

Internal Revenue Service, Treasury

§ 1.6015-5

§ 1.6015-4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under § 1.6015-2 or 1.6015-3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015-3(c)(1) (i.e., no refunds under § 1.6015-3). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015-3.

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

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

§ 1.6015-5 Time and manner for requesting relief.

(a) *Requesting relief.* To elect the application of § 1.6015-2 or 1.6015-3, or to request equitable relief under § 1.6015-4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief" (or other specified form); submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(b) *Time period for filing a request for relief—(1) In general.* To elect the application of § 1.6015-2 or 1.6015-3, or to request equitable relief under § 1.6015-4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting

spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions—(i) Collection activity.* For purposes of this paragraph (b), collection activity means a section 6330 notice; an offset of an overpayment of the requesting spouse against a liability under section 6402; the filing of a suit by the United States against the requesting spouse for the collection of the joint tax liability; or the filing of a claim by the United States in a court proceeding in which the requesting spouse is a party or which involves property of the requesting spouse. Collection activity does not include a notice of deficiency; the filing of a Notice of Federal Tax Lien; or a demand for payment of tax. The term *property of the requesting spouse*, for purposes of this paragraph (b), means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

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

(3) *Requests for relief made before commencement of collection activity.* An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return or a demand for payment, or pursuant to the CDP hearing procedures under section 6320 in connection with the filing of a Notice of Federal Tax Lien. For more information on the rules regarding collection due process for liens, see the Treasury regulations under section 6320. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

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

Example 1. On January 11, 2000, a section 6330 notice is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's