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The Tax Adviser

Innocent Spouse Relief Under Rev. Proc. 2013-34

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EXECUTIVE SUMMARY

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- Married taxpayers who file joint income tax returns are jointly and severally liable with their spouses for any income tax arising from those returns, regardless of which spouse earned the income. Married taxpayers living in community property states who file separate returns may also be liable for taxes on income earned by their spouses by the operation of community property law. Secs. 6015(f) and 66(c) authorize the IRS to grant equitable relief from joint liability in certain circumstances.
- Under Sec. 6015(f), the IRS may grant equitable relief if, under the facts and circumstances, it would be inequitable to hold the requesting spouse liable for any unpaid tax or any deficiency from a joint return. Similar relief is available under Sec. 66(c) to a requesting spouse who is liable for tax on his or her spouse's income due to the operation of community property law.
- Rev. Proc. 2013-34, which modified and superseded Rev. Proc. 2003-61, made a number of changes to the rules under which the IRS will grant equitable relief. The most significant change is to give much greater consideration to the effect on the requesting spouse of the nonrequesting spouse's history of abuse or intimidation.
- If a taxpayer does not meet the criteria to receive streamlined equitable relief, the IRS will consider whether the taxpayer is entitled to relief under all the facts and circumstances. Rev. Proc. 2013-34 provides a list of seven nonexclusive factors that the IRS will consider in its analysis.



On Sept. 16, 2013, the IRS issued Rev. Proc. 2013-34. The new revenue procedure revised the rules for taxpayers who request equitable relief from joint and several tax liability under Sec. 6015(f) or from tax liability arising from the operation of community property laws under Sec. 66(c).

Background

Spouses who file a joint income tax return are jointly and severally liable for income tax arising from the joint return under Sec. 6013(d)(3). In limited circumstances, a spouse who files a joint return can file a request for relief from joint tax liability, which takes one of three forms under Sec. 6015: innocent spouse relief, separation-of-liability relief, or equitable relief. Even a spouse who has not filed a joint return may have tax liability resulting from the operation of community property laws if the spouse lives in a community property state. Those spouses may seek relief under Sec. 66. Secs. 6015(f) 1 and 66(c) 2 each allow the IRS to grant equitable relief if, taking into account all the facts and circumstances, the IRS determines that it would be inequitable to hold a spouse liable for the tax liability.

Rev. Proc. 2013-34 provides guidance to taxpayers seeking equitable relief under Secs. 6015(f) and 66(c) and is effective for requests for relief filed on or after Sept. 16, 2013, and for requests pending on that date, with the IRS, the Office of Appeals, or in a case docketed with a federal court. Rev. Proc. 2013-34 modifies and supersedes Rev. Proc. 2003-61.

Equitable Relief Under Rev. Proc. 2013-34

To qualify for equitable relief under Rev. Proc. 2013-34, the requesting spouse 3 must meet the threshold conditions that are set forth in Section 4.01 of the revenue procedure. If the threshold conditions are met, relief may be granted through either (1) a streamlined process as set forth in Section 4.02 of the revenue procedure, or (2) if the conditions for streamlined treatment are not met, a consideration of other facts and circumstances as set forth in Section 4.03. A requesting spouse seeking equitable relief under Sec. 66(c) or Sec. 6015(f) must file, within the time frame set forth in Sec. 4.01(3), Form 8857, Request for Innocent Spouse Relief, or other similar statement signed under penalties of perjury.

Section 4.01: Threshold Conditions

A requesting spouse who has filed a joint return must satisfy all the conditions in Section 4.01 of Rev. Proc. 2013-34 to qualify for equitable relief under Sec. 6015(f). A requesting spouse who is seeking equitable relief under Sec. 66(c) must satisfy all of the conditions other than the first two conditions, which relate to the filing of a joint return and to the requesting spouse's inability to qualify for relief under Sec. 6015(b) or (c). The general conditions for relief set forth in Secs. 4.01(1)—(7) are discussed in the following paragraphs.

1. Joint return: The first threshold condition that the requesting spouse must meet is that the requesting spouse filed a joint return for the tax year for which he or she is seeking relief. Again, this condition does not need to be met for Sec. 66(c) relief.
2. No relief under Sec. 6015(b) or (c): To qualify for equitable relief under Sec. 6015(f), the requesting spouse must establish that he or she is not entitled to innocent spouse relief under Sec. 6015(b) or separation-of-liability relief under Sec. 6015(c).
3. Timely filed claim for relief: Rev. Proc. 2013-34 significantly changes the time in which a requesting spouse must apply for equitable relief under Sec. 6015(f) or 66(c). 4 In contrast to the provisions in Rev. Proc. 2003-61, the length of time that a requesting spouse has to timely file a claim depends upon whether the

requesting spouse is applying for relief from an unpaid tax liability or for a credit or refund of amounts paid. If the requesting spouse is applying for relief from liability (or a portion of liability) that remains unpaid, the claim for relief must be made on or before the collection statute expiration date (CSED), which is the expiration date for the limitation period on collection of the income tax liability. Generally, this period is 10 years following the assessment of the tax (but may be extended under other provisions of the Code). If the requesting spouse is claiming a credit or refund of amounts paid, the claim must be made before the expiration of the statute of limitation on credit or refund, which generally is the later of (a) three years from the date the return was filed, and (b) two years from the time the tax was paid.

4. No fraudulent scheme: The requesting spouse and the nonrequesting spouse 5 must not have transferred any assets to the other as part of a fraudulent scheme.
5. No transfer of disqualified assets: The nonrequesting spouse did not transfer disqualified assets 6 to the requesting spouse. If the nonrequesting spouse transferred disqualified assets to the requesting spouse, relief is available only to the extent the income tax liability exceeds the value of the disqualified asset. Rev. Proc. 2003-61 did not take into account the presence of abuse or financial control when disqualified assets were transferred to the requesting spouse. Now, under Rev. Proc. 2013-34, even if there is a transfer of disqualified assets, relief may be granted to the requesting spouse if:
 - a. The nonrequesting spouse abused the requesting spouse;
 - b. The nonrequesting spouse maintained control over the household finances by restricting the requesting spouse's access to financial information; or
 - c. The requesting spouse did not have actual knowledge that the disqualified assets were transferred.
6. No fraudulent return filed: The requesting spouse did not knowingly participate in filing a fraudulent return.
7. Attributable to nonrequesting spouse: For a requesting spouse to be granted equitable relief, the income tax liability from which the requesting spouse is seeking relief must be attributable (in full or in part) to (a) an item of the nonrequesting spouse, or (b) an underpayment resulting from the nonrequesting spouse's income. Notwithstanding the attribution rule, the IRS will consider granting equitable relief regardless of whether the understatement, deficiency, or underpayment is attributable to the requesting spouse if any of the following exceptions apply:
 - a. The item is wholly or partially attributable to the requesting spouse solely due to the operation of community property law;
 - b. The requesting spouse has nominal ownership in the item;
 - c. The nonrequesting spouse misappropriated the funds intended to pay the tax, and the requesting spouse did not know or have reason to know of the misappropriation;
 - d. The requesting spouse was the victim of abuse before the return was filed, and, as a result of that abuse, the requesting spouse was not able to challenge the treatment of any items on the return or was not able to question the payment of any balance due reported on the return for fear of the nonrequesting spouse's retaliation; or
 - e. The nonrequesting spouse's fraud is the reason for the erroneous item.

Rev. Proc. 2013-34 added the exception for the nonrequesting spouse's fraud.

Section 4.02 Streamlined Determinations for Relief

If each threshold condition of Section 4.01 is fulfilled, the IRS will make a streamlined determination for equitable relief under Secs. 6015(f) and 66(c), provided that the requesting spouse meets the three criteria set forth in Section 4.02 of Rev. Proc. 2013-34 regarding marital status, economic hardship, and knowledge or reason to know. Under Rev. Proc. 2003-61, a streamlined determination was available only for underpayment cases. Now, Rev. Proc. 2013-34 explicitly provides that streamlined determinations apply to understatement cases as well. The circumstances under which the IRS will make a streamlined determination are:

1. The requesting spouse is no longer married to the nonrequesting spouse as set forth in Section 4.03(2)(a);
2. The requesting spouse will suffer economic hardship if equitable relief is not granted as set forth in Section 4.03(2)(b); and
3. (a) For Sec. 6015(f) cases, on the date the requesting spouse signed the joint return, the requesting spouse did not know or have reason to know there was an understatement or deficiency on the joint return or did not know or have reason to know that the nonrequesting spouse would not or could not pay the underpayment or the tax reported on the return. If the nonrequesting spouse abused the requesting spouse or maintained control over 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 or challenge the nonrequesting spouse's assurance regarding paying the taxes, for fear of the nonrequesting spouse's retaliation, then the abuse or financial control will result in this factor being satisfied. This will be the result even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency or knew or had reason to know that the nonrequesting spouse would not pay the tax liability.

(b) For Sec. 66(c) cases, the requesting spouse did not know or have reason to know of any item of community income properly includible in gross income that would be treated as the income of the nonrequesting spouse under Sec. 879(a), which determines the treatment of community income if one of the spouses is a nonresident alien.

Section 4.03: Factors for Determining Whether to Grant Equitable Relief

If a requesting spouse meets the threshold conditions but does not meet the conditions for a streamlined determination, the IRS will determine whether relief should be granted based on all the facts and circumstances. Section 4.03(2) provides a list of factors that the IRS will consider, but makes it clear that this is not exclusive and other relevant factors may be taken into account. It also clarifies that no one factor or even a majority of factors necessarily controls the determination for relief. Under the revenue procedure, even if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, relief may still be appropriate, and the degree of importance of each factor depends upon the facts and circumstances of the case. The factors listed in Rev. Proc. 2013-34 that the IRS will consider in making its determination whether to grant relief are:

- Marital status;
- Economic hardship;
- Knowledge or reason to know;
- Legal obligation;
- Significant benefit;
- Compliance with income tax laws; and
- Mental or physical health.

Marital Status

The first factor set forth in Section 4.03 is the marital status of the requesting spouse. Rev. Proc. 2013-34 made several changes to the marital status requirement. Now, if the requesting spouse and nonrequesting spouse continue to be married as of the date of the IRS's determination, the factor is neutral. If the spouses are no longer married, the factor weighs in favor of relief. The procedure clarifies that the requesting spouse is considered no longer married if the requesting spouse (1) is divorced or legally separated from the nonrequesting spouse under applicable state law; (2) is not an heir to the nonrequesting spouse's estate that has sufficient assets to pay the tax liability; or (3) 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 IRS makes its determination. If the spouses are temporarily separated from each other due to incarceration, illness, business, military service, or education, and the absent spouse intends to return to the household, then the spouses are not considered separated for this purpose. Additionally, if the spouses share the same residence, they are considered to be members of the same household.

Economic Hardship

The second factor the IRS will consider is whether the requesting spouse will suffer economic hardship if equitable relief is not granted. Economic hardship exists if, after payment of all or part of the tax liability, the requesting spouse would be unable to pay reasonable basic living expenses. Under the previous guidance, the IRS based its determination of whether the requesting spouse would suffer economic hardship on rules similar to those provided in Regs. Sec. 301.6343-1(b)(4), which contains the economic hardship prerequisites for releasing a lien or levy. Although that regulation is still used as a reference for determining economic hardship, Rev. Proc. 2013-34 now provides additional guidance by using minimum standards to determine economic hardship that are based on the requesting spouse's income, reasonable basic living expenses, and assets.

The IRS will determine reasonable basic living expenses for the requesting spouse, considering factors such as whether the requesting spouse shares expenses or has expenses paid by another individual. The federal poverty guidelines 7 for the requesting spouse's family size are used as minimum standards to ascertain whether the requesting spouse will suffer economic hardship. The minimum standards for a finding of economic hardship are:

- The requesting spouse's income is less than 250% of the federal poverty guideline.

- The requesting spouse's income is greater than 250% of the federal poverty guideline, but the amount by which the requesting spouse's monthly income exceeds the reasonable basic monthly living expenses is not greater than or equal to \$300.

In both cases, if the requesting spouse has assets out of which he or she can make payments toward the tax liability and still adequately meet reasonable basic living expenses, the minimum standard for economic hardship will not be met.

If neither minimum standard for a finding of economic hardship listed above can be met, then the IRS will consider all facts and circumstances in determining whether the requesting spouse would suffer economic hardship. Even if the IRS determines that the requesting spouse will not suffer economic hardship, the lack of economic hardship is now a neutral factor that does not weigh against relief, unlike under Rev. Proc. 2003-61.

Knowledge or Reason to Know

Whether the requesting spouse knew or had reason to know of factors relating to the tax liability is the third factor in Section 4.03. This factor will weigh against relief if the requesting spouse knew or had reason to know: **8**

- In a 6015(f) understatement case, of the item giving rise to the understatement or deficiency;
- In a 66(c) understatement case, of an item of community property includible in gross income that would be treated as the income of the nonrequesting spouse under Sec. 879(a) (see above); or
- In an underpayment case, that the nonrequesting spouse would not or could not pay the tax liability at the time the return was filed or within a reasonable time afterward.

Rev. Proc. 2013-34 changed the rules for determining whether a requesting spouse satisfies the knowledge factor in several ways. First, it clarifies how the knowledge factor works in different types of cases, i.e., Secs. 66(c), 6015(f), and underpayment vs. understatement cases. Actual knowledge is no longer weighted more heavily than other factors, as it was under Rev. Proc. 2003-61. Most importantly, the current revenue procedure mitigates the knowledge or reason-to-know factor in cases involving the presence of abuse or financial control. **9** Depending on the facts and circumstances, if abuse or financial control is present, the requesting spouse may still be granted relief even if he or she knew or had reason to know of the items giving rise to the understatement or deficiency, or that the nonrequesting spouse was not able or did not intend to pay the taxes due.

For underpayment cases, Rev. Proc. 2013-34 now allows the IRS to consider it a positive factor if the requesting spouse reasonably expected the nonrequesting spouse would pay the tax liability. A requesting spouse is presumed to have reasonably expected the nonrequesting spouse would pay the tax liability if a request for an installment agreement was made on or before the later of 90 days after the due date of the liability or 90 days after the return was filed. The presumption is qualified, however, and the requesting spouse may not rely upon it if it was unreasonable for him or her to believe that the nonrequesting spouse would be able to make the installment agreement payments. If the facts and circumstances of the case make it unreasonable for the requesting spouse to believe that the nonrequesting spouse would or could pay the tax liability, **10** then the factor will weigh against relief.

Legal Obligation

The fourth factor is whether the requesting spouse or the nonrequesting spouse has a legal obligation 11 to pay the outstanding income tax liability arising from a divorce decree or legally binding agreement. Under Rev. Proc. 2003-61, the only consideration was whether the nonrequesting spouse had the legal obligation to pay. It did not address whether (1) the requesting spouse has the sole legal obligation to pay; (2) the nonrequesting spouse has been relieved of liability for the taxes as a result of a bankruptcy; (3) both spouses have the legal obligation to pay the tax liability; (4) the spouses are not separated or divorced; or (5) the divorce decree or agreement is silent as to the legal obligation to pay.

Rev. Proc. 2013-34 clarifies each situation. A requesting spouse's legal obligation to pay is now a factor for the IRS to consider. If the requesting spouse has the sole legal obligation to pay the tax liability, the factor will weigh against equitable relief. When determining whether a requesting spouse has the sole obligation to pay the tax liability, the IRS will disregard the fact that a nonrequesting spouse's obligation to pay the tax liability has been discharged in bankruptcy. If both spouses have the legal obligation to pay because of an agreement, because they are not divorced or separated, or because the divorce decree is silent, the factor will be neutral.

Significant Benefit

Section 4.03(2)(e) requires determining whether the requesting spouse significantly benefited from the unpaid income tax liability or tax understatement, which means any benefit in excess of normal support. Rev. Proc. 2003-61 did not provide any guidance on this factor other than referencing Regs. Sec. 1.6015-(2)(d). As expanded under Rev. Proc. 2013-34, the significant-benefit factor now provides that if the requesting spouse received a significant benefit, that will weigh against relief. Enjoying a lavish lifestyle will be considered a significant benefit, but, if abuse or financial control was present and the nonrequesting spouse made the decision to spend funds on a lavish lifestyle, the factor will be neutral.

Also, if the nonrequesting spouse significantly benefited from the unpaid tax or understatement, and the requesting spouse had little or no benefit, the factor will weigh in favor of relief. Where the amount of the unpaid tax or understatement is so small that neither spouse received a significant benefit, the factor is neutral. Whether the unpaid tax or understatement is small depends on the facts and circumstances of the case.

Compliance With Income Tax Laws

In determining whether to grant equitable relief, in Rev. Proc. 2003-61 the IRS simply stated that it would consider whether the requesting spouse has made a good-faith effort to comply with income tax laws in the years following the year to which the request applies. Rev. Proc. 2013-34 expands the guidance on this point and explains whether the factor should be weighed in favor of relief, be weighed against relief, or be neutral, depending upon whether the requesting spouse and nonrequesting spouse have divorced or are still married and, if still married, whether they continue to file jointly.

- If the requesting spouse is divorced, then (1) if the requesting spouse has complied with the income tax laws, the factor will weigh in favor of relief; (2) if the requesting spouse has not complied with the income tax laws, the factor will weigh against relief; or (3) if the requesting spouse has made a good-faith effort to comply but was unable to fully comply, the factor will be neutral.
- If the requesting spouse is not divorced from the nonrequesting spouse and continues to file a joint return, the factor will be neutral so long as the joint returns comply with the income tax laws. If the joint returns do

not comply, the factor will weigh against relief.

- If the requesting spouse files a separate return while remaining married to the nonrequesting spouse, the factor will (1) weigh in favor of relief if the requesting spouse's separate return complies with the income tax laws; (2) weigh against relief if the separate return does not comply with the income tax laws; or (3) be neutral, if the requesting spouse made a good-faith effort to comply but was unable to fully comply.

Mental or Physical Health

The requesting spouse's mental and physical condition is considered in determining whether to grant equitable relief. Rev. Proc. 2013-34 makes a couple of changes to this factor, by establishing that the factor will (a) weigh in favor of relief if the requesting spouse was in poor mental or physical health when the return was filed (or when the requesting spouse reasonably believed the return was filed) or at the time the requesting spouse requested relief; or (b) be neutral if the requesting spouse was not in poor physical or mental health. Additionally, the guidance requires the IRS to consider the economic impact of the requesting spouse's illness.

Section 4.04: Refunds

Subject to refund limitations in Sec. 6511, a requesting spouse is eligible for a refund of separate payments made after July 22, 1998, so long as the requesting spouse provided the funds used to make the payment. Rev. Proc. 2013-34 expands the availability of refunds in cases involving deficiencies by eliminating the earlier requirement that limited refunds in deficiency cases to payments the requesting spouse made under an installment agreement. The requesting spouse is not entitled to a refund of any payments made by the nonrequesting spouse, but if the requesting spouse used his or her funds to make an overpayment for another tax year that was applied to the joint income tax liability, the requesting spouse may be eligible for a refund.

Changes Made by the Revenue Procedure

Rev. Proc. 2013-34 made significant changes to the earlier rules in Rev. Proc. 2003-61. One of the most significant is the greater weight given to the presence of abuse or financial control in a marriage and how it affects other factors. The IRS recognizes that abuse can come in many forms: physical, psychological, sexual, or emotional, and can include 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. Under Rev. Proc. 2013-34, the IRS will now consider the effect of a nonrequesting spouse's alcohol or drug abuse in determining whether to grant equitable relief to the requesting spouse. Additionally, the abuse of the requesting spouse's child or other family member living in the household may constitute abuse of the requesting spouse. **12**

Another major change in Rev. Proc. 2013-34 is the time frame in which the requesting spouse must file a request for equitable relief. Rev. Proc. 2003-61 required a claim for equitable relief to be filed no later than two years after the date of the IRS's first collection activity after July 22, 1998, with respect to the requesting spouse. Under Rev. Proc. 2013-34, a request for equitable relief is timely made if it is filed (a) before the expiration of the limitation period for collections under Sec. 6502 if the requesting spouse is seeking relief from an outstanding liability; or (b) before the expiration of the limitation period for credit or refund claims under Sec. 6511 if the requesting spouse is seeking a refund of taxes paid. Other significant changes contained in Rev. Proc. 2013-34 are summarized in [Exhibit 1-A \(/content/dam/tta/issues/2014/nov/pulliam-exhibit01-a.png\)](/content/dam/tta/issues/2014/nov/pulliam-exhibit01-a.png) and [Exhibit 1-B \(/content/dam/tta/issues/2014/nov/pulliam-exhibit01-b.png\)](/content/dam/tta/issues/2014/nov/pulliam-exhibit01-b.png).

In addition to giving greater weight to the presence of abuse and financial control and increasing the time in which to file for equitable relief, many of the changes provided by Rev. Proc. 2013-34 are expansions of the factors included in Rev. Proc. 2003-61. Section 4.03 now provides specific guidance on how each factor should be weighed depending upon the circumstances. [Exhibit 2 \(/content/dam/tta/issues/2014/nov/pulliam-exhibit02.png\)](#) summarizes these.

The Courts' Use of the Revenue Procedure

As of this writing, the Tax Court has applied Rev. Proc. 2013-34 in several cases:

- Hall, T.C. Memo. 2014-171.
- Hammernik, T.C. Memo. 2014-170.
- Molinet, T.C. Memo. 2014-109.
- Reilly-Casey, T.C. Memo. 2013-292.
- Corbisiero, T.C. Summ. 2014-42.
- Raschke, T.C. Summ. 2014-32.
- Barrera, T.C. Summ. 2014-30.
- Bowerman, T.C. Summ. 2014-26.
- Young, T.C. Summ. 2014-24.
- Howerter, T.C. Summ. 2014-15.
- Zimmerman-Phillips, T.C. Summ. 2014-8.
- Cole, T.C. Summ. 2013-34.

In these cases, the Tax Court reviewed the petitioners' requests for equitable relief under Rev. Proc. 2013-34. In Hammernik, Corbisiero, Bowerman, Young, Zimmerman-Phillips, and Cole, the taxpayers either did not meet the threshold conditions for equitable relief or qualified for streamlined relief, so the Tax Court was not required to evaluate and weigh the seven equitable relief factors to determine if relief should be granted. In the other six cases, the court addressed the factors. The results of the Tax Court's analyses are summarized in [Exhibit 3 \(/content/dam/tta/issues/2014/nov/pulliam-exhibit03.png\)](#).

Conclusion

As the above discussion shows, while equitable relief is available, proving that a taxpayer qualifies for that relief can be difficult. Therefore, a taxpayer requesting relief under Rev. Proc. 2013-34 should be prepared to present all the evidence available to support that he or she qualifies based on the seven factors set out in the revenue procedure.

Contributors

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Footnotes

¹ Sec. 6015(f) reads as follows: "Under procedures prescribed by the Secretary, if (1) taking into account all of the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and (2) relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability."

² The flush language in Sec. 66(c) reads as follows: "Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability."

³ A requesting spouse is the person who filed a joint return and is electing relief from joint liability under the regulations (Regs. Sec. 1.6015-1(h)(1)).

⁴ In response to a number of court cases on the two-year limitation issue, the IRS issued Notice 2011-70, which eliminated the two-year rule for claiming relief and announced that the IRS would issue proposed rules amending the existing regulations that stated otherwise. Proposed regulations (REG-132251-11) were issued in 2013, and Rev. Proc. 2013-24 also contains the new deadlines.

⁵ The nonrequesting spouse is the person with whom the requesting spouse filed the joint return for the year for which relief from liability is sought (Regs. Sec. 1.6015-1(h)(2)).

⁶ The term "disqualified asset" is defined in Sec. 6015(c)(4)(b) as "any property or right to property transferred to an individual making the election under this subsection with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax."

⁷ As updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

⁸ The following factors (as well as others) may be considered in determining whether the requesting spouse had reason to know: level of education, any deceit or evasiveness by the nonrequesting spouse, degree of involvement in the activity generating the income tax liability, the involvement in business or household financial matters, business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

⁹ The requesting spouse was abused by the nonrequesting spouse 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 (1) able to challenge the treatment

of any items on the joint return for fear of the nonrequesting spouse's retaliation, or (2) able to challenge the nonrequesting spouse's assurance regarding payment of the taxes for fear of the nonrequesting spouse's retaliation.

¹⁰ Rev. Proc. 2013-34 lists prior bankruptcies, financial difficulties, and other issues with the IRS or creditors as some of the facts that knowledge of could make it unreasonable for the requesting spouse to believe that the nonrequesting spouse would pay the tax liability.

¹¹ For purposes of Rev. Proc. 2013-34, a legal obligation is an obligation arising from a divorce decree or other legally binding agreement.

¹² Rev. Proc. 2013-34, §4.03(2)(c)(iv).



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