

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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(Small Business/Self-Employed)

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subject: Ability to provide refund to taxpayer who was granted relief under section 6015(c) during pendency of her Chapter 13 bankruptcy proceeding.

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer
Spouse
Year 1
Year 2
Date 1
Date 2
Date 3
Date 4
Date 5
Date 6
Date 7
Date 8

Date 9
Date 10
Amount \$W
Amount \$X
Amount \$Y
Amount \$Z

ISSUES

- 1) Whether the Service must refund amounts received through the Chapter 13 plan after the Service granted relief under section 6015(c), if it is determined that the payments exceeded the amount Taxpayer owed after application of section 6015(c).
- 2) If Taxpayer is entitled to a refund, whether the refund should be issued to the bankruptcy trustee or issued directly to Taxpayer.

CONCLUSIONS

- 1) Yes. To the extent that the Service received payments that exceeded the amount Taxpayer owed after application of section 6015(c), the payments should be returned.
- 2) If it is determined that Taxpayer is entitled to a refund, then, under the facts of this case, the refund should be issued directly to Taxpayer.

FACTS

The pertinent facts are as follows: Taxpayer filed joint Federal income tax returns with her husband, Spouse, for the Year 1 and Year 2 taxable years. The Service subsequently determined that there were total deficiencies, additions to tax, and interest of Amount \$W and Amount \$X relating to the Year 1 and Year 2 taxable years, respectively. The Service assessed those amounts on Date 1, and Date 2, for the Year 1 and Year 2 taxable years, respectively.

On Date 3, Taxpayer and Spouse filed a Chapter 7 petition with the U.S. Bankruptcy Court. On Date 4, the U.S. Bankruptcy Court entered an order granting Taxpayer a discharge in her joint Chapter 7 case; however, the deficiencies for the Year 1 and Year 2 taxable years were not discharged in that proceeding.

On Date 5, Taxpayer individually filed a Chapter 13 petition with the U.S. Bankruptcy Court. The Service's filed a timely Proof of Claim in Taxpayer's Chapter 13 proceeding, and the Proof of Claim included the Year 1 and Year 2 joint tax liabilities. On Date 6, Taxpayer filed with the Service a Form 8857, Request for Innocent Spouse Relief, seeking relief under section 6015 for her Year 1 and Year 2 joint tax liabilities. On Date 7, the U.S. Bankruptcy Court confirmed Taxpayer's Chapter 13 plan, as amended. The amended plan provided that all claims be paid in full, including the Year 1 and Year 2 tax liabilities, and that Taxpayer's right to claim innocent spouse relief shall survive

confirmation. The Order Confirming Plan also provided that Taxpayer's "right to claim innocent spouse relief shall survive confirmation...."

On Date 8, the Service received payments from the Chapter 7 trustee of Amount \$Y and Amount \$Z, which were applied to the tax liabilities for the Year 1 and Year 2 taxable years, respectively. These payments, however, did not fully satisfy the Year 1 and Year 2 tax liabilities. By Final Notice of Determination dated Date 9, the Service determined that Taxpayer was entitled to elect to allocate an unpaid deficiency pursuant to section 6015(c). The Service continued to receive payments pursuant to the Chapter 13 plan after Date 9. When the plan was completed, Taxpayer's joint liabilities for Year 1 and Year 2 had been fully paid. On Date 10, the Taxpayer received a Chapter 13 discharge.

Although Taxpayer was granted relief under section 6015(c), Taxpayer now is concerned the Service never performed the required allocation of the items giving rise to the deficiency pursuant to section 6015(d)(3). We do not have the administrative file, and we understand that thus far the Service has not been able to locate the file, so we do not know if or how the Service allocated the liability. Furthermore, based on the information provided, it does not appear that the Service's records were adjusted to reflect the Service's determination that Taxpayer was entitled to section 6015(c) relief.

LAW AND ANALYSIS

Taxpayers filing joint Federal income tax returns are generally jointly and severally liable for all taxes due. I.R.C. § 6013(d)(3). Relief from joint liability is available in limited circumstances under section 6015. I.R.C. § 6015(b), (c), (f). Section 6015(c) provides that spouses who are no longer married, legally separated, or living apart for the 12 months preceding the election may elect to allocate the joint liability. I.R.C. § 6015(c)(3)(A)(i). Section 6015(c)(1) allows a taxpayer to elect that her liability for any deficiency with respect to the joint return be limited to the portion of such deficiency that is properly allocable to her under section 6015(d). Section 6015(d) and Treas. Reg. section 1.6015-3 provide rules for how to allocate the deficiency.

Issue 1: Should the Service refund amounts received through the Chapter 13 plan after the Service granted relief under section 6015(c)?

Generally, taxpayers are not entitled to receive refunds as a result of relief granted under section 6015(c). I.R.C. § 6015(g)(3). Sometimes, however, the Service has returned funds to taxpayers where the funds were received in contravention of the Service's administrative practice or policy. See, e.g., Rivera v. Commissioner, T.C. Memo. 2005-33, n.2. Similarly, the Service should not be prevented from returning funds that it was not legally entitled to receive.

Taxpayer filed a Chapter 13 bankruptcy petition on Date 5. On Date 6, Taxpayer filed a request for relief from joint and several liability with the Service. On Date 7, Taxpayer's Chapter 13 plan was confirmed, subject to Taxpayer's section 6015 claim. Thus,

Taxpayer's eligibility for relief under section 6015 remained open during the pendency of the Chapter 13 proceeding. On Date 9, the Service issued a Final Notice of Determination to Taxpayer granting relief under section 6015(c). The Service's determination was a final determination, and thus, the Service should have adjusted its records to reflect the Final Notice of Determination, and amended or withdrawn its claim accordingly. See IRM 5.9.4.18(5), (6), and (7). Once Taxpayer was granted section 6015(c) relief for Year 1 and Year 2, the Service was not entitled to receive from the trustee payments in excess of what Taxpayer owed after application of section 6015(c). In this case, based on the information provided, it does not appear that the Service adjusted its records to reflect the Service's determination granting section 6015(c) relief. The Service continued to receive payments through the bankruptcy estate in the same amount as provided by the confirmed plan, and there is no indication that the Service's Proof of Claim was amended or withdrawn after Date 9 to reflect the Service's determination. Currently, we do not have enough facts to reconstruct the section 6015(d) allocation to determine the exact amount, if any, that Taxpayer owed with respect to her Year 1 and Year 2 income tax liabilities after application of section 6015(c). If, for example, after application of section 6015(c), Taxpayer has \$0 remaining tax liability for Year 1 and Year 2, then the Service would not have been entitled to receive any payments toward the Year 1 and Year 2 joint tax liabilities after Date 9 because Taxpayer had no remaining tax liability for the Year 1 and Year 2 tax years. Thus, the Service should work with Taxpayer to obtain the necessary information to compute the amount allocable to Taxpayer for Year 1 and Year 2 on Date 9 after application of section 6015(c). If it is determined that the Service received payments that exceeded what Taxpayer owed, then the excess should be returned.

Issue 2: Should any refund be issued to Taxpayer or the Trustee?

When the Service is issuing a refund of payments received pursuant to a bankruptcy proceeding, it may be necessary for the Service to consult with the trustee to determine if the refund check should be issued to the trustee or the taxpayer. Under the facts of this case, all claims provided for by Taxpayer's confirmed plan were paid in full. There does not appear to be any creditors who might be entitled to receive a share of any refund determined after a reconstruction of the section 6015(d) allocation of Taxpayer's Year 1 and Year 2 tax liabilities. Consequently, any refund should be issued directly to Taxpayer in this case.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

There are no hazards or other considerations.

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Please call (202) 622-4940 if you have any further questions.