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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-134219-08]

RIN 1545-BI82

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 (Code). The regulations reflect changes in the law made by the Tax Relief and Health Care Act of 2006 as well as changes in the law arising from litigation. The regulations provide guidance to married individuals who filed joint returns and later seek relief from joint and several liability.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-134219-08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134219-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC; or sent

electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-134219-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy Rose at (202) 317-6844; concerning submissions of comments contact Oluwafunmilayo Taylor, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) for relief from joint and several liability under section 6015 of the Code and relief from the operation of state community property law under section 66.

Section 6013(a) permits a husband and wife to file a joint income tax return. Section 6013(d)(3) provides that spouses filing a joint income tax return are jointly and severally liable for liabilities for tax arising from that return. The term “tax” includes additions to tax, additional amounts, 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 who signed the joint return, without regard to whom the items of income, deduction, credit, or basis that gave rise to the liability are attributable. Prior to 1998, section 6013(e) provided limited relief from joint and several liability. In 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law No. 105-206, 112 Stat. 685 (1998), which repealed section 6013(e) and replaced it with section 6015. Section 6015 applies to liabilities arising after July 22, 1998, and liabilities that arose on or before July 22, 1998, but remained unpaid as of that date.

Section 6015 provides three avenues for relief from joint and several liability -- sections 6015(b), (c) and (f). To be eligible for relief from joint and several liability, a spouse must request relief. Under section 6015(b), a requesting spouse may be entitled to relief from joint and several liability for an understatement of tax attributable to erroneous items of the nonrequesting spouse. Section 6015(c) permits a taxpayer who is divorced, separated, widowed, or who had been living apart from the other spouse for 12 months to allocate his or her tax deficiency between the spouses as if separate returns had been filed. Claims for relief under section 6015(b) and (c) must be made within two years of the IRS's first collection activity against the requesting spouse. Finally, section 6015(f) confers discretion upon the Commissioner to grant equitable relief from joint and several liability for understatements and underpayments, based on all the facts and circumstances. Regulations under section 6015 were first prescribed in TD 9003, **Federal Register** (67 FR 47278) on July 18, 2002.

These proposed amendments are necessary to carry out the provisions of section 6015 and to reflect changes in the law since the publication of TD 9003. On December 20, 2006, Congress enacted the Tax Relief and Health Care Act of 2006, Public Law No. 109-432, div. C, title IV, section 408, 120 Stat. 2922, 3061-62 (2006) (the 2006 Act). The 2006 Act amended section 6015 to provide the United States Tax Court with jurisdiction to review the Commissioner's determination to deny equitable relief under section 6015(f) when the Commissioner has not determined a deficiency and to suspend the period of limitation for collection under section 6502 when relief is requested only under section 6015(f). The proposed regulations also provide

clarification and additional guidance on procedural and substantive issues related to the three types of relief from joint and several liability under section 6015.

Section 66 provides relief for a spouse who did not file a joint return in a community property state and did not include in gross income an item of community income that would be attributable solely to the nonrequesting spouse but for the operation of state community property law. Regulations under section 66 were first prescribed in TD 9074, **Federal Register** (68 FR 41067) on July 10, 2003. The proposed regulations under section 66 contain only non-substantive changes.

Recently, other amendments to the regulations under section 6015 were proposed in a notice of proposed rulemaking (REG-132251-11) published in the **Federal Register** (78 FR 49242) on August 13, 2013. Those regulations proposed changes to §1.6015-5 to remove the two-year deadline for taxpayers to file requests for equitable relief under section 6015(f), and other changes related to the time and manner for requesting relief. Additionally, on September 16, 2013, the IRS issued Rev. Proc. 2013-34 (2013-2 CB 397). Rev. Proc. 2013-34 revised the factors used in determining if a requesting spouse is eligible for equitable relief under sections 66(c) and 6015(f).

### **Explanation of Provisions**

These regulations propose to make a number of significant changes to the existing regulations. These changes include providing additional guidance on the judicial doctrine of res judicata and the section 6015(g)(2) exception to res judicata when a requesting spouse did not meaningfully participate in a prior court proceeding. The regulations propose to add a list of acts to be considered in making the determination as to whether the requesting spouse meaningfully participated in a prior

proceeding and provide examples of the operation of these rules. The regulations also (1) propose a definition of underpayment or unpaid tax for purposes of section 6015(f); (2) provide detailed rules regarding credits and refunds in innocent spouse cases; (3) expand the rule that penalties and interest are not separate items from which relief can be obtained to cases involving underpayments; (4) incorporate an administratively developed rule that attribution of an erroneous item follows the attribution of the underlying item that caused the increase to adjusted gross income (AGI); (5) update the discussion of the allocation rules under section 6015(c) and (d); and (6) revise the rules regarding prohibition on collection and suspension of the collection statute.

#### 1. Section 1.6015-1

The procedures for requesting relief on Form 8857, “Request for Innocent Spouse Relief,” under section 6015 have changed since 2006 because of the amendments to section 6015(e) made by Section 408 of Title IV of Division C of the 2006 Act. The amendments to section 6015(e) conferred jurisdiction on the Tax Court to review the Commissioner’s denial of relief under section 6015(f) in cases in which a deficiency had not been asserted. The amendments also provided for a prohibition on collection and a corresponding tolling of the collection statute under section 6502 upon the filing of a request for relief under section 6015(f). The amendments apply to any liability for taxes arising on or after December 20, 2006, and to any liability for taxes arising before December 20, 2006, and remaining unpaid as of that date. As a result of the amendments, any request for relief under section 6015 will toll the collection statute, making it unnecessary for a spouse to elect or request a particular type of relief as required under §1.6015-1(a)(2) of the current regulations. Accordingly, §1.6015-1 and

all sections referencing an election under §§1.6015-2 and 1.6015-3 or a request for relief under §1.6015-4 are proposed to be revised to reflect that a requesting spouse is no longer required to elect or request relief under a specific provision of section 6015. Thus, beginning with the June 2007 revision to the Form 8857, a requesting spouse makes a single request for relief on Form 8857. Section 1.6015-1 is also being revised to provide that the IRS will consider in all cases whether the requesting spouse is eligible for relief under §1.6015-2 or §1.6015-3, and if relief is not available under either of those sections, under §1.6015-4.

Section 6015(g)(2) provides an exception to the common law doctrine of res judicata except in a case in which relief under section 6015 was at issue in a prior court proceeding or if a requesting spouse meaningfully participated in a prior proceeding in which relief under section 6015 could have been raised. Current §1.6015-1(e) is being revised in these proposed regulations to provide more detailed guidance on how the exception to res judicata and the meaningful participation rule work, and to reflect developments in the case law since 2002 (described below). Proposed §1.6015-1(e)(1) restates the general rule from the current regulations.

Proposed §1.6015-1(e)(2) incorporates the holding in Deihl v. Commissioner, 134 T.C. 156 (2010) (When a requesting spouse generally raises relief under section 6015 in a proceeding but does not specifically plead relief under any subsection of section 6015, relief under section 6015(c) will not be treated as being at issue in that proceeding if the requesting spouse was not eligible to elect relief under section 6015(c) because the requesting spouse was not divorced, widowed, legally separated, or living apart for 12 months at any time during the prior proceeding.).

Proposed §1.6015-1(e)(3) provides guidance on the meaningful participation exception to res judicata provided by section 6015(g)(2). A requesting spouse meaningfully participated in the prior proceeding if the requesting spouse was involved in the proceeding so that the requesting spouse could have raised the issue of relief under section 6015 in that proceeding. Meaningful participation is a facts and circumstances determination. A nonexclusive list of acts was added in proposed §1.6015-1(e)(3) to provide indicators of “meaningful participation” within the context of a bar against relief based on the judicial doctrine of res judicata. Whether a requesting spouse meaningfully participated in a prior proceeding is based on all the facts and circumstances. No one act necessarily determines the outcome. The degree of importance of each act varies depending on the requesting spouse’s facts and circumstances. The following acts, derived from case law and experience since 2002, are among the acts the IRS and courts consider in making the determination regarding meaningful participation: whether the requesting spouse participated in the IRS Appeals process while the prior case was docketed; whether the requesting spouse participated in discovery; whether the requesting spouse participated in pretrial meetings, settlement negotiations, or trial; whether the requesting spouse signed court documents; and whether the requesting spouse was represented by counsel in the prior proceedings.

Proposed §1.6015-1(e)(3)(i) provides a new rule under which the requesting spouse will not be considered to have meaningfully participated in the prior proceeding if the requesting spouse establishes that the requesting spouse performed any of the acts listed in proposed §1.6015-1(e)(3) because the nonrequesting spouse abused or

maintained control over the requesting spouse, and the requesting spouse did not challenge the nonrequesting spouse for fear of the nonrequesting spouse's retaliation. Proposed §1.6015-1(e)(3)(ii) restates the rule from the current regulations that a requesting spouse did not meaningfully participate in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding.

Proposed §1.6015-1(e)(3)(iii) provides that in a case petitioned from a statutory notice of deficiency under section 6213, the fact that the requesting spouse did not have the ability to effectively contest the underlying deficiency is irrelevant for purposes of determining whether the requesting spouse meaningfully participated in the prior proceeding. Treasury and the IRS disagree with the holding in Harbin v. Commissioner, 137 T.C. 93 (2011), in which the Tax Court concluded that Mr. Harbin did not meaningfully participate in the deficiency case in part because he could not effectively contest the part of the deficiency related to his ex-wife's gambling losses without her. The Tax Court found that Mr. Harbin could not effectively contest this part of the deficiency without his ex-wife because she "was the one with personal knowledge of the winnings and losses from the gambling activities" and was the one "who maintained and provided all of the documentation relating to the gambling activities." The Tax Court concluded that this knowledge and control of the documentation resulted in Mr. Harbin's ex-wife effectively exercising "exclusive control" of the case. Harbin v. Commissioner, 137 T.C. at 98.

Treasury and the IRS believe that the Tax Court applied the incorrect standard to determine whether a taxpayer meaningfully participated in a proceeding for purposes of



section 6015(g)(2). The purpose of the meaningful participation exception to res judicata is not to ensure that a taxpayer had the opportunity to contest the deficiency but rather to ensure that the taxpayer could have raised relief under section 6015. Moore v. Commissioner, T.C. Memo. 2007-156. This is evident because, if section 6015 relief was at issue in the prior case, the taxpayer is not permitted to raise section 6015 relief in a subsequent proceeding regardless of the degree to which the taxpayer participated or whether taxpayer's ability to contest the deficiency was impaired. See Deihl v. Commissioner, 134 T.C. 156, 161 (2010).

Proposed §1.6015-1(e)(4) provides examples of how the rules in paragraphs (e)(1), (e)(2), and (e)(3) work. Proposed §1.6015-1(e)(5) restates the collateral estoppel rule from current §1.6015-1(e) without change.

Proposed §1.6015-1(h)(1) and (h)(5) are being revised to remove the distinction between electing and requesting relief as discussed earlier in this preamble.

Proposed §1.6015-1(h)(6) defines "unpaid tax" for purposes of §1.6015-4. For purposes of §1.6015-4, the regulations propose that the terms "unpaid tax" and "underpayment" have the same meaning. The unpaid tax or underpayment on a joint return is the balance shown as due on the return reduced by the tax paid with the return or paid on or before the due date for payment (without considering any extension of time to pay). The balance due is determined after applying withholding credits, estimated tax payments, payments with an extension, and other credits applied against the total tax reported on the return. Payments made with the return include payments made by check in the same envelope with the return or remitted at a later date (but before the due date for payment) with Form 1040-V, "Payment Voucher." Payments

made with the return also include remittances made by direct debit, credit card, or other commercially acceptable means under section 6311 on or before the due date for payment. The determination of the existence and amount of unpaid tax is made as of the date the joint return is filed, or as of the due date for payment if payments are made after the return is filed but on or before the due date.

If the payments made with the joint return, including any payments made on or before the due date for payment (without considering any extension of time for payment), completely satisfy the balance due shown on the return, then there is no unpaid tax for purposes of §1.6015-4. A requesting spouse is not entitled to be considered for relief (credit or refund) under §1.6015-4 for any tax paid with the joint return (including a joint amended return). Payments made after the later of the date the joint return is filed or the due date for payment (without considering any extension of time for payment), including offsets of overpayments from other tax years, do not change the amount of unpaid tax reported on the joint return. Under §1.6015-4, a requesting spouse can only get relief from the unpaid tax on the return, and if refunds are available, from any payments made on the liability after the later of the date the joint return was filed or the due date for payment (without considering any extension of time for payment).

Proposed §1.6015-1(h)(7) and (h)(8) define understatement and deficiency, respectively. Section 6015(b)(3) provides that an “understatement” for purposes of section 6015 has the same meaning given to that term by section 6662(d)(2)(A). The definition of understatement is in current §1.6015-2(b) and therefore only applies to requests under that section. The term “understatement,” however, is a term that is

relevant to relief under sections 6015(b), (c), and (f). These regulations propose to move the definition of “understatement” to proposed §1.6015-1(h)(7) to allow a consistent definition to apply throughout the regulations. Likewise, proposed §1.6015-1(h)(8) adds a definition of deficiency, by reference to section 6211 and the regulations under section 6211, to clarify that the term deficiency has the same meaning throughout the regulations.

Section 6015(g)(1) provides that requesting spouses generally can receive a credit or refund of payments made on the joint liability if the requesting spouse is entitled to relief under section 6015. This general rule is set forth in proposed §1.6015-1(k)(1). Section 6015(g) also provides some limitations on the availability of credit or refund. New §1.6015-1(k)(2) through (5) discuss these and other limitations on credit or refund when a requesting spouse is eligible for relief.

Proposed §1.6015-1(k)(2) sets forth the limitation on refunds from section 6015(g)(3) when a requesting spouse is entitled to relief under §1.6015-3. Proposed §1.6015-1(k)(3) sets forth the rule from current §1.6015-4(b) that relief under §1.6015-4 is not available when the requesting spouse is entitled to full relief under §1.6015-3 but is not entitled to a refund because of the limitation in section 6015(g)(3) and proposed §1.6015-1(k)(2). Proposed §1.6015-1(k)(4) incorporates, consistent with section 6015(g)(1), the limitations on credit or refund provided by sections 6511 (general limitations on credits or refunds) and 6512(b) (limitations on credits or refunds where the Tax Court determines that a taxpayer made an overpayment). This section also clarifies that, in general, Form 8857 will be treated as the requesting spouse’s claim for credit or refund.

Proposed §1.6015-1(k)(5) sets forth the general rule that a requesting spouse who is entitled to relief is generally not eligible for a credit or refund of joint payments made with the nonrequesting spouse. Under the proposed rule, a requesting spouse, however, may be eligible for a credit or refund of the requesting spouse's portion of the requesting and nonrequesting spouse's joint overpayment from another tax year that was applied to the joint income tax liability to the extent that the requesting spouse can establish his or her contribution to the overpayment. Both spouses have an interest in a joint overpayment relative to each spouse's contribution to the overpayment. See, for example, Gordon v. United States, 757 F.2d 1157, 1160 (11th Cir. 1985) ("Where spouses claim a refund under a joint return, the refund is divided between the spouses, with each receiving a percentage of the refund equivalent to his or her proportion of the withheld tax payments."). If the requesting spouse contributed to the joint overpayment through withholding, estimated tax, or other payments, then the requesting spouse may be entitled to a refund of that portion of the overpayment that was applied to the joint liability. Under the proposed rule, a requesting spouse in a state that is not a community property state may establish his or her portion of a joint overpayment using the allocation rules of Rev. Rul. 80-7 (1980-1 CB 296), or successor guidance. A requesting spouse in a community property state may establish his or her portion of a joint overpayment using the allocation rules of Rev. Rul. 2004-71 (2004-2 CB 74), Rev. Rul. 2004-72 (2004-2 CB 77), Rev. Rul. 2004-73 (2004-2 CB 80), or Rev. Rul. 2004-74 (2004-2 CB 84), or successor guidance, whichever is applicable to the state in which the requesting spouse is domiciled. For copies of Revenue Procedures, Revenue

Rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at <http://www.irs.gov>.

These proposed regulations reflect the elimination of the more restrictive rule regarding credit or refund when relief is granted under §1.6015-4 in cases involving a deficiency, as provided by Rev. Proc. 2013-34. A credit or refund, subject to the limitations in §1.6015-1(k), is available to a requesting spouse who is entitled to relief under §1.6015-4 in both underpayment and deficiency cases.

Current §1.6015-1(h)(4) provides, in part, that penalties and interest are not separate erroneous items from which a requesting spouse can be relieved separate from the tax. Rather, relief from penalties and interest related to an understatement or deficiency will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved.

Thus, under the existing regulations, a requesting spouse who is determined not to be eligible for relief from the understatement or deficiency stemming from an erroneous item cannot be separately relieved from a penalty, such as the accuracy-related penalty, related to the item under section 6015. If a requesting spouse is entitled to partial relief (such as relief from two of three erroneous items giving rise to the understatement or deficiency), then the requesting spouse will be entitled to relief from the accuracy-related penalty applicable to those two items.

These regulations propose to move the discussion in current §1.6015-1(h)(4) to proposed §1.6015-1(m). Proposed §1.6015-1(m) additionally clarifies, consistent with the statutory interpretation in current §1.6015-1(h)(4), that penalties and interest on an underpayment also are not separate items from which a requesting spouse may obtain

relief under §1.6015-4. Rather, relief from penalties and interest on the underpayment will be determined based on the amount of relief from the underpayment to which the requesting spouse is entitled. If a requesting spouse remains liable for a portion of the underpayment after application of §1.6015-4, the requesting spouse is not eligible for relief under section 6015 for the penalties and interest related to that portion of the underpayment. Cf. Weiler v. Commissioner, T.C. Memo. 2003-255 ( a requesting spouse is not relieved from liabilities for penalties and interest resulting from items attributable to the requesting spouse). This position is consistent with how the IRS currently treats relief from penalties and interest after determining the relief from the underlying tax. See IRM 25.15.3.4.1.1(2) (Revised 03/08/2013).

If an assessed deficiency is paid in full, or the unpaid tax reported on the joint return is later paid in full, but penalties and interest remain unpaid, under the proposed rule, a requesting spouse may be considered for relief from the penalties and interest under section 6015. The determination of relief from the penalties and interest is made by considering whether the requesting spouse would be entitled to relief from the underlying tax and not considering the penalties and interest as if they were separate items. A requesting spouse may be relieved from the penalties and interest even if relief in the form of a refund of the payments made on the underlying tax is barred (for example, §1.6015-1(k)(2) (no refunds allowed under §1.6015-3) or §1.6015-1(k)(4) (refund barred by the limitations of sections 6511 or 6512(b))).

Proposed §1.6015-1(n) provides attribution rules for a portion of an understatement or deficiency relating to the disallowance of certain items. Specifically, §1.6015-1(n) addresses items that are otherwise not erroneous items, but are

disallowed solely due to the increase of adjusted gross income (or modified adjusted gross income) over a phase-out threshold as a result of an erroneous item attributable to the nonrequesting spouse. One common example of this is when the nonrequesting spouse's omitted income increases adjusted gross income so that the Earned Income Tax Credit (EITC) is phased out and the understatement or deficiency partially represents the recapture of the refunded EITC.

Under proposed §1.6015-1(n), the understatement or deficiency related to the item disallowed due to the increase to adjusted gross income will be attributable to the spouse whose erroneous item caused the increase to adjusted gross income, unless the evidence shows that a different result is appropriate. If the increase to adjusted gross income is the result of erroneous items of both spouses, the item disallowed due to the increase to adjusted gross income will be attributable to the requesting spouse in the same ratio as the amount of the item or items attributable to the requesting spouse over the total amount of the items that resulted in the increase to adjusted gross income. Corresponding rules are proposed to be added to §§1.6015-2(b) and 1.6015-3(c)(2)(i) to provide that a requesting spouse knows or has reason to know of the item disallowed due to the increase in adjusted gross income if the requesting spouse knows or has reason to know of the erroneous item or items that resulted in the increase to adjusted gross income. Likewise, for purposes of proposed §1.6015-4 and Rev. Proc. 2013-34, a requesting spouse knows or has reason to know of the portion of an understatement or deficiency related to an item attributable to the nonrequesting spouse under §1.6015-1(n) if the requesting spouse knows or has reason to know of the

nonrequesting spouse's erroneous item or items that resulted in the increase to adjusted gross income.

Examples are provided to illustrate how this rule applies in situations involving the EITC, the phase-out of itemized deductions, and the application of the alternative minimum tax. This rule, however, can be implicated in other situations. It should be noted that this proposed rule would not apply if there is another reason for disallowing the item, such as no qualifying child for the EITC, no substantiation for a claimed deduction, or the lack of any basis in law or fact for the deduction. In this situation, the normal attribution rules applicable to §§1.6015-2, 1.6015-3, and 1.6015-4 apply.

Proposed §1.6015-1(o) provides a definition of abuse for purposes of proposed §§1.6015-2(b) and 1.6015-3(c)(vi). The definition of abuse is taken directly from Rev. Proc. 2013-34, section 4.03(2)(c)(iv).

## 2. Section 1.6015-2

Only minor substantive changes are proposed to current §1.6015-2. The proposed amendments reorganize the section, update references, and provide clarification where needed. Proposed §1.6015-2(a) changes the language in the existing regulations, “the requesting spouse elects the application of this section,” to “the requesting spouse requests relief” consistent with the discussion earlier in this preamble. The definition of “understatement” in current §1.6015-2(b) is removed as the definition will now be located in proposed §1.6015-1(h)(7). Current §1.6015-2(c) is redesignated as proposed §1.6015-2(b), adds additional facts and circumstances from Rev. Proc. 2013-34 to consider in determining whether a requesting spouse had reason to know, adds a knowledge rule to correspond to proposed §1.6015-1(n) as discussed



earlier in this preamble, and clarifies, consistent with the changes made in Rev. Proc. 2013-34, that abuse or financial control by the nonrequesting spouse will result in the requesting spouse being treated as not having knowledge or reason to know of the items giving rise to the understatement. Current §1.6015-2(d) is redesignated as proposed §1.6015-2(c) and provides an updated cross-reference to the most recent revenue procedure providing the criteria to be used in determining equitable relief, Rev. Proc. 2013-34. Current §1.6015-2(e)(1) is redesignated as proposed §1.6015-2(d)(1) and the word “only” is removed to clarify the rule. Current §1.6015-2(e)(2) is redesignated as proposed §1.6015-2(d)(2) and the example is updated to use more current years and dates, but otherwise no substantive changes were made.

### 3. Section 1.6015-3

Among other clarifying changes, these regulations propose to clarify the difference between full and partial relief under section 6015(c) and to reflect case law regarding the tax benefit rule of section 6015(d)(3)(B), including new examples.

Proposed §1.6015-3(a) provides a revised heading and a cross-reference to the definition of deficiency in proposed §1.6015-1(h)(8).

Section 6015(g)(3) provides that no credit or refund is allowed as a result of an allocation of a deficiency under section 6015(c). Proposed §1.6015-3(c)(1) clarifies the existing regulations and provides that whether relief is available to a requesting spouse under section 6015(c) is not dependent on the availability of credit or refund. Thus, if a requesting spouse is eligible to allocate the entire deficiency to the nonrequesting spouse, the requesting spouse has received full relief even if the requesting spouse made payments on the deficiency and is not entitled to a refund of those payments

because of section 6015(g)(3). Further, the requesting spouse is not eligible to be considered for relief (and a refund) under section 6015(f) for the amount of any paid liability because a prerequisite to relief under section 6015(f) is the unavailability of relief under section 6015(b) or (c) and the spouse received full relief under section 6015(c). A requesting spouse may still be considered for relief (and a refund) under section 6015(b) for the amount of any paid liability. If a requesting spouse only receives partial relief (for example, some part of the deficiency is still allocated to the requesting spouse), then the requesting spouse may be considered for relief under section 6015(f) for the portion of the deficiency allocable to the requesting spouse. A new sentence is added to §1.6015-3(c)(2)(i) to add a knowledge rule to correspond to proposed §1.6015-1(n), which, as discussed earlier in this preamble, provides an attribution rule for the portion of a deficiency relating to the disallowance or reduction of an otherwise valid item solely due to the increase in AGI as a result of the disallowance of an erroneous item.

Proposed §1.6015-3(d)(2)(i) illustrates that, under the tax benefit rule of section 6015(d)(3)(B), the amount of an erroneous item allocated to a requesting spouse may increase or decrease depending upon the tax benefit to the requesting and nonrequesting spouses. Thus, these proposed regulations adopt the holding of Hopkins v. Commissioner, 121 T.C. 73 (2003) (a requesting spouse was entitled to relief from her own item under the tax benefit rule of section 6015(d)(3)(B) because the nonrequesting spouse was the only person who reported income on the returns, and therefore, the only one who received any tax benefit from the item). In addition, five new examples have been added to §1.6015-3(d)(5) to provide additional guidance on

the application of the tax benefit rule of §1.6015-3(d)(2)(i). Example 7 demonstrates the application of §1.6015-3(d)(2)(i)(B), which provides that each spouse's hypothetical separate taxable income may need to be determined to properly apply the tax benefit rule. Example 8 demonstrates the holding in Hopkins by showing that a requesting spouse's allocated portion of a deficiency will be decreased when the nonrequesting spouse receives a tax benefit from the item. Example 9 demonstrates the allocation of a liability when the erroneous item is a loss from a jointly-owned investment. Example 10 demonstrates how the tax benefit rule works when the erroneous item is a loss from a jointly-owned investment. In addition, Example 11 is added to demonstrate how the rule in §1.6015-3(d)(2)(ii) regarding fraud works.

Section 1.6015-3(c)(2)(iv) currently provides that the requesting spouse's joint ownership (with the nonrequesting spouse) of the property that resulted in the erroneous item is a factor that may be relied upon in demonstrating that the requesting spouse had actual knowledge of the item. Under the tax benefit rule of §1.6015-3(d)(2)(i), as stated earlier in this preamble, a requesting spouse can be relieved of liability for the requesting spouse's own erroneous item if the item is otherwise allocable in full or in part to the nonrequesting spouse under section 6015(d). Therefore, proposed §1.6015-3(c)(2)(iv) revises the current regulations to clarify that the requesting spouse's separate ownership of the erroneous item is also a factor that may be relied upon in demonstrating that the requesting spouse had actual knowledge of the item. Current §1.6015-3(c)(2)(v) is redesignated as proposed §1.6015-3(c)(2)(vi) and the discussion of community property in current §1.6015-3(c)(iv) is removed and is now located in proposed §1.6015-3(c)(2)(v). Proposed §1.6015-3(c)(vi) is revised to clarify,

consistent with the changes made in Rev. Proc. 2013-34, that abuse or financial control by the nonrequesting spouse will result in the requesting spouse being treated as not having actual knowledge of the items giving rise to the understatement.

#### 4. Section 1.6015-4

No substantive changes are proposed to current §1.6015-4. The proposed amendments update references and provide a clarifying change consistent with proposed §1.6015-3(c)(1), which provides the rule that refunds are not allowed under section 6015(c).

Proposed §1.6015-4(a) was revised to provide a cross-reference to the definitions of unpaid tax, understatement, and deficiency in proposed §§1.6015-1(h)(6), (h)(7), and (h)(8).

Proposed §1.6015-4(b) was revised to provide a cross-reference to proposed §1.6015-1(k)(3). The paragraph also clarifies that if only partial relief is available under §1.6015-3, then relief may be considered under §1.6015-4 for the portion of the deficiency for which the requesting spouse remains liable.

Proposed §1.6015-4(c) replaces the citation to Rev. Proc. 2000-15 (2000-1 CB 447) with Rev. Proc. 2013-34, which revised the factors used in determining if the requesting spouse is eligible for equitable relief under section 6015(f).

#### 5. Section 1.6015-5

A notice of proposed rulemaking (REG-132251-11) was published in the **Federal Register** (78 FR 49242) on August 13, 2013. Those regulations proposed changes to §1.6015-5 to remove the two-year deadline for taxpayers to file requests for equitable relief under section 6015(f), and other changes related to the time and manner for

requesting relief. These proposed regulations revise the notice of proposed rulemaking published on August 13, 2013 to add an effective date provision.

#### 6. Section 1.6015-6

The changes in proposed §1.6015-6 are intended to update the current regulations to reflect existing practice and guidance. Proposed §1.6015-6(a)(1) replaces the term “election” under §1.6015-2 or §1.6015-3 with “request for relief.” Proposed §1.6015-6(a)(2) includes a reference to Rev. Proc. 2003-19 (2003-1 CB 371), which provides guidance on a nonrequesting spouse’s right to appeal a preliminary determination to IRS Appeals.

#### 7. Section 1.6015-7

Section 1.6015-7 was revised to reflect the amendments to section 6015(e) in the 2006 Act that, as noted earlier in this preamble, conferred jurisdiction on the United States Tax Court to review the IRS’s denial of relief in cases in which taxpayers requested equitable relief under section 6015(f), without regard to whether the IRS has determined a deficiency. Prior to these amendments, the United States Tax Court lacked jurisdiction to review section 6015(f) determinations if no deficiency had been determined. The amendments apply to any liability for tax that arose on or after December 20, 2006, and any liability for tax that arose before December 20, 2006, but remained unpaid as of that date. Proposed §1.6015-7(c) revises the current regulations to reflect the changes to the restrictions on collection and corresponding tolling of the collection statute under section 6502. On versions of the Form 8857 dated before June 2007 a requesting spouse could request relief under just one subsection of section 6015. For claims for relief that were made under sections 6015(b) and (c) (and the

corresponding §§1.6015-2 and 1.6015-3), the IRS is prohibited from collecting against the requesting spouse (and the collection statute is tolled) beginning on the date the claim is filed. For requests for relief made solely under section 6015(f) (and the corresponding §1.6015-4), the IRS is prohibited from collecting against the requesting spouse (and the collection statute is tolled) only for liabilities arising on or after December 20, 2006, or liabilities arising before December 20, 2006, but remaining unpaid as of that date. For requests for relief made solely under §1.6015-4, the restrictions on collection and tolling of the collection statute do not start until December 20, 2006, for any requests filed before that date, assuming the tax remained unpaid as of that date. The restrictions on collection and tolling of the collection statute start as of the date the request is filed for requests filed on or after December 20, 2006.

#### 8. Section 1.66-4

The only changes to the existing regulations under section 66 are non-substantive changes. Proposed §1.66-4(a)(3) and (b) replace the citation to Rev. Proc. 2000-15 with Rev. Proc. 2013-34, which revised the factors used in determining whether a requesting spouse is eligible for equitable relief under section 66(c).

#### 9. Effective and Applicability Dates

Additionally, the effective and applicability date sections in the regulations under section 66 and section 6015 are reorganized to move the effective and applicability date sections within the specific regulation to which the dates apply. The separate effective date sections under §§1.66-5 and 1.6015-9 are removed.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact 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 these regulations. In addition, 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. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the “Addresses” heading. Treasury and the IRS request comments on all aspects of the proposed regulations. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Nancy Rose of the Office of the Associate Chief Counsel (Procedure and Administration).

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping 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 as follows:

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

Section 1.66-1 also issued under 26 U.S.C. 66(c).

Section 1.66-2 also issued under 26 U.S.C. 66(c).

Section 1.66-3 also issued under 26 U.S.C. 66(c).

\*\*\*\*\*

Par. 2. Section 1.66-1 is amended by adding paragraph (d) to read as follows:

§1.66-1 Treatment of community income.

\* \* \* \* \*

(d) Effective/applicability date. This section is applicable beginning July 10, 2003.

Par. 3. Section 1.66-2 is amended by adding paragraph (e) to read as follows:

§1.66-2 Treatment of community income where spouses live apart.

\* \* \* \* \*



(e) Effective/applicability date. This section is applicable beginning July 10, 2003.

Par. 4. Section 1.66-3 is amended by adding paragraph (d) to read as follows:

§1.66-3 Denial of the Federal income tax benefits resulting from the operation of community property law where spouses not notified.

\* \* \* \* \*

(d) Effective/applicability date. This section is applicable beginning July 10, 2003.

Par. 5. Section 1.66-4 is amended by:

1. The last sentence of paragraphs (a)(3) and (b) are revised.
2. Paragraph (l) is added and reserved.
3. Paragraph (m) is added.

The revisions and additions read as follows:

§1.66-4 Request for relief from the Federal income tax liability resulting from the operation of community property law.

(a) \* \* \*

(3) \* \* \* Factors relevant to whether it would be inequitable to hold a requesting spouse liable, more specifically described under the applicable administrative procedure issued under section 66(c) (Rev. Proc. 2013-34 (2013-2 CB 397) (See §601.601(d)(2) of this chapter), or other applicable guidance published by the Secretary), are to be considered in making a determination under this paragraph (a).

(b) \* \* \* Factors relevant to whether it would be inequitable to hold a requesting spouse liable, more specifically described under the applicable administrative procedure issues under section 66(c) (Rev. Proc. 2013-34 (2013-2 CB 397) (See

§601.601(d)(2) of this chapter), or other applicable guidance published by the Secretary), are to be considered in making a determination under this paragraph (b).

\* \* \* \* \*

(l) [Reserved]

(m) Effective/applicability date. This section is applicable beginning July 10, 2003, except that paragraphs (a)(3) and (b) of this section will be applicable on the date of publication of a Treasury Decision adopting these rules as final regulations in the **Federal Register**.

§1.66-5 [Removed]

Par. 6. Section 1.66-5 is removed.

Par. 7. Section 1.6015-0 is amended by:

1. In §1.6015-1, entries for paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (h)(6), (h)(7), (h)(8), (k), (l), (m), (n), (o), and (p) are added and the entry for paragraph (h)(5) is revised.

2. In §1.6015-2, entries for paragraphs (b), (c), (d), and (e) are revised and the entries for paragraphs (e)(1) and (e)(2) are removed.

3. In §1.6015-3, entries for paragraphs (a) and (c)(2)(v) are revised and entries for paragraphs (c)(2)(vi), (d)(2)(i)(A), (d)(2)(i)(B), and (e) are added.

4. In §1.6015-4, an entry for paragraph (d) is added.

5. In §1.6015-5, an entry for paragraph (d) is added.

6. In §1.6015-6, an entry for paragraph (d) is added.

7. In §1.6015-7, entries for paragraphs (c)(1) and (c)(4)(iii) are revised and entries for paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (d) are added.

8. In §1.6015-8, an entry for paragraph (d) is added.

9. Section 1.6015-9 entry is removed.

The revisions and additions read as follows:

§1.6015-0 Table of contents.

\* \* \* \* \*

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

\* \* \* \* \*

(e) \* \* \*

(1) In general.

(2) Situations in which relief under §1.6015-3 will not be considered to have been at issue in the prior proceeding.

(3) Meaningful participation.

(4) Examples.

(5) Collateral estoppel.

\* \* \* \* \*

(h) \* \* \*

(5) Request for relief.

(6) Unpaid tax and underpayment.

(7) Understatement.

(8) Deficiency.

\* \* \* \* \*

(k) Credit or refund.

(1) In general.

(2) No credit or refund allowed under §1.6015-3.

(3) No circumvention of §§1.6015-1(k)(2) and 1.6015-3(c)(1).

(4) Limitations on credit or refund.

(5) Requesting spouse limited to credit or refund of payments made by the requesting spouse.

(l) [Reserved]

(m) Penalties and interest.

(n) Attribution of understatement or deficiency resulting from an increase to adjusted gross income.

(1) In general.

(2) Examples.

(o) Abuse by nonrequesting spouse.

(p) Effective/applicability date.

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

\* \* \* \* \*

- (b) Know or reason to know.
- (c) Inequity.
- (d) Partial relief.
- (1) In general.
- (2) Example.
- (e) Effective/applicability date.

§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) Allocation of deficiency.

\* \* \* \* \*

- (c) \* \* \*

- (2) \* \* \*

- (v) Actual knowledge and community property.

- (vi) Abuse exception.

\* \* \* \* \*

- (d) \* \* \*

- (2) \* \* \*

- (i) \* \* \*

- (A) In general.

- (B) Calculating separate taxable income and tax due.

- (e) Effective/applicability date.

§1.6015-4 Equitable relief.

- (d) Effective/applicability date.

§1.6015-5 Time and manner for requesting relief.

\* \* \* \* \*

- (d) Effective/applicability date.

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

\* \* \* \* \*

- (d) Effective/applicability date.

§1.6015-7 Tax Court review.

\* \* \* \* \*

- (c) \* \* \*

- (1) Restrictions on collection.

- (i) Restrictions on collection for requests for relief made on or after December 20, 2006.

- (ii) Restrictions on collection for requests for relief made before December 20, 2006.

(iii) Rules for determining the period of the restrictions on collection.

\* \* \* \* \*

(4) \* \* \*

(iii) Assessment to which the request relates.

(d) Effective/applicability date.

§1.6015-8 Applicable liabilities.

\* \* \* \* \*

(d) Effective/applicability date.

Par. 8. Section 1.6015-1 is amended by:

1. Paragraphs (a)(2), (e), (h)(1), and (h)(5) are revised.
2. The last three sentences of paragraph (h)(4) are removed.
3. Paragraphs (h)(6), (7), and (8) and (k) are added.
4. Paragraph (l) is added and reserved.
5. Paragraphs (m), (n), (o), and (p) are added.

The revisions and additions read as follows:

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

(a) \* \* \*

(2) A requesting spouse may submit a single request for relief under §§1.6015-2, 1.6015-3, and 1.6015-4. Upon submitting a request for relief, the IRS will consider whether relief is appropriate under §§1.6015-2 and 1.6015-3 and, to the extent relief is unavailable under both of those provisions, under §1.6015-4. 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.

\* \* \* \* \*

(e) Res judicata and collateral estoppel--(1) In general. 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 the issue of relief under section 6015.

(2) Situations in which relief under §1.6015-3 will not be considered to have been at issue in the prior proceeding. Relief under §1.6015-3 will not be considered to have been at issue in a prior proceeding if the requesting spouse only raised the issue of relief under section 6015 in general and did not specify under which subsection relief was being requested, and the requesting spouse was not eligible for relief under §1.6015-3 during the prior proceeding because the requesting spouse was not divorced, widowed, or legally separated, or had been a member of the same household as the nonrequesting spouse during the prior 12 months.

(3) Meaningful participation. A requesting spouse meaningfully participated in the prior proceeding if the requesting spouse was involved in the proceeding so that the requesting spouse could have raised the issue of relief under section 6015 in that proceeding. Meaningful participation is a facts and circumstances determination. Absent abuse as set forth in paragraph (i) of this section, the following is a nonexclusive list of acts to be considered in making the facts and circumstances determination: whether the requesting spouse participated in the IRS Appeals process while the prior proceeding was docketed; whether the requesting spouse participated in pretrial meetings; whether the requesting spouse participated in discovery; whether the requesting spouse participated in settlement negotiations; whether the requesting spouse signed court documents, such as a petition, a stipulation of facts, motions,

briefs, or any other documents; whether the requesting spouse participated at trial (for example, the requesting spouse was present or testified at the prior proceeding); and whether the requesting spouse was represented by counsel in the prior proceeding. No one act necessarily determines the outcome. The degree of importance of each act varies depending on the requesting spouse's facts and circumstances.

(i) Notwithstanding the fact that a requesting spouse performed any of the acts listed in paragraph (e)(3) of this section in the prior proceeding, the requesting spouse will not be considered to have meaningfully participated in the prior proceeding if the requesting spouse establishes that the requesting spouse performed the acts because the nonrequesting spouse abused (as described in paragraph (o) of this section) or maintained control over the requesting spouse, and the requesting spouse did not challenge the nonrequesting spouse for fear of the nonrequesting spouse's retaliation.

(ii) A requesting spouse did not meaningfully participate in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding.

(iii) In a case petitioned from a statutory notice of deficiency under section 6213, the fact that the requesting spouse did not have the ability to effectively contest the underlying deficiency is irrelevant for purposes of determining whether the requesting spouse meaningfully participated in the court proceeding for purposes of paragraph (e)(1) of this section.

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

Example 1. In a prior court proceeding involving a petition from a notice of deficiency related to a joint income tax return, H and W were still married and filed a timely joint petition to the United States Tax Court. The petition stated that W was entitled to relief under section 6015 without specifying under which subsection she was

requesting relief. Before trial, H negotiates with the IRS Chief Counsel attorney and settles the case. W did not meaningfully participate. A stipulated decision was entered that did not mention relief under section 6015. One year later W files a request for relief under section 6015. While W did not meaningfully participate in the prior court proceeding, because relief under section 6015 was at issue in that case, res judicata applies except with respect to relief under §1.6015-3. Because W did not specify that she was requesting relief under §1.6015-3, and W was not eligible to request relief under that section because she was still married to the nonrequesting spouse throughout the court proceeding, relief under §1.6015-3 is not considered to have been at issue in that case. Thus, W is not barred by res judicata from raising relief under §1.6015-3 in a later case. However, any later claim from W requesting relief under §1.6015-2 or §1.6015-4 would be barred by res judicata.

Example 2. Same facts as in Example 1 of this paragraph (e)(4) except that H and W are divorced at the time the petition was filed. Because W was eligible to request relief under §1.6015-3 as she was divorced from H, relief under §1.6015-3 is considered to be at issue in the prior court proceeding and W is barred by res judicata from raising relief under §1.6015-3 in a later case. Thus, any later claim from W requesting relief under any subsection of section 6015 would be barred by res judicata.

Example 3. The IRS issued a notice of deficiency to H and W determining a deficiency on H and W's joint income tax return based on H's Schedule C business. H and W timely filed a petition in the United States Tax Court. W signed the petition and numerous other documents, participated in discussions regarding the case with the IRS Chief Counsel attorney, and ultimately agreed to a settlement of the case. W could have raised any issue, but W did not have any access to H's records regarding his Schedule C business, over which H maintained exclusive control. Relief under section 6015 was never raised in the court proceeding. If W were to later file a request for relief under section 6015, W's claim would be barred by res judicata. Considering these facts and circumstances, W meaningfully participated in the prior court proceeding regarding the deficiency. The fact that W could not have effectively contested the underlying deficiency because she had no access to H's Schedule C records is not relevant to the determination of whether W meaningfully participated. Instead the meaningful participation exception looks to W's involvement in the prior court proceeding and her ability to raise relief under section 6015 as a defense.

Example 4. Same facts as Example 3 of this paragraph (e)(4), except that W's participation in discussions with the IRS Chief Counsel attorney were clearly controlled by H, and W was fearful of H when she agreed to settle the case. In this situation, her involvement in the prior proceeding would not be considered meaningful participation because W was able to establish that H maintained control over her and that she did not challenge H for fear of the H's retaliation. If W were to later file a request for relief under section 6015, her claim would not be barred by res judicata.

Example 5. In March 2014, the IRS issued a notice of deficiency to H and W determining a deficiency on H and W's joint income tax return for tax year 2011. H and



W timely filed a pro se petition in the United States Tax Court for redetermination of the deficiency. W signed the petition, but otherwise, H handled the entire litigation, from discussing the case with the IRS Chief Counsel attorney to agreeing to a settlement of the case. Relief under section 6015 was never raised. W signed the decision document that H had agreed to with the IRS Chief Counsel attorney. If W were to later file a claim requesting relief under section 6015, W's claim would not be barred by res judicata. Considering these facts and circumstances, W's involvement in the prior court proceeding regarding the deficiency did not rise to the level of meaningful participation.

Example 6. Same facts as in Example 5 of this paragraph (e)(4) except that W also participated in settlement negotiations with the IRS Chief Counsel attorney that resulted in the decision document entered in the case. Considering these facts and circumstances—signing the petition and the decision document, along with participating in the negotiations that led to the settlement reflected in the decision document—W meaningfully participated in the prior court proceeding regarding the deficiency because W could have raised relief under section 6015. Any later claim from W requesting relief under section 6015 would be barred by res judicata.

Example 7. In a prior court proceeding involving a petition from a notice of deficiency, H and W hired counsel, C, to represent them in the United States Tax Court. W agreed to C's representation, but otherwise, only H met and communicated with C about the case. C signed and filed the petition, discussed the case with the IRS Chief Counsel attorney, and agreed to a settlement of the case after discussing it with H. Relief under section 6015 was never raised. C signed the decision document on behalf of H and W. If W were to later file a claim requesting relief under section 6015, W's claim would not be barred by res judicata. Even though W was represented by counsel in the prior court proceeding regarding the deficiency, considering all the facts and circumstances, W's involvement in the prior court proceeding did not rise to the level of meaningful participation.

Example 8. In a prior court proceeding involving a petition from a notice of deficiency, H did not sign the petition or other court documents, participate in the Appeals or Counsel settlement negotiations, attend pretrial meetings, or hire separate counsel. H did, however, attend the trial and testify. Considering these facts and circumstances, H's participation in the trial is sufficient to establish that H meaningfully participated in the prior court proceeding regarding the deficiency because H's participation provided H with a definite opportunity to raise relief under section 6015 in that proceeding. Any later claim from H requesting relief under section 6015 would be barred by res judicata.

Example 9. The IRS issued a joint notice of deficiency to H and W determining a deficiency on H and W's joint income tax return based on H's Schedule C business. Only W timely filed a petition in the United States Tax Court. W conceded the deficiency shortly before trial and signed a decision document. W did not raise relief under section 6015. If W were to later file a claim requesting relief under section 6015,

W's claim would be barred by res judicata. Because W was the only petitioner in the prior court proceeding, W's participation in that proceeding was meaningful participation.

(5) Collateral estoppel. 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.

\* \* \* \* \*

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

\* \* \* \* \*

(5) Request for relief. A qualifying request under §1.6015-2, §1.6015-3, or §1.6015-4 is the first timely request for relief from joint and several liability for the tax year for which relief is sought. A qualifying request also includes a requesting spouse's second request for 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 at the time of the first request solely because the qualifications of §1.6015-3(a) were not satisfied; and

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

(6) Unpaid tax and underpayment. Unpaid tax and underpayment for purposes of §1.6015-4 means the balance due shown on the joint return, reduced by the tax paid

with the joint return. The balance due shown on the joint return is determined after application of the credits for tax withheld under section 31, any amounts paid as estimated income tax, any amounts paid with an extension of time to file, or any other credits applied against the total tax reported on the return. Tax paid with the joint return includes a check or money order remitted with the return or Form 1040-V, "Payment Voucher," or payment by direct debit, credit card, or other commercially acceptable means under section 6311. If the joint return is filed on or before the last day prescribed for filing under section 6072 (determined without regard to any extension of time to file under section 6081), the tax paid with the joint return includes any tax paid on or before the last day prescribed for payment under section 6151. If the joint return is filed after the last day prescribed for filing, the tax paid with the joint return includes any tax paid on or before the date the joint return is filed. A requesting spouse is not entitled to be considered for relief under §1.6015-4 for any tax paid with the joint return. If the tax paid with the joint return completely satisfies the balance due shown on the return, then there is no unpaid tax for purposes of §1.6015-4.

(7) Understatement. The term understatement means the excess of the amount of tax required to be shown on the return for the taxable year over the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

(8) Deficiency. The term deficiency has the same meaning given to that term in section 6211 and §301.6211-1 of this chapter.

\* \* \* \* \*

(k) Credit or refund--(1) In general. Except as provided in paragraphs (k)(2) through (5) of this section, a requesting spouse who is eligible for relief can receive a credit or refund of payments made to satisfy the joint income tax liability, whether the liability resulted from an understatement or an underpayment.

(2) No credit or refund allowed under §1.6015-3. A requesting spouse is not entitled to a credit or refund of any payments made on the joint income tax liability as a result of allocating the deficiency under §1.6015-3. See section 6015(g)(3) and §1.6015-3(c)(1).

(3) No circumvention of §§1.6015-1(k)(2) and 1.6015-3(c)(1). Section 1.6015-4 may not be used to circumvent the limitation of §1.6015-3(c)(1) (such as, no refunds under §1.6015-3). Therefore, relief is not available under this section to obtain a credit or refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under §1.6015-3. For purposes of determining whether the requesting spouse qualifies for relief under §1.6015-3, the fact that a refund was barred by section 6015(g)(2) and paragraph (k)(2) of this section does not mean that the requesting spouse did not receive full relief. A requesting spouse is entitled to full relief under §1.6015-3 if the requesting spouse was eligible to allocate the deficiency in full to the nonrequesting spouse.

(4) Limitations on credit or refund. The availability of credit or refund is subject to the limitations provided by sections 6511 and 6512(b). Generally the filing of Form 8857, "Request for Innocent Spouse Relief," will be treated as the filing of a claim for credit or refund even if the requesting spouse does not specifically request a credit or refund. The amount allowable as a credit or refund, assuming the requesting spouse

is eligible for relief, includes payments made after the filing of the Form 8857, as well as payments made within the applicable look-back period provided by section 6511(b).

(5) Requesting spouse limited to credit or refund of payments made by the requesting spouse. A requesting spouse is only eligible for a credit or refund of payments to the extent the requesting spouse establishes that he or she provided the funds used to make the payment for which he or she seeks a credit or refund. Thus, a requesting spouse is not eligible for a credit or refund of payments made by the nonrequesting spouse. A requesting spouse is also generally not eligible for a credit or refund of joint payments made with the nonrequesting spouse. A requesting spouse, however, may be eligible for a credit or refund of the requesting spouse's portion of an overpayment from a joint return filed with the nonrequesting spouse that was offset under section 6402 to the spouses' joint income tax liability, to the extent that the requesting spouse can establish his or her contribution to the overpayment.

(l) [Reserved]

(m) Penalties and interest. Generally, a spouse who is entitled to relief under §1.6015-2, §1.6015-3, or §1.6015-4 is also entitled to relief from related penalties, additions to tax, additional amounts, and interest (collectively, penalties and interest). Penalties and interest, however, are not separate erroneous items (as defined in paragraph (h)(4) of this section) from which a requesting spouse can be relieved separate from the tax. Rather relief from penalties and interest related to an understatement or deficiency will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. For penalties that relate to a particular erroneous item, see §1.6015-3(d)(4)(iv)(B). Penalties and

interest on an underpayment are also not separate items from which a requesting spouse may obtain relief under §1.6015-4. Relief from penalties and interest on the underpayment will be determined based on the amount of relief from the underpayment to which the requesting spouse is entitled. If the underlying tax liability (whether an assessed deficiency or an underpayment) was paid in full after the joint return was filed but penalties and interest remain unpaid, the requesting spouse may be relieved from the penalties and interest if the requesting spouse is entitled to relief from the underlying tax. The fact that the requesting spouse is entitled to relief from the underlying tax but is not entitled to a refund because of §1.6015-1(k) does not prevent the requesting spouse from being relieved from liability for the penalties and interest.

(n) Attribution of understatement or deficiency resulting from an increase to adjusted gross income--(1) In general. Any portion of an understatement or deficiency relating to the disallowance of an item (or increase to an amount of tax) separately listed on an individual income tax return solely due to the increase of adjusted gross income (or modified adjusted gross income or other similar phase-out thresholds) as a result of an erroneous item solely attributable to the nonrequesting spouse will also be attributable to the nonrequesting spouse unless the evidence shows that a different result is appropriate. If the increase to adjusted gross income is the result of an erroneous item(s) of both the requesting and nonrequesting spouses, the item disallowed (or increased tax) due to the increase to adjusted gross income will be attributable to the requesting spouse in the same ratio as the amount of the item or

items attributable to the requesting spouse over the total amount of the items that resulted in the increase to adjusted gross income.

(2) Examples. The following examples illustrate the rules of this paragraph (n):

Example 1. H and W file a joint Federal income tax return. After applying withholding credits there is a tax liability of \$500. Based on the earned income reported on the return and the number of qualifying children, H and W are entitled to an Earned Income Tax Credit (EITC) in the amount of \$1,500. The EITC satisfies the \$500 in tax due and H and W receive a refund in the amount of \$1,000. Later the IRS concludes that H had additional unreported income, which increased the tax liability on the return to \$1,000 and resulted in H and W's EITC being reduced to zero due to their adjusted gross income exceeding the maximum amount. The IRS determines a deficiency in the amount of \$2,000 – \$1,500 of which relates to the EITC and \$500 of which relates to H's erroneous item – the omitted income. If W requests relief under section 6015, the entire \$2,000 deficiency is attributable to H because the EITC was disallowed solely due to the increase of adjusted gross income as a result of H's omitted income. W satisfies the attribution factor of §1.6015-2(a)(2) and the threshold condition in section 4.01(7) of Rev. Proc. 2013-34 with respect to the entire deficiency. Under §1.6015-3(d)(4)(ii), the portion of the deficiency related to the disallowance of the EITC is initially allocated to H.

Example 2. H and W file a joint Federal income tax return reporting a total tax liability of \$22,000. Later the IRS concludes that H had additional unreported income in the amount of \$20,000, which increased H and W's adjusted gross income and their alternative minimum taxable income. As a result, H and W now owe the Alternative Minimum Tax (AMT). The IRS determines a deficiency in the amount of \$5,250 – \$250 of which relates to H and W's AMT liability as determined under section 55 and \$5,000 of which relates to the increase in H and W's section 1 income tax liability. If W requests relief under section 6015, the entire \$5,250 deficiency is attributable to H because H and W owe the AMT solely due to H's erroneous item – the omitted income. W satisfies the attribution factor of §1.6015-2(a)(2) and the threshold condition in section 4.01(7) of Rev. Proc. 2013-34 with respect to the entire deficiency. Under §1.6015-3(d)(4)(ii), the portion of the deficiency related to the AMT is initially allocated to H.

Example 3. H and W file a joint Federal income tax return reporting itemized deductions on Schedule A, "Itemized Deductions," in the amount of \$50,000. Later the IRS concludes that \$10,000 of W's expenses reported on her Schedule C, "Profit or Loss From Business," were not allowable, which increased H and W's adjusted gross income. As a result, H and W's itemized expenses are reduced to \$45,000 as their adjusted gross income exceeded the phase-out amount. The IRS determines a deficiency in the amount of \$5,000. If H requests relief under section 6015, the entire \$5,000 deficiency is attributable to W because the itemized deductions were reduced solely due to the increase of adjusted gross income as a result of W's erroneous item – the Schedule C expenses. H satisfies the attribution factor of §1.6015-2(a)(2) and the

threshold condition in section 4.01(7) of Rev. Proc. 2013-34 with respect to the entire deficiency. Under §1.6015-3(d)(2)(iv), the portion of the deficiency related to the disallowance of the Schedule A deductions is initially allocated to W.

Example 4. H and W file a joint Federal income tax return reporting itemized deductions on Schedule A in the amount of \$50,000. Later the IRS concludes that H had additional unreported income in the amount of \$4,000 and W had additional unreported income in the amount of \$6,000, which increased H and W's adjusted gross income. As a result, H and W's itemized expenses are reduced to \$45,000 as their adjusted gross income exceeded the phase-out amount. The IRS determines a deficiency in the amount of \$6,000 – \$1,500 of which relates to H's erroneous item, \$2,500 of which relates to W's erroneous item, and \$2,000 of which relates to the reduced itemized deductions. Assuming the conditions for relief under section 6015 are otherwise satisfied, the \$2,500 deficiency from W's omitted income is attributable to W and the \$1,500 deficiency from H's omitted income is attributable to H. Because the increase to adjusted gross income as a result of both H and W's erroneous items reduced the itemized deductions, the portion of the deficiency related to the disallowed itemized deductions is partially attributable to both H and W. Of the \$2,000 deficiency from the disallowed itemized deductions, \$800 is attributable to H because 40 percent ( $\$4,000/\$10,000$ ) of the items that resulted in the increase to adjusted gross income are attributable to H, and \$1,200 is attributable to W because 60 percent ( $\$6,000/\$10,000$ ) of the items that resulted in the increase to adjusted gross income are attributable to W. If both H and W requested relief the most H could be relieved from is \$3700, the amount attributable to W ( $\$2500 + \$1200$ ), and the most W could be relieved from is \$2300, the amount attributable to H ( $\$1500 + \$800$ ).

(o) Abuse by the nonrequesting spouse. Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws. All the facts and circumstances are considered in determining whether a requesting spouse was abused. The impact of a nonrequesting spouse's alcohol or drug abuse is also considered in determining whether a requesting spouse was abused. Depending on the facts and circumstances, abuse of the requesting spouse's child or other family member living in the household may constitute abuse of the requesting spouse.



(p) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 9. Section 1.6015-2 is amended by:

1. Paragraph (a) introductory text is revised.
2. Paragraph (b) is removed.
3. Paragraphs (c), (d), and (e) are redesignated as paragraphs (b), (c), and (d).
4. Newly designated paragraph (b) is revised.
5. The last sentence of newly designated paragraph (c) is revised.
6. Newly designated paragraph (d) is revised.
7. Paragraph (e) is added.

The revisions and addition read as follows:

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

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

\* \* \* \* \*

(b) 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; any deceit or evasiveness of the nonrequesting spouse; 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; the requesting spouse's involvement in business or household financial matters; 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; any lavish or unusual expenditures compared with past spending levels; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (for example, omitted income from an investment regularly reported on prior years' returns). A requesting spouse has knowledge or reason to know of the portion of an understatement related to an item attributable to the nonrequesting spouse under §1.6015-1(n) if the requesting spouse knows or has reason to know of the nonrequesting spouse's erroneous item or items that resulted in the increase to adjusted gross income. Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in §1.6015-1(o)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, the requesting spouse will be treated as not having

knowledge or reason to know of the items giving rise to the understatement. If, however, the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, §1.6013-4(d) applies.

(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. 2013-34 (2013-2 CB 397), or other guidance published by the Treasury and IRS (see §601.601(d)(2) of this chapter).

(d) Partial relief--(1) In general. If a requesting spouse had no knowledge or reason to know of 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 (d):

Example. H and W are married and file their 2014 joint income tax return in March 2015. In April 2016, H is convicted of embezzling \$2 million from his employer during 2014. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. H and W had a joint bank account into which H and W deposited all of their reported income. Each month during 2014, H transferred an additional \$10,000 from the individual account to H and W's joint bank account. Although H paid the household expenses using this joint account, W regularly received the bank statements relating to the account. W did not know or have reason to know of H's embezzling activities. W did, however, know or have 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 and she regularly received bank statements showing the monthly deposits from H's individual 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.

(e) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 10. Section 1.6015-3 is amended by:

1. The paragraph heading and first sentence of paragraph (a) are revised.
2. Paragraphs (c)(1) and (c)(2)(iv) are revised.
3. A sentence is added at the end of paragraph (c)(2)(i).
4. Paragraph (c)(2)(v) is redesignated as paragraph (c)(2)(vi) and paragraph (c)(2)(v) is added.
5. Newly redesignated paragraph (c)(2)(vi) is revised.
6. Paragraphs (d)(2)(i) and (d)(5) introductory text are revised.
7. In paragraph (d)(5), Examples 7, 8, 9, 10, and 11 are added.
8. Paragraph (e) is added.

The revisions and additions read as follows:

§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) Allocation of deficiency. A requesting spouse may allocate a deficiency (as defined in §1.6015-1(h)(8)) 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 the request for relief is filed. \* \* \*

(c) \* \* \* (1) No refunds. Although a requesting spouse may be eligible to allocate the deficiency to the nonrequesting spouse, refunds are not authorized under this section. Refunds of paid liabilities for which a requesting spouse was entitled to

allocate the deficiency under this section may be considered under §1.6015-2 but not under §1.6015-4. See §1.6015-1(k)(3).

(2) \* \* \* (i) \* \* \* A requesting spouse has actual knowledge of the portion of an understatement related to an item attributable to the nonrequesting spouse under §1.6015-1(n) and allocable to the nonrequesting spouse under paragraph (d) of this section if the requesting spouse has actual knowledge of the nonrequesting spouse's erroneous item or items that resulted in the increase to adjusted gross income.

\* \* \* \* \*

(iv) Factors supporting actual knowledge. To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the Internal Revenue Service (IRS) will consider all the facts and circumstances, including but not limited to, whether the requesting spouse made a deliberate effort to avoid learning about the item to be shielded from liability; whether the erroneous item would have been allocable to the requesting spouse but for the tax benefit rule in paragraph (d)(2)(i) of this section; and whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. These factors, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item. If the requesting spouse had actual knowledge of an erroneous item, the portion of the deficiency with respect to that item will not be allocated to the nonrequesting spouse.

(v) Actual knowledge and community property. 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 asserted dominion and control over 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 one-half of the bank account. Assuming there is no other indication that she asserted dominion and control over the item, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(v) because she does not hold the account in her name.

(vi) Abuse exception. Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in §1.6015-1(o)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, the limitation on the requesting spouse's ability to allocate the deficiency because of actual knowledge will not apply. The requesting spouse will be treated as not having knowledge of the items giving rise to the deficiency. If, however, the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, §1.6013-4(d) applies.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) Benefit on the return--(A) In general. An erroneous item that would otherwise be allocated to one spouse is allocated to the second spouse to the extent that the second spouse received a tax benefit on the joint return and the first spouse did not receive a tax benefit. An erroneous item under this paragraph can be allocated to a requesting spouse or a nonrequesting spouse, but only a spouse who requests relief under this section may allocate the deficiency. A spouse who does not request relief under section 6015 remains fully liable for the deficiency. An allocation from a requesting spouse to a nonrequesting spouse reduces the amount for which a requesting spouse remains liable while an allocation from a nonrequesting spouse to a requesting spouse increases the amount for which a requesting spouse remains liable.

(B) Calculating separate taxable income and tax due. Under section 6015(d)(3)(A), the items giving rise to the deficiency must be allocated to each spouse in the same manner as the items would have been allocated if the spouses had filed separate returns. In determining whether a spouse received a tax benefit from the item, it may be necessary to calculate each spouse's hypothetical separate return taxable income, determined without regard to the erroneous items, and taking into consideration adjusted gross income, allowable deductions and losses, and allowable credits against tax.

\* \* \* \* \*

(5) Examples. The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to allocate the

deficiency, that a request under section 6015 was timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse actually knew of the erroneous items allocable to the other spouse. The examples are as follows:

\* \* \* \* \*

Example 7. Calculation of tax benefit based on taxable income. (i) On their joint Federal income tax return for tax year 2009, H reports \$60,000 of wage income; W reports \$25,000 of wage income; and H and W report joint interest income of \$2,000 and joint ordinary income from investments in the amount of \$6,000. In addition, H and W properly deduct \$30,000 for their two personal exemptions and itemized deductions, and W erroneously reports a loss from her separate investment in a partnership in the amount of \$20,000. On May 3, 2012, a \$5,000 deficiency is assessed with respect to their 2009 joint return. W dies in November 2012. H requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of W's \$20,000 loss (which is initially allocable to W).

(ii) After taking all sources of income and all allowable deductions into consideration, H's separate taxable income is \$49,000 and W's separate taxable income is \$14,000, calculated as follows:

|                           | <u>H</u>          | <u>W</u>          |
|---------------------------|-------------------|-------------------|
| Wages                     | \$60,000          | \$25,000          |
| Interest Income           | \$1,000           | \$1,000           |
| Investment Income         | <u>\$3,000</u>    | <u>\$3,000</u>    |
| Adj. Gross Income         | \$64,000          | \$29,000          |
| Exemptions and Deductions | <u>(\$15,000)</u> | <u>(\$15,000)</u> |
| Taxable Income            | \$49,000          | \$14,000          |
| W's Disallowed Loss       |                   | <u>(\$20,000)</u> |
| Tax Benefit Not Used by W |                   | (\$6,000)         |
| Tax Benefit to W          |                   | (\$14,000)        |
| Tax Benefit to H          | (\$6,000)         |                   |

(iii) As W only used \$14,000 of her \$20,000 loss from her separate investment in a partnership to offset her separate taxable income, H benefited from the other \$6,000 of the disallowed loss used to offset his separate taxable income. Therefore, \$14,000 of



the disallowed \$20,000 loss is allocable to W (7/10) and \$6,000 of the disallowed loss is allocable to H (3/10). H's liability is limited to \$1,500 (3/10 of the \$5,000 deficiency).

Example 8. Nonrequesting spouse receives a benefit on the joint return from the requesting spouse's erroneous item. (i) On their joint Federal income tax return for tax year 2008, W reports \$40,000 of wage income and H reports \$12,000 of wage income. In addition, H and W properly deduct \$20,000 for their two personal exemptions and itemized deductions, H erroneously deducts a casualty loss in the amount of \$5,000 related to a loss on his separately held property, and W erroneously takes a loss in the amount of \$7,000 from an investment in a tax shelter. H and W legally separate in 2010, and on October 21, 2011, a \$2,400 deficiency is assessed with respect to their 2008 joint return. H requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of H's \$5,000 loss and all of W's \$7,000 loss (which is allocable to W and for which H did not have actual knowledge).

(ii) The \$5,000 casualty loss is initially allocated to H. As H's separate taxable income is only \$2,000 (\$12,000 wage income less \$10,000 – 50 percent of the exemptions and itemized deductions), H only used \$2,000 of his \$5,000 casualty loss to offset his separate taxable income, and W benefited from the other \$3,000 of the disallowed loss, which offset a portion of her separate taxable income. Therefore, \$3,000 of the disallowed loss is allocable to W even though the loss is H's item, and \$2,000 of the loss is allocable to H. The \$7,000 tax shelter loss is also allocable to W as H did not have knowledge of the facts that made the tax shelter item unallowable as a loss. H's allocation percentage is 1/6 (\$2,000/\$12,000) and H's liability is limited to \$400 (1/6 of \$2,400 deficiency). The IRS may collect up to \$400 from H and up to \$2,400 from W (although the total amount collected may not exceed \$2,400).

(iii) If the IRS could establish that H had knowledge of the facts that made the deduction for his casualty loss unallowable, the entire \$5,000 casualty loss would be allocable to H. H's allocation percentage would be 5/12 (\$5,000/\$12,000) and H's liability would be limited to \$1,000 (5/12 of \$2,400 deficiency).

(iv) If W also requested innocent spouse relief (and H did not have knowledge of the facts that made his loss unallowable), there would be no remaining joint and several liability, and the IRS would be permitted to collect \$400 from H (1/6 (\$2,000/\$12,000) of the \$2,400 deficiency) and \$2,000 (5/6 (\$10,000/\$12,000) of \$2,400 deficiency) from W. If the IRS could establish that W had knowledge of the facts that made the deduction for the casualty loss unallowable, W would then be liable for the entire \$2,400 deficiency, while H would remain liable for up to \$400.

Example 9. Allocation of liability based on joint erroneous loss item. (i) On their joint Federal income tax return for tax year 2009, H reports \$100,000 of wage income and W reports \$50,000 of wage income. In addition, H and W properly deduct \$40,000 for their two personal exemptions and itemized deductions, and erroneously report a loss in the amount of \$50,000 from a jointly-held investment in a tax shelter. H and W divorce in 2011, and on August 14, 2012, a \$12,000 deficiency is assessed with respect

to their 2009 joint return. W requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of the \$50,000 loss.

(ii) Under paragraph (d)(2)(iv) of this section, in the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item related to a jointly-owned investment is generally allocated 50 percent to each spouse. Thus, \$25,000 of the loss is allocated to each spouse. In determining the effect, if any, of the tax benefit rule of §1.6015-1(d)(2)(i), H's separate taxable income is \$80,000: \$100,000 wage income minus \$20,000, or 50 percent of the exemptions and itemized deductions; and W's separate taxable income is \$30,000: \$50,000 minus \$20,000. As both H's and W's separate taxable income exceeds their allocated share of the disallowed loss, no additional amount is allocated between the spouses. W's allocation percentage is 1/2 ( $\$25,000/\$50,000$ ) and W's liability is limited to \$6,000 (1/2 of \$12,000 deficiency). The IRS may collect up to \$6,000 from W and up to \$12,000 from H (although the total amount collected may not exceed \$12,000).

(iii) If the IRS could establish that W had knowledge of the facts that made the loss unallowable, both H and W would then remain jointly and severally liable for the \$12,000 deficiency.

Example 10. Calculation of tax benefit based on joint erroneous item. Assume the same facts as in Example 9 of this paragraph (d)(5), except that W's wage income is only \$40,000. W's separate taxable income would then be only \$20,000 (\$40,000 wage income minus \$20,000 – 50 percent of the exemptions and itemized deductions). W would only be able to use \$20,000 of the \$25,000 loss from the tax shelter to offset her separate taxable income. Accordingly, H benefited from the other \$5,000 of the disallowed loss, which was used to offset a portion of his separate taxable income. Therefore, \$20,000 of the disallowed loss is allocable to W, and \$30,000 is allocable to H: \$25,000 (H's 50 percent of the disallowed loss) plus \$5,000 (the portion of W's 50 percent that is allocable to H because H received a tax benefit). W's allocation percentage is 2/5 ( $\$20,000/\$50,000$ ) and W's liability is limited to \$4,800 (2/5 of \$12,000 deficiency). The IRS may collect up to \$4,800 from W and up to \$12,000 from H (although the total amount collected may not exceed \$12,000).

Example 11. Allocation of erroneous item based on fraud of the nonrequesting spouse. During 2009, W fraudulently accesses H's brokerage account to sell stock that H had separately received from an inheritance. W deposits the funds from the sale in a separate bank account to which H did not have access. H and W file a joint Federal income tax return for tax year 2009. The return did not include the income from the sale of the stock. H and W divorce in November 2010. The divorce decree states that W committed forgery and defrauded H with respect to his brokerage account. The IRS commences an audit in March 2011 and determines a deficiency based on the omission of the income from the sale of the stock. H requests innocent spouse relief. Under paragraph (d)(2)(iii) of this section, items of investment income are generally allocated to the spouse who owned the investment, which in this case would be H. Under paragraph (d)(2)(ii) of this section, however, the IRS may allocate any item between the

spouses if the IRS determines that the allocation is appropriate due to fraud by one or both spouses. The IRS determines that W committed fraud with respect to H and as a result it is appropriate to allocate the deficiency to W under paragraph (d)(2)(ii).

(e) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 11. Section 1.6015- 4 is revised to read as follows:

§1.6015-4 Equitable relief.

(a) A requesting spouse who files a joint return for which an understatement or deficiency (as defined by §1.6015-1(h)(7) and (8)) was determined or for which there was unpaid tax (as defined by §1.6015-1(h)(6)), and who does not qualify for full relief under §1.6015-2 or §1.6015-3, may be entitled to equitable relief under this section. The Internal Revenue Service (IRS) 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). 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. See §1.6015-1(k)(3). If the requesting spouse is only eligible for partial relief under §1.6015-3 (i.e., some portion of the deficiency is allocable to the requesting spouse), then the requesting spouse may be considered for relief under this section with respect to the portion of the deficiency for which the requesting spouse was not entitled to relief.

(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. 2013-34 (2013-1 IRB 397), or other guidance published by the Treasury and IRS (see §601.601(d)(2) of this chapter).

(d) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 12. Section 1.6015- 5 is amended by adding paragraph (d) to read as follows:

§1.6015-5. Time and manner for requesting relief.

\* \* \* \* \*

(d) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 13. Section 1.6015-6 is amended by revising the first sentence of paragraph (a)(1), adding a sentence at the end of paragraph (a)(2), and adding paragraph (d) to read as follows:

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

(a) \* \* \* (1) When the Internal Revenue Service (IRS) receives a request for relief under §1.6015-2, §1.6015-3, or §1.6015-4, the IRS must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's request for relief. \* \* \*

(2) \* \* \* For guidance concerning the nonrequesting spouse's right to appeal the preliminary determination to IRS Appeals, see Rev. Proc. 2003-19 (2003-1 CB 371), or other guidance published by the Treasury Department and the IRS (see §601.601(d)(2) of this chapter).

\* \* \* \* \*

(d) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.**

Par. 14. In §1.6015-7, paragraphs (b), (c)(1), (c)(3), and (c)(4)(iii) are revised and paragraph (d) is added to read as follows:

§1.6015-7 Tax Court review.

\* \* \* \* \*

(b) Time period for petitioning the Tax Court. Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review the denial of relief under §1.6015-1 within 90 days after the date the Internal Revenue Service's (IRS) final determination is mailed by certified or registered mail (the 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 a request for relief under section 6015, the requesting spouse may petition the Tax Court to review the request 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 request for relief if the Tax Court has jurisdiction under another section of the Internal Revenue Code, such as section 6213(a) or section 6330(d). This paragraph (b) applies to liabilities arising on or after December 20, 2006, or arising prior

to December 20, 2006, and remaining unpaid as of that date. For liabilities arising prior to December 20, 2006, which were fully paid prior to that date, the requesting spouse may petition the Tax Court to review the denial of relief as discussed above, but only with respect to denials of relief involving understatements under §1.6015-2, §1.6015-3, or §1.6015-4.

(c) Restrictions on collection and suspension of the running of the period of limitations--(1) Restrictions on collection--(i) Restrictions on collection for requests for relief made on or after December 20, 2006. Unless the IRS determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a spouse requesting relief under §1.6015-2, §1.6015-3, or §1.6015-4 (except for certain requests for relief made solely under §1.6015-4) for the collection of any assessment to which the request 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 requests for relief made solely under §1.6015-4, the restrictions on collection only apply if the liability arose on or after December 20, 2006, or arose prior to December 20, 2006, and remained unpaid as of that date. The restrictions on collection begin on the date the request is filed.

(ii) Restriction on collection for requests for relief made before December 20, 2006. Unless the IRS determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse requesting relief under §1.6015-2 or §1.6015-3 for the collection of any assessment to which the request 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. The restrictions on collection begin on the date the request is filed with the IRS. For requests for relief made solely under §1.6015-4, the restrictions on collection do not begin until December 20, 2006, and only apply with respect to liabilities remaining unpaid on or after that date.

(iii) Rules for determining the period of the restrictions on collection. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if the requesting spouse appeals the Tax Court's decision, the IRS 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 paragraphs (c)(1)(i) and (ii) of this section means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

\* \* \* \* \*

(3) Suspension of the running of the period of limitations. The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which the request under §1.6015-2, §1.6015-3, or §1.6015-4 relates is suspended for the period during which the IRS is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter. If the requesting spouse, however, signs a waiver of the restrictions on collection in accordance with paragraph (c)(2) of this section, the suspension of the period of

limitations in section 6502 on collection against the requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the IRS.

(4) \* \* \*

(iii) Assessment to which the request relates. For purposes of this paragraph (c), the assessment to which the request relates is the entire assessment of the understatement or the balance due shown on the return to which the request relates, even if the request for relief is made with respect to only part of that understatement or balance due.

(d) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 15. Section 1.6015-8 is amended by adding paragraph (d) to read as follows:

§1.6015-8 Applicable liabilities.

\* \* \* \* \*

(d) Effective/applicability date. This section will be applicable on the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

§1.6015-9 [Removed]

Par. 16. Section 1.6015-9 is removed.

§§1.6015-3 and 1.6015-8 [Amended]

Par. 17. For each entry in the “Section” column remove the language in the “Remove” column and add the language in the “Add” column in its place.



| Section   | Remove           | Add              |
|---|------------------|------------------|
| 1.6015-3(c)(4) <u>Example 4</u><br>(ii), (iii), (iv), and (v), first sentence | <u>Example 5</u> | <u>Example 4</u> |
| 1.6015-3(c)(4) <u>Example 5</u><br>(ii), (iii), and (iv), first sentence      | <u>Example 6</u> | <u>Example 5</u> |
| 1.6015-8(c) <u>Example 1</u> ,<br>fifth sentence                              | 6015(b)          | 6015             |

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

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