

Checkpoint Contents

Federal Library

Federal Editorial Materials

Federal Taxes Weekly Alert Newsletter

Preview Documents for the week of 09/07/2006 - Volume 52, No. 36

Articles

IRS changes litigating position on equitable innocent spouse relief (09/07/2006)

Federal Taxes Weekly Alert, 09/07/2006, Volume 52, No. 36

IRS changes litigating position on equitable innocent spouse relief

Chief Counsel Notice 2006-020

A new Chief Counsel Notice provides changed procedures on how IRS litigators should handle certain equitable innocent spouse relief cases in light of the Tax Court's recent decision in *David Bruce Billings*, (2006) 127 TC No. 2 . In that case, the Tax Court, reversing its earlier position, held that it lacks jurisdiction to review IRS's denial of equitable innocent spouse relief where IRS has not issued a deficiency notice (see Weekly Alert ¶ 7 07/27/2006). The new Chief Counsel Notice supersedes an earlier one, which provided that IRS's equitable innocent spouse determinations were reviewable by any court.

Background. Generally, married taxpayers who file joint federal income tax returns are jointly and severally liable for the tax. (Code Sec. 6013(d)) Code Sec. 6015 provides procedures for seeking relief from joint and several liability, i.e, innocent spouse relief.

Code Sec. 6015(f) authorizes IRS to prescribe procedures for providing "equitable relief" when it would be inequitable to hold one individual liable for any unpaid tax or deficiency relating to a joint return. Under Code Sec. 6015(e) , however, the Tax Court only has jurisdiction "[i]n the case of an individual against whom a deficiency has been asserted." The filing of a petition in response to a final Notice of Determination under Code Sec. 6015(f) or after the claim has been pending for six months is often referred to as a "stand-alone" proceeding because jurisdiction is predicated on Code Sec. 6015(e) and not deficiency jurisdiction under Code Sec. 6213 . The only issue pending in a stand-alone case is whether the requesting spouse is entitled to relief from joint and several liability.

Procedures for handling Code Sec. 6015(f) stand-alone cases in which IRS has not determined a deficiency. The new Chief Counsel Notice says that in all Code Sec. 6015(f) stand-alone cases in which IRS has not determined a deficiency that are not calendared, a Motion to Dismiss for Lack of Jurisdiction should be filed. For calendared cases, a Motion to Dismiss should be filed in all Code Sec. 6015(f) stand-alone cases in which IRS has not determined a deficiency, even if the case has been fully or partially briefed or submitted.

References: For equitable innocent spouse relief, see FTC 2d/FIN ¶ V-8553 ; United States Tax Reporter ¶ 60,154.04 ; TaxDesk ¶ 570,928 ; TG ¶ 1928 . For Tax Court jurisdiction to review a claim for innocent spouse relief, see FTC 2d/FIN ¶ U-2148 ; United States Tax Reporter ¶ 60,154.03 .

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