

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 business property 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 proof of claim in W's bankruptcy case.

(5) *Premature requests for relief.* The Internal Revenue Service 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 IRS 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(h)(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(h)(5).

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

Example: In January 2001, W becomes a limited partner in partnership P, and in February 2001, she starts her own business 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 commences 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's 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 resulting from the TEFRA partnership proceeding 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).

[T.D. 9003, 67 FR 47285, July 18, 2002, as amended at 67 FR 54735, Aug. 26, 2002]

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

(a) *In general.* (1) When the Internal Revenue Service receives an election under § 1.6015-2 or 1.6015-3, or a request for relief under § 1.6015-4, the Internal Revenue Service 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. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter. 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. Upon the request of either spouse, the Internal Revenue Service will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration.

(2) The Internal Revenue Service must notify the nonrequesting spouse of the Service's preliminary and final determinations with respect to the requesting spouse's claim for relief under section 6015.

(b) *Information submitted.* The Internal Revenue Service will consider all of the information (as relevant to each

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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, 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.

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

§ 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 90 days after the date

notice of the Service's final determination is mailed by certified or registered mail (90-day period). If the IRS 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. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under another section of the Internal Revenue Code such as section 6213(a) or 6330(d).

(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 Internal Revenue Service 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. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Notwithstanding the above, if the requesting spouse appeals the Tax Court's decision, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date the requesting spouse files the notice of appeal, unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) *Waiver of the restrictions on collection.* A requesting spouse may, at any time (regardless of whether a notice of the Service's final determination of relief is mailed), waive the restrictions on collection in paragraph (c)(1) of this section.