

A Second Bite at the Apple-Can You Ask for Innocent Spouse Relief Twice?

Section 6015 of the Internal Revenue Code provides three different forms of innocent spouse relief, which permit a qualified taxpayer to limit his liability for taxes due under a joint return. While innocent spouse relief can be a terrific remedy, many taxpayers attempt to proceed on their own, which is often a mistake due to the complexity of the relevant standards. Frequently, taxpayers fail to present sufficient evidence, or they only apply under one of the three operative standards.

Making matters worse, successive applications are generally barred by the Treasury Regulations, which provide that a taxpayer seeking relief under Section 6015 is entitled to “only one final administrative determination of relief.” Treas. Reg. § 1.6015-5(c)(1). Currently, the only recognized exception to this rule is where a taxpayer applies under Section 6015(c) and relief is denied because the taxpayer has not met the marital status requirements, which limit relief to those who are divorced, separated, or have lived separately from their spouse for twelve months. See Treas. Reg. § 1.6015-1(h)(5). One author has suggested that this regulation is vulnerable to a due process attack because it treats one class of applicants (those whose marital status has changed) differently than other applicants who wish to make a second application to demonstrate that they can now meet a different element. See Robert B. Nadler, *Equitable Relief: Time to Level the Playing Field*, 113 Tax Notes 899 (Dec. 4, 2006).

In a recent decision, the Tax Court indicated that the door to a second application for relief may be open, at least where the request is not simply duplicative. *Gray v. Comm’r*, 2012 U.S. Tax Ct. LEXIS 14 (Mar. 28, 2012). The taxpayer in *Gray* had filed a petition for review following a collection due process hearing under Section 6330 of the Code. Unfortunately, the taxpayer did not file within the thirty day limit that applies for these petitions under Section 6330(d)(1), which meant the court lacked jurisdiction to review the determination concerning collection action. *Gray v. Comm’r*, 2012 U.S. Tax Ct. LEXIS 14, slip op. at *8-*9. The petitioner, however, had raised an innocent spouse issue at the collection due process hearing, which meant that the denial of that relief could be reviewed if a petition was filed within ninety days under Section 6015(e)(1). 2012 U.S. Tax Ct. LEXIS 14 at *12-*13.

As a further complication, the taxpayer acknowledged that she had previously sought innocent spouse relief unsuccessfully for the relevant tax years and had not sought Tax Court review. Although a second administrative application for relief would be barred by regulation, the Tax Court refused to dismiss the taxpayer’s petition, noting that it had previously reserved judgment on the question whether a second petition for innocent spouse relief raising grounds or facts that were not presented in a prior request would revive the right to judicial review. *Id.*, slip op. at 16 (citing *Barnes v. Comm’r*, 130 T.C. 248, 254 n.6 (2008)). Since the record was not clear on whether the taxpayer’s second request for relief was “sufficiently dissimilar” to her prior request, the Tax Court concluded that further proceedings were necessary to determine whether it had jurisdiction to review the taxpayer’s request for innocent spouse relief. *Id.* at *16-*17.

The opinion in *Gray* suggests that the Court may be receptive to innocent spouse cases that involve a second request for relief, if either new evidence or an alternative ground for relief is asserted. Given the number of taxpayers who unsuccessfully seek innocent spouse relief on their own, this is a positive development.

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