

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2006-020

August 25, 2006

Subject: Change of Litigating Position in Tax Court Cases Involving Review of Section 6015(f) Claims **Cancel Date:** Effective until further notice/Indefinite

Purpose

On July 25, 2006, the Tax Court in Billings v. Commissioner, 127 T.C. No. 2, held that the Tax Court lacks jurisdiction under section 6015(e) to review the Service's section 6015(f) determinations in cases in which the Commissioner has not determined a deficiency against the taxpayer. This Notice provides procedures on how certain section 6015(f) cases should be handled in light of the Billings opinion. This Chief Counsel Notice supersedes Chief Counsel Notice N(35)000-338 (June 5, 2000), which provided that the Service's section 6015(f) determinations are reviewable by any court.

I. Background

Generally, married taxpayers who file joint federal income tax returns are jointly and severally liable for the tax. Section 6013(d). Section 6015 provides procedures for seeking relief from joint and several liability, and is commonly referred to as "innocent spouse relief."

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

The Billings opinion is in accord with two recent appellate court decisions, Commissioner v. Ewing, 439 F.3d 1009 (9th Cir. 2006), petition for reh'g en banc denied, (May 10, 2006), and Bartman v. Commissioner, 446 F.3d 785 (8th Cir. 2006), petition for reh'g en banc denied

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(August 3, 2006) in which the appellate courts held that the Tax Court does not have jurisdiction in stand-alone cases when the Commissioner has not determined a deficiency.

After holding that the Tax Court had no jurisdiction to hear the case in Ewing, the Ninth Circuit vacated the Tax Court's decision in Ewing v. Commissioner, 122 T.C. 32 (2004), and thus nullified the Tax Court's holdings that the taxpayer was entitled to relief and that the Tax Court could consider evidence outside the administrative record when reviewing the Service's determination under section 6015(f). The Ninth Circuit did not, however, address the merits as to whether the Tax Court can look beyond the administrative record in section 6015(f) cases. With respect to the administrative record issues, the procedures outlined in Chief Counsel Notice CC-2004-26 (July 12, 2002) in all section 6015(f) cases should be followed, including those cases in which a deficiency has been determined, except that motions for remand should no longer be filed.

II. Procedures for handling section 6015(f) stand-alone cases in which the Commissioner has not determined a deficiency

The procedures set forth below should be followed in Tax Court stand-alone cases in which the Commissioner has not determined a deficiency. If a taxpayer raises section 6015(f) in response to a statutory notice of deficiency, these procedures should not be followed as jurisdiction is predicated on section 6213 and a deficiency has been determined. See Butler v. Commissioner, 114 T.C. 276 (2000). Likewise, if section 6015(f) is raised in a petition from a Notice of Determination in a collection due process proceeding under sections 6320 or 6330, do not follow these procedures, even if no deficiency has been determined, as jurisdiction is predicated on section 6330.

Because these cases can now be dismissed on jurisdictional grounds, section 6015(f) stand-alone cases in which the Commissioner has not determined a deficiency should not be settled. Instead, motions to dismiss for lack of jurisdiction should be filed.

A. Noncalendared Cases

In all section 6015(f) stand-alone cases (including "S" cases) in which the Commissioner has not determined a deficiency that are not calendared, a Motion to Dismiss for Lack of Jurisdiction should be filed. (A sample Motion to Dismiss is attached as Exhibit A.) If the sample Motion to Dismiss is followed, the motion does not need to be reviewed by the National Office. If the court denies the Motion to Dismiss, APJP Branch 2 ((202) 622- 4940) should be contacted. The Motion to Dismiss should be filed in lieu of the answer, if required, and the Notice of Petition and Right to Intervene on the nonrequesting spouse, which is normally required under Tax Court Rule 325, should not be served until the Tax Court rules on the Motion to Dismiss. See CCDM 35.2.2.12.2(2)(3).

B. Calendared Cases

For calendared cases, a Motion to Dismiss should be filed in all section 6015(f) stand-alone cases (including "S" cases) in which the Commissioner has not determined a deficiency, even if the case has been fully or partially briefed or submitted. In the event that the court denies the Motion to Dismiss, APJP Branch 2 should be notified. In addition, it may be necessary to file a Motion For Continuance while the Motion to Dismiss is pending once the case is calendared. (A sample Motion for Continuance is attached as Exhibit B.)

EXHIBIT A

UNITED STATES TAX COURT

JANE DOE,)	
)	
Petitioner,)	
)	
v.)	Docket No. XXXX-XX
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

MOTION TO DISMISS FOR LACK OF JURISDICTION

RESPONDENT MOVES that this case be dismissed for lack of jurisdiction upon the ground that the Tax Court lacks jurisdiction under section 6015(e) to review the Commissioner’s determination that the petitioner was not entitled to relief under section 6015(f).

IN SUPPORT THEREOF, respondent respectfully states:

1. Petitioner and the nonpetitioning spouse filed a joint income tax return for **[insert year]** on **[insert date]**.
2. The joint income tax return for **[insert year]** reports income tax of **[\$[insert amount]** which was assessed on **[insert date]**. The joint income tax return showed a balance of tax due of **[\$[insert amount]**. The petitioner and the nonpetitioning spouse have not paid the balance of tax due.
3. No deficiency of income tax has been determined by respondent against petitioner and the nonpetitioning spouse for **[insert year]**.
4. On **[insert date]**, Petitioner filed a Form 8857, Request for Innocent Spouse Relief (And Separation of Liability and Equitable Relief), requesting relief under section 6015(f) from joint and several liability for the underpayment of the joint income tax for **[insert year]**.

Attached as Exhibit A is a true and correct copy of petitioner's Form 8857.

5. On **[insert date]**, respondent issued a Notice of Determination to petitioner denying relief under section 6015(f). Attached as Exhibit B is a true and correct copy of the Notice of Determination issued to petitioner.

6. In response to the Notice of Determination, petitioner filed a petition in the Tax Court seeking review of the Commissioner's determination denying relief under section 6015(f).

7. The Tax Court in Billings v. Commissioner, 127 T.C. No. 2 (July 25, 2006), held that the Tax Court lacks jurisdiction under section 6015(e) to review the Commissioner's determination denying relief under section 6015(f) when the Commissioner has not determined a deficiency.

8. The Eighth and Ninth Circuits have held that the Tax Court lacks jurisdiction under section 6015(e) to review respondent's determinations denying relief under section 6015(f) when the Commissioner has not determined a deficiency. See Commissioner v. Ewing, 439 F.3d 1009 (9th Cir. 2006), petition for reh'g en banc denied (May 10, 2006), rev'g Ewing v. Commissioner, 118 T.C. 494 (2002); Bartman v. Commissioner, 446 F.3d 785 (8th Cir. 2006), petition for reh'g en banc denied (August 3, 2006), rev'g Bartman v. Commissioner, T.C. Memo. 2004-93.

9. In the instant case, jurisdiction is predicated solely on section 6015(e). Respondent has not determined a deficiency for the years at issue. Therefore, the court lacks jurisdiction over this case, and this case should be dismissed.

10. **[Insert paragraph regarding: notification of petitioner]**

WHEREFORE, respondent requests that this motion be granted.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

Date: _____

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EXHIBIT B

UNITED STATES TAX COURT

Jane Doe,)		
)		
Petitioner,)		
)		
v.)	Docket No.	XXXX-XX
)		
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent.)		

MOTION FOR CONTINUANCE OF TRIAL

RESPONDENT MOVES, pursuant to the provisions of Tax Court Rule 133, that the court remove this case from the trial session scheduled to commence at _____, on _____, and restore the case to the general trial docket.

IN SUPPORT THEREOF, respondent respectfully states:

1. On _____, the court issued a Notice Setting Case for Trial on _____.
2. On _____, respondent filed a Motion to Dismiss for Lack of Jurisdiction.
3. The Tax Court may exercise jurisdiction only to the extent authorized by Congress. Gati v. Commissioner, 113 T.C. 132, 133 (1999). Jurisdiction is a fundamental question that may be raised by a party, or by the court *sua sponte*, at any time. Neely v. Commissioner, 115 T.C. 287 (2000).
4. On July 25, 2006, the court in Billings v. Commissioner, 127 T.C. No. 2 (July 25, 2006), held that the court lacks jurisdiction under section 6015(e) to review respondent's determination denying relief under section 6015(f) when the Commissioner has not determined a deficiency against the taxpayer.
5. The jurisdictional issue in this case is identical to the issue in Billings.

Respondent requests that the case be continued until the court rules on respondent's Motion to

Dismiss. Respondent seeks the continuance to avoid having respondent, petitioner, and this court incur the time and expense of conducting a trial in a case subject to dismissal for lack of jurisdiction.

6. **[If motion is made in less than 30 days, explain reasons for delay]**

7. **[Insert paragraph re: notification of petitioner]**

WHEREFORE, respondent requests that this motion be granted.

DONALD L. KORB
Chief Counsel
Internal Revenue Service

Date: _____

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