 6320. 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 section 6330 notice 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. An election or request for relief must be made by January 11, 2002, which is two years after the Internal Revenue Service sent the section 6330 notice.

Example 2. The Internal Revenue Service offsets an overpayment against a joint liability for 1995 on January 12, 1998. The offset only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2001, 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 sends a section 6330 notice on January 22, 1999. 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