Impact Statement is necessary for this proposed rule.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the BIA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

*I. Review Under Executive Order 12630 (Takings Implication Assessment)*

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule does not involve the "taking" of private property interests.

*J. Review under Executive Order 13175 (Tribal Consultation)*

The BIA determined that, because the removal of current regulations has tribal implications, it was an appropriate topic for consultation with tribal governments. This consultation is in keeping with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." In April 2001, BIA sent all tribal leaders a report that documents the results of a BIA review of existing regulations, policies, and procedures that affect delivery of trust services to tribal governments and individual Indians. Included in the report was a multi-year schedule for bringing all trust regulations, policies and procedures up-to-date. In May 2001, the BIA sent all tribal leaders a letter describing and identifying ten parts of Title 25 CFR that we were considering for removal. Regional directors followed up to determine if there were tribal concerns with any aspects of the proposal.

Following publication of the proposed rule, BIA again notified tribal governments of the substance of this rulemaking through a direct mailing. This enabled tribal officials and the affected tribal constituency throughout Indian Country to have meaningful and timely input in the development of the final rule.

**List of Subjects**

*25 CFR Part 112*

Indians—business and finance.

*25 CFR Part 116*

Estates, Indians—business and finance, Trusts and trustees.

*25 CFR Part 121*

Indians—claims, Indians—judgment funds.

*25 CFR Part 123*

Alaska, Indian—claims.

*25 CFR Part 125*

Indians—claims, Reporting and recordkeeping requirements.

*25 CFR Part 154*

Indians—lands.

*25 CFR Part 156*

Indians—lands.

*25 CFR Part 178*

Indians—lands.

*25 CFR Part 243*

Alaska, Indians—business and finance, Reindeer.

Accordingly, under the authority in 25 U.S.C. 9, 25 CFR chapter 1 is amended by removing parts 112, 116, 121, 123, 125, 154, 156, 178, and 243.

Dated: August 12, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–21692 Filed 8–23–02; 8:45 am]

BILLING CODE 4310–02–P

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 9003]**

**RIN 1545–AW64**

## Relief From Joint and Several Liability; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations that were published in the Federal Register on Thursday, July 18, 2002 (67 FR 47278), relating to relief from joint and several liability.

**DATES:** This correction is effective July 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Hall (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction is under section 6015 of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations contains an error that my prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 9003), that were the subject of FR Doc. 02–17866, is corrected as follows:

On page 47294, column 3, § 1.6015–5(b)(3), line 10, the language "CDP hearing procedures under sections" is corrected to read "CDP hearing procedures under section".

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).*

[FR Doc. 02–21693 Filed 8–23–02; 8:45 am]

BILLING CODE 4830–01–P

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[COTP San Diego 02–016]**

**RIN 2115–AA97**

## Safety Zone; San Diego Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two (2) temporary safety zones: A stationary safety zone and a moving safety zone, both on the navigable waters of North San Diego Bay in support of the Parade of Ships-Festival of Sail. These temporary safety zones are necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 12:30 (PDT) to 4:30 (PDT) on September 12, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket (COTP San procedures which would affect such compliance."

(d) The FHWA Division Administrator shall periodically review the State DOT's management process to determine if the State is in compliance with the requirements of this subpart. If the Division Administrator determines that a State DOT is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State DOT. The notice will set forth the reasons for the proposed determination and inform the State DOT that it may reply in writing within 30 calendar days from the date of the notice. The State DOT's reply should address the deficiencies cited in the notice and provide documentation as necessary. If the State DOT and the Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State DOT may appeal to the Federal Highway Administrator whose action shall constitute the final decision of the FHWA. An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for the State DOT's RD&T activities until the State DOT is in full compliance.

(The information collection requirements in § 420.209 have been approved by the OMB and assigned control number 2125–0039.)

[FR Doc. 02–18007 Filed 7–17–02; 8:45 am]

BILLING CODE 4910–22–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[TD 9003]**

**RIN 1545–AW64**

**Relief From Joint and Several Liability**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to relief from joint and several liability under section 6015 of the Internal Revenue Code. The regulations reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and by the Community Renewal Tax Relief Act of 2000. The regulations provide guidance to married individuals filing joint returns who seek relief from joint and several liability.

**EFFECTIVE DATE:** These regulations are effective July 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Hall, 202–622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1719. Responses to this collection of information are required in order for certain individuals to receive relief from the joint and several liability imposed by section 6013(d)(3).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The burden contained in § 1.6015–5 is reflected in the burden of Form 8857.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6013 of the Internal Revenue Code (Code), relating to the election to file a joint Federal income tax return, and section 6015, relating to relief from the joint and several liability. Section 6015 was added to the Code by section 3201 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685) (1998) (RRA), effective for any joint liability that was unpaid as of July 22, 1998, and for any liability that arises after July 22, 1998. Section 6015 was amended by section 313 of the Community Renewal Tax Relief Act of 2000, which was enacted as part of the Consolidated Appropriations Act, 2001, Public Law 106–554 (114 Stat. 2763)(2000)(CRA).

This document also removes final regulation § 1.6013–5, relating to relief from joint and several liability under former section 6013(e). The final regulation under § 1.6013–5 is obsolete due to amendments to section 6013 of the Code by the Internal Revenue Service Restructuring and Reform Act of 1998. The removal of this regulation will not affect taxpayers.

A notice of proposed rulemaking (REG–106446–98) was published in the **Federal Register** (66 FR 3888) on January 17, 2001, with correction dated March 29, 2001 (66 FR 17130). Several comment letters were received, and three of the commentators spoke at the public hearing on May 30, 2001. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

## Summary of Comments and Explanation of Revisions

### *1. Section 1.6015–1*

Section 1.6015–1 of the proposed regulations contains general provisions that apply to all three types of relief from joint and several liability.

### A. Types of Relief Considered

Section 1.6015–1 of the proposed regulations provides that if a requesting spouse only requests equitable relief under section 6015(f) and does not elect relief under section 6015(b) or (c), the IRS may not grant relief under either section 6015(b) or (c). Several commentators suggested that, regardless of the type of relief requested, the regulations should require that the IRS consider all three types of relief.

Relief under section 6015(b) and (c) must be elected by the requesting spouse. When an election is made, the statute of limitations on collection of the requesting spouse's liability relating to such election is suspended. In addition, the IRS is statutorily prohibited from pursuing certain collection activities until the claim for relief under section 6015(b) or (c) is resolved. When, however, a requesting spouse only requests equitable relief under section 6015(f), the statute of limitations on collection is not suspended, and the IRS is not prohibited from collecting the liability from the requesting spouse. The IRS cannot assume, absent an election under section 6015(b) or (c), that a requesting spouse, in only requesting relief under section 6015(f), would have elected relief under section 6015(b) or (c). Such an assumption would improperly suspend the requesting spouse's statute of limitations on collection when the requesting spouse did not elect relief under section 6015(b) or (c). Thus, the final regulations do not adopt this recommendation.

If, in the course of reviewing a request for relief only under section 6015(f), the IRS determines that the requesting spouse may qualify for relief under section 6015(b) or (c) instead of section 6015(f), the IRS will contact the requesting spouse to see if he or she wishes to amend the claim for relief by affirmatively electing relief under section 6015(b) or (c). If the requesting spouse so chooses, he or she may submit a statement that amends the claim for relief and elects relief under section 6015(b) or (c). The final regulations provide that the amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

B. Duress

Section 1.6013–4(d) of the proposed regulations provides that if an individual asserts and establishes that he or she signed a return under *legal duress*, the return is not a joint return, and the individual is not jointly and severally liable for the tax shown on the return, or any deficiency in tax with respect to the return.

Two commentators suggested that § 1.6013–4(d) of the proposed regulations improperly denies the benefits of section 6015 to those individuals who establish that they signed returns under duress. The rule in § 1.6013–4(d) reflects well established case law regarding the consequences of filing a joint return under duress. *Compare Stanley* v. *Commissioner*, 45 T.C. 555 (1966), with *Brown* v. *Commissioner*, 51 T.C. 116 (1968). Under section 6013, married taxpayers may elect to file a joint return. If such an election is made, section 6013(d)(3) provides that both spouses are jointly and severally liable for the combined liability of both spouses. The election under section 6013 must be voluntarily made by both spouses. If either spouse involuntarily makes the election under duress, then the election is invalid with respect to both spouses.

One commentator suggested that the invalidation of the joint election when one spouse signs a return under duress inappropriately denies such spouse the benefits of certain credits (e.g., the earned income credit) and the joint filing rates. An allegation that a spouse was forced to sign a joint return against his or her will indicates that, in the absence of the threat, the spouse would have filed a separate return. In order to qualify for the earned income credit or the joint return rates, the Code mandates that the spouse file a joint return. If the spouse filed a joint return in order to benefit from the earned income credit, the joint return rates, or other benefits flowing from a joint return, and not due to duress, then the election to file the joint return was voluntary and valid. If the requesting spouse raises the issue of duress and it is determined that the requesting spouse would owe more tax if he or she filed a married filing separately return, then the requesting spouse may choose not to pursue the issue of duress.

Both commentators suggested that the rule regarding the treatment of returns signed under duress was inconsistent with the language of section 6015(c)(3)(C). Section 6015(c)(3)(C) provides that the limitation on relief under section 6015(c), when the requesting spouse has actual knowledge of the item giving rise to the deficiency, does not apply if the requesting spouse establishes that he or she signed the return under duress. Neither the limitation of section 6015(c)(3)(C), nor any portion of section 6013 or 6015 applies to a return signed under duress, i.e., a return for which no valid joint return election was made. To interpret the rule to allow the benefits of a joint return in the absence of a valid joint return election, as the commentators suggest, would require that the IRS treat joint return elections as valid for purposes of section 6015(c), but invalid for purposes of sections 6015(b) and (f), when the requesting spouse establishes that the return was signed under duress. Placing the duress rule in the regulations under section 6013 results in consistent treatment of a claim of duress that would apply to the three relief provisions under section 6015.

One commentator suggested that, the Treasury and IRS refer to *duress* as opposed to *legal duress* because the term *legal duress* suggests that something more specific than *duress* is intended. In particular, the commentator noted that in some cases courts have declined to define legal duress to include domestic abuse. Although the final regulations use the term, *duress* rather than *legal duress*, Treasury and the IRS believe the terms are synonymous, and *duress* continues to provide a basis for invalidating the joint return election.

Nonetheless, Treasury and the IRS have taken these comments into consideration in interpreting the specific duress provision in section 6015(c)(3)(C). See the discussion of the abuse exception to actual knowledge (§ 1.6015–3(c)(2)(v)) in section 3.B. of this preamble.

C. Prior Closing Agreement or Offer in Compromise

Section 1.6015–1(c) of the proposed regulations provides that relief is not available if the requesting spouse signed a closing agreement or entered into an offer in compromise with the IRS for the same tax year for which he or she seeks relief under section 6015. One commentator suggested that there was no support for this position in the statute. Section 6015(g)(1) provides that "[e]xcept as provided in paragraphs (2) and (3), notwithstanding any other law or rule of law (other than section 6511, 6512(b), 7121, 7122), credit or refund shall be allowed or made to the extent attributable to the application of this section." (Emphasis added). Sections 7121 and 7122 deal with closing agreements and offers in compromise, respectively. Section 301.7121–1(c) of the Regulations on Procedure and Administration provides that a closing agreement is final and will not be set aside in the absence of fraud, malfeasance, or misrepresentation. Section 301.7122–1T(d)(5) of the Temporary Regulations on Procedure and Administration provides a similar rule for the finality of offers in compromise. Thus, the statute and the regulations directly support the position in the proposed regulations that relief under section 6015 is not available if the requesting spouse signed a closing agreement or offer in compromise disposing of the same liability that is the subject of the claim for relief.

Another commentator suggested that the requesting spouse should be given an opportunity to establish that he or she was not a party to the closing agreement or offer in compromise and that such signed documents should not preclude relief. In *Hopkins* v. *Commissioner*, 146 F.3d 729 (9th Cir. 1998), the United States Court of Appeals for the Ninth Circuit held that a claim for relief from joint and several liability under section 6013(e) was precluded if a closing agreement was signed by the requesting spouse for the tax year in question. Nothing in section 6015 nor the legislative history indicates that Congress intended to change the rules regarding the finality of such documents when relief is requested under section 6015. If the requesting spouse did not sign the closing agreement or offer in compromise, then the requesting spouse is not bound by that document, and relief under section

6015 would be available. Thus, there is no need to amend the final regulations to incorporate this comment.

D. Fraudulent Scheme and Fraud

Section 1.6015–1(d) of the proposed regulations provides that if the Secretary establishes that one spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015. Section 1.6015–3(d)(2)(ii) of the proposed regulations provides that the Service may allocate any item between the spouses if the Service establishes that the allocation is appropriate due to fraud by one or both spouses. Two commentators requested that the Treasury and IRS provide examples to distinguish between a fraudulent scheme and fraud.

*Fraudulent scheme* in § 1.6015–1(d) refers to a fraudulent transfer of assets. The final regulations clarify that a fraudulent scheme is a scheme to defraud the IRS or another third party, including, but not limited to, creditors, ex-spouses, and business partners. In contrast, *fraud* in § 1.6015–3(d)(2)(ii) encompasses any fraud of either spouse including, but not limited to, the fraudulent alteration of documents, the fraudulent filing of a return or claim for relief, or any other fraud that may be relevant to the claim for relief. The fraudulent scheme and fraud exceptions are very broad and might overlap in some circumstances. It would be misleading to provide discrete examples that attempt to distinguish between a fraudulent scheme and fraud. Thus, the final regulations do not adopt this recommendation.

E. Definition of Item

Section 1.6015–1(g)(3) of the proposed regulations defines *item* as that which is required to be separately listed on an individual income tax return or any required attachments, subject to one exception. The exception provides that interest and dividend income from the same source would be treated as one item. Several commentators suggested that this rule be eliminated because the source of the income should not be relevant. The requesting spouse's ability to receive partial relief from the deficiency relating to an erroneous item when the requesting spouse knew of part but not all of the item addresses the concern for which this rule was originally drafted. Thus, the final regulations adopt this recommendation.

F. Definition of "Erroneous Item"

Section 1.6015–1(g)(4) of the proposed regulations defines *erroneous item* as any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. One commentator suggested that it was improper to include items that were improperly characterized on the return as erroneous items. The commentator suggested that such a rule would require a requesting spouse to know the proper characterization of an item in order for the spouse to receive relief. The proposed regulations, however, do not require a requesting spouse to know the proper characterization of an item for the item to be "erroneous." To the contrary, if the requesting spouse knew of the item that gave rise to an understatement or deficiency, regardless of whether the requesting spouse also knew the item was improperly characterized, the item is "erroneous" under § 1.6015–1(g)(4). To remove improper characterization from the definition of erroneous item might create an inference that requesting spouses are not entitled to relief for an item that was improperly characterized on a return. Such a rule would be inconsistent with the statutory language. Therefore, the final regulations do not adopt this recommendation.

This provision was also amended to clarify that penalties and interest are not erroneous items. Rather, relief from penalties and interest will generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, then relief from such penalty will be determined based on whether the requesting spouse was relieved of liability from the erroneous item.

G. Collection

Section 1.6015–1(h) of the proposed regulations provides that the relief provisions of section 6015 do not negate liability that arises under the operation of other laws. One commentator suggested that the regulations adopt a rule that the IRS would not look to community property as a collection source when a requesting spouse with an interest in such community property is granted relief under section 6015. A federal tax lien arising under section 6321 attaches to all property and rights to property of the taxpayer. Whether a taxpayer has an interest in property to which the lien can attach is determined by state law. *Aquilino* v. *United States*, 363 U.S. 509 (1960). Once that property interest is defined, federal law alone determines the consequences resulting from the attachment of the federal lien on the property. *United States* v. *Drye*, 528 U.S. 49 (1999). If under the law of the community property state in which the spouses reside, the IRS can look to community property to collect a liability of one of the spouses, the determination that the other spouse is entitled to relief under section 6015 does not affect the Service's ability to collect the nonrequesting spouse's liability from the community property. See, e.g., *United States* v. *Stolle*, 2000–1 U.S.T.C. ¶50,329 (C.D. Cal. 2000); *Hegg* v. *IRS*, 28 P.3d 1004 (Idaho 2001). The final regulations do not adopt this recommendation because it goes beyond the scope of the statute.

H. Res Judicata

Section 6015(g)(2) provides that, in the case of any election under section 6015(b) or (c), if a decision of a court in any prior proceeding for the same taxable year has become final, such decision shall be conclusive except with respect to the qualification of the requesting spouse for relief which was not at issue in that proceeding. This exception does not apply if the court determines that the requesting spouse participated meaningfully in the prior proceeding. In other words, a requesting spouse who participated meaningfully in a prior court proceeding concerning the underlying liability for which relief is sought is precluded by section 6015(g)(2) from electing relief under section 6015(b) or (c) after the decision becomes final, whether or not the requesting spouse's eligibility for relief under section 6015(b) or (c) was at issue in the prior proceeding. In addition, under section 6015(g)(2) if the requesting spouse's entitlement to relief from liability under section 6015 for the same tax year was at issue in a prior proceeding, then, regardless of the extent of the requesting spouse's participation in such proceeding, the requesting spouse would be precluded from electing relief under section 6015(b) or (c) after the decision in such proceeding has become final. Thus, § 1.6015–1(e) of the final regulations was amended to emphasize that res judicata will apply if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in the prior proceeding.

I. Scope of Section 6015

The final regulations add § 1.6015–1(g), and redesignate § 1.6015–1(g) and (h) of the proposed regulations as § 1.6015–1(h) and (j), respectively. Section 1.6015–1(g) of the final regulations clarifies that relief under section 6015 will not be available for any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of any law or rule of law.

*2. Section 1.6015–2*

Section 1.6015–2 of the proposed regulations provides the rules regarding relief from joint and several liability under section 6015(b) that are applicable to all qualifying joint filers.

A. Knowledge or Reason to Know

Section 1.6015–2(a)(3) of the proposed regulations provides that one of the requirements of relief under section 6015(b) is that the requesting spouse establish that he or she had no knowledge or reason to know of the item giving rise to the understatement. Two commentators pointed out that the underlined language is not consistent with section 6015(b)(1)(C), which articulates the requirement as knowledge or reason to know of the understatement. Both commentators suggested that the rules regarding knowledge under section 6015(b) should be consistent with the knowledge standard developed under former section 6013(e).

The language in § 1.6015–2(a)(3) of the proposed regulations was not intended to reflect a new standard of knowledge in section 6015(b) cases. Indeed, the standards for knowledge or reason to know that were developed under former section 6013(e) should be used in determining a requesting spouse's knowledge or reason to know under section 6015(b). The Treasury and IRS did not intend to suggest a harsher standard of knowledge under section 6015(b) than that which existed under section 6013(e). Therefore, the final regulations adopt this recommendation by amending the language of § 1.6015–2(a)(3) of the proposed regulations to be consistent with the language of section 6015(b)(1)(C).

B. Inequity

Section 1.6015–2(d) of the proposed regulations provides that all of the facts and circumstances are considered in determining whether it was inequitable to hold a requesting spouse liable for the understatement attributable to the nonrequesting spouse. Among the factors considered is whether the requesting spouse significantly benefitted, in excess of normal support, either directly or indirectly from the understatement. Such significant benefit may include transfers of property or rights to property, including transfers that may be received several years after the year of the understatement (e.g., life insurance proceeds) that are traceable to items omitted from gross income.

Two commentators suggested that the Treasury and IRS define *normal support* for purposes of this section. Normal support depends on the taxpayer's particular circumstances, including the cost of living, which varies across the country. Thus, a general definition in the final regulations would not be useful. Rules regarding normal support have been developed in case law under section 6013(e) and are applicable to section 6015(b) as well. The final regulations do not adopt this recommendation.

Another commentator questioned the conclusion in the example within § 1.6015–2(d) of the proposed regulations that life insurance proceeds that are traceable to items of omitted income of the nonrequesting spouse are considered a significant benefit. The commentator pointed to the legislative history as suggesting that Congress intended widows to benefit from the relief provided by the statute, and it is likely that widows would receive such a benefit. The reference to widows in the legislative history to section 6015 is contained in a footnote to the legislative history for section 6015(c). The footnote provides that *no longer married* for purposes of that section includes widowed. The reference to widows is not in the legislative history for section 6015(b) with respect to the rules regarding equity under section 6015(b).

The courts have recognized that the rules regarding knowledge or reason to know and equity under section 6015(b) are consistent with the rules regarding knowledge or reason to know that were developed under section 6013(e). See, e.g., *Von Kalinowski* v. *Commissioner*, T.C. Memo. 2001–21. The rule regarding significant benefit from life insurance proceeds was contained in the regulations under § 1.6013–5. As life insurance proceeds traceable to items of omitted income were considered a significant benefit for purposes of section 6013(e), they are also considered a significant benefit for purposes of section 6015(b). While, the final regulations do not adopt this recommendation, they do clarify that the receipt of property, such as insurance proceeds or the value of life insurance, traceable to items omitted by the nonrequesting spouse must be beyond normal support before they are considered a significant benefit.

One commentator suggested that the final regulations provide that the IRS should consider the entire property settlement, if any, in order to determine whether the requesting spouse significantly benefitted from the understatement. The commentator suggested that if the requesting spouse did not receive an equitable distribution of assets during the divorce proceedings, the Service should not consider any items received by the requesting spouse that are traceable to items of omitted income as a significant benefit. Such a rule, however, would require the IRS to make a determination of whether the distribution of assets was fair in a divorce proceeding, which may have taken place years before and to which the IRS was not a party. Many factors, including equity, are typically considered under state and local laws in determining the distribution of assets in a divorce proceeding. It would be inappropriate for the IRS to pass judgment on the equity of such determinations. The final regulations do not adopt this recommendation.

One commentator suggested that the final regulations adopt a de minimis exception to significant benefit. However, if the benefit was de minimis, it would not be significant. Thus, the final regulations do not adopt this recommendation.

Section 1.6015–2(d) of the proposed regulations also provides a list of factors that may be considered in determining whether it would be inequitable to hold the requesting spouse liable for an understatement. Such factors include the fact that the nonrequesting spouse has not fulfilled support obligations, or that the spouses are divorced, legally separated, or have not been members of the same household for the 12 months directly preceding the election. One commentator suggested that whether the spouses are divorced or legally separated, and the duration of the spouses' separation, should not be relevant to a determination of equity. The language in the proposed regulations was used in an attempt to be consistent with the marital status determination in section 6015(c). After further consideration, the Treasury and IRS have determined that, as the rules regarding equity under section 6015(b) are the same as those developed under section 6013(e), the final regulations should adopt the language that was used in former § 1.6013–5 regarding the couple's marital status. Thus, although the final regulations do not adopt the commentator's recommendation, the final regulations amend the language of § 1.6015–2(d) of the proposed regulations to be consistent with the language regarding equity under former § 1.6013–5, which provided that facts relevant to the determination of equity include whether the requesting spouse was abandoned by the nonrequesting spouse and whether the spouses are divorced or separated.

Section 1.6015–2(d) of the proposed regulations cross-references Rev. Proc. 2000–15 (2000–1 C.B. 447), for additional guidance on the definition of *inequitable*. Two commentators suggested that this cross-reference was inappropriate because the public did not have an opportunity to comment on the procedures in Rev. Proc. 2000–15. The procedures in Rev. Proc. 2000–15 were originally published in Notice 98–61 (1998–2 C.B. 756). Notice 98–61 was published on December 21, 1998, and the Treasury and IRS specifically requested comments on the procedures prescribed therein. The comment period was extended from April 30, 1999, to June 30, 1999, by Notice 99–29 (1999–1 C.B. 1101). Those procedures were finalized, with minor changes, in Rev. Proc. 2000–15, in January 2000. In addition, as the proposed regulations cross-referenced Rev. Proc. 2000–15, the procedures prescribed therein were again subject to comment during the comment period for the proposed regulations. No such comments were received.

Both §§ 1.6015–2 and 1.6015–4 require a determination of whether it was inequitable to hold a requesting spouse liable, and such a determination should be consistent under both relief provisions. Thus, it is appropriate for the final regulations to cross-reference the procedures for determining whether it is inequitable to hold a requesting spouse liable as outlined in Rev. Proc. 2000–15. The final regulations do not adopt this recommendation.

### *3. Section 1.6015–3*

Section 1.6015–3 of the proposed regulations provides the rules regarding the allocation of a deficiency under section 6015(c) for spouses who are no longer married, legally separated, or not members of the same household.

#### A. Marital Status

Section 1.6015–3(a) of the proposed regulations provides that spouses who are no longer married, legally separated, or who have not been members of the same household for the 12 months preceding the election may allocate a deficiency between the spouses in proportion to each spouse's share of the deficiency. Section 1.6015–3(b)(1) of the proposed regulations defines *divorced* as a requesting spouse having a decree of divorce that is recognized in the jurisdiction in which the requesting spouse resides. Section 1.6015–3(b)(2) defines *legally separated* as a separation that is recognized under the laws of the jurisdiction in which the requesting spouse resides. Several commentators suggested that the final regulations cross-reference the rules of section 7703, and the regulations thereunder, for a determination of whether a requesting spouse is divorced or legally separated. The final regulations adopt this recommendation.

Section 1.6015–3(b)(3)(i) of the proposed regulations defines *members of the same household* and provides that spouses are considered members of the same household if one of the spouses is temporarily absent from the household, and the household is maintained in anticipation of that spouse's return. Such temporary absences include, but are not limited to, incarceration, hospitalization, business travel, vacation travel, military service, or education away from home. One commentator suggested that the inclusion of incarceration and hospitalization as temporary absences was inappropriate under the circumstances of a typical case where a spouse is requesting relief from joint and several liability. Section 6015(c), however, provides relief to spouses who are divorced, widowed, legally separated, or who were not members of the same household for the 12 months preceding the election. H.R. Conf. Rept. No. 599, 105th Cong., 2d Sess. 252 (1998); S. Rep. No. 105–174 (1998). The Treasury and IRS have interpreted "not members of the same household" as meaning that the spouses live apart and are estranged. Thus, if the spouses live apart due to a temporary absence, but the household is being maintained in anticipation of the absent spouse's return, then the spouses are still considered members of the same household. The exceptions regarding temporary absences are also consistent with the regulations under section 152, regarding temporary absences for purposes of a dependency exemption. The election to allocate liability is not available to spouses who are not divorced, widowed, legally separated, or living apart and estranged. Although the language in the final regulations was modified to more closely track the language of the regulations under section 152, the final regulations do not adopt this recommendation.

One commentator suggested that, because the election to allocate liability was meant to address the situation where spouses were divorced, widowed, or estranged, the final regulations should adopt a rule that spouses who indefinitely maintain separate households (the spouses have jobs in different cities, for example) but who are not estranged are considered members of the same household for purposes of this provision. This clarification is adopted in the final regulations.

In addition, § 1.6015–3(a) of the final regulations clarifies that, for purposes of section 6015(c), the marital status of a deceased requesting spouse is determined on the earlier of the date of the election or the date of the requesting spouse's death in accordance with section 7703(a)(1).

#### B. Actual Knowledge

Section 1.6015–3(c)(2) of the proposed regulations provides that relief under section 6015(c) is not available if the IRS demonstrates that the requesting spouse had actual knowledge of the item giving rise to the deficiency at the time he or she signed the return. The proposed regulations adopt the holding in *Cheshire* v. *Commissioner*, 115 T.C. 183 (2000), *aff'd*, 282 F.3d 326 (5th Cir. 2002), that, in an omission of income case, the relevant inquiry is whether the requesting spouse had actual knowledge of the item, rather than whether the requesting spouse had actual knowledge of the tax consequences of the item. Several commentators suggested that the regulations provide that actual knowledge of the item means actual knowledge of the proper tax treatment of the item. The legislative history to section 6015(c) provides an example of a requesting spouse who had actual knowledge of a portion of the nonrequesting spouse's self-employment income that was omitted from the return. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 253 (1998). The example provides that the requesting spouse remains liable for the portion of the income tax and self-employment tax deficiency attributable to the portion of the self-employment income of which the requesting spouse had actual knowledge. Id. Nothing in the example indicates that the IRS would have to establish that such spouse had actual knowledge that self-employment income was subject to income tax and self-employment tax in order to invalidate the requesting spouse's section 6015(c) election under section 6015(c)(3)(C). In addition, in many cases, neither spouse may know the proper tax treatment of an item, and both spouses may have equal knowledge regarding the item. The fact that the spouse to whom the item is not attributable does not understand the intricacies of tax law should not be relevant to a determination of whether the spouse had actual knowledge of the item. Therefore, the final regulations do not adopt the recommendation to have the regulations provide that actual knowledge of the item means actual knowledge of the proper tax treatment of the item.

The Tax Court also held that, in an erroneous deduction case, the relevant inquiry is whether the requesting spouse had actual knowledge of the factual circumstances which made the item unallowable as a deduction, rather than whether the requesting spouse knew the proper tax consequences of the item. *King* v. *Commissioner*, 116 T.C. 198 (2001). The final regulations adopt the standard for erroneous deductions set forth in *King* in § 1.6015–3(c)(2)(i)(B)(*1*).

Section 1.6015–3(c)(2)(i)(B)(*2*) of the final regulations also clarifies that if a deduction or credit is fictitious or inflated, the relevant inquiry is whether the requesting spouse had actual knowledge that the expense was not incurred, or not incurred to that extent.

Section 1.6015–3(c)(2)(iii) of the proposed regulations provides that one factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an item giving rise to a deficiency is whether the requesting spouse deliberately avoided learning about the item. Several commentators suggested that this factor was inappropriate in that it would harm those individuals who do not pay attention to the family finances, or who are afraid to confront the nonrequesting spouse about financial matters. This rule, however, addresses situations where the requesting spouse makes a deliberate effort to avoid learning about an item in an attempt to be shielded from liability. For an example of deliberate avoidance, see *United States* v. *Campbell*, 977 F.2d 854 (4th Cir. 1992) (Criminal money laundering case where the Fourth Circuit found that a finding of knowledge may be made by inferences drawn when a party deliberately closes his or her eyes to what would otherwise be obvious, i.e., willful blindness to the existence of a fact).

As discussed above in section 1.B. of this preamble, section 6015(c)(3)(C) provides that the limitation on a requesting spouse's ability to allocate an erroneous item to the nonrequesting spouse when the requesting spouse had actual knowledge of that item does not apply if the requesting spouse establishes that he or she signed the return under duress. When a requesting spouse signs a return under duress, it is not that spouse's return, and accordingly, the spouse is not jointly and severally liable for the tax on that return. Thus, such spouse does not need the relief from joint and several liability provided by section 6015. The final regulations interpret the "duress" provision in section 6015(c)(3)(C) to mean that a requesting spouse in an abusive situation who does not establish that he or she signed the joint return under duress and elects relief from joint and several liability can receive such relief regardless of the requesting spouse's knowledge of the erroneous item at the time the return was signed. Although the requesting spouse may have voluntarily signed the joint return without a direct threat of abuse from the nonrequesting spouse, he or she may have not challenged the content of the joint return due to a long history of abuse from the nonrequesting spouse, resulting in a general fear of the nonrequesting spouse's reprisal. Thus, § 1.6015–3(c)(2)(v) of the final regulations provides that if a requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's reprisal, the actual knowledge limitation in § 1.6015–3(c)(2) will not apply.

C. Disqualified Assets

Section 1.6015–3 of the proposed regulations provides that the portion of a deficiency for which a requesting spouse remains liable will be increased (up to the entire amount of the deficiency) by the value of any disqualified asset that is transferred to the requesting spouse. A disqualified asset is defined as that which is transferred for the purpose of avoidance of tax or payment of tax. Any asset transferred from the date that is 1 year prior to the date the first letter of proposed deficiency (30-day letter) is mailed, is presumed disqualified. The presumption will not apply if the asset is transferred pursuant to a divorce decree or separate maintenance agreement. Two commentators suggested that the use of the terms *divorce decree* and *separate maintenance agreement* is inconsistent with the language of the statute. The final regulations adopt this recommendation by amending the language of the regulation to read "decree of divorce or separate maintenance or written instrument incident to such decree."

One commentator suggested that there should be a de minimis exception to the disqualified asset limitation of $5,000. The Treasury and IRS have determined that a de minimis exception to the disqualified asset rule is inappropriate. The disqualified asset rule limits relief under section 6015(c) when an asset is transferred to the requesting spouse for the purpose of avoidance of tax or payment of tax. The requesting spouse's participation in the attempt to avoid tax or the payment of tax should prevent the spouse from obtaining relief no matter how small the value of the asset. Thus, the final regulations do not adopt this recommendation for a de minimis exception.

One commentator suggested that an example of when a requesting spouse overcomes the disqualified asset presumption in § 1.6015–3(c)(3)(iii) be included in the final regulations. The final regulations adopt this recommendation.

One commentator suggested that some assets should be disqualified, even if they are transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree, if it can be shown that the assets are transferred for the purpose of avoidance of tax or payment of tax. The final regulations adopt this recommendation by clarifying the rule. A disqualified asset is defined as that which is transferred for the purpose of avoidance of tax or payment of tax. Regardless of the situation, if the asset is transferred for that purpose, it is a disqualified asset. The rule regarding a transfer pursuant to a decree of divorce or separate maintenance provides that the "presumption" that an asset is disqualified will not apply if the asset is transferred pursuant to a decree unless the IRS can establish that the asset was transferred for the purpose of avoidance of tax or the payment of tax. If, however, in the absence of a decree, the requesting spouse cannot establish that the purpose of the transfer was not the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable.

D. Burden of Proof for Allocation

Section 1.6015–3(d)(3) of the proposed regulations provides that a requesting spouse seeking to allocate liability under section 6015(c) has the burden of proof to establish the proper allocation of items. One commentator suggested that the final regulations provide an exception to this rule for cases where the requesting spouse is unable to locate the appropriate documents to establish the proper allocation. Section 6015(c)(2) places the burden on the requesting spouse. The final regulations do not adopt this recommendation.

E. Other Comments on Allocation of Items

Section 1.6015–3(d)(4)(ii) of the proposed regulations provides that any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or addition to tax (other than a tax imposed by section 1 or 55) is allocated separately to that spouse. One commentator suggested that such items should be allocated proportionately between the spouses instead of solely to one spouse or the other. Section 6015(d)(2) provides that if a deficiency is attributable to the disallowance of a credit, or any tax (other than tax imposed by section 1 or 55) required to be included with the joint return, and the item is allocated to one individual, the deficiency shall be allocated to that individual. The item will not be subject to the proportionate allocation in section 6015(d)(1). The statutory language of section 6015(d)(2) suggests that separate treatment of items is only appropriate when the item is allocable solely to one spouse or the other. Thus, the final regulations adopt this recommendation by providing that the allocation of taxes and credits attributable to both spouses will be determined by the IRS on a case-by-case basis.

F. Child's Liability

Section 1.6015–3(d)(4)(iii) of the proposed regulations provides that any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse will be allocated jointly to both spouses. If one of the spouses has sole custody of the child, the proposed regulations provided that the liability will be allocated solely to that spouse. One commentator suggested that the liability should be allocated based on the child's residence; another commentator suggested that the liability be allocated based on which parent is in control of the child's finances; and a third commentator suggested that it is not clear to which spouse a child's liability should be allocated. The final regulations address these recommendations, in part, by removing the exception to allocating the child's liability jointly to both parents when only one parent has custody of the child.

*4. Section 1.6015–4*

Section 1.6015–4 of the proposed regulations provides the rules regarding equitable relief from joint and several liability under section 6015(f). Section 1.6015–4(b) of the proposed regulations provides that relief under § 1.6015–4 is not available to circumvent the "no refund" rule of § 1.6015–3(c)(1). Several commentators suggested that this rule be removed. Under Rev. Proc. 2000–15, refunds under section 6015(f) are generally limited to amounts paid pursuant to an installment agreement, on which the requesting spouse is not in default, from the date the claim for relief is filed until a final determination is made. The rule regarding installment payments is intended to encourage individuals to remain current on their installment agreements. Therefore, the Treasury and IRS determined that limited refunds would be appropriate to encourage such compliance. Section 6015(g)(3), however, precludes the allowance of a credit or refund under section 6015(c). It would be inappropriate to circumvent the rule of section 6015(g)(3) by giving equitable relief in the form of a refund when the requesting spouse qualifies for relief under section 6015(c). Thus, the final regulations do not adopt this recommendation.

*5. Section 1.6015–5*

Section 1.6015–5(b)(2) of the proposed regulations defines *collection activity* as, among other things, an administrative levy or seizure described by section 6331. Section 1.6015–5(b)(2) of the final regulations provides that the term *collection activity* includes a collection due process (CDP) notice under section 6330. That 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 Service's intent to levy and the taxpayer's right to a pre-levy CDP hearing. This change is consistent with the legislative history of section 6015(e). See H.R. Conf. Rep. No. 599, 105th Cong. 2d Sess. 250–251 (1998).

*6. Section 1.6015–6*

Section 1.6015–6 of the proposed regulations provides rules regarding the nonrequesting spouse's right to notice and to participate in the administrative determination of whether the requesting spouse is entitled to relief under any of the provisions of section 6015. Some commentators suggested that the proposed regulations are overly broad in providing rights to the nonrequesting spouse, while other commentators suggested that the proposed regulations unnecessarily limit the rights of the nonrequesting spouse. One commentator suggested that the IRS have minimal contact with the nonrequesting spouse and that the nonrequesting spouse not be automatically notified at the administrative level. This commentator also suggested that all of the information submitted by the nonrequesting spouse be shared with the requesting spouse, but not vice versa. The commentator suggested that the nonrequesting spouse should only be given information submitted by the requesting spouse if the nonrequesting spouse files his or her own request for relief. Section 6015 specifically provides the nonrequesting spouse with two opportunities to participate in the determination of whether the requesting spouse is entitled to relief (once at the administrative level under section 6015(h)(2), and once when the petition has been filed in the Tax Court under section 6015(e)(4)). The nonrequesting spouse's participation is necessary to ensure that relief is only granted in meritorious cases. The final regulations do not adopt these recommendations.

Section 1.6015–6(a)(1) of the proposed regulations provides that, at the request of one spouse, the IRS will omit from shared documents the spouse's new name, address, employer, telephone number, and any other information that would reasonably identify the spouse's location. One commentator suggested that this information always be omitted from shared documents regardless of whether a spouse requests such treatment. The final regulations do not adopt this recommendation. Instead, this statement is removed from the final regulations. To address this concern, however, the Internal Revenue Manual provides that the IRS will omit from shared documents any information that could reasonably identify a spouse's location.

A commentator made several suggestions to help ensure that the nonrequesting spouse will have a meaningful opportunity to participate in the administrative determination. One suggestion is that the nonrequesting spouse have access to all information submitted by the requesting spouse, including the basis for relief. Under the proposed regulations, the IRS has the discretion to share information submitted by one spouse with the other spouse. It is the Service's practice to share information at the request of one of the spouses. The final regulations adopt this recommendation by clarifying that information will be shared on request as long as the information would not impair tax administration.

Another suggestion was that the nonrequesting spouse be afforded administrative appeal rights if the nonrequesting spouse disagrees with the Service's determination that the requesting spouse is entitled to relief. The nonrequesting spouse's participation is essential to a proper determination of relief. The nonrequesting spouse may participate during the preliminary determination of relief, and if the requesting spouse files an administrative appeal or a petition in court, the nonrequesting spouse may participate in those proceedings as well. In addition, if a requesting spouse files a petition in Tax Court, the IRS is precluded from settling with the requesting spouse unless the nonrequesting spouse agrees to the settlement. See *Corson* v. *Commissioner*, 114 T.C. 354 (2000). The nonrequesting spouse is afforded a meaningful opportunity to participate in the administrative determination of relief, as well. Thus, the final regulations do not prohibit the nonrequesting spouse from administratively appealing the IRS's determination that the requesting spouse is entitled to relief from joint and several liability.

*7. Section 1.6015–7*

Section 1.6015–7 of the final regulations reflects changes to section 6015 that were made by section 313 of the CRA with respect to waivers and the 90-day period for filing a Tax Court petition.

Section 1.6015–7(c)(1) of the final regulations reflects the fact that when the requesting spouse elects relief under § 1.6015–2 or 1.6015–3, the IRS is restricted from taking collection actions until a decision of the Tax Court becomes final. Section 1.6015–7(c)(1) also reflects the fact that section 6015(e)(1)(B)(i) provides that rules similar to the rules of section 7485 will apply with respect to collection actions. Section 7485 provides that the IRS may begin collection activity upon the filing of a notice of appeal from a Tax Court decision unless the taxpayer files an appeal bond. Because refunds may be limited under section 6015, a requesting spouse may be denied a refund of amounts collected during the pendency of an appeal proceeding, even if he or she is granted relief on appeal. Therefore, the IRS has determined that at this time it will not begin any collection activities against the requesting spouse upon the filing of a notice of appeal unless the expiration of the statute of limitations on collection is imminent, or that collection will be jeopardized by delay.

**Special Analyses**

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

**Drafting Information**

The principal authors of the regulations are Bridget E. Finkenaur and Charles A. Hall of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

**PART 1—INCOME TAXES**

1. The authority citation for part 1 is amended by adding the following entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.6015–1 also issued under 26 U.S.C. 6015(h).

Section 1.6015–2 also issued under 26 U.S.C. 6015(h).

Section 1.6015–3 also issued under 26 U.S.C. 6015(h).

Section 1.6015–4 also issued under 26 U.S.C. 6015(h).

Section 1.6015–5 also issued under 26 U.S.C. 6015(h).

Section 1.6015–6 also issued under 26 U.S.C. 6015(h).

Section 1.6015–7 also issued under 26 U.S.C. 6015(h).

Section 1.6015–8 also issued under 26 U.S.C. 6015(h).

Section 1.6015–9 also issued under 26 U.S.C. 6015(h). * * *

2. In § 1.6013–4, paragraph (d) is added to read as follows:

**§ 1.6013–4 Applicable rules.**

* * * * *

(d) *Return signed under duress.* If an individual asserts and establishes that he or she signed a return under duress, the return is not a joint return. The individual who signed such return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. The return is adjusted to reflect only the tax liability of the individual who voluntarily signed the return, and the liability is determined at the applicable rates in section 1(d) for married individuals filing separate returns. Section 6212 applies to the assessment of any deficiency in tax on such return.

**§ 1.6013–5 [Removed]**

3. Section 1.6013–5 is removed.

4. Sections 1.6015–0 through 1.6015–9 are added to read as follows:

**§ 1.6015–0 Table of contents.**

This section lists captions contained in §§ 1.6015–1 through 1.6015–9.

**§ 1.6015–1 Relief from joint and several liability on a joint return.**



**§ 1.6015–2 Relief from liability applicable to all qualifying joint filers.**



**§ 1.6015–3 Allocation of liability for individuals who are no longer married, are legally separated, or are not members of the same household.**

(*1*) Erroneous deductions in general.
(*2*) Fictitious or inflated deduction.
(ii) Partial knowledge.
(iii) Knowledge of the source not sufficient.
(iv) Factors supporting actual knowledge.
(v) Abuse exception.
(3) Disqualified asset transfers.
(i) In general.
(ii) Disqualified asset defined.
(iii) Presumption.
(4) Examples.
(d) Allocation.
(1) In general.
(2) Allocation of erroneous items.
(i) Benefit on the return.
(ii) Fraud.
(iii) Erroneous items of income.
(iv) Erroneous deduction items.
(3) Burden of proof.
(4) General allocation method.
(i) Proportionate allocation.
(ii) Separate treatment items.
(iii) Child's liability.
(iv) Allocation of certain items.
(A) Alternative minimum tax.
(B) Accuracy-related and fraud penalties.
(5) Examples.
(6) Alternative allocation methods.
(i) Allocation based on applicable tax rates.
(ii) Allocation methods provided in subsequent published guidance.
(iii) Example.

**§ 1.6015–4 Equitable relief.**

**§ 1.6015–5 Time and manner for requesting relief.**

(a) Requesting relief.
(b) Time period for filing a request for relief.
(1) In general.
(2) Definitions.
(i) Collection activity.
(ii) Section 6330 notice.
(3) Requests for relief made before commencement of collection activity.
(4) Examples.
(5) Premature requests for relief.
(c) Effect of a final administrative determination.

**§ 1.6015–6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.**

(a) In general.
(b) Information submitted.
(c) Effect of opportunity to participate.
(2) Waiver of the restrictions on collection.

**§ 1.6015–7 Tax Court review.**

(a) In general.
(b) Time period for petitioning the Tax Court.
(c) Restrictions on collection and suspension of the running of the period of limitations.
(1) Restrictions on collection under § 1.6015–2 or 1.6015–3.
(2) Waiver of the restrictions on collection.
(3) Suspension of the running of the period of limitations.
(i) Relief under § 1.6015–2 or 1.6015–3.
(ii) Relief under § 1.6015–4.
(4) Definitions.
(i) Levy.
(ii) Proceedings in court.
(iii) Assessment to which the election relates.

**§ 1.6015–8 Applicable liabilities.**

(a) In general.
(b) Liabilities paid on or before July 22, 1998.
(c) Examples.

**§ 1.6015–9 Effective date.**

**§ 1.6015–1 Relief from joint and several liability on a joint return.**

(a) *In general.* (1) An individual who qualifies and elects under section 6013 to file a joint Federal income tax return with another individual is jointly and severally liable for the joint Federal income tax liabilities for that year. A spouse or former spouse may be relieved of joint and several liability for Federal income tax for that year under the following three relief provisions:
(i) Innocent spouse relief under § 1.6015–2.
(ii) Allocation of deficiency under § 1.6015–3.
(iii) Equitable relief under § 1.6015–4.
(2) A requesting spouse may submit a single claim electing relief under both or either §§ 1.6015–2 and 1.6015–3, and requesting relief under § 1.6015–4. However, equitable relief under § 1.6015–4 is available only to a requesting spouse who fails to qualify for relief under §§ 1.6015–2 and 1.6015–3. If a requesting spouse elects the application of either § 1.6015–2 or 1.6015–3, the Internal Revenue Service will consider whether relief is appropriate under the other elective provision and, to the extent relief is unavailable under either, under § 1.6015–4. If a requesting spouse seeks relief only under § 1.6015–4, the Secretary may not grant relief under § 1.6015–2 or 1.6015–3 in the absence of an affirmative election made by the requesting spouse under either of those sections. If in the course of reviewing a request for relief only under § 1.6015–4, the IRS determines that the requesting spouse may qualify for relief under § 1.6015–2 or 1.6015–3 instead of § 1.6015–4, the Internal Revenue Service will correspond with the requesting spouse to see if the requesting spouse would like to amend his or her request to elect the application of § 1.6015–2 or 1.6015–3. If the requesting spouse chooses to amend the claim for relief, the requesting spouse must submit an affirmative election under § 1.6015–2 or 1.6015–3. The amended claim for relief will relate back to the original claim for purposes of determining the timeliness of the claim.

(3) 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 Internal Revenue Code (e.g., domestic service employment taxes under section 3510).

(b) *Duress.* For rules relating to the treatment of returns signed under duress, see § 1.6013–4(d).

(c) *Prior closing agreement or offer in compromise*—(1) *In general.* A requesting spouse is not entitled to relief from joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into a closing agreement with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 for any tax year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(2) *Exception for agreements relating to TEFRA partnership proceedings.* The rule in paragraph (c)(1) of this section regarding the unavailability of relief from joint and several liability when the liability to which the claim for relief relates was the subject of a prior closing agreement entered into by the requesting spouse, shall not apply to an agreement described in section 6224(c) with respect to partnership items (or any penalty, addition to tax, or additional amount that relates to adjustments to partnership items) that is entered into while the requesting spouse is a party to a pending partnership-level proceeding conducted under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding). If, however, a requesting spouse enters into a closing agreement pertaining to any penalty, addition to tax, or additional amount that relates to adjustments to partnership items, at a time when the requesting spouse is not a party to a pending TEFRA partnership proceeding (*e.g.*, in connection with an affected items proceeding), then the provisions of paragraph (c)(1) shall apply. Similarly, if a requesting spouse enters into a closing agreement with respect to both partnership items (including affected items) and nonpartnership items, while the requesting spouse is a party to a pending TEFRA partnership proceeding, the provisions of paragraph (c)(1) shall apply to the portion of the closing agreement that relates to nonpartnership items and the provisions of this paragraph (c)(2) shall apply to the remainder of the closing agreement.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c):

*Example 1.* H and W file joint returns for taxable years 2002–2004, on which they claim losses attributable to H's limited partnership interest in Partnership A. In January 2006, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) regarding Partnership A's 2002–2004 taxable years, and sends H and W a notice under section 6223(a)(1). In September 2007, H files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge in April 2008. In August 2008, H and W enter into a closing agreement with the Internal Revenue Service, in which H and W agree to the disallowance of some of the claimed losses from Partnership A for taxable years 2002 through 2007. W may not later claim relief from joint and several liability under section 6015 as to the disallowed losses attributable to Partnership A for taxable years 2002 to 2007. This is because at the time W entered into the closing agreement, H's partnership items attributable to Partnership A had converted to nonpartnership items as a result of H's filing of the bankruptcy petition. The conversion of H's items also terminated W's status as a partner in the TEFRA partnership proceeding regarding Partnership A. Consequently, the closing agreement did not pertain to partnership items and W was not a party to a pending partnership-level proceeding regarding Partnership A when she entered into the closing agreement. Accordingly, the exception in paragraph (c)(2) of this section for agreements relating to TEFRA partnership proceedings does not apply.

*Example 2.* H and W file a joint return for taxable year 2002, on which they claim $25,000 in losses attributable to H's general partnership interest in Partnership B. In November 2003, the Service proposes a deficiency in tax relating to H's and W's 2002 joint return arising from omitted taxable interest income in the amount of $2,000 that is attributable to H. In July 2005, the Internal Revenue Service commences a TEFRA partnership proceeding regarding Partnership B's 2002 and 2003 taxable years, and sends H and W a notice under section 6223(a)(1). In March 2006, H and W enter into a closing agreement with the Service. The closing agreement provides for the disallowance of the claimed losses from Partnership B in excess of H's and W's out-of-pocket expenditures relating to Partnership B for taxable year 2002 and any subsequent year(s) in which H and W claimed losses from Partnership B. In addition, H and W agree to the imposition of the accuracy-related penalty under section 6662 with respect to the disallowed losses attributable to partnership B. In the closing agreement, H and W also agree to the deficiency resulting from the omitted interest income for taxable year 2002. W may not later claim relief from joint and several liability under section 6015 as to the deficiency in tax attributable to the omitted income of $2,000 for taxable year 2002, because this portion of the closing agreement pertains to nonpartnership items. In contrast, W may claim relief from joint and several liability as to the disallowed losses and accuracy-related penalty attributable to Partnership B for taxable year 2002 or any subsequent year(s). This is because this portion of the closing agreement pertains to partnership and affected items and was entered into at a time when W was a party to the pending partnership-level proceeding regarding Partnership B. Consequently, W never had the opportunity to raise the innocent spouse defense in the course of that TEFRA partnership proceeding. (See § 1.6015–5(b)(5) relating to premature claims).

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under section 6015, and section 6013(d)(3) applies to the return. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Service or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Res judicata and collateral estoppel.* A requesting spouse is barred from relief from joint and several liability under section 6015 by res judicata for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability if relief under section 6015 was at issue in the prior proceeding, or if the requesting spouse meaningfully participated in that proceeding and could have raised relief under section 6015. A requesting spouse has not meaningfully participated in a prior proceeding if, due to the effective date of section 6015, relief under section 6015 was not available in that proceeding. Also, any final decisions rendered by a court of competent jurisdiction regarding issues relevant to section 6015 are conclusive and the requesting spouse may be collaterally estopped from relitigating those issues.

(f) *Community property laws*—(1) *In general.* In determining whether relief is available under § 1.6015–2, 1.6015–3, or 1.6015–4, items of income, credits, and deductions are generally allocated to the spouses without regard to the operation of community property laws. An erroneous item is attributed to the individual whose activities gave rise to such item. See § 1.6015–3(d)(2).

(2) *Example.* The following example illustrates the rule of this paragraph (f):

*Example.* (i) H and W are married and have lived in State A (a community property state) since 1987. On April 15, 2003, H and W file a joint Federal income tax return for the 2002 taxable year. In August 2005, the Internal Revenue Service proposes a $17,000 deficiency with respect to the 2002 joint return. A portion of the deficiency is attributable to $20,000 of H's unreported interest income from his individual bank account. The remainder of the deficiency is attributable to $30,000 of W's disallowed business expense deductions. Under the laws of State A, H and W each own ½ of all income earned and property acquired during the marriage.

(ii) In November 2005, H and W divorce and W timely elects to allocate the deficiency. Even though the laws of State A provide that ½ of the interest income is W's, for purposes of relief under this section, the $20,000 unreported interest income is allocable to H, and the $30,000 disallowed deduction is allocable to W. The community property laws of State A are not considered in allocating items for this purpose.

(g) *Scope of this section and §§ 1.6015–2 through 1.6015–9.* This section and §§ 1.6015–2 through 1.6015–9 do not apply to any portion of a liability for any taxable year for which a claim for credit or refund is barred by operation of law or rule of law.

(h) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who filed a joint return and elects relief from Federal income tax liability arising from that return under § 1.6015–2 or 1.6015–3, or requests relief from Federal income tax liability arising from that return under § 1.6015–4.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual with whom the requesting spouse filed the joint return for the year for which relief from liability is sought.

(3) *Item.* An item is that which is required to be separately listed on an individual income tax return or any required attachments. Items include, but are not limited to, gross income, deductions, credits, and basis.

(4) *Erroneous item.* An erroneous item is any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return. For example, unreported income from an investment asset resulting in an understatement or deficiency in tax is an erroneous item. Similarly, ordinary income that is improperly reported as capital gain resulting in an understatement or deficiency in tax is also an erroneous item. In addition, a deduction for an expense that is personal in nature that results in an understatement or deficiency in tax is an erroneous item of deduction. An erroneous item is also an improperly reported item that affects the liability on other returns (e.g., an improper net operating loss that is carried back to a prior year's return). Penalties and interest are not erroneous items. Rather, relief from penalties and interest will

generally be determined based on the proportion of the total erroneous items from which the requesting spouse is relieved. If a penalty relates to a particular erroneous item, see § 1.6015–3(d)(4)(iv)(B).

(5) *Election or request.* A qualifying election under § 1.6015–2 or 1.6015–3, or request under § 1.6015–4, is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A qualifying election also includes a requesting spouse's second election to seek relief from joint and several liability for the same tax year under § 1.6015–3 when the additional qualifications of paragraphs (h)(5)(i) and (ii) of this section are met—

(i) The requesting spouse did not qualify for relief under § 1.6015–3 when the Internal Revenue Service considered the first election solely because the qualifications of § 1.6015–3(a) were not satisfied; and

(ii) At the time of the second election, the qualifications for relief under § 1.6015–3(a) are satisfied.

(i) [Reserved]

(j) *Transferee liability*—(1) *In general.* The relief provisions of section 6015 do not negate liability that arises under the operation of other laws. Therefore, a requesting spouse who is relieved of joint and several liability under § 1.6015–2, 1.6015–3, or 1.6015–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws. For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder. In addition, the requesting spouse's property may be subject to collection under Federal or state property laws.

(2) *Example.* The following example illustrates the rule of this paragraph (j):

*Example.* H and W timely file their 1998 joint income tax return on April 15, 1999. H dies in March 2000, and the executor of H's will transfers all of the estate's assets to W. In July 2001, the Internal Revenue Service assesses a deficiency for the 1998 return. The items giving rise to the deficiency are attributable to H. W is relieved of the liability under section 6015, and H's estate remains solely liable. The Internal Revenue Service may seek to collect the deficiency from W to the extent permitted under Federal or state transferee liability or property laws.

**§ 1.6015–2 Relief from liability applicable to all qualifying joint filers.**

(a) *In general.* A requesting spouse may be relieved of joint and several liability for tax (including additions to tax, penalties, and interest) from an understatement for a taxable year under this section if the requesting spouse elects the application of this section in accordance with §§ 1.6015–1(h)(5) and 1.6015–5, and—

(1) A joint return was filed for the taxable year;

(2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse;

(3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the understatement; and

(4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.

(b) *Understatement.* The term *understatement* has the meaning given to such term by section 6662(d)(2)(A) and the regulations thereunder.

(c) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. For rules relating to a requesting spouse's actual knowledge, see § 1.6015–3(c)(2). All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(d) *Inequity.* All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000–15 (2000–1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

(e) *Partial relief*—(1) *In general.* If a requesting spouse had no knowledge or reason to know of only a portion of an erroneous item, the requesting spouse may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion.

(2) *Example.* The following example illustrates the rules of this paragraph (e):

*Example.* H and W are married and file their 2004 joint income tax return in March 2005. In April 2006, H is convicted of embezzling $2 million from his employer during 2004. H kept all of his embezzlement income in an individual bank account, and he used most of the funds to support his gambling habit. H and W had a joint bank account into which H and W deposited all of their reported income. Each month during 2004, H transferred an additional $10,000 from the individual account to H and W's joint bank account. W paid the household expenses using this joint account, and regularly received the bank statements relating to the account. W had no knowledge or reason to know of H's embezzling activities. However, W did have knowledge and reason to know of $120,000 of the $2 million of H's embezzlement income at the time she signed the joint return because that amount passed through the couple's joint bank account. Therefore, W may be relieved of the liability arising from $1,880,000 of the unreported embezzlement income, but she may not be relieved of the liability for the deficiency arising from $120,000 of the unreported embezzlement income of which she knew and had reason to know.

**§ 1.6015–3 Allocation of deficiency for individuals who are no longer married, are legally separated, or are not members of the same household.**

(a) *Election to allocate deficiency.* A requesting spouse may elect to allocate a deficiency if, as defined in paragraph (b) of this section, the requesting spouse is divorced, widowed, or legally separated, or has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date an election for relief is filed. For purposes of this section, the marital status of a deceased requesting spouse will be determined on the earlier of the date of the election or the date of death in accordance with section 7703(a)(1). Subject to the restrictions of paragraph (c) of this section, an eligible requesting spouse who elects the application of this section in accordance with §§ 1.6015–1(h)(5) and 1.6015–5 generally may be relieved of joint and several liability for the portion of any deficiency that is allocated to the nonrequesting spouse pursuant to the allocation methods set forth in paragraph (d) of this section. Relief may be available to both spouses filing the joint return if each spouse is eligible for and elects the application of this section.

(b) *Definitions*—(1) *Divorced.* A determination of whether a requesting spouse is divorced for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(2) *Legally separated.* A determination of whether a requesting spouse is legally separated for purposes of this section will be made in accordance with section 7703 and the regulations thereunder. Such determination will be made as of the date the election is filed.

(3) *Members of the same household*—(i) *Temporary absences.* A requesting spouse and a nonrequesting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, illness, business, vacation, military service, or education.

(ii) *Separate dwellings.* A husband and wife who reside in the same dwelling are considered members of the same household. In addition, a husband and wife who reside in two separate dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of paragraph (b)(3)(i) of this section.

(c) *Limitations*—(1) *No refunds.* Relief under this section is only available for unpaid liabilities resulting from understatements of liability. Refunds are not authorized under this section.

(2) *Actual knowledge*—(i) *In general.* If, under section 6015(c)(3)(C), the Secretary demonstrates that, at the time the return was signed, the requesting spouse had actual knowledge of an erroneous item that is allocable to the nonrequesting spouse, the election to allocate the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. The Service, having both the burden of production and the burden of persuasion, must establish, by a preponderance of the evidence, that the requesting spouse had actual knowledge of the erroneous item in order to invalidate the election.

(A) *Omitted income.* In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. For example, assume W received $5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received $5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (i.e., $5,000 of unreported dividend income from X Co.), and no relief is available under this section for the deficiency attributable to the dividend income from X Co. This rule applies equally in situations where the other spouse has unreported income although the spouse does not have an actual receipt of cash (e.g., dividend reinvestment or a distributive share from a flow-through entity shown on Schedule K–1, "Partner's Share of Income, Credits, Deductions, etc.").

(B) *Deduction or credit*—(*1*) *Erroneous deductions in general.* In the case of an erroneous deduction or credit, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction or credit.

(*2*) *Fictitious or inflated deduction.* If a deduction is fictitious or inflated, the IRS must establish that the requesting spouse actually knew that the expenditure was not incurred, or not incurred to that extent.

(ii) *Partial knowledge.* If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W's dividend income from X Co. was taxable, but knew that W received the dividend income. Relief is not available under this section. In addition, a requesting spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W's dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under this section.

(iii) *Knowledge of the source not sufficient.* Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H's knowledge of W's ownership in X Co. is not sufficient to establish that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse's actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H's knowledge of W's ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know. Similarly, the IRS need not establish that a requesting spouse knew of the source of an erroneous item in order to establish that the requesting spouse had actual knowledge of the item itself. For example, assume H knew that W received $1,000, but he did not know the source of the $1,000. W and H omit the $1,000 from their joint return. H has actual knowledge of the item giving rise to the deficiency ($1,000), and relief is not available under this section.

(iv) *Factors supporting actual knowledge.* To demonstrate that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the IRS may rely upon all of the facts and circumstances. One factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item, and the requesting spouse's election would be invalid with respect to that entire item. Another factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. For purposes of this paragraph, a requesting spouse will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, a requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item. For example, assume H and W live in State A, a community property state. After their marriage, H opens a bank account in his name. Under the operation of the community property laws of State A, W owns ½ of the bank account. However, W does not have an ownership interest in the account for purposes of this paragraph (c)(2)(iv) because the account is not held in her name and there is no other indication that she asserted dominion and control over the item.

(v) *Abuse exception*. If the requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's retaliation, the limitation on actual knowledge in this paragraph (c) will not apply. However, if the requesting spouse involuntarily executed the return, the requesting spouse may choose to establish that the return was signed under duress. In such a case, § 1.6013–4(d) applies.

(3) *Disqualified asset transfers*—(i) *In general*. The portion of the deficiency for which a requesting spouse is liable is increased (up to the entire amount of the deficiency) by the value of any disqualified asset that was transferred to the requesting spouse. For purposes of this paragraph (c)(3), the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(ii) *Disqualified asset defined*. A disqualified asset is any property or right to property that was transferred from the nonrequesting spouse to the requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax (including additions to tax, penalties, and interest).

(iii) *Presumption*. Any asset transferred from the nonrequesting spouse to the requesting spouse during the 12-month period before the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonrequesting spouse to the requesting spouse after the mailing date of the first letter of proposed deficiency. The presumption does not apply, however, if the requesting spouse establishes that the asset was transferred pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree. If the presumption does not apply, but the Internal Revenue Service can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the requesting spouse remains liable. If the presumption applies, a requesting spouse may still rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

(4) *Examples*. The following examples illustrate the rules in this paragraph (c):

*Example 1. Actual knowledge of an erroneous item*. (i) H and W file their 2001 joint Federal income tax return on April 15, 2002. On the return, H and W report W's self-employment income, but they do not report W's self-employment tax on that income. H and W divorce in July 2003. In August 2003, H and W receive a 30-day letter from the Internal Revenue Service proposing a deficiency with respect to W's unreported self-employment tax on the 2001 return. On November 4, 2003, H files an election to allocate the deficiency to W. The erroneous item is the self-employment income, and it is allocable to W. H knows that W earned income in 2001 as a self-employed musician, but he does not know that self-employment tax must be reported on and paid with a joint return.

(ii) H's election to allocate the deficiency to W is invalid because, at the time H signed the joint return, H had actual knowledge of W's self-employment income. The fact that H was unaware of the tax consequences of that income (i.e., that an individual is required to pay self-employment tax on that income) is not relevant.

*Example 2. Actual knowledge not inferred from a requesting spouse's reason to know*. (i) H has long been an avid gambler. H supports his gambling habit and keeps all of his gambling winnings in an individual bank account, held solely in his name. W knows about H's gambling habit and that he keeps a separate bank account, but she does not know whether he has any winnings because H does not tell her, and she does not otherwise know of H's bank account transactions. H and W file their 2001 joint Federal income tax return on April 15, 2002. On October 31, 2003, H and W receive a 30-day letter proposing a $100,000 deficiency relating to H's unreported gambling income. In February 2003, H and W divorce, and in March 2004, W files an election under section 6015(c) to allocate the $100,000 deficiency to H.

(ii) While W may have had reason to know of the gambling income because she knew of H's gambling habit and separate account, W did not have actual knowledge of the erroneous item (i.e., the gambling winnings). The Internal Revenue Service may not infer actual knowledge from W's reason to know of the income. Therefore, W's election to allocate the $100,000 deficiency to H is valid.

*Example 3. Actual knowledge and failure to review return*. (i) H and W are legally separated. In February 1999, W signs a blank joint Federal income tax return for 1998 and gives it to H to fill out. The return was timely filed on April 15, 1999. In September 2001, H and W receive a 30-day letter proposing a deficiency relating to $100,000 of unreported dividend income received by H with respect to stock of ABC Co. owned by H. W knew that H received the $100,000 dividend payment in August 1998, but she did not know whether H reported that payment on the joint return.

(ii) On January 30, 2002, W files an election to allocate the deficiency from the 1998 return to H. W claims she did not review the completed joint return, and therefore, she had no actual knowledge that there was an understatement of the dividend income. W's election to allocate the deficiency to H is invalid because she had actual knowledge of the erroneous item (dividend income from ABC Co.) at the time she signed the return. The fact that W signed a blank return is irrelevant. The result would be the same if W had not reviewed the completed return or if W had reviewed the completed return and had not noticed that the item was omitted.

*Example 4. Actual knowledge of an erroneous item of income*. (i) H and W are legally separated. In June 2004, a deficiency is proposed with respect to H's and W's 2002 joint Federal income tax return that is attributable to $30,000 of unreported income from H's plumbing business that should have been reported on a Schedule C. No Schedule C was attached to the return. At the time W signed the return, W knew that H had a plumbing business but did not know whether

H received any income from the business. W's election to allocate to H the deficiency attributable to the $30,000 of unreported plumbing income is valid.

(ii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W knew that H received $20,000 of plumbing income. W's election to allocate to H the deficiency attributable to the $20,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $10,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iii) Assume the same facts as in paragraph (i) of this *Example 5* except that, at the time W signed the return, W did not know the exact amount of H's plumbing income. W did know, however, that H received at least $8,000 of plumbing income. W's election to allocate to H the deficiency attributable to $8,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the remaining $22,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

(iv) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported $26,000 of plumbing income on the return and omitted $4,000 of plumbing income from the return. At the time W signed the return, W knew that H was a plumber, but she did not know that H earned more than $26,000 that year. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income is valid because she did not have actual knowledge that H received plumbing income in excess of $26,000.

(v) Assume the same facts as in paragraph (i) of this *Example 5* except that H reported only $20,000 of plumbing income on the return and omitted $10,000 of plumbing income from the return. At the time W signed the return, W knew that H earned at least $26,000 that year as a plumber. However, W did not know that, in reality, H earned $30,000 that year as a plumber. W's election to allocate to H the deficiency attributable to the $6,000 of unreported plumbing income (of which W had actual knowledge) is invalid. W's election to allocate to H the deficiency attributable to the $4,000 of unreported plumbing income (of which W did not have actual knowledge) is valid.

*Example 5. Actual knowledge of a deduction that is an erroneous item.* (i) H and W are legally separated. In February 2005, a deficiency is asserted with respect to their 2002 joint Federal income tax return. The deficiency is attributable to a disallowed $1,000 deduction for medical expenses H claimed he incurred. At the time W signed the return, W knew that H had not incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is invalid because W had actual knowledge that H had not incurred any medical expenses.

(ii) Assume the same facts as in paragraph (i) of this *Example 6* except that, at the time W signed the return, W did not know whether H had incurred any medical expenses. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred any medical expenses.

(iii) Assume the same facts as in paragraph (i) of this *Example 6* except that the Internal Revenue Service disallowed $400 of the $1,000 medical expense deduction. At the time W signed the return, W knew that H had incurred some medical expenses but did not know the exact amount. W's election to allocate to H the deficiency attributable to the disallowed medical expense deduction is valid because she did not have actual knowledge that H had not incurred medical expenses (in excess of the floor amount under section 213(a)) of more than $600.

(iv) Assume the same facts as in paragraph (i) of this *Example 6* except that H claims a medical expense deduction of $10,000 and the Internal Revenue Service disallows $9,600. At the time W signed the return, W knew H had incurred some medical expenses but did not know the exact amount. W also knew that H incurred medical expenses (in excess of the floor amount under section 213(a)) of no more than $1,000. W's election to allocate to H the deficiency attributable to the portion of the overstated deduction of which she had actual knowledge ($9,000) is invalid. W's election to allocate the deficiency attributable to the portion of the overstated deduction of which she had no knowledge ($600) is valid.

*Example 6. Disqualified asset presumption.* (i) H and W are divorced. In May 1999, W transfers $20,000 to H, and in April 2000, H and W receive a 30-day letter proposing a $40,000 deficiency on their 1998 joint Federal income tax return. The liability remains unpaid, and in October 2000, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items are allocable to W, and 25% of the net amount of erroneous items are allocable to H.

(ii) In accordance with the proportionate allocation method (see paragraph (d)(4) of this section), H proposes that $30,000 of the deficiency be allocated to W and $10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the $20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the $20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable ($10,000) is increased by the value of the disqualified asset ($20,000). H is relieved of liability for $10,000 of the $30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining $30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

*Example 7. Disqualified asset presumption inapplicable.* On May 1, 2001, H and W receive a 30-day letter regarding a proposed deficiency on their 1999 joint Federal income tax return relating to unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to a decree of divorce, H must transfer ½ of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of ½ of H's interest in mutual fund A took place after the 30-day letter was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a decree of divorce.

*Example 8. Overcoming the disqualified asset presumption.* (i) H and W are married for 25 years. Every September, on W's birthday, H gives W a gift of $500. On February 28, 2002, H and W receive a 30-day letter from the Internal Revenue Service relating to their 1998 joint individual Federal income tax return. The deficiency relates to H's Schedule C business, and W had no knowledge of the items giving rise to the deficiency. H and W are legally separated in June 2003, and, despite the separation, H continues to give W $500 each year for her birthday. H is not required to give such amounts pursuant to a decree of divorce or separate maintenance.

(ii) On January 27, 2004, W files an election to allocate the deficiency to H. The $1,500 transferred from H to W from February 28, 2001 (a year before the 30-day letter was mailed) to the present is presumed disqualified. However, W may overcome the presumption that such amounts were disqualified by establishing that such amounts were birthday gifts from H and that she has received such gifts during their entire marriage. Such facts would show that the amounts were not transferred for the purpose of avoidance of tax or payment of tax.

(d) *Allocation*—(1) *In general.* (i) An election to allocate a deficiency limits the requesting spouse's liability to that portion of the deficiency allocated to the requesting spouse pursuant to this section.

(ii) Only a requesting spouse may receive relief. A nonrequesting spouse who does not also elect relief under this section remains liable for the entire amount of the deficiency. Even if both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.

(2) *Allocation of erroneous items.* For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following four exceptions:

(i) *Benefit on the return.* An erroneous item that would otherwise be allocated to the nonrequesting spouse is allocated to the requesting spouse to the extent that the requesting spouse received a tax benefit on the joint return.

(ii) *Fraud.* The Internal Revenue Service may allocate any item between the spouses if the Internal Revenue Service establishes that the allocation is appropriate due to fraud by one or both spouses.

(iii) *Erroneous items of income.* Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (c) of this section. In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (c)(2)(iv) of this section. For rules regarding the effect of community property laws, see § 1.6015–1(f) and paragraph (c)(2)(iv) of this section.

(iv) *Erroneous deduction items.* Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (c) of this section and the exceptions in paragraph (d)(4) of this section. Deduction items unrelated to a business or investment are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(3) *Burden of proof.* Except for establishing actual knowledge under paragraph (c)(2) of this section, the requesting spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The requesting spouse must also establish the proper allocation of the erroneous items.

(4) *General allocation method*—(i) *Proportionate allocation.* (A) The portion of a deficiency allocable to a spouse is the amount that bears the same ratio to the deficiency as the net amount of erroneous items allocable to the spouse bears to the net amount of all erroneous items. This calculation may be expressed as follows:

$$X = (\text{deficiency}) \times \frac{\text{net amount of erroneous items allocable to the spouse}}{\text{net amount of all erroneous items}}$$

where X = the portion of the deficiency allocable to the spouse.

(B) The proportionate allocation applies to any portion of the deficiency other than—

(*1*) Any portion of the deficiency attributable to erroneous items allocable to the nonrequesting spouse of which the requesting spouse had actual knowledge;

(*2*) Any portion of the deficiency attributable to separate treatment items (as defined in paragraph (d)(4)(ii) of this section);

(*3*) Any portion of the deficiency relating to the liability of a child (as defined in paragraph (d)(4)(iii) of this section) of the requesting spouse or nonrequesting spouse;

(*4*) Any portion of the deficiency attributable to alternative minimum tax under section 55;

(*5*) Any portion of the deficiency attributable to accuracy-related or fraud penalties;

(*6*) Any portion of the deficiency allocated pursuant to alternative allocation methods authorized under paragraph (d)(6) of this section.

(ii) *Separate treatment items.* Any portion of a deficiency that is attributable to an item allocable solely to one spouse and that results from the disallowance of a credit, or a tax or an addition to tax (other than tax imposed by section 1 or section 55) that is required to be included with a joint return (a separate treatment item) is allocated separately to that spouse. If such credit or tax is attributable in whole or in part to both spouses, then the IRS will determine on a case by case basis how such item will be allocated. Once the proportionate allocation is made, the liability for the requesting spouse's separate treatment items is added to the requesting spouse's share of the liability.

(iii) *Child's liability.* Any portion of a deficiency relating to the liability of a child of the requesting and nonrequesting spouse is allocated jointly to both 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.

(iv) *Allocation of certain items*—(A) *Alternative minium tax.* Any portion of a deficiency relating to the alternative minimum tax under section 55 will be allocated appropriately.

(B) *Accuracy-related and fraud penalties.* Any accuracy-related or fraud penalties under section 6662 or 6663 are allocated to the spouse whose item generated the penalty.

(5) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the requesting spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse. The examples are as follows:

*Example 1. Allocation of erroneous items.* (i) H and W file a 2003 joint Federal income tax return on April 15, 2004. On April 28, 2006, a deficiency is assessed with respect to their 2003 return. Three erroneous items give rise to the deficiency—

(A) Unreported interest income, of which W had actual knowledge, from H's and W's joint bank account;

(B) A disallowed business expense deduction on H's Schedule C; and

(C) A disallowed Lifetime Learning Credit for W's post-secondary education, paid for by W.

(ii) H and W divorce in May 2006, and in September 2006, W timely elects to allocate the deficiency. The erroneous items are allocable as follows:

(A) The interest income would be allocated ½ to H and ½ to W, except that W has actual knowledge of it. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W remains jointly and severally liable for it.

(B) The business expense deduction is allocable to H.

(C) The Lifetime Learning Credit is allocable to W.

*Example 2. Proportionate allocation.* (i) W and H timely file their 2001 joint Federal income tax return on April 15, 2002. On August 16, 2004, a $54,000 deficiency is assessed with respect to their 2001 joint return. H and W divorce on October 14, 2004, and W timely elects to allocate the deficiency. Five erroneous items give rise to the deficiency—

(A) A disallowed $15,000 business deduction allocable to H;

(B) $20,000 of unreported income allocable to H;

(C) A disallowed $5,000 deduction for educational expense allocable to H;

(D) A disallowed $40,000 charitable contribution deduction allocable to W; and

(E) A disallowed $40,000 interest deduction allocable to W.

(ii) In total, there are $120,000 worth of erroneous items, of which $80,000 are attributable to W and $40,000 are attributable to H.

| W's items | | H's items | |
|---|---|---|---|
| $40,000 | charitable deduction | $15,000 | business deduction |
| 40,000 | interest deduction | 20,000 | unreported income |
| | | 5,000 | education deduction |
| $80,000 | | $40,000 | |

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 2/3 ($80,000/$120,000). W's liability is limited to $36,000 of the deficiency (2/3 of $54,000). The Internal Revenue Service may collect up to $36,000 from W and up to $54,000 from H (the total amount collected, however, may not exceed $54,000). If H also made an election, there would be no remaining joint and several liability, and the Internal Revenue Service would be permitted to collect $36,000 from W and $18,000 from H.

*Example 3. Proportionate allocation with joint erroneous item.* (i) On September 4, 2001, W elects to allocate a $3,000 deficiency for the 1998 tax year to H. Three erroneous items give rise to the deficiency—

(A) Unreported interest in the amount of $4,000 from a joint bank account;

(B) A disallowed deduction for business expenses in the amount of $2,000 attributable to H's business; and

(C) Unreported wage income in the amount of $6,000 attributable to W's second job.

(ii) The erroneous items total $12,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the portion of the deficiency attributable to this item is invalid, and W and H remain jointly and severally liable for this portion. Assume that this portion is $1,000. W may allocate the remaining $2,000 of the deficiency.

| H's items | | W's items | |
|---|---|---|---|
| $2,000 | business deduction | $6,000 | wage income |

Total allocable items: $8,000

(iii) The ratio of erroneous items allocable to W to the total erroneous items is 3/4 ($6,000/$8,000). W's liability is limited to $1,500 of the deficiency (3/4 of $2,000) allocated to her. The Internal Revenue Service may collect up to $2,500 from W (3/4 of the total allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest) and up to $3,000 from H (the total amount collected, however, cannot exceed $3,000).

(iv) Assume H also elects to allocate the 1998 deficiency. H is relieved of liability for 3/4 of the deficiency, which is allocated to W. H's relief totals $1,500 (3/4 of $2,000). H remains liable for $1,500 of the deficiency (1/4 of the allocated deficiency plus $1,000 of the deficiency attributable to the joint bank account interest).

*Example 4. Separate treatment items (STIs).* (i) On September 1, 2006, a $28,000 deficiency is assessed with respect to H's and W's 2003 joint return. The deficiency is the result of 4 erroneous items—

(A) A disallowed Lifetime Learning Credit of $2,000 attributable to H;

(B) A disallowed business expense deduction of $8,000 attributable to H;

(C) Unreported income of $24,000 attributable to W; and

(D) Unreported self-employment tax of $14,000 attributable to W.

(ii) H and W both elect to allocate the deficiency.

(iii) The $2,000 Lifetime Learning Credit and the $14,000 self-employment tax are STIs totaling $16,000. The amount of erroneous items included in computing the proportionate allocation ratio is $32,000 ($24,000 unreported income and $8,000 disallowed business expense deduction). The amount of the deficiency subject to proportionate allocation is reduced by the amount of STIs ($28,000 − $16,000 = $12,000).

(iv) Of the $32,000 of proportionate allocation items, $24,000 is allocable to W, and $8,000 is allocable to H.

| W's share of allocable items | H's share of allocable items |
|---|---|
| 3/4 ($24,000/$32,000) | 1/4 ($8,000/$32,000) |

(v) W's liability for the portion of the deficiency subject to proportionate allocation is limited to $9,000 (3/4 of $12,000) and H's liability for such portion is limited to $3,000 (1/4 of $12,000).

(vi) After the proportionate allocation is completed, the amount of the STIs is added to each spouse's allocated share of the deficiency.

| W's share of total deficiency | | H's share of total deficiency | |
|---|---|---|---|
| $ 9,000 | allocated deficiency | $3,000 | allocated deficiency |
| 14,000 | self-employment tax | 2,000 | Lifetime Learning Credit |
| $23,000 | | $5,000 | |

(vii) Therefore, W's liability is limited to $23,000 and H's liability is limited to $5,000.

*Example 5. Requesting spouse receives a benefit on the joint return from the nonrequesting spouse's erroneous item.* (i) In 2001, H reports gross income of $4,000 from his business on Schedule C, and W reports $50,000 of wage income. On their 2001 joint Federal income tax return, H deducts $20,000 of business expenses resulting in a net loss from his business of $16,000. H and W divorce in September 2002, and on May 22, 2003, a $5,200 deficiency is assessed with respect to their 2001 joint return. W elects to allocate the deficiency. The deficiency on the joint return results from a disallowance of all of H's $20,000 of deductions.

(ii) Since H used only $4,000 of the disallowed deductions to offset gross income from his business, W benefitted from the other $16,000 of the disallowed deductions used to offset her wage income. Therefore, $4,000 of the disallowed deductions are allocable to H and $16,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,160 (4/5 of $5,200). If H also elected to allocate the deficiency, H's election to allocate the $4,160 of the deficiency to W would be invalid because H had actual knowledge of the erroneous items.

*Example 6. Calculation of requesting spouse's benefit on the joint return when the nonrequesting spouse's erroneous item is partially disallowed.* Assume the same facts as in Example 5, except that H deducts $18,000 for business expenses on the joint return, of which $16,000 are disallowed. Since H used only $2,000 of the $16,000 disallowed deductions to offset gross income from his business, W received benefit on the return from the other $14,000 of the disallowed deductions used to offset her wage income. Therefore, $2,000 of the disallowed deductions are allocable to H and $14,000 of the disallowed deductions are allocable to W. W's liability is limited to $4,550 (7/8 of $5,200).

(6) *Alternative allocation methods*—(i) *Allocation based on applicable tax rates.* If a deficiency arises from two or more erroneous items that are subject to tax at different rates (e.g., ordinary income and capital gain items), the deficiency will be allocated after first separating the erroneous items into categories according to their applicable tax rate. After all erroneous items are categorized, a separate allocation is made with respect to each tax rate category using the proportionate allocation method of paragraph (d)(4) of this section.

(ii) *Allocation methods provided in subsequent published guidance.* Additional alternative methods for allocating erroneous items under section 6015(c) may be prescribed by the Treasury and IRS in subsequent revenue rulings, revenue procedures, or other appropriate guidance.

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(6):

*Example. Allocation based on applicable tax rates.* H and W timely file their 1998 joint Federal income tax return. H and W divorce in 1999. On July 13, 2001, a $5,100 deficiency is assessed with respect to H's and W's 1998 return. Of this deficiency, $2,000 results from unreported capital gain of $6,000 that is attributable to W and $4,000 of capital gain that is attributable to H (both gains being subject to tax at the 20% marginal rate). The remaining $3,100 of the deficiency is attributable to $10,000 of unreported dividend income of H that is subject to tax at a marginal rate of 31%. H and W both timely elect to allocate the deficiency, and qualify under this section to do so. There are erroneous items subject to different tax rates; thus, the alternative allocation method of this paragraph (d)(6) applies. The three erroneous items are first categorized according to their applicable tax rates, then allocated. Of the total amount of 20% tax rate items ($10,000), 60% is allocable to W and 40% is allocable to H. Therefore, 60% of the $2,000 deficiency attributable to these items (or $1,200) is allocated to W. The remaining 40% of this portion of the deficiency ($800) is allocated to H. The only 31% tax rate item is allocable to H. Accordingly, H is liable for $3,900 of the deficiency ($800 + $3,100), and W is liable for the remaining $1,200.

### § 1.6015–4 Equitable relief.

(a) A requesting spouse who files a joint return for which a liability remains unpaid and who does not qualify for full relief under § 1.6015–2 or 1.6015–3 may request equitable relief under this section. The Internal Revenue Service has the discretion to grant equitable relief from joint and several liability to a requesting spouse when, considering all of the facts and circumstances, it would be inequitable to hold the requesting spouse jointly and severally liable.

(b) This section may not be used to circumvent the limitation of § 1.6015–3(c)(1) (i.e., no refunds under § 1.6015–3). Therefore, relief is not available under this section to obtain a refund of liabilities already paid, for which the requesting spouse would otherwise qualify for relief under § 1.6015–3.

(c) For guidance concerning the criteria to be used in determining whether it is inequitable to hold a requesting spouse jointly and severally liable under this section, see Rev. Proc. 2000–15 (2000–1 C.B. 447), or other guidance published by the Treasury and IRS (see § 601.601(d)(2) of this chapter).

### § 1.6015–5 Time and manner for requesting relief.

(a) *Requesting relief.* To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857, "Request for Innocent Spouse Relief" (or other specified form); submit a written statement containing the same information required on Form 8857, which is signed under penalties of perjury; or submit information in the manner prescribed by the Treasury and IRS in forms, relevant revenue rulings, revenue procedures, or other published guidance (see § 601.601(d)(2) of this chapter).

(b) *Time period for filing a request for relief*—(1) *In general.* To elect the application of § 1.6015–2 or 1.6015–3, or to request equitable relief under § 1.6015–4, a requesting spouse must file Form 8857 or other similar statement with the Internal Revenue Service no later than two years from the date of the first collection activity against the requesting spouse after July 22, 1998, with respect to the joint tax liability.

(2) *Definitions*—(i) *Collection activity.* For purposes of this paragraph (b), 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. The term *property of the requesting spouse,* for purposes of this paragraph (b), means property in which the requesting spouse has an ownership interest (other than solely through the operation of community property laws), including property owned jointly with the nonrequesting spouse.

(ii) *Section 6330 notice.* A section 6330 notice refers to the notice sent, pursuant to section 6330, providing taxpayers notice of the Service's intent to levy and of their right to a collection due process (CDP) hearing.

(3) *Requests for relief made before commencement of collection activity.* An election or request for relief may be made before collection activity has commenced. For example, an election or request for relief may be made in connection with an audit or examination of the joint return or a demand for payment, or pursuant to the CDP hearing procedures under sections 6320 in connection with the filing of a Notice of Federal Tax Lien. For more information on the rules regarding collection due process for liens, see the Treasury regulations under section 6320. However, no request for relief may be made before the date specified in paragraph (b)(5) of this section.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

*Example 1.* On January 11, 2000, a section 6330 notice is mailed to H and W regarding their 1997 joint Federal income tax liability. The Internal Revenue Service levies on W's employer on June 5, 2000. The Internal Revenue Service levies on H's employer on

July 10, 2000. An election or request for relief must be made by January 11, 2002, which is two years after the Internal Revenue Service sent the section 6330 notice.

*Example 2.* The Internal Revenue Service offsets an overpayment against a joint liability for 1995 on January 12, 1998. The offset only partially satisfies the liability. The Internal Revenue Service takes no other collection actions. On July 24, 2001, W elects relief with respect to the unpaid portion of the 1995 liability. W's election is timely because the Internal Revenue Service has not taken any collection activity after July 22, 1998; therefore, the two-year period has not commenced.

*Example 3.* Assume the same facts as in *Example 2,* except that the Internal Revenue Service sends a section 6330 notice on January 22, 1999. W's election is untimely because it is filed more than two years after the first collection activity after July 22, 1998.

*Example 4.* H and W do not remit full payment with their timely filed joint Federal income tax return for the 1989 tax year. No collection activity is taken after July 22, 1998, until the United States files a suit against both H and W to reduce the tax assessment to judgment and to foreclose the tax lien on their jointly-held business property on July 1, 1999. H elects relief on October 2, 2000. The election is timely because it is made within two years of the filing of a collection suit by the United States against H.

*Example 5.* W files a Chapter 7 bankruptcy petition on July 10, 2000. On September 5, 2000, the United States files a proof of claim for her joint 1998 income tax liability. W elects relief with respect to the 1998 liability on August 20, 2002. The election is timely because it is made within two years of the date the United States filed the proof of claim in W's bankruptcy case.

(5) *Premature requests for relief.* The Internal Revenue Service will not consider premature claims for relief under § 1.6015–2, 1.6015–3, or 1.6015–4. A premature claim is a claim for relief that is filed for a tax year prior to the receipt of a notification of an audit or a letter or notice from the IRS indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings. A premature claim is not considered an election or request under § 1.6015–1(h)(5).

(c) *Effect of a final administrative determination*—(1) *In general.* A requesting spouse is entitled to only one final administrative determination of relief under § 1.6015–1 for a given assessment, unless the requesting spouse properly submits a second request for relief that is described in § 1.6015–1(h)(5).

(2) *Example.* The following example illustrates the rule of this paragraph (c):

*Example:* In January 2001, W becomes a limited partner in partnership P, and in February 2001, she starts her own business from which she earns $100,000 of net income for the year. H and W file a joint return for tax year 2001, on which they claim $20,000 in losses from their investment in P, and they omit W's self-employment tax. In March 2003, the Internal Revenue Service commences an audit under the provisions of subchapter C of chapter 63 of subtitle F of the Internal Revenue Code (TEFRA partnership proceeding) and sends H and W a notice under section 6223(a)(1). In September 2003, the Internal Revenue Service audits H's and W's 2001 joint return regarding the omitted self-employment tax. H may file a claim for relief from joint and several liability for the self-employment tax liability because he has received a notification of an audit indicating that there may be an outstanding liability on the joint return. However, his claim for relief regarding the TEFRA partnership proceeding is premature under paragraph (b)(5) of this section. H will have to wait until the Internal Revenue Service sends him a notice of computational adjustment or assesses the liability resulting from the TEFRA partnership proceeding before he files a claim for relief with respect to any such liability. The assessment relating to the TEFRA partnership proceeding is separate from the assessment for the self-employment tax; therefore, H's subsequent claim for relief for the liability from the TEFRA partnership proceeding is not precluded by his previous claim for relief from the self-employment tax liability under this paragraph (c).

**§ 1.6015–6 Nonrequesting spouse's notice and opportunity to participate in administrative proceedings.**

(a) *In general.* (1) When the Internal Revenue Service receives an election under § 1.6015–2 or 1.6015–3, or a request for relief under § 1.6015–4, the Internal Revenue Service must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. For further guidance regarding the definition of last known address, see § 301.6212–2 of this chapter. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from joint and several liability. A nonrequesting spouse is not required to submit information under this section. Upon the request of either spouse, the Internal Revenue Service will share with one spouse the information submitted by the other spouse, unless such information would impair tax administration.

(2) The Internal Revenue Service must notify the nonrequesting spouse of the Service's preliminary and final determinations with respect to the requesting spouse's claim for relief under section 6015.

(b) *Information submitted.* The Internal Revenue Service will consider all of the information (as relevant to each particular relief provision) that the nonrequesting spouse submits in determining whether relief from joint and several liability is appropriate, including information relating to the following—

(1) The legal status of the requesting and nonrequesting spouses' marriage;

(2) The extent of the requesting spouse's knowledge of the erroneous items or underpayment;

(3) The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;

(4) The requesting spouse's education level;

(5) The extent to which the requesting spouse benefitted from the erroneous items;

(6) Any asset transfers between the spouses;

(7) Any indication of fraud on the part of either spouse;

(8) Whether it would be inequitable, within the meaning of §§ 1.6015–2(d) and 1.6015–4, to hold the requesting spouse jointly and severally liable for the outstanding liability;

(9) The allocation or ownership of items giving rise to the deficiency; and

(10) Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) *Effect of opportunity to participate.* The failure to submit information pursuant to paragraph (b) of this section does not affect the nonrequesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the nonrequesting spouse submits pursuant to paragraph (b) of this section is relevant in determining whether relief from joint and several liability is appropriate for the nonrequesting spouse should the nonrequesting spouse also submit an application for relief.

**§ 1.6015–7 Tax Court review.**

(a) *In general.* Requesting spouses may petition the Tax Court to review the denial of relief under § 1.6015–1.

(b) *Time period for petitioning the Tax Court.* Pursuant to section 6015(e), the requesting spouse may petition the Tax Court to review a denial of relief under § 1.6015–1 within 90 days after the date notice of the Service's final determination is mailed by certified or registered mail (90-day period). If the IRS does not mail the requesting spouse a final determination letter within 6 months of the date the requesting spouse files an election under § 1.6015–2 or 1.6015–3, the requesting spouse may petition the Tax Court to review the election at any time after the expiration of the 6-month period, and before the expiration of the 90-day period. The Tax Court also may review a claim for relief if Tax Court jurisdiction has been acquired under another section of the Internal Revenue Code such as section 6213(a) or 6330(d).

(c) *Restrictions on collection and suspension of the running of the period of limitations*—(1) *Restrictions on collection under § 1.6015–2 or 1.6015–3.* Unless the Internal Revenue Service determines that collection will be jeopardized by delay, no levy or proceeding in court shall be made, begun, or prosecuted against a requesting spouse electing the application of § 1.6015–2 or 1.6015–3 for the collection of any assessment to which the election relates until the expiration of the 90-day period described in paragraph (b) of this section, or if a petition is filed with the Tax Court, until the decision of the Tax Court becomes final under section 7481. For more information regarding the date on which a decision of the Tax Court becomes final, see section 7481 and the regulations thereunder. Notwithstanding the above, if the requesting spouse appeals the Tax Court's decision, the Internal Revenue Service may resume collection of the liability from the requesting spouse on the date the requesting spouse files the notice of appeal, unless the requesting spouse files an appeal bond pursuant to the rules of section 7485. Jeopardy under this paragraph (c)(1) means conditions exist that would require an assessment under section 6851 or 6861 and the regulations thereunder.

(2) *Waiver of the restrictions on collection.* A requesting spouse may, at any time (regardless of whether a notice of the Service's final determination of relief is mailed), waive the restrictions on collection in paragraph (c)(1) of this section.

(3) *Suspension of the running of the period of limitations*—(i) *Relief under § 1.6015–2 or 1.6015–3.* The running of the period of limitations in section 6502 on collection against the requesting spouse of the assessment to which an election under § 1.6015–2 or 1.6015–3 relates is suspended for the period during which the Internal Revenue Service is prohibited by paragraph (c)(1) of this section from collecting by levy or a proceeding in court and for 60 days thereafter. However, if the requesting spouse signs a waiver of the restrictions on collection in accordance with paragraph (c)(2) of this section, the suspension of the period of limitations in section 6502 on collection against the requesting spouse will terminate on the date that is 60 days after the date the waiver is filed with the Internal Revenue Service.

(ii) *Relief under § 1.6015–4.* If a requesting spouse seeks only equitable relief under § 1.6015–4, the restrictions on collection of paragraph (c)(1) of this section do not apply. Accordingly, the request for relief does not suspend the running of the period of limitations on collection.

(4) *Definitions*—(i) *Levy.* For purposes of this paragraph (c), levy means an administrative levy or seizure described by section 6331.

(ii) *Proceedings in court.* For purposes of this paragraph (c), proceedings in court means suits filed by the United States for the collection of Federal tax. Proceedings in court does not refer to the filing of pleadings and claims and other participation by the Internal Revenue Service or the United States in suits not filed by the United States, including Tax Court cases, refund suits, and bankruptcy cases.

(iii) *Assessment to which the election relates.* For purposes of this paragraph (c), the assessment to which the election relates is the entire assessment of the deficiency to which the election relates, even if the election is made with respect to only part of that deficiency.

**§ 1.6015–8 Applicable liabilities.**

(a) *In general.* Section 6015 applies to liabilities that arise after July 22, 1998, and to liabilities that arose prior to July 22, 1998, that were not paid on or before July 22, 1998.

(b) *Liabilities paid on or before July 22, 1998.* A requesting spouse seeking relief from joint and several liability for amounts paid on or before July 22, 1998, must request relief under section 6013(e) and the regulations thereunder.

(c) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* H and W file a joint Federal income tax return for 1995 on April 15, 1996. There is an understatement on the return attributable to an omission of H's wage income. On October 15, 1998, H and W receive a 30-day letter proposing a deficiency on the 1995 joint return. W pays the outstanding liability in full on November 30, 1998. In March 1999, W files Form 8857, requesting relief from joint and several liability under section 6015(b). Although W's liability arose prior to July 22, 1998, it was unpaid as of that date. Therefore, section 6015 is applicable.

*Example 2.* H and W file their 1995 joint Federal income tax return on April 15, 1996. On October 14, 1997, a deficiency of $5,000 is assessed regarding a disallowed business expense deduction attributable to H. On June 30, 1998, the Internal Revenue Service levies on the $3,000 in W's bank account in partial satisfaction of the outstanding liability. On August 31, 1998, W files a request for relief from joint and several liability. The liability arose prior to July 22, 1998. Section 6015 is applicable to the $2,000 that remained unpaid as of July 22, 1998, and section 6013(e) is applicable to the $3,000 that was paid prior to July 22, 1998.

**§ 1.6015–9 Effective date.**

Sections 1.6015–0 through 1.6015–9 are applicable for all elections under § 1.6015–2 or 1.6015–3 or any requests for relief under § 1.6015–4 filed on or after July 18, 2002.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

5. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to read as follow:

**§ 602.101 OMB Control Numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
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| * * * * | * |
| 1.6015–5 ............................ | 1545–1719 |
| * * * * | * |

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: July 3, 2002.

**Pamela F. Olson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 02–17866 Filed 7–17–02; 8:45 am]

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## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## 30 CFR Part 57

## RIN 1219–AB11

## Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; stay of effectiveness.

**SUMMARY:** The Mine Safety and Health Administration is staying the effectiveness of certain provisions of the final rule addressing "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the Federal Register on January 19, 2001 (66 FR 5706) and amended on February 27, 2002 (67 FR 9180).