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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

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SUBJECT: Deceased Taxpayers and Elections Under I.R.C. §§ 6015(b)
and 6015(c)

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official tax administration duties with respect to the case and the issues discussed in the document require inspection or disclosure of the Field Service Advice.

LEGEND

W	=
H	=
W's executor	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Month 1	=
Year 1	=
Year 2	=
Year 3	=
X	=
Y	=

ISSUE

Whether an executor of a deceased spouse's estate may elect the application of sections 6015(b) and 6015(c) on behalf of a deceased individual?

CONCLUSION

An election under sections 6015(b) and 6015(c) must be timely made by the requesting spouse during his or her lifetime. If the election is made during the requesting spouse's lifetime, then the executor of the requesting spouse's estate may pursue the claim. However, the executor of a deceased spouse's estate may not elect relief under section 6015(b) or 6015(c) on behalf of a deceased spouse.

FACTS

W and H were married and filed joint returns for Years 1 through 2. During Years 1 through 2, W and H claimed deductions on the joint returns relating to H's partnership interests. H died on Date 1, and W died on Date 2. When W died, she left an estate valued at approximately X. In Month 1 of Year 3, the Service made TEFRA adjustments to the joint returns for Years 1 through 2. The adjustments total approximately Y. On Date 3, W's executor filed Form 8857, "Request for Innocent Spouse Relief," electing relief under sections 6015(b) and 6015(c). W's executor signed the Form 8857 on W's behalf. The claim alleges that W did not participate in the preparation of the joint returns and that W was unaware of H's

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partnership interests. The claim also indicates that H invested in the partnerships pursuant to a financial planner's advice.

LAW AND ANALYSIS

Section 6015 provides relief from joint and several liability to individuals who file joint income tax returns. Section 6015(b), innocent spouse relief, and section 6015(c), allocation of liability, offer relief to certain joint filers from liability that arises as a result of a deficiency. The individual seeking relief under section 6015(b) or 6015(c) must affirmatively elect relief under those sections. See I.R.C. §§ 6015(b)(1)(E) and 6015(c)(1).

Section 6015 does not indicate whether the executor of a deceased spouse's estate may elect relief under section 6015(b) or 6015(c) on behalf of a deceased spouse. When the meaning of a statute is not clear, the language of other statutes, which apply to similar persons or relationships, may be considered to derive the meaning of the statute in question. National Fed'n of Fed. Employees, Local 1309 v. DOI, 526 U.S. 86, 105 (1999). Therefore, although there is no indication in section 6015 as to whether relief was intended for deceased individuals, other sections of the Internal Revenue Code may be helpful in determining the meaning of section 6015.

Section 6013 allows a husband and wife to elect to file a joint individual income tax return. The filing of such a return leads to the joint and several liability from which spouses seek relief under section 6015. I.R.C. § 6013(d)(3). Unlike section 6015, section 6013 specifically provides rules for the availability of the joint election to deceased spouses: (1) section 6013(a)(3) provides, that, generally, in the case of the death of one or both spouses, the joint return with respect to the decedent may be made only by his or her executor or administrator, or in some cases by the surviving spouse; (2) section 6013(c) provides that a husband and wife may file a joint return after the death of one of the spouses for the taxable year in which the spouse died; (3) section 6013(d)(1)(B) provides that, if one of the spouses dies before the close of the taxable year, the status as husband and wife is determined on the date of the spouse's death, and (4) section 6013(f)(4) provides that an executor may revoke the joint election of a spouse missing in action. All of the references in section 6013 regarding the treatment of deceased spouses indicate that Congress considered and specifically provided that the section 6013 joint return election is available to deceased spouses, and that the deceased spouse's executor may make the election on behalf of the deceased spouse. The explicit reference in section 6013 to deceased spouses and executors, in contrast to the omission in section 6015 of any reference to deceased spouses and an executor's right to make an election on behalf of a deceased spouse, suggests that Congress

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did not intend for an executor to be able to make an election under section 6015 on behalf of a deceased spouse.

Another election statute that is helpful in interpreting the statutory language of section 6015 is section 1033. Section 1033 allows a taxpayer who has had property involuntarily converted into cash to elect to limit the gain recognized on the involuntarily converted property if the taxpayer converts the cash into similar replacement property within 2 years. Section 1033 does not specifically indicate whether an executor may receive the benefits of section 1033 on behalf of a decedent, but the case law under section 1033 does address that issue.

Under section 1033, as long as the taxpayer makes a timely election during his or her lifetime, the executor of the taxpayer's estate may continue what the taxpayer started by converting the remaining cash into replacement property and receive the benefits of limited gain under section 1033. See, e.g., Chichester v. United States, 78-1 U.S.T.C. ¶ 9458 (1978).¹ In In re Estate of Morris, 454 F. 2d 208 (4th Cir. 1972), the court found that an executor, in continuing to purchase replacement property under section 1033, was acting on the deceased taxpayer's behalf in completing what the deceased taxpayer had already started. Id.

In comparing the lack of any reference to deceased spouses in section 6015 with the explicit reference to deceased spouses in section 6013, we conclude that an executor cannot make an election under section 6015(b) or 6015(c) on behalf of a deceased spouse. The rationale in the section 1033 cases can be also be applied to elections under sections 6015(b) and 6015(c). If a requesting spouse elects relief under section 6015(b) or section 6015(c) during his or her lifetime, the requesting spouse's executor or personal representative may pursue the claim. However, if the spouse did not elect to be relieved of liability during his or her lifetime, the estate of the spouse cannot make an election under section 6015(b) or 6015(c) on the deceased spouse's behalf.

The language of section 1033 is also helpful in interpreting section 6015 in that section 1033 uses the term "taxpayer," whereas section 6015 uses the term "individual." Under section 1033, the term "taxpayer" was interpreted broadly because, after the taxpayer's death, the estate is the entity that is responsible for paying the tax. Therefore, the estate is the "taxpayer," and the executor is the fiduciary of the estate responsible for payment. See In re Goodman's Estate, 199 F.2d 895, 897 (3d Cir. 1952). In contrast, under section 6015, an "individual" is entitled to relief. "Individual" is a much narrower term than "taxpayer." Under

¹The Service decided to follow the decision in Chichester, in that it would no longer follow a per se rule that the provisions of section 1033(a)(3) that limit the recognition of gain would terminate upon the taxpayer's death. See A.O.D. 1981-3.

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section 7701(a)(14), a taxpayer is defined as any person subject to any internal revenue tax. In section 7701(a)(1), a person is defined as including an individual, a trust, estate, partnership, association, company, or corporation. Because “individual” and “estate” are listed separately under the definition of “person,” we conclude that the term “individual” does not include “estate.”

Another useful tool in interpreting a statute is the legislative history. If the meaning of the statute is ambiguous, then the legislative history may be considered to determine how Congress intended the statute to be applied. Garcia v. United States, 469 U.S. 70, 76 (1984). The lack of a reference in section 6015 to deceased spouses and the rights of their executors creates an ambiguity in the statute. The legislative history to section 6015 provides some guidance on how the statute should be interpreted.

As with section 6015, the legislative history to section 6015 makes no reference to executors making elections on behalf of deceased spouses. Most of the legislative history to section 6015 focuses on the election to allocate liability under section 6015(c). Section 6015(c) provides that spouses who are no longer married, legally separated, or living apart for the 12 months preceding the election may elect to allocate the joint liability. I.R.C. § 6015(c)(3)(A)(i). The legislative history identifies the typical case where relief is appropriate under section 6015(c) as follows: “after a husband and wife have had marital discord and are divorced, the husband may have left town and is difficult to find, the IRS locates the custodial parent, typically the wife, who is more easily accessible, and then becomes responsible for 100 percent of the tax deficiency that was a result of a filing while the marriage was in place.” Senate Floor Debate for Amendment No. 2369, 144 Cong. Rec. 56, S4473 (1998). The legislative history to section 6015 indicates that section 6015 was intended to relieve spouses who are saddled with a joint and several liability attributable to a nonrequesting spouse who is inaccessible.

The legislative history to section 6015 is silent with respect to deceased spouses. It does, however, make a reference to widows. The legislative history to section 6015(c)(3)(A)(i)(I) provides that “a taxpayer is no longer married if he or she is widowed.” H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 252, n.16 (1998). The legislative history does not say that a taxpayer is no longer married if he or she is deceased. Again, the omitted reference to deceased spouses indicates that relief was not intended for deceased individuals.

Under the fact scenario presented, both W and H were deceased before section 6015 was enacted. W did not seek relief from joint and several liability during her lifetime. Therefore, W’s executor cannot elect the benefits of section 6015(b) or 6015(c) on W’s behalf.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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