

Tax Law Insights

A Burr & Forman BLOG

Innocent Spouses Seeking Equitable Relief Must File Claim Within Two Years

Published June 15, 2011

When spouses file a joint income tax return each is jointly and severally liable not only for the reported tax liability, but also for any additional taxes, penalties and interest later claimed by the IRS as due. A spouse can request relief from this joint liability by filing a request for innocent spouse relief with the Internal Revenue Service.

The IRS states that an innocent spouse request must be filed within two years after the date initial collection activities for the unpaid taxes have begun. The United States Tax Court has repeatedly disagreed with the IRS, however, ruling in numerous cases that an innocent spouse request based on equitable considerations may be filed at any time and that a two-year limit for the filing of such a claim does not apply.

The IRS has appealed these adverse United States Tax Court decisions to the applicable United States Courts of Appeal. There are 12 United States Courts of Appeal across the country which hear appeals from Tax Court decisions. Each Court of Appeals has jurisdiction over a particular geographic region of the United States. An appeal from a Tax Court decision lies with the Court of Appeals having jurisdiction over the state or area in which the taxpayer resided at the time the Tax Court case was initially filed.

On June 13, 2011 in the case of Jones v. Commissioner, 107 A.F.T.R.2d ¶ 2011-930 (4th Cir. 2011), the United States Court of Appeals for Fourth Circuit agreed with the IRS that a claim for innocent spouse relief must be filed by a spouse within two years from the date IRS collection activities have begun. The Fourth Circuit joins the Third and Seventh Circuit Courts of Appeal in upholding this IRS position.

Taxpayer Impact

Under Golsen v. United States, 54 T.C. 742 (1970), the United States Tax Court is required to apply

as precedential authority decisions of the particular Court of Appeals where an appeal would lie in a case. The Fourth Circuit of Appeals has jurisdiction over United States Tax Court appeals from taxpayers living in South Carolina, North Carolina, Virginia, West Virginia, and Maryland. Taxpayers living in South Carolina, North Carolina, Virginia, West Virginia, and Maryland need to be diligent in filing innocent spouse claims within two years from the date they begin receiving collection notices from the IRS. IRS, United States Tax Court, and now the Fourth Circuit Court of Appeals will reject innocent spouse requests filed more than two years after collection activities began, even if based on equitable considerations.

In jurisdictions outside the Fourth, Third and Seventh Circuit Courts of Appeal, the Tax Court still officially disagrees with the IRS and may continue to overrule the IRS where it does not allow equity-based innocent spouse claims filed beyond the two year filing period.

South Carolina has adopted the innocent spouse relief provisions contained in the Internal Revenue Code and will most likely join the IRS in limiting their review of innocent spouse relief requests to those filed within two years from the date collection activities begin.

Taxpayers may obtain some relief from the strict two-year filing requirement in the future. The National Taxpayer Advocate and members of Congress have asked that the two-year rule for filing equitable requests be modified or eliminated. The IRS is currently reviewing the two year period for filing innocent spouse requests.

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