



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.7.12

JUNE 10, 2021

EFFECTIVE DATE

(06-10-2021)

PURPOSE

- (1) This document transmits new IRM 8.7.12, Appeals, Technical and Procedural Guidelines, Appeals Innocent Spouse Case Procedures. The material in new IRM 8.7.12 was previously published in IRM 25.15.12, Special Topics, Relief from Joint and Several Liability, Appeals Procedures. IRM 25.15.12, dated October 28, 2014, is obsolete.

MATERIAL CHANGES

- (1) The following table lists information contained in this new IRM section, including content moved from IRM 25.15.12:

IRM Subsection	Reason for Change
IRM 8.7.12.1	<p>Program Scope and Objectives</p> <p>Added internal control information required by IRM 1.11.2.2.5, Address Management and Internal Controls. Substantive information in the related subsections include the following:</p> <ul style="list-style-type: none">• Added to IRM 8.7.12.1.4, Program Reports, information from IRM 25.15.12.27, Validation Reports• Added to IRM 8.7.12.1.5, Terms and Acronyms, information from IRM 25.15.12.1.1, Common Terms Applicable to Innocent Spouse Cases• Added to IRM 8.7.12.1.6, Related Resources, information from IRM 25.15.12.2, References Available to Appeals• Also, added to IRM 8.7.12.1.6 information on the Taxpayer Bill of Rights (TBOR), based on guidance from the Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) and Branch 3 of the Associate Chief Counsel (Procedure and Administration)
IRM 8.7.12.2	<p>Joint and Several Liability</p> <p>Added information from IRM 25.15.12.1, Overview of the Innocent Spouse Appeals Process. Substantive information in the related subsections include the following:</p> <ul style="list-style-type: none">• Added to IRM 8.7.12.2.1, Timing of Request for Innocent Spouse Relief, information from IRM 25.15.12.1.2, Types of Cases That Can Be Innocent Spouse Cases• Added to IRM 8.7.12.2.2, Disclosure of Information, information from IRM 25.15.12.1.3, Disclosure of Information

IRM Subsection	Reason for Change
IRM 8.7.12.3	<p>Appeals Technical Employee's Receipt of Innocent Spouse Case</p> <p>Added new information and incorporated general initial contact procedures that include a 45-day statute verification from the following interim guidance:</p> <ul style="list-style-type: none"> • IGM #AP-08-0620-0010, Reissuance of Interim Guidance on Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases (dated 6/26/2020) • IGM #AP-08-1120-0021, Reissuance of Appeals Conference Procedures (dated 11/6/2020) <p>Also, added content on criteria for expedite case treatment from paragraph (2) of IRM 25.15.12.8, Preliminary Review by AO</p>
IRM 8.7.12.3.1	<p>Joint Return Work Unit as Key Case</p> <ul style="list-style-type: none"> • Added information from IRM 25.15.12.5.1, Carding the Joint Return Work Unit as Key Case • Excluded ACDS card-in procedures (shown in IRM 25.15.12.5.1.1, Joint Return Key Case Record, IRM 25.15.12.5.1.2, Requesting Spouse Related Record, and IRM 25.15.12.5.1.3, Non-Requesting Spouse Related Record) and instead added references to this guidance moved to IRM 8.20.5, Carding New Receipts
IRM 8.7.12.3.2	<p>Separate Return Work Unit for Married Taxpayers Who Filed Separate Returns in Community Property States</p> <ul style="list-style-type: none"> • Added information from IRM 25.15.12.5.2, Carding the Separate Return Work Unit (For Married Taxpayers Who Filed Separate Returns in Community Property States) • Excluded ACDS card-in procedures (shown in IRM 25.15.12.5.2.1, Requesting Spouse Key Case Record, and IRM 25.15.12.5.2.2, Non-Requesting Spouse Related Record) and instead added references to this guidance moved to IRM 8.20.5, Carding New Receipts
IRM 8.7.12.3.3	<p>Additional Card-In Information</p> <ul style="list-style-type: none"> • Added information from IRM 25.15.12.5, APS Establishes ACDS Controls
IRM 8.7.12.4	<p>IDRS/ISTS Controls</p> <ul style="list-style-type: none"> • Added information from IRM 25.15.12.4, IDRS/ISTS Controls • Added new information on "balance due reminder notices" and the "innocent spouse tracking system"
IRM 8.7.12.5	<p>Requests for Relief Under IRC 6015</p> <ul style="list-style-type: none"> • Added new guidance on relief provisions from the tax law, treasury regulations, etc. • In IRM 8.7.12.5.2.2.1.1, Hoyt Investors and IRC 6015(c), added/revised content from IRM 25.15.12.17, Hoyt Investors and IRC 6015(c)

IRM Subsection	Reason for Change
IRM 8.7.12.6	Notice and Participation of NRS <ul style="list-style-type: none"> Added information from IRM 25.15.12.11, Notice and Participation of NRS. Excluded “note” that states a non-labile NRS doesn’t have the right to appeal because Rev. Proc. 2003-19 does not deny appeal rights for this reason Added to IRM 8.7.12.6.1, Potentially Abusive NRS, revised information from IRM 25.15.12.11.1, Potentially Abusive NRS) Added to IRM 8.7.12.6.2, Deceased Non-Requesting Spouse, information from IRM 25.15.12.7.1, Deceased Non-Requesting Spouse
IRM 8.7.12.7	Relief from Community Property Laws - <ul style="list-style-type: none"> Added guidance on relief provisions from the tax law, treasury regulations, etc.
IRM 8.7.12.8	Invalid Joint Election <ul style="list-style-type: none"> Revised and added information from paragraph (1), (2), and (5) of IRM 25.15.12.26.6, Invalid Joint Election Added references to related processing guidance in IRM 8.20.7.40.7, Innocent Spouse Invalid Joint Election, including information added to IRM 8.7.12.8.1, Tacit Consent Factors (moved from IRM 25.15.12.12, Tacit Consent Factors) and IRM 8.7.12.8.2, Forgery (moved from IRM 25.15.12.13, Forgery)
IRM 8.7.12.9	Appeals Consideration <ul style="list-style-type: none"> Revised and updated guidance from IRM 25.15.12, as needed, including information from IRM 25.15.12.14, Innocent Spouse Raised During Consideration of a Non-docketed Case, and (adding to IRM 8.7.12.9.1, Innocent Spouse Raised During Consideration of a Non-docketed Liability Case) information from IRM 25.15.12.14.1, Premature Referral - Jurisdiction Released to Examination
IRM 8.7.12.9.2	AUR/Innocent Spouse Cases <ul style="list-style-type: none"> Moved to IRM 8.7.12.9.2 and its related subsections information from IRM 25.15.12.15, AUR/Innocent Spouse Cases, and its related subsections Excluded the AUR/Innocent Spouse ACDS card-in procedures from new IRM 8.7.12.9.2.7, Special “Carding” Procedures for APS on IS/AUR Cases (now shown in IRM 8.20.5.29.5.3, IS/AUR Case Carding) Excluded information contained in IRM 25.15.12.15.8, Appeals Technical Employee Assignment and Consideration <p>Note: Case receipt and case consideration information is addressed throughout IRM 8.7.12, including IRM 8.7.12.3, Appeals Technical Employee’s Receipt of Innocent Spouse Case, and IRM 8.7.12.9, Appeals Consideration.</p>
IRM 8.7.12.9.3	Docketed Innocent Spouse Cases <ul style="list-style-type: none"> Moved information from IRM 25.15.12.25, Docketed Innocent Spouse Cases, and its related subsections

IRM Subsection	Reason for Change
IRM 8.7.12.10	Closing an Innocent Spouse Request <ul style="list-style-type: none"> Incorporated into IRM 8.7.12.10, and its related subsections, guidance from IRM 25.15.12 and reorganized and revised this guidance as needed, distinguishing pre-assessment from post-assessment closures, non-docketed from docketed closures, and IRC 6015 relief determinations from IRC 66 relief determinations
IRM 8.7.12.11	Notice of Deficiency with IRC 6015 Relief Determination <ul style="list-style-type: none"> Incorporated into IRM 8.7.12.11, and its related subsections, guidance from IRM 25.15.12 and reorganized and revised as needed
IRM 8.7.12.12	Settlement Computation <ul style="list-style-type: none"> Incorporated into IRM 8.7.12.12 information from IRM 25.15.12.20, Settlement Computation Preparation
IRM 8.7.12.13	CDP/EH and Innocent Spouse Cases <ul style="list-style-type: none"> Moved information from IRM 25.15.12.16, CDP/EH and Innocent Spouse Cases, and excluded guidance on actions performed by APS and for the CDP/EH (non-IS) portion of a CDP/EH combo case
IRM 8.7.12.14	Barred Statute / One Signature (BSOS) <ul style="list-style-type: none"> Moved and revised information from IRM 25.15.12.18, Barred Statute One Signature (BSOS) Excluded IRM 25.15.12.18 guidance that allowed for an IRS employee to prepare a “Barred Statute Memo,” in lieu of completing Form 3999, Statute Expiration Report, for an invalid joint assessment in respect to a non-signing spouse. In 2003, this barred statute memo guidance was added to IRM 25.15.9 and it applied only for a barred statute arising from IRS’s prior policy for assessing a deficiency against both spouses based on only one spouse signing a waiver form if certain criteria were met. This information is no longer needed because the “one signature policy” was eliminated prior to Compliance adding the “Barred Statute Memo” guidance in 2003. <p>Note: On 12/06/2016, Compliance moved IRM 25.15.9.1.4, Barred Statute One Signature (BSOS), to IRM 25.15.19, Non-Qualifying Claims and Complex Account Issues, omitting guidance on the “Barred Statute Memo.”</p>
IRM 8.7.12.15	Split Spousal Assessments Overview <ul style="list-style-type: none"> Changed title of IRM 25.15.12.19 from “Separate Assessment Module Overview” and incorporated information from this section (and its related subsections) into IRM 8.7.12.15 and its related subsections Added to IRM 8.7.12.15.2, Mirrored Accounts, guidance from IGM #AP-25-0720-0013, Reissuance of Interim Guidance on Innocent Spouse Mirroring Requests - 07/24/2020 Added to IRM 8.7.12.15.2, Mirrored Accounts, information on “CI account freezes” from paragraph (4) of IRM 25.15.12.8, Preliminary Review by AO
IRM 8.7.12.16	Issuing a Second Final Determination Letter <ul style="list-style-type: none"> Added information on the conditions for issuing a second final determination, similar to the guidance shown in IRM 25.15.12.22, Rescinding/Issuing a Second Final Determination Letter

IRM Subsection	Reason for Change
IRM 8.7.12.17	Innocent Spouse Relief Reconsiderations <ul style="list-style-type: none"> Revised and added to IRM 8.7.12.17 (and its related subsections) information from IRM 25.15.12.28, Reconsiderations (and its related subsections)
Various sections from IRM 25.15.12	Form 870-IS, Waiver of Collection Restrictions in Innocent Spouse Cases - <ul style="list-style-type: none"> Excluded IRM 25.15.12 guidance on the use of Form 870-IS for securing the requesting spouse's agreement to the IRS's post-assessment innocent spouse relief determination. Appeals will no longer solicit an agreement using Form 870-IS. This form waived only the restrictions on Collections, but does not waive the requesting spouse's right to petition the Tax Court because the tax law does not allow for such a waiver. Appeals will issue a final determination letter with Tax Court rights for each innocent spouse relief determination subject to review by the Tax Court.
Exhibit 8.7.12-1	Initial Contact Letters <ul style="list-style-type: none"> Added new IRM exhibit that identifies the appropriate initial contact letter for each spouse
Throughout IRM	<ul style="list-style-type: none"> Updated references, revised for clarity, corrected references as needed

EFFECT ON OTHER DOCUMENTS

This IRM supersedes the information in IRM 25.15.12, Special Topics, Relief from Joint and Several Liability, Appeals Procedures, dated October 28, 2014, and incorporates guidance from the following: IGM #AP-08-0620-0010, Reissuance of Interim Guidance on Initial Conference Procedures for Liability, Penalty Appeals and Innocent Spouse Cases - 06/26/2020; IGM #AP-25-0720-0013, Reissuance of Interim Guidance on Innocent Spouse Mirroring Requests - 07/24/2020; and IGM #AP-08-1120-0021, Reissuance of Appeals Conference Procedures - 11/6/2020.

AUDIENCE

Appeals Employees

Steven M. Martin
Director, Case and Operations Support

8.7.12

Appeals Innocent Spouse Case Procedures

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Exhibits

- 8.7.12-1 Initial Contact Letters

8.7.12.1
(06-10-2021)
Program Scope and Objectives

- (1) *Purpose:* This IRM section provides procedures for Appeals Technical Employees (ATEs) working Innocent Spouse issues and is a supplement to servicewide guidelines contained in IRM 25.15 , Relief from Joint and Several Liability. This section does not cover Injured Spouse Claims. See IRM 25.15.1.2.5, Injured Spouse Claims.
- (2) *Audience:* Appeals Technical Employees (ATEs) and Tax Computation Specialists (TCSs)
- (3) *Policy Owner:* Director, Case and Operations Support
- (4) *Program Owner:* Director, Policy, Planning, Quality and Analysis
- (5) *Contact Information:* Appeals employees should follow established procedures on *How to Contact an Analyst*. Other employees should contact the Product Content Owner shown on the Product Catalog Information page for this IRM.

8.7.12.1.1
(06-10-2021)
Background

- (1) The mission of the Independent Office of Appeals (Appeals) is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. Appeals accomplishes its mission by considering protested and Tax Court cases and negotiating settlements in a manner which ensures Appeals employees act in accord with the Taxpayer Bill of Rights (TBOR) in every interaction with taxpayers. See IRM 8.1.1.1, Accomplishing the Appeals Mission.

8.7.12.1.2
(06-10-2021)
Authority

- (1) IRC 66, Treatment of Community Income, and its related regulations.
- (2) IRC 6015, Relief from Joint and Several Liability on Joint Return, and its related regulations. See also the related proposed regulations 78 FR 49242 (issued on August 13, 2013) and 80 FR 72649 (issued November 20, 2015).
- (3) Rev. Proc. 2003-19 provides guidance on the NRS's administrative appeal rights.
- (4) Rev. Proc. 2013-34 provides guidance on requests for equitable relief from income tax liability under IRC 66(c) or IRC 6015(f).
- (5) Under Delegation Order 8-1 and Delegation Order 8-8 (Rev. 1), Appeals Team Managers (ATMs) and Appeals Team Case Leaders (ATCLs) are authorized to settle protested and Tax Court cases. This does not include the authority to set aside a closing agreement. See IRM 1.2.2.9.8 , Delegation Order 8-8 (Rev. 1) (formerly DO-66, Rev. 15), and IRM 1.2.2.9.1 for Delegation Order 8-1 (formerly DO 60, Rev. 7). Therefore, the ATM or ATCL will sign the following letters for cases under their jurisdiction:
 - Letter 894, Notice of Deficiency
 - Letter 3288, Final Appeals Determination to Requesting Spouse
 - Letter 3289, Final Appeals Notice to Non-Requesting Spouse

8.7.12.1.3
(06-10-2021)
Responsibilities

- (1) The Director, Case and Operations Support is the executive responsible for Appeals' policy and procedural guidance.
- (2) The Director, Policy, Planning, Quality and Analysis (PPQA) is responsible for program oversight.

8.7.12.1.4
(06-10-2021)
Program Reports

- (1) PPQA provides trends and data analyses and detailed summary reports for Appeals.
- (2) Florence APS is responsible for working validation reports that can be generated from either the ACDS AMATCH sub-system or ISTS. The ACDS AMATCH sub-system matches ACDS information against data received from the Innocent Spouse Tracking System (ISTS) to ensure cases are received and in the proper status on ISTS. The four ACDS/ISTS AMATCH report listings are shown below:
 - On ISTS Not on ACDS Open
 - On ACDS Open Not on ISTS
 - ISTS Stage 07 List
 - Mismatched Data

8.7.12.1.5
(06-10-2021)
Terms and Acronyms

- (1) The table lists commonly used acronyms and their definitions:

Term or Acronym	Definition
ACDS	Appeals Centralized Database System is Appeals' computerized case control system, used to control and track cases throughout the appeal process (IRM 8.20.3)
ACM	Appeals Case Memo (IRM 8.6.2)
AIMS	Audit Information Management System is a computer database system used by Appeals and Compliance (for examination-sourced cases) to control returns, input assessment/adjustments to Master File and provide management reports.
APGolf	Appeals Generator of Letters and Forms, a sub-system of ACDS, generates forms and letters using taxpayer data contained in ACDS (IRM 8.20.3)
Appellate spouse	Spouse appealing the preliminary determination
APS	Account and Processing Support (IRM 8.20)
ASED	Assessment Statute Expiration Date
ATE	Appeals Technical Employee
Card-in or carding	"Carding" is creating a case record on ACDS (IRM 8.20.5)
CDPTS	Collection Due Process Tracking System
Compliance	Originating function
CSED	Collection Statute Expiration Date
IDRS	Integrated Data Retrieval System
Innocent spouse (I/S) claim	Request for innocent spouse relief filed on Form 8857, Request for Innocent Spouse Relief, or similar statement signed under penalties of perjury.
ISTS	Innocent Spouse Tracking System

Term or Acronym	Definition
MFT	Master File Tax
Non-appellate spouse	The spouse or former spouse of the person who appealed the preliminary determination
Non-requesting spouse (NRS)	The spouse or former spouse of the person who files the request for innocent spouse relief. Also referred to as the “non-electing spouse.”
PTM	Processing Team Manager
Requesting spouse (RS)	The person who files the request (Form 8857) for innocent spouse relief, or otherwise properly raises the issue of innocent spouse relief. Also referred to as the “electing spouse.”
RSED	Refund Statute Expiration Date
TCS	Tax Computation Specialist
TLCATS	Tax Litigation Counsel Automated Tracking System
VTs	Validation Tracking System (IRM 8.1.3.2.10) provides a method for Appeals employees to update critical data fields in ACDS for controlling inventory

(2) Also, see Exhibit 8.1.1-1, Common Terms Used by Appeals.

8.7.12.1.6
(06-10-2021)

Related Resources

(1) The following table lists related IRM guidance:

IRM	Title
IRM 8.1.3.2.8	Appeals Function, Working Cases in Appeals, Innocent Spouse Tracking System (ISTS)
IRM 25.15.1	Relief from Joint and Several Liability, Introduction
IRM 25.15.2	Relief from Joint and Several Liability, General Procedures/Employees With Taxpayer Contact
IRM 25.15.3	Relief from Joint and Several Liability, Technical Provisions of IRC 6015
IRM 25.15.5	Relief from Joint and Several Liability, Relief from Community Property Laws
IRM 25.15.6	Relief from Joint and Several Liability, Field Examination Procedures
IRM 25.15.7	Relief from Joint and Several Liability, Innocent Spouse Shared Processing Responsibilities
IRM 25.15.8	Relief from Joint and Several Liability, Revenue Officer Procedures for Working Innocent Spouse Relief Cases
IRM 25.15.9	Relief from Joint and Several Liability, Account Processing of Requests for Relief from Joint and Several Liability
IRM 25.15.14	Relief from Joint and Several Liability, Innocent Spouse Tracking System

IRM	Title
IRM 25.15.15	Relief from Joint and Several Liability, Mirror Modules for Requests for Relief from Joint and Several Liability
IRM 25.15.17	Relief from Joint and Several Liability, Reconsiderations
IRM 25.15.18	Relief from Joint and Several Liability, Innocent Spouse Relief Processing Procedures
IRM 25.15.19	Relief from Joint and Several Liability, Non-Qualifying Requests for Relief & Complex Account Issues

- (2) Appeals Policy *Innocent Spouse Program* page.
- (3) Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

8.7.12.2
(06-10-2021)
**Joint and Several
Liability**

- (1) Married taxpayers may elect to file joint returns in accordance with IRC 6013, Joint Returns of Income Tax by Husband and Wife. If a joint return is made, each spouse is jointly and severally liable for the tax; that is, each spouse is responsible for the entire income tax liability even though all or part of the liability arises from income, a deduction, credit, or other tax attributable to the other spouse.
- (2) Same-sex spouses who are lawfully married under state law are considered married for federal tax purposes and the terms “spouse,” “husband and wife,” “husband,” and “wife” refer to such spouses. Same-sex spouses who file joint returns are jointly and severally liable for the tax liability and may be entitled to innocent spouse relief if the IRC 6015 conditions are met. For more information, see Rev. Rul. 2013-17 and 26 CFR 301.7701-18.
- (3) An election to file a joint return may only be revoked before the due date of the return, including extensions. However, if an executor or administrator of the decedent is appointed after the surviving spouse files a joint return with the decedent, the executor or administrator may disaffirm such joint return by filing a separate return for the decedent within one year of the filing due date (including extensions of time for filing) of the surviving spouse’s return. See 26 CFR 1.6013-1(d)(5) .
- (4) In certain circumstances, the Internal Revenue Code allows for the RS’s relief from the joint and several liability under the following provisions:
- IRC 6015(b) - Provides relief from a deficiency/understatement of tax liability
 - IRC 6015(c) - Allows an RS to allocate a deficiency/understatement
 - IRC 6015(f) - Provides for the IRS to grant an RS equitable relief from a deficiency/ understatement or underpayment, if relief isn’t available under IRC 6015(b) or 6015(c)

Note: IRC 6015 is effective for unpaid balances as of July 22, 1998 and liabilities arising after July 22, 1998.

- (5) Both spouses might request innocent spouse relief for the same tax period. Therefore, Appeals could have two cases where one spouse is the requesting spouse (RS) on his/her claim and the non-requesting spouse (NRS) on their spouse's claim.
- (6) Married taxpayers filing separate returns in community property states may request relief from the operation of state community property laws. This is also considered innocent spouse relief. See IRC 66(c) .

8.7.12.2.1 (06-10-2021) **Timing of Request for Innocent Spouse Relief**

- (1) Requests for innocent spouse relief are considered by Compliance Area Office examiners during open field examinations and by Cincinnati Centralized Innocent Spouse Operation (CCISO) otherwise. See IRM 25.15.1.1.3, Responsibilities. A post-assessment claim occurs when a claim is filed on a liability that is already assessed.
- (2) Appeals considers an innocent spouse request as part of a standalone (post-assessment) case or a deficiency (pre-assessment) case, including the following:
 - a. Compliance's preliminary determination regarding RS's request for relief from an assessed liability
 - b. Compliance's preliminary determination regarding RS's request for relief from a proposed deficiency
 - c. Consideration of RS's request for relief in a docketed Tax Court case
 - d. Consideration of RS's request for relief raised for the first time in a Tax Court petition
 - e. Consideration of RS's request for relief raised under Collection Due Process
- (3) If the RS is granted relief under IRC 6015 from the income tax, relief also applies to the related penalties, additions to tax, additional amounts, and interest.
- (4) If Compliance makes a preliminary determination to fully or partially deny relief, the RS may appeal this determination to deny relief. The NRS may appeal the preliminary determination to the extent relief is granted. Therefore, Compliance's preliminary determination to partially deny relief could result in appeals by both spouses (i.e. the RS appeals the partial denial and the NRS appeals the partial allowance). The NRS can not appeal a decision to deny relief to the RS.

8.7.12.2.2 (06-10-2021) **Disclosure of Information**

- (1) IRS can disclose to either spouse information with respect to the joint return account, such as the "balance due" disclosed to either spouse. See IRM 11.3.2.4.1, Individuals, and 11.3.2.4.1.1, Disclosure of Collection Activities with Respect to Joint Returns.
- (2) Request for information concerning divorced or separated spouses beyond that provided in IRC 6103(e)(8) should be referred to the Disclosure Office. See IRM 25.15.1.9.2, Authorized Disclosure Rules.
- (3) **Do not** disclose the RS's personal information to the NRS. Similarly, do not disclose the NRS's personal information to the RS. This includes not disclosing the following:

- The other spouse's new last name, location, or telephone number;
- Any information about the other spouse's employment, income or assets.

8.7.12.2.3
(06-10-2021)

Effect of Innocent Spouse Relief

- (1) The effect of innocent spouse relief is to make a spouse no longer liable for a particular tax. See
 - IRM 25.15.1.7, Prohibition Against Collection Actions
 - IRM 25.15.5.7, Effect of Innocent Spouse Relief

8.7.12.3
(06-10-2021)

Appeals Technical Employee's Receipt of Innocent Spouse Case

- (1) Follow the procedures detailed in IRM 8.6.1.2, New Receipts and Initial Case Actions, requiring the ATE to complete (within 45 days of receiving a newly assigned or transferred case) the statute verification and the mailing of the appropriate initial contact letter with required enclosures. Make an entry on the case activity record to indicate the statute date was verified. The spouse appealing the preliminary determination is the "appellate spouse." If both appeal, they can be referred to as "appellate spouse x" and "appellate spouse y," or possibly "appellate spouse primary" and "appellate spouse secondary." For the initial contact letters used in Innocent Spouse cases, see Exhibit 8.7.12-1, Initial Contact Letters. For conference options, see IRM 8.6.1.5.1, Conference Practice.
- (2) Pre-assessed Liabilities
 - a. Appeals will not accept a pre-assessed liability case if the number of days remaining on the ASER for a new receipt is less than 365 days. See IRM 8.21.3.2.1, New Receipts and Transfers.
 - b. Determine if the examiner secured an agreement separately for the deficiency, leaving unagreed only the innocent spouse relief determination. If agreed, confirm the deficiency has been assessed. See paragraph of IRM 25.15.6.10.1.2, Pre-Assessment Unagreed.
 - c. For deficiency cases with proposed penalties, confirm managerial approval of penalties, as required by IRC 6751(b). See IRM 8.11.1.2.1, Supervisory Approval of Penalties Before Appeals Consideration.
- (3) Verify the case is correctly carded-in on ACDS. See IRM 8.7.12.3.1 Joint Return Work Unit as Key Case, and IRM 8.7.12.3.2 Separate Return Work Unit for Married Taxpayers Who Filed Separate Returns in Community Property States. Use the Validation Tracking System (VTS) to update the statute critical data fields on ACDS, if necessary. See IRM 8.21.3.2.1.1, Procedures to Update Statutes on ACDS, and IRM 8.20.3, Appeals Centralized Database System (ACDS).
- (4) Review account transcripts and verify that "Transaction Code 971 with Action Code 065 (TC 971 AC065)" is posted to IDRS and properly cross-referenced on IDRS for all innocent spouse claim years. Review Innocent Spouse Tracking System (ISTS) transcripts, and verify the ISTS stage has been updated for Appeals' consideration for all claim years. Contact Florence APS for assistance in posting these missing IDRS and/or ISTS codes. See IRM 8.7.12.4, IDRS/ISTS Controls.
- (5) Innocent spouse cases are normally worked on a first in first out basis. However, when Taxpayer Advocate Service (TAS) identifies a case requiring expedite treatment, the case is worked as expeditiously as possible. The determination for expedite treatment is based on the facts and circumstances of the

case. TAS identifies a case requiring expedite treatment as TAS Criteria 1 or marks the Operations Assistance Request (OAR) with EXPEDITE printed in red on top of the request. Refer to IRM 13.1.7.2, TAS Case Criteria, for description of types of TAS criteria. See IRM 13.1, Taxpayer Advocate Case Procedures, for more information about TAS. In addition, docketed cases sent back to CCISO that are forwarded to Appeals are also worked as expeditiously as possible. This happens, for example, in cases where the RS raises relief under IRC 6015 for the first time in a docketed deficiency case.

8.7.12.3.1 (06-10-2021) **Joint Return Work Unit as Key Case**

- (1) Joint return tax years, whether one or both spouses request innocent spouse relief, are controlled on ACDS in a work unit number that includes three records, as shown below:
 - One ACDS record for the joint return (MFT 30)
 - One ACDS record for the RS (MFT 31)
 - One ACDS record for the NRS (MFT 31)
- (2) The joint return is controlled as the ACDS key case. The RS and the NRS are each controlled as a related case within the same work unit number.
- (3) The related case records are created for the following reasons:
 - To control each spouse's separate address for generating letters and forms from ACDS; and
 - To control each spouse's separate statutes. For a proposed deficiency case, separately control the NRS's ASER on ACDS. For a post-assessment case, there is no need to separately control the NRS's CSED on ACDS. See Exhibit 8.20.5-1, Innocent Spouse — ACDS Statute Date/Code Tables, to assist in determining the correct statute date/code to use for inventory control.
- (4) Verify the correct card-in procedures for each ACDS record (joint, RS, and NRS), as shown in the following IRM sections:
 - IRM 8.20.5.29.5.1.1, Joint Return Key Case Carding
 - IRM 8.20.5.29.5.1.2, Requesting Spouse Related Case Carding
 - IRM 8.20.5.29.5.1.3, Non-Requesting Spouse Related Case Carding

8.7.12.3.2 (06-10-2021) **Separate Return Work Unit for Married Taxpayers Who Filed Separate Returns in Community Property States**

- (1) Special instructions apply to carding a case for married taxpayers who filed separate returns in community property states where one (or both spouses) is requesting equitable relief.
- (2) This type of case requires special card-in procedures to create a work unit that includes two records — one for the RS and one for the NRS.
- (3) The RS is controlled as the key case, and the NRS is controlled as a related case.
- (4) If both spouses are docketed under separate docket numbers, each spouse must be controlled as a separate key case work unit. Enter cross reference information in the ACDS "Notes" field.
- (5) Verify the correct card-in procedures for each ACDS record (RS and NRS), as shown in the following IRM sections:

- IRM 8.20.5.29.5.2.1, Requesting Spouse Key Case Carding
- IRM 8.20.5.29.5.2.2, Non-Requesting Spouse Related Record Carding

8.7.12.3.3 (06-10-2021)

Additional Card-In Information

- (1) Innocent Spouse (INNSP) is one of the ACDS categories of cases on the Appeals Inventory Report (AIR). See IRM 8.10.1.3.1, Appeals Inventory Reports (AIR). For a case to be included in the INNSP category, the ACDS Feature Code must contain "SD" (Spousal Defense) and the TYPE Code cannot be:
 - a. Collection Due Process (CDP) TYPE Code - DPLN (CDP Lien), DPLV (CDP Levy), or DPL2 (CDP Lien and Levy); or
 - b. Offer in Compromise (OIC)
- (2) Whether a case is initially received as an innocent spouse case or identified as an innocent spouse case during Appeals consideration, verify that ACDS properly reflects the "SD" feature code for appropriately including the case in the INNSP category for a post-assessment claim. If the innocent spouse request is part of a pre-assessed deficiency case, the "SD" feature code will alert APS, along with Form 5402 instructions, to complete all closing actions for the deficiency and innocent spouse issues.
- (3) A separate work unit number is needed for the innocent spouse case when the issue is raised during Appeals consideration of a CDP case. See IRM 8.20.5.29.6, CDP/EH and Innocent Spouse Case Carding.
- (4) If both spouses file a request for relief, even for the same tax year(s), control each spouse's claim request with a separate ACDS work unit number. Verify that IDRS and ISTS separately reflect both spouses' claim requests according to the Primary/Secondary (P/S) indicator. See IRM 8.7.12.4, IDRS/ISTS Controls.

8.7.12.4 (06-10-2021)

IDRS/ISTS Controls

(1) **Integrated Data Retrieval System (IDRS)**

The IRS office initially receiving the Form 8857, Request for Innocent Spouse Relief, is responsible for inputting the following IDRS transaction codes. Normally, these codes are already input on these cases prior to Appeals' receipt. Review the account transcript and verify the appropriate transaction codes (as shown below) were input, and if not, take steps to input them. For assistance, send an email to the Florence APS Processing Team Manager (PTM).

- **Transaction Code 971 with AC 065**

This transaction code identifies a processable innocent spouse claim has been filed. The input of TC 971 AC 065 stops all potential collection action and generates an L- Freeze Code which prohibits offsets and prevents notices from being issued except for Notice CP 521, Installment Agreement Reminder Notice, (see Exhibit 3.11.10-29) , CP 71 Reminder Notice (see IRM 21.3.1.5.40) and CP 71A Reminder Notice (see IRM 21.3.1.5.41). CP71 and CP71A notices are issued at least once a year to remind the taxpayer of a balance due, including penalty and interest as of the notice date, as required by IRC 7524 , Annual Notice of Tax Delinquency. This information about the reminder notice

can assist the ATE in responding to a RS's concern about receiving these notices during the consideration of the innocent spouse request.

Note: The TC 971 with AC 065 requires the following: The taxpayer's TIN who filed for relief (RS). A cross-reference entry is not required (leave blank) if the primary taxpayer is the RS. If secondary taxpayer is the RS, enter the TIN of the secondary spouse and the date the Form 8857 or equivalent was filed with IRS. See IRM 25.15.2.4.2, Innocent Spouse Indicator Transaction Code (TC) 971/972, for additional information on TC 971 AC 065.

- **Transaction Code 130**

Verify that this transaction code is on ENMOD for the NRS's TIN. It prevents an "erroneous refund" by freezing the entire account. The system automatically generates this transaction code when the proper TC 971 AC 065 and cross-reference is input on any MFT 30 account. If both spouses request relief, a TC 131 should be input to reverse the automatic TC 130s. See IRM 25.15.2.4.3, TC 130 Entire Account Frozen From Refunding, for additional information regarding TC 130 and TC 131.

Caution: A TC 130 will not post if there is no balance due at the time TC 971 AC 065 posts. Therefore, if there is no balance due, you will have to manually input a TC 130.

(2) Innocent Spouse Tracking System (ISTS)

The ISTS is a mandatory, nationwide, cross-functional system developed to track and monitor (from inception to completion) the various **stages** for each of the requesting spouse's claim year. After making a preliminary determination whether to grant relief, Compliance is responsible for updating the ISTS stage (for a protested innocent spouse decision) to "Stage 07 -Transferred" with the appropriate Appeals Office Code (AOC) and identify the appealing spouse (primary taxpayer appealed, secondary taxpayer appealed, or both appealed). See IRM 25.15.14.4.1.7, Stage 07-Transferred, and IRM 2.4.56, Command Code ISTSR, for obtaining an ISTSR transcript and interpreting the Innocent Spouse Tracker record. For information on Appeals Office Codes, see Document 6209, IRS Processing Codes and Information - Section 13.2, or *Exhibit 3.13.62-9*.

- (3) After Compliance updates the ISTS Stage to Appeals (Stage 07-Transferred), APS is responsible for subsequent and final updates to the ISTS by the case closing date. See IRM 25.15.14, Innocent Spouse Tracking System, for more information. Check the admin file for ISTS transcripts covering all claim periods and verify the ISTS tracking stage has been updated to Appeals.

Note: If an ISTS record is not in the file and/or the record has not been updated to Stage 07 - Transferred (to Appeals Office Code), pull a current ISTSR or send an email to the Florence APS PTM.

8.7.12.5
(06-10-2021)

**Request for Relief under
IRC 6015**

- (1) An individual who qualifies and elects to file a joint return with another individual is jointly and severally liable for the joint federal income tax liabilities for that year. A spouse or former spouse may be relieved of joint and several liability for federal income tax for that year under the following relief provisions:
 - Innocent Spouse Relief under IRC 6015(b)
 - Separation of Liability Relief under IRC 6015(c)
 - Equitable Relief under IRC 6015(f)
- (2) A spouse or former spouse can request relief from such liability by filing Form 8857, Request for Innocent Spouse Relief, or a similar written statement that is signed under penalty of perjury. If the RS spouse elects the application of either IRC 6015(b) or IRC 6015(c), the Service will consider whether relief is appropriate under the elective provision and, to the extent unavailable under either, IRC 6015(f).

Reminder: The NRS must receive notice of, and an opportunity to participate in, any proceeding with respect to an innocent spouse request for relief. See IRM 8.7.12.6, Notice and Participation of NRS.

- (3) Relief is not available for liabilities that are required to be reported on a joint federal income tax return but are **not income taxes imposed under Subtitle A** of the Internal Revenue Code (e.g., domestic service employment taxes under IRC 3510). See 26 CFR 1.6015-1, Relief from Joint and Several Liability on a Joint Return.
- (4) Prior closing agreement or offer in compromise - In general, the RS is **not** entitled to relief under IRC 6015 for any tax year for which the RS entered into a closing agreement with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a RS is not entitled to relief under IRC 6015 for any tax year for which the RS has entered into an offer in compromise with the Commissioner.
 - a. Exception for closing agreements relating to TEFRA partnership proceedings - The above “general rule regarding unavailability of IRC 6015 relief in regards to a prior closing agreement” does not apply to an agreement described in IRC 6224(c) that the RS entered into *while a party to a pending TEFRA partnership proceeding* with respect to partnership items (or any penalty, addition to tax, or additional amount that relates to adjustments to partnership items) under the unified partnership audit and litigation procedures for IRC 6221 through IRC 6234 (TEFRA partnership proceeding).
 - b. If, however, the RS entered into a closing agreement pertaining to any penalty, addition to tax, or additional amount that relates to the adjustments to partnership items, at a time *when the RS is not a party to a pending TEFRA partnership proceeding* (e.g., in connection with an affected items proceeding), then the “general rule regarding unavailability of IRC 6015 relief” does apply. For additional information, see 26 CFR 1.6015-1(c), Prior Closing Agreement or Offer in Compromise.
- (5) Return signed under duress - If a spouse claims and establishes he or she signed the joint return under duress, the return is not a joint return. The spouse who signed the joint return under duress is not jointly and severally liable for the tax shown on the return or any deficiency in tax with respect to the return. See 26 CFR 1.6013-4(d) and IRM 25.15.1.2.3, Return Signed Under Duress.

- (6) Fraudulent scheme - If the IRS establishes that the spouse transferred assets to the other spouse as part of a fraudulent scheme, IRC 6015 relief is not available. For the purpose of this provision, a fraudulent scheme includes a scheme to defraud the IRS or another third party, including, but not limited to creditors, ex-spouses, and business partners. See 26 CFR 1.6015-1(d).
- (7) Res judicata and collateral estoppel - A RS is barred by “res judicata” from IRC 6015 relief for any tax year for which a court of competent jurisdiction has rendered a final decision on the RS’s tax liability if IRC 6015 relief was at issue in the prior proceeding, or if the RS meaningfully participated in that proceeding and could have raised IRC 6015 relief. A RS has not meaningfully participated in a prior proceeding if, due to the effective date of IRC 6015, relief under IRC 6015 was not available in that proceeding. Also, any final decisions rendered by a court of competent jurisdiction regarding issues relevant to IRC 6015 are conclusive and the RS may be collaterally estopped from re-litigating those issues. See 26 CFR 1.6015-1(e) and IRM 25.15.3.6, Special Considerations.
- (8) Community property laws - In determining whether relief is available under IRC 6015, items of income, credits, and deductions are generally allocated to the spouses without regard to the operation of community property laws. An erroneous item is attributed to the spouse whose activities gave rise to such items. See IRC 6015(a). Also, see the following:
- (9) Refund statute of limitations - IRC 6015 does not apply to any portion of a liability for which a claim for refund is barred by statute. See 26 CFR 1.6015-1(g), 26 CFR 1.6015-2 through 26 CFR 1.6015-9, and IRM 8.7.7.3, Periods of Limitation in Claim and Overpayment Cases.
- (10) Transferee liability - The relief provisions of IRC 6015 will not negate liability that arises under the operation of other laws. Therefore, a RS who is relieved under IRC 6015 may remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by federal or state transferee liability or property laws. See 26 CFR 1.6015-1(j).

8.7.12.5.1
(06-10-2021)
**Innocent Spouse Relief
under IRC 6015(b)**

- (1) A spouse or former spouse may be relieved of joint and several tax liability under IRC 6015(b) if the RS meets **all** of the following five requirements:
 - a. A valid joint return was filed for the year in which relief is requested.
 - b. There is an understatement of tax attributable to the NRS’s erroneous items. See IRM 8.7.12.5.1.1, Erroneous Item.
 - c. The RS establishes that in signing the return he or she did not know, and had no reason to know, of the understatement. See IRM 8.7.12.5.1.2, Knowledge or Reason to Know.
 - d. Taking into account all the facts and circumstances, it is inequitable to hold the RS liable for the understatement attributable to the NRS. See IRM 8.7.12.5.1.3, Inequitable to Hold RS Liable.
 - e. The request for relief is made within two years from the date of the first collection activity with respect to the RS after July 22, 1998. See IRM 25.15.3.5.1, Collection Activity, and IRC 6015(b)(1)(E).

Note: See 26 CFR 1.6015-2.

- (2) The RS is not entitled to relief if the Service establishes the spouses transferred property to one another as part of a fraudulent scheme. IRM 8.7.12.5 (6).

8.7.12.5.1.1
(06-10-2021)
Erroneous Item

- (1) An erroneous item is any item resulting in an understatement or deficiency in tax to the extent such item is omitted from, or improperly reported/characterized on an individual income tax return. See 26 CFR 1.6015-1(h)(4). The following are examples of an erroneous item:
 - a. Unreported income from an investment asset resulting in an understatement or deficiency in tax
 - b. Ordinary income improperly reported as capital gain resulting in an understatement or deficiency in tax
 - c. A deduction for an expense that is personal in nature that results in an understatement or deficiency in tax
 - d. An improperly reported item that affects the liability on other returns (e.g. an improper net operating loss that is carried back to a prior year's return)

Note: The above list is not all-inclusive.

- (2) Penalties and interest are not erroneous items. Instead, they will generally be determined based on the proportion of the total erroneous items from which the RS is relieved.
- (3) Math Errors - Some math errors adjusted during the processing of the original return are considered underpayments, and some are considered understatements. See Exhibit 25.15.3-1, Math Errors, for examples.

8.7.12.5.1.2
(06-10-2021)
Knowledge or Reason to Know

- (1) A RS has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. See 26 CFR 1.6015-2(c). For rules relating to a RS's **actual knowledge**, see IRM 8.7.12.5.2.2.1, Actual Knowledge Invalidates Election to Allocate Deficiency.
- (2) **All** of the facts and circumstances are considered in determining whether the RS had **reason to know** of the understatement. The facts and circumstances that are considered include, **but are not limited to**:
 - a. The nature of the erroneous item and the amount of the erroneous item relative to other items
 - b. The couple's financial situation
 - c. The RS's educational background
 - d. The RS's business experience
 - e. The extent of the RS's participation in the activity that resulted in the erroneous item
 - f. Whether the RS failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question
 - g. Whether the erroneous item represented a departure from a recurring pattern in prior years' returns (e.g. omitted income from an investment regularly reported on prior years' returns)
- (3) Partial Relief - If the RS had no knowledge or reason to know of only a portion of an erroneous item, the RS may be relieved of the liability attributable to that portion of that item, if all other requirements are met with respect to that portion. See example in 26 CFR 1.6015-2(e).

8.7.12.5.1.3
(06-10-2021)
**Inequitable to Hold RS
Liable**

- (1) All facts and circumstances are considered in determining whether it is inequitable to hold the RS jointly and severally liable for an understatement. See 26 CFR 1.6015-2(d) and section 4.03 of Rev. Proc. 2013-34.
- (2) Significant benefit - A relevant factor for determining whether it is inequitable (unfair) to hold the RS liable is whether the RS significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the understatement year. For example, if the RS received property (including life insurance proceeds) from the NRS that is beyond normal support and traceable to items omitted from gross income that are attributable to the NRS, the RS will be considered to have received significant benefit from those items.
- (3) Below are other factors that may be taken into account, if the situation warrants:
 - a. Whether the NRS deserted the RS and/or dependent children
 - b. Whether the spouses are divorced or separated
 - c. Whether the RS received a tax benefit from the understatement (See IRM 25.15.3.12.7, Tax Benefit)
 - d. The RS's level of education
 - e. The NRS's deceitfulness or evasiveness towards the RS
 - f. The RS's degree of involvement in the activity generating the deficiency
 - g. The RS's involvement in business or household financial matters
 - h. The RS's business or financial expertise
 - i. Whether the RS would suffer economic hardship if relief is not granted
 - j. The NRS's alleged abuse of the RS

Note: This list is not all inclusive.

8.7.12.5.2
(06-10-2021)
**Separation of Liability
Relief under IRC 6015(c)**

- (1) The RS may **elect** to allocate a deficiency with respect to a valid joint return. Relief may be available to both spouses, if each spouse is eligible for and elects to allocate a deficiency. If only one spouse elects to allocate the deficiency, the liability of the NRS is not affected. See 26 CFR 1.6015-3.
- (2) To qualify for relief under IRC 6015(c), the RS **must** meet the following requirements:
 - a. A valid joint return was filed for the year in which relief is requested.
 - b. There is a deficiency attributable to the NRS's erroneous items. See IRM 8.7.12.5.1.1, Erroneous Item. A spouse may be relieved of a portion of the tax liability resulting from a joint item adjustment.
 - c. The RS is divorced, widowed, or legally separated from the NRS, or the RS has not been a member of the same household as the NRS at any time during the 12-month period ending on the date the request for relief is filed.
 - d. The request for relief is made within two years from the date of the first collection activity with respect to the RS after July 22, 1998. See IRC 6015(c)(3)(B) and IRM 25.15.3.5.1, Collection Activity.

Note: The marital status of a deceased RS will be determined on the earlier of the date of the election or the date of death.

Note: The 12-month separate household requirement does not apply to either spouse's temporary absences from the household if it is reasonable to assume the absent spouse will return to the household. Examples of temporary absences may include, but are not limited to, absence due to incarceration, illness, business, vacation, military service, or education. For guidance on spouses who reside in separate dwellings, see 26 CFR 1.6015-3(b)(3)(ii).

- (3) Burden of proof - Except for establishing actual knowledge, the **RS must establish** that all of the qualifications for making the election are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The RS must also establish the proper allocation of the erroneous items. See IRM 8.7.12.5.2.1, Allocating a Deficiency Under IRC 6015(c), IRM 8.7.12.5.2.2.1, Actual Knowledge Invalidates Election to Allocate Deficiency, and 26 CFR 1.6015-3(d)(3).

8.7.12.5.2.1
(06-10-2021)
**Allocating a Deficiency
Under IRC 6015(c)**

- (1) In general, an election to allocate a deficiency limits the RS's liability to the portion of the deficiency allocated to the RS under the guidance in 26 CFR 1.6015-3(d). Only a RS may receive relief. A NRS who does not elect to allocate a deficiency under this section remains liable for the entire amount of the deficiency. Even if both spouses elect to allocate a deficiency under this section, there may be a portion of the deficiency that is not allocable, for which both spouses remain jointly and severally liable.
- (2) Erroneous items are generally allocated to the spouses as if separate returns are filed, subject to the following four exceptions:
- a. **Benefit on the return** - An erroneous item that would otherwise be allocated to the NRS is allocated to the RS to the extent the RS received a tax benefit on the joint return. See Exhibit 25.15.3-2, Tax Benefit Rule Examples.
 - b. **Fraud** - The IRS may allocate any item between the spouses if the IRS establishes the allocation is appropriate due to fraud by one or both spouses. See IRM 25.1.1.3, Definition of Fraud.
 - c. **Erroneous items of income** - Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations described in IRM 8.7.12.5.2.2, Limitations on Relief Under IRC 6015(c). In the absence of clear and convincing evidence supporting a different allocation, an erroneous item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in IRM 8.7.12.5.2.2 and the exceptions in 26 CFR 1.6015-3(c)(2)(iv), Factors Supporting Actual Knowledge. These factors are also included in IRM 8.7.12.5.2.2.1, Actual Knowledge Invalidates Election to Allocate Deficiency. For rules regarding the effect of community property laws, see 26 CFR 1.6015-1(f) and IRM 8.7.12.5.2.2.1 (11).
 - d. **Erroneous deduction items** - Erroneous deductions related to a business investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the

business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations described in IRM 8.7.12.5.2.2.1, Actual Knowledge Invalidates Election to Allocate Deficiency, and the exceptions in 26 CFR 1.6015-3(d)(4).

- e. **Child's Liability** - The liability of a child, included on a joint return, is disregarded in computing the separate liability of either spouse. The child's liability will be allocated equally between the spouses. See IRC 6015(d)(5), Child's Liability. For purposes of this paragraph, a "child" does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse. See 26 CFR 1.6015-3(d)(4)(iii). See Form 8615, Tax for Certain Children Who Have Unearned Income, and Form 8814, Parents' Election to Report Child's Interest and Dividends.

(3) See the following:

- 26 CFR 1.6015-3(d)(5) - Examples of allocation rules
- 26 CFR 1.6015-3(d)(6) - Alternative allocation methods
- IRM 25.15.3.8.3.1, Steps to Allocate

8.7.12.5.2.2
(06-10-2021)
**Limitations on Relief
Under IRC 6015(c)**

- (1) Even if the RS meets the requirements in IRM 8.7.12.5.2, Separation of Liability Relief Under IRC 6015(c), he or she is subject to the limitations in 26 CFR 1.6015-3(c), also summarized in the following paragraphs.
- (2) No refunds - Relief under IRC 6015(c) is only available for **unpaid** liabilities resulting from **understatements** of liability. Refunds are not authorized under this section.
- (3) Actual knowledge - If the IRS establishes, that at the time the RS signed the joint return, he or she had actual knowledge of an erroneous item allocable to the NRS, the election to allocate the deficiency attributable to that item is invalid, and the RS remains liable for the portion of the deficiency attributable to that item. For more information on actual knowledge, see IRM 8.7.12.5.2.2.1, Actual Knowledge Invalidates Election to Allocate Deficiency.

Note: Abuse exception to the RS's actual knowledge- If the RS establishes he or she was a victim of domestic abuse prior to the time the return was signed and, as a result of the prior abuse, the RS did not challenge the treatment of items on the return for fear of the NRS's retaliation, the limitation on actual knowledge will not apply. However, if the RS involuntarily executed the return, the RS may choose to establish that the return was signed under duress. For information on "returns signed under duress," see IRM 8.7.12.5 (5).

- (4) Disqualified asset transfers - In general, the portion of the deficiency, for which a RS is liable, is increased (up to the entire amount of the deficiency) by the value of any disqualified assets transferred to the RS. For purposes of this provision, the value of a disqualified asset is the fair market value of the asset

on the date of transfer. A “disqualified asset” is any property or right to property that the NRS transferred to the RS if the principal purpose was the avoidance of tax or payment of tax (including tax, penalties, and interest).

- a. Presumption of a disqualified asset - Any asset transferred from the NRS to the RS during the 12-month period before, or any time after, the mailing date of the first letter of proposed deficiency (e.g., a 30-day letter or, if no 30-day letter is mailed, a notice of deficiency) is presumed to be a disqualified asset.
- b. The presumption does not apply if the RS establishes the asset was transferred pursuant to a divorce decree, separate maintenance agreement, or a written instrument incident to such a decree or agreement. If the presumption does not apply, but the IRS establishes that the purpose of the transfer was the avoidance of tax or payment of tax, the asset will be disqualified, and its value will be added to the amount of the deficiency for which the RS remains liable. If the presumption applies, the RS may rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

- (5) See 26 CFR 1.6015-3(c)(4) for examples illustrating situations involving “actual knowledge” and whether “asset transfers” were considered “disqualified asset transfers.”

8.7.12.5.2.2.1
(06-10-2021)

**Actual Knowledge
Invalidates Election to
Allocate Deficiency**

- (1) If the IRS establishes, that at the time the return was signed, the RS had actual knowledge of an erroneous item allocable to the NRS, the election to allocate the deficiency attributable to that item is invalid and the RS remains liable for the portion of the deficiency attributable to that item. “Abuse” is an exception to the RS’s actual knowledge. See 26 CFR 1.6015-3(c)(2). The IRS, having both the burden of production and the burden of persuasion, must establish, by the preponderance of the evidence, that the RS had actual knowledge of the erroneous item in order to invalidate the election. See IRM 8.6.4.2.6, Burden of Proof, for more information on “burden of persuasion” and “burden of production.”
- (2) Omitted income - In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. For example, assume the NRS received \$5,000 of dividend income from her investment in X Co., but did not report it on the joint return. The RS knew the NRS received this \$5,000 dividend income that year. The RS had actual knowledge of the NRS’s erroneous item (i.e. \$5,000 of the unreported dividend income from X Co.). Therefore, no relief is available under IRC 6015(c) for the deficiency attributable to the erroneous item. This rule applies equally in situations where the NRS has unreported income without receiving cash (e.g. dividend reinvestment or a distributive share from a flow-through entity shown on Schedule K-1 “Partner’s Share of Income, Credits, Deductions, etc.”)
- (3) Erroneous deductions or credits, in general- In the case of an erroneous deduction or credit, knowledge of the item means “knowledge of the facts” that made the item not allowable as a deduction or credit. See IRM 8.7.12.5.2.2.1.1, Hoyt Investors and IRC 6015(c).
- (4) Fictitious or inflated deduction - If a deduction is fictitious or inflated, the IRS must establish that the RS actually knew the expenditure was not incurred, or not incurred to that extent.

- (5) Partial knowledge - If the RS had actual knowledge of only a portion of the NRS's erroneous item, then relief is not available for that portion of the erroneous item. For example, if the NRS failed to report \$5,000 of her dividend income on the joint return and the RS knew that the NRS received \$1,000 dividend income, but not the additional \$4,000, relief would not be available for the portion of the deficiency attributable to the \$1,000 of which the RS had actual knowledge.
- (6) The RS's actual knowledge of the proper tax treatment of an item is not relevant for the purpose of demonstrating that the RS had actual knowledge of an erroneous item.

Example: Assume the RS did not know the NRS's dividend income from X Co. was taxable, but knew the NRS received the dividend income, then relief is not available under IRC 6015(c).

- (7) The RS's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the RS had actual knowledge of the item.

Example: Assume the RS knew of the NRS's dividend income, but the RS failed to review the completed return and did not know the NRS's dividend income was omitted from the return. Relief is not available for the deficiency attributable to that item.

- (8) Knowledge of the **source** of an erroneous item is not sufficient to establish actual knowledge.

Example: Assume the RS knew that the NRS owned X Co. stock but the RS did not know that X Co. paid dividends to the NRS that year. The RS's knowledge of the NRS's ownership in X Co. is not sufficient to establish that the RS had actual knowledge of the NRS's dividend income from X Co.

- (9) Actual knowledge not inferred from RS's reason to know - Even if the RS's knowledge of the NRS's ownership interest in X Co. indicates a reason to know of her dividend income, actual knowledge of such dividend income cannot be concluded from the RS's reason to know. Similarly, the IRS need not establish that the RS knew of the source of an erroneous item in order to establish that the RS had actual knowledge of the item.

Example: Assume the RS knew that the NRS received \$1,000 (omitted from the joint return), but the NRS did not know the source of the \$1,000, then the RS has actual knowledge of the item (i.e. \$1,000 dividend income) giving rise to the deficiency.

- (10) Factors supporting actual knowledge - The IRS can rely on all the facts and circumstances to demonstrate the RS had actual knowledge of the erroneous item, at the time the return was signed. The factors could include the following:
 - a. Whether the RS made a deliberate effort to avoid learning about the item in order to be shielded from the liability
 - b. Whether the RS and NRS jointly owned the property that resulted in the erroneous item

Note: Joint ownership is a factor supporting a finding that the RS had actual knowledge of an erroneous item.

- (11) Rules regarding the effect of community property laws - For the purpose of determining actual knowledge, the RS will not be considered to have had an ownership interest in an item based solely on the operation of community property law. Rather, the RS who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the RS's name appeared on the ownership documents, or there otherwise is an indication that the RS asserted dominion and control over the item.

Example: Assume the RS and NRS live in State A, a community property state. After their marriage, the NRS opens a bank account in her name. Under the operation of the community property laws of State A, the RS owns 1/2 of the bank account. However, for the purpose of determining actual knowledge of an erroneous item for IRC 6015 relief, the RS does not have an ownership interest in the account because it is not held in his name and there is no indication that he asserted dominion and control over the item (i.e. the bank account).

- (12) For more information on community property laws, see the following:

- IRM 25.15.5, Relief from Community Property Laws
- IRM 25.18.1, Basic Principles of Community Property Law

8.7.12.5.2.2.1.1
(06-10-2021)

Hoyt Investors and IRC 6015(c)

- (1) Three Tax Court Memo decisions were issued in May and June 2005 that awarded attorney's fees to the petitioner's attorneys, in part because the IRS denied IRC 6015(c) relief because of actual knowledge. These cases involve Hoyt investors and are as follows:
- *Foy v. Commissioner*, T.C. Memo. 2005-116 (May 19, 2005)
 - *Owen v. Commissioner*, T.C. Memo. 2005-115 (May 19, 2005)
 - *Bulger v. Commissioner*, T.C. Memo. 2005- 147 (June 20, 2005)
- (2) The IRS has the burden of proof when denying a IRC 6015(c) claim because of actual knowledge. When the deficiency results from an erroneous deduction or loss, the IRS must establish that the RS "knew the facts" (e.g., the overvalued livestock or same animals sold to different partnerships, as discussed in the above court cases) that made the deduction or loss unallowable. If the RS did not know the facts, consider whether the RS is entitled to "full relief" or "partial relief."

Example: If the Hoyt investment was a joint investment of the spouses, then the RS is still liable for 50% of the deficiency, subject to other considerations, such as the transfer of a "disqualified asset" as discussed in IRC 6015(c)(4) or the tax benefit exception in IRC 6015(d)(3)(B).

Reminder: Under the tax benefit exception, the portion of the deficiency allocated to the RS can increase or decrease. For example, if the RS was a homemaker without any income, he or she received no "tax benefit" from the Hoyt loss, and his or her portion of the deficiency is allocated to the NRS. In those circumstances, relief is granted. Further questions

on actual knowledge and the operation of the tax benefit exception can be addressed to local counsel.

8.7.12.5.3
(06-10-2021)
**Equitable Relief under
IRC 6015(f)**

- (1) The IRS may grant relief from joint and several liability to a RS, under procedures prescribed by the Secretary (see Rev. Proc. 2013-34), if -
 - a. Taking into account all of the facts and circumstances, it is inequitable to hold the RS liable for **an unpaid tax or any deficiency** (or any portion of either), **and**
 - b. Relief is not available to the RS under IRC 6015(b) or IRC 6015(c). See IRM 8.7.12.5.1, Innocent Spouse Relief under IRC 6015(b), and IRM 8.7.12.5.2, Separation of Liability Relief under IRC 6015(c).
- (2) Rev. Proc. 2013-34 provides guidance for the RS seeking equitable relief from income tax liability under IRC 66(c), Spouse Relieved of Liability, or IRC 6015(f), Equitable Relief. Under IRC 6015(b) and (c), relief is available only from an understatement (deficiency). However, IRC 6015(f) applies to understatements and underpayments (unpaid self-assessed taxes on original and amended returns).
- (3) A RS must satisfy all of the threshold conditions in section 4.01 of Rev. Proc. 2013-34 to be eligible for consideration of equitable relief under IRC 6015(f). For requests for relief under IRC 66(c), the first two threshold conditions don't apply (i.e. "Joint Return Filed" and "Unavailability of IRC 6015(b) or IRC 6015(c)"). See IRM 8.7.12.5.3.1, Eligibility Threshold Requirements for Equitable Relief (Section 4.01 of Rev. Proc. 2013-34). The IRS may relieve a RS who satisfies all the applicable threshold conditions for relief under IRC 66(c) or IRC 6015(f) if, taking into account all the facts and circumstances, the IRS determines that it would be inequitable to hold the RS liable for the income tax liability.
- (4) If the threshold requirements in section 4.01 of Rev. Proc. 2013-34 are met, section 4.02 identifies conditions under which the IRS will make streamlined equitable relief determinations under IRC 6015(f) or IRC 66(c). See IRM 8.7.12.5.3.2, Streamlined Determinations under IRC 66(c) and IRC 6015(f) - (Section 4.02 of Rev. Proc. 2013-34). If the section 4.02 conditions are not met for a streamlined equitable relief determination, the IRS will consider factors in section 4.03 of Rev. Proc. 2013-34 for determining whether to grant equitable relief.
- (5) Section 4.03 of Rev. Proc. 2013-34 provides a non-exclusive list of factors for consideration in determining whether relief should be granted because it would be inequitable to hold the RS liable. The factors in section 4.03 will also apply in determining whether to relieve a spouse from income tax liability resulting from the operation of community property law under IRC 66(c).
- (6) Time for requesting relief - A request for relief under IRC 6015(f) may be made with respect to any portion of any liability that:
 - a. Has not been paid, provided that the request is made before the time for collecting the liability has expired (see IRC 6502, Collection After Assessment), or
 - b. Has been paid, provided that the request is made during the period in which the RS could submit a timely claim for refund or credit of such payment (see IRC 6511, Limitations on Credit or Refund).

8.7.12.5.3.1
(06-10-2021)

**Eligibility Threshold
Requirements for
Equitable Relief (Section
4.01 of Rev. Proc.
2013-34)**

(7) Res judicata and collateral estoppel- See IRM 8.7.12.5 (7).

(1) Joint Return Filed - The RS filed a joint return for the year in which relief is requested.

(2) Relief is not available to the RS under IRC 6015(b) or IRC 6015(c).

Reminder: Conditions (a) and (b) above are not threshold conditions for eligibility under IRC 66(c).

(3) Time Limitation - The request for relief is timely filed. See IRM 8.7.12.5.3 (6).

(4) No Fraudulent Transfers - No assets were transferred between the spouses as part of a fraudulent scheme between the spouses. See IRM 8.7.12.5 (6).

(5) No Transfers of Disqualified Assets - The NRS did not transfer disqualified assets to the RS. See IRM 8.7.12.5.2.2 (4). If the NRS transferred disqualified assets to the RS, relief will be available only to the extent that the income tax liability exceeds the value of the disqualified assets.

Exception: The RS may be eligible for relief if the NRS abused the RS or maintained control over the household finances by restricting the RS's access to financial information, or the RS did not have actual knowledge that disqualified assets were transferred.

(6) No Fraudulent Return - The RS did not knowingly participate in the filing of a fraudulent joint return.

(7) Attributable to the NRS - The income tax liability from which the RS seeks relief is attributable (either in full or in part) to an item of the NRS or an underpayment resulting from the NRS's income. If the liability is partially attributable to the RS, then relief can only be considered for the portion of the liability attributable to the NRS. For exceptions to the general attribution rules, see the following:

- a. Attribution solely due to the operation of community property law - If an item is attributable or partially attributable to the RS solely due to the operation of common property law, then for purposes of Rev. Proc. 2013-34, that item (or portion of the item) will be considered attributable to the NRS.
- b. Nominal ownership - If the item is titled in the RS's name, the item is presumed to be attributable to the RS. However, this presumption is rebuttable as shown in the following example:

Example: In 2013, H opened an Individual Retirement Account (IRA) in W's name and forged W's signature on the IRA. Subsequently, H made contributions to the IRA, and in 2017, withdrew a taxable distribution from the IRA. The spouses filed a joint return for the 2017 year, but did not report the taxable distribution on their joint return. The IRS later determined a deficiency relating to the taxable IRA distribution. W requested relief under IRC 6015(f) and established that she did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if she was the owner of the IRA. As a result, W rebutted the presumption that the IRA is attributable to W.

- c. Misappropriation of funds - If the RS did not know, and had no reason to know, that funds intended for payment of tax were misappropriated by the NRS for the NRS's benefit, the IRS will consider granting equitable relief although the underpayment may be attributable (in part or in full) to an item of the RS. The IRS will consider granting equitable relief only to the extent that the funds intended for the payment of tax were taken by the NRS.
- d. Abuse - If the RS establishes that he or she was the victim of abuse prior to the time the joint return was filed and that as a result of the prior abuse the RS was not able to challenge the treatment of any items on the return, or was not able to question the payment of any balance due reported on the return for fear of the NRS's retaliation, the IRS will consider granting equitable relief even though the deficiency or underpayment may be attributable (in part or in full) to an item of the RS.
- e. Fraud committed by the NRS - The IRS will consider granting the RS relief from an **understatement (deficiency)** attributable to the RS's item(s) if the RS establishes that the NRS's fraud is the reason for the erroneous item. An example of this "attribution exception" is shown below:

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. For the stock sale year, the spouses file a joint return that omitted the income from the sale. The IRS determined a deficiency arising from the omitted income from the stock sale. H requests IRC 6015(f) relief from the deficiency attributable to this omitted income. This item would normally be attributable to H, the owner of the stock. 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.

8.7.12.5.3.2
(06-10-2021)
**Streamlined
Determinations under
IRC 66(c) and IRC
6015(f) - (Section 4.02 of
Rev. Proc. 2013-34)**

- (1) If a RS who filed a joint return, or a RS who did not file a joint return in a community property state, satisfies the threshold conditions discussed in IRM 8.7.12.5.3.1, Eligibility Threshold Requirements for Equitable Relief (Section 4.01 of Rev. Proc. 2013-34), and **all** factors identified in section 4.02 of Rev. Proc. 2013-34 are met, then relief is granted. These factors are listed below:
 - a. Marital Status (IRM 8.7.12.5.3.2.1)
 - b. Economic Hardship (IRM 8.7.12.5.3.2.2)
 - c. Knowledge or Reason to Know - (IRM 8.7.12.5.3.2.3)
- (2) If the RS does not satisfy **all** section 4.02 factors, the IRS will consider whether the RS is entitled to relief under the equitable factors in section 4.03 of Rev. Proc. 2013-34. See IRM 8.7.12.5.3.3.

8.7.12.5.3.2.1
(06-10-2021)
Marital Status

- (1) Marital Status Factor - The RS is no longer married to the NRS, as set forth in section 4.03(2)(a) of Rev. Proc. 2013-34. This criteria is met if the RS is longer married to the NRS **as of the date the IRS makes its determination**. For purposes of equitable relief, a RS will be treated as being "no longer married to the NRS" only in the following situations:

- a. The RS is divorced from the NRS,
- b. The RS is legally separated from the NRS under applicable state law,
- c. The RS is a widow or widower and is not an heir to the NRS's estate that would have sufficient assets to pay the tax liability, or
- d. The RS has not been a member of the same household as the NRS at any time during the 12-month period ending on the date the IRS makes its determination.

Note: For these purposes, a temporary absence (e.g. due to incarceration, illness, business, vacation, military service, or education) is not considered separation if the absent spouse is expected to return to the household. A RS is a member of the same household as the NRS for any period in which the spouses maintain the same residence.

8.7.12.5.3.2.2
(06-10-2021)

Economic Hardship

- (1) Economic Hardship Factor - The RS will suffer economic hardship if relief is not granted, as set forth in section 4.03(2)(b) of Rev. Proc. 2013-34. For purposes of this factor, an economic hardship exists if satisfaction of the tax liability in whole or in part will cause the RS to be unable to pay reasonable basic living expenses. Whether the RS will suffer economic hardship is determined based on rules similar to those provided in 26 CFR 301.6343-1(b)(4), and the IRS will take into consideration the RS's current income and expenses and the RS's assets.
- (2) The determination of a "reasonable amount for basic living expenses" will be made by the IRS and will vary according to the unique circumstances of the individual taxpayer. Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living. See 26 CFR 301.6343-1(b)(4).
- (3) Information from RS - In determining a reasonable amount for basic living expenses, the IRS will consider any information provided by RS, including:
 - a. The RS's age, employment status and history, ability to earn, number of dependents, and whether the RS is someone else's dependent;
 - b. The amount reasonably necessary for food, clothing, housing (including utilities, homeowner insurance, homeowner dues, etc.), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the RS's production of income (such as dues for a trade union or professional organization, or child care payments which allow the RS to be gainfully employed);
 - c. The cost of living in the geographic area where the RS resides;
 - d. The amount of property exempt from levy which is available to pay the RS's expenses;
 - e. Extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster, and
 - f. Any other factor that the RS claims bears on economic hardship

Note: The IRS will consider whether the RS shares expenses or has expenses paid by another individual (such as a family member, including a current spouse).

- (4) Comparison with Federal Poverty Guidelines - In determining whether the RS would suffer economic hardship if relief is not granted, section 4.03(2)(b) of

Rev. Proc. 2013-34 instructs the IRS to compare the RS's income to the Federal poverty guidelines for the RS's family size and to determine how much, if at all, the RS's monthly income exceeds the RS's reasonable basic monthly living expenses.

- a. **RS's Income is Below 250% of the Federal Poverty Guidelines** - This factor will weigh in favor of relief, **unless** the RS has assets out of which the RS can make payments towards the tax liability and still adequately meet the RS's reasonable basic living expenses.
- b. **RS's Income Exceeds 250% of the Federal Poverty Guidelines (Monthly Excess of \$300 or Less)**- This factor will weigh in favor of relief if the RS's monthly income exceeds the *RS's reasonable basic monthly living expenses by \$300 or less*, **unless** the RS has assets out of which the RS spouse can make payments towards the tax liability and still adequately meet the RS's reasonable basic living expenses.
- c. **RS's Income Exceeds 250% of the Federal Poverty Guidelines (Monthly Excess More than \$300)** - If the monthly excess is more than \$300 and the RS has sufficient assets to make payments towards the tax liability and still adequately meet the RS's reasonable basic living expenses, the IRS will consider all facts and circumstances (including the size of the RS's household) in determining whether the RS would suffer economic hardship if relief is not granted.

Note: Federal poverty guidelines are 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), *Poverty Line*. For more information on federal poverty guidelines, visit the *U. S. Department of Health & Human Service, Poverty Guidelines' webpage*.

- (5) If the RS is deceased, the economic hardship factor is not met for the purposes of making a streamlined equitable relief determination.

8.7.12.5.3.2.3
(06-10-2021)

**Equitable Relief -
Knowledge or Reason to
Know**

- (1) For information on "knowledge or reason to know," see IRM 8.7.12.5.1.2. This factor will weigh in favor of relief if the RS:
 - Did not know or have reason to know of the item giving rise to the understatement (deficiency) as of the date the joint return (including amended return) was filed, or the date the RS reasonably believed the joint return was filed; or
 - Reasonably expected, at the time the return was filed, that the NRS would pay the tax liability reported on the return within a reasonable period of time after filing the joint return.
- (2) This factor will weigh against relief if the RS:
 - Knew or had reason to know of the item giving rise to the understatement (deficiency)
 - Could not reasonably believe the RS would or could pay the tax liability shown on the return

Example: If prior to the return being filed, or the date the RS reasonably believed the return was filed, the RS knew of the NRS'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.

- (3) Actual knowledge of the item giving rise to the deficiency will not be weighed more heavily than any other factor.
- (4) Abuse or Financial Control (Exception to knowledge factor) - If the NRS abused the RS or maintained control of the household finances by restricting the RS's access to financial information, and because of the abuse or financial control, the RS was not able to challenge the treatment of any items on the joint return, or to question the payment of taxes reported as due on the joint return or challenge the NRS's assurance regarding payment of the taxes, for fear of the NRS's retaliation, then the abuse or financial control will **result in this factor being satisfied**.

Note: For addition information on abuse, see section 4.03(2)(c)(iv) of Rev. Proc. 2013-34, Abuse by the Non-requesting Spouse.

- (5) Equitable Relief Under IRC 66(c) Understatement Cases- A RS, who did not file a joint return in a community property state, must establish he or she did not know or have reason to know of an item of community income properly includible in gross income, which under the rules contained in IRC 879(a), would be treated as the income of the NRS. See IRM 8.7.12.7.1 (2).

8.7.12.5.3.3
(06-10-2021)
**Equitable Relief Factors
(Section 4.03 of Rev.
Proc. 2013-34)**

- (1) Section 4.03 of Rev. Proc. 2013-34 provides factors for determining whether to grant equitable relief. This guidance applies to requests for relief under IRC 66(c) or IRC 6015(f) where the RS has satisfied the threshold conditions (in IRM 8.7.12.5.3.1, Eligibility Threshold Requirements for Equitable Relief (Section 4.01 of Rev. Proc. 2013-34), but does not qualify for a streamlined determination. See IRM 8.7.12.5.3.2, Streamlined Determinations under IRC 66(c) and IRC 6015(f) - (Section 4.02 of Rev. Proc. 2013-34).
- (2) In determining whether it is inequitable to hold the RS liable for all or part of the unpaid income tax liability or deficiency, consider all the relevant facts and circumstances. The factors listed below are designed as guides and not intended to comprise an exclusive list. Other factors relevant to a specific request may also be taken into account in making a determination. No one factor or a majority of factors necessarily determines the outcome. The degree of importance of each factor varies depending on the RS's facts and circumstances. Abuse or the exercise of financial control by the NRS is a factor that may impact other factors, as described below. Factors to consider include the following:
 - a. Marital Status - See IRM 8.7.12.5.3.2.1
 - b. Economic Hardship - See IRM 8.7.12.5.3.2.2
 - c. Knowledge or Reason to Know - See IRM 8.7.12.5.1.2
 - d. Legal Obligation - See IRM 8.7.12.5.3.3.1
 - e. Significant Benefit - See IRM 8.7.12.5.3.3.2
 - f. Compliance with Income Tax Laws - See IRM 8.7.12.5.3.3.3
 - g. Mental or Physical Health - See IRM 8.7.12.5.3.3.4

8.7.12.5.3.3.1
(06-10-2021)
Legal Obligation

- (1) This factor requires a determination whether the RS or NRS 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.
- (2) This factor will weigh in favor of relief if the NRS has the sole legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement.

Note: This factor will be neutral if the RS knew or had reason to know, when entering into the divorce or agreement, that the NRS would not pay the income tax liability.

- (3) This factor will weigh against relief if the RS has the sole legal obligation. The fact that the NRS has been relieved of liability for the taxes at issue as a result of a discharge in bankruptcy is disregarded in determining whether the RS has the sole legal obligation.
- (4) This factor will be neutral 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.

8.7.12.5.3.3.2
(06-10-2021)
Significant Benefit

- (1) This factor requires a determination whether the RS significantly benefitted from the unpaid income tax liability or understatement. A significant benefit is any benefit in excess of normal support. See IRM 8.7.12.5.1.3 (2).
- (2) This factor will weigh against relief if the RS enjoyed the benefits of a lavish lifestyle, such as owning luxury assets and taking expensive vacations. If, however, the NRS controlled the household and business finances or there was abuse (see IRM 8.7.12.5.3.2.3 (4) such that the NRS made the decision on spending funds for a lavish lifestyle, then this mitigates this factor so that it is neutral.
- (3) This factor will weigh in favor of relief if only the NRS significantly benefitted from the unpaid tax or understatement, and the RS had little or no benefit, or the NRS enjoyed the benefit to the RS's detriment.
- (4) If the amount of unpaid tax or understatement was small such that neither spouse received a significant benefit, then this factor is neutral. Whether such amount is small will vary depending on the facts and circumstances.

8.7.12.5.3.3.3
(06-10-2021)
Compliance with Income Tax Laws

- (1) This factor requires a determination whether the RS has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year(s) to which the request for relief relates.
- (2) This factor will weigh in favor of relief if:
 - a. The RS is compliant for taxable years after being divorced from the NRS; or
 - b. The RS remains married to the NRS but filed a separate return and is compliant with the tax laws.
- (3) This factor will weigh against relief if:

- a. The RS is not compliant for taxable years after being divorced from the NRS and did not establish that he or she made a good faith effort to comply with the tax laws;
 - b. The RS remains married to the NRS, whether or not legally separated or living apart, continues to file joint returns with the NRS after requesting relief, and the joint returns are not compliant with the tax laws; or
 - c. The RS remains married to the NRS but filed a separate return, is not compliant with the tax laws, and did not establish he or she made a good faith effort to comply.
- (4) This factor will be neutral if:
- a. The RS made a good faith effort to comply, but was unable to fully comply, for taxable years after being divorced from the NRS;
 - b. The RS remains married to the NRS, whether or not legally separated or living apart, continues to file joint returns with the NRS after requesting relief, and the joint returns are compliant with the tax laws; or
 - c. The RS remains married to the NRS but filed a separate return, he or she made a good faith effort to comply with the tax laws but was unable to fully comply.

Example: Good faith effort to comply (after divorce) - If the RS timely filed an income tax return but was unable to fully pay the liability due to the RS's poor financial or economic situation after the divorce, then this factor will be neutral.

Example: Good faith effort to comply (spouses separated or living apart) - If the RS timely filed his or her return but was unable to fully pay the tax liability due to the RS's poor financial or economic situation as a result of being separated or living apart from the NRS, then this factor will be neutral.

8.7.12.5.3.3.4
(06-10-2021)
Mental or Physical Health

- (1) This factor requires a determination whether the RS was in poor physical or mental health.
- (2) This factor will weigh in favor of relief if the RS was in poor mental or physical health at:
 - a. The time the return or returns for which the request for relief relates were filed;
 - b. The time the RS reasonably believed such return or returns were filed; or
 - c. The time the RS requested relief.
- (3) The IRS will consider the nature, extent, and duration of the condition, including the ongoing impact of the illness.
- (4) This factor will be neutral if the RS was in neither poor physical nor poor mental health at the times identified in IRM 8.7.12.5.3.3.4 (2).

8.7.12.5.3.4
(06-10-2021)
IRC 6015(f) Refunds

- (1) Section 4.04 of Rev. Proc. 2013-34 provides guidance on a RS's eligibility for refunds in both understatement and underpayment cases.
- (2) A RS is eligible for a refund of separate payments made by the RS if he or she **establishes** that he or she provided the funds used to make the payment for which a refund is sought.

- (3) The RS is not eligible for refunds of:
 - a. Payments made with the joint return,
 - b. Other joint payments, or
 - c. Payments made by the NRS
- (4) A RS may be eligible for a refund of the RS's portion of these spouses' joint overpayment from another tax year that was applied to the joint liability for the year for which relief is requested, but only to the extent that the RS can establish he or she provided the funds for the overpayment.
- (5) The availability of refunds is subject to the refund statute of limitations. See IRM 8.7.12.5 (9).

8.7.12.6
(06-10-2021)
**Notice and Participation
of NRS**

- (1) **IRC Section 6015 Relief**
The NRS must be notified and given an opportunity to participate in administrative proceedings with respect to the RS's request for relief filed under IRC 6015. The IRS must send a notice to the NRS's **last known address** that informs the NRS of the RS's claim for relief, the preliminary determination, **and** the final determination. If the ATE is considering increasing the relief recommended, the NRS must be notified and given an opportunity to present further arguments and information. See IRC 6015(h)(2) and 26 CFR 1.6015-6.
- (2) **IRC Section 66(c) Relief**
The NRS must be notified and given an opportunity to participate in administrative proceedings with respect to the RS's request for relief filed under IRC 66(c). The IRS must send a notice to the NRS's **last known address** that informs the NRS of the RS's request for relief and provide the NRS with an opportunity to submit any information for consideration in determining whether to grant the RS relief from the federal income tax liability resulting from the operation of community property law. The IRS will share with each spouse the information submitted by the other spouse, unless the IRS determines that the sharing of this information will impair tax administration. Do not disclose the other spouse's new last name, location, telephone number or any information about the other spouse's employment, income or assets. See 26 CFR 1.66-4(k).
- (3) If the request for relief (Form 8857 or other written statement) indicates an address for the NRS that differs from the address of record, then the letter may also be issued to such other address. If Compliance makes a preliminary determination that the RS is eligible for full or partial relief, the NRS can file a protest with appeal rights. When a spouse appeals the preliminary determination, Compliance will notify the other spouse of the appeal. For Appeals' initial contact letters, see Exhibit 8.7.12-1, Initial Contact Letters.
- (4) The IRS's contact with the NRS with respect to the joint return does not constitute third party contact under IRC 7602(c).
- (5) The NRS does not have the right to petition the Tax Court to review the IRS's administrative determination to grant relief to the RS. For additional information, see Rev. Proc. 2003-19 and Maier v. Commissioner, 119 T.C.267 (2002), aff'd., 360 F.3d 361 (2d Cir. 2004).
- (6) For the RS's docketed deficiency case that includes a request for innocent spouse relief, Chief Counsel will serve the NRS with notice of the claim and advise the NRS of the right to intervene by filing a notice of intervention with

the Tax Court within 60 days of service of the petition. See Tax Court Rule 325, Notice and Intervention. This Tax Court rule applies if the NRS is not already part of the court proceedings (e.g. where the NRS previously petitioned Tax Court for a redetermination of the underlying joint liability). Confirm with Area Counsel that the NRS has been notified of the right to intervene.

8.7.12.6.1
(06-10-2021)

Potentially Abusive NRS

- (1) Form 8857, Request for Innocent Spouse Relief, and Pub 971, Innocent Spouse Relief, notify the RS that the IRS is required by law to contact the NRS during the relief consideration process. Do not disclose a spouse's personal information to the other spouse. This includes the other spouse's new last name, location, or telephone number; any information about the other spouse's employment, income or assets, or the income level at which an outstanding account (suspended from collection activity) will be reactivated. For more information, see IRM 25.15.1.9.2, Authorized Disclosure Rules.
- (2) The IRS is aware of the sensitive nature of innocent spouse relief requests involving alleged abuse of the NRS against the RS. In some cases, the file may contain information that shows that the RS was previously abused and fears harassment or retaliation from the NRS in response to filing the request for relief. If abuse is alleged, contact the RS to determine if it is necessary to take additional precautions to conceal the RS's location. Document any actions taken in the case activity record.
- (3) If there is a need to conceal the RS's location, additional mailing precautions are needed if the ATE and RS are in the same geographic location (e.g. in the same state). For correspondence communications between Appeals and the NRS, follow the procedures below:
 - a. **Correspondence to NRS (other than Letter 3289)** - Prepare the letter's header and signature block using the name, title, return address, and contact information of the ATM (if not co-located with the ATE) or the Area Director, and then send the letter to the ATM or Area Director for signature and mailing. The ATM or Area Director will forward any responses from the NRS to the ATE.
 - b. **Letter 3289, Final Appeals Notice to Non-Requesting Spouse-** Prepare the Letter 3289 header and signature block using the name, title, return address, and contact information of the ATM (if not co-located with the ATE) or the Area Director, and then send the letter to the ATM or Area Director for signing. The ATM or Area Director will return the signed (undated letter) for inclusion in the administrative file for APS to mail during the case closing. See IRM 8.20.6.26.1, Innocent Spouse Notice of Determination Procedures.

Note: For Campus ATEs, follow normal procedures for mailing letters from the centralized campus location.

8.7.12.6.2
(06-10-2021)

**Deceased
Non-Requesting Spouse**

- (1) The NRS is entitled to receive all required letters, even if the NRS is deceased. Usually, the RS will notify the IRS if the NRS is deceased. Also, a deceased taxpayer can also be identified on IDRS as indicated below:
 - The literal "DECD" after his/her name on INOLE and ENMOD
 - Date of Death on INOLE - Generated by a Social Security Administrative record
 - Transaction Code 540 on TXMOD or IMFOLT for the year of death

Note: For required letters, see Exhibit 8.7.12-1, Initial Contact Letters, IRM 8.7.12.9, Appeals Consideration, and IRM 8.7.12.10, Closing an Innocent Spouse Request, and its related subsections.

- (2) If IDRS does not indicate the NRS is deceased, request from the RS or representative the following information:
 - Date of death and copy of death certificate,
 - County in which the taxpayer died,
 - County in which the taxpayer resided at time of death,
 - A will or letter of testamentary, validated through the court, and
 - Name, address and telephone number of the decedent's fiduciary (executor, executrix, heirs or administrator of the taxpayer's estate), if any
- (3) If IDRS does not identify the NRS as deceased and Appeals receives information establishing that the NRS is deceased, send a request to APS (with a copy of the death certificate to) APS to:
 - Add the "DECD" indicator to IDRS using CC INCHG, and
 - Input TC 540 using CC REQ77 for the year of the taxpayer's death, unless the date of death is in the current year or there is a filing requirement for the year of death.
- (4) For a deceased NRS, determine the proper person who can represent the NRS. Ask the RS if he/she knows whether the NRS has an estate. In addition, research IDRS using CC INOLE with definer G, to determine if the IRS is aware of an estate. If yes, research using CC CFINK for POA information under the EIN of the estate. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in a position of and acts as the taxpayer, not as an appointee or representative. A fiduciary does not need to complete a third party authorization unless the fiduciary wishes to authorize someone else to act in place of the decedent. If necessary, obtain the following:
 - Form 56, Notice Concerning Fiduciary Relationship, when necessary to prove the creation or termination of a fiduciary relationship
 - Court papers naming the person as the court-appointed or court certified personal representative for the deceased taxpayer.
 - Authorized representative forms, when necessary to verify an authorized representative.

Caution: Use caution when determining from CFINK the NRS's authorized representative. A third party authorization expires with the death of the taxpayer. See instructions for Form 56, Notice Concerning Fiduciary Relationship.

- (5) See the following for guidance on addressing letters to deceased taxpayers:

If the NRS is deceased and	Then
<ul style="list-style-type: none"> • There is no estate • You do not know if there is an estate • The fiduciary is unknown 	<p>Address the first name line to the deceased NRS at the NRS's last known address:</p> <p>Example: John Doe (Deceased)</p>

If the NRS is deceased and	Then
There is an estate	<p>Address the first name line to the estate of the taxpayer and address the second name line to the executor, fiduciary, or representative at the address of the person named on the second name line:</p> <p>Example:</p> <p>Estate of John Doe Joseph Elm, Executor</p>
The fiduciary is known	<p>Address the first name line to the deceased NRS and address the second name line in care of the fiduciary or representative at the address of the person named on the second name line:</p> <p>Example:</p> <p>John Doe (Deceased) c/o Jane Green, CPA</p>

- (6) For docketed cases, notify the assigned Counsel attorney that the NRS is deceased.
- (7) Document the case activity record with actions and discussions, such as the following:
 - NRS is deceased and date of death
 - If a required letter was not sent to the NRS and state the reason (see example below):

Example: Letter 3289 was not sent to the NRS because no relief was granted to the RS and mail to the NRS's last known address was returned undeliverable. A new address could not be located.

8.7.12.7
(06-10-2021)
**Relief from Community
Property Laws**

- (1) In general, married individuals domiciled in a community property state who do not elect to file a joint return must report half of the total community income earned by the spouses during the tax year. IRC 66, Treatment of Community Income, and its related regulations provide guidance on the treatment of community income after a determination is made under **state law** that an item of income is community income. See related IRM guidance below:
 - a. IRM 25.15.5.4, Domicile
 - b. IRM 25.15.5.5, Community and Separate Property
 - c. IRM 25.15.5.6, Community Income
- (2) The states listed below are community property states:
 - Arizona
 - California
 - Idaho
 - Louisiana
 - Nevada
 - New Mexico

- Texas
- Washington
- Wisconsin

Note: Also, see IRM 25.15.5.2, Community Property States, and Exhibit 25.18.1, Comparison of State Law Differences in Community Property States.

- (3) Per 26 CFR 1.66-1, Treatment of Community Income, the rules of IRC 66
 - a. Apply only to community income as defined by state law
 - b. Do not apply to income from property that was formerly community property, but in accordance with state law, has ceased to be community property becoming, e.g., separate property or property held by joint tenancy or tenancy in common
- (4) In general, married individuals domiciled in a community property state who do not elect to file a joint federal income tax return must report half of the total community income earned by the spouses during the taxable years, and are liable for paying federal income tax on the amount of community income required to be reported on their separate returns, except when **one** of the following exceptions apply:
 - a. The spouses live apart and meet the qualifications of 26 CFR 1.66-2 (See IRM 8.7.12.7.1)
 - b. The IRS denies a spouse the federal income tax benefits resulting from community property law under 26 CFR 1.66-3 because the spouse acted as if solely entitled to the income and failed to notify his or her spouse of the nature and amount of the income prior to the due date for filing his or her spouse's return (See IRM 8.7.12.7.2)
 - c. A RS qualifies for traditional relief from the federal income tax liability resulting from the operation of community property law under 26 CFR 1.66-4(a) (See IRM 8.7.12.7.3.1)
 - d. A RS qualifies for equitable relief from the federal income tax liability resulting from the operation of community property law under 26 CFR 1.66-4(b) (See IRM 8.7.12.7.3.2)
- (5) Married taxpayers filing separate returns in community property states may request relief (under regulations prescribed by the Secretary) from the operation of state community property laws. See IRC 66(c), Spouse Relieved of Liability in Certain Other Cases. This is also considered innocent spouse relief. See IRM 8.7.12.7.3, IRC 66(c) - Innocent Spouse Relief.
- (6) Transferee liability - The relief provisions of IRC 66 will not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to federal income tax on community income may remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by federal or state transferee liability or property laws (other than community property laws). See 26 CFR 1.66-1(c), Transferee Liability.

8.7.12.7.1
(06-10-2021)
**IRC 66(a) Treatment of
Community Income
Where Spouses Live
Apart**

- (1) Per IRC 66(a), Treatment of Community Income Where Spouses Live Apart, spouses must report their income according to the rules of IRC 879(a), instead of following the general rule that community income is taxed one-half to each spouse domiciled in a community property state, **if** all of the following criteria are met:

- a. The spouses are married to each other at **any time** during the calendar year
- b. The spouses live apart at **all times** during the calendar year
- c. The spouses do not file a joint return with each other for the calendar year
- d. One or both spouses have earned income that is community income for the calendar year
- e. No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the calendar year (See IRM 8.7.12.7.1 (3))

Note: For purposes of IRC 66, living apart requires that the spouses maintain separate residences. Spouses who maintain separate residences due to temporary absences are not considered to be living apart. Spouses who are not members of the same household under 26 CFR 1.6015-3(b) are considered to be living apart for purposes of this section. See “**Note**” in IRM 8.7.12.5.2 (2).

Example: Living Apart (Temporary Absence) - H and W are married, domiciled in State A, a community property state, and have lived apart the entire 2015 tax year. W, who is in the Army, was stationed in Korea for the entire calendar year. During their separation, W intended to return home to H, and H intended to live with W upon W’s return. H and W do not file a joint return for the 2015 tax year. H and W may not report their income under IRC 879(a) because a temporary absence due to military service is not living apart as contemplated under IRC 66.

- (2) IRC 879(a) - If **all** of the conditions in IRM 8.7.12.7.1 (1) are met, the spouses in community property states must follow the income reporting rules identified below:
 - a. Earned income (within the meaning of IRC 911(d)(2), other than trade or business income and a partner’s distributive share of partnership income, is treated as the income of the spouse who rendered the personal services.
 - b. Trade or business income is treated as provided in IRC 1402(a)(5)(A). Therefore, gross income and deductions attributable to such trade or business are treated as the gross income and deductions of the spouse carrying on such trade or business. If the trade or business is jointly operated, these items are treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions.
 - c. A distributive share of partnership income is treated as provided in IRC 1402(a)(5)(B). Therefore, all of such distributive share will be included in computing the net earnings from self-employment (and self-employment tax) of the spouse who is the partner.
- (3) For the purposes of determining if earned income is “transferred between the spouses,” transferred income does not include a *de minimis* amount of earned income that is transferred between the spouses. In addition, any amount of earned income transferred for the benefit of the spouses’ child will not be treated as an indirect transfer to one spouse. Additionally, income transferred between spouses is presumed to be a transfer of earned income. This presumption is rebuttable.

Example: Transfer of Earned Income-De Minimis Exception - H and W are married, domiciled in State B, a community property state, and have lived apart the entire 2015 tax year. H and W are estranged and intend to live apart indefinitely. H and W did not file a joint return for the 2015 tax year. H occasionally visits W and their two children, who live with W. When H visits, he often buys gifts for the children, takes the children out to dinner, and occasionally buys groceries or gives W money to buy the children new clothes for school. Both W and H have earned income in the 2015 year that is community income under the laws of State B. H and W may report their income on separate returns under this section.

Example: Transfer of Earned Income -- Source of Transfer - H and W are married, domiciled in State C, a community property state, and have lived apart the entire 2015 tax year. H and W are estranged and intend to live apart indefinitely. H and W do not file a joint return for the 2015 tax year. W provides H \$1,000 a month from March 2015 through August 2015 while H is working part-time and seeking full-time employment. W is not legally obligated to make the \$1,000 payments. W earns \$75,000 in wage income during the 2015 tax year. W also receives \$10,000 in capital gains income in December 2015. H wants to report his income in accordance with this section, alleging that the \$6,000 that he received from W was not from W's earned income, but from the capital gains income W received in 2015. The facts and circumstances surrounding the periodic payments to H from W do not indicate that W made the payments out of her capital gains. H and W may not report their income under IRC 879(a), as the \$6,000 W transferred to H is presumed to be from W's earned income, and H has not presented any facts to rebut the presumption.

8.7.12.7.2
(06-10-2021)
**IRC 66(b) - Denial of
Community Property
Benefits Where Spouse
Not Notified**

- (1) The IRS can deny the federal income tax benefits of community property law to any spouse with respect to any income **if** such taxpayer acted as if solely entitled to such income **and** failed to notify his or her spouse of the nature and amount of the income before the due date (including extensions) for filing his or her spouse's return for the tax year in which the income was derived. See IRC 66(b).
- (2) Whether a spouse has acted *as if solely entitled to the item of income* is a "facts and circumstances" determination. This determination focuses on whether the spouse used, or made available, the item of income for the benefit of the marital community. For examples that illustrate these rules, see 26 CFR 1.66-3(c).
- (3) Effect of Relief - If the Service denies a spouse the federal income tax benefits from community property law for an item of income, it will be included, in its entirety, in the gross income of the spouse to whom the IRS denied such benefits. The tax liability arising from the inclusion of the item of community income are subject to the deficiency procedures under IRC 6212 against this spouse.

8.7.12.7.3
(06-10-2021)
**IRC 66(c) Innocent
Spouse Relief**

- (1) IRC 66(c) authorizes the IRS, per procedures in 26 CFR 1.66-4, to relieve a spouse from an income tax liability resulting from the operation of community property law if **all** of the following apply:

- a. The spouses did not file a joint return for the tax year
 - b. The RS did not include in his or her gross income for the tax year an item of community income properly includible, under the rules in IRC 879(a), which would be treated as the other spouse's income (See IRM 8.7.12.7.1 (2))
 - c. The RS establishes that he or she did not know of, and had no reason to know of, such item of community income
 - d. Taking into account all facts and circumstances, it is inequitable to include such item of community income in the RS's gross income.
- (2) 26 CFR 1.66-4, Request for Relief from the Federal Income Tax Liability Resulting from the Operation of Community Property Law, provides guidance on the following two types of relief:
- a. Traditional relief - Applies only to deficiencies arising out of omitted income. See IRM 8.7.12.7.3.1.
 - b. Equitable relief - Applies to a deficiency or an unpaid tax. See IRM 8.7.12.7.3.2.

Note: Also, see 26 CFR 1.66-4 for examples that illustrate the rules of this section.

- (3) For the "time and manner for requesting relief," see IRM 8.7.12.7.3.3.
- (4) The NRS must receive notice of, and an opportunity to participate in, any proceeding with respect to an innocent spouse request for relief. See IRM 8.7.12.6, Notice and Participation of NRS.
- (5) If relief is granted, the item of community income is included in the gross income of the NRS and not the gross income of the RS.

8.7.12.7.3.1
(06-10-2021)

Traditional Relief from Liability Resulting from an Item of Community Income

- (1) Traditional relief applies only to deficiency cases. A RS will receive relief from the federal income tax liability resulting from the operation of community property law for an item of community income if **all** of the following apply:
 - a. The RS did not file a joint return for the tax year for which he or she requests relief
 - b. The RS did not include in his or her gross income for the tax year an item of community income properly includible, which under the rules of IRC 879(a), would be treated as the NRS's income
 - c. The RS establishes that he or she did not know of, and had no reason to know of, the item of community income (see IRM 8.7.12.7.3.1.1)
 - d. Taking into account all of the facts and circumstances, it is inequitable to include in the RS's income such item of community income. (See IRM 8.7.12.7.3.1.2)

Note: See 26 CFR 1.66-4(a).

8.7.12.7.3.1.1
(06-10-2021)

IRC 66(c) Traditional Relief from an Item of Community Income - Knowledge or Reason to Know

- (1) A RS had knowledge or reason to know of an item of community income if he or she either actually knew of the item of community income, or if a reasonable person in similar circumstances would have known of the item of community income. All the facts and circumstances are considered in determining whether a RS had reason to know of an item of community income. The relevant facts and circumstances include, but are not limited to:

- a. The nature of the item of community income
- b. The amount of the item of community income relative to other income items
- c. The spouses' financial situation
- d. The RS's educational background
- e. The RS's business experience
- f. Whether the item of community income was reflected on prior years' returns (e.g. investment income omitted that was regularly reported on prior years' returns)

- (2) If the RS is aware of the source of community income or the income-producing activity, but is unaware of the specific amount of the NRS's community income, the RS is considered to have knowledge or reason to know of the item of community income. The RS's lack of knowledge of the specific amount of community income does not provide a basis for relief under this section.

8.7.12.7.3.1.2

(06-10-2021)

IRC 66(c) Traditional Relief from an Item of Community Income - Inequitable

- (1) For traditional relief, all the facts and circumstances are considered in determining whether it is inequitable to hold a RS liable for a **deficiency** attributable to an item of community income. Relevant factors for consideration include, but are not limited to, the following:

- a. Whether the RS benefitted, directly or indirectly, from the omitted item of community income. A benefit **includes normal support**, but does not include *de minimis* amounts. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers received several years after the filing of the return.

Example: If a RS receives from the NRS property (including life insurance proceeds) that is traceable to items of community income attributable to the NRS, the RS will have benefitted from those items of community income.

- b. Whether the NRS deserted the RS
- c. Whether the spouses are divorced or separated
- d. Any other factors relevant to whether it would be inequitable to hold the RS liable, including factors described in section 4.03 of Rev. Proc. 2013-34 (See IRM 8.7.12.5.3.3, Equitable Relief Factors (Section 4.03 of Rev. Proc. 2013-34.))

- (2) Fraudulent scheme - If the IRS establishes that a spouse transferred assets to his or her spouse as part of a fraudulent scheme, relief is not available under IRC 66(c). For purposes of this section, a fraudulent scheme includes a scheme to defraud the IRS or another third party, such as a creditor, ex-spouse, or business partner.
- (3) Prior closing agreement or offer in compromise - The RS is not entitled to relief under IRC 66 for any tax year for which the RS has entered into a closing agreement (other than pursuant to IRC 6224(c) relating to partnership items) with the Secretary that disposes of the same liability that is the subject of the request for relief. In addition, a RS is not entitled to relief under IRC 66 for a tax year for which the RS has entered into an offer in compromise with the Secretary.

8.7.12.7.3.2
(06-10-2021)
IRC 66(c) Equitable Relief

- (1) Per 26 CFR 1.66-4(b), equitable relief may be available when the four requirements in IRM 8.7.12.7.3.1.2 (1) are not satisfied, but it would be inequitable to hold the RS liable for the unpaid tax or deficiency. For factors relevant to whether it would be inequitable to hold a RS liable, as described under Rev. Proc. 2013-34, see IRM 8.7.12.5.3.3, Equitable Relief Factors (Section 4.03 of Rev. Proc. 2013-34).
- (2) Effect of Relief - See IRM 8.7.12.7.2 (3).

8.7.12.7.3.3
(06-10-2021)
Time and Manner for Requesting Relief

- (1) To request relief from the federal income tax liability resulting from the operation of community property law under IRC 66(c), a RS must submit, within the time period for requesting relief, a Form 8857, Request for Innocent Spouse Relief, or other written request, signed under penalties of perjury, stating why relief is appropriate. The RS must also comply with the IRS's reasonable requests for information that will assist in identifying and locating the NRS. 26 CFR 1.66-4(j) identifies the time for requesting relief, also shown in:
 - a. IRM 8.7.12.7.3.3.1, Time Period for Requesting Traditional Relief; and
 - b. IRM 8.7.12.7.3.3.2, Time Period for Requesting Equitable Relief.

8.7.12.7.3.3.1
(06-10-2021)
Time Period for Requesting Traditional Relief

- (1) The **earliest** time for submitting a request for traditional relief resulting from the operation of community property law for an amount underreported on, or omitted from, the RS's separate return is the date the RS receives notification of an audit or a letter or notice from the IRS stating that there may be an outstanding liability regarding that year.
- (2) The **latest** time for submitting a request for traditional relief is 6 months before the expiration of the period of limitations on assessment, including extensions, against the NRS for the tax year that is the subject of the RS's request for relief, unless the examination of the RS's return begins during that 6-month period.
- (3) If the examination of the RS's return begins during that 6-month period, the latest time for requesting traditional relief is 30 days after the start of the examination.

8.7.12.7.3.3.2
(06-10-2021)
Time Period for Requesting Equitable Relief

- (1) The **earliest** time for submitting a request for equitable relief relating to a deficiency from the operation of community property law is the date the RS receives notification of an audit or a letter of notice from the IRS stating that there may be an outstanding liability regarding that year.
- (2) The **earliest** time for submitting a request for equitable relief relating to a liability properly reported but unpaid is the filing of the RS's federal income tax return.
- (3) The latest time for submitting a request for equitable relief is before the time for collecting an unpaid liability has expired or the time for requesting refund has expired. See IRM 8.7.12.5.3 (6).

8.7.12.7.3.3.3
(06-10-2021)
Premature Requests

- (1) The IRS will not consider a premature request under IRC 66(c). See IRM 8.7.12.7.3.3.1 (1) and IRM 8.7.12.7.3.3.2 (1) for the earliest time for submitting a traditional or equitable request. The notices or letters referenced in these sections do not include notices issued pursuant to IRC 6223 relating to Tax Equity and Fiscal Responsibility Act (TEFRA) partnership proceedings. These

notices or letters do include notices of computational adjustment to a partner or partner's spouse (Form 4549, Report of Income Tax Examination Changes) that reflect a computation of the liability attributable to partnership items of the partner or partner's spouse.

8.7.12.8 (06-10-2021) Invalid Joint Election

- (1) The following are situations that could result in a determination that the joint election was invalid:
 - a. Invalid election - One of the individuals on the joint return did not elect to file a joint return. See IRM 25.15.1.2.9, Joint Assessment/One Signature.
 - b. Forgery - One spouse did not sign the return. See IRM 8.7.12.8.2, Forgery, and IRM 8.7.12.8.1, Tacit Consent Factors.
 - c. Unlawful - Taxpayers had no legal right to file jointly. See IRM 25.15.19.2.6, Unlawful.
 - d. The return was signed under duress. See IRM 8.7.12.5 (5).
- (2) If the taxpayer seeks to invalidate the joint election, the taxpayer must submit verification. The taxpayer must provide an allocation of all income, credits, and payments. See IRM 25.15.19.2.4, Joint Returns - Invalidated, and IRM 25.18.1, Basic Principles of Community Property Law, for states that recognize common law marriages. If the taxpayer raises this issue for the first time in Appeals, follow the procedures in IRM 8.6.1.7.4, Taxpayer Raises New Issue, and IRM 8.6.1.7.5, Taxpayer Provides New Information.
- (3) Refunds due a taxpayer for payments made with respect to a tax liability stemming from invalid joint elections are available if the claim was filed within 3 years of the date the return was filed, or 2 years from the payment date, whichever is later, and a married filing separate (MFS) return was filed, or the taxpayer was not required to file a return. See IRM 8.7.7.3, Periods of Limitation in Claim and Overpayment Cases.
- (4) If Appeals processing is needed because of an invalid joint election, ensure that APS has sufficient instructions for processing the account changes.
 - a. If the **secondary spouse is not liable** because of the invalid joint election, then APS will process the taxpayer account(s) following procedures in IRM 8.20.7.40.7(3)
 - b. If the **primary spouse is not liable**, then APS will process the taxpayer account(s) following procedures in IRM 8.20.7.40.7(4).

8.7.12.8.1 (06-10-2021) Tacit Consent Factors

- (1) Tacit consent means that the joint return is valid even though the RS may not have signed it because the consent is implied by or inferred from the RS's actions or statements.
- (2) Here are some questions to consider when determining whether tacit consent applies:
 - a. Did the RS have a filing requirement? Did the RS file a MFS return? In general, spouses domiciled in a community property state are required to report their share of the community property, not just their income. See IRM 8.7.12.7, Relief from Community Property Laws, for considering whether the RS had a filing requirement.
 - b. Did the RS participate in the preparation of the return by providing return information?

- c. Was there a tax benefit, i.e., reduced income tax or Earned Income Tax Credit?
- d. Did the RS have another reason to file jointly (e.g., divorce decree, immigration purposes, etc.?)
- e. Did the spouses file joint returns in prior or subsequent years?
- f. Did the RS sign other tax related documents, such as in other locations on the return, forms filed after the return was filed, extension requests, and installment agreements?
- g. Are there any return schedules that belong to or include the RS?
- h. Were there any gains or losses belonging to the RS?
- i. Are there any income items on the joint return belonging solely to the RS?

8.7.12.8.2
(06-10-2021)
Forgery

- (1) If the RS alleges forgery, he/she should have provided a statement addressing the forgery issue.
- (2) Review the case for tacit consent.
- (3) The burden of proof is on the taxpayer to prove forgery and no intent to file a joint return.
- (4) For additional information, see IRM 25.15.1.2.4, Forged Signatures.

8.7.12.9
(06-10-2021)
Appeals Consideration

- (1) A spouse, who filed a joint return, can request relief as soon as he or she becomes aware of an income tax liability for which the other spouse should be held responsible. The timing of the spouse's request for relief could affect when Appeals can consider an appeal of Compliance's preliminary determination. For more information, see the following:
 - IRM 8.7.12.9.1, Innocent Spouse Raised During Consideration of a Non-docketed Liability Case
 - IRM 8.7.12.9.2, AUR/Innocent Spouse Cases
 - IRM 8.7.12.9.3, Docketed Innocent Spouse Cases
 - IRM 8.7.12.13, CDP/EH and Innocent Spouse Cases
- (2) For conference and settlement practices, see IRM 8.6.1, Conference and Issue Resolution, IRM 8.6.2, Appeals Case Memo Procedures, and IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form. For a stand-alone innocent spouse request or innocent request under CDP/EH, do not consider the underlying tax liability. Consider only whether relief from the liability can be granted under IRC 6015 or IRC 66. If Compliance makes a preliminary determination to fully or partially deny relief, the RS may appeal the denial. If the ATE is considering increasing the amount of relief recommended by Compliance, the NRS must be notified and given an opportunity to present further arguments and information. See IRM 8.7.12.6, Notice and Participation of NRS, and IRM 8.6.1.7.5, Taxpayer Provides New Information.
- (3) If the NRS appeals, and not the RS, and Appeals is considering reducing the relief amount previously determined by Compliance, the RS must be notified and given an opportunity to participate. The NRS can appeal a preliminary determination to the extent relief is granted, but cannot appeal a decision to deny relief.
- (4) Do not disclose a spouse's personal information to the other spouse. This includes the other spouse's new last name, location, telephone number, em-

ployment, income, assets, or the income level at which an outstanding account (suspended from collection activity) will be reactivated.

- (5) For initial contact letters, see Exhibit 8.7.12-1, Initial Contact Letters. The following letters are also used by Appeals for working innocent spouse requests:

Letter Number	Mail to	Letter Title	Purpose
Letter 3791	Non-appellate NRS	Appeals Innocent Spouse Case Letter to NRS Allowing for Information or Conference	Notifies the non-appellate NRS that Appeals is considering granting the RS full or partial relief or increasing the relief that IRS previously granted. This letter offers the non-appellate NRS an opportunity to participate in the appeal.
Letter 3792	Non-appellate RS	Appeals Innocent Spouse Case Letter to RS Allowing for Information or Conference	Notifies the non-appellate RS that the NRS appealed IRS's decision to allow relief and that Appeals is considering a change to the amount of relief previously determined. This letter offers the non-appellate RS an opportunity to participate in the appeal.
Letter 3288	RS	Final Appeals Determination to RS	Final determination reviewable by the Tax Court
Letter 3289	NRS	Final Appeals Notice to NRS	Notice to NRS of final determination

Note: See IRM 8.7.12.6.2, Deceased Non-Requesting Spouses, for determining how to address letters to a deceased NRS.

- (6) If Compliance's preliminary determination was not a merit based determination, then return the case to Compliance for a merit based determination. Appeals should never make the first determination on an innocent spouse claim.

Example: The RS was denied relief for res judicata. During the Appeals conference, the RS established that he/she did not meaningfully participate in the proceeding and that Compliance never addressed the factors/criteria.

- (7) Fully explain joint and several liability and the criteria for relief under applicable IRC sections.

Note: The RS can not withdraw a request for relief after the preliminary determination letter has been issued.

- (8) Note that the Tax Court's scope of review under IRC 6015(e)(7), Standard And Scope of Review, is limited to the administrative record, established at the time of the final determination, and any newly discovered or previously unavailable evidence. Therefore, Compliance and Appeals must ensure that the administrative record is properly maintained and complete. Accordingly, the

administrative record must include the RS's Form 8857 and all documents the RS and NRS provide during the administrative proceeding. The administrative record must also include all documents the Service obtains from third parties during the administrative proceeding. Finally, the administrative record must include all documents the Service produces during the administrative proceeding (e.g., documents required under IRM 8.7.12) and any other Service records Compliance or Appeals considered before issuing the final determination (e.g., federal tax transcripts).

8.7.12.9.1
(06-10-2021)
**Innocent Spouse Raised
During Appeals'
Consideration of a
Non-docketed Liability
Case**

- (1) If the taxpayer raises the issue of relief from joint and several Liability during an appeal of a non-docketed proposed deficiency case, secure a completed Form 8857, Request for Innocent Spouse Relief, or a similar statement containing the same information, signed under penalties of perjury.
- (2) Generally, for a non-docketed proposed deficiency case, the case is returned to the originating Compliance function for consideration of the relief from joint and several liability issue. Jurisdiction is released for Compliance's consideration, with appeal rights.
- (3) If unusual circumstances exist (e.g., short statute), Appeals and Compliance will decide the best way to handle the request on a case-by-case basis.

8.7.12.9.2
(06-10-2021)
**AUR/Innocent Spouse
Cases**

- (1) When Automated Underreporter Unit (AUR) and CCISO are simultaneously considering issues on the same taxpayer(s), regarding both a proposed deficiency (AUR) and a request for Innocent Spouse relief (CCISO), coordination between the functions is necessary. AUR is responsible for the deficiency issues, but not innocent spouse relief. AUR coordination with Appeals becomes necessary if the taxpayer(s) appeals either the AUR or CCISO determination, or both. An appeal (protest) of the innocent spouse preliminary determination can be made before or after AUR issues a notice of deficiency. Therefore, Appeals can receive the case in either pre-assessment or post-assessment status.
- (2) When AUR receives a Form 8857 or similar written statement, AUR notifies CCISO. AUR's procedures for issuing a notice of deficiency vary depending on whether CCISO has made a preliminary determination at the time AUR is ready to issue the notice of deficiency. For additional information, see IRM 25.15.7.3, Campus Compliance Examination Operation/Automated Underreporter (CCEO/AUR) Overview, and IRM 4.19.3.22.1.20, Innocent Spouse Relief Cases.

8.7.12.9.2.1
(06-10-2021)
**CCISO Has Not Made
Determination**

- (1) When AUR is ready to issue a notice of deficiency and CCISO has not yet made a determination on the innocent spouse request for relief, AUR checks IDRS Command Code ISTSRA to determine the latest stage, and then:
 1. If stage 01 - 04, AUR issues the notice of deficiency to both spouses and notifies CCISO that a notice of deficiency was issued.
 2. If stage 05 or higher, AUR contacts CCISO to determine if the notice of deficiency should be issued. AUR does not issue the notice of deficiency during the time period for the RS or NRS to appeal CCISO's preliminary determination.

Note: If the case is in stage 11, AUR does not issue the notice of deficiency until 51 days after the Stage 11 date.

Note: When CCISO has made a final determination for full relief, AUR issues a notice of deficiency to only the NRS.

Reminder: See IRM 25.15.14, Innocent Spouse Tracking System, to identify the ISTS processing stages.

8.7.12.9.2.2 (06-10-2021) CCISO Made Determination

- (2) When AUR issues a notice of deficiency and CCISO has not made an IS determination, AUR will issue a Letter 4314-C, Automated Underreporter Interim Letter, only to the RS. This letter informs the RS of the impending notice of deficiency and that CCISO is considering the RS's request for IS relief.

- (1) When CCISO makes the IS determination before AUR issues the notice of deficiency, AUR will follow instructions in IRM 25.15.7.3, Campus Compliance Examination Operation/Automated Underreporter (CCEO/AUR) Overview.

- a. When CCISO denies or partially allows relief and neither spouse appeals (protests) this IS preliminary determination, AUR prepares and sends the notice of deficiency to both spouses, following normal AUR procedures.

Note: When CCISO makes a preliminary determination to partially deny relief, AUR will issue Letter 4314-C, Automated Underreporter Interim Letter, only to the RS. This letter informs the RS of the impending notice of deficiency and explains that although CCISO has made a determination, the notice of deficiency must include the full deficiency amount.

- b. When CCISO has made a preliminary determination to grant full relief and the NRS does not appeal this determination, then CCISO will complete the process for the final determination to grant full relief. AUR will issue a notice of deficiency only to the NRS.

Note: Appeals could receive the deficiency case for consideration if the taxpayer(s) appeals the AUR deficiency decision or the taxpayer(s) petitions the United States Tax Court for a redetermination in response to the notice of deficiency.

8.7.12.9.2.3 (06-10-2021) Appealed IS Case/AUR Notice of Deficiency Not Issued

- (1) If prior to AUR issuing the notice of deficiency, CCISO informs AUR that the IS determination was appealed:

- a. After the time to appeal has expired, CCISO will send the innocent spouse case to Appeals.
- b. AUR will continue to process the deficiency case.

- (2) AUR will:

- a. Provide copies of the AUR case contents.
- b. Ensure all AUR related issues are addressed.
- c. Notify Appeals of any changes to the case based on additional information.
- d. At the end of the CP2000 suspense period, send Letter 2626-C, AUR - Underreported Income/Penalty and Interest/Additional and Final Correspondence. Include a special paragraph using the following or similar language:

Example: “An appeal of the Innocent Spouse determination was filed. While the appeal is pending, we will continue processing the underreported income issue(s). We will send a notice of deficiency to both spouses within the next two to four weeks, which outlines your rights to petition the United States Tax Court.”

- e. Issue a notice of deficiency by updating the case with Process (PC) 75, indicating on IDRS that a notice of deficiency was issued. See IRM 4.19.3.2(14), Overview of IMF Automated Underreporter.
- f. Provide a copy of the notice of deficiency to Florence APS, to be forwarded to the ATE assigned to the IS case.
- g. Maintain and monitor the deficiency case.
- h. Notify Appeals of any subsequent changes to the original deficiency amount (i.e. recomputed notice/supplemental report, case closed “No Change,” etc.)
- i. Follow normal procedures to assess the joint account if the taxpayer does not petition the U.S. Tax Court in response to AUR’s notice of deficiency.

Note: If the appeal of CCISO’s IS determination is still pending at the end of the notice of deficiency suspense period, AUR will send the RS Letter 1802-C, Unreported Income; Final URP Response to Conclusive Correspondence (CP-2000), and include a special paragraph using the following or similar language:

Example: “An appeal of the Innocent Spouse determination was filed. While the appeal is pending, you may receive collection notices because our automated system requires and sends certain notices when the tax is assessed.”

8.7.12.9.2.4
(06-10-2021)

**Appealed IS Case/Notice
of Deficiency Issued**

- (1) If, after AUR issued the notice of deficiency, CCISO or AUR is informed that either the RS or the NRS has appealed the IS preliminary determination:
 - a. After the time to appeal the deficiency has expired, CCISO will send the innocent spouse file to Appeals.
 - b. AUR will continue to process their case.
- (2) AUR will:
 - a. Issue an interim letter informing the taxpayer that proceedings before Appeals do not waive or extend the period within which a petition may be filed with Tax Court.
 - b. Provide copies of the AUR case contents, including a copy of the notice of deficiency. If a copy of the notice of deficiency is not available at the time AUR provides the copy of the deficiency case file, AUR will fax a copy to Florence APS when available.
 - c. Maintain and monitor the deficiency case.
 - d. Notify Appeals of any subsequent changes to the original deficiency amount (i.e. recomputed notice/supplemental report, case closed “No Change”, etc.).
 - e. Follow normal procedures to assess the deficiency on the joint account if the taxpayer does not petition the U.S. Tax Court in response to the notice of deficiency.

Note: If the appeal of CCISO's preliminary determination is still pending at the end of the notice of deficiency suspense period, AUR will send the RS Letter 1802-C, Unreported Income; Final URP Response to Conclusive Correspondence (CP-2000), and include a special paragraph using the following or similar language:

Example: "An appeal of the Innocent Spouse determination was filed. While the appeal is pending, you may receive collection notices because our automated system requires and sends certain notices when the tax is assessed."

8.7.12.9.2.5

(06-10-2021)

Appealed AUR Non-docketed Case with IS Issue

- (1) If prior to AUR issuing the notice of deficiency, taxpayer appeals both the income tax deficiency and the IS determination, AUR will inform CCISO that the income tax case has been appealed. AUR will then send the pre-90 day income tax deficiency case to Appeals.
- (2) CCISO will:
 - a. Make a preliminary determination and issue letters to the taxpayers.
 - b. Wait until the time to appeal the IS determination has expired for both spouses.
 - c. Forward the IS case to the same Appeals office as the AUR deficiency case, if either spouse appeals the IS preliminary determination.
 - d. Issue the final IS determination letter to the RS and final notice to the NRS, if no appeal of the IS preliminary determination.
 - e. Suspend the case for 106 days.
 - f. Forward the closed IS case file to Appeals for association with the AUR deficiency case, if the AUR case is still open in Appeals at the time CCISO is ready to close the IS case.
- (3) Appeals will be responsible for:
 - Issuing the notice of deficiency, if unagreed.
 - Adjusting the taxpayers' account(s) based upon the final determination made by CCISO.

8.7.12.9.2.6

(06-10-2021)

AUR Docketed Case with IS Issue

- (1) If, prior to the IS determination, the taxpayer(s) petitions the U.S. Tax Court in response to AUR's notice of deficiency, AUR will inform CCISO that the taxpayer(s) petitioned the tax court.
- (2) AUR will route the docketed deficiency case to Appeals.
- (3) CCISO will:
 - a. Make a preliminary IS determination.
 - b. Coordinate with Counsel to determine if CCISO will send preliminary determination letters to the RS and the NRS or forward the case to Appeals.
 - c. If instructed by Counsel, forward the IS case to the same Appeals office assigned the the docketed deficiency case.

8.7.12.9.2.7
(06-10-2021)
**Special “Carding”
Procedures for APS on
IS/AUR Cases**

- (1) Compliance routes non-docketed AUR/Innocent Spouse cases to Florence APS and docketed Innocent Spouse cases to the Appeals office indicated on the docket list. Check ACDS to confirm that the taxpayer’s related case is not assigned to a different ATE. For ACDS card-in procedures, see IRM 8.20.5.29.5.3, IS/AUR Case Carding.

8.7.12.9.3
(06-10-2021)
**Docketed Innocent
Spouse Cases**

- (1) The RS may petition the Tax Court to determine the appropriate relief available if such petition is filed:
 - a. During the 90-day period beginning on the day after the final determination for IRC 6015 relief is mailed, or
 - b. After 6 months of filing the request, if the IRS has not issued a determination.

Note: See IRC 6015(e)(1)(A).

- (2) A taxpayer can petition the Tax Court for relief under IRC 6015 in response to:
 - A final innocent spouse relief determination letter
 - A notice of deficiency
 - A CDP notice of determination (See IRM 8.7.12.13, CDP/EH and Innocent Spouse Cases)

8.7.12.9.3.1
(06-10-2021)
**Innocent Spouse Issue
Raised in Petition**

- (1) If IRC 6015 relief is raised for the first time in a docketed case, treat it in the same manner as any other affirmative issue raised in a docketed case. Jurisdiction is retained by either Appeals or Counsel. Per Chief Counsel Notice CC-2013–011 (June 7, 2013), Counsel will refer the case to CCISO to consider the request for relief.
- (2) When a request for relief under IRC 6015 is raised for the first time in a petition to the Tax Court and the taxpayer simultaneously files a Form 8857 with the IRS, the petition to the court takes precedence, since the court has jurisdiction over the tax year(s) at issue.
- (3) Counsel (or Appeals under Rev. Proc. 2016-22) has functional jurisdiction over the matter and handles the case and request for relief, and either settles or litigates the issue on its merits, as appropriate. Counsel and Appeals may ask CCISO or Field Examination for assistance in developing a previously unaudited issue, while retaining jurisdiction.
- (4) In the event a Form 8857 is filed simultaneously with the filing of the petition or subsequent to the filing of the petition while Counsel (or Appeals) has functional jurisdiction over the matter, the receiving function forwards the form to the appropriate Associate Area Counsel handling the litigation as determined from TL CATS or the Docket List. The IDRS account module typically shows a litigation freeze code TC 520.

8.7.12.9.3.2
(06-10-2021)
**NRS Notice and
Intervention**

- (1) In response to IRC 6015(e)(4), the Tax Court wrote Tax Court Rule 325, Notice and Intervention.

- (2) Counsel must file a Notice of Filing of Petition and Right to Intervene (Notice of Filing) in all cases involving IRC 6015 (including deficiency cases, stand-alone cases, and collection due process cases) on the NRS on or before 60 days from the date of service of a petition raising IRC 6015 relief, unless the NRS is already a party to the case.
- (3) This Notice of Filing advises the NRS of the right to intervene by filing a notice of intervention with the Court no later than 60 days after the date the Notice of Filing was served on the NRS. Counsel must simultaneously file with the Court a copy of the Notice of filing with an attached certificate of service.
- (4) If each spouse files a separate petition from a notice of deficiency and one spouse raises relief under IRC 6015, or only one spouse files a petition, then the Notice of Filing must be sent to the other spouse because that spouse is not a party to the IRC 6015 case. If each spouse raises IRC 6015 relief in separate petitions, then a Notice of Filing must be sent to each spouse regarding the right to intervene in the other spouse's case. For additional guidance, see *CCDM 35.2.2.12*, Answers in Cases Where Petitioners Seek Relief from Joint and Several Liability.
- (5) If the NRS desires to intervene, the NRS files a notice of intervention with the Court no later than 60 days after service of the Notice of Filing of the petition by Counsel, unless the Court directs otherwise. If the NRS intervenes, Counsel provides Appeals with a copy of the notice of intervention. Counsel and Appeals must coordinate with each other regarding the NRS's right to intervene and/or intervention.

8.7.12.9.3.3
(06-10-2021)
**Preparation of
Settlement Documents**

- (1) Appeals is responsible for preparing the necessary computations for docketed cases settled by either Appeals or Counsel.
- (2) Counsel generally prepares the settlement documents for docketed innocent spouse cases.
 - a. In Field Appeals offices - Appeals generally mails the settlement documents to be executed by the taxpayer or counsel of record.
 - b. In Campus Appeals offices - Counsel generally prepares and mails the documents to be executed by the taxpayer or counsel of record. See IRM 8.4.2.6.1, Stipulation/Decision Preparation.
- (3) Where unusual or complex circumstances exist, proposed settlements of regular docketed cases are reviewed by the Appeals Team Manager or Appeals Area Director before the settlement documents are forwarded to the taxpayer for signing.

8.7.12.10
(06-10-2021)
**Closing an Innocent
Spouse Request**

- (1) This section provides information on documents needed for closing innocent spouse requests. Every ACDS work unit requires an Appeals Case Memo (ACM) and a Form 5402, Appeals Transmittal and Case Memo. The ACM must adequately explain and support the basis on which a work unit is disposed. The exception to this general rule is where disposition, including all ACM comments and rationale about the case, can fit in the Remarks section of the Form 5402. Use Form 5402 to alert the ATM and/or APS employee of significant items in the case to be addressed. Alerts could include information on the following:

- a. Imminent statute date
- b. Amounts of advance payments and payment periods
- c. IRC 6603 deposits and deposit periods
- d. IRC 6404(g) interest suspension
- e. Court jurisdiction, if appropriate
- f. Special assessment and/or processing instructions

Note: See IRM 8.6.2.3.2, Using Form 5402 as the Appeals Case Memo (ACM), and IRM 8.6.2.3.3, Using Form 5402 as an Alert.

- (2) Ensure that ACDS generates the appropriate Customized Form 5402 by verifying the case is correctly carded-in on ACDS. See IRM 8.7.12.3 (3), Appeals Technical Employee's Receipt of Innocent Spouse Cases. The detailed card-in instructions in *Exhibit 8-20.5-1, Innocent Spouse - ACDS STATDATE/Statute CODE Tables*, must be followed to allow ACDS to distinguish pre-assessment liabilities (subject to deficiency procedures) from post-assessment liabilities. For the Customized Form 5402 instructions, visit Appeals' **ACDS page**, listed under **Systems and Technology**, for a link to *Customized 5402 Instructions and Contacts*, and then select:
 - a. "Customized Form 5402-EXAM INCOME TAX" for a pre-assessment innocent spouse request, or
 - b. "Customized Form 5402-INNSP" for a post-assessment innocent spouse request.

Note: For information on determining the necessary ISTS closing instructions for APS, see IRM 8.7.12.10.3.1, Customized Form 5402, Appeals Transmittal and Case Memo.

- (3) For each tax period controlled on AIMS, prepare Form 5403 instructions. The assigned APS Tax Examiner will use these instructions to prepare Form 5403, Appeals Closing Record, for processing account adjustments and closing the AIMS module. Use IDRS command code AMDIS to determine if the account module is on AIMS. See IRM 2.8.3, AIMS Command Code AMDIS. Campus-sourced claims are generally not controlled on AIMS.
- (4) See the following guidance for closing an innocent spouse relief determination:
 - a. IRM 8.7.12.10.1, Non-Docketed Pre-Assessment IRC 6015 Relief Determination
 - b. IRM 8.7.12.10.2, Docketed Pre-Assessment IRC 6015 Relief Determination
 - c. IRM 8.7.12.10.3, Post-Assessment IRC 6015 Relief Determination
 - d. IRM 8.7.12.10.4, Form 8857 Filed During 90-Day or 150-Day Period
 - e. IRM 8.7.12.10.5, IRC 66(c) Relief Determination

8.7.12.10.1
(06-10-2021)
**Non-Docketed
Pre-Assessment IRC
6015 Relief
Determination**

- (1) Before assessing an additional income tax, the IRS must send the taxpayer (by certified or registered mail) notice of the deficiency to the taxpayer's last known address. See IRM 8.7.12.11, Notice of Deficiency with IRC 6015 Relief Determination. A notice of deficiency is not required if the taxpayer signs a form waiving the right to petition the United States Tax Court for a redetermination of the tax and the restrictions on assessment and collection of the deficiency. See IRC 6213(d), Waiver of Restrictions.

- (2) When both spouses agree to the joint liability, the assessment will be requested on the joint MFT 30 account. When relief is requested under IRC 6015 and the agreed liability is determined to be an individual liability, assessment on MFT 31 will be required. This includes cases where one spouse agrees to a liability and one does not.
- (3) In an agreed case where relief is granted in full for the entire deficiency, a signed agreement is not required from the RS. Only the NRS must sign the agreement.
- (4) Partial agreement does not mean partial relief.
- (5) In an agreed case where relief is partially or fully denied, a signed waiver agreement is required from both spouses.
- (6) This section contains guidance for preparing closing documents for protested pre-assessment liabilities that include innocent spouse relief determinations. This includes the following:
 - a. IRM 8.7.12.10.1.1, Agreed Pre-Assessment IRC 6015 Relief Determination
 - b. IRM 8.7.12.10.1.2, Unagreed Pre-Assessment IRC 6015 Relief Determination

8.7.12.10.1.1
(06-10-2021)

**Agreed Pre-Assessment
IRC 6015 Relief
Determination**

- (1) For an agreed pre-assessment liability, Appeals will solicit agreement from the liable spouse(s), using one of the waiver forms below, for the deficiency issues and include on the waiver form a statement that identifies the innocent spouse relief determination:
 - a. Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment
 - b. Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment

Reminder: Use Form 870-AD if settlement of the underlying liability is based on hazards of litigation. If not based on hazards of litigation, use Form 870. See IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form. This Form 870 type decision should relate only to the deficiency liability, and not the innocent spouse relief determination.

- (2) The Form 870/Form 870-AD must include only pre-assessment years. See the following for sample language, based on the innocent spouse relief decision, includible on Form 870/Form 870-AD:

Relief Determination	Example	Sample Form 870 or Form 870-AD Language
Fully Allowed	Appeals' determination is to grant to the RS (Mary Trout) full relief from the \$25,000 deficiency. - NRS (Thomas Trout)	Mary Trout, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c), or IRC 6015(f) for the tax year ended December 31, 20XX. Relief has been granted in full under _____. Mary Trout is jointly and severally liable for \$0.00, including penalties or interest. Thomas Trout, TIN XXX-XX-XXXX, is individually liable for \$25,000 plus penalties and interest.
Partially Disallowed	Appeals' determination is to grant to the RS (Mary Trout) partial relief for \$14,000 of the total \$25,000 deficiency. - NRS (Thomas Trout)	Mary Trout, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c), or IRC 6015(f) for the tax year ended December 31, 20XX. Relief has been granted in part under _____. Mary Trout is jointly and severally liable for \$11,000 plus penalties and interest. See attached statement. Thomas Trout, TIN XXX-XX-XXXX, is jointly and severally liable for \$11,000 and individually liable for \$14,000 plus penalties and interest.
Fully Disallowed	Appeals' determination is to fully deny to the RS (Mary Trout) relief from the \$25,000 deficiency. - NRS (Thomas Trout)	Mary Trout, TIN XXX-XX-XXXX, requested Innocent Spouse relief under IRC 6015(b), IRC 6015(c), or IRC 6015(f) for the tax year ended December 31, 20XX. Relief has been denied. Thomas Trout and Mary Trout are jointly and severally liable for the deficiency of \$25,000 plus penalties and interest.

8.7.12.10.1.1.1
(06-10-2021)

IRC 6015 Relief Fully Allowed (Pre-Assessed, Agreed Non-Docketed)

- (1) For an agreed closure of a pre-assessed non-docketed case, provide the following closing documents:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 913, Agreed Cases-Closing Letter (for each spouse)
 - d. Form 870 or Form 870-AD
 - e. Settlement computations, as needed
 - f. Form 5403 instructions (if AIMS controlled)
- (2) On Form 870/Form 870-AD, enter the full tax deficiency and penalty dollar amounts (as applicable) for each tax period. Include on this waiver form a statement identifying the innocent spouse relief determination, as described in IRM 8.7.12.10.1.1, Agreed Pre-Assessment IRC 6015 Relief Determination.
- (3) If the NRS agrees with the tax deficiency and penalty but is unwilling to sign a waiver form that includes the innocent spouse relief decision to grant relief, solicit the NRS's agreement on a new waiver form without this language. If the NRS signs the waiver agreeing only to the deficiency assessment, then prepare for the NRS the following closing letters:
 - a. Letter 913, Agreed Cases Closing Letter
 - b. Letter 3289, Final Appeals Notice to Non-Requesting Spouse

8.7.12.10.1.1.2
(06-10-2021)

**IRC 6015 Relief Partially
Disallowed
(Pre-Assessed, Agreed
Non-Docketed)**

- (1) For an agreed closure of a pre-assessed non-docketed case, provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 913, Agreed Cases-Closing Letter (for each spouse)
 - d. Form 870 or Form 870-AD
 - e. Settlement computations, as needed
 - f. Form 5403 instructions (if AIMS controlled)
- (2) Prepare a separate Form 870 for each spouse, using the same Form 870 type for both. Include on both spouses' Form 870 a statement identifying the innocent spouse relief determination, as described in IRM 8.7.12.10.1.1, Agreed Pre-Assessment Spouse Relief Determination.
 - a. On the NRS's Form 870/Form 870-AD, enter the full tax deficiency and penalty dollar amounts (as applicable) for each tax period.
 - b. On the RS's Form 870/Form 870-AD, enter the tax deficiency and penalty dollar amounts (as applicable) for which innocent spouse relief is denied.
- (3) If the NRS agrees with the tax deficiency and penalty but is unwilling to sign a waiver form that includes the innocent spouse relief decision to grant relief, solicit the NRS's agreement on a new waiver form without this language. If the NRS signs the waiver agreeing only to the deficiency assessment, then prepare for the NRS the following closing letters:
 - a. Letter 913, Agreed Cases Closing Letter (deficiency only)
 - b. Letter 3289, Final Appeals Notice to Non-Requesting Spouse
- (4) If the RS agrees with the tax deficiency and penalty amounts (for which relief is denied) but is unwilling to sign a waiver form that includes the innocent spouse relief decision to deny relief, solicit the RS's agreement on a new waiver form without this language. If the RS signs the waiver agreeing only to the deficiency assessment, then prepare for the RS the following closing letters:
 - a. Letter 913, Agreed Cases Closing Letter (deficiency)
 - b. Letter 3288, Final Appeals Determination to Requesting Spouse
- (5) If the RS signs a Form 870/Form 870-AD waiver, without the language denying innocent spouse relief, then Appeals will:
 - a. Assess the deficiency,
 - b. Mail Form 3288, Final Appeals Determination to Requesting Spouse, and
 - c. Suspend the case to allow the RS the opportunity to petition the Tax Court for the innocent spouse relief determination only.

8.7.12.10.1.1.3
(06-10-2021)

**IRC 6015 Relief Fully
Disallowed
(Pre-Assessed, Agreed
Non-Docketed)**

- (1) For an agreed closure of a pre-assessed non-docketed case, provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 913, Agreed Cases-Closing Letter (for each spouse)
 - d. Form 870 or Form 870-AD (required for both spouses)
 - e. Settlement computations, as needed
 - f. Form 5403 instructions (if AIMS controlled)

- (2) On Form 870/Form 870-AD (either jointly or a duplicate original), enter the full tax deficiency and penalty dollar amounts (as applicable) for each tax period. Include on this waiver form a statement identifying the innocent spouse relief determination, as described in IRM 8.7.12.10.1.1, Agreed Pre-Assessment IRC 6015 Relief Determination.
- (3) If either spouse is unwilling to sign solely due to an unfavorable innocent spouse relief decision in respect to that spouse, follow the procedures in IRM 8.7.12.10.1.1.2 (3) or IRM 8.7.12.10.1.1.2 (4), as applicable.

8.7.12.10.1.2
(06-10-2021)
**Unagreed
Pre-Assessment IRC
6015 Relief
Determination**

- (1) For an unagreed pre-assessment liability, Appeals will mail a notice of deficiency to the spouse(s) remaining liable after the innocent spouse relief determination. If both spouses are liable and only one spouse signs a Form 870 or Form 870-AD waiver, Appeals will mail a notice of deficiency to the non-signing liable spouse only. Appeals uses Letter 894, Notice of Deficiency. IRM 8.17.4, Notices of Deficiency, contains Appeals' primary guidance for preparing a notice of deficiency. Follow the procedures in IRM 8.17.4.4, How an AO Requests Preparation of a Notice of Deficiency.

8.7.12.10.1.2.1
(06-10-2021)
**IRC 6015 Relief Fully
Allowed (Pre-Assessed,
Unagreed
Non-Docketed)**

- (1) For an unagreed closure of a pre-assessed non-docketed case, provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Settlement computations, as needed
 - d. Form 5403 instructions (if AIMS controlled)
 - e. Closing letters and enclosures as shown below:

Requesting Spouse	Non-requesting Spouse
<ul style="list-style-type: none"> Letter 3288, Final Appeals Determination to Requesting Spouse 	<ul style="list-style-type: none"> Letter 894, Notice of Deficiency Form 4089, Notice of Deficiency - Waiver Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax Form 4089-A, Notice of Deficiency Statement Letter 3289, Final Appeals Notice to NRS

Note: Waiver Form 4089 is enclosed with Letter 894. If Form 4089 is not used, waiver Form 870 and Form 4089-A are enclosed.

- (2) For guidance on preparing the NRS's Letter 894, Notice of Deficiency, see IRM 8.7.12.11.1, Notice of Deficiency - IRC 6015 Relief Fully Allowed.
- (3) For instructions on the mailing requirements, see IRM 8.20.6.26.2, Full Relief Allowed to Requesting Spouse (RS).

8.7.12.10.1.2.2
(06-10-2021)
**IRC 6015 Relief Partially
Disallowed
(Pre-Assessed,
Unagreed
Non-Docketed)**

- (1) For an unagreed closure of a pre-assessed non-docketed case, provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Settlement computations, as needed

- d. Form 5403 instructions (if AIMS controlled)
- e. Closing letters and enclosures as shown below:

Requesting Spouse	Non-requesting Spouse
<ul style="list-style-type: none"> Letter 894, Notice of Deficiency Form 4089, Notice of Deficiency - Waiver Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax Form 4089-A, Notice of Deficiency Statement Letter 3288, Final Appeals Determination to Requesting Spouse 	<ul style="list-style-type: none"> Letter 894, Notice of Deficiency Form 4089, Notice of Deficiency - Waiver Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax Form 4089-A, Notice of Deficiency Statement Letter 3289, Final Appeals Notice to NRS

Note: Waiver Form 4089 is enclosed with Letter 894. If Form 4089 is not used, waiver Form 870 and Form 4089-A are enclosed.

- (2) For guidance on preparing Letter 894, Notice of Deficiency, see IRM 8.7.12.11.2, Notice of Deficiency - IRC 6015 Relief Partially Disallowed.
- (3) For instructions on the mailing requirements, see IRM 8.20.6.26.3, Partial Relief Allowed to Requesting Spouse (RS).

8.7.12.10.1.2.3
(06-10-2021)
IRC 6015 Relief Fully Disallowed (Pre-Assessed, Unagreed Non-Docketed)

- (1) For an unagreed closure of a pre-assessed non-docketed case, provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Settlement computations, as needed
 - d. Form 5403 instructions (if AIMS controlled)
 - e. Closing letters and enclosures as shown below:

Requesting Spouse	Non-requesting Spouse
<ul style="list-style-type: none"> Letter 894, Notice of Deficiency Form 4089, Notice of Deficiency - Waiver Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax Form 4089-A, Notice of Deficiency Statement Letter 3288, Final Appeals Determination to Requesting Spouse 	<ul style="list-style-type: none"> Letter 894, Notice of Deficiency Form 4089, Notice of Deficiency - Waiver Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax Form 4089-A, Notice of Deficiency Statement Letter 3289, Final Appeals Notice to NRS

Note: Waiver Form 4089 is enclosed with Letter 894. If Form 4089 is not used, waiver Form 870 and Form 4089-A are enclosed.

- (2) For guidance on preparing Letter 894, Notice of Deficiency, see IRM 8.7.12.11.3, Notice of Deficiency - IRC 6015 Relief Fully Disallowed.

- (3) For instructions on the mailing requirements, see IRM 8.20.6.26.4, Relief Denied to Requesting Spouse (RS).
- 8.7.12.10.1.2.4
(06-10-2021)
IRC 6015 Relief Determination for AUR Deficiency Case
- (1) If Appeals has both the innocent spouse relief issue and AUR deficiency issues and an agreement has been reached with both spouses, follow the procedures in IRM 8.7.12.10.1.1, Agreed Pre-Assessment Innocent Spouse Relief Determination.
- (2) If Appeals has only the innocent spouse relief issue and the deficiency is still under consideration by AUR, prepare the closing documents for a standalone innocent spouse relief request. In addition:
- Contact AUR for information on the status of the deficiency case decision and when AUR will process an assessment.
 - On Form 5402, inform APS of the status of the deficiency assessment.
 - On Form 5402, instruct APS to adjust the account based on the innocent spouse relief determination after the deficiency is assessed.
- 8.7.12.10.2
(06-10-2021)
Docketed Pre-Assessment IRC 6015 Relief Determination
- (1) This section contains guidance for preparing closing documents for docketed pre-assessment liabilities that include innocent spouse relief determinations. This includes the following:
- IRM 8.7.12.10.2.1, Agreed Pre-Assessment IRC 6015 Relief Determination
 - IRM 8.7.12.10.2.2, Unagreed Pre-Assessment IRC 6015 Relief Determination
- (2) Determine whether one or both spouses petitioned the Tax Court. If only the RS petitioned and the IRC 6015 relief determination is before the Tax Court, determine if the NRS filed a notice of intervention for the IRC 6015 relief determination. See IRM 8.7.12.9.3.2, NRS Notice and Intervention.
- (3) Appeals must review source documents, such as the petition and any court orders in the file, regarding the caption. In addition, Appeals must access www.ustaxcourt.gov to ensure the proper caption is used on the decision document. For assistance with preparing the Decision Document, see IRM 8.4.1.11.2, Stipulation/Decision Preparation.
- 8.7.12.10.2.1
(06-10-2021)
Agreed Pre-Assessment IRC 6015 Relief Determination
- (1) For an agreed closure of a pre-assessed docketed case, provide the following:
- Form 5402, Appeals Transmittal and Case Memo
 - Appeals Case Memo, as needed
 - Form 5403 instructions (if AIMS controlled)
 - Decision Document
 - Settlement computation, as needed
 - Statement of Account for Docketed Cases
- (2) Stipulation/Decision Document
- If both spouses timely petition the Tax Court in response to the notice of deficiency, then both spouses' name caption and signatures (as petitioners) are required on the decision document.
 - If the RS only timely petitions the Tax Court in response to the notice of deficiency and the NRS timely files a notice of intervention, then both

spouses' name caption and signatures are required on the decision document (i.e. RS as petitioner and NRS as intervenor).

- c. If the RS only timely petitions the Tax Court in response to a notice of deficiency and the NRS does not file a notice of intervention, then only the RS's name caption and signature (as petitioner) is required on the decision document. For the NRS, prepare closing Letter 3289, Final Appeals Notice to Non-Requesting Spouse.

8.7.12.10.2.2
(06-10-2021)

**Unagreed
Pre-Assessment IRC
6015 Relief
Determination**

- (1) For an unagreed closure of a pre-assessed docketed case, Appeals will forward the case to Area Counsel for trial preparation, containing the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Settlement computation, as needed
- (2) Use Letter 971, Letter Advising No Settlement Reached - Docketed Case, to notify a petitioner that no settlement has been reached and that the case has been referred to Counsel for trial preparation.

8.7.12.10.3
(06-10-2021)

**Post-Assessment IRC
6015 Relief
Determination**

- (1) For post-assessment IRC 6015 relief determinations, prepare the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 3288, Final Appeals Determination to Requesting Spouse
 - d. Letter 3289, Final Appeals Notice to Non-Requesting Spouse
 - e. Form 5403 instructions (if AIMS controlled)
- (2) For information includible on Form 5402, see IRM 8.7.12.10.3.1, Customized Form 5402, Appeals Transmittal and Case Memo.
- (3) The RS can petition the Tax Court for a relief determination after 6 months of filing the request. See IRM 8.7.12.9.3, Docketed Innocent Spouse Cases. If the RS petitioned the Tax Court prior to the Service's final determination for the innocent spouse relief request under IRC 6015, alert the Area Counsel attorney of the status of the innocent spouse case.
- (4) Appeals uses Letter 3288, Final Appeals Determination to Requesting Spouse, to notify the RS of the IRS's final determination of the RS's request under IRC 6015. This letter also explains how the RS can petition the Tax Court if the RS disagrees with the IRS's decision. Similar to a notice of deficiency, the time for petitioning the Tax Court must be no later than 90 days from the date of the final determination letter. The ATM and ATCL are the authorized signers of Letter 3288, Final Appeals Determination to Requesting Spouse, and Letter 3289, Final Appeals Notice to Non-Requesting Spouse.

Note: Once issued, Letter 3288, Final Appeals Determination to Requesting Spouse, cannot be rescinded.

- (5) For an agreed closure of a docketed post-assessment IRC 6015 relief determination, secure the petitioner's signature (and signature of intervenor, if applicable) on a Decision Document instead of mailing Letter 3288. Appeals must review source documents, such as the petition and any orders in the file, regarding the caption. In addition, Appeals must access www.ustaxcourt.gov to

ensure the proper caption is used on the decision document. For assistance with preparing the Decision Document, see IRM 8.4.1.11.2, Stipulation/ Decision Preparation.

8.7.12.10.3.1

(06-10-2021)

**Customized Form 5402,
Appeals Transmittal and
Case Memo**

- (1) As discussed in IRM 8.7.12.10 (2), ensure that ACDS generates the appropriate Customized Form 5402 by verifying the case is correctly carded in on ACDS. The ATE is responsible for providing APS with the necessary disposition information for updating ACDS, ISTS and IDRS. IRM 25.15.14, Innocent Spouse Tracking System, is the IRS's primary resource for interpreting ISTS transcripts and determining the required ISTS updates.
- (2) At closing, APS will input the appropriate ISTS updates through the ISTS closing stages. Therefore, the ATE must provide APS with the required entries for updating ISTS Stage 12 (Final Determination Issued). For every final innocent spouse relief determination year, entries are required for documenting on ISTS the following:
 - a. The decision whether relief was granted,
 - b. The innocent relief code section and subsection, and
 - c. The reason code for disallowing relief, if fully or partially disallowed
- (3) For a pre-assessment liability, following normal procedures for completing the "Customized Form 5402-EXAM INCOME TAX" and include under the "Disposal Information" the ISTS final determination information described in paragraph 2 above. For a post-assessment liability, the "Customized Form 5402-INNSP" contains designated fields, as labeled below, to capture this same resolution information:
 - ISTS ADP Code - See IRM 8.7.12.10.3.1.1
 - ISTS Code Section - See IRM 8.7.12.10.3.1.2
 - ISTS ADP Reason Code - See IRM 8.7.12.10.3.1.3
- (4) On the "Customized Form 5402-INNSP," entries are not required in the following fields:
 - Amount Claimed
 - Appeals Amount Allowed
 - Appeals Amount Disallowed
- (5) The ATE must review the account modules for levies, liens, Offers-in Compromise, Installment Agreements, missing payments, and collection statute dates to determine whether these issues have an impact on the innocent spouse case. Address these issues and any special processing instructions on the Customized Form 5402.
- (6) Provide APS with instructions for allocating payments and credits.

8.7.12.10.3.1.1

(06-10-2021)

ISTS ADP Code

- (1) For each innocent spouse relief claim year, enter one of following codes to document the relief determination. For the Customized Form 5402-INNSP, enter this code under **ISTS ADP Code**.

Required Entry	If Relief is
A	Allowed in Full

Required Entry	If Relief is
P	Partially Disallowed
D	Disallowed in Full

8.7.12.10.3.1.2
(06-10-2021)
ISTS Code Section

- (1) For each innocent spouse relief claim year, enter one of following codes to document the relevant codes section under which innocent spouse relief was considered. For the Customized Form 5402-INNSP, enter this code under **ISTS Code Section**, also referred to as an activity code (explanation code).

Required Entry	Explanation
6015b	IRC 6015(b)
6015c	IRC 6015(c)
6015fd	IRC 6015(f) understatement/deficiency - <i>See paragraph 2 below</i>
6015fo	IRC 6015(f) underpayment/original liability
66ceqr	IRC 66(c) equitable relief — community property
66cins	IRC 66(c) innocent spouse — community property

- (2) On disallowed deficiency cases, **DO NOT** use code “6015fd” when entering the code section unless the taxpayer only requested relief under IRC 6015(f) and the IRS did not consider relief under IRC 6015(b) or IRC 6015(c). It is a given that the IRS considered relief under IRC 6015(f), in addition to IRC 6015(b) or IRC 6015(c). Use code “6015(b)” or “6015(c)” as appropriate.

Exception: If the case is an understatement that is untimely under IRC 6015(b) or IRC 6015(c) but timely under IRC 6015(f), then use “6015(fd).”

- (3) In any other combination of partial allowance/disallowance, the code section (activity code) input will be the one which **reflects the highest dollar amount allowed**.

Example: RS is seeking relief from a \$1,000 understatement
\$500 is allowed under IRC 6015(b)
\$250 is allowed under IRC 6015(f)
\$250 is disallowed under IRC 6015(f)
Enter activity code “P6015B,” with the appropriate **reason code** for partial **disallowance** under IRC 6015(b).

Note: For additional examples, see IRM 25.15.14.4.1.11, Preliminary Determination Issued.

8.7.12.10.3.1.3
(06-10-2021)

ISTS ADP Reason Code

- (1) For each innocent spouse relief claim year, enter one of following codes to document the reason for fully or partially **disallowing** the request for relief. For the Customized Form 5402-INNSP, enter this code under **ISTS ADP Reason Code**. If the **ADP** is **P** or **D**, then select from the list below the primary reason for the disallowance:

Reason Code	Explanation
A	Liability attributable to the RS
B	RS received significant benefit from the unpaid/unreported liability Note: Don't use with IRC 6015(c).
BT	At the time the return was signed, the RS had no reason to believe the tax would be paid
DA	Disqualified assets transferred to avoid paying tax
E	It is equitable to hold the RS liable Note: Don't use with IRC 6015(c).
FT	Fraud/fraudulent transfers of assets between the spouses
K	Knowledge of item giving rise to deficiency
MS	Marital status not met for IRC 6015(c)
O	Other (should only be used with managerial approval)
OC	Offer in compromise was previously accepted for the RS
P	Paid in full after claim was received
RB	Refund barred by Internal Revenue Code (IRC)
S	Statute barred for filing Form 8857
V	Verification missing

Note: The activity code "RJ" (Res Judicata) is a reason to **non-qualify** a relief request, and not a reason for disallowance.

Note: If denying recaptured credits only under IRC 6015(b) or IRC 6015(c), use disallowance reason code **K** if the RS knew about the unreported issue that caused the reversal of the credits. Use disallowance reason code **A** if the RS did not know about the unreported issue that caused the reversal of the credits. Under IRC 6015(f), use disallowance reason code **E**.

- (2) If relief is allowed but the refund is barred, enter disallowance reason code **RB**.

8.7.12.10.4
(06-10-2021)

Form 8857 Filed During the 90-Day or 150-Day Period

- (1) In cases where Appeals issued the notice of deficiency for a joint return and during the 90-day or 150-day period Appeals receives from one of the spouses a Form 8857, Request for Innocent Spouse Relief, APS will pull the case from suspense and return it to the assigned ATE. The ATE will:
 - a. Notify the RS, either by letter or telephone, that the period for filing a petition with the Tax Court is not extended by the filing of the request for relief.
 - b. Notify the RS that if he or she plans to file a petition with the Tax Court regarding the notice of deficiency to include the innocent spouse relief issue in the petition.
 - c. Explain to the RS that he or she does not need to file a petition with Tax Court regarding the notice of deficiency to be considered for innocent spouse relief and that the innocent spouse claim will be forwarded to CCISO for consideration.
 - d. Explain to the RS that if an agreement is not reached after CCISO's preliminary determination, the RS will have the opportunity to appeal that decision.
 - e. If the RS petitions the Tax Court, notify the Area Counsel attorney handling the docketed deficiency case that the spouse filed a claim for relief under IRC 6015.
- (2) The ATE will take the actions listed above as soon as possible, document these actions in the Case Activity Record, and promptly return the administrative file to APS. APS will monitor the case while it is in the hands of the ATE. See IRM 8.20.6.26.7, Form 8857 Filed During the 90-Day or 150-Day Period.
- (3) If no petition is filed by either spouse in response to the notice of deficiency, APS will:
 - a. Assess the deficiency on the notice.
 - b. Close the case on ACDS and AIMS (if AIMS controlled).
 - c. Recharge the administrative file and forward it and the Form 8857 to CCISO for consideration of the innocent spouse relief issue.
- (4) If a petition is filed in response to the notice of deficiency, APS will:
 - a. Close the case to Counsel for trial preparation, using ACDS closing code 43.
 - b. Send a copy of Form 8857 to CCISO for consideration of the innocent spouse relief issue and provide CCISO with the name and address of the assigned Area Counsel attorney, if known, or the Area Counsel office.
 - c. Retain in the administrative file a copy of the transmittal for Counsel's information.
 - d. Forward the administrative file to Area Counsel for Answer/Trial Preparation.

8.7.12.10.5
(06-10-2021)

IRC 66(c) Relief Determination

- (1) IRC 66(c) provides for relief from an income tax liability resulting from the operation of community property law to taxpayers domiciled in a community property state. For items eligible for relief, see IRM 8.7.12.7.1 (2). The traditional method of IRC 66(c) relief is available only for deficiencies resulting from the RS's omission or under-reporting of an item of community income. The latest time for requesting traditional relief is six months before the NRS's ASER expires. If the RS doesn't qualify for traditional relief, the RS may be eligible under the equitable method. Equitable relief is available for a deficiency or

unpaid tax resulting from an item of community income. The latest time for requesting equitable relief from an outstanding liability is before the CSED expires. For a refund, the latest time for requesting relief is before the expiration of the Refund Statute Expiration Date (RSED).

- (2) To the extent relief is granted, it removes or prevents the assessment of tax against the RS. It does not affect the IRS's ability to pursue collection remedies against the non-lie spouse's interest in community property or override the IRS's ability to offset payments made from community property under state law. See IRM 25.15.5.7, Effect of Innocent Spouse Relief.
- (3) If the RS qualifies for relief from liability under either the traditional or equitable method, the RS's liability for community property items is decreased. As a result, the IRS must assess any deficiency of the NRS arising out of the grant of relief to the RS. If Appeals has jurisdiction over the NRS's separate pre-assessment liability case, along with the RS's IRC 66(c) relief request for the same tax year, increase the NRS's gross income as a result of the determination to grant the RS relief. See IRM 8.2.3.13, Whipsaw Cases, and IRM 4.10.7.4.9, Whipsaw (a/k/a correlative adjustments).
- (4) For an IRC 66(c) determination under Collection Due Process, follow the procedures in IRM 8.7.12.13, CDP/EH and Innocent Spouse Cases.

8.7.12.10.5.1
(06-10-2021)

**Agreed Pre-Assessment
IRC 66(c) Relief
Determination**

- (1) For the RS's agreed pre-assessment liabilities, provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 913, Agreed Cases-Closing Letter (RS)
 - d. Form 870 or Form 870-AD
 - e. Settlement computations, as needed
 - f. Letter 3289, Final Appeals Notice to Non-Requesting Spouse (only if NRS is not in appeals)

Note: Form 870 is not required if relief is fully allowed, resulting in no change to the RS's assessed liability.

- (2) If Form 870 or Form 870-AD is required, include on this waiver form a statement identifying the innocent spouse relief determination similar to that shown in IRM 8.7.12.10.1.1, Agreed Pre-Assessment IRC 6015 Relief Determination. However, replace the IRC 6015 references with IRC 66(c).

8.7.12.10.5.2
(06-10-2021)

**Unagreed
Pre-Assessment IRC
66(c) Relief
Determination**

- (1) For an unagreed pre-assessment liability (for the RS, NRS, or both spouses), follow the deficiency procedures in IRM 8.17.4, Notices of Deficiency. The denial of the RS's relief must be clearly reflected in the RS's notice of deficiency, along with other items included in this notice. Appeals will also prepare the NRS's notice of deficiency, if Appeals has jurisdiction over the NRS's pre-assessed liability for the same tax year. Where IRC 66(c) is invoked against the NRS, it must be clearly reflected in the NRS's notice of deficiency. At closing provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 894, Notice of Deficiency (RS with deficiency amounts and IRC 66 relief denial, as applicable)

- d. Letter 894, Notice of Deficiency (NRS with deficiency amounts, including IRC 66 income issue, as applicable)
- e. Settlement computations, as needed
- f. Letter 3289, Final Appeals Notice to Non-Requesting Spouse (if no NRS deficiency case in Appeals)

8.7.12.10.5.3
(06-10-2021)
Post-Assessment IRC 66(c) Relief Determination

- (1) Unlike IRC 6015(e), Petition for Review by Tax Court, the Tax Court cannot review the denial of IRC 66(c) relief in a stand-alone proceeding. See Kathryn Bernal v. Commissioner, 120 T.C. 102, 120 T.C. No. 6(2003). In order to seek a Tax Court review of a denial of treatment of community income under IRC 66, another basis for Tax Court jurisdiction must exist as when a notice of deficiency is issued or a notice of determination under Collection Due Process is issued with IRS's final determination on innocent spouse relief.
- (2) If Appeals consideration includes the IRC 66(c) relief determination **plus non-IRC 66(c) liability issues**, use Form 870 or Form 870-AD (as appropriate) to secure an agreement. A Form 870 is not needed for a no-change decision. In addition to the appropriate Form 870 or Form 870-AD (with language containing the IRC 66(c) relief determination), provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 913, Agreed Cases-Closing Letter (RS)
 - d. Letter 5841, Audit Reconsideration Closing Letter (RS, unagreed closure) - *see paragraph 4 below for IRC 66(c) issue only*
 - e. Settlement computations, as needed
 - f. Letter 3289, Final Appeals Notice to Non-Requesting Spouse (NRS)
- (3) For a post assessment IRC 66(c) standalone relief determination, where **no other liabilities issues are involved**, Form 870 is not needed. Provide the following:
 - a. Form 5402, Appeals Transmittal and Case Memo
 - b. Appeals Case Memo, as needed
 - c. Letter 913, Agreed Cases-Closing Letter (RS, if fully allowed)
 - d. Letter 5841, Audit Reconsideration Closing Letter (RS, if partially or fully disallowed)
 - e. Settlement computations, as needed
 - f. Letter 3289, Final Appeals Notice to Non-Requesting Spouse (NRS)
- (4) See the following for sample language to include in the RS's closing letter, based on the final determination.

If relief is	Then prepare	Enter in the letter's "open paragraph" language similar to the following
Fully Allowed	Letter 913	<ul style="list-style-type: none"> • We made a decision about your request for Innocent Spouse Relief under IRC 66(c). • We granted you full relief under IRC 66(c) from the debt. You will no longer be responsible for the amount for which you requested relief.

If relief is	Then prepare	Enter in the letter's "open paragraph" language similar to the following
Partially Disallowed	Letter 5841	<ul style="list-style-type: none"> We made a decision about your request for Innocent Spouse Relief under IRC 66(c). We granted partial relief under IRC 66(c). Full relief couldn't be granted because: <i>[List the reasons for the partial disallowance. Refer to Letter 3288 for standard language for communicating the reason(s).]</i> The amount of relief granted is \$0.00 and amount denied is \$0.00. You will remain responsible for the amount of relief denied. These amounts do not include interest and other penalties, if applicable.
Fully Disallowed	Letter 5841	<ul style="list-style-type: none"> We made a decision about your request for Innocent Spouse Relief under IRC 66(c). We denied relief under IRC 66(c) for the debt because you didn't meet the following requirement(s)/factor(s). <i>[List the reasons for the full disallowance. Refer to Letter 3288 for standard language for communicating the reason(s).]</i>

8.7.12.11

(06-10-2021)

Notice of Deficiency with IRC 6015 Relief Determination

- (1) A notice of deficiency, also called a "statutory notice of deficiency," "statutory notice" or "90 day letter," is a legal notice in which the Commissioner determines the taxpayer's tax deficiency. IRM 8.17.4, Notice of Deficiency, is Appeals' primary resource for ensuring the notice of deficiency is properly prepared. The notice of deficiency is a legal determination that is presumptively correct and consists of:
 - a. A letter explaining the purpose of the notice, the tax period(s) involved, the amount of the deficiency and the taxpayer's options
 - b. An agreement form (waiver) to allow the taxpayer to agree to the additional tax liability
 - c. A statement showing the computation of the deficiency
 - d. An explanation of the adjustments
- (2) Household employment taxes included on Form 1040, U.S. Individual Income Tax Return, are subject to normal employment tax procedures. See IRM 8.7.16.9, Agreement Forms and Transmittal Letter, Non Docketed Cases, and IRM 8.7.16.11, Closing Letters - Non Docketed Cases. Relief is not available under IRC 6015 because it applies only to income taxes under Subtitle A of the Internal Revenue Code.
- (3) This IRM guidance supplements the guidance in IRM 8.17.4 for addressing an innocent spouse relief issue in a notice of deficiency. The TCS is responsible for preparing the notice of deficiency. Follow the procedures in IRM 8.17.4.4, How an AO Requests Preparation of Notice of Deficiency, for requesting a TCS's preparation of a notice of deficiency. The ATE shares the responsibility for ensuring an accurate and complete notice of deficiency.

- (4) Follow normal procedures to verify the taxpayer's last known address. See IRM 8.17.4.8.7, Taxpayer's Last Known Address. Married filing joint taxpayers are given separate notice of IRS actions that may affect their joint and several liability and collection thereof. Send the notice of deficiency to each spouse, even when they reside at the same address.
- (5) If Form 8857, Request for Innocent Spouse Relief, indicates a new name and new address for the RS, the new name or address cannot be disclosed on any of the documents issued to the NRS. See IRM 8.17.4.28.3, Divorced or Separated Taxpayers.
- (6) Appeals uses Letter 894, Notice of Deficiency. Generally, enclosures listed on the last page of the notice of deficiency include the following:
 - a. Statement
 - b. Waiver
 - c. Envelope
- (7) Because the notice of deficiency "Statement" consists of the Form 4089, Notice of Deficiency - Waiver, (or Form 4089-A, Notice of Deficiency Statement and Form 870), the tax computation, the explanation of adjustments, and any attachments, can simply be listed as "Statement" rather than individually listing the Form 4089/4089-A, tax computation form such as Form 5278, Statement - Income Tax Changes, paragraphs, etc.
- (8) Do not list "Audit Statement" or "settlement computation" as an enclosure since an Audit Statement or settlement computation is not included as part of a notice of deficiency.
- (9) For additional guidance based on the innocent spouse relief determination, see the following:
 - a. IRM 8.7.12.11.1, Notice of Deficiency - IRC 6015 Relief Fully Allowed
 - b. IRM 8.7.12.11.2, Notice of Deficiency - IRC 6015 Relief Partially Disallowed
 - c. IRM 8.7.12.11.3, Notice of Deficiency - IRC 6015 Relief Fully Disallowed
 - d. IRM 8.7.12.11.4, Notice of Deficiency - Both Spouses Request Relief
 - e. IRM 8.7.12.11.5, Short Statute Procedures
 - f. IRM 8.7.12.11.6, Fraud Penalty Under IRC 6663(c).

8.7.12.11.1
(06-10-2021)
**Notice of Deficiency -
IRC 6015 Relief Fully
Allowed**

- (1) When a determination is made to fully grant the RS relief under IRC 6015 and the NRS was notified and given an opportunity to appeal this determination, do not issue Letter 894, Notice of Deficiency, to the RS. See IRM 8.7.12.10.1.2.1, IRC 6015 Relief Fully Allowed (Pre-Assessed, Unagreed Non-Docketed), for the appropriate closing letters.
- (2) If the NRS has not had a chance to appeal the full grant of relief (for example if the ASER is about to expire and one or both of the spouses will not extend the statute), then follow the procedures in IRM 8.7.12.11.5, Short Statute Procedures. The ATE will instruct the TCS to follow the short statute procedures.
- (3) Address Letter 894, Notice of Deficiency, to both spouses as shown on the tax return, but send the notice only to the NRS. See details below for preparing Letter 894:

- a. Use the name of both spouses
- b. Use the address of the NRS
- c. Use the primary taxpayer's TIN shown on the tax return
- d. Direct the salutation to the NRS only

(4) Include the name, address, and TIN of the NRS only on the following:

- a. Form 4089, Notice of Deficiency - Waiver; or
- b. Form 4089-A, Notice of Deficiency Statement, and Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment

Note: Include the total deficiency amounts.

(5) On Form 5278, Statement-Income Tax Changes, include the names of both spouses and the primary TIN because the tax computation starts with the joint return information.

(6) Include the names of both spouses on the explanation of adjustments, computational schedules, and exhibits attached to Letter 894.

(7) See the following example for preparing Letter 894 and enclosures:

Example: Thomas and Mary Trout filed a joint return for the 2017 tax year reflecting Thomas as primary taxpayer. The IRS examined the 2017 tax year and proposed a tax deficiency of \$5,000. Thomas Trout requested and was allowed full innocent spouse relief. The IRS must mail to Mary Trout (NRS) a notice of deficiency for the unagreed \$5,000 tax deficiency. Thomas's TIN (the primary TIN) is shown on the letter, the notice of deficiency is addressed to both spouses, and the address for Mary (NRS) is shown on the letter. The salutation on the notice of deficiency is "Dear Mary Trout." The Form 4089 waiver (or Form 4089-A and Form 870) includes only Mary's name, TIN, and address. The Form 5278 includes the name of both spouses and Thomas' TIN (as the primary TIN).

(8) Include the following paragraph on the notice of deficiency letter, waiver (Form 4089 or Form 870), and at the bottom of Form 5278 (Instead of including the paragraph on the waiver and on Form 5278, it may be shown instead on separate schedules attached to the waiver and to Form 5278).

"We granted full relief to [Name of the requesting spouse] under Internal Revenue Code section 6015 [insert applicable subsection; for example, (b), (c), and/or (f)], from the joint and several liability determined in this notice of deficiency. We will send a separate letter to each spouse regarding our decision to grant full relief."

8.7.12.11.2
(06-10-2021)
**Notice of Deficiency -
IRC 6015 Relief Partially
Disallowed**

- (1) When a determination is made to partially disallow the RS relief under IRC 6015 and both spouses had the opportunity to participate in the administrative proceedings, include the full tax deficiency amounts in the notice of deficiency to the NRS and the RS. See IRM 8.7.12.10.1.2.2, IRC 6015 Relief Partially Disallowed (Pre-Assessed, Unagreed Non-Docketed), for the appropriate closing letters.
- (2) If the spouses have not had a chance to appeal the partial grant of relief (for example if the ASER is about to expire and one or both of the spouses will not

extend the statute), then follow the procedures in IRM 8.7.12.11.5, Short Statute Procedures. The ATE will instruct the TCS to follow the short statute procedures.

- (3) When a deficiency remains attributable to both spouses, but each is liable for a different amount, show (as usual) the total deficiency on Letter 894 and Form 4089 (or Form 4089-A and Form 870). Include the following paragraph on the notice of deficiency letter, waiver (Form 4089 or Form 870), and at the bottom of Form 5278 (Instead of including the paragraph on the waiver and on Form 5278, it may be shown instead on separate schedules attached to the waiver and to Form 5278).

"We granted partial relief to [Name of requesting spouse] under Internal Revenue Code section 6015 [insert applicable subsection; for example, (b), (c), and/or (f)], from the joint and several liability determined in this notice of deficiency. The amount of [Name of requesting spouse]'s remaining liability is not reflected in this notice. We will send a separate letter to each spouse regarding our decision to grant partial relief."

- (4) Prepare Form 5278 and include all adjustments made to the return.
- (5) Prepare Letter 3288, Final Appeals Determination to Requesting Spouse, by including the standard explanatory paragraph(s) and adding the write-in paragraph shown below:

If you disagree with this determination and also disagree with our determination in a related Notice of Deficiency for the same tax years, you may contest both in the United States Tax Court in the same petition. See the paragraph below in this letter entitled "If You Disagree" for additional information about filing a petition. If you dispute both determinations, state you are contesting both notices in the explanation section of your petition, and include a copy of both this notice and the Notice of Deficiency as enclosures. If you already filed a petition contesting the Notice of Deficiency, you do not need to file a separate petition, but may instead amend your existing petition to state your objections to this determination.

- (6) Innocent spouse allocation worksheets are not required with the statutory notice of deficiency. Instead, when needed, they are included with the Letter 3288 and Letter 3289. If the ATE wants the TCS to prepare allocation worksheets, the ATE must specify this on a work request to the TCS. Otherwise, the TCS will not need to prepare an allocation worksheet when preparing the notice of deficiency. Innocent Spouse allocation spreadsheets are available on the *Appeals Tax Computation Specialist (TCS) site*.

8.7.12.11.3
(06-10-2021)
**Notice of Deficiency -
IRC 6015 Relief Fully
Disallowed**

- (1) When a determination is made to fully disallow the RS relief under IRC 6015 (i.e., both spouses are liable for the entire deficiency) and both spouses had the opportunity to participate in the administrative proceedings, include the full deficiency amount(s) in the notice of deficiency to the NRS and the RS. See IRM 8.7.12.10.1.2.3, IRC 6015 Relief Fully Disallowed (Pre-Assessed, Unagreed Non-Docketed), for the appropriate closing letters.
- (2) If the RS has not had the chance to appeal the denial of relief (for example if the ASER is about to expire and one or both of the spouses will not extend the statute), then follow the procedures in IRM 8.7.12.11.5, Short Statute Procedures. The ATE will instruct the TCS to follow the short statute procedures.

- (3) Show the total deficiency amounts on the joint notice of deficiency letter and Form 4089 (or Form 4089-A and Form 870). Include the following paragraph on the notice of deficiency letter, waiver (Form 4089 or Form 870), and at the bottom of Form 5278 (Instead of including the paragraph on the waiver and on Form 5278, it may be shown instead on separate schedules attached to the waiver and to Form 5278).

"We denied relief to [Name of requesting spouse] under IRC Section 6015(b), (c), or (f), from the joint and several liability determined in this notice of deficiency. We will send a separate letter to each spouse regarding our decision to deny relief."

- (4) Prepare Letter 3288, Final Appeals Determination to Requesting Spouse, by including the standard explanatory paragraph(s) and adding the write-in paragraph shown below:

If you disagree with this determination and also disagree with our determination in a related Notice of Deficiency for the same tax years, you may contest both in the United States Tax Court in the same petition. See the paragraph below in this letter entitled "If You Disagree" for additional information about filing a petition. If you dispute both determinations, state you are contesting both notices in the explanation section of your petition and include a copy of both this notice and the Notice of Deficiency as enclosures. If you already filed a petition contesting the Notice of Deficiency, you do not need to file a separate petition, but may instead amend your existing petition to state your objections to this determination.

8.7.12.11.4
(06-10-2021)
**Notice of Deficiency -
Both Spouses Request
Relief**

- (1) When a determination is made to fully disallow relief under IRC 6015 and both spouses had the opportunity to participate in the administrative proceedings, include the full amount of the deficiency amounts in the notice of deficiency to the NRS and RS.
- (2) If the spouses have not had a chance to appeal the relief determination (for example if the ASER is about to expire and one or both of the spouses will not extend the statute), then follow the procedures in IRM 8.7.12.11.5, Short Statute Procedures. The ATE will instruct the TCS to follow the short statute procedures.
- (3) Prepare and issue the notices of deficiency as described above in IRM 8.7.12.11.1, Notice of Deficiency - IRC 6015 Relief Fully Allowed, IRM 8.7.12.11.2, Notice of Deficiency - IRC 6015 Relief Partially Disallowed, or IRM 8.7.12.11.3, Notice of Deficiency - IRC 6015 Relief Fully Disallowed. However, instead of the statements described in these sections, include the paragraph shown in paragraph (4) below.
- (4) Where both spouses filed for relief under IRC 6015 and relief is fully disallowed, include the following paragraph on the notice of deficiency letter, waiver (Form 4089 or Form 870), and at the bottom of Form 5278 (Instead of including the paragraph on the waiver and on Form 5278, it may be shown instead on separate schedules attached to the waiver and to Form 5278.)

"We are sending separate notices regarding [Name of requesting spouse] and [Name of other requesting spouse]'s requests for relief from joint and several liability under IRC Section 6015(b), (c), or (f). Our determination is not reflected in this notice."

Note: As stated in IRM 8.7.12.11.1, Notice of Deficiency - IRC 6015 Relief Fully Allowed, a notice of deficiency should not be issued to a spouse who has been relieved from a determined joint liability under IRC 6015.

Note: A separate Letter 3288, Final Appeals Determination to Requesting Spouse, will be mailed to each spouse.

- (5) For each spouse, prepare Letter 3288, Final Appeals Determination to Requesting Spouse, by including the standard explanatory paragraph(s) and adding the write-in paragraph shown below:

If you disagree with this determination and also disagree with our determination in a related Notice of Deficiency for the same tax years, you may contest both in the United States Tax Court in the same petition. See the paragraph below in this letter entitled "If You Disagree" for additional information about filing a petition. If you dispute both determinations, state you are contesting both notices in the explanation section of your petition and include a copy of both this notice and the Notice of Deficiency as enclosures. If you already filed a petition contesting the Notice of Deficiency, you do not need to file a separate petition, but may instead amend your existing petition to state your objections to this determination."

- (6) It is not necessary to send Letter 3289, Final Appeals Notice to Non-Requesting Spouse, to each spouse to notify them of the decision regarding the request of their spouse or former spouse. Include an explanation of the decision regarding the request of their spouse or former spouse in Letter 3288, Final Appeals Determination to Requesting Spouse.
- (7) For instructions on the mailing requirements, see IRM 8.20.6.26.5, Both Spouses Request Relief.

8.7.12.11.5 (06-10-2021) Short Statute Procedures

- (1) If the ASER is about to expire before consideration of the innocent spouse issue can be completed and one or both spouses will not extend the ASER, include the full deficiency amount(s) in the notice of deficiency to the NRS and the RS.
- (2) Include the following paragraph on the notice of deficiency, waiver (Form 4089 or Form 870), and at the bottom of Form 5278 (Instead of including the paragraph on the waiver and on Form 5278, it may be shown instead on separate schedules attached to the waiver and to Form 5278.)

"[Name of requesting spouse] requested relief under IRC section 6015(b), (c), or (f), from the joint and several liability determined in this notice of deficiency. Our determination is not reflected in this notice."
- (3) The ATE will request a new WUNO for the innocent spouse case and retain copies of all pertinent documents from the notice of deficiency (income) file. Cross reference the income WUNO and add a cross-reference on the income case to the innocent spouse WUNO. The ATE will continue consideration of the innocent spouse issue while the notice of deficiency is pending. The ATE will coordinate with Counsel if the RS petitions Tax Court.
- (4) APS is responsible for maintaining the notice of deficiency case and monitoring it during the suspense period to determine if, in response to the notice of deficiency, a petition to the U.S. Tax Court was filed.

If...	Then APS will...
A joint petition is filed by both spouses	<ol style="list-style-type: none"> 1. Update ACDS to add the docket number and move the deficiency case WUNO to ACDS Part 2 inventory (docketed, Appeals' jurisdiction) instead of Part 3 inventory (docketed, Counsel's jurisdiction) 2. Flag the file for Area Counsel's return of the case for consideration of the innocent spouse issue 3. Follow existing procedures for forwarding the docketed deficiency case to Area Counsel for an "Answer" in response to the petition 4. After assessment, the innocent spouse request will be processed following post-assessment procedures
Each spouse files a separate petition	<ol style="list-style-type: none"> 1. Update ACDS to control two work unit numbers, each with its own separate docket number and a cross-reference to the other, and follow existing procedures (described above) for forwarding the docketed deficiency case to Area Counsel for an "Answer" in response to the petitions 2. After assessment(s), the innocent spouse request will be processed following post-assessment procedures
Only the RS files a petition	<ol style="list-style-type: none"> 1. Make a default assessment on the NRS's (non-petitioning spouse's) MFT 31 account and include copies of the assessment paperwork in the case file 2. Update ACDS with the RS's docket number and follow existing procedures (described above) to forward the docketed deficiency case to Area Counsel for an "Answer" to the petition 3. After assessment, the innocent spouse request will be processed following post-assessment procedures
Only the NRS files a petition	<ol style="list-style-type: none"> 1. Make a default assessment on the RS's (non-petitioning spouse's) MFT 31 account and include copies of the assessment paperwork in the case file 2. Update ACDS with the NRS's docket number and follow existing procedures (described above) to forward the docketed deficiency case to Area Counsel for an "Answer" to the petition 3. After assessment, the innocent spouse request will be processed following post-assessment procedures
No petition is filed (when the full suspense time frame has elapsed)	<ol style="list-style-type: none"> 1. Make the default joint assessment on MFT 30 joint account and notify the ATE with the innocent spouse case that the assessment was made so the ATE can update the ACDS Statute Date/Statute Code 2. After assessment, the innocent spouse request will be processed following post-assessment procedures.

8.7.12.11.6
(06-10-2021)

Fraud Penalty Under IRC 6663(c)

- (1) IRC 6663(c) provides that in the case of a joint return, the imposition of the fraud penalty shall not apply to a spouse, unless some part of the underpayment is due to the fraud of such spouse.

- (2) Where the fraud penalty is assessed against a spouse without appropriate development and explanation, that spouse should be relieved of such assessment pursuant to IRC 6663(a), not IRC 6015. IRC 6015 does not provide for relief from penalties and interest separate from tax.

8.7.12.12
(06-10-2021)
Settlement Computation

- (1) This subsection contains information for preparing settlement computations for relief from liability under IRC 6015 or IRC 66(c). See IRM 8.7.12.5, Request for Relief under IRC 6015, and IRM 8.7.12.7.3, IRC 66 (c) Innocent Spouse Relief.
 - a. IRC 6015(b) provides for relief from a deficiency/understatement of tax liability.
 - b. IRC 6015(c) provides for relief in response to an election to allocate a deficiency/understatement, but doesn't allow for a refund.
 - c. IRC 6015(f) provides for relief from a deficiency/understatement or underpayment, if relief isn't available under IRC 6015(b) or 6015(c).
 - d. IRC 66(c) provides for relief, for a spouse who filed a separate return, from an income tax liability resulting from the omission of an item of community income.
- (2) Innocent Spouse relief is not available for liabilities required to be reported on a joint federal income tax return but are not income taxes imposed under Subtitle A of the Internal Revenue Code. Therefore, relief isn't available for Form 1040, Schedule H, Household Employment Taxes.
- (3) Both spouses might request innocent spouse relief for the same tax period. Therefore, Appeals could have two cases where one spouse is the requesting spouse (RS) on his/her claim and the non-requesting spouse (NRS) on the other spouse's claim.
- (4) Check Non-master file (NMF), as well as MFT 30 and MFT 31 accounts, to secure information relating to joint accounts in innocent spouse cases. IRM 8.7.12.15, Split Spousal Assessments Overview.
- (5) Form 3610, Audit Statement, and /or an allocation worksheet is optional and may be prepared at the discretion of the ATE or TCS. Understatement and underpayment allocation worksheets are available on the *Appeals Tax Computation Specialist (TCS) site*.

8.7.12.13
(06-10-2021)
CDP/EH and Innocent Spouse Cases

- (1) During the collection process, one or both spouses can request a Collection Due Process (CDP) hearing or an equivalent hearing (EH) using Form 12153, Request for Collection Due Process or Equivalent Hearing. IRC 6330(c), Matters Considered At Hearing, allows a spouse to raise innocent spouse relief as an issue under Collection Due Process (CDP) or Equivalent Hearing (EH).
- (2) When a spouse requests innocent spouse relief before, during or after IRS receives Form 12153, the CDP/EH case is then referred to as a "combo" case that requires coordination of the CDP/EH and innocent spouse issues that are subject to different tax law provisions. The consideration of the innocent spouse request, including the NRS's right to participate in the proceedings, does not change when an innocent spouse request is considered in connection with a CDP/EH case.
- (3) A spouse cannot raise innocent spouse relief under CDP/EH if the IRS already made a final innocent spouse relief determination in a statutory notice of defi-

ciency or final determination letter or if the U. S. Tax Court entered a decision on the innocent spouse relief issue. See 26 CFR 301.6330-1(e), Matters Considered at CDP Hearing.

Note: If the ISTS is in stage 12 (Final Determination Issued) prior to the CDP request, then the IRS previously made a final determination on the request for innocent spouse relief.

- (4) If Appeals' consideration is needed in response to Compliance's preliminary determination, the responsibility for the CDP/EH case remains with the Settlement Officer (SO). The Appeals Officer (AO) will consider the appeal of the preliminary decision on whether to grant innocent spouse relief. Therefore, ACDS will reflect ATE assignments of the CDP/EH WUNO and the Innocent Spouse WUNO. See IRM 8.22.8.8.3, Appeals Processing of IS Claim Related to CDP Case, IRM 8.20.5.12.1.6.3, CDP Innocent Spouse Case Carding, and IRM 8.7.12.4, IDRS/ISTS Controls.

8.7.12.13.1
(06-10-2021)

Coordination of CDP/EH and Innocent Spouse Procedures

- (1) For a joint CDP/EH hearing request, the hearing can proceed for the NRS. However, the final CDP/EH determination can not be made until the final innocent spouse relief determination has been made. The collection potential from the RS could affect the viability of a proposed collection alternative. The SO will suspend the CDP/EH case until the innocent spouse relief determination has been made. If CCISO makes a final determination to fully grant relief and the accounts can be mirrored, CCISO will mirror the accounts prior to sending the innocent spouse case back to Appeals. See IRM 8.7.12.15.2, Mirrored Accounts. Mirroring allows collection activity to continue for the NRS, if not otherwise suspended for a timely CDP hearing.
- (2) CCISO should not issue an innocent spouse final determination letter on combo cases. See IRM 25.15.7.4.3, Request for Collection Due Process (CDP) or Equivalent Hearing (Form 12153). If CCISO has inadvertently issued a final determination letter, the SO will contact CCISO to get the administrative file or at least a copy of the innocent spouse case work papers and determination letter. The CDP WUNO will be suspended, until after the expiration of the period for the RS to petition the Tax Court to review the innocent spouse relief determination.
 - a. If the taxpayer petitions, the SO retains the CDP case in suspense until the Tax Court decision becomes final.
 - b. If the taxpayer does not petition, the SO takes the CDP case out of suspense and sends the innocent spouse administrative file, using Form 3210, Document Transmittal, to Florence APS to establish the innocent spouse case in ACDS. APS will forward the IS case to an ATM for assignment.

Note: If the RS timely petitions the Tax Court in response to Compliance's final innocent spouse determination letter, the AO could receive the docketed innocent spouse case for consideration, similar to other docketed case assignments. See IRM 8.4.1, Procedures for Processing and Settling Docketed Cases.

8.7.12.13.2
(06-10-2021)
**Working Innocent
Spouse - CDP/EH
“Combo” Case**

- (1) Follow normal procedures for considering an innocent spouse request, allowing both spouses the opportunity to participate in the proceedings. See IRM 8.7.12.9, Appeals Consideration.
- (2) After deciding whether to grant relief, the AO will:
 - a. Prepare Form 5402, Appeals Transmittal and Case Memo, and include instructions to APS regarding all required IDRS account adjustments and ISTS updates. The AO’s ATM will approve the innocent spouse case decision by signing Form 5402, following procedures in IRM 8.6.2.3.1, Accessing the Customized Form 5402.
 - b. Prepare an ACM explaining the innocent spouse IS determination.
 - c. Prepare an electronic narrative explaining the innocent spouse determination for the SO to attach to the CDP/EH case closing letter, and upload this narrative to ACDS as a “Case File Attachment.” Access the “Case File Attachments” feature by clicking on the ACDS **CASES** button or the **Main Cases Menu**.
 - d. Use CARATS action code MS, not AC/FR, when transferring the innocent spouse case to the SO.
 - e. Complete and submit an ACDS “30-40 Transfer Form” to transfer the innocent spouse WUNO on ACDS to the SO.

Note: The ATM will not input an ACAP date for the innocent spouse case WUNO.

- (3) The SO will follow procedures in IRM 8.22.9.4.2, Closing a CDP with Innocent Spouse, for closing the CDP/EH and innocent spouse case WUNOs. APS will then follow the interim action procedures in IRM 8.20.6.26.1, Innocent Spouse Notice of Determination Procedures, or closing actions in IRM 8.20.7.40, Innocent Spouse Case Closing Overview, and their related subsections.
- (4) A CDP request can be withdrawn up to the point the determination letter is issued. If the taxpayer(s) withdraws the CDP request, the SO will determine the status of the innocent spouse case.
 - a. If the innocent spouse case is still in CCISO, the SO will forward a copy of Form 12256, Withdrawal of Request for Collection Due Process or Equivalent Hearing, within 2 business days to notify CCISO of the withdrawal. CCISO will retain the innocent spouse case and work it following normal IRS procedures.
 - b. If the innocent spouse case is assigned to an AO, the SO will forward a copy of Form 12256 within 2 business days to notify the AO of the withdrawal. The AO will remove the “DP” ACDS feature code from the innocent spouse case WUNO and consider the innocent spouse case appeal following the normal standalone innocent spouse procedures.
 - c. If the RS withdraws the CDP/EH after the AO returned the innocent spouse case to the SO, the SO will close the innocent spouse case containing the AO’s determination and closing documents shown below:

Resolution	Closing Documents
Agreed or Unagreed	<ul style="list-style-type: none">Letter 3288, Final Appeals Determination to Requesting SpouseLetter 3289, Final Appeals Notice to Non-Requesting Spouse

8.7.12.14
(06-10-2021)
**Barred Statute / One
Signature (BSOS)**

- (1) There can be a binding originally-filed joint return even if only one spouse signed the return, if the parties intended to file a joint return. See IRM 8.7.12.8.1, Tacit Consent Factors.
- (2) A deficiency assessed on a joint account based on the signature of only one spouse on a waiver of assessment is generally not a valid assessment with respect to the non-signing spouse. This also applies if the spouse did not sign an amended return. The following IRM guidance address IRS procedures when only one spouse signs a waiver agreeing to a joint deficiency.
 - a. IRM 4.10.8.12.3, Separate Assessments on Joint Taxpayers
 - b. IRM 8.17.4.28.4, Notice Issued to Only One Spouse.
- (3) Refer to IRM 8.7.12.8, Invalid Joint Election, if the taxpayer seeks to invalidate the joint election. If an invalid deficiency assessment or an assessment due to an amended return was made against a non-signing spouse, the IRS can not assess the proper amount against the non-signing spouse if the ASER has expired.
 - a. If the ASER is still open for the non-signing spouse, notify the originating function of the invalid assessment.
 - b. If the ASER has expired, follow the procedures in IRM 8.21.7.5, Potentially Barred Statutes, for the non-signing spouse. In addition, following the procedures in paragraph (4) below for notifying the spouses.
- (4) Advise the RS, "Our records indicate you did not sign the consent to assess and collect the proposed tax, penalties, and interest. Therefore, you are not liable for the additional assessment." Advise the NRS, "Our records indicate you signed the consent to assess and collect the proposed tax, penalties, and interest. There is no record of your spouse signing a consent to assess and collect the liability. The statute of limitations has expired to assess and collect it from your spouse. Therefore, you are solely liable for the additional assessment."
- (5) These cases do not meet Innocent Spouse criteria because the RS is relieved of the liability because the ASER has expired. The barred assessment is moved from the joint account module to MFT 31 for the signing spouse.
- (6) For additional information for adjusting the spouses' accounts, see IRM 25.15.9.7.2, Barred Statute One Signature (BSOS), to ensure that APS has complete instructions for closing the IS request and adjusting the accounts.

8.7.12.15
(06-10-2021)
**Split Spousal
Assessments Overview**

- (1) In January 2001, the MFT 31, Separate Assessment Module, was added to the Individual Master File (IMF). MFT 31 contains split spousal assessments previously processed to the Automated Non-Master File (ANMF). See IRM 3.17.46, Automated Non-Master File Accounting.
- (2) In January 2016, MFT 65 was added to IMF. MFT 65 is a mirror of MFT 35, Shared Responsibility Payment (SRP). For additional information on SRP, see IRM 21.6.4.4.20.3, Shared Responsibility Payment Overview.
- (3) Split spousal assessments are made on MFT 31 or MFT 65. Both MFTs can be created when the joint module meets one or more of the following conditions:

- a. Collection action is prohibited against only one spouse.
 - b. Each spouse is liable for different amounts.
 - c. Each spouse has different penalty and/or interest suspension periods.
 - d. Each spouse has a different statute of limitations.
- (4) The triggering event is one listed in IRM 8.7.12.15.1, MFT 31 / MFT 65. If the triggering event is not listed, then the module stays on MFT 30 / MFT 35 or is moved to NMF (for MFT 30 only).
- (5) Check non-master file (NMF), as well as MFT 30 and MFT 31, to secure information relating to joint accounts.

8.7.12.15.1
(06-10-2021)

Master File 31 / MFT 65

- (1) MFT 31 and MFT 65 are used to identify assessments against an individual taxpayer on a joint module and are generated by one or more of the following:
- a. **Bankruptcy** — either spouse's bankruptcy case is discharged or dismissed from bankruptcy.
 - b. **Offer in Compromise (OIC)** — either spouse makes an offer in compromise of a liability under IRC 7122, Compromises.
 - c. **Restitution-based**— one spouse is assessed a criminal court ordered restitution debt. See IRM 8.7.1.11.2, Restitution Debt Assessed as a Tax under IRC 6201(a)(4).
 - d. **United States Tax Court** — either spouse, instead of jointly, appeals or petitions the Tax Court.
 - e. **Innocent Spouse**— one spouse is fully or partially relieved of a joint assessment.
 - f. **Agreed / Unagreed Deficiency Case** - only one spouse signed a waiver consenting to the assessment and collection of the joint tax deficiency, while the non-agreeing spouse does not appeal or petition the Tax Court for a reconsideration of the proposed deficiency.
 - g. **Taxpayer Assistance Order (TAO)**— either spouse files Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).
 - h. **Installment Agreement** — either spouse requests an installment agreement.
 - i. **Currently Not Collectible (CNC)** — either spouse qualifies for CNC based on financial status. See IRM 5.16.1.3.2.1, Joint Liability Separate CNC Requests - MFT 31/65 Mirrored Assessments.
- (2) The types of MFT 31 modules are as follows:
- a. **Split/Transfer** - MFT 31 modules created or in process prior to January 2005 or a qualifying NMF MFT 20 module (CSED expired after January 1, 2005); See IRM 21.6.8.5.1, Split/Transfer Modules.
 - b. **Mirrored** - Only one spouse files for bankruptcy, requests innocent spouse relief, agrees to a joint deficiency, files an OIC, defaults on an accepted OIC, files Form 911 (TAO), requests an installment agreement, or qualifies for CNC;
 - c. **Protesting / Non-protesting Spouse** - Only one spouse appeals, in response to a 30-day letter mailed to both spouses for a proposed joint liability.
 - d. **Petitioning / Non-petitioning Spouse** - Only one spouse petitions the Tax Court, in response to a notice of deficiency mailed to both spouses. See IRM 8.20.5.5.5, Non-Petitioning Spouse (NPS) Cases.

- e. **Restitution-Based Assessment (RBA)** - Only one spouse is liable for RBA.

Note: SBSE Technical Services has exclusive responsibility for assessing or abating an RBA. See IRM 8.7.1.11.2, Restitution Debt Assessed as a Tax under IRC Section 6201(a)(4).

- (3) The “triggering event,” identified on IDRS with a TC 971 action code, determines **when the module is moved** from MFT 30, or MFT 35, and the **type of module established**. The “module type” identifies if the credits posted to the module are “*systemically mirrored*” or “*manually mirrored*.” See the table below for a list of triggering events:

Triggering Event	When MFT 31 module is established	Type of MFT 31 module	Identified by TC 971 Action Code
Bankruptcy by only one spouse (can also apply to individual assessments shown below)	Upon discharge or dismissal	Systemically Mirrored	100
OIC submitted by only one spouse	Resolution decision and approval	Systemically Mirrored	101
Joint OIC defaulted	One spouse defaults an accepted joint OIC	Systemically Mirrored	101
Criminal court-ordered restitution (not applicable to MFT 65).	Upon SBSE Technical Service’s receipt of assessment documents	Manually Mirrored	102
Separate spousal assessments on a joint account (not applicable to MFT 65) Note: Prior to 3/23/2011, action code 102 was used to separately assess a spouse, for a joint liability, when only one spouse agreed to a deficiency.	Only one spouse petitions Tax Court, protests in response to a 30-day letter, or innocent spouse relief is partially granted	Manually Mirrored	103
Innocent Spouse (not applicable to MFT 65)	CCISO made determination to grant relief	Systemically Mirrored	104
Taxpayer Advocate case	Only one spouse filed Form 911	Systemically Mirrored	106
Installment Agreement	Upon approval of the installment agreement for one spouse	Systemically Mirrored	107
Currently Not Collectible	Upon approval of CNC for one spouse	Systemically Mirrored	109

8.7.12.15.2
(06-10-2021)
Mirrored Accounts

- (1) From cycle 4 of 2005 until January 13, 2016, CCISO mirrored joint accounts for every request for innocent spouse relief received for the joint tax years indicated, with exceptions for modules with account problems that prevented mirroring. Beginning January 13, 2016, CCISO no longer mirrors all accounts upon receiving a request for innocent spouse relief. Mirroring only occurs upon a determination of full relief. See IRM 25.15.15, Mirror Modules for Requests for Relief from Joint and Several Liability.
- (2) When requested, CCISO will mirror an account that was not mirrored prior to CCISO sending the case to Appeals. The request can only be made after Appeals has made a final determination to fully allow the claim for relief, but only if the claim was previously denied in full by CCISO. If the account can be mirrored, the ATE will initiate such requests as soon as practicable. See Exhibit 25.15.18-2, Accounts That Cannot Be Mirrored.
- (3) For Innocent Spouse and Collection Due Process/Equivalent Hearing “combo” cases, the ATE working the innocent spouse claim will make the mirroring request.
- (4) The ATE will submit mirroring requests to CCISO through the *Appeals Support Work Request site*, accessible from Appeals’ *Innocent Spouse Program page*, by clicking on “New Request” and completing the “Appeals Support Work request” form as shown below:

Form Field	ATE Entry / Action
Business Unit	Appeals
Appeals Type of Request	Mirror Request CCISO
Case information <ul style="list-style-type: none"> • Taxpayer Name (primary) • TIN • MFT • Tax Year(s) • Secondary Taxpayer Name • Secondary Taxpayer TIN 	Enter the case information as indicated
Specify Requesting Spouse	Primary TIN or Secondary TIN
Notes	If needed
Attachments	N/A
Requestor information <ul style="list-style-type: none"> • Requestor Name • Title • Email • Telephone • POD 	Complete

- (5) The ATE’s submission of the mirroring request form will generate an email to a centralized CCISO inbox at ***SBSE CCISO APPLS REQ** and a copy of the email to the requesting ATE. Upon receipt of the mirroring request, CCISO will:
 - a. Begin the mirroring process within five business days of receiving the request or notify Appeals if the account is one that cannot be mirrored.

- b. Ensure all transactions are posted to complete the mirroring of the account.
- c. Promptly notify Appeals after the entire mirroring process is complete.
- d. Resolve any unpostables resulting from the mirroring transactions they input.

Note: See IRM 25.15.18.5.4.4, Mirroring Requests for Appeals.

- (6) The ATE will send the case to APS for closing using current procedures. The ATE does not need to wait for CCISO to mirror the account prior to sending the case to APS. On Form 5402, Appeals Transmittal Case Memo, the ATE will include a note to APS indicating that the ATE has requested that CCISO mirror the account. APS will be responsible for ensuring the mirrored accounts have been established by CCISO prior to closing the Appeals case. See IRM 8.20.7.40.4, Innocent Spouse Preliminary Closing Procedures.
- (7) Determine if there is a CI freeze on the account. If yes, is the account mirrored? If not, is there documentation in the file to indicate CI agrees to allow the account to be mirrored at processing? If yes, consider the case. If not, return the case to CCISO or the source function if the case did not originate in CCISO, as a premature referral. See IRM 8.20.7.40.4, Innocent Spouse Preliminary Closing Procedures.

8.7.12.15.3
(06-10-2021)
**Exam/Appeals/AUR
modules**

- (1) Exam/Appeals/AUR MFT 31 modules are created when only one spouse petitions Tax Court in response to a notice of deficiency or only one spouse agrees to the proposed deficiency.
- (2) The modules are systemically established but not mirrored.
- (3) Exam/Appeals/AUR MFT 31 accounts are established using similar procedures as for mirrored accounts, except the account is not mirrored because only one TC 971 AC 102 or 103 is input. The non-petitioning spouse's TIN is input as the TC 971 cross-reference TIN.

8.7.12.16
(06-10-2021)
**Issuing a Second Final
Determination Letter**

- (1) Where the IRS issues (by certified or registered mail) a final innocent spouse relief determination under IRC 6015, the RS has 90 days (or 150 days, if mailed outside the U.S.) from the mailing date to petition the Tax Court to review the IRS's determination. See IRC 6015(e), Petition for Review by Tax Court. Unlike the notice of deficiency, the tax law does not authorize the IRS to rescind a final determination under IRC 6015.
- (2) In general, a RS is entitled to only one final administrative determination of relief under IRC 6015(b), (c) or (f) for a given assessment. A qualifying election under IRC 6015(b) or IRC 6015(c) or a request under IRC 6015(f) is the first timely claim from joint and several liability for the tax year for which relief is sought. A qualifying election includes a RS's second election to seek relief for the same tax year under IRC 6015(c) when the additional qualifications described in 26 CFR 1.6015-1(h)(5) are met. See this exception below:

Exception: If the only basis for the IRS not considering or denying the initial request for relief under IRC 6015(c) was that the RS did not meet the marital status requirement and the RS files a new request for relief based on the marital status subsequently being met, then the new request is not a reconsideration, but a qualifying request under IRC 6015(c) subject to review by the Tax Court. Under this circumstance,

follow the closing procedures in IRM 8.7.12.10.3, Post-Assessment IRC 6015 Relief Determination.

- (3) The time for petitioning the Tax Court is not extended by any reconsideration of a final administrative determination of relief. The time period for petitioning the Tax Court began with the mailing of the initial final determination letter. Any notice or letter issued to the RS as a result of the reconsideration is **not a final determination** for purposes of IRC 6015(e) and is not subject to review by the Tax Court.
- (4) In very limited circumstances, the IRS may issue a second final determination letter for the same claim; for instance, in cases of IRS delay or error, or taxpayer fraud. In these very limited circumstances, a second final determination grants the right for the RS to petition the Tax Court for a review. If this occurs, follow the closing procedures in IRM 8.7.12.10.3, Post-Assessment IRC 6015 Relief Determination. For more information, see:
 - IRM 25.15.17.7.1, Service Delay or Error
 - IRM 25.15.17.7.2, Taxpayer Fraud
- (5) If the RS timely petitioned the Tax Court in response to the initial final determination letter, do not issue a second final determination letter.

8.7.12.17 (06-10-2021) Innocent Spouse Relief Reconsiderations

- (1) The IRS will reconsider a final innocent spouse relief determination when a RS submits information not previously considered (new information or information IRS previously failed to consider), if the CSED or RSED is still open. See IRM 25.15.17 , Reconsiderations, for guidance on reconsidering a request for innocent spouse relief. This includes cases on the Innocent Spouse Tracking System (ISTS) in Stage 12 (Final Determination Issued), Stage 30 (Closed), or Stage 99 (Archived). See IRM 25.15.17.1.1, Background.
- (2) CCCISO will screen all reconsideration cases and determine if a request should be reconsidered. See IRM 25.15.17.4 , Full Scope Evaluation. If a case meets the guidelines for reconsideration, CCISO will consider any new information before sending a protested case to Appeals.
- (3) Refundable Payments for Reconsiderations - Use the “IRS received date” of the **reconsideration claim**, and not the initial claim, when determining whether a payment is eligible for refund. If the **reconsideration** is due to IRS error or previously denied for timeliness, then consider the date of the original claim for determining the timeliness for allowing a refund before the RSED or CSED expires.

8.7.12.17.1 (06-10-2021) ACDS Card-in Procedures for Innocent Spouse Reconsiderations

- (1) APS will follow the normal card-in procedures for innocent spouse cases, as identified in IRM 8.7.12.3.1 (4). In addition to normal carding procedures, APS will input on ACDS the following:
 - a. FEATRC - **RE** for reconsideration.
 - b. NOTES - RECON

Note: See IRM 8.20.5.29.7, Innocent Spouse Reconsideration Case Carding.

8.7.12.17.2
(06-10-2021)
**Closing Innocent
Spouse Relief
Reconsiderations**

- (1) For a reconsideration, the ATE will:
 - a. Notate on the case activity record the result of the reconsideration
 - b. Prepare a letter to notify the RS of the results of the reconsideration
 - c. Prepare a Customized Form 5402, Appeals Transmittal Case Memo (Prepare ACM if needed)
- (2) For specific instructions based on the reconsideration decision, see the following:
 - a. IRM 8.7.12.17.2.1, No Change to Prior Determination - Reconsiderations
 - b. IRM 8.7.12.17.2.2, Determination is the Same but the Reason is Different - Reconsiderations
 - c. IRM 8.7.12.17.2.3, Previously Agreed Case Where no Final Determination Letter was Issued - Reconsiderations
 - d. IRM 8.7.12.17.2.4, Determination Changed to Allow Relief in Full or Part - Reconsiderations
- (3) APS will follow normal closing procedures in IRM 8.20.7.40.19, Innocent Spouse Reconsideration Closing procedures.

8.7.12.17.2.1
(06-10-2021)
**No Change to Prior
Determination -
Reconsiderations**

- (1) If the claim was previously disallowed for more than one reason and the determination is to disallow it for one of the original reasons, treat it as “no change to prior determination.”

Example: The claim was initially disallowed because the IRS concluded it was equitable to hold the RS liable. The IRS previously determined that the RS would not suffer an economic hardship, had actual knowledge, and was non-compliant with income tax laws. After the reconsideration, the IRS determined that the RS would suffer an economic hardship. However, there was no change to the Service’s determination that the RS had actual knowledge and was non-compliant with income tax laws. After the reconsideration, the IRS’s conclusion is “no change to prior determination.”

- (2) On the case activity record, notate the following: “Received information, no change to prior determination.”
- (3) Prepare letter to RS of the “no change to prior determination” decision. If the time for petitioning the Tax Court has not expired, remind the RS of the last day for petitioning the Tax Court.

Note: Do not issue a letter to the NRS.

- (4) Prepare a customized Form 5402, Appeals Transmittal Case Memo, and include the following:
 - Disposal information - Closing Code: 03
 - Resolution Reason: INNSP RECON - No new information provided
- (5) If the IRS did not issue a final determination letter, see IRM 8.7.12.17.2.3, Previously Agreed Case Where no Final Determination Letter was Issued - Reconsiderations.

8.7.12.17.2.2
(06-10-2021)

Determination is the Same but the Reason is Different - Reconsiderations

- (1) If the claim was previously disallowed for more than one reason and the determination is to disallow it for a new reason (raised by Compliance), treat it as “no change to prior determination”.

Example: The claim was initially disallowed because the IRS determined the RS had actual knowledge of the item causing the deficiency/understatement. After the reconsideration, the IRS determined that the RS established that he or she did not have actual knowledge. However, the IRS determined it is equitable to hold the RS liable. The IRS’s conclusion is “no change to prior determination.”

- (2) On the case activity record, notate the following: “Received additional information with a new reason for disallowing.”
- (3) Prepare a letter to RS of the “no change to prior determination” decision. If the time for petitioning the Tax Court has not expired, remind the RS of the last day for petitioning the Tax Court.

Note: Do not issue a letter to the NRS.

- (4) Prepare a customized Form 5402, Appeals Transmittal Case Memo, and include the following:
 - Disposal information - Closing Code: 03
 - Resolution Reason: INNSP RECON - No new information provided
- (5) If the IRS did not issue a final determination letter, see IRM 8.7.12.17.2.3, Previously Agreed Case Where no Final Determination Letter was Issued - Reconsiderations.

8.7.12.17.2.3
(06-10-2021)

Previously Agreed Case Where no Final Determination Letter was Issued - Reconsiderations

- (1) If a reconsideration results in a no change to the earlier disallowance determination and no final innocent spouse relief determination letter was issued, then Appeals will issue Letter 3288, Final Appeals Determination to Requesting Spouse, with Tax Court rights.

Note: Do not issue a final notice letter to the NRS unless he/she was involved in the reconsideration process.

- (2) In the case activity record, notate the following: “Received additional information but no change to original determination.”
- (3) Prepare Letter 3288, Final Appeals Determination to Requesting Spouse.
- (4) Prepare a customized Form 5402, Appeals Transmittal Case Memo, and include the following:
 - Disposal information - Closing Code: 05
 - Resolution Reason: INNSP RECON - No new information provided or INNSP RECON - New information provided.
- (5) Prepare an ACM, as needed.

8.7.12.17.2.4
(06-10-2021)

**Determination Changed
to Allow Relief in Full or
Part - Reconsiderations**

- (1) If additional information is received and the determination is changing to allow relief in full or part, notify the NRS and provide the NRS with the opportunity to provide any relevant information. See IRM 8.7.12.6, Notice and Participation of NRS. When necessary, use Letter 3791, Appeals Innocent Spouse Case Letter to Non-Requesting Spouse Allowing for Information or Conference.
- (2) On the case activity record, notate the following: "Received additional information and changing determination."
- (3) Submit a request to APS to input "Transaction Code (TC) 971 Action Code (AC) 065" on the account module with an outstanding balance.
- (4) Prepare a customized Form 5402, Appeals Transmittal Case Memo, and include the following:
 - Disposal information - Closing Code: 03 (if agreed) or 05 (if unagreed)
 - Resolution Reason: INNRP RECON - New information provided
- (5) Prepare an ACM that fully explains your determination.
- (6) Prepare Letter 913, Agreed Cases - Closing Letter, for RS (if final determination was previously issued), using the **open paragraph** to explain the decision for granting relief. In the letter's heading, change the case type information to "Innocent Spouse Relief - Reconsideration." See the following sample paragraph.

Example: We reconsidered IRS's final determination on MM/DD/YYYY [enter determination date] of your Form 8857, Request for Innocent Spouse Relief. For tax years [enter tax years], you established that you are eligible for full relief from the debt. You are no longer responsible for the amount owed on the account.

Note: If the reconsideration results in partial relief and the RS indicates he or she doesn't agree, use Letter 5841 instead of Letter 913.

- (7) Prepare Letter 5841, Audit Reconsideration Closing Letter, for RS [Use open paragraph.] In the letter's heading, change the case type information to "Innocent Spouse Relief - Reconsideration." See the following sample paragraph.

Example: We previously notified you that your spouse for the tax years [enter tax years] filed Form 8857, Request for Innocent Spouse Relief. We reconsidered the IRS's initial determination on MM/DD/YYYY [enter determination date] and determined that relief is allowed in full (or allowed in part). For tax year [enter tax year], we allowed \$nnnn (enter amount) and disallowed \$nnn (entered amount, if partially disallowed). To the extent we allowed relief, you alone will be held responsible for the amount owed. We will notify you of the amount due when we adjust your account.

Note: Do not send a closing letter to the NRS, if he or she is no longer liable for the tax liabilities at issue. See IRM 8.7.12.6, Notice and Participation of NRS.

Exhibit 8.7.12-1 (06-10-2021) Initial Contact Letters

For initial contact letters sent to the appellate spouse(s), enclose the following:

- Notice 1016, How to Stop Interest on Your Account
- Pub 4227, Overview of the Appeals Process Brochure

See Exhibit 8.6.1-1, Pre-Selected Enclosures for Initial Contact Letters Based on Category and Case Type.

Non-docketed Case Initial Contact Letters

If	And	Then Mail
RS appeals Compliance's preliminary determination to fully deny relief		To RS (appellate spouse) <ul style="list-style-type: none"> • Letter 5157, Non-docketed Acknowledgement & Conference To NRS (non-appellate spouse) <ul style="list-style-type: none"> • Letter 3791, Appeals Innocent Spouse Case Letter to Non-requesting Spouse Allowing for Information or Conference
RS appeals Compliance's preliminary determination to partially deny relief	NRS does not appeal the preliminary determination to partially allow relief	To RS (appellate spouse) <ul style="list-style-type: none"> • Letter 5157, Non-docketed Acknowledgement & Conference To NRS (non-appellate spouse) <ul style="list-style-type: none"> • Letter 3791, Appeals Innocent Spouse Case Letter to Non-requesting Spouse Allowing for Information or Conference
RS appeals Compliance's preliminary determination to partially deny relief	NRS appeals the preliminary determination to partially allow relief	To RS (appellate spouse) <ul style="list-style-type: none"> • Letter 5157, Non-docketed Acknowledgement & Conference To NRS (appellate spouse) <ul style="list-style-type: none"> • Letter 5157, Non-docketed Acknowledgement & Conference
NRS appeals Compliance's preliminary determination to fully allow relief		To NRS (appellate spouse) <ul style="list-style-type: none"> • Letter 5157, Non-docketed Acknowledgement & Conference
NRS appeals Compliance's preliminary determination to partially allow relief	RS does not appeal the preliminary determination to partially deny relief	To NRS (appellate spouse) <ul style="list-style-type: none"> • Letter 5157, Non-docketed Acknowledgement & Conference

Exhibit 8.7.12-1 (Cont. 1) (06-10-2021)
Initial Contact Letters

Docketed Case Initial Contact Letters

If	And	Then Mail
RS appeals Compliance's preliminary determination to fully deny relief		<p>To RS (appellate spouse)</p> <ul style="list-style-type: none"> Letter 3808, Docketed Acknowledgement and Conference (To Petitioner), or Letter 3808-A, Docketed Acknowledgement and Conference (To Counsel of Record) <p>To NRS (non-appellate spouse)</p> <ul style="list-style-type: none"> Letter 3791, Appeals Innocent Spouse Case Letter to Non-requesting Spouse Allowing for Information or Conference
RS appeals Compliance's preliminary determination to partially deny relief	NRS does not appeal the preliminary determination to partially allow relief	<p>To RS (appellate spouse)</p> <ul style="list-style-type: none"> Letter 3808, Docketed Acknowledgement and Conference (To Petitioner), or Letter 3808-A, Docketed Acknowledgement and Conference (To Counsel of Record) <p>To NRS (non-appellate) spouse</p> <ul style="list-style-type: none"> Letter 3791, Appeals Innocent Spouse Case Letter to Non-requesting Spouse Allowing for Information or Conference
RS appeals Compliance's preliminary determination to partially deny relief	NRS appeals the preliminary determination to partially allow relief	<p>To RS (appellate spouse)</p> <ul style="list-style-type: none"> Letter 3808, Docketed Acknowledgement and Conference (To Petitioner), or Letter 3808-A, Docketed Acknowledgement and Conference (To Counsel of Record) <p>To NRS (appellate) spouse</p> <ul style="list-style-type: none"> Letter 5157, Non-docketed Acknowledgement & Conference
NRS appeals Compliance's preliminary determination to fully allow relief		<p>To NRS (appellate spouse)</p> <ul style="list-style-type: none"> Letter 5157, Non-docketed Acknowledgement & Conference
NRS appeals Compliance's preliminary determination to partially allow relief	RS does not appeal the preliminary determination to partially deny relief	<p>To NRS (appellate spouse)</p> <ul style="list-style-type: none"> Letter 5157, Non-docketed Acknowledgement & Conference