



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
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MEMORANDUM FOR NORTH CENTRAL DISTRICT COUNSEL (ST. PAUL)

FROM: Joseph W. Clark
Acting Chief, Branch 2 (General Litigation)

SUBJECT: Relief from Joint and Several Liability - Effect of Prior Judgment

This memorandum responds to your request for advice dated July 7, 1999. this document is not to be cited as precedent.

ISSUE: Can a taxpayer claim relief from joint and several liability for the same tax years which are the subject of a prior district court judgment reducing tax assessments to judgment and foreclosing the tax liens?

CONCLUSION: Although pursuant to the doctrine of claim preclusion, the taxpayer cannot as a general matter claim relief from joint and several liability for the same tax years which are the subject of a prior district court judgment, the taxpayer can qualify for the statutory exception to claim preclusion for tax years which were the subject of prior final Tax Court decisions.

FACTS: Taxpayer and her husband incurred joint income tax liabilities for the tax years . According to the district court decision you have forwarded to us, the and liabilities were the subject of a final Tax Court decision entered on Taxpayer's husband incurred separate income and employment tax liabilities. The Service made assessments for these liabilities and brought an action in the United States District Court to reduce the tax assessments to judgment and to foreclose the tax liens against the residence owned by taxpayer and her husband. 1/ Judgment was entered in favor of the United States on Judgment was for (including interest to the date of judgment) for the joint liabilities and (including interest to the date of judgment) for the separate liabilities of taxpayer's husband.

1/ The district court decision indicates that most of the tax liability is for the joint liability for the tax year.

The Department of Justice subsequently decided not to proceed with judicial sale of the residence as ordered in the decision. The Department of Justice decided it would not proceed with the sale until the death of the taxpayers. In the interim, it would maintain its judgment file and continue to refile the judgment. The Department of Justice has advised the Service that the judgment was refiled in _____ and will remain in effect until _____

The taxpayer's husband is now deceased and the taxpayer has filed a claim for relief from joint and several liability on Form 8857, requesting innocent spouse relief pursuant to section 6015(b) and equitable relief pursuant to section 6015(f). 2/ Taxpayer is seeking relief so the liens and judgments can be removed from her residence. She wishes to sell her residence and make other living arrangements with the proceeds. The residence is the taxpayer's only asset of value.

You request advice as to whether the doctrine of res judicata precludes relief in light of the district court judgment.

LAW AND ANALYSIS:

The doctrine of claim preclusion, or res judicata, prevents a taxpayer from raising in a new proceeding any issues regarding the merits of the tax liability for a particular tax year, if a court in a prior proceeding has entered a final judgment on the liability for such year, even if the issues were not raised in the prior proceeding. Commissioner v. Sunnen, 333 U.S. 591 (1948). Thus, it was established prior to RRA 1998 that a taxpayer could not raise innocent spouse relief under I.R.C. § 6013(e) for tax years which were the subject of prior final judgments, even if innocent spouse relief was not raised in the prior proceeding. United States v. Shanbaum, 10 F.3d 305 (5th Cir. 1994); United States v. Bryant, 15 F.3d 756 (8th Cir. 1994); Edwards v. United States, 792 F. Supp. 474 (W.D. Va. 1991).

The same principles apply to relief from joint and several liability under I.R.C. § 6015 as enacted by RRA 1998. However, section 6015(e)(3)(B) provides a statutory exception to claim preclusion, where relief is requested under sections 6015(b) or (c), if a decision of the Tax Court for the same taxable year for which relief is requested has become final, where such relief was not an issue in the prior Tax Court proceeding. This exception does not apply if the Tax Court determines that the individual participated meaningfully in the prior Tax Court proceeding.

2/ Taxpayer should also request relief under section 6015(c), as it is much easier to qualify for relief under section 6015(c) than it is to qualify for relief under sections 6015(b) or (f). As a widow, taxpayer is "no longer married" within the meaning of section 6015(c)(3)(A)(i)(1). See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess., at p. 252, n. 16 (1998).

Based on the facts you have provided us, we conclude that the district court judgment precludes the raising of relief from joint and several liability with respect to the joint liabilities for the tax years _____, which were not subjects of prior Tax Court decisions. Claim preclusion applies if four conditions are satisfied: (1) the parties in the later action must be identical to the parties in the prior action, (2) the judgment in the prior action must have been rendered by a court of competent jurisdiction, (3) the prior action must have concluded with a final judgment on the merits, and (4) the same claim or cause of action must be involved in both suits. Shanbaum, 10 F.3d at 310. Each tax year is considered a separate cause of action for purposes of claim preclusion. Sunnen, 333 U.S. at 598. Each of these elements has been met with respect to the _____ tax years. The section 6015(e)(3)(B) exception only applies to final decisions of the Tax Court, and not district court decisions. Thus, taxpayer cannot obtain relief with respect to the _____ tax years.

However the statutory exception is applicable to the tax years _____ and _____ because they were the subject of a prior Tax Court decision. The fact that these tax years were the subject of the district court decision reducing the tax assessments to judgment does not preclude reliance on the statutory exception. The Tax Court decision was res judicata for purposes of the district court case and, thus, the merits of the tax liability could not be relitigated in the district court case. See Bryant, supra; Shanbaum, supra. Thus, the district court litigation did not alter the fact that the Tax Court decision was a final decision which conclusively settled the merits of the tax liabilities. The intent of the section 6015(e)(3)(B) exception is to permit the raising of innocent spouse relief under section 6015 despite such a final Tax Court decision.

We also conclude that the taxpayer could not have participated “meaningfully” in the prior Tax Court proceeding since there was no innocent spouse relief available at the time of that proceeding.

Thus, pursuant to the section 6015(e)(3)(B) exception to res judicata, taxpayer can claim innocent spouse relief under section 6015(b) for the tax years _____ and _____. Note that the exception is only applicable to relief requested under sections 6015(b) and (c), and so taxpayer cannot obtain equitable relief under section 6015(f) with respect to the _____ and _____ tax years.

We also note that with respect to any portion of the joint liability for which relief is not granted, because the tax liability has been reduced to judgment, any settlement of the joint and several liabilities is within the jurisdiction of the Department of Justice. I.R.C. § 7122(a); CCDM (34)(11)15.3. If the taxpayer submits an offer in compromise with respect to the joint liabilities, the offer should be referred to Justice. See IRM 57(10)1.(13). We also note that taxpayer cannot obtain section 6015 relief with respect to the separate liability of her husband, and, thus, the property will remain encumbered by the district court judgment with respect her husband's separate liabilities.

Please contact this office at (202) 622-3620 if you have any questions or comments concerning this memorandum.

cc: Chief, Branch 4, Assistant Chief Counsel (IT&A)
Chief, IT&A Branch, Assistant Chief Counsel (FS)