

From the desk of

Peter S. Muffoletto, C.P.A.

Innocent Spouse Relief Granted

In a matter heard by the U.S. Tax Court it was found that a spouse was granted relief from for all or part of the liability for the deficiency that resulted from the failure to report on a joint return a distribution from his spouse's separately owned retirement account.

While the court found that spouse should have known of his wife's distribution there was no evidence that he had actual knowledge of the distribution.

General, married taxpayers who file a joint federal income tax return are jointly, and severally liable for the tax reported or reportable on the tax return. (Code Sec. 6013(d)(3))

Under Internal Revenue Code Sec. 6015 a spouse who has filed a joint tax return may elect to seek relief from joint and several liability under one of three relief provisions.

Code Sec. 6015(b)(1) provides that a taxpayer will be relieved of liability for an understatement of tax if:

1. A joint return was made for the tax year in question;
2. There is an understatement of tax 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, that there was such understatement";
4. Taking into account all the facts and circumstances, it would be inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement; and
5. The requesting spouse elects to invoke Code Sec. 6015(b) within two years after the date IRS has begun collection actions with respect to the requesting spouse.

An election under Code Sec. 6015(c) treats former spouses that filed a joint return as if they had filed separate returns, and each spouse's liability is limited to that portion of the deficiency properly allocable to that spouse.

Such an allocation is not permitted, however, if IRS demonstrates that the individual electing relief had actual knowledge at the time the return was signed, of any item giving rise to a deficiency (or portion thereof) which is not allocable to that individual. (Code Sec. 6015(c)(3)(C))

Code Sec. 6015(f) provides for equitable innocent spouse relief under procedures prescribed by IRS if:

1. Taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency and

2. Relief is not available to the requesting spouse under Code Sec. 6015(b) or Code Sec. 6015(c).

The requesting spouse has the burden of proving that he/she is entitled to relief. (Alt, (2002) 119 TC 306119 TC 306)

In the matter found in favor of the husband, the two were married on October 31, 2007.

They were temporarily separated twice during 2014, finally separated in June 2015, and divorced in 2016.

During 2014, and until the time of the permanent separation in 2015, the couple maintained a joint checking account into which their payroll checks were deposited.

They made transfers to and from other accounts, and family expenses were paid out of the joint account.

Both had access to the funds in the joint account by the use of debit cards.

During 2014 the wife received a \$15,068 distribution from the Edward Jones retirement account.

Edward Jones withheld \$2,712 from the distribution and reported both of those amounts to IRS.

On August 1, 2014, \$6,000 was deposited into the joint checking account.

The balance of the distribution was used for the benefit of wife's daughter from a former marriage.

The couple filed a joint tax return providing information independently to their tax preparer for the joint tax return for 2014.

The wife failed to report the Edward Jones distribution.

The IRS asserted additional tax, and a \$3,545 deficiency for failure to report the distribution based upon data reported to the IRS by Edward Jones.

The husband sought relief by filing Form 8857 (Request for Innocent Spouse Relief) with IRS.

The IRS denied the application.

The issue before the Court was whether the husband could be relieved from liability for all or part of the deficiency that resulted from failure to report on a joint return the distribution to the wife from a separately owned retirement account.

The husband contended that he was entitled to relief from the full amount of the deficiency.

The wife requested that Colin be held liable for tax, and penalties.

Court Grants Relief

The Tax Court determined that the husband qualified for relief under Code Sec. 6015(c).

The Court reasoned that although he admitted that he knew about the retirement account, and about withdrawals made in other years for various family expenditures, he had no knowledge of the distribution for the tax year in question.

The taxpayer further argued that his ex-spouse deliberately deceived him in failing to alert him to the distribution. He did acknowledge in hindsight that he was at fault for not checking the records on the joint bank account maintained by him and his former wife.

The Court concluded that the history of withdrawals from the retirement account used by the parties over a period of years and the transactions by the husband with reference to the joint bank account supported a conclusion that he should have known about the distribution but that while he should have known about the distribution based upon the activity in the bank account, the evidence fell short of establishing actual knowledge of any specific amount of the distribution during the tax year.

The essence of this case was what the taxpayer knew, when he knew it, and was he negligent in reporting the distribution that he apparently had no knowledge of, and that the control of the information was in the hands of his former spouse, who apparently failed to disclose the distribution to him, therefore the court found in his favor, and allocated the additional tax, and penalties to the former spouse.

It further appears that as rare as it normally is, if your wife doesn't tell you, you are not at fault.

We here at Muffoletto & Company believe that the more informed you are in regards to the rules and regulations that affect you the more we can be of service.

Should you have questions relating to any tax or financial matters call at

(818) 346-2160,

or you can visit us on the web at

www.petemcpa.com

Providing individuals, small businesses, corporations, partnerships, professionals, and other business entities with the necessary guidance and answers for a complex world.

IMPORTANT NOTICE

The contents of this email and any attachments to it may contain privileged and confidential information from Muffoletto & Company.

This information is only for the viewing or use of the intended recipient. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of, or the taking of any action in reliance upon, the information contained in this e-mail, or any of the attachments to this e-mail, is strictly prohibited and that this e-mail and all of the attachments to this e-mail, if any, must be immediately returned to Muffoletto & Company or destroyed and, in either case, this e-mail and all attachments to this e-mail must be immediately deleted from your computer without making any copies hereof.

If you have received this e-mail in error, please notify Muffoletto & Company by e-mail immediately.

To ensure compliance with Treasury Department regulations, we wish to inform you that, unless expressly stated otherwise in this communication (including any attachments) any tax advice that may be contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

If you prefer not to remain on our email lists, please let us know.

We will remove you as soon as you notify us.

You may do so by emailing us at

pete@petemcpa.com