

ACTION ON DECISION

Subject: Wilson v. Commissioner, 705 F.3d 980 (9th Cir. 2013), aff'g T.C. Memo. 2010-134.

Issues: Whether I.R.C. § 6015(e)(1) provides both a de novo standard and a de novo scope of review in section 6015(f) cases petitioned to the Tax Court.

Discussion: Petitioner requested equitable relief under section 6015(f) from the joint and several tax liabilities with her former husband. The Internal Revenue Service issued a notice of determination that denied her relief. Petitioner petitioned the Tax Court.

Under section 6015(e)(1)(A), the Tax Court has jurisdiction to “determine the appropriate relief available” to an individual who requests equitable relief under section 6015(f) and files a timely petition. In this case, the Tax Court, relying on its prior interpretation of section 6015(e)(1) in Porter v. Commissioner, 130 T.C. 115 (2008), and Porter v. Commissioner, 132 T.C. 203 (2009), applied both a de novo standard and a de novo scope of review to grant the taxpayer relief. Wilson v. Commissioner, T.C. Memo. 2010-134. The de novo scope of review allowed petitioner to introduce evidence outside the administrative record, and the de novo standard of review allowed the court to determine whether the taxpayer was entitled to relief without regard to the Service’s determination. The court observed that if it were not using the de novo standard and de novo scope of review, its findings on a number of factors would have been different.

The Service appealed. Affirming the Tax Court, the Ninth Circuit held that “determine,” as used in section 6015(e)(1)(A), provides both a de novo standard and a de novo scope of review in section 6015(f) cases. The circuit court interpreted section 6015(e)(1) in conjunction with the mandate under section 6015(f) “to consider the totality of the circumstances before making an equitable relief determination,” which the court noted would be impossible if the Tax Court limited its review to the administrative record. The majority rejected the Service’s argument that the phrase “the Secretary may relieve” in section 6015(f) means that the Tax Court should review the Service’s section 6015(f) determinations for an abuse of discretion, limiting its review to evidence in the administrative record.

Although the Service disagrees that section 6015(e)(1) provides both a de novo standard and a de novo scope of review, the Service will no longer argue that the Tax Court should review section 6015(f) cases for an abuse of discretion or that the court should limit its review to the administrative record.

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Recommendation: Acquiescence.

/s/
Samuel T. Williams
Attorney
(Procedure & Administration)

Reviewer:
CAH
HSS
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TJK

Approved: William J. Wilkins
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By: _____
/s/
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