



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.15.3

JUNE 10, 2024

EFFECTIVE DATE

(06-10-2024)

PURPOSE

- (1) This transmits revised IRM 25.15.3, Relief from Joint and Several Liability, Technical Provisions of IRC 6015.

MATERIAL CHANGES

- (1) IRM 25.15.3.1 - Added Primary Stakeholders.
- (2) IRM 25.15.3.1.3 - Updated title to Roles and Responsibilities; updated Taxpayer Bill of Rights.
- (3) IRM 25.15.3.1.4 - Added a new subsection for Program Management and Review.
- (4) IRM 25.15.3.1.5 - Added a new subsection for Program Controls.
- (5) IRM 25.15.3.1.6 - Updated title to Terms and Acronyms.
- (6) IRM 25.15.3.1.8 - Added Appeals IRM 8.7.12, Technical and Procedural Guidelines - Appeals Innocent Spouse Case Procedures.
- (7) IRM 25.15.3.4(4) and (5) - Added a Note:
- (8) IRM 25.15.3.4.1 - Added Alleged Abuse IRM reference.
- (9) IRM 25.15.3.7.1 - Added a Note:
- (10) IRM 25.15.3.7.3 - Added Alleged Abuse IRM reference.
- (11) IRM 25.15.3.8.2.1 - Added Alleged Abuse IRM reference.
- (12) IRM 25.15.3.8.4 - Corrected the URLs.
- (13) IRM 25.15.3.9.2.1 - Added Alleged Abuse IRM reference.
- (14) IRM 25.15.3.9.4.1 - Added Alleged Abuse IRM reference.
- (15) IRM 25.15.3.9.4.1.3 - Added Alleged Abuse IRM reference.
- (16) IRM 25.15.3.9.4.1.3.1 - Added Alleged Abuse IRM reference.
- (17) IRM 25.15.3.9.4.1.3.2 - Added Alleged Abuse IRM reference.
- (18) IRM 25.15.3.9.4.1.4 - Added the Reminder.
- (19) IRM 25.15.3.10 - Added Appeals IRM 8.7.12, Technical and Procedural Guidelines - Appeals Innocent Spouse Case Procedures.
- (20) IRM 25.15.3.10.1 - Added Community Property Letters.
- (21) IRM 25.15.3.10.2 - Added Community Property Letters.
- (22) IRM 25.15.3.10.3 - Added Community Property Letters.

- (23) IRM 25.15.3.11 - Deleted the entire Waivers section, Case Development is the new IRM section.
- (24) IRM 25.15.3.11.1 - Added content and a table with domestic violence/spousal abuse scenario examples.
- (25) IRM 25.15.3.11.8 - Added Form 9984, Examining Officer's Activity Record.
- (26) Minor editorial changes made throughout this IRM, including spelling, punctuation, and updating the new organizational title from Wage and Investment (W&I) to Taxpayer Services (TS).

EFFECT ON OTHER DOCUMENTS

IRM 25.15.3 dated January 10, 2020 is superseded.

AUDIENCE

Employees in all business operating divisions who have contact with taxpayers addressing an innocent spouse issue.

Heather J. Yocum
Director, Examination - Field and Campus Policy
Small Business/Self-Employed Division

25.15.3

Technical Provisions of IRC 6015

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25.15.3.1
(06-10-2024)
Program Scope and Objectives

- (1) Purpose: This section discusses the innocent spouse provisions of IRC 6015 which provide three avenues for relief from joint and several liability:
 - IRC 6015(b), Innocent Spouse Relief, provides for a request for relief from a deficiency/understatement of tax liability.
 - IRC 6015(c), Separation of Liability, provides for a request to allocate a deficiency/understatement.
 - IRC 6015(f), Equitable Relief, provides IRS with discretion to grant equitable relief from deficiencies and underpayments if the relief provisions under IRC 6015(b) or IRC 6015(c) do not apply.
- (2) Audience: Employees in all business operating divisions addressing an innocent spouse issue.
- (3) Policy Owner: The innocent spouse program is under the jurisdiction of the SB/SE Division Director, Examination - Field and Campus Policy.
- (4) Program Owner: The program owner is SB/SE Campus Exam and Field Support.
- (5) Primary Stakeholders: Cincinnati Centralized Innocent Spouse Operation (CCISO) and Field Exam General Processes (FEGP).
- (6) Program Goals: The program goals are to timely and accurately process Forms 8857 and similar requests signed under penalties of perjury requesting innocent spouse relief.

25.15.3.1.1
(01-10-2020)
Background

- (1) Taxpayers may request relief from joint and several liability under the provisions of IRC 6015 by submitting a Form 8857, Request for Innocent Spouse Relief, or a similar statement containing the same information signed under penalties of perjury.
- (2) Same-sex spouses who are lawfully married under state law are considered married for federal tax purposes, and the terms “spouse”, “husband and wife”, “husband”, and “wife” refer to such spouses. Accordingly, same-sex spouses who file joint returns are jointly and severally liable for any tax liability and may be entitled to innocent spouse relief so long as the conditions of IRC 6015 are met. See Rev. Rul. 2013–17 and Treas. Reg. 301.7701-18 for more information.

Note: Same-sex spouses who are lawfully married under state law are considered married for federal tax purposes. The term “marriage” does not include registered domestic partnerships, civil unions, or other similar formal relationships that are not recognized as marriage under state law.
- (3) The term “examiner” is used throughout this IRM. This generic term refers to Financial Technicians or Financial Specialists located in Cincinnati Centralized Innocent Spouse Operations (CCISO), or Area Office field examiners, which can be either Revenue Agents or Tax Compliance Officers. All such examiners may make Innocent Spouse Relief Determinations under IRC 6015 and this IRM is intended for their use.
- (4) The term “innocent spouse relief” is used throughout this IRM. This term encompasses any request for relief from joint and several liability under IRC 6015.

25.15 Relief from Joint and Several Liability

- (5) The term “claim” may be used throughout this IRM. This term refers to the request for innocent spouse relief, or innocent spouse claim, filed.
- (6) The terms “Requesting Spouse”(RS), and “Non-Requesting Spouse”(NRS) are used throughout this IRM. If a valid Power of Attorney (POA) is on file or otherwise established, the IRS is obligated to make contact with the POA in lieu of the RS or NRS. Therefore, the terms RS and NRS can mean either the taxpayers or the valid POA of RS or NRS, if there is one. See IRM 25.15.1.9.1, Power of Attorney (POA), for more information.

Note: If the Form 2848, Power of Attorney and Declaration of Representative, does not specifically authorize the POA to handle Form 8857 matters, the IRS should only correspond with the RS regarding the Form 8857. However, if the Form 2848 specifically authorizes the POA to handle Form 8857 matters, the IRS must correspond with the POA regarding the Form 8857 (even if the POA is not aware that the RS submitted a Form 8857 or is not familiar with the details of the request).

25.15.3.1.2 (01-10-2020) Authority

- (1) IRC 6015, Relief from joint and several liability on joint return.
- (2) 26 CFR sections 1.6015-1 through -9, which provide guidance on requests for relief from joint and several liability and related proposed regulations, including 78 FR 49242 (issued on August 13, 2013) and 80 FR 72649-01 (issued November 20, 2015).
- (3) Rev. Proc. 2003-19, administrative appeal rights for the Non-Requesting Spouse.
- (4) Rev. Proc. 2013-34, guidelines for taxpayers seeking equitable relief from income tax liability under section 66(c) or section 6015(f).

Note: Taxpayers can also request innocent spouse relief from liability resulting from community property laws under IRC 66(c), Treatment of community income relief provisions. See IRM 25.15.5, Relief from Community Property Laws, for more information.

25.15.3.1.3 (06-10-2024) Roles and Responsibilities

- (1) The Director, Examination - Field and Campus Policy, who is under the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the field and campus examination process. See IRM 1.1.16.5.5.1, Examination Field and Campus Policy, for additional information.
- (2) Campus Exam and Field Support, which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing IRS policy guidance on compliance processes that relate to campus examination operations and support Field Exam and Specialty Programs in SB/SE and Large Business & International (LB&I). See IRM 1.1.16.5.5.1.5, Campus Exam and Field Support, for additional information.
- (3) Requests for innocent spouse relief are considered by Area Office examiners during open field examinations, and by Cincinnati Centralized Innocent Spouse Operation (CCISO) otherwise. Field Examination General Processes, under the Director, Examination - Field and Campus Policy is the group responsible for providing policy and procedural guidance on standard examination processes

to field employees. CCISO falls under the responsibility of the Director, Examination - Campus, with the Director, Examination - Field and Campus Policy providing oversight to the campus innocent spouse processing IRMs.

- (4) All examiners must perform their professional responsibilities in a way that supports the *IRS Mission*. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (5) Employees in all business divisions and their managers should thoroughly acquaint themselves with the technical information contained in this IRM, as well as other resources, to ensure accurate determinations of innocent spouse relief are rendered and communicated to taxpayers appropriately.
- (6) The Internal Revenue Code (IRC) provides taxpayers specific rights. The Taxpayer Bill of Rights groups these rights into ten fundamental rights. See IRC Section 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see Publication 1, Your Rights as a Taxpayer or visit irs.gov/taxpayer-bill-of-rights.

25.15.3.1.4
(06-10-2024)
**Program Management
and Review**

- (1) Program Reports - The program reports provided in this IRM are for identification purposes for the Field and Campus managers and Tax Examiners. For reports concerning quality, inventory, and aged listings, refer to IRM 1.4.29, SB/SE Campus Exam/AUR, and Taxpayer Services Exam Operations. The overage report can be viewed by accessing Control Data Analysis, Project PCD, and are on the Control-D/Web Access server, which has a login program control.
 - National Quality Review System (NQRS),
 - Innocent Spouse Tracking System (ISTS) provides information regarding the current status of the case.
- (2) Operational Reviews are performed by:
 - Department Managers review Frontline Teams,
 - Operation Managers review Department Managers,
 - Directors/Planning & Analysis Staff review Operations.
- (3) Program Effectiveness - Program effectiveness is determined by Field and Campus employees successfully using IRM guidance to perform necessary account actions and duties. The following are used to ensure program effectiveness:
 - Case reviews are conducted by Managers and recorded into the Embedded Quality Review System (EQRS) to ensure compliance with the IRM.
 - Program reviews are conducted by headquarters analysts to evaluate program delivery and conformance to administrative and compliance requirements.

25.15.3.1.5
(06-10-2024)
Program Controls

- (1) The Cincinnati Centralized Innocent Spouse Operation (CCISO) provides control and support to Field Examination, IRM 25.15.6, Relief from Joint And Several Liability - Field Examination Procedures.
- (2) The Area Innocent Spouse Coordinator (ISC) provides Field Exam support.

25.15.3.1.6
(06-10-2024)

Terms and Acronyms

- (1) The following table lists terms used in this IRM and their definitions:

Term	Definition
Allocation (Allocate, Allocable, Allocated)	To set aside or assign to a particular spouse for the purpose of computing their share of an understatement or underpayment. See IRM 25.15.3.8.3, Allocating a Deficiency, and IRM 25.15.3.11, Case Development, for additional information.
Apportionment (Apportion, Apportioned)	Relieving a particular spouse of a portion of a specific item or items giving rise to an understatement.
Attribution (Attribute, Attributable, Attributed)	Establishing or designating a particular spouse as the owner, possessor or party responsible for a specific item giving rise to an understatement or underpayment. See IRM 25.15.3.11, Case Development, for additional information.

Term	Definition
Collection Activity	<ul style="list-style-type: none"> 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. See Treas. Reg. 1.6015-5(b)(2)(i) for more information. Used to determine whether relief requests for deficiencies under IRC 6015(b) or (c) are time barred by the two-year rule. See IRM 25.15.3.7, IRC 6015(b) - Innocent Spouse Relief Qualifications, and IRM 25.15.3.8, IRC 6015(c) - Election to Allocate A Deficiency, for the two-year rule. See IRM 25.15.3.5.1, Collection Activity, for different kinds of collection activity.

Term	Definition
Deficiency/Understatement	<ul style="list-style-type: none"> • The excess of the amount of tax required to be shown on the return over the amount of tax shown on the return. • For purposes of determining relief under IRC 6015, a deficiency and understatement are treated the same. • Relief from an understatement can be considered under IRC 6015(b), (c), or (f).
Erroneous Item	<p>Any “item” resulting in an understatement or deficiency in tax to the extent such item is omitted from, or improperly reported/characterized on an individual income tax return. For example:</p> <ul style="list-style-type: none"> • Unreported income items. • Ordinary income improperly reported as a capital gain. • Deduction for an expense that is personal in nature. <p>The above list is not all-inclusive.</p>
Item	<p>An “item” is that which is required to be separately listed on an individual income tax return or any required attachments. For example:</p> <ul style="list-style-type: none"> • Interest and dividends from the same source are considered two separate items. • Gross income. • Deductions. • Credits (including Premium Tax Credit). • Cost basis. <p>The above list is not all-inclusive.</p> <p>Note: Penalties and interest related to tax are not erroneous items and relief from penalties and interest follows relief granted on the underlying tax.</p>

Term	Definition
Math Error	Some Math Errors adjusted on the original return filed are considered underpayments, and some are considered understatements. See Exhibit 25.15.3-1, Math Errors, to determine how to classify a Math Error if one is present.
Overstated Withholding	<p>Overstated withholding is considered an underpayment of tax and qualifies for consideration only under IRC 6015(f). Consider it jointly attributable unless the RS establishes that they did not receive or benefit from the overstated withholding</p> <p>Example: Tax on original return \$6,000; Withholding claimed \$10,000 (actual withholding = \$0); Refund \$4,000. Automated Underreporter (AUR) operations issued a CP 2000 notice to reverse the withholding, resulting in \$10,000 owed. The \$10,000 owed is an underpayment. Relief will be considered under IRC 6015(f) only.</p>
Prohibited Collection Actions	<ul style="list-style-type: none"> • Taking collection action against a RS while an innocent spouse request for relief is pending (not final). • Refund offsets are not prohibited by statute but the IRS has made a business decision not to offset refunds while a request for relief is pending. <p>If a prohibited collection action or refund offset has occurred after a request for relief is filed, corrective actions must be taken to release the funds to RS.</p>

Term	Definition
Substitute For Return (SFR)	<ul style="list-style-type: none">• A return filed by the IRS per IRC 6020(b); since joint filing status is an election, an SFR can only be prepared with a filing status other than joint.• If SFR's are prepared for spouses living in a community property state, and based on community property laws, a spouse may request relief from community property items under IRC 66(c) using the Form 8857, Request for Innocent Spouse Relief or other similar statement signed under penalty of perjury. See Rev. Proc. 2013-34 and IRM 25.15.5, Relief from Community Property Laws, for more information.

Term	Definition
Underpayment	<ul style="list-style-type: none"> The unpaid amount due from self-assessed taxes on either an original or amended joint return (the amount due after credits and payments made by the due date of the return or the return filed date, whichever is later). Overstated Withholding is considered an underpayment of tax because withholding corrections are not subject to deficiency proceedings. <p>Relief from an underpayment can only be considered under IRC 6015(f).</p> <p>Note: Relief is not available for liabilities that are required to be reported on a joint Federal income tax return but are not income taxes imposed under Subtitle A of the IRC. Treas. Reg. 1.6015-1(a)(3). The individual shared responsibility payment under IRC 5000A is imposed under Subtitle B of the IRC. Therefore, relief is not available under 6015 from the shared responsibility payment under 5000A.</p>

(2) The following table lists commonly used acronyms in this IRM:

Acronym	Description
AC	Action Code (most often associated with a transaction code (TC))
ACCURINT	Electronic Research service used to gather information from public databases
ASED	Assessment Statute Expiration Date

Acronym	Description
ASFR	Automated Substitute For Return
AUR	Automated Underreporter
CC	Command Code or Closing Code
CCEO	Compliance Campus Examination Operations
CCISO	Cincinnati Centralized Innocent Spouse Operation
CSED	Collection Statute Expiration Date
DLN	Document Locator Number
EITC	Earned Income Tax Credit
EQRS	Embedded Quality Review System
ESTAB	IDRS command code used to order documents associated with transactions on an account.
FEGP	Field Exam General Processes
FS	Filing Status
IDRS	Integrated Data Retrieval System
IMFOLE	A command code used in IDRS to retrieve taxpayer account data.
IMFOLT	A command code used in IDRS to retrieve taxpayer account data for specific tax period.
IMF	Individual Master File
IRPTR	A command code used in IDRS to retrieve taxpayer income data as reported by payers.
ISC	Innocent Spouse Coordinator
ISO-AR	Innocent Spouse Operation - Adjustment Request
ISTS	Innocent Spouse Tracking System
ISTSR	Innocent Spouse Tracking System Record
MFS	Married Filing Separate
MFT	Master File Tax
NMF	Non Master File

Acronym	Description
NQRS	National Quality Review System
NRS	Non-Requesting Spouse
POA	Power Of Attorney
PSP	Planning and Special Programs
REQ77	An IDRS command code used to input specific information.
RS	Requesting Spouse
RSED	Refund Statute Expiration Date
SFR	Substitute for Return
SSN	Social Security Number
STAUP	IDRS Command Code used to request suspension of collection notices.
TC	Transaction Code
TXI	Taxable Income
TXMOD	IDRS command code used to obtain a transcript of a specific tax account.

25.15.3.1.7
(06-10-2024)

Related Resources

- (1) The table below contains references for related innocent spouse Internal Revenue Manuals (IRMs).

IRM	Purpose
IRM 21.10, Quality Assurance	Cincinnati Innocent Spouse Case Review (CISCR) procedures.
IRM 25.15.1, Introduction	General procedures for all functions.
IRM 25.15.2, General Procedures/ Employees With Taxpayer Contact	General procedures for all functions.
IRM 25.15.3, Technical Provisions of IRC 6015	Technical provisions of IRC 6015, Relief from Joint and Several Liability on Joint Return.
IRM 25.15.5, Relief from Community Property Laws	Technical provisions of IRC 66(c), Treatment of Community Property.

IRM	Purpose
IRM 25.15.6, Field Examination Procedures	Field examination procedures for working innocent spouse cases.
IRM 25.15.7, Innocent Spouse Shared Processing Responsibilities	Provides guidance for coordination between CCISO and other functions of the IRS.
IRM 25.15.8, Revenue Officer Procedures for Working Innocent Spouse Relief Cases	Field collection procedures for working innocent spouse cases.
IRM 25.15.9, Account Processing of Requests for Relief from Joint and Several Liability	Processing procedures for adjusting accounts and closing innocent spouse cases.
IRM 8.7.12, Technical and Procedural Guidelines - Appeals Innocent Spouse Case Procedures	Appeals procedures for considering innocent spouse cases.
IRM 25.15.14, Innocent Spouse Tracking System	Innocent Spouse Tracking System (ISTS) procedures used to track innocent spouse cases.
IRM 25.15.15, Mirror Modules for Requests for Relief from Joint and Several Liability	Mirror modules for requests for relief from joint and several liability.
IRM 25.15.17, Reconsiderations	Reconsideration procedures for innocent spouse cases.
IRM 25.15.19, Non-Qualifying Requests for Relief & Complex Account Issues	Provides guidance to CCISO employees resolving taxpayer account issues which do not involve a determination of relief from joint and several liability.

25.15.3.2
(12-12-2016)

**Request for Relief under
IRC 6015**

- (1) A spouse can request innocent spouse relief by filing Form 8857, Request for Innocent Spouse Relief, or a similar written statement that is signed under penalty of perjury. The IRS considers relief under IRC 6015(b), (c) and (f), as applicable. The spouse requesting relief is the Requesting Spouse (RS), and the spouse not requesting relief is the Non-Requesting Spouse (NRS).
- (2) In general, a RS may only withdraw a request for relief prior to the issuance of a preliminary determination letter.

Exception: In some cases, the IRS may allow the RS to withdraw a request for relief after it issues the preliminary determination. Consult with management before allowing the RS to withdraw the request after the preliminary determination has been issued.

25.15.3.3
(12-12-2016)
**Administrative
Processes**

- (1) In general, requests for relief are received in CCISO, and most are worked by CCISO through correspondence. For taxpayers who are already under examination in an Area Office, the requests are established on the Innocent Spouse Tracking System (ISTS) and then forwarded to the Area Office Innocent Spouse Coordinator (ISC) for routing to the appropriate field examiner for consideration. Occasionally, Area Office examiners receive requests directly from the taxpayers. Innocent spouse relief requests are considered as part of any open examination concurrently with deficiency determinations.

Note: See IRM 25.15.6, Field Examination Procedures, for additional information applicable to Area Office examiners.

Note: See IRM 25.15.18, Innocent Spouse Relief Processing Procedures , for information applicable to CCISO examiners.

- (2) For all relief requests filed, the NRS must be notified and provided an opportunity to submit information relevant to the request for relief. See IRM 25.15.3.4, Notification to NRS, for more information.

Note: If both spouses file relief requests, then both are considered the RS and NRS respectively for each request. The relief determinations for each spouse are made individually.

- (3) Once information is gathered from both spouses, the determination is made, and both taxpayers are notified of the proposed relief determination and given administrative appeal rights by issuance of either Preliminary Determination Letters or examination reports issued to each spouse, depending on whether the request is being worked in CCISO or in the Area Office. If neither spouse appeals, Final Determination Letters are issued to each spouse. See IRM 25.15.3.10, Commonly Used Letters, for additional information on letters to be issued.

Note: In an open Area Office exam case which is unagreed, statutory notices are issued which include the Final Determination of innocent spouse relief, and are issued concurrently with the Final Determination Letters. See IRM 4.8.9.18.11, IRC 6015: Relief from Joint and Several Liability on Joint Return(s), for more information.

- (4) Once a Final Determination is made and letters/notices are issued and defaulted (no Tax Court petitions filed by either spouse), account adjustments are made if relief is granted in full or in part.

25.15.3.4
(06-10-2024)
Notification to NRS

- (1) The NRS must receive notice of, and an opportunity to participate in, any proceeding with respect to an innocent spouse relief request.

Caution: Always protect the privacy and return information of the RS. See IRM 25.15.1.9.2, Authorized Disclosure Rules, for more information.

- (2) The NRS is notified by issuance of Letter 3284-C, Non-Requesting Spouse Initial Contact, by CCISO, or Letter 3284, Non-Requesting Spouse Initial Contact, by the Area Office examiner. The letter notifies the NRS of the request for relief and solicits additional information, including the completed Form 12508, Questionnaire for Non-Requesting Spouse, with a 30-day response time.

- (3) The notification letter is not sent via certified mail, but must be sent to the NRS' last known address.

Note: If the request for relief (Form 8857, Request for Innocent Spouse Relief, or other written statement) indicates an address for NRS that is different from the address of record, then the letter must also be issued to such other address.

- (4) The NRS is notified of the preliminary determination made, and given the right to an administrative appeal when relief is fully or partially allowed. The NRS may file a protest and request an Appeals conference.

Note: If the request for relief (Form 8857, Request for Innocent Spouse Relief, or other written statement) indicates an address for NRS that is different from the address of record, then the letter must also be issued to such other address.

- (5) If relief is denied in full, the NRS is notified that they will be contacted if the RS protests the determination and Appeals proposes to increase the amount of relief granted in the preliminary determination.

Note: If the request for relief (Form 8857, Request for Innocent Spouse Relief, or other written statement) indicates an address for NRS that is different from the address of record, then the letter must also be issued to such other address.

25.15.3.4.1
(06-10-2024)

**Notification to NRS in
Cases of Alleged Abuse**

- (1) The IRS recognizes the sensitivity of information shared in relief requests involving alleged abuse of the RS. See IRM 25.15.3.11.1, Alleged Abuse. The Form 8857, Request for Innocent Spouse Relief, and the Pub 971, Innocent Spouse Relief, advise the RS that the NRS will be contacted during the relief consideration process.
- (2) Personal information of one spouse is not to be disclosed to the other spouse: this includes the other spouse's new last name, location, or telephone number; any information about the other spouse's employment, income or assets, or the income level at which a suspended account will be reactivated. See IRM 25.15.1.9.2, Authorized Disclosure Rules, for more information.

25.15.3.5
(01-10-2020)

Account Activities

- (1) Transactions posted on each account can indicate various activities taken by different functions of the IRS.

25.15.3.5.1
(12-12-2016)

Collection Activity

- (1) Certain collection activities trigger the start of the two-year period for requesting relief under IRC 6015(b) or (c). In general, the Collection Due Process (CDP) notice is considered the first collection activity. The CDP notice, which occurs in all cases before levy or seizure except in the case of levies on state tax refunds and in jeopardy situations, provides taxpayer notice of the IRS's intent to levy (pursuant to section 6331(d)) and the taxpayer's right to a pre-levy (section 6330) CDP hearing.

Term	Description
Two-Year Rule for 6015(b) and 6015(c)	<p>To be considered for relief under 6015(b) or (c), RS must file a request for relief with the IRS no later than two years from the date of the first collection activity against the RS.</p> <p>Note: A request is timely for consideration under IRC 6015(f) if the collection statute or refund statute is open at the time of filing.</p> <p>Note: Timely mailing is timely filing. If available, look at the postmark date to determine whether a request for relief is filed timely.</p>
Refund Offsets	<p>The offset of an overpayment of the RS against the joint liability. This does not include joint refund offsets.</p>
IRC 6330 Notices	<ul style="list-style-type: none"> • A notice issued by Collection of the IRS's intent to levy and to notify taxpayers of their right to a CDP hearing. • The notice is indicated by a TC 971/AC 069 associated with the RS SSN. <p>Exception: If the TC 971/AC 069 is followed by a TC 971/AC 068 or TC 971/AC 469 the TC 971/AC 069 does NOT start the collection activity against RS for purposes of the Two-Year Rule for 6015(b) and 6015(c).</p>

Term	Description
Collection suit filed by the United States against the RS for the collection of a joint liability	<ul style="list-style-type: none">• Triggers the two-year period for purposes of the Two-Year Rule.• Indicated by a TC 520 with a closing code (CC) of 70, 75, 78-81, or 84.• If one of these indicators is present on the account more than two years prior to the relief request date, investigate further to determine if the Department of Justice (DOJ) commenced a collection suit against the RS.

Term	Description
Claims in Judicial Proceedings	<ul style="list-style-type: none"> Includes claims filed by the IRS in a court proceeding of which RS is a party and/or involves the property of the RS, as in a bankruptcy proceeding. Example: Proof of Claims (POC) filed in bankruptcy will be indicated on transcripts, and if more than two years prior to innocent spouse relief request date, further investigation is warranted by contacting the bankruptcy unit and requesting the POC, along with documentation regarding who was served and at what address. A general litigation code TC 520 should prompt the examiner to investigate to determine what type of litigation is present and whether or not the two-year period for innocent spouse relief requests under IRC 6015(b) or (c) has been triggered.
Notices of Deficiency	NOT a collection activity that triggers the Two-Year Rule for 6015(b) and (c).
Demands for Payment of Tax	NOT a collection activity that triggers the Two-Year Rule for 6015(b) and (c).
Notices of Federal Tax Lien	NOT a collection activity that triggers the Two-Year Rule for 6015(b) and (c).

25.15.3.5.2
(12-12-2016)
Math Errors

- (1) See Exhibit 25.15.3-1, Math Errors, for additional information on how to treat Math Errors for purposes of determining innocent spouse relief.

25.15.3.6
(12-12-2016)
Special Considerations

- (1) There are various legal doctrines and agreements that can prevent RS from filing a request for innocent spouse relief and result in the request being non-qualifying. Additionally, there are items which appear on the tax return that are not eligible for relief under IRC 6015:

Non-Qualifying Factor	If	Then
Res judicata - Generally prevents any kind of claim for a tax year previously litigated.	Any court has rendered a final decision on RS' tax liability for a tax year, and IRC 6015 relief was at issue, OR if RS meaningfully participated. Note: See Proposed Treasury Regulation 1.6015-1(e) for definition and examples of "meaningfully participated."	RS request for innocent spouse relief is non-qualifying due to Res judicata. Note: Res judicata does not apply to criminal tax cases if the civil income tax liabilities were not and could not have been at issue. Note: If the only basis for not considering or initially denying a relief request under IRC 6015(c) was that the RS was still married when the original request was made or considered, and RS files a new request, then res judicata does not apply to bar the new request from being considered under IRC 6015(c) only.

Non-Qualifying Factor	If	Then
Collateral estoppel -holds that the findings of fact or law of a prior judicial decision are binding in a subsequent proceeding between the same parties.	<p>For example: A court denied relief under IRC 6015(b) due to the established knowledge of the RS for tax year 1.</p> <p>Note: See Proposed Treasury Regulation 1.6015-1(e) for definition and examples of Collateral estoppel.</p>	<p>In a subsequent year the RS is precluded from arguing that they did not have knowledge.</p> <p>Note: Since knowledge is only one factor to consider under IRC 6015(f), then in this example, the RS could still request relief consideration under that code section.</p>
Offer In Compromise (OIC)	<p>The RS is a party to an accepted OIC for a given tax period.</p>	<p>The RS cannot be considered for relief from any liability covered under the OIC - even if the taxpayer later defaults. See IRM 25.15.1.2.7, Offer in Compromise (OIC), for more information.</p>
Closing Agreements	<p>Closing agreements are signed by RS:</p> <ul style="list-style-type: none"> • Form 866, Agreement as to Final Determination of Tax Liability. • Form 906, Closing Agreement on Final Determination Covering Specific Matters. 	<ul style="list-style-type: none"> • RS request for innocent spouse relief is non-qualifying for the tax year which is covered in the Form 866. • RS request can be considered for relief on items not covered in the Form 906.

Non-Qualifying Factor	If	Then
TEFRA Settlement Agreements	RS is a party to TEFRA proceedings under certain circumstances with regard to partnership items and/or non-partnership items.	RS may or may not be eligible to be considered for relief under IRC 6015. See IRM 25.15.1.2.8, Tax Equity and Fiscal Responsibility Act (TEFRA) Settlement Agreements, for more information.
Household Employment Taxes	Unpaid tax liability is due to Household Employment Taxes.	That portion is not eligible for relief since those taxes do not qualify for relief under IRC 6015. Household Employment Taxes are not income taxes under Subtitle A.
Individual Shared Responsibility Payments assessed per the Affordable Care Act	Unpaid liability is due to Individual Responsibility Payments (may be assessed on MFT 35).	That portion is not eligible for relief under IRC 6015 since assessments under that provision are not income taxes under Subtitle A.

25.15.3.7
(12-12-2016)
IRC 6015(b) - Innocent Spouse Relief Qualifications

(1) To qualify for innocent spouse relief under IRC 6015(b), the RS must meet ALL of the following five requirements:

- A valid joint return was filed for the year in which relief is requested.
- There is an understatement of tax attributable to erroneous items of the NRS. See IRM 25.15.3.1.6, Terms, for more information.
- The RS did not know and had no reason to know of the understatement at the time the return was signed.
- Taking into account all the facts and circumstances, it would be inequitable to hold the RS liable for the understatement attributable to the NRS.
- The request for relief is made within two years from the date of the first collection activity with respect to the RS after July 22, 1998. See IRM 25.15.3.5.1, Collection Activity, for more information.

25.15.3.7.1
(06-10-2024)
Joint Return

(1) Under IRC 6015(b), the first requirement is that a valid joint return was filed for the taxable year for which relief is being requested.

Note: If RS did not file a joint return or the joint return filed is invalid, and the spouses are domiciled in a community property state, relief under IRC 66(c) may be considered. See IRM 25.15.5, Relief from Community Property Laws, for more information.

Note: If the validity of the joint return is raised by the RS or NRS, the issue of whether a valid married filed joint election was made should be addressed in the workpapers contained in the case file. See IRM 25.15.19.2.4, Joint Returns - Invalidated for more information.

25.15.3.7.2
(12-12-2016)
**Understatement
Attributable to
Erroneous Item of NRS**

- (1) The second requirement is that there must be an understatement of tax attributable to erroneous items of the NRS. Attribution is a critical factor. Items attributable to the RS do not qualify for relief. The RS cannot be relieved of tax on their own items, including joint items, under IRC 6015(b). In most cases, examiners should first consider attribution before other factors. See IRM 25.15.3.1.6, Terms, for more information on:

- Understatement.
- Erroneous Items.
- Attribution.
- Math Errors.

25.15.3.7.3
(06-10-2024)
**Actual and Constructive
Knowledge**

- (1) The third requirement to consider under IRC 6015(b) is whether the RS did not know and had no reason to know of the understatement at the time the tax return was signed.

- (2) Under this requirement, the RS must establish:

- Lack of actual knowledge (did not know), or
- Lack of constructive knowledge (had no reason to know)

Exception: If a RS establishes he or she was the victim of domestic abuse prior to the time the return was signed, but did not sign the return under duress (which might invalidate the joint filing status election), and as a result of the prior abuse did not challenge any of the items on the return for fear of retaliation, the actual knowledge and reason to know requirement of IRC 6015(b) will not apply. See IRM 25.15.3.11.1, Alleged Abuse.

- (3) The examiner should consider the following factors to determine whether a reasonable person in similar circumstances would have known of the understated tax. The following list is not all inclusive:
- Nature of the erroneous item and the amount of the erroneous item relative to other items.
 - The couple's financial situation.
 - The RS' educational background and business experience.
 - Whether the RS failed to inquire, at or before the time the return was filed, about items on the return, or omitted from the return, that a reasonable person would question (see Exception above in paragraph (2)).
 - Whether the erroneous item represented a departure from a recurring pattern reflected in prior year's returns.
- (4) See Treas. Reg. 1.6015-2(d) and IRM 25.15.3.11, Case Development, for additional information on case development.

25.15.3.7.4
(12-12-2016)

**Inequitable to Hold RS
Liable**

- (1) The fourth requirement under IRC 6015(b) is to consider all the facts and circumstances, and determine whether it is inequitable (unfair) to hold the RS liable for the deficiency.
- (2) A determination of whether it is inequitable to hold the RS liable is based on the facts and circumstances and considers such items as:
 - a. Whether a significant benefit was received by RS (in excess of normal support).
 - b. Education level of RS.
 - c. Involvement of RS in household finances.
 - d. Whether NRS deserted RS.
 - e. Health of RS at the time the return was signed and at the time relief was requested.
 - f. Economic hardship of RS.
 - g. Alleged abuse of RS or whether RS was subject to financial control of NRS.
 - h. Whether NRS was deceitful toward RS.
 - i. Whether RS received a tax benefit on the return from the understated tax.

Note: This list is not all inclusive. See IRM 25.15.3.11, Case Development, for more information.

- (3) These guidelines must be applied in a consistent and nondiscriminatory manner. Decisions to grant relief must not be based on the subjective personal and social beliefs of the IRS employee or any other inappropriate grounds.

25.15.3.7.5
(12-12-2016)

**Time Period for
Requesting Relief**

- (1) The fifth requirement to consider under IRC 6015(b) is that the request for relief must be made within two years from the first collection activity against the RS. See IRM 25.15.3.1.6 , Terms, and IRM 25.15.3.5.1, Collection Activity, for additional information.

25.15.3.7.6
(01-10-2020)

Partial Relief Available

- (1) Partial relief may be granted when a spouse meets all of the other conditions for innocent spouse relief, except that he or she had knowledge of, or reason to know of, some part of the understatement, or some part of the understatement is attributable to the RS. IRC 6015(b) specifically allows the partial relief of liability (including related penalties and interest) to the extent of the lack of knowledge or reason to know of the item giving rise to the understatement. See IRM 25.15.3.11, Case Development, Exhibit 25.15.3-4, Partial Relief Due to Knowledge or Reason to Know, and Treas. Reg. 1.6015-2(e) for additional information.

Note: The knowledge requirement applies to each item of adjustment individually, and to the extent of the knowledge of each erroneous item.

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25.15.3.7.7
(12-12-2016)
IRC 6015(b)
Determination

- (1) If all the criteria of 6015(b) relief are met by RS, then allow full or partial relief of the liability accordingly, including any related penalties and interest.
- (2) If the request for relief is denied in full or in part under the provisions of IRC 6015(b), then consider relief under IRC 6015(c) for the denied amount(s).

25.15.3.8
(12-12-2016)
IRC 6015(c) - Election to
Allocate a Deficiency

- (1) If the RS is requesting relief from a deficiency (whether assessed or un-assessed), and all the criteria for relief under IRC 6015(b) are not met for any portion of the liability, then consider relief under IRC 6015(c) for the portion denied under IRC 6015(b).
- (2) Both parties to a joint return may elect to allocate a deficiency. If only one spouse elects to allocate the deficiency, the liability of the NRS is not affected. The NRS is still liable for the entire deficiency.
- (3) Under IRC 6015(c), relief granted to the RS is determined by allocation of items giving rise to the deficiency, if all other criteria are met. Allocation is determined by attributing each item adjusted to one or both spouses. Items which may be attributed to both spouses can be allocated fifty percent (50%) to each spouse. See IRM 25.15.3.1.6 , Terms, for more information on attribution and allocation.

Note: Refunds are not allowed under IRC 6015(c). Treat as a full allowance when granting relief under IRC 6015(c) for the balance due but not refunding any money.

- (4) The allocation is made without regard to community property law.

25.15.3.8.1
(12-12-2016)
Qualifications

- (1) An individual may request relief by asking the IRS to allocate a deficiency. To qualify for relief under IRC 6015(c), the RS must meet the following requirements:
 - a. A valid joint return was filed for the taxable year for which relief is being requested.
 - b. There is a deficiency attributable to erroneous items of the NRS. A spouse may be relieved for a portion of the tax liability resulting from a joint item adjustment.
 - c. RS is either divorced, widowed, or legally separated from the NRS, OR RS and NRS were not members of the same household at any time during the 12 month period prior to the date the request was filed. The 12 month separation requirement does not apply to a spouse temporarily absent from the household due to incarceration, illness, business, vacation, education, or other temporary absences.

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Note: Treas. Reg. 1.6015-3 provides that the marital status of a deceased RS will be determined on the earlier of the date of election or the date of death, in accordance with IRC 7703(a)(1). The regulations also clarify that spouses who reside in different dwellings are con-

sidered members of the same household if they are not estranged or one spouse is temporarily absent.

- d. The request for relief is made within two years from the date of the first collection activity with respect to the RS. The two year time period for making the request is the same as required under IRC 6015(b). See IRM 25.15.3.5.1, Collection Activity, for the definition of collection activity.

25.15.3.8.2
(12-12-2016)
Items Not Eligible for Allocation

- (1) There are numerous factors to consider in allocating a deficiency under IRC 6015(c). Not all items are eligible for allocation, subject to the limitations listed in this section.

25.15.3.8.2.1
(06-10-2024)
Actual Knowledge Invalidates Allocation

- (1) If the IRS can show that the RS had actual knowledge of the items giving rise to the deficiency at the time the return was signed, those items are not allocated to the NRS.

Note: The IRS has the burden of proof to show by a preponderance of the evidence that the RS had actual knowledge of the items causing the deficiency at the time the return was signed. See IRM 25.15.3.11, Case Development, for additional information.

- (2) Under IRC 6015(b), the RS can be denied relief for “reason to know” or “constructive knowledge” of certain items, but may qualify for relief under IRC 6015(c) if he or she did not have actual knowledge of those items (or if the IRS cannot show by a preponderance of evidence that RS had actual knowledge).
- (3) In an omitted income case, actual knowledge includes knowledge of the receipt of the income, not only the source of the income.
- (4) Actual knowledge of an erroneous deduction or credit means knowledge of the facts that made the item not allowable as a deduction or credit.

Note: For example, in an erroneous deduction case involving disallowed deductions generated by a partnership, the IRS must establish that the RS had actual knowledge of the facts which made the partnership items erroneous deductions. See Treas. Reg. 1.6015-3(c)(2) and IRM 25.15.3.11, Case Development, for more information.

- (5) Actual knowledge of a portion of the deficiency does not invalidate the request for relief of the entire deficiency. An allocation to the NRS is invalidated for the specific items of which RS had actual knowledge.

Exception: If a RS establishes he or she was the victim of domestic abuse prior to the time the return was signed, but did not sign the return under duress (which might invalidate the joint filing status election), and as a result of the prior abuse did not challenge any of the items on the return for fear of retaliation, the actual knowledge requirement of IRC 6015(c) will not apply. This exception only applies if the IRS first establishes actual knowledge of the item giving rise to the deficiency. See IRM 25.15.3.11.1, Alleged Abuse.

25.15.3.8.2.2
(12-12-2016)

Fraudulent Transfers

- (1) Taxpayers are not eligible for relief under IRC 6015(c) or IRC 6015(f) if assets were transferred between spouses as part of a fraudulent scheme.
- (2) A fraudulent scheme includes a scheme to defraud the IRS or another third party, including, but not limited to, creditors, ex-spouses, and business partners. See Treas. Reg. 1.6015-1(d).
- (3) IRS bears the burden of showing assets were transferred as part of a fraudulent scheme. If the IRS is unable to prove fraud, fraud indicators will still be taken into account when considering relief under the equitable factors of IRC 6015(f). For more information see IRM 25.1, Fraud Handbook.

25.15.3.8.2.3
(12-12-2016)

Taxpayer Burden of Proof to Establish Their Allocated Portion of the Liability

- (1) The RS bears the burden of proof in establishing his or her allocated portion of the liability per IRC 6015(c)(2). The spouse must prove that the items giving rise to an understatement are attributable to the NRS. If efforts to retrieve the administrative file are unsuccessful, and no other corroborating evidence is available to determine attribution of the erroneous items, examiners should base their determination on the credibility of the RS. IRC 6015(c) requires the IRS prove actual knowledge of each item giving rise to a deficiency in order to invalidate an allocation to the NRS. In addition, the IRS must prove the extent of actual knowledge for each item. See IRM 25.15.3.8.2.1, Actual Knowledge Invalidates Allocation, for additional information.

25.15.3.8.2.4
(12-12-2016)

Items Attributable to RS

- (1) Generally, the RS may not be relieved of any part of the deficiency which relates to an item attributable to the RS.
- (2) A RS can obtain relief from his or her own item to the extent that the RS does not receive a tax benefit from the item and the item offsets the NRS's income.
 - In these instances the IRS must establish that the RS had actual knowledge in order to invalidate the allocation to the NRS, or the RS will be able to obtain relief.

25.15.3.8.2.5
(12-12-2016)

Fraud

- (1) IRC 6015(d)(3)(C) provides an exception to the allocation method if the IRS establishes fraud by one or both spouses. The IRS may use an alternative allocation it deems appropriate based on the facts and circumstances.

25.15.3.8.2.6
(12-12-2016)

Disqualified Assets

- (1) Relief is not available to the extent of the value of Disqualified Assets transferred to the RS by the NRS.
- (2) A disqualified asset is any property or right to property transferred to the RS by the NRS if the principal purpose of the transfer was the avoidance of tax or payment of tax (including related additions to tax, penalties and interest):
 - a. All assets transferred from the NRS to the RS during the 12 month period before, or any time after, the mailing date of the first letter of proposed deficiency (the 30 day letter), are presumed to be disqualified assets. See IRC 6015(c)(4)(B)(ii)(I) and Treas. Reg. 1.6015-3(c)(3)(iii).
 - b. The presumption does not apply if the RS establishes that the transfer was pursuant to a divorce decree, separate maintenance agreement, or documents related to such a decree or agreement.

- (3) If the presumption of the transfer of a disqualified asset applies, the RS may rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

25.15.3.8.2.7

(12-12-2016)

Tax Benefit Limitation

- (1) An erroneous item that would otherwise qualify for relief does not qualify to the extent the RS received a tax benefit from that item on the original return. Likewise, to the extent the RS did not receive a tax benefit from the item and the NRS does (offset of NRS's income), then the amount that the RS does not receive a benefit from is allocated to the NRS. Examples of items that could result in such a benefit include deductions, losses, and credits attributable to the NRS (or joint items allocated 50–50) that reduce taxable income of the RS or vice-versa.
- (2) For credits treated as separate items, benefit is derived from the lesser of :
- The total of such credits per return, or
 - The excess of such credits over the NRS's share of the original return liability (including Other Taxes).
- (3) See Exhibit 25.15.3-2, Tax Benefit Rule Examples, for more information.

25.15.3.8.2.8

(12-12-2016)

Household Employment Taxes

- (1) Because household employment taxes (reported on Form 1040, Schedule H) are employment taxes, not income taxes under Subtitle A, they do not qualify for relief. Only Subtitle A taxes are subject to relief.

25.15.3.8.2.9

(12-12-2016)

Child's Liability

- (1) The liability of a child, included on a joint return, is disregarded in computing the separate liability of either spouse. See IRC 6015(d)(5). The child's liability should be allocated equally between the spouses. For purposes of this paragraph, a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse. See Treas. Reg. 1.6015–3(d)(4)(iii). See Form 8615, Tax for Certain Children Who Have Unearned Income, and Form 8814, Parents' Election to Report Child's Interest and Dividends.

25.15.3.8.3

(12-12-2016)

Allocating a Deficiency

- (1) The allocation is made according to the procedures contained in IRC 6015(d). The allocation takes into consideration limitations in IRC 6015(c).

25.15.3.8.3.1

(12-12-2016)

Steps to Allocate

- (1) The following is a seven step approach to allocating understatements between the joint and several liability and the NRS individually. **In general, items for which the RS is granted relief are allocated from the joint liability to the NRS individually. Items for which relief is not granted remain part of the joint and several liability.**
- (2) The seven steps are summarized in the following table:

Step	Action
1	<p>Determine the total deficiency for the joint return with all adjustments.</p> <p>Note: For example, this amount should reconcile with Line 14, Deficiency-Increase in Tax, of Form 4549, Report of Income Tax Examination Changes.</p>
2	<p>Identify and allocate separate treatment items. See IRM 25.15.3.8.3.2, Separate Treatment Items, for more information.</p>
3	<p>Compute the total allocable deficiency. This is done in order to allocate income tax before credits and other taxes. Therefore, certain disallowed credit items are subtracted from the total deficiency. Other tax increases, such as self-employment tax, are also subtracted from the total deficiency. When applicable, credit items increased and other taxes decreased are added back to the total deficiency.</p> <p>Joint deficiency (Step 1) -/+ Separate treatment items (Step 2) = Total Allocable Deficiency (Step 3)</p>
4	<p>Allocate all adjustment items between the spouses. The allocation takes into account exceptions and special rules as follows:</p> <ul style="list-style-type: none"> • Actual knowledge bars relief for the item. See IRM 25.15.3.8.2.1. • Fraudulent transfers invalidate request for relief. See IRM 25.15.3.8.2.2. • RS bears burden of proof for establishing the portion of deficiency allocated to them. See IRM 25.15.3.8.2.3. • Allocate items to joint liability or NRS individual liability according to attribution. • Tax benefit limitation may apply. See IRM 25.15.3.8.2.7. • When an understatement is due to fraud. See IRM 25.15.3.8.2.5. • There is no relief for items attributable to RS - they are not allocated to NRS liability. See IRM 25.15.3.8.2.4. <p>Note: A RS can obtain relief from his or her own item to the extent that the RS does not receive a tax benefit from the item and the item offsets the NRS's income. In these instances, the IRS must establish that the RS had actual knowledge to invalidate the allocation to the NRS, or the RS will be able to obtain relief.</p> <ul style="list-style-type: none"> • Disqualified Asset transfers. See IRM 25.15.3.8.2.6. • Household Employment Taxes. See IRM 25.15.3.8.2.8. • Child's Liability. See IRM 25.15.3.8.2.9.
5	<p>Compute the allocable deficiency ratio for the joint and NRS individual liabilities. This is the portion of the total allocable deficiency (Step 3) allocated to NRS and the joint liability, using the ratio of: the adjustment items allocable to each (Step 4) over the total of all allocated adjustment items.</p> <p>Percentage of adjustments allocated (Step 4) x Total allocable deficiency (Step 3) = Percentage of Deficiency Allocated (Step 6)</p>

Step	Action
6	<p>Compute the total deficiency allocated to the NRS individually and the joint account liability. This is a two-step process:</p> <ul style="list-style-type: none"> The allocable deficiency is adjusted for the Separate Treatment Items (See IRM 25.15.3.8.3.2, Separate Treatment Items) added or removed from the total deficiency in Step 3. The result is the Tentative Total Deficiency allocated to the NRS individually and the joint liability. <p>Deficiency allocated (Step 5) +/- Separate treatment tax items (Step 3) = Tentative total deficiency allocated</p> <p>Note: The total of the joint liability plus NRS's allocated individual liability should equal the total deficiency before any allocation: the amount in Step 1</p>
7	<p>Compute and adjust for any change to the Earned Income Credit (EIC).</p> <ul style="list-style-type: none"> Compute the allocation of the EIC based on attribution of items increasing AGI unless it was adjusted due to other reasons. If adjusted due to other reasons, the allocation is based on attribution of the adjustment. <p>Tentative total deficiency as allocated + The decrease in EIC - The increase in EIC = Total Deficiency Allocated</p>

(3) Any related penalties (for example TC 240 penalty) are allocated based on the amount of relief granted to RS.

- Determine the penalty rate with regard to the deficiency assessment (for example 20%).
- If relief is granted in full or in part, the RS will be relieved of the related penalty using the same ratio.

Example: Total deficiency is \$100 and 20% accuracy-related penalty of \$20 is assessed. RS is relieved of \$50 of the deficiency, therefore she is relieved of \$10 of the penalty (20% of \$50)

(4) A discussion of the special rules and exceptions indicated in the allocation steps 2, 4 and 7 are in the remainder of IRM 25.15.3.8.3 below.

25.15.3.8.3.2 (12-12-2016)

Separate Treatment Items

- Separate treatment items for purposes of the allocation computation are **credits and taxes only**. They affect the deficiency dollar for dollar in the allocation computation. Examples include:
 - Child and Dependent Care Credit,
 - Child Tax Credit,
 - Education Credits, and
 - Self-employment (SE) Tax and the 10 percent penalty for early withdrawal of an Individual Retirement Account (IRA) Tax.
- Because separate treatment items affect the deficiency dollar for dollar, they are allocated separately from the other adjustment items. The separate treatment items that were adjusted should be totaled and subtracted from the total deficiency to arrive at a figure that represents only income tax. After the proportionate deficiency (the **only** income tax figure) is allocated between the

spouse, then the separate treatment items are allocated between the spouses based on who they belong to and added to their share of the proportionate deficiency.

- (3) **Underpayment** - Separate treatment items creating a balance due are allocated based on who they belong to.

Note: When allocating the non-refundable credits, allocate 50/50 unless the RS's tax is less than the amount of the credit. If that is the case apply that amount to the RS and the remainder on the NRS.

Note: In general refundable credits are allocated based on the percentage of income belonging to each spouse.

- (4) **Understatement** - When the credit is reduced or eliminated due to the increase in AGI, the reduction in the credit is allocated based on which spouse's items were adjusted, and how much this contributed to the change in AGI. See IRM 25.15.3.8.3.3, Understatements Resulting From an Increase to Adjusted Gross Income, for more information.

Example: If it is the NRS's income that caused the increase to AGI, it would be attributable to the NRS, much like EITC and Additional Child Tax Credit (ACTC).

- a. If the education credit is reduced due to lack of verification, then it is attributable to the party actually claiming the education expenses.
- b. If the education credit is due to a child having the expenses, it is allocated by percentage.

Note: It is important to read the CP 2000 or Exam work papers to identify why the education credit was reduced.

25.15.3.8.3.3
(12-12-2016)
**Understatements
Resulting From an
Increase to Adjusted
Gross Income**

- (1) If an erroneous item that is attributable to the NRS increases the adjusted gross income (AGI) and results in disallowance of another item on the return because of the increase to AGI, then any understatement caused by the disallowance of the other item will also be attributable to the NRS. This rule is applicable whether or not the RS received a refund (or a portion of a refund) due to the item.

Example: A joint return shows a tax liability of \$500 and an earned income tax credit (EITC) in the amount of \$1500 which results in a refund of \$1000. Upon examination NRS had additional unreported income that increased the tax liability on the return to \$1000. In addition, the increase to AGI from the unreported income resulted in the EITC being disallowed in full because the AGI now exceeded the maximum amount. The IRS determines a deficiency in the amount of \$2000 (\$500 from the unreported income and \$1500 from the disallowed EITC). If RS requests relief under IRC 6015, the entire \$2000 deficiency will be attributable to NRS because the EITC was disallowed solely due to the increase to adjusted gross income (AGI) of NRS's unreported income. Thus, RS will satisfy the attribution factors of IRC 6015(b) and IRC 6015(f). For purposes of IRC 6015(c) the deficiency related to the EITC will be initially allocated to NRS.

Exception: This does not apply to the RS's social security benefits. The social security benefits will be attributable to the RS.

- (2) When credits are reduced or eliminated due to lack of verification, then the liability is attributable to the spouse claiming the expense which generated the credit. It is important to know why the credit was reduced.
- (3) For purposes of determining whether a RS knew or had reason to know of the item that was disallowed due to the increase in AGI, the RS's knowledge or reason to know of the erroneous item that resulted in the increase in AGI is applicable.

Example: Thus, in the example (1) above, if RS knew or had reason to know of NRS's unreported income, then RS will have knowledge or reason to know of the deficiency related to the EITC. On the other hand, if RS did not know or have reason to know of NRS's unreported income, then RS will not have knowledge or reason to know of the deficiency related to the EITC.

- (4) If the item is attributable to the NRS and the RS is determined to not have knowledge or reason to know of the item, other factors still need to be evaluated.
- (5) Other examples of items that might result in an understatement due to an increase to AGI include, but are not limited to, itemized deductions, alternative minimum tax, student loan interest adjustment, and other credits. See Exhibit 25.15.3-3, Allocation of Deficiency Items Due to Increase in AGI, for more information.

25.15.3.8.4
(06-10-2024)

Allocation Worksheets

- (1) CCISO will refer to the allocation worksheets on the *Innocent Spouse Operations* SharePoint site.
- (2) Area Office examiners will refer to *SBSE Exam Innocent Spouse web site*, for more information, and find the Technical Services reviewer at *Innocent Spouse - Exam Technical Services* for the worksheets, and for assistance in completing the computations as needed.

25.15.3.9
(01-10-2020)

IRC 6015(f) Equitable Relief

- (1) IRC 6015(f) was enacted to provide relief from joint and several liability where, taking into consideration all the facts and circumstances, it is inequitable to hold the spouse liable for an understatement or underpayment when other relief provisions do not apply.
- (2) Rev. Proc. 2013-34 provides the guidelines for considering equitable relief under IRC 6015(f). It is effective for all relief requests still under consideration (not final) as of September 13, 2013, and requests filed on or after September 13, 2013.
- (3) Rev. Proc. 2013-34 takes abuse and financial control into consideration more thoroughly than previous guidance.
- (4) Requirements that must be met for the IRS to consider whether the RS is entitled to streamlined relief is in Section 4.02 of Rev. Proc. 2013-34. See IRM 25.15.3.9.3, Streamlined Determinations, for details.

- (5) If a RS does not meet the requirements for streamlined relief, then equitable factors to be considered are described in Section 4.03 of Rev. Proc. 2013-34. See IRM 25.15.3.9.4.1, Equitable Relief Factors (Section 4.03), and IRM 25.15.3.9.4.2, Other Factors (Section 4.03) for details.
- (6) Apply the guidelines in a consistent and nondiscriminatory manner. Decisions to grant relief must not be based on the subjective personal and social beliefs of the IRS employee or any other inappropriate grounds.

25.15.3.9.1
(03-08-2013)
Understatements and Underpayments

- (1) IRC 6015(f) applies to **understatements** (liabilities from deficiency assessments) and **underpayments** (unpaid self-assessed taxes on original or amended returns).
- (2) This is the only provision under IRC 6015 that provides relief for underpayments. See IRM 25.15.3.1.6, Terms, for a further explanation of underpayment.
- (3) There are seven threshold conditions which must be met in order for an innocent spouse relief request to be considered under IRC 6015(f). See IRM 25.15.3.9.2, Eligibility Threshold Requirements for more information.
- (4) If the threshold conditions are met, evaluate the relief request first using factors discussed in Section 4.02 of Rev. Proc. 2013-34. See IRM 25.15.3.9.3, Streamlined Determinations, for more information.
- (5) Innocent spouse relief requests that cannot be allowed under Section 4.02 of Rev. Proc. 2013-34 will be evaluated using the Equitable Relief factors discussed in Section 4.03 of Rev. Proc. 2013-34. See IRM 25.15.3.9.4, Relief for Underpayment and Understatement Cases.
- (6) This provision also applies to **penalties, additions to tax, and interest where relief is granted for the underlying tax**. The analysis of the factors should focus on the underlying tax. If relief would have been appropriate for the underlying tax, then relief is appropriate for the penalties and interest. This includes situations where there was an underpayment of tax or a deficiency on the return, but subsequent payments have paid all the tax leaving only penalty and/or interest unpaid or partially unpaid.

Note: If the original return was full paid when filed, then there is no underpayment of tax, therefore, no relief is available under IRC 6015.

Example: Taxpayers filed a joint return late, paid the tax with the return, but still owed penalties and interest for filing late, relief is not available under IRC 6015. Reasonable cause or other penalty relief provisions, outside of the innocent spouse process, may be considered. See IRM 25.15.18.5.1.11, Non-Qualifying Requests for more information.

- (7) See IRM 25.15.3.9.2.2, Availability of Refunds under IRC 6015(f), for refund provisions.

25.15.3.9.2
(03-08-2013)
Eligibility Threshold Requirements

- (1) For a list of requirements that must be met for the IRS to consider whether the RS is entitled to relief under IRC 6015(f), see IRM 25.15.3.9.2.1, Eligibility Threshold Conditions - Defined.

25.15.3.9.2.1
(06-10-2024)

**Eligibility Threshold
Conditions - Defined**

- (1) **Joint Return Filed** — The individual filed a valid joint return for the year in which relief is requested.
- (2) **Unavailability of IRC 6015(b) and IRC 6015(c)** — Relief is not available under IRC 6015(b) or IRC 6015(c).

Exception: Paragraphs (1) and (2) are not relevant for requests for relief under IRC 66(c) relating to taxpayers who file separate returns in community property states. For more information about relief under IRC 66, see IRM 25.15.5.14, IRC 66(c) Innocent Spouse Relief.

- (3) **Time Limitation** — The individual requested relief within any time period that the collection statute or refund statute remains open. Under IRC 6015(f)(2)(B), a request for equitable relief may be made with respect to any portion of any liability that has been paid, provided that such request is made during the period in which the individual could submit a timely claim for refund or credit of such payment.
- (4) **No Fraudulent Transfers** — Equitable relief will not be considered if assets were transferred between spouses as part of a fraudulent scheme to avoid tax or payment of tax. Acts which would disqualify the RS from requesting allocation under IRC 6015(c) also disqualify the RS from equitable relief. See IRM 25.15.3.8.2.2, Fraudulent Transfers, for additional information.
- (5) **No Transfers of Disqualified Assets** — Equitable relief will not be considered to the extent of the value of disqualified assets which were transferred to the RS, similar to IRC 6015(c). See IRM 25.15.3.8.2.6, Disqualified Assets, for more information.

Exception: This condition will not result in the RS being ineligible for relief if the NRS abused the RS or maintained control over the household finances by restricting the RS's access to financial information, or the RS did not have actual knowledge that assets were transferred. See IRM 25.15.3.11.1, Alleged Abuse.

- (6) **No Fraudulent Return** — The RS did not knowingly participate in the filing of a fraudulent joint return. Additional information can be found in IRM 25.1.2.3, Indicators of Fraud.
- (7) **Attributable to the NRS** — Equitable relief will not be considered if the liability is solely attributable to the RS unless one of the following exceptions applies. If liability is attributable to both the RS and NRS, equitable relief will only be considered for the portion attributable to the NRS.

Note: Generally erroneous items of income or erroneous deductions are allocated consistent with the rules under IRC 6015(c), see Treas. Reg. 1.6015-3(d). Joint items are generally allocable 50% to each spouse. Underpayments of tax are allocated based on each spouse's pro rata share of the joint taxable income.

Note: For purposes of determining how much of an underpayment is attributable to each spouse, the EITC and ACTC is allocated to each spouse in proportion to the spouse's share of the adjusted gross income.

Note: When determining allocation, if attribution is unknown, leave it on the joint account. The RS has the burden to establish to whom the income or deduction is attributable.

- a. **Attribution solely due to the operation of community property law.** If an item is attributable or partially attributable to the RS solely due to the operation of community property law, then that item (or portion thereof) will be considered to be attributable to the NRS.
- b. **Nominal ownership.** If the item is titled in the name of the RS, the item is presumptively attributable to the RS. This presumption is rebuttable.

Example: For example, NRS opens an Individual Retirement Account (IRA) in RS's name and forges RS's signature on the IRA in 2006. Thereafter, NRS makes contributions to the IRA and in 2008 takes a taxable distribution from the IRA. NRS and RS file a joint return for the 2008 taxable year, but do not report the taxable distribution on their joint return. The IRS later proposes a deficiency relating to the taxable IRA distribution. RS requests relief from joint and several liability under IRC 6015. RS establishes that RS did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if RS were the owner of the IRA. RS thereby rebutted the presumption the IRA is attributable to RS.

- c. **Misappropriation of funds.** If the RS did not know and had no reason to know, that funds intended for the payment of tax were misappropriated by the NRS for the NRS's benefit, the IRS will consider granting equitable relief although the underpayment may be attributable in part or in full to an item of the RS. The IRS will consider granting relief in this case only to the extent that the funds intended for the payment of tax were taken by the NRS.
- d. **Abuse not amounting to duress.** If the RS establishes that he or she was the victim of abuse prior to the time the return was signed, and that, as a result of the prior abuse, the RS did not challenge the treatment of any items on the return, or question the payment of any balance due reported on the return, for fear of the NRS's retaliation, the IRS will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item of the RS. See IRM 25.15.3.11.1, Alleged Abuse.
- e. **Fraud committed by NRS.** If the RS establishes that the NRS's fraud is the reason for the erroneous item, the IRS will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item of the RS.

Example: NRS fraudulently accesses RS's brokerage account to sell stock that RS had separately received from an inheritance. NRS deposits the funds from the sale in a separate bank account to which RS does not have access. RS and NRS file a joint federal income tax return for the year, which does not report the income from the sale of the stock. The IRS determines a deficiency based on the omission of the income from the sale of the stock. RS requests relief from the deficiency under IRC 6015(f). The income from the sale of the stock normally would be attributable to RS. Because NRS committed

fraud with respect to RS, however, and because this fraud was the reason for the erroneous item, the liability is properly attributable to NRS.

25.15.3.9.2.2
(03-08-2013)
**Availability of Refunds
under IRC 6015(f)**

- (1) Rev. Proc. 2013-34 broadened the availability of refunds when relief requests are allowed in full or in part under IRC 6015(f).
- (2) Refunds are considered only AFTER a determination for relief has been made. See IRM 25.15.3.9.4.3, 6015(f) Relief Refunds, for more information.

25.15.3.9.3
(03-08-2013)
**Streamlined
Determinations**

- (1) If **all the threshold requirements** discussed in IRM 25.15.3.9.2.1, Eligibility Threshold Conditions - Defined, are met and the RS **meets all of the following criteria, relief will be granted:**
 - The RS is no longer married to the NRS. See IRM 25.15.3.9.4.1.1, Marital Status.
 - Economic hardship will result if relief is not granted. See IRM 25.15.3.9.4.1.2, Economic Hardship.
 - The RS did not know or have reason to know of the understatement, OR that the NRS would not or could not pay the underpayment of tax. See IRM 25.15.3.9.4.1.3, Knowledge or Reason to Know, for additional information.
- (2) If relief is not granted due to failure to meet one of the factors above then the examiner must consider the equitable relief factors in Section 4.03 of Rev. Proc. 2013-34. See IRM 25.15.3.9.4.1, Equitable Relief Factors (Section 4.03).

25.15.3.9.4
(07-29-2014)
**Relief for Underpayment
and Understatement
Cases**

- (1) In some instances, a RS with an underpayment liability or understatement who meets the threshold requirements, (see IRM 25.15.3.9.2.1, Eligibility Threshold Conditions - Defined), may not meet all of the Section 4.02 conditions for a Streamlined Determination, see IRM 25.15.3.9.3, Streamlined Determinations, to qualify for relief. The RS may still qualify for equitable relief from a tax liability, if taking into account all the facts and circumstances, it is clearly inequitable to hold the RS liable for the **underpayment**, or for a liability arising from an **understatement** adjustment.
- (2) Various factors, listed in IRM 25.15.3.9.4.1, Equitable Relief Factors (Section 4.03), below, must be considered. All the facts and circumstances of the case are to be taken into account. The degree of importance of each factor varies depending on the circumstances of the RS and the factual context surrounding the marriage. The factors are designed as guides. It is not intended that only the factors described below in IRM 25.15.3.9.4.1, Equitable Relief Factors (Section 4.03), are to be taken into account in making the determination.
- (3) No one factor or majority of factors necessarily controls the determination. Therefore, depending on the facts and circumstances of the case, relief may be granted even if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief may be appropriate even if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief.

Caution: The weight given to any one factor depends on all the facts and circumstances of the case.

25.15.3.9.4.1
(06-10-2024)

**Equitable Relief Factors
(Section 4.03)**

- (1) The factors listed below are designed as guides and not intended to comprise an exclusive list. Other factors relevant to a specific request for relief must also be taken into account in making a determination.
- (2) Consider the following factors to determine whether or not RS should be granted relief under the provisions of IRC 6015(f):
 - Marital Status, IRM 25.15.3.9.4.1.1.
 - Economic Hardship, IRM 25.15.3.9.4.1.2.
 - Knowledge or Reason to Know, IRM 25.15.3.9.4.1.3.
 - Legal Obligation, IRM 25.15.3.9.4.1.4.
 - Significant Benefit, IRM 25.15.3.9.4.1.5.
 - Compliance with Income Tax Laws, IRM 25.15.3.9.4.1.6.
 - Mental or Physical Health, IRM 25.15.3.9.4.1.7.

Note: Although abuse or the exercise of financial control is not a “stand alone” factor, the impact of abuse or financial control is considered. See IRM 25.15.3.11.1, Alleged Abuse. Depending on the facts and circumstances, abuse of the RS’s child or other family member living in the household can constitute abuse of the RS.

25.15.3.9.4.1.1
(07-29-2014)

Marital Status

- (1) **Marital Status** — Whether the RS is no longer married to the NRS as of the date the IRS makes its determination.
- (2) This factor will **weigh in favor of relief** if the RS is no longer married to the NRS. The RS will be treated as being no longer married to the NRS if the RS:
 - is divorced from the NRS, or
 - is legally separated from the NRS under applicable state law, or
 - is a widow or widower and is not an heir to the NRS’s estate, which would have sufficient assets to pay the tax liability; or
 - has not been a member of the same household as the NRS at any time during the 12-month period ending on the date the IRS makes its determination. A temporary absence such as an absence due to incarceration, illness, business, military service, or education, shall not be considered separation for this purpose if it is reasonably expected that the absent spouse will return to the household.

Reminder: A RS is a member of the same household as the NRS for any period in which the spouses maintain the same residence.

- (3) This **factor is neutral** if the RS is:
 - still married to the NRS, or
 - a widow or widower and an heir to the NRS’s estate and there are sufficient assets in the estate to pay the tax liability.

25.15.3.9.4.1.2
(07-29-2014)

Economic Hardship

- (1) **Economic Hardship** - Whether the RS will suffer economic hardship if relief is not granted. An economic hardship exists if paying the tax liability in whole or part will cause the RS to be unable to pay reasonable basic living expenses.
 - If denying relief will cause the RS to suffer economic hardship, this factor will **weigh in favor of relief**.

- If denying relief will not cause the RS to suffer economic hardship, this **factor will be neutral**.
 - If the RS is deceased, this **factor will be neutral**.
- (2) Consider the RS's current income, expenses and assets to determine if an economic hardship exists. It is not sufficient to rely on IRPTR data to determine current income. Instead, information should be solicited if omitted from the Form 8857. Also, consider whether the RS shares expenses or has expenses paid by another individual, such as a new spouse, a family member or significant other with whom the RS is living with and is paying for some or all of the household expenses.
- (3) An **economic hardship exists** if either situation below is present; unless the situation in the "CAUTION" below is present.
- a. Gross income is at 250% (for the RS's family size) or less of the poverty level and the RS does not have assets out of which payments towards the liability can be made.

Note: No need to look at the expenses in this case.

- b. Gross income is more than 250% of the poverty level but the income minus expenses is \$300 or less.

Note: The expenses must be for reasonable basic living expenses, not for the maintenance of an affluent or luxurious standard of living. To determine basic living expenses, consult the national and local collection financial standards.

- c. The federal poverty level chart, by year and by state, can be found at *Federal Poverty Guidelines*.

Caution: When the RS meets the above criteria but has assets such that the RS can make payments and still pay reasonable living expenses, consider this factor as neutral. Review the facts and circumstances. If neither (a) or (b) above applies, evaluate on a case-by-case basis; and if it would be an economic hardship, consider this factor in favor of relief. When evaluating the hardship, the size of the liability must be considered with the financial situation.

25.15.3.9.4.1.3
(06-10-2024)

Knowledge or Reason to Know

- (1) Actual knowledge or reason to know of the item giving rise to the understatement or deficiency **will not be weighed more heavily** than other factors.
- (2) This factor will **weigh in favor of relief** if the RS:
- did not know and had no reason to know of the item giving rise to the understatement or deficiency at the time the RS filed the joint return (including a joint amended return), or
 - had a reasonable expectation at the time the joint return was filed that the NRS would pay the tax liability at the time the joint return was filed or within a reasonable period of time after the filing of the joint return.

Exception: If the **NRS abused the RS or maintained control over the household finances by restricting the RS's access to financial information**, and, therefore, because of the abuse or financial control, the RS was not able to challenge the treatment of any items on the joint return, or to question the payment of taxes reported as due on the

joint return, or challenge the NRS's assurances regarding payment of the taxes, for fear of the NRS's retaliation, then the abuse or financial control will mitigate the RS's knowledge or reason to know. Under these circumstances, this factor **will weigh in favor of relief** because the abuse or financial control would mitigate the RS's knowledge or reason to know of the understatement. See IRM 25.15.3.11.1, Alleged Abuse.

(3) This factor will **weigh against relief** if the RS:

- knew or had reason to know of the item giving rise to the understatement or deficiency at the time the RS filed the joint return (including a joint amended return), or
- could not reasonably expect that the NRS would or could pay the tax liability shown on the joint return within a reasonable period of time after filing of the return.

Example: Prior to signing the return, the RS knew of the NRS's prior bankruptcies, financial difficulties, or other issues with the IRS or other creditors, or was otherwise aware of difficulties in timely paying bills.

25.15.3.9.4.1.3.1
(06-10-2024)
**Understatement or
Deficiency**

- (1) Determine whether the RS did not know and had no reason to know of the item giving rise to the understatement or deficiency at the time the RS filed the joint return (including a joint amended return).
- (2) For purposes of determining reason to know, consider:
 - the RS's level of education,
 - any deceit or evasiveness of the NRS,
 - the RS's degree of involvement in the activity and household financial matters,
 - the RS's business or financial expertise; and
 - any lavish or unusual expenditures compared with past spending levels.

Reminder: Abuse and NRS's control of finances could mitigate knowledge. See IRM 25.15.3.9.4.1.3, Knowledge or Reason to Know. See IRM 25.15.3.11.1, Alleged Abuse.

25.15.3.9.4.1.3.2
(06-10-2024)
Underpayment

- (1) Determine whether the RS knew or had reason to know at the time the RS filed the joint return that the NRS would not or could not pay the tax liability at the time the joint return was filed or within a reasonable period of time after the return was filed. When making this determination, consider whether the RS reasonably expected that the NRS would pay the tax liability at the time the return was filed or within a reasonable period of time after filing of the return.

Note: A reasonable expectation of payment will be presumed if the spouses submitted a request for an installment agreement within 90 days of the due date for payment of the tax or within 90 days of the return being filed, whichever is later. The request must detail the plan for paying the liability, satisfy the liability within a reasonable amount of time, and it must not be unreasonable for the RS to believe that the NRS will be able to make the payments contemplated in the request.

Reminder: Abuse and NRS's control of finances could mitigate reasonable expectation. See IRM 25.15.3.9.4.1.3, Knowledge or Reason to Know. See IRM 25.15.3.11.1, Alleged Abuse.

- (2) If there was a reasonable expectation some of the liability would be paid, but not all of it, then relief may be available to the extent there was a reasonable expectation the liability would be paid.
- (3) The examiner making the determination must be satisfied the RS had a bona fide reasonable expectation the tax would be paid by the NRS.

Note: An expectation the tax would be paid is not reasonable if the RS knew or had reason to know the NRS was not in an economic position, and was not expected to be in an economic position within the foreseeable future, to pay those taxes. A similar position is taken where the RS knew the NRS had a history of not paying the IRS or other creditors.

- (4) If there is an underpayment of tax on an amended return which is reporting a liability based on items not properly reported on the original return, consideration should be given to whether the RS had knowledge or reason to know of the original understatement.
- (5) For purposes of determining reason to know, consider:
 - the RS's level of education,
 - any deceit or evasiveness of the NRS,
 - the RS's degree of involvement in the activity and household financial matters,
 - the RS's business or financial expertise; and
 - any lavish or unusual expenditures compared with past spending levels.
- (6) The examiner should also look to prior years to determine payment history. A consistent history of underpayments that the RS was aware of may show that there was not a reasonable expectation the tax would be paid. On the other hand, a consistent history of returns showing tax due and the NRS timely paying those taxes could give a RS a reasonable expectation that the NRS would pay the tax due on the year(s) at issue. The examiner should also look at whether there were multiple returns filed (some of which would be late filed) with balances due that may make paying all of the taxes more difficult and might show that there was not a reasonable expectation that the tax would be paid.

25.15.3.9.4.1.4
(06-10-2024)
Legal Obligation

- (1) This factor **will weigh in favor of relief** if the NRS has the sole legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement.

Note: It **will be neutral** if the RS knew or had reason to know, when entering into the divorce decree or agreement, that the NRS would not pay the income tax liability.

- (2) This factor **will weigh against relief** if the RS has the sole legal obligation.

Note: The fact that the NRS has been relieved of liability for the taxes at issue as a result of a discharge in bankruptcy is disregarded in determining whether the RS has the sole legal obligation.

(3) This factor **will be neutral** if any of the following apply:

- both spouses have a legal obligation to pay the tax liability,
- the spouses are not separated or divorced, or
- the divorce decree or agreement is silent as to any obligation to pay the tax liability.

Reminder: What is stipulated in a taxpayers' divorce decree or marital settlement agreement regarding their federal tax liability should not be taken into consideration for determination of relief under IRC 6015(b), Innocent Spouse Relief Qualifications and IRC 6015(c), Election to Allocate a Deficiency. See also IRM 5.14.4.4(1), Joint and Several Liability Relief under IRC Section 6015 and Installment Agreement Requests.

25.15.3.9.4.1.5
(07-29-2014)
Significant Benefit

- (1) Defined as, whether the RS received significant benefit (beyond normal support) from the unpaid income tax liability or item giving rise to the deficiency. See Treas. Reg. 1.6015-2(d).
- (2) This factor **will weigh against relief** if the RS enjoyed significant benefits, for example, living a lavish lifestyle by owning luxury assets and taking expensive vacations.

Exception: If the NRS controlled the household and business finances or there was abuse such that the NRS made the decision on spending funds, then this mitigates this factor so that it **will be neutral**.

- (3) This factor **will weigh in favor of relief** if only the NRS significantly benefitted from the unpaid tax or item giving rise to an understatement or deficiency, and the RS had little or no benefit, or the NRS enjoyed the benefit to the RS's detriment.
- (4) This factor **is neutral** if the amount of unpaid tax or understated tax was small such that neither spouse received a significant benefit. Whether the amount of unpaid tax or understatement is small will vary depending on the facts and circumstances of each case.

25.15.3.9.4.1.6
(03-08-2013)
Compliance with Income Tax Laws

- (1) Defined as, whether the RS has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief relates.
- (2) This factor will **weigh in favor of relief** if the RS:
- is compliant for taxable years after being divorced from the NRS, or
 - remains married to the NRS but files separate returns, and is compliant with the tax laws.
- (3) This factor will **weigh against relief** if the RS:
- is not compliant for taxable years after being divorced from the NRS,
 - remains married to the NRS, whether or not legally separated or living apart, and continues to file joint returns with the NRS after requesting relief and the returns are not compliant,
 - remains married to the NRS and files separate returns, and is noncompliant with the tax laws.

Exception: If the RS's noncompliance is due to the RS's poor financial or economic situation after the divorce, despite good faith efforts to comply, then this factor **will be neutral**.

(4) This factor **will be neutral** if the RS:

- made a good faith effort to comply with the tax laws but was unable to fully comply,
- remains married to the NRS, whether or not legally separated or living apart, and continues to file joint returns with the NRS after requesting relief, even if they are compliant, or
- is not compliant because of the RS's poor financial or economic situation as a result of being separated or living apart from the NRS, despite good faith efforts to comply.

25.15.3.9.4.1.7
(03-08-2013)

Mental or Physical Health

- (1) Whether the RS was in poor physical or mental health will influence how this factor is weighed.
- (2) This factor will **weigh in favor of relief** if the RS was in poor mental or physical health at the time the RS filed the return or returns for which the request for relief relates or at the time the RS requested relief. The IRS will consider the nature, extent, and duration of the condition.
- (3) This factor **will be neutral** if the RS was in neither poor physical nor poor mental health at the time the RS filed the return or returns for which the request for relief relates or at the time the RS requested relief.

25.15.3.9.4.2
(03-08-2013)

Other Factors (Section 4.03)

- (1) Other relevant factors (not only to justify relief, but perhaps to deny relief) on relief shall be considered. See IRM 25.15.3.11, Case Development.

25.15.3.9.4.3
(12-12-2016)

6015(f) Relief Refunds

- (1) Once a determination has been made to grant relief in full or in part under IRC 6015(f), certain payments may be eligible for refund if a claim for refund is made before the refund statute expiration date (RSED). See IRM 25.6.1.10.2.7, Claims for Credit or Refund - General Time Period for Submitting a Claim, for more information.
- (2) **Deficiency and underpayment cases**— The RS may be eligible for a refund of separate payments that he or she made after July 22, 1998, if the RS establishes that he or she provided the funds used to make the payment for which he or she seeks a refund.
- (3) RS is not eligible for refunds of payments made with the joint returns (including withholding, estimated tax payments, payments made with the return, a Form 1040-V voucher, or a request for an extension of time to file and includes payments made after the joint return was filed but on or before the due date for payment), joint payments, or payments made solely by the NRS.

Exception: The RS may be eligible for a refund of the RS's portion of the joint overpayment from another tax year applied to the joint income tax liability (refund offset); to the extent that the RS can establish that the RS provided the funds for the RS's portion of the overpayment and the payment was made AFTER the innocent spouse relief request received date. See Exhibit 25.15.3-5, Allocation of EITC for Previous Year Joint

Refund Offset, for computing the RS share of overpayment if EITC is present.

- (4) The RS is entitled to their portion of the stimulus payments.

Note: If the stimulus payment was attributable to children, the portion is 50% to each spouse unless there is a good reason to allocate the payment differently, i.e., there was a remarriage and the children were the children of only one spouse.

- (5) Allocate the Making Work Pay Credit equally between the RS and NRS, even if one spouse did not work.
- (6) The RS is entitled to their portion of the First Time Homebuyers Credit (FTHBC).

Note: The maximum amount allowed is 50% of the allowed credit. This is because if they had filed a separate return the maximum allowable for married filing separate returns is \$4,000 for each spouse.

- (7) **Other limitations**— The availability of refunds is subject to IRC 6511. Generally the Form 8857, Request for Innocent Spouse Relief is treated as a claim for refund.

25.15.3.10 (06-10-2024) Commonly Used Letters

- (1) The following is a list of letters to be issued by CCISO and Area Office personnel to the RS and NRS. Integrated Data Retrieval System (IDRS) letters are known as **C** letters and are to be used by CCISO. All other letters are to be used by Area Office personnel.
- (2) Appeals letters are described in IRM 8.7.12, Technical and Procedural Guidelines, Appeals Innocent Spouse Case Procedures. See Exhibit 8.7.12-1, Initial Contact Letters.

25.15.3.10.1 (06-10-2024) Preliminary Determination Letters

- (1) Letter 3660, Non-Requesting Spouse Preliminary Determination, and Letter 3660-C, Non-Requesting Spouse Preliminary Determination notifies NRS of the determination made to allow full relief, allow partial relief, or deny relief and allows 30 days to appeal in cases of full or partial allowance. They can also be issued as a Revised Preliminary Determination letter to advise the NRS of a change in the determination based on additional information submitted by the RS and/or NRS and allows an additional 30 days to appeal in cases of full or partial allowance.

Reminder: Include an allocation work sheet as an enclosure in cases of partial relief.

- (2) Letter 3661, Requesting Spouse Preliminary Determination, and Letter 3661-C, Requesting Spouse Preliminary Determination notifies RS of the determination made to allow full relief, allow partial relief, or deny relief. It can also be issued as a Revised Preliminary Determination letter to advise the RS of the determination to allow full relief, partial relief, or deny relief based on additional information submitted by the RS and/or NRS.

Reminder: Include an allocation work sheet as an enclosure in cases of partial relief.

25.15.3.10.2
(06-10-2024)

**Final Determination
Letters**

- (1) Letter 3323, Non-Requesting Spouse Notice of Final Determination, and Letter 3323-C, Non-Requesting Spouse Notice of Final Determination notifies NRS of the final determination.
- (2) Letter 3279, Requesting Spouse Final Determination, and Letter 3279-C, Requesting Spouse Final Determination notifies RS of the determination to allow relief, allow partial relief or deny relief. Informs RS of their Tax Court rights.

25.15.3.10.3
(06-10-2024)

Other Letters

- (1) Letter 3284, Non-Requesting Spouse Initial Contact, and Letter 3284-C, Non-Requesting Spouse Initial Contact notifies NRS of the innocent spouse request for relief filed and their opportunity to participate in the administrative proceedings.
- (2) Letter 3657, No Consideration Innocent Spouse, and Letter 3657-C, No Consideration Innocent Spouse notifies RS that their request for relief is not being considered because they do not meet the basic eligibility requirements for requesting relief and informs the RS that the request for relief is being closed.
- (3) Letter 3658, Unprocessable Innocent Spouse Relief Request, and Letter 3658-C, Unprocessable Innocent Spouse Relief Request notifies RS that their request for relief is unprocessable.
- (4) Letter 3659, Requesting Spouse Initial/Follow-Up Contact, Letter 3659 (SP), Requesting Spouse Initial/Follow-Up Contact (Spanish), and Letter 3659-C, Requesting Spouse Initial Contact notifies RS of receipt of their request for relief and provides information on the consideration process (initial contact letter); also used to request additional information for making a determination if the necessary information is missing, incomplete, or appears questionable.
- (5) Letter 4144, Innocent Spouse Appeal Acknowledgement, and Letter 4144-C, Innocent Spouse Appeal Acknowledgement notifies RS and NRS that the case has been transferred to Appeals.
- (6) Letter 4284, Innocent Spouse Reconsideration - Non-Requesting Spouse, and Letter 4284-C, Innocent Spouse Reconsideration - Non-Requesting Spouse notifies NRS of the determination on a reconsideration.
- (7) Letter 4277, Innocent Spouse Reconsideration - Requesting Spouse, and Letter 4277-C, Innocent Spouse Reconsideration - Requesting Spouse notifies RS of the determination on a reconsideration.
- (8) Refer to IRM 25.15.17, Reconsiderations, for information on circumstances that allow for issuance of a second final determination letter.

25.15.3.11
(12-12-2016)

Case Development

- (1) This section provides some guidance for addressing specific factors of relief that may need additional development in order to make proper determinations of relief under all code sections of IRC 6015.
- (2) Use the following information in developing specific criteria, interview questions and issues to consider. Examiners must fully understand the technical terms used in innocent spouse relief development and the specific criteria required in innocent spouse relief determinations, as described in this IRM.

Reminder: Phone contacts with the RS and NRS are helpful in the fact-finding phase of case development. Current situations of each spouse can be assessed and information submitted can be clarified more quickly than

through correspondence. If phone contact is not possible or appropriate, then allow reasonable time frames for response to correspondence requests, based on the particular facts and circumstances of that individual and what information is needed.

Caution: These are only guidelines. Develop each criterion to the fullest extent possible. Document the details of the facts and circumstances considered for each factor. Apply these guidelines in a consistent and nondiscriminatory manner. Do not base decisions to grant or deny relief on subjective personal and social beliefs or any other inappropriate grounds.

25.15.3.11.1
(06-10-2024)
Alleged Abuse

- (1) Rev Proc 2013-34, section 4.03(2)(c)(iv) and Proposed Treas. Reg. 1.6015-1(o) provide the definition of abuse by the NRS as follows:
 - “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 Non-Requesting 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.”
- (2) Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be economic, emotional, physical, psychological, sexual, or technological actions, or threats of actions, or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. The following types of domestic violence/spousal abuse are not all inclusive; each situation should be evaluated based on the facts and circumstances of the case.

Note: The IRS will also consider the impact of the spouse’s (or former spouse’s) alcohol and/or drug abuse and its impact on the analysis of relevant factors.

Reminder: Abuse of a child or other family member living in the household can constitute abuse of the spouse.

- (3) Information on types of spousal abuse may be found at www.justice.gov/ovw/domestic-violence. The examples in the following chart illustrate some common types of abusive behavior.

Type of Domestic Violence/Spousal Abuse	Examples of Abusive Behavior
Economic abuse	<p>This type of abuse is often subtle, like controlling all money and resources, stealing from or defrauding a spouse, or withholding access to funds.</p> <ul style="list-style-type: none"> • Preventing the spouse from going to school or being employed. • Not letting the spouse know about or have access to the household income, checkbook or bank accounts. • Giving the spouse false or misleading information about income or financial status. Intentionally concealing financial affairs from the spouse. • Forcing default on joint or other financial obligations.
Emotional abuse	<p>Often overlooked, emotional abuse is about eroding a person's sense of self-worth and independence. This can include constant criticism, intimidation, humiliation and refusal to ever be pleased.</p> <ul style="list-style-type: none"> • Minimizing or denying the abuse occurred. • Shifting responsibility for abusive and other narcissistic behavior. • Demeaning the spouse or making the spouse feel guilty.

Type of Domestic Violence/Spousal Abuse	Examples of Abusive Behavior
Physical abuse	<p>This is the most recognizable form of abuse; involving any use of physical force with the intention of causing injury.</p> <ul style="list-style-type: none"> • Violent or aggressive behavior inflicted upon the spouse or another household family member (such as a child) which may include hitting, punching, slapping, biting, hair pulling, shoving, grabbing, strangling or burning. • Denying spouse access to medical care or controlling medications. • Forcing spouse into drug or alcohol use.
Psychological abuse	<p>This involves causing fear through intimidation; threatening physical harm to oneself, the victim, others, or pets; destruction of property, and isolating the victim from friends and family.</p> <ul style="list-style-type: none"> • Bullying, exhibiting hostile or aggressive behavior. • Monitoring and controlling the spouse's actions. • Making the spouse afraid to disagree. Intimidating using looks, actions or gestures. Smashing or destroying property or abusing pets. • Displaying weapons, threatening to hurt the spouse or their children, threatening to leave the spouse or threatening self-harm. • Using children as pawns or scapegoats. Threatening to report the spouse to the authorities to have the children removed. Using visitation to harass the spouse.

Type of Domestic Violence/Spousal Abuse	Examples of Abusive Behavior
Sexual abuse	This involves any sexual behavior performed without consent. <ul style="list-style-type: none"> Forced or coerced sexual contact; marital rape.
Technological abuse	Use of technology to harm, threaten, stalk, harass, impersonate, extort or monitor the other spouse. <ul style="list-style-type: none"> Monitoring a spouse's cell phone use and social media interactions. Hacking into a spouse's email and other online accounts. Demanding to know the spouse's passwords.

- (4) The IRS is aware of the sensitive nature of innocent spouse relief requests involving alleged abuse of the NRS against the RS. Conduct fact-finding with compassion and awareness of the RS situation.
 - Make contact with the RS (if at all possible) and find out the safest way to maintain contact during the process, if not already indicated in the relief request.
 - For instance, the RS may express fear of the NRS if RS is contacted by phone, and may request all contact be by mail to a safe address provided by RS that is not on master file.
 - The RS may be moving frequently to maintain safety, and may prefer telephone contact.
 - The RS may request contact with their valid POA only.
- (5) Carefully review all documentation submitted to support the abuse allegation, such as: police reports, witness statements, medical information, and photos.

Caution: Be sure that the documentation confirms abuse inflicted on RS and is consistent with other statements made by RS. Sometimes the documentation shows that the RS making the allegation is also abusive toward the NRS; this could reduce the weight given to the abuse factor and make it neutral.
- (6) Document the RS situation and particular circumstances, and all contacts made with RS and NRS.
- (7) Exercise special care in communications with the NRS to prevent unauthorized disclosure and to shield the RS location and circumstances from the NRS.
- (8) When making a determination to allow relief in full or in part, take care to notify the RS prior to contacting the NRS, if RS requests such advance notification, or if warranted by other facts and circumstances.

- (9) The presence of abuse by NRS toward RS or RS loved ones (such as children or other dependents in the household) mitigates the factor of knowledge under all code sections. Even if the RS knew or had reason to know of the items giving rise to the understatement or underpayment, they may still be granted relief if they were not able to challenge the treatment of any items on the joint return for fear of the NRS's retaliation.
- (10) Consider how abuse played a role in the tax filing and/or omission of income items; do not treat the presence of abuse as a "blanket" factor to grant relief.

Note: Financial Control of the NRS not rising to the level of abuse may mitigate the knowledge factor under all sections of IRC 6015. See Proposed Treas. Reg. 1.6015-3(c)(vi) for more information.

25.15.3.11.2
(12-12-2016)
**Special Considerations
of Deficiencies
(Understatements)**

- (1) In a pre-assessment case, review the adjustment report or letter regarding the proposed deficiency which lists each adjustment. Consider all facts and circumstances of the examination and proposed adjustments.
 - Compare the information submitted by the RS on the Form 8857 to what is present in the exam file.
 - Is the return preparation information consistent?
 - Did the RS make any statements or submit information during the examination that contradicts what is stated on the Form 8857?
 - Are the NRS statements consistent throughout the exam and consideration process or are there inconsistencies?
 - Compare the notes on the case history with statements made by RS and NRS with regard to the innocent spouse relief request and obtain explanations for any contradictory statements or inconsistencies in documentation submitted.
 - If at all possible, contact the examiner for additional perspective and relevant facts about the taxpayers.
- (2) In a post-assessment deficiency case, the administrative file of the examination should be obtained whenever possible, so the analysis described in paragraph (1) above can be performed.
 - At a minimum, obtain a copy of the Revenue Agent's Report, CP-2000 notice, or other report that lists all adjustments and computes the deficiency.
 - Compare the information on the report to what is assessed on the transcript and resolve any discrepancies.
 - If at all possible, contact the examiner for additional perspective and relevant facts about the taxpayers.
- (3) Careful analysis of examinations establishes the credibility of one or both spouses' written statements and oral testimony. Assign the proper weight to the information obtained from each spouse accordingly.
- (4) Consider relief determinations of deficiencies (understatements) by applying the criteria in IRC 6015(b), Innocent Spouse Relief, first. If all the criteria for relief under 6015(b) are not met, then consider relief under the provisions of IRC 6015(c) Allocation of Liability. Any amounts not granted relief under 6015(b) and 6015(c) must then be considered under the provisions of IRC 6015(f), Equitable Relief.

Caution: If RS is eligible to allocate the entire deficiency to the NRS under 6015(c), then RS has received full relief, even if RS made payments on the deficiency and is not entitled to refund of those payments. In that case, do not consider relief of the paid liability (and associated refund claim) under 6015(f), because full relief was granted under 6015(c). See proposed Treas. Reg. 1.6015-3(c)(1) for more information.

25.15.3.11.3
(12-12-2016)

**Reason to Know
(Constructive
Knowledge) and Actual
Knowledge**

- (1) Focus on what the RS knew or had reason to know of at the time the return was signed, not what the RS knew during the audit, or at the time the request for relief was filed.
- (2) RS has the burden of establishing that they did not know and had no reason to know of the understatement or underpayment under 6015(b) or 6015(f). For instance:
 - The RS may indicate that the erroneous items were reflected in a bank account in NRS's name only, and provide bank records to show no erroneous items were deposited into or paid out of, accounts to which RS had access.
- (3) "Did not know" is considered "actual knowledge," and is applicable during consideration of relief under 6015(c). Under 6015(c), the IRS has the burden of proving the extent of RS's knowledge.
 - Evaluate actual knowledge by focusing on the RS level of knowledge of the facts underlying a transaction or adjustment item that is causing the deficiency. A RS assertion of ignorance of the tax consequences of a transaction is NOT lack of actual knowledge.

Example: RS may not know the exact dollar amount but rather has full knowledge of an erroneous item. The RS had knowledge of the W-2 wages that NRS earned, but the W-2 wages were not reported on the return. RS has actual knowledge of the W-2 income item.
- (4) "Reason to know" is also known as "Constructive Knowledge." Consider the following:
 - Would the RS, as a reasonable prudent taxpayer have been expected to know that the return reflected an understatement or underpayment of tax?
 - The nature of the erroneous item and the amount of the erroneous item relative to other items.
 - The RS level of education and business background, especially as compared to NRS.
 - The extent of RS participation in the household finances or the activity that resulted in the erroneous item.
 - The presence of lavish or unusual family expenditures when compared to past levels and income reported.

Example: A \$6000 vacation when reported AGI is \$20,000.

 - The evasiveness or deceit of the NRS when questioned by the RS.
 - Abuse and threats of violence toward the RS.
 - NRS control of household finances by restricting RS access to financial information.

25.15.3.11.4
(12-12-2016)
Inequitability

- (5) Use all resources at your disposal, including but not limited to: IDRS, for IRP income items and filing history, and Accurant for possible property interests and related business entities.
 - (6) See Exhibit 25.15.3-4, Partial Relief Due to Knowledge or Reason to Know, for more information.
-
- (1) This concept is one of fairness toward the RS. Would it be inequitable (unfair) to hold the RS liable for the deficiency or understatement? This concept is used for relief determinations under 6015(b) and 6015(f).
 - (2) Consider the following:
 - Significant Benefit: Economic benefit received by RS in EXCESS of normal support. Normal support is unique to each taxpayer. Significant benefit could involve transfers of property to RS (past, present and future), lavish vacations, luxury automobiles, and expensive jewelry, as long as it is out of the norm for that RS.
 - Current marital status: Are the RS and NRS still married and living together? If so, see IRM 25.15.3.11.5, RS and NRS Still Married for how to develop this factor.
 - Has the NRS failed to fulfill support obligations to RS and/or dependent children? Did NRS desert the RS and/or dependent children?
 - Poor physical and mental health of the RS at the time of the signing of the return or at the time of requesting relief.
 - Would the RS suffer economic hardship if relief is not granted?
 - Did the NRS conceal financial affairs from RS? Is the NRS deceitful toward the RS?
 - (3) Consider the motivation of the RS:
 - Are they merely trying to get or protect future refunds without regard to whether or not they have a valid joint liability?
 - Is the RS a disgruntled spouse trying to inflict harm to NRS?
 - (4) In cases where RS and NRS give conflicting testimony and there is no corroborating evidence to support either's statements, consider denial, which leaves the liability joint and gives both taxpayers opportunity to go to appeals.

25.15.3.11.5
(12-12-2016)
RS and NRS Still Married

- (1) When spouses are still married and living together, a RS can make a request for innocent spouse relief under 6015(b) and 6015(f).
- (2) Scrutinize all the facts to determine the reason for the request: be aware of attempts by the taxpayers to abuse the innocent spouse laws and avoid collection of tax due.
 - For instance, if NRS is pursuing other avenues to protect assets from collection (through bankruptcy or OIC for example), then relief to RS may not be appropriate.
- (3) Divorced RS and NRS who are still living together for financial reasons may make requests for innocent spouse relief under 6015(c) as well and these situations also bear additional scrutiny.
- (4) Obtain information regarding assets and any transfers made from NRS to RS.

- (5) If there is economic hardship and little to no earned income between the spouses, that alone is not a basis for allowing innocent spouse relief.
- (6) These cases must be well developed and documented in support of the determination made.
- (7) Points to consider:
 - A couple married and living together may mitigate other factors such as hardship.
 - Indications that they are deliberately working together to not pay, or really want some type of agreement because they “can’t pay.”
 - Be wary of granting relief solely based on attribution and economic hardship.

25.15.3.11.6
(12-12-2016)
**When RS and NRS Have
the Same POA**

- (1) If the Form 2848, Power of Attorney and Declaration of Representative, does not specifically authorize the representative with regard to the Form 8857 innocent spouse relief request filed, then contact the RS directly. At that time it is recommended the RS be advised that there is a potential for conflict of interest when the same POA represents both parties.

Note: The CC CFINK will not show issue specific representation such as for an innocent spouse relief request; inspection of the Form 2848 will confirm whether or not the POA can represent the RS.

25.15.3.11.7
(12-12-2016)
Tax Benefit

- (1) Tax benefit does not mean benefit from a refund received.
- (2) Tax benefit means deductions, losses and credits attributable to the NRS that reduced the taxable income or tax of the RS.
- (3) It is also possible for items of the RS to reduce the taxable income of the NRS.
- (4) Account for items that created a tax benefit from one spouse to the other in any allocation.
- (5) See Exhibit 25.15.3-2, Tax Benefit Rule Examples, and Proposed Treas. Reg. 1.6015-3(d)(2)(i) for additional information.

25.15.3.11.8
(06-10-2024)
Work Papers

- (1) Do not use a “count” of factors “for” and “against” relief to make determinations under 6015(f).
- (2) Make each relief determination based on the case as a whole and document ALL facts considered and the reasons for the determination outcome.

Example: A case may have several factors documented that would favor relief, yet a determination to deny relief is appropriate. The denial may be based on an item of severity that would cause a granting of relief negligent.

- (3) Work papers must document and support the examiner’s determination, which is made based on all the facts and circumstances of the case and the examiner’s judgement in application of those facts to the law.
- (4) The work papers should include the following required elements, properly identified:

- a. Facts: What is the situation giving rise to the relief request? What are the facts during the taxable years at issue? Each tax period must be considered separately if the fact pattern varies from year to year.
- b. Law: Which sections of the code are being considered, 6015(b), 6015(c), or 6015(f), all three, or just two? For instance in a denial for a deficiency, all three code sections must be fully developed.
- c. RS Position: What is the basis for the RS request for relief? Hardship, abuse, lack of knowledge, or something else?
- d. NRS Position: Document any response received from NRS, and whether they provide additional facts to be considered.
- e. The relief determination based on facts and law. For instance, denied under 6015(b) due to constructive knowledge, but allocation allowed under 6015(c) due to lack of evidence of actual knowledge.

Caution: Section 6015(e)(7) states that the Tax Court's scope of review under section 6015 is limited to the administrative record established at the time of the determination and any additional newly discovered or previously unavailable evidence. Because the Tax Court's scope of review includes the administrative record, procedures in this section **must** be followed, and the examiner's work papers (and any written analysis) **must** be included in the administrative record.

(5) Do not rely on work papers alone.

- Review the work papers and add details as needed for the specific situations of the RS and NRS and to include the required elements as shown above.
- Be aware of confusing dates when work papers are reprinted and make notes accordingly.
- Maintain a detailed Form 9984, Examining Officer's Activity Record, documenting all taxpayer/POA contacts and all significant activity.
- Include TXMOD prints of the years at issue. They provide valuable information for subsequent reviewers who may not have IDRS access and also show the account information at the time the relief determination is made.

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Exhibit 25.15.3-1 (12-12-2016)

Math Errors

Math Error Table to Determine if the amount is treated as an Underpayment or Understatement

If Math Error is Due to	Then the Amount is Considered an
<ul style="list-style-type: none"> Overstated Withholding (including Excess Social Security and Tier 1 Railroad Retirement withholding). Overstated Estimated Tax Payments 	Underpayment
<ul style="list-style-type: none"> Tax figured incorrectly. Rebate credits disallowed. Exemptions disallowed. Earned Income Tax Credit (EITC) not allowed because of Adjusted Gross Income (AGI) exceeding limit. EITC Disallowed because Form 8862, Information to claim Earned Income Credit After Disallowance, was missing. Schedule D, Capital Gains and Losses, tax worksheet incorrectly computed. Social Security Benefits figured incorrectly. Schedule A, Itemized Deductions, not attached to return as required and disallowed. Student Loan Interest deduction disallowed. 	Understatement

Exhibit 25.15.3-2 (12-12-2016)**Tax Benefit Rule Examples**

The following examples are taken from excerpts of Proposed Treas. Reg. 1.6015-3(d)(2). 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:

Calculation of tax benefit based on taxable income. On their joint Federal income tax return for tax year 2009, Non-Requesting Spouse (NRS) reports \$60,000 of wage income; Requesting Spouse (RS) reports \$25,000 of wage income; and NRS and RS report joint interest income of \$2,000 and joint ordinary income from investments in the amount of \$6,000. In addition, NRS and RS properly deduct \$30,000 for their two personal exemptions and itemized deductions, and RS erroneously reports a loss from the 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. RS dies in November 2012. NRS 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 RS).

- After taking all sources of income and all allowable deductions into consideration, NRS's separate taxable income is \$49,000 and RS's separate taxable income is \$14,000, calculated as follows:

Item	NRS	RS
Wages	\$60,000	\$25,000
Interest Income	1,000	1,000
Investment Income	3,000	3,000
Adjusted Gross Income (AGI)	64,000	29,000
Exemptions and Deductions	(15,000)	(15,000)
Taxable Income	49,000	14,000
RS's Disallowed Loss	n/a	(20,000)
Tax Benefit not used by RS	n/a	(6,000)
Tax Benefit to RS	n/a	(14,000)
Tax Benefit to NRS	(6,000)	n/a

As RS only used \$14,000 of the \$20,000 loss from the separate investment in a partnership to offset the separate taxable income, NRS benefited from the other \$6,000 of the disallowed loss used to offset the separate taxable income. Therefore, \$14,000 of the disallowed \$20,000 loss is allocable to RS (7/10) and \$6,000 of the disallowed loss is allocable to NRS (3/10). NRS's liability is limited to \$1,500 (3/10 of the \$5,000 deficiency).

Non-Requesting Spouse receives a benefit on the joint return from the Requesting Spouse's erroneous item.

1. On their joint Federal income tax return for tax year 2008, RS reports \$40,000 of wage income and NRS reports \$12,000 of wage income. In addition, NRS and RS properly deduct \$20,000 for their two personal exemptions and itemized deductions, NRS erroneously deducts a casualty loss in the amount of \$5,000 related to a loss on his separately held property, and RS erroneously takes a loss in the amount of \$7,000 from an investment in a tax shelter. NRS and RS legally separate in 2010,

Exhibit 25.15.3-2 (Cont. 1) (12-12-2016)
Tax Benefit Rule Examples

and on October 21, 2011, a \$2,400 deficiency is assessed with respect to their 2008 joint return. NRS requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of NRS's \$5,000 loss and all of W's \$7,000 loss (which is allocable to RS and for which NRS did not have actual knowledge).

2. The \$5,000 casualty loss is initially allocated to NRS. As NRS's separate taxable income is only \$2,000 (\$12,000 wage income less \$10,000—50 percent of the exemptions and itemized deductions), NRS only used \$2,000 of the \$5,000 casualty loss to offset their separate taxable income, and RS benefited from the other \$3,000 of the disallowed loss, which offset a portion of the separate taxable income. Therefore, \$3,000 of the disallowed loss is allocable to RS even though the loss is NRS's item, and \$2,000 of the loss is allocable to NRS. The \$7,000 tax shelter loss is also allocable to RS as NRS did not have knowledge of the facts that made the tax shelter item unallowable as a loss. NRS's allocation percentage is 1/6 (\$2,000/\$12,000) and NRS's liability is limited to \$400 (1/6 of \$2,400 deficiency). The IRS may collect up to \$400 from NRS and up to \$2,400 from RS (although the total amount collected may not exceed \$2,400).
3. If the IRS could establish that NRS had knowledge of the facts that made the deduction for the casualty loss unallowable, the entire \$5,000 casualty loss would be allocable to NRS. NRS's allocation percentage would be 5/12 (\$5,000/\$12,000) and NRS's liability would be limited to \$1,000 (5/12 of \$2,400 deficiency).
4. If RS also requested innocent spouse relief (and NRS did not have knowledge of the facts that made the loss unallowable), there would be no remaining joint and several liability, and the IRS would be permitted to collect \$400 from NRS (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 RS. If the IRS could establish that RS had knowledge of the facts that made the deduction for the casualty loss unallowable, RS would then be liable for the entire \$2,400 deficiency, while RS would remain liable for up to \$400.

Allocation of liability based on joint erroneous loss item.

1. On their joint Federal income tax return for tax year 2009, NRS reports \$100,000 of wage income and RS reports \$50,000 of wage income. In addition, NRS and RS 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. NRS and RS divorce in 2011, and on August 14, 2012, a \$12,000 deficiency is assessed with respect to their 2009 joint return. RS requests innocent spouse relief. The deficiency on the joint return results from a disallowance of all of the \$50,000 loss.
2. 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), NRS's separate taxable income is \$80,000: \$100,000 wage income minus \$20,000, or 50 percent of the exemptions and itemized deductions; and RS's separate taxable income is \$30,000: \$50,000 minus \$20,000. As both NRS's and RS's separate taxable income exceeds their allocated share of the disallowed loss, no additional amount is allocated between the spouses. RS's allocation percentage is 1/2 (\$25,000/\$50,000) and RS's liability is limited to \$6,000 (1/2 of \$12,000 deficiency). The IRS may collect up to \$6,000 from RS and up to \$12,000 from NRS (although the total amount collected may not exceed \$12,000).
3. If the IRS could establish that RS had knowledge of the facts that made the loss unallowable, both NRS and RS would then remain jointly and severally liable for the \$12,000 deficiency.

Calculation of tax benefit based on joint erroneous item.

1. Assume the same facts as the example above, except that RS's wage income is only \$40,000. RS'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

Exhibit 25.15.3-2 (Cont. 2) (12-12-2016)**Tax Benefit Rule Examples**

\$25,000 loss from the tax shelter to offset the separate taxable income. Accordingly, NRS benefited from the other \$5,000 of the disallowed loss, which was used to offset a portion of their separate taxable income. Therefore, \$20,000 of the disallowed loss is allocable to RS, and \$30,000 is allocable to NRS: \$25,000 (NRS's 50 percent of the disallowed loss) plus \$5,000 (the portion of RS's 50 percent that is allocable to NRS because NRS received a tax benefit). RS's allocation percentage is $\frac{2}{5}$ ($\$20,000/\$50,000$) and RS's liability is limited to \$4,800 ($\frac{2}{5}$ of \$12,000 deficiency). The IRS may collect up to \$4,800 from RS and up to \$12,000 from NRS (although the total amount collected may not exceed \$12,000).

Allocation of erroneous item based on fraud of the Non-Requesting Spouse.

1. During 2009, RS fraudulently accesses NRS's brokerage account to sell stock that NRS had separately received from an inheritance. RS deposits the funds from the sale in a separate bank account to which NRS did not have access. NRS and RS file a joint Federal income tax return for tax year 2009. The return did not include the income from the sale of the stock. NRS and RS divorce in November 2010. The divorce decree states that RS committed forgery and defrauded NRS with respect to the 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. NRS 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 NRS. 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 RS committed fraud with respect to NRS and as a result it is appropriate to allocate the deficiency to RS under paragraph (d)(2)(ii).

Exhibit 25.15.3-3 (12-12-2016)
Allocation of Deficiency Items Due to Increase in AGI

The following are examples from Proposed Treas. Reg. 1.6015-1(n):

Example 1:

- NRS and RS 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, NRS and RS are entitled to an Earned Income Tax Credit (EITC) in the amount of \$1,500. The EITC satisfies the \$500 in tax due and NRS and RS receive a refund in the amount of \$1,000. Later the IRS concludes that NRS had additional unreported income, which increased the tax liability on the return to \$1,000 and resulted in NRS and RS'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 NRS's erroneous item—the omitted income. If RS requests relief under section 6015, the entire \$2,000 deficiency is attributable to NRS because the EITC was disallowed solely due to the increase of adjusted gross income as a result of NRS's omitted income. RS 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 NRS.

Example 2:

- NRS and RS file a joint Federal income tax return reporting a total tax liability of \$22,000. Later the IRS concludes that NRS had additional unreported income in the amount of \$20,000, which increased NRS and RS's adjusted gross income and their alternative minimum taxable income. As a result, NRS and RS now owe the Alternative Minimum Tax (AMT). The IRS determines a deficiency in the amount of \$5,250—\$250 of which relates to NRS and RS's AMT liability as determined under section 55 and \$5,000 of which relates to the increase in NRS and RS's section 1 income tax liability. If RS requests relief under section 6015, the entire \$5,250 deficiency is attributable to NRS because NRS and RS owe the AMT solely due to NRS's erroneous item—the omitted income. RS 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 NRS.

Example 3:

- NRS and RS 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 RS's expenses reported on her Schedule C, "Profit or Loss From Business," were not allowable, which increased NRS and RS's adjusted gross income. As a result, NRS and RS'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 NRS requests relief under section 6015, the entire \$5,000 deficiency is attributable to RS because the itemized deductions were reduced solely due to the increase of adjusted gross income as a result of RS's erroneous item—the Schedule C expenses. NRS 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 RS.

Example 4:

- NRS and RS file a joint Federal income tax return reporting itemized deductions on Schedule A in the amount of \$50,000. Later the IRS concludes that NRS had additional unreported income in the amount of \$4,000 and RS had additional unreported income in the amount of \$6,000, which increased NRS and RS's adjusted gross income. As a result, NRS and RS'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 NRS's erroneous item, \$2,500 of which relates to RS'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

Exhibit 25.15.3-3 (Cont. 1) (12-12-2016)**Allocation of Deficiency Items Due to Increase in AGI**

deficiency from RS's omitted income is attributable to RS and the \$1,500 deficiency from NRS's omitted income is attributable to NRS. Because the increase to adjusted gross income as a result of both NRS and RS's erroneous items reduced the itemized deductions, the portion of the deficiency related to the disallowed itemized deductions is partially attributable to both NRS and RS. Of the \$2,000 deficiency from the disallowed itemized deductions, \$800 is attributable to NRS because 40 percent ($\$4,000/\$10,000$) of the items that resulted in the increase to adjusted gross income are attributable to NRS, and \$1,200 is attributable to RS because 60 percent ($\$6,000/\$10,000$) of the items that resulted in the increase to adjusted gross income are attributable to RS. If both NRS and RS requested relief the most NRS could be relieved from is \$3700, the amount attributable to RS ($\$2500 + \1200), and the most RS could be relieved from is \$2300, the amount attributable to NRS ($\$1500 + \800).

Exhibit 25.15.3-4 (12-12-2016)**Partial Relief Due to Knowledge or Reason to Know**

Example from Proposed Treas. Reg. 1.6015-2(d)

NRS and RS are married and file their 2014 joint income tax return in March 2015. In April 2016, NRS is convicted of embezzling \$2 million from his employer during 2014. NRS kept all the embezzlement income in an individual bank account, and used most of the funds to support a gambling habit. NRS and RS had a joint bank account into which NRS and RS deposited all of their reported income. Each month during 2014, NRS transferred an additional \$10,000 from the individual account to NRS and RS's joint bank account. Although NRS paid the household expenses using this joint account, RS regularly received the bank statements relating to the account. RS did not know or have reason to know of NRS's embezzling activities. RS did, however, know or have reason to know of \$120,000 of the \$2 million of NRS's embezzlement income at the time they signed the joint return because that amount passed through the couple's joint bank account and regularly received bank statements showing the monthly deposits from NRS's individual account. Therefore, RS may be relieved of the liability arising from \$1,880,000 of the unreported embezzlement income, but may not be relieved of the liability for the deficiency arising from \$120,000 of the unreported embezzlement income of which they knew and had reason to know.

Exhibit 25.15.3-5 (12-12-2016)**Allocation of EITC for Previous Year Joint Refund Offset**

Rev. Rul. 87-52 allows for allocation of the Earned Income Tax Credit (EITC) shown on the joint return. If EITC is not shown on the joint return, do not figure EITC on the allocation.

Use the appropriate EITC table and worksheet, or CC EICMP with definer "R" for the tax year for which the form is being worked.

Determine a new, separate EITC that would be available for each spouse if that spouse had filed a separate return and if EITC were available on a married filing separate return. This is a theoretical situation used for computation only.

Compute each spouse's separate EITC, based on each individual's **earned income**, using the same number of qualifying dependents used to compute the EITC on the joint return.

- Do not split the qualifying dependents between the spouses.
- Use the same column in the EITC table as used to determine the EITC on the original joint return.

Figure the RS percentage of EITC by dividing the RS's new separate EITC by the sum of the EITC for both spouses and multiply the percentage by the amount allowed on the joint return. See below for an example.

Example: 2012 Joint tax return with income from wages totaling 35,000. There are two qualifying children. NRS wages = \$25,000 and the RS wages = \$10,000. The EITC on this return is \$2,550. Calculate EITC for each spouse based on a single filing status with 2 qualifying children. NRS income consists of \$25,000 in wages. EITC is \$3,560. RS income consists of \$10,000 in wages. EITC is \$4,010.00.

Calculate percentages.

Add the EITC amounts together: $\$3,560 + \$4,010 = \$7,570$.

NRS portion is $\$3,560$ divided by $\$7,570 = 47\%$.

RS portion is $\$4,010$ divided by $\$7,570 = 53\%$.

Calculate EITC allocation of the \$2,250 on the joint return.

NRS $\$2,550 \times 47\% = \$1,198.50$.

RS $\$2,550 \times 53\% = \$1,351.50$.

Note: If the allocation using the above formula results in no EITC for both spouses due to a loss claimed on the joint return, the EITC is allocated to the spouse claiming the loss, since it is that loss that qualified the joint account for the EITC.

If taxpayers are using their 2007 earned income to figure their EITC for 2008, then the following Heartland Disaster Tax Relief Act of 2008 provisions may apply:

Provisions of the Heartland Disaster Tax Relief Act of 2008 allow impacted taxpayers to use their 2007 earned income for purposes of figuring any EITC for 2008 if the 2008 earned income is less than the 2007 earned income and:

The main home on the applicable disaster date was in a Midwestern disaster area listed in Table 1 of Publication 4492-B, Information for Affected Taxpayers in the Midwestern Disaster Areas; or the main home on the applicable disaster date was in a Midwestern disaster area as shown in Table 2 and the taxpayer was displaced from that home because of the severe storms, tornadoes, or flooding.

If the taxpayer qualifies to use their 2007 earned income, you will determine the EITC allocation based on the 2007 income not the 2008 income.