

Legislative Recommendation #51**Clarify That Taxpayers May Seek Innocent Spouse Relief in Refund Suits¹****PRESENT LAW**

IRC §§ 6015 and 66, sometimes referred to as the “innocent spouse” rules, provide relief from the joint and several liability that arises from filing a joint federal income tax return and from the operation of community property rules. Taxpayers may request that the IRS grant innocent spouse relief, and if a request is denied, they may seek judicial review.

U.S. Tax Court

Under IRC § 6015(e), the Tax Court has jurisdiction to review the IRS’s denial of a claim for innocent spouse relief and to determine the appropriate relief. There is no right to a jury trial in Tax Court, and while the standard of review of a denial of a claim for innocent spouse relief under IRC § 6015 is *de novo*, the scope of the Tax Court’s review is limited to “(A) the administrative record established at the time of the determination, and (B) any additional newly discovered or previously unavailable evidence.”²

Other Federal Courts

Taxpayers who pay a proposed deficiency before filing a Tax Court petition and whose administrative claims for tax refunds have been denied by the IRS cannot bring refund suits in the Tax Court, but they may seek refunds by filing suit in a U.S. district court or in the U.S. Court of Federal Claims. They may raise their innocent spouse claims for the first time in proceedings before those courts.³

IRC § 6015(e) provides that a taxpayer’s right to petition the Tax Court for innocent spouse relief is provided “[i]n addition to any other remedy provided by law.” Despite the quoted language, a U.S. district court concluded in the case of *Chandler v. United States* that it lacked jurisdiction to consider a taxpayer’s innocent spouse claim in a refund suit arising under IRC § 7422.⁴

A jury trial is available if a refund suit is brought in a U.S. district court, and the scope of the court’s review in a refund suit is *de novo* (i.e., not limited, for example, to the administrative record).⁵

1 This recommendation that Congress clarify that taxpayers may seek innocent spouse relief in refund cases addresses issues similar to those discussed in our recommendation *Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection Proceedings and Bankruptcy Cases*, *supra*.

2 IRC § 6015(e)(7). This provision was enacted as part of the Taxpayer First Act, Pub. L. No. 116-25, § 1203, 133 Stat. 981, 988 (2019). The National Taxpayer Advocate recommends revising IRC § 6015(e)(7) to remove this limitation on the Tax Court’s scope of review. See *Provide That the Scope of Judicial Review of Determinations Under IRC § 6015 Is De Novo*, *supra*.

3 If the innocent spouse claim is raised for the first time in a refund suit, then it is arguable that the IRS, although it may make a recommendation to the Justice Department about whether relief should be granted, does not make a “determination” that the Tax Court would have jurisdiction to review. If the IRS has not made a determination and IRC § 6015(e)(7) does not apply, the statute should not be construed as conferring exclusive jurisdiction on the Tax Court.

4 *Chandler v. United States*, 2018 U.S. Dist. LEXIS 173880 (N.D. Tex. 2018), *adopting* 2018 U.S. Dist. LEXIS 174482 (N.D. Tex. 2018). The decision quoted *United States v. Elman*, 2012 U.S. Dist. LEXIS 173026, at *8 (N.D. Ill. 2012), which stated that “although the statute itself does not address whether the Tax Court’s jurisdiction is exclusive, courts interpreting the statute have concluded that it is.”

5 See *Vons Companies v. United States*, 51 Fed. Cl. 1, 5-6 (2001), noting “the axiomatic principle that tax refund cases are *de novo* proceedings” in which the court’s determination of the taxpayer’s tax liability is “based upon the facts and merits presented to the court and does not require (or even ordinarily permit) this court to review findings or a record previously developed at the administrative level.” (Citations omitted.)

REASONS FOR CHANGE

The *Chandler* decision is inconsistent with decisions by other federal courts that for decades have allowed taxpayers to seek innocent spouse relief in refund suits.⁶ The decision in *Chandler*, by foreclosing district court review of innocent spouse claims, leaves taxpayers with only one forum — the Tax Court — in which to seek review of adverse IRS determinations. Taxpayers are thus deprived of judicial review of their cases that is *de novo* in scope. Because there is no right to a jury trial in the Tax Court, the *Chandler* decision also undermines taxpayers' right to have their cases decided by a jury.

Moreover, a refund suit may involve issues other than innocent spouse relief over which the court would clearly have jurisdiction. Requiring taxpayers to litigate the innocent spouse claim in the Tax Court and other issues in a different federal court imposes unreasonable burdens on taxpayers and undermines judicial economy.

Legislation is needed to clarify that the statutory language of IRC § 6015, conferring Tax Court jurisdiction “in addition to any other remedy provided by law” does not give the Tax Court exclusive jurisdiction to determine innocent spouse claims, and that U.S. district courts and the U.S. Court of Federal Claims are also authorized to consider whether innocent spouse relief should be granted in refund suits.⁷ Clarification will prevent further confusion as to whether seeking innocent spouse relief is allowable in those courts and will provide uniformity among all federal courts.⁸

RECOMMENDATION

- Amend IRC §§ 6015 and 66 to clarify that taxpayers are entitled to assert a claim for innocent spouse relief in refund suits arising under IRC § 7422.

6 See, e.g., *Sanders v. United States*, 509 F.2d 162 (5th Cir. 1975) *aff'g* 369 F. Supp. 160 (N.D. Ala. 1973); *Mlay v. IRS*, 168 F. Supp. 2d 781 (S.D. Ohio 2001); *Flores v. United States*, 51 Fed. Cl. 49 (2001); and *Hockin v. United States*, 2019 U.S. Dist. LEXIS 137972, at *15 n. 2 (D. Or. 2019), in which the court distinguished the *Chandler* case, observing that “notably the plaintiff [in the *Chandler* case] did not respond to the motion to dismiss, so that district court was deprived of the benefit of reasoned argument on the issue from both parties.”

7 IRC § 6015(e)(3) provides that the Tax Court loses jurisdiction to the extent jurisdiction is acquired by a U.S. district court or the U.S. Court of Federal Claims in a refund suit, indicating that the Tax Court does not have exclusive jurisdiction over innocent spouse claims.

8 As noted above, IRC § 6015(e)(7) provides that “[a]ny review of a determination under this section shall be reviewed *de novo* by the Tax Court.” The National Taxpayer Advocate agrees that the standard and scope of Tax Court review of innocent spouse cases should be *de novo*. However, the new provision could be construed as conferring exclusive jurisdiction on the Tax Court to hear innocent spouse claims, which would be inconsistent with IRC § 6015(e)(1)(A). Such an interpretation would also be inconsistent with this recommendation relating to seeking innocent spouse relief in refund suits and with the recommendation to *Clarify That Taxpayers May Raise Innocent Spouse Relief as a Defense in Collection Proceedings and Bankruptcy Cases*, *supra*. For this reason, the National Taxpayer Advocate recommends clarifying that the scope and standard of review are *de novo* in innocent spouse cases before the Tax Court “or other court of competent jurisdiction,” thereby precluding any implication that the Tax Court has exclusive jurisdiction over innocent spouse claims. See *Provide That the Scope of Judicial Review of Determinations Under IRC § 6015 Is De Novo*, *supra*.