

CC-2011-017

July 25, 2011

Change in Litigating Position on the
Two-Year Deadline to Request
Subject: Section 6015(f) Equitable Relief
Effective until further
Cancel Date: notice

Purpose

On July 25, 2011, the Service issued Notice 2011-70, 2011-32 I.R.B. _____, which enlarges the period of time for taxpayers to request equitable relief under section 6015(f). Specifically, Notice 2011-70 provides that the Service will no longer require taxpayers to submit requests for equitable relief within two years from the date that the Service takes initial collection activity against the requesting spouse with respect to the joint tax liability at issue. This change in position was adopted by the Service in the interest of tax administration and is not reflective of any doubt concerning the authority of the Service to impose the two-year deadline, which was upheld by three circuit courts as a valid exercise of the Service's rulemaking authority under sections 7805(a) and 6015(f). See Lantz v. Commissioner, 607 F.3d 479 (7th Cir. 2010); Mannella v. Commissioner, 631 F.3d 115 (3d Cir. 2011); Jones v. Commissioner, 642 F.3d 459 (4th Cir. 2011). In light of Notice 2011-70, this Chief Counsel Notice provides a change in litigating position concerning the two-year deadline to request equitable relief and provides direction for handling cases docketed with the Tax Court that involve the two-year deadline. This Notice supersedes Chief Counsel Notices CC-2009-012 (April 17, 2009), CC-2010-005 (March 12, 2010), and CC-2010-011 (June 18, 2010).

Background

Section 6015(b), (c), and (f) prescribe the bases for relief from joint and several tax liability. When relief is not available under section 6015(b) or (c), a taxpayer may obtain relief under section 6015(f) if it would be inequitable under the facts and circumstances to hold the taxpayer liable. By statute, a taxpayer must request relief under section 6015(b) or (c) no later than two years from the date of the Service's first collection activity. See section 6015(b)(1)(E) and (c)(3)(B). Beginning in 1998, the Department of Treasury and the Service incorporated the two-year deadline into published guidance, including ultimately the section 6015 regulations, and applied the rule to requests for equitable relief under subsection (f). Treas. Reg. § 1.6015-5(b)(1).

In Lantz v. Commissioner, 132 T.C. 131 (2009), the Tax Court held that the two-year deadline to request equitable relief was an invalid interpretation of section 6015(f). The Service appealed the decision, and the Court of Appeals for the Seventh Circuit reversed and upheld the Service's authority to establish a two-year deadline. Lantz v. Commissioner, 607 F.3d 479 (7th Cir. 2010). Two additional circuit courts have upheld the validity of the two-year deadline as a valid exercise of the Service's rulemaking authority under sections 7805(a) and 6015(f). See Mannella v.

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Commissioner, 631 F.3d 115 (3d Cir. 2011), and Jones v. Commissioner, 642 F.3d 459 (4th Cir. 2011).

For tax administration reasons, the deadline, as it relates to relief under section 6015(f), was revised in Notice 2011-70. Specifically, the notice provides that the Service will consider equitable relief if a request is filed during the time the applicable period of limitation in section 6502 for collection of tax or the period of limitation in section 6511 for a credit or refund of tax is open for the taxable years at issue. Until the regulations are amended to reflect this change in how the Service administers section 6015(f), the transitional rules in Notice 2011-70 apply, including rules for requests in cases currently in litigation.

Discussion

Based on the Service's policy determination that taxpayers should have more time within which to request equitable relief, and thus, will no longer be subject to the two-year deadline in the regulations under section 6015(f), attorneys will no longer argue in any case docketed in the Tax Court (including cases still pending in the Tax Court that were docketed prior to the issuance of Notice 2011-70) that the two-year deadline applies to equitable relief. The two-year deadline may not be raised as a defense to a claim of equitable relief under section 6015(f) in any pleading or at trial and the issue is no longer designated for litigation. In place of the two-year deadline, the position in litigation is that eligibility for equitable relief requested under section 6015(f) is determined by the period of limitation in section 6502 or section 6511, as applicable. A requesting spouse is eligible for equitable relief only if the applicable period of limitation was open when the relief was first requested, either administratively or in litigation. To the extent a petitioner's request for equitable relief under section 6015(f) seeks a refund that is time-barred by section 6511, this limitations period should be raised as a defense.

Notice 2011-70 only addresses the time period within which individuals may request equitable relief from joint and several liability under section 6015(f) and does not address the other conditions and factors for relief. It has no effect on the statutory two-year deadline to elect relief under section 6015(b) or (c). Accordingly, the two-year deadline remains a defense in the context of section 6015(b) or (c) and should be raised whenever appropriate.

Notice 2011-70 provides, as a transitional rule, that the Service "will take appropriate action . . . consistent with the position announced in this notice" in any section 6015(f) case in litigation in which the two-year deadline is at issue. Appropriate action will depend on the posture of the case. Because the background and posture of each case will vary, this Notice cannot provide case-specific guidance. It is, therefore, necessary for attorneys in **all** affected cases to contact Branch 1 or 2 of Procedure and Administration to discuss the action appropriate for their case, whether it is filing a pleading, a motion, a status report, a brief or a decision document; conducting a conference call, or some other action. Those attorneys with cases in which a decision has been entered that is not yet final should contact Procedure and Administration immediately.

Questions concerning this Notice should be directed to Branch 1 or 2 of Procedure and Administration at (202) 622-4910 or (202) 622-4940, respectively.

/s/

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