#16 CODIFY THE RULE THAT TAXPAYERS CAN REQUEST EQUITABLE RELIEF UNDER IRC § 6015(f) ANY TIME BEFORE EXPIRATION OF THE PERIOD OF LIMITATIONS ON COLLECTION

Present Law

Under IRC § 6015, taxpayers may obtain relief from the joint and several liability that results from filing a joint return. IRC § 6015 (b) and (c) both provide for relief from an understatement of tax if certain conditions are met. Both subsections impose a two-year period for requesting relief, which commences when the IRS first takes collection activity against the spouse seeking relief.

If relief is unavailable under IRC § 6015(b) or (c), subsection (f) provides for “equitable” relief from both understatements and underpayments. Subsection (f) does not contain a time limit for requesting relief, but Treasury Regulation § 1.6015-5(b)(1) imposes the same two-year time limit for requesting relief under subsection (f) as the statute imposes with respect to requests for relief under subsections (b) and (c).

In 2009, the Tax Court, in Lantz v. Commissioner, held the regulation imposing the two-year limit for requesting equitable relief under IRC § 6015(f) is invalid. The IRS appealed Lantz and similar decisions, and three U.S. Courts of Appeals overturned the Tax Court and upheld the validity of the two-year limit. The National Taxpayer Advocate has consistently advocated for removing the two-year rule for obtaining equitable relief.

In July 2011, the IRS changed its position and issued Notice 2011-70, which provides that taxpayers may request equitable relief within the IRC § 6502 period of limitation on collection or, for any credit or refund of tax, within the IRC § 6511 period of limitation. Proposed Treasury regulations to remove the two-year deadline consistent with Notice 2011-70 were published on August 13, 2013 (RIN 1545-BK51, 78 Fed. Reg. 49242-01), and public comment on the proposed regulations was invited. None of the four persons who submitted comments opposed removing the two-year rule, yet to date the regulations have not been finalized.

Reasons for Change

Although the IRS no longer imposes the two-year rule in section 6015(f) cases and has published guidance to that effect, the statute should be amended to make this rule permanent under the law.

Recommendation

Amend IRC § 6015(f) to provide that taxpayers may request equitable relief within the period of limitation on collection in IRC § 6502 or, for any credit or refund of tax, within the period of limitation in IRC § 6511.90

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