

IRS Notice 2012-8

This notice provides a proposed revenue procedure that would update *Rev. Proc. 2003-61, 2003-2 C.B. 296*, which provides guidance regarding equitable relief from income tax liability under *section 66 (c)* and *section 6015 (f)* of the *Internal Revenue Code*. Since the issuance of *Rev. Proc. 2003-61* in August 2003, the Internal Revenue Service's experience in working *section 6015 (f)* equitable relief cases has grown significantly. This proposed update to *Rev. Proc. 2003-61* addresses the criteria used in making innocent spouse relief determinations for *section 6015 (f)* equitable relief cases and revises the factors for granting equitable relief. The factors have been revised to ensure that requests for innocent spouse relief are granted under *section 6015 (f)* when the facts and circumstances warrant and that, when appropriate, requests are granted in the initial stage of the administrative process.

Significantly, this proposed revenue procedure expands how the IRS will take into account abuse and financial control by the nonrequesting spouse [*2] in determining whether equitable relief is warranted. Review of the innocent spouse program demonstrated that when a requesting spouse has been abused by the nonrequesting spouse, the requesting spouse may not have been able to challenge the treatment of any items on the joint return, question the payment of the taxes reported as due on the joint return, or challenge the nonrequesting spouse's assurance regarding the payment of the taxes. Review of the program also highlighted that lack of financial control may have a similar impact on the requesting spouse's ability to satisfy joint tax liabilities. As a result, this proposed revenue procedure provides that abuse or lack of financial control may mitigate other factors that might otherwise weigh against granting equitable relief under *section 6015 (f)*.

The proposed revenue procedure also provides for certain streamlined case determinations; new guidance on the potential impact of economic hardship; and the weight to be accorded to certain factual circumstances in determining equitable relief.

The proposed revenue procedure sets forth the background concerning the relief from joint and several liability under *section 6015*, a summary of [*3] the proposed changes to *Rev. Proc. 2003-61*, and the proposed text of the updated revenue procedure. Before issuing an updated revenue procedure addressing the equitable relief under *section 6015 (f)*, the Department of the Treasury and the Internal Revenue Service invite comments from the public regarding the proposed revenue procedure. Treasury and the Service also invite comments related to the administration of the innocent spouse relief program. Because the provisions in the proposed revenue procedure expand the equitable relief analysis by providing additional considerations for taxpayers seeking relief, until the revenue procedure is finalized, the Service will apply the provisions in the proposed revenue procedure instead of *Rev. Proc. 2003-61* in evaluating claims for equitable relief under *section 6015 (f)*. If taxpayers conclude that they would receive more favorable treatment under one or more of the factors provided in *Rev. Proc. 2003-61* they should advise the Service in their application for relief or supplement an already existing application. Then the Service will apply those factors from *Rev. Proc. 2003-61*, until a new revenue procedure is finalized. Comments also are [*4] requested on any factors contained in *Rev.*

Proc. 2003-61 that might be interpreted as being more favorable to requesting spouses than those proposed in this notice.

Comments should be submitted by February 21, 2012 to:

Internal Revenue Service

Attn: CC:PA:LPD:PR

(Notice 2012-8)

Room 5203

P.O. Box 7604

Ben Franklin Station

Washington, D.C. 20044

or hand deliver comments Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk

Internal Revenue Service

Attn: CC:PA:LPD:PR

(Notice 2012-8)

1111 Constitution Avenue, N.W.

Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address: Notice.Comments@irs.counsel.treas.gov. Persons should include "Notice 2012-8" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

Proposed Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE AND SCOPE

.01 Purpose. This revenue procedure provides guidance for a taxpayer seeking equitable relief from income tax liability under *section 66 (c)* or *section 6015 (f)* of the *Internal Revenue Code* (a "requesting spouse"). Section 4.01 of this revenue procedure provides the threshold requirements for [*5] any request for equitable relief. Section 4.02 of this revenue procedure sets forth the conditions under which the Internal Revenue Service will make streamlined relief determinations granting equitable relief under *section 6015 (f)* from an understatement of income tax or an underpayment of income tax reported on a joint return. Section 4.03 of this revenue procedure provides a nonexclusive list of factors for consideration in determining whether relief should be granted under *section 6015 (f)* because it would be inequitable to hold a requesting spouse jointly and severally liable when the conditions of section 4.02 are not met. The factors in section 4.03 also will apply in determining whether to relieve a spouse from income tax liability resulting from the operation of community property law under the equitable relief provision of *section 66 (c)*.

.02 Scope. This revenue procedure applies to spouses who request either equitable relief from joint and several liability under *section 6015 (f)*, or equitable relief under *section 66 (c)* from income tax liability resulting from the operation of community property law.

SECTION 2. BACKGROUND

.01 *Section 6013 (d) (3)* provides that married taxpayers [*6] who file a joint return under *section 6013* will be jointly and severally liable for the income tax arising from that joint return. For purposes of *section 6013 (d) (3)* and this revenue procedure, the term "tax" includes penalties, additions to tax, and interest. See *sections 6601 (e) (1)* and *6665 (a) (2)*.

.02 Section 3201 (a) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 734 (RRA), enacted *section 6015*, which provides relief in certain circumstances from the joint and several liability imposed by *section 6013 (d) (3)*. *Section 6015 (b)* and *(c)* specify two sets of circumstances under which relief from joint and several liability is available in cases involving understatements of tax. *Section 6015 (b)* is modeled after former *section 6013 (e)*, the prior innocent spouse statute, and *section 6015 (c)* provides for separation of liability. If relief is not available under *section 6015 (b)* or *(c)*, *section 6015 (f)* authorizes the Secretary to grant equitable relief if, taking into account all the facts and circumstances, the Secretary determines that it is inequitable to hold a requesting spouse liable for any unpaid tax or any deficiency [*7] (or any portion of either). *Section 66 (c)* provides relief from income tax liability resulting from the operation of community property law to taxpayers domiciled in a community property state who do not file a joint return. Section 3201 (b) of RRA amended *section 66 (c)* to add an equitable relief provision similar to *section 6015 (f)*.

.03 *Section 6015* provides relief only from joint and several liability arising from a joint return. If an individual signs a joint return under duress, the election to file jointly is not valid and there is no valid joint return. The individual is not jointly and severally liable for any income tax liabilities arising from that return. Therefore, *section 6015* does not apply and is not necessary for obtaining relief.

.04 Under *section 6015 (b)* and *(c)*, relief is available only from an understatement or a deficiency. *Section 6015 (b)* and *(c)* do not authorize relief from an underpayment of income tax reported on a joint return. *Section 66 (c)* and *section 6015 (f)* permit equitable relief from an underpayment of income tax or from a deficiency. The legislative history of *section 6015* provides that Congress intended for the Secretary to exercise discretion in [*8] granting equitable relief from an underpayment of income tax if a requesting spouse "does not know, and had no reason to know, that funds intended for the payment of tax were instead taken by the other spouse for such other spouse's benefit." H.R. Conf. Rep. No. 105-599, at 254 (1998). Congress also intended for the Secretary to exercise the equitable relief authority under *section 6015 (f)* in other situations if, "taking into account all the facts and circumstances, it is inequitable to hold an individual liable for all or part of any unpaid tax or deficiency arising from a joint return." *Id.*

SECTION 3. SIGNIFICANT CHANGES

This revenue procedure supersedes *Revenue Procedure 2003-61*, changing the following:

- .01 Section 4.01 (3) of this revenue procedure provides that a request for equitable relief under *section 6015 (f)* or *section 66 (c)* must be filed before the expiration of the period of limitation for collection under *section 6502*, or, if applicable, the period of limitation for credit or refund under *section 6511*. This is a significant change to the requirement in *Revenue Procedure 2003-61*, section 4.01 (3) and *Treas. Reg. § 1.6015-5 (b) (1) (TD 9003)*, that the requesting spouse's [*9] claim for equitable

relief must be filed no later than two years after the date of the Service's first collection activity. See *Notice 2011-70*.

- .02 Section 4.01 (7) (e) of this revenue procedure adds a new exception to the threshold condition in section 4.01 (7) that the income tax liability must be attributable to an item of the nonrequesting spouse, when the nonrequesting spouse's fraud gave rise to the understatement of tax or deficiency.
- .03 Section 4.02 of this revenue procedure has been revised to apply to understatements of income tax in addition to underpayments. Section 4.02 has also been revised to apply to claims for equitable relief under section 66 (c).
- .04 Section 4.03 (2) is revised to clarify that no one factor or a majority of factors necessarily controls the determination. Therefore, depending on the facts and circumstances of the case, relief may still be appropriate if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief may still be appropriate if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief.
- .05 Section 4.03 (2) (b) of this revenue procedure [*10] revises the economic hardship equitable factor to provide minimum standards based on income, expenses, and assets, for determining whether the requesting spouse would suffer economic hardship if relief is not granted. Section 4.03 (2) (b) is also revised to provide that the lack of a finding of economic hardship does not weigh against relief.
- .06 Section 4.03 (2) (c) (i) of this revenue procedure provides that actual knowledge of the item giving rise to an understatement or deficiency will no longer be weighed more heavily than other factors. Further, section 4.03 (2) (c) (ii) clarifies that, for purposes of this factor, if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and, therefore, because of the abuse or financial control the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, then that abuse or financial control will result in this factor weighing in favor of relief even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement [*11] or deficiency.
- .07 Section 4.03 (2) (c) (ii) of this revenue procedure provides that, in determining whether the requesting spouse had knowledge or reason to know that the nonrequesting spouse would not pay the tax reported as due, the Service will consider whether the requesting spouse reasonably expected that the nonrequesting spouse would pay the tax liability within a reasonably prompt time. Further, section 4.03 (2) (c) (ii) clarifies that for purposes of this factor, if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and, therefore, because of the abuse or financial control the requesting spouse was not able to question the payment of the taxes reported as due on the joint return or challenge the nonrequesting spouse's assurance regarding payment of the taxes for fear of the nonrequesting spouse's retaliation, then that abuse or financial control will result in

this factor weighing in favor of relief even if the requesting spouse had knowledge or reason to know that the nonrequesting spouse would not pay the tax liability.

- .08 Section 4.03 (2) (d) of this [*12] revenue procedure clarifies that a requesting spouse's legal obligation to pay outstanding tax liabilities is a factor to consider in determining whether equitable relief should be granted, in addition to whether the nonrequesting spouse has a legal obligation to pay the tax liabilities.
- .09 Section 4.03 (2) (f) of this revenue procedure is revised to provide that the fact that a requesting spouse is subsequently compliant with all Federal income tax laws is a factor that may weigh in favor of relief.
- .10 Section 4.04 of this revenue procedure broadens the availability of refunds in cases involving deficiencies by eliminating the rule in section 4.04 (1) of *Rev. Proc. 2003-61* that limited refunds in cases involving deficiencies to payments made by the requesting spouse pursuant to an installment agreement.

SECTION 4. GENERAL CONDITIONS FOR RELIEF

.01 Eligibility for equitable relief. A requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request for equitable relief under *section 6015 (f)*. With the exception of conditions (1) and (2), a requesting spouse must satisfy all of the following threshold conditions to be eligible to submit a request [*13] for equitable relief under *section 66 (c)*. The Service may relieve a requesting spouse who satisfies all the applicable threshold conditions set forth below of all or part of the income tax liability under *section 66 (c)* or *section 6015 (f)* if, taking into account all the facts and circumstances, the Service determines that it would be inequitable to hold the requesting spouse liable for the income tax liability. The threshold conditions are as follows:

- (1) The requesting spouse filed a joint return for the taxable year for which he or she seeks relief.
- (2) Relief is not available to the requesting spouse under *section 6015 (b)* or *(c)*.
- (3) Time for filing claim for relief:
 - (a) If the requesting spouse is applying for relief from a liability or a portion of a liability that remains unpaid, the request for relief must be made before the expiration of the period of limitation on collection of the income tax liability, as provided in *section 6502*. Generally, that period expires 10 years after the assessment of tax. *Section 6502*.
 - (b) Claims for credit or refund of amounts paid must be made before the expiration of the period of limitation on credit or refund, as provided in *section 6511*. Generally, [*14] that period expires three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

- (4) No assets were transferred between the spouses as part of a fraudulent scheme by the spouses.
- (5) The nonrequesting spouse did not transfer disqualified assets to the requesting spouse. For this purpose, the term "disqualified asset" has the meaning given the term by *section 6015 (c) (4) (B)*. If the nonrequesting spouse transferred disqualified assets to the requesting spouse, relief will be available only to the extent that the income tax liability exceeds the value of the disqualified assets. This condition will not result in the requesting spouse being ineligible for relief if the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, or the requesting spouse did not have actual knowledge that disqualified assets were transferred.
- (6) The requesting spouse did not knowingly participate in the filing of a fraudulent joint return.
- (7) The income tax liability from which the requesting spouse seeks relief is attributable (either in full or in [*15] part) to an item of the nonrequesting spouse or an underpayment resulting from the nonrequesting spouse's income. If the liability is partially attributable to the requesting spouse, then relief can only be considered for the portion of the liability attributable to the nonrequesting spouse. Nonetheless, the Service will consider granting relief regardless of whether the understatement, deficiency, or underpayment is attributable (in full or in part) to the requesting spouse if any of the following exceptions applies:
 - (a) Attribution solely due to the operation of community property law. If an item is attributable or partially attributable to the requesting spouse solely due to the operation of community property law, then for purposes of this revenue procedure, that item (or portion thereof) will be considered to be attributable to the nonrequesting spouse.
 - (b) Nominal ownership. If the item is titled in the name of the requesting spouse, the item is presumptively attributable to the requesting spouse. This presumption is rebuttable. For example, H opens an individual retirement account (IRA) in W's name and forges W's signature on the IRA in 2006. Thereafter, H makes contributions to [*16] the IRA and in 2008 takes a taxable distribution from the IRA. H and W file a joint return for the 2008 taxable year, but do not report the taxable distribution on their joint return. The Service later determines a deficiency relating to the taxable IRA distribution. W requests relief from joint and several liability under *section 6015*. W establishes that W did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if W were the owner of the IRA. W thereby rebutted the presumption that the IRA is attributable to W.
 - (c) Misappropriation of funds. If the requesting spouse did not know, and had no reason to know, that funds intended for the payment of tax were misappropriated by the nonrequesting spouse for the nonrequesting spouse's benefit, the Service will consider granting equitable relief although the

underpayment may be attributable in part or in full to an item of the requesting spouse. The Service will consider granting relief in the case only to the extent that the funds intended for the payment of tax were taken by the nonrequesting spouse.

- (d) Abuse not amounting to duress. If the requesting spouse establishes that he or she was the victim of abuse prior [*17] to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return, or question the payment of any balance due reported on the return, for fear of the nonrequesting spouse's retaliation, the Service will consider granting equitable relief even though the deficiency or underpayment may be attributable in part or in full to an item of the requesting spouse.
- (e) Fraud committed by nonrequesting spouse. The Service will consider granting relief notwithstanding that the item giving rise to the understatement or deficiency is attributable to the requesting spouse, if the requesting spouse establishes that the nonrequesting spouse's fraud is the reason for the erroneous item. For example, W fraudulently accesses H's brokerage account to sell stock that H had separately received from an inheritance. W deposits the funds from the sale in a separate bank account to which H does not have access. H and W file a joint Federal income tax return for the year, which does not report the income from the sale of the stock. The Service determines a deficiency based on the omission of the income from the sale of the [*18] stock. H requests relief from the deficiency under *section 6015 (f)*. The income from the sale of the stock normally would be attributable to H. Because W committed fraud with respect to H, however, and because this fraud was the reason for the erroneous item, the liability is properly attributable to W.

.02. Circumstances under which the Service will make streamlined determinations granting equitable relief under sections 66 (c) and 6015 (f).

If a requesting spouse who filed a joint return, or a requesting spouse who filed a separate return in a community property state, satisfies the threshold conditions of section 4.01, the Service will consider whether the requesting spouse is entitled to a streamlined determination of equitable relief under *section 66 (c)* or *section 6015 (f)* under section 4.02. If a requesting spouse is not entitled to a streamlined determination because the requesting spouse does not satisfy all the elements in section 4.02, the requesting spouse is still entitled to be considered for relief under the equitable factors in section 4.03. The Service will make streamlined determinations granting equitable relief under *sections 66 (c)* and *6015 (f)*, in cases in which [*19] the requesting spouse establishes that the requesting spouse:

- (1) Is no longer married to the nonrequesting spouse as set forth in section 4.03 (2) (a);
- (2) Would suffer economic hardship if relief were not granted as set forth in section 4.03 (2) (b); and

- (3) Did not know or have reason to know that there was an understatement or deficiency on the joint return, as set forth in section 4.03 (2) (c) (i), or did not know or have reason to know that the nonrequesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return, as set forth in section 4.03 (2) (c) (ii). If the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse's access to financial information, and therefore, because of the abuse or financial control the requesting spouse was not able to challenge the treatment of any items on the joint return, or to question the payment of the taxes reported as due on the joint return or challenge the nonrequesting spouse's assurance regarding payment of the taxes, for fear of the nonrequesting spouse's retaliation, then the abuse or financial control will result in this [*20] factor being satisfied even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement or deficiency or had knowledge or reason to know that the nonrequesting spouse would not pay the tax liability.

.03. Factors for determining whether to grant equitable relief.

(1) Applicability. This section 4.03 applies to requesting spouses who request relief under *section 66 (c)* or *section 6015 (f)*, and satisfy the threshold conditions of section 4.01, but do not qualify for streamlined determinations granting relief under section 4.02.

(2) Factors. In determining whether it is inequitable to hold the requesting spouse liable for all or part of the unpaid income tax liability or deficiency, and full or partial equitable relief under *section 66 (c)* or *section 6015 (f)* should be granted, all the facts and circumstances of the case are to be taken into account. The degree of importance of each factor varies depending on the circumstances of the requesting spouse and the factual context surrounding the marriage. The factors are designed as guides. It is not intended that only the factors described in this paragraph are to be taken into account in making the [*21] determination. No one factor or a majority of factors necessarily determines the outcome. Factors to consider include the following:

(a) Marital status. Whether the requesting spouse is no longer married to the nonrequesting spouse as of the date the Service makes its determination. If the requesting spouse is still married to the nonrequesting spouse, this factor is neutral. If the requesting spouse is no longer married to the nonrequesting spouse, this factor will weigh in favor of relief. For purposes of this section, a requesting spouse will be treated as being no longer married to the nonrequesting spouse only in the following situations:

- (i) The requesting spouse is divorced from the nonrequesting spouse,
- (ii) The requesting spouse is legally separated from the nonrequesting spouse under applicable state law,
- (iii) The requesting spouse is a widow or widower and is not an heir to the nonrequesting spouse's estate which would have sufficient assets to pay the tax liability, or
- (iv) The requesting spouse has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date relief was requested. For these purposes, a temporary absence [*22] (e.g., due to incarceration, illness, business, military service, or education) is not considered separation if the absent spouse is expected to return to the household. See *Treas.*

Reg. § 1.6015-3 (b) (3) (i). A requesting spouse is a member of the same household as the nonrequesting spouse for any period in which the spouses maintain the same residence.

(b) Economic hardship. Whether the requesting spouse will suffer economic hardship if relief is not granted. For purposes of this factor, an economic hardship exists if satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable to pay reasonable basic living expenses. Whether the requesting spouse will suffer economic hardship is determined based on rules similar to those provided in §301.6343-1 (b) (4), and will take into consideration a requesting spouse's current income and expenses and the requesting spouse's assets. In determining the requesting spouse's reasonable basic living expenses, the Service will consider whether the requesting spouse shares expenses or has expenses paid by another individual (such as a spouse). If denying relief from the joint and several liability will cause the [*23] requesting spouse to suffer economic hardship, this factor will weigh in favor of relief. If denying relief from the joint and several liability will not cause the requesting spouse to suffer economic hardship, this factor will be neutral.

In determining whether the requesting spouse would suffer economic hardship if relief is not granted, the Service will compare the requesting spouse's income to the Federal poverty guidelines (as updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902 (2)) for the requesting spouse's family size and will determine by how much, if at all, the requesting spouse's monthly income exceeds the spouse's reasonable basic monthly living expenses. If the requesting spouse's income is below 250% of the Federal poverty guidelines, or if the requesting spouse's monthly income exceeds the requesting spouse's reasonable basic monthly living expenses by \$300 or less, then this factor will weigh in favor of relief unless the requesting spouse has assets out of which the requesting spouse can make payments towards the tax liability and still adequately meet the requesting spouse's reasonable [*24] basic living expenses. If the requesting spouse's income exceeds these standards, the Service will consider all facts and circumstances in determining whether the requesting spouse would suffer economic hardship if relief is not granted. If the requesting spouse is deceased, this factor is neutral.

(c) Knowledge or reason to know.

(i) Understatement cases. Whether the requesting spouse knew or had reason to know of the item giving rise to the understatement or deficiency at the time the requesting spouse signed the joint return (including a joint amended return). In the case of an income tax liability that arose from an understatement or a deficiency, this factor will weigh in favor of relief if the requesting spouse did not know and had no reason to know of the item giving rise to the understatement. If the requesting spouse knew or had reason to know of the item giving rise to the understatement, this factor will weigh against relief. Actual knowledge of the item giving rise to the understatement or deficiency will not be weighed more heavily than any other factor. Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described [*25] in section 4.03 (2) (c) (iv)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information and, therefore, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, this factor will weigh in favor of relief even if the requesting spouse had knowledge or reason to know of the items giving rise to the understatement or deficiency.

(ii) Underpayment cases. In the case of an income tax liability that was properly reported on a joint return (including a joint amended return) but not paid, whether the requesting spouse

knew or had reason to know at the time the requesting spouse signed the joint return that the nonrequesting spouse would not or could not pay the tax liability at the time the joint return was filed or within a reasonably prompt time after the filing of the joint return. This factor will weigh in favor of relief if the requesting spouse reasonably expected the nonrequesting spouse to pay the tax liability reported on the joint return. This factor will weigh against relief if, based on the facts and circumstances [*26] of the case, it was not reasonable for the requesting spouse to believe that the nonrequesting spouse would or could pay the tax liability shown on the joint return within a reasonably prompt time after filing of the return. For example, if prior to signing the return, the requesting spouse knew of the nonrequesting spouse's prior bankruptcies, financial difficulties, or other issues with the IRS or other creditors, or was otherwise aware of difficulties in timely paying bills, then this factor will generally weigh against relief. Depending on the facts and circumstances, if the requesting spouse was abused by the nonrequesting spouse (as described in section 4.03 (2) (c) (iv)), or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information and, therefore, the requesting spouse was not able to question the payment of the taxes reported as due on the joint return or challenge the nonrequesting spouse's assurance regarding payment of the taxes for fear of the nonrequesting spouse's retaliation, this factor will weigh in favor of relief even if the requesting spouse had knowledge or reason to know regarding [*27] the nonrequesting spouse's intent or ability to pay the taxes due.

(iii) Reason to know. The facts and circumstances that are considered in determining whether the requesting spouse had reason to know of an understatement, or reason to know the nonrequesting spouse could not or would pay the reported tax liability, include, but are not limited to, the requesting spouse's level of education, any deceit or evasiveness of the nonrequesting spouse, the requesting spouse's degree of involvement in the activity generating the income tax liability, the requesting spouse's involvement in business and household financial matters, the requesting spouse's business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

(iv) Abuse by the nonrequesting spouse. For purposes of this revenue procedure, if the requesting spouse establishes that he or she was the victim of abuse (not amounting to duress, see *Treas. Reg. § 1.6015-1 (b)*), then depending on the facts and circumstances of the requesting spouse's situation, the abuse may result in certain factors weighing in favor of relief when otherwise the factor may have weighed against relief. Abuse comes in [*28] many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws. All the facts and circumstances are considered in determining whether a requesting spouse was abused. The impact of a nonrequesting spouse's alcohol or drug abuse is also considered in determining whether a requesting spouse was abused.

(d) Legal obligation. Whether the requesting spouse or the nonrequesting spouse has a legal obligation to pay the outstanding Federal income tax liability. For purposes of this factor, a legal obligation is an obligation arising from a divorce decree or other legally binding agreement. This factor will weigh in favor of relief if the nonrequesting spouse has the sole legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement. This factor, however, will be neutral if the requesting spouse knew or had reason to know, when entering into the divorce decree or agreement, that the nonrequesting spouse would not pay the income [*29] tax liability. This factor will weigh against relief if the requesting spouse has the sole legal obligation. The fact that the nonrequesting spouse has been relieved of liability for the taxes at issue as a result of a discharge in bankruptcy is disregarded in determining whether the

requesting spouse has the sole legal obligation. If, based on an agreement or consent order, both spouses have a legal obligation to pay the outstanding income tax liability, the spouses are not separated or divorced, or the divorce decree or agreement is silent as to any obligation to pay the outstanding income tax liability, this factor is neutral.

(e) Significant benefit. Whether the requesting spouse received significant benefit (beyond normal support) from the unpaid income tax liability or item giving rise to the deficiency. See *Treas. Reg. § 1.6015-2 (d)*. If the requesting spouse enjoyed the benefits of a lavish lifestyle, such as owning luxury assets and taking expensive vacations, this factor will weigh against relief. If the nonrequesting spouse controlled the household and business finances or there was abuse (as described in section 4.03 (2) (c) (iv)) such that the nonrequesting spouse made [*30] the decision on spending funds for a lavish lifestyle, then this mitigates this factor so that it is neutral. If only the nonrequesting spouse significantly benefitted from the unpaid tax or item giving rise to an understatement or deficiency, and the requesting spouse had little or no benefit, or the nonrequesting spouse enjoyed the benefit to the requesting spouse's detriment, this factor will weigh in favor of relief. If the amount of unpaid tax or understated tax was small such that neither spouse received a significant benefit, then this factor is neutral.

(f) Compliance with income tax laws. Whether the requesting spouse has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief relates.

(1) If the requesting spouse is compliant for taxable years after being divorced from the nonrequesting spouse, then this factor will weigh in favor of relief. If the requesting spouse is not compliant, then this factor will weigh against relief. If the requesting spouse made a good faith effort to comply with the tax laws but was unable to fully comply, then this factor will be neutral. For example, if [*31] the requesting spouse timely filed an income tax return but was unable to fully pay the tax liability due to spouse's poor financial or economic situation after the divorce, then this factor will be neutral.

(2) If the requesting spouse remains married to the nonrequesting spouse, whether or not legally separated or living apart, and continues to file joint returns with the nonrequesting spouse after requesting relief, then this factor will be neutral if the joint returns are compliant with the tax laws, but will weigh against relief if the returns are not compliant.

(3) If the requesting spouse remains married to the nonrequesting spouse but files separate returns, this factor will weigh in favor of relief if the requesting spouse is compliant with the tax laws and will weigh against relief if the requesting spouse is not compliant with the tax laws. If the requesting spouse made a good faith effort to comply with the tax laws but was unable to fully comply, then this factor will be neutral. For example, if the requesting spouse timely filed an income tax return but was unable to fully pay the tax liability due to the requesting spouse's poor financial or economic situation as a result [*32] of being separated or living apart from the nonrequesting spouse, then this factor will be neutral.

(g) Mental or physical health. Whether the requesting spouse was in poor physical or mental health. This factor will weigh in favor of relief if the requesting spouse was in poor mental or physical health at the time the requesting spouse signed the return or returns for which the request for relief relates or at the time the requesting spouse requested relief. The Service will consider the nature, extent, and duration of the condition. If the requesting spouse was in neither poor physical nor poor mental health, this factor is neutral.

.04. Refunds. In both understatement and underpayment cases, a requesting spouse is eligible for a refund of separate payments made by the requesting spouse after July 22, 1998, and the

requesting spouse establishes that the funds used to make the payment for which a refund is sought were provided by the requesting spouse. A requesting spouse is not eligible for refunds of payments made with the joint return, joint payments, or payments that the nonrequesting spouse made. A requesting spouse, however, may be eligible for a refund of the requesting spouse's [*33] portion of the requesting and nonrequesting spouse's joint overpayment from another tax year that was applied to the joint income tax liability to the extent that the requesting spouse can establish that the requesting spouse provided the funds for the overpayment. The availability of refunds is subject to the refund limitations of *section 6511*.

SECTION 5. PROCEDURE

A requesting spouse seeking equitable relief under *section 66 (c)* or *section 6015 (f)* must file Form 8857, Request for Innocent Spouse Relief (and Separation of Liability, and Equitable Relief), or other similar statement signed under penalties of perjury, within the applicable period of limitation as set forth in section 4.01 (3) of this revenue procedure.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2003-61, 2003-2 C.B. 296, is superseded.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for requests for relief filed on or after **[INSERT DATE REVENUE PROCEDURE IS RELEASED TO THE PUBLIC]**. In addition, this revenue procedure is effective for requests for equitable relief pending on **[INSERT DATE REVENUE PROCEDURE IS RELEASED TO THE PUBLIC]**, whether with the Service, the Office of Appeals, or in a case docketed [*34] with a Federal court.

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Nancy Rose and Sheida Lahabi of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure contact Branches 1 or 2 of Procedure and Administration on (202) 622-4910 or (202) 622-4940 (not a toll free call).