



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.15.5

APRIL 14, 2020

EFFECTIVE DATE

(04-14-2020)

PURPOSE

- (1) This transmits revised IRM 25.15.5, Relief from Joint and Several Liability, Relief from Community Property Laws.

MATERIAL CHANGES

- (1) Editorial changes have been made throughout.

EFFECT ON OTHER DOCUMENTS

IRM 25.15.5, Relief from Community Property Laws , dated July 24, 2017 is superseded.

AUDIENCE

Employees who are working cases involving married taxpayers domiciled in community property states, or cases otherwise raising community property issues, including receiving requests for relief under IRC 66(c).

Maha Williams
Director, Examination - Field and Campus Policy
Small Business/Self-Employed Division

25.15.5

Relief from Community Property Laws

Table of Contents

25.15.5.1 Program Scope and Objectives

25.15.5.1.1 Background

25.15.5.1.2 Authority

25.15.5.1.3 Responsibilities

25.15.5.1.4 Terms

25.15.5.1.5 Acronyms

25.15.5.1.6 Related Resources

25.15.5.2 Community Property States

25.15.5.3 Treatment of Community Income in General

25.15.5.4 Domicile

25.15.5.5 Community and Separate Property

25.15.5.6 Community Income

25.15.5.7 Effect of Innocent Spouse Relief

25.15.5.8 General Provisions of IRC 66

25.15.5.9 Other Liabilities and Collection Remedies

25.15.5.10 Transfer of Liability

25.15.5.11 Relief Not Available If Fraudulent Scheme, Closing Agreement or Offer In Compromise

25.15.5.12 IRC 66(a) Treatment of Community Income Where Spouses Live Apart

25.15.5.13 IRC 66(b) Denial of Community Property Benefits Where Spouse Not Notified

25.15.5.14 IRC 66(c) Innocent Spouse Relief

25.15.5.14.1 Traditional Relief

25.15.5.14.2 Equitable Relief Under 66(c) Generally

25.15.5.15 Requesting Relief under IRC 66(c)

25.15.5.16 Time Period for Filing a Request for Relief

25.15.5.16.1 Traditional Relief

25.15.5.16.2 Equitable Relief

25.15.5.16.3 Premature Requests

25.15.5.17 Invalid Joint Return Elections

25.15.5.18 Assessment Against NRS if Relief Granted

25.15.5.19 Substitute for Return

25.15.5.20 Notification Requirement

25.15.5.21 Appeal Rights

25.15.5.22 Refunds Under IRC 66

25.15.5.23 Letters

25.15.5.23.1 Preliminary Determination Letters

-
- 25.15.5.23.2 Final Determination Letter
 - 25.15.5.23.3 Other Letters

25.15.5.1
(07-24-2017)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides technical guidance on various relief provisions of IRC 66, Treatment of Community Income, and how to determine relief under this code section.
- (2) **Audience:** This IRM section is intended to address the needs of all Service employees working cases involving married taxpayers domiciled in community property states that filed separate returns or are non-filers. They include but are not limited to:
 - a. SB/SE Area Office examiners, such as Revenue Agents and Tax Compliance Officers.
 - b. SB/SE Technical Services Reviewers.
 - c. Financial Technicians and Specialists at the Centralized Cincinnati Innocent Spouse Operations (CCISO).
 - d. Managers of the above listed employees.
- (3) **Policy Owner:** The Director, Examination - Field and Campus Policy, who is under the Director, Headquarters Examination.
- (4) **Program Owner:** Campus Exam and Field Support, which is under the Director, Examination - Field and Campus Policy.
- (5) **Program Goals:** Determine how provisions of IRC 66 are applicable to taxpayers domiciled in a community property state who file separate returns, or are non-filers. Determine which taxpayers may be eligible for one of the community property income allocation exceptions of IRC 66(a) or (b), or for innocent spouse relief under IRC 66(c). See IRM 25.15.1, Introduction, for more information.

25.15.5.1.1
(07-24-2017)
Background

- (1) Each spouse domiciled in a community property state is generally liable for income tax on one-half of the community income when the spouses do not file a joint return. This section will discuss community property laws and outline the provisions of IRC 66, Treatment of Community Income. IRC 66 grants spouses relief from the community property income splitting requirements in certain circumstances.

Note: The existence of community property does not impact IRC 6015 determinations when a joint return is filed. Under IRC 6015 a spouse may be eligible for relief from joint and several liabilities attributable to a joint return. Determinations under IRC 6015 are made without regard to community property.

- (2) A spouse may be exempted from community property items attributable to the other spouse under certain provisions of IRC 66, and also by filing a Form 8857, Request for Innocent Spouse Relief.
- (3) IRC 66(c) relief is not available if the spouse:
 - Filed a joint return,
 - Transferred assets to the other spouse as part of a fraudulent scheme,
 - Entered into a closing agreement that disposes of the same liability, or
 - Entered into an offer in compromise for the liability.
- (4) For further information on community property law not listed in this IRM, see IRM 25.18.1, Basic Principles of Community Property Law.

25.15.5.1.2
(07-24-2017)

Authority

- (1) The information in this section is based upon the following authorities:
 - a. IRC 66, Treatment of Community Income.
 - b. Treas. Reg. 1.66, - Treatment of community income.
 - c. Rev. Proc. 2013-34, guidelines for taxpayers seeking equitable relief from income tax liability under section 66(c) or section 6015(f).

25.15.5.1.3
(04-14-2020)

Responsibilities

- (1) The Director, Examination - Field and Campus Policy (formerly known as the Director, Examination AUR/Policy), reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the field and campus examination process. See IRM 1.1.16.3.5.1, Field and Campus Policy, for additional information.
- (2) Campus Exam and Field Support, which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing Servicewide policy guidance on compliance processes that relate to campus examination operations and support Field Exam and Specialty programs in SB/SE and Large Business & International (LB&I). See IRM 1.1.16.3.5.1.5, Campus Exam and Field Support, for additional information.
- (3) Area Office examiners, such as Revenue Agents and Tax Compliance Officers, are responsible for applying the provisions of IRC 66 fairly and consistently in determining whether relief provisions apply, as part of their examinations.
- (4) CCISO Financial Technicians and Specialists make determinations of relief for innocent spouse claims filed with the campus, for taxpayers who are not in open field examinations.
- (5) Management in the Area Offices and in CCISO oversee the employees making relief determinations for accuracy, protecting the government's interest and taxpayers' rights.

25.15.5.1.4
(07-24-2017)

Terms

- (1) The following table contains a list of terms used throughout this IRM:

Terms	Definition
Common Law	A property system in which each spouse is treated as an individual, and each spouse owns and is taxed upon income that he or she earns. See IRM 25.18.1.2.1, Common Law, for more information.
Community Property	Generally all property acquired during a marriage while spouses are domiciled in a community property state. See IRM 25.15.5.5, Community and Separate Property, and IRM 25.18.1.3.10, Definition of Community Property, for more information.

Terms	Definition
Community Property Income	Income earned by either or both spouses in a community property state that is not deemed separate property by other rules, or agreements between the spouses to maintain a separate property ownership regime. Community property income is typically taxed 50% to each spouse. See IRM 25.15.5.3, Treatment of Community Property Income in General, and IRM 25.18.2, Income Reporting Considerations of Community Property, for more information.
Community Property Law	A property system where the presumption is that each spouse contributes income and assets to the “community” of the spouses, and share equally in any earnings, assets, and debts of the community. See IRM 25.18.1.2.2, Community Property Law, for more information.
Community Property state	States that use community property law as their property system. Each state's law can vary based on the individual state statutes. See IRM 25.15.5.2, Community Property States, for more information.
Innocent Spouse relief	The relief from liabilities on joint or separately filed returns requested by filing a Form 8857, Request for Innocent Spouse Relief, or similar statement signed under penalties of perjury. See IRM 25.15.1, Introduction, for more information.
Separate property	Property and related income that is deemed separate property of one spouse. See IRM 25.15.5.5, Community and Separate Property, and IRM 25.18.1.3.11, Definition of Separate Property, for more information.

25.15.5.1.5
(07-24-2017)
Acronyms

- (1) The following table lists commonly used acronyms and their definitions used throughout this IRM:

Acronym	Definition
CCISO	Cincinnati Centralized Innocent Spouse Operation - the campus location that works innocent spouse relief requests that are not worked in Area Office examinations.
NRS	Non-Requesting Spouse - the spouse not requesting innocent spouse relief.
RS	Requesting Spouse - the spouse requesting innocent spouse relief.

25.15.5.1.6
(04-14-2020)
Related Resources

- (1) Related IRM sections are in the table below:

IRM	Title	Guidance on
25.18.1	Basic Principles of Community Property Law	Basic theory and principles of community property law and discusses some state law differences.
25.18.2	Income Reporting Considerations of Community Property	Treatment of specific items of income and deductions under various scenarios in separate returns under community property rules.
25.18.4	Collection of Taxes in Community Property States	Collection issues involving married taxpayers domiciled in community property states.
25.18.5	Injured Spouse	Injured Spouse claim filed by taxpayer in a community property state.
25.15.3	Technical Provisions of IRC 6015	Equitable relief determinations under IRC 66(c).
25.15.6	Field Examination Procedures	Procedures for Area Office examiners considering innocent spouse relief during open examinations.

IRM	Title	Guidance on
25.15.18	Innocent Spouse Relief Processing Procedures	Procedures for CCISO financial technicians and specialists considering requests for innocent spouse relief.

- (2) Pro forma work papers with check sheets and other information concerning IRC 66 and its subsections can be found online.
- CCISO technicians can go to <https://organization.ds.irsnet.gov/sites/SBSEfeEP/ExamTasks/FSP/ISO/SitePages/Home.aspx> under the Shared Documents folder.
 - Area Office examiners can find IRC 66(a) and (b) job aids at <http://mysbse.web.irs.gov/examination/tip/innocentspouse/jobaids/default.aspx>.

25.15.5.2
(07-24-2017)
Community Property States

- (1) The following are community property states:

- Arizona
- California
- Idaho
- Louisiana
- Nevada
- New Mexico
- Texas
- Washington
- Wisconsin

Note: While not community property states, Alaska and Oklahoma do allow couples to elect a community property system. See Alaska Statutes §§ 34.77.020 - 34.77.995. The U.S. Supreme Court ruled that the Oklahoma statute would not be recognized for federal income tax reporting purposes. *Commissioner v. Harmon*, 323 U.S. 44(1944). The Harmon decision should also apply to the Alaska system for income reporting purposes.

- (2) Same-sex marriage: On June 26, 2015 in *Oberfell v. Hodges*, 135 S.Ct. 2584(2015), the Supreme Court held that:
- State laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples, and
 - All states must recognize same-sex marriages performed in other states.

As a result, same-sex married couples receive the same state and federal benefits and burdens as opposite-sex married couples. Therefore, same-sex couples who domicile in a community property state are subject to community property rules in the same manner as opposite-sex married couples.

- (3) Registered domestic partners in Nevada, Washington, or California generally must follow state community property laws and report half the combined community income of the individual and his or her registered domestic partner. See Cal. Fam. Code § 297.5(a); Nev. Rev. Stat. § 122A200; Wash. Rev. Code § 26.16.030. These laws are summarized in Exhibit 25.18.1-1, Comparison of

State Law Differences in Community Property States, at <http://irm.web.irs.gov/Part25/Chapter18/Section1/IRM25.18.1.asp#25.18.1-1>. Registered domestic partners are not married for federal tax purposes. They may not file **married filing jointly** or **married filing separately** federal income tax returns. See IRM 25.18.1.3.3, Registered Domestic Partners, for more information.

- (4) Some countries are community property, and the law of each country should be checked as necessary.
- (5) The community property territories of the United States are:
 - Guam
 - Puerto Rico

25.15.5.3
(07-24-2017)

Treatment of Community Income in General

- (1) Community property laws vary greatly from state to state based upon each individual state's statutes. The community property laws of the state where the spouses are domiciled controls and must be reviewed when any tax issue involves the application of community property laws. See Exhibit 25.18.1-1, Comparison of State Law Differences in Community Property States, at *Exhibit 25.18.1-1* for more information.
- (2) Spouses domiciled in community property states may file tax returns either jointly or separately. The spouses generally have an undivided one-half interest in the community income; so any separate return should reflect one-half of the community income plus 100% of their separate income.

Note: Taxpayers with a prenuptial agreement can opt out of state community property laws and elect to have income treated as if they were domiciled in a non-community property state, in which case IRC 66 would not apply. See IRM 25.18.1.3.25, Premarital and Post-Marital Contracts Between Spouses, for more information.

25.15.5.4
(07-24-2017)

Domicile

- (1) For federal tax purposes, a taxpayer's rights and interest in property are determined under the laws of the taxpayer's state of domicile. The words "residence" and "domicile" are not synonymous and are often confused. A residence is where a taxpayer lives. A domicile is a permanent home the taxpayer intends to use for an indefinite or unlimited period, and when absent, intends to return. A taxpayer may have several places of residence, but only one domicile. See IRM 25.18.1.3.1, Domicile, for more information.
- (2) Objective factors are a good indication of the taxpayer's intent. Such factors include:
 - a. Where the taxpayer is employed.
 - b. Whether the taxpayer is on temporary work detail, attending school or stationed in the military.
 - c. Where the taxpayer's vehicles are registered.
 - d. Where the taxpayer files state tax returns.
 - e. Where the taxpayer is registered to vote.
 - f. Where the taxpayer's personal residence is located.
 - g. Where the taxpayer's family is located.
 - h. Where the taxpayer is involved with the community.

- (3) If both spouses have different domiciles, you should check the community property laws of each state to determine if they have community property or community income.

25.15.5.5
(07-24-2017)
**Community and
Separate Property**

- (1) **Community Property** - Generally, community property is all property acquired during a marriage while the spouses are domiciled in a community property state. See IRM 25.18.1.3.10, Definition of Community Property, for more information. Additional guidelines listed below are the general rules regarding what constitutes community property:
 - Property both spouses agree to convert from separate to community property
 - Property which cannot be identified as separate property
- (2) **Separate Property** - Generally, for property to be considered separate after marriage, it must be acquired by separate funds. For property acquired before marriage to remain separate, the upkeep must be done by separate funds and the property must not be commingled with community property. See IRM 25.18.1.3.11, Definition of Separate Property, for more information.

25.15.5.6
(07-24-2017)
Community Income

- (1) Generally, community income is income generated from community property. For additional information, see IRM 25.18.2, Income Reporting Considerations of Community Property, for additional information. Listed below are the general rules regarding what constitutes community income:
 - Income, rents, dividends, and/or interest derived from community property
 - Salaries, wages, or pay for the services of either spouse during the marriage
 - Economic benefits attributable to the efforts of the spouse (for example, income reported on Schedules C, E, or F)
- (2) State law must be reviewed to determine the proper treatment for community income. Also, state law will determine how to treat community income if the spouses have separated during the year. Each state's laws regarding community income and community property are different. Do not assume the general rules apply in every state. See IRM Exhibit 25.18.1-1, Comparison of State Law Differences in Community Property States, for more information.

25.15.5.7
(07-24-2017)
**Effect of Innocent
Spouse Relief**

- (1) The effect of innocent spouse relief is to make a spouse no longer liable for a particular tax. It removes or prevents the assessment of tax against a spouse. It does not affect the ability of the Service to pursue collection remedies against the nonliable spouse's interest in community property. See *United States v. Stolle*, 2000-1 U.S.T.C. ¶ 50,329, 86 A.F.T.R.2d ¶ 2000-5043 (C.D. Cal 2000). This is true even if this has an adverse impact on the non-liable spouse who has received the innocent spouse relief.

Example: If a spouse receives innocent spouse relief in a state that would allow a private creditor to garnish the non-liable spouse's wages for a debt of the liable spouse, then the Service could still collect from this property.

- (2) IRC 6015(g) does not override the Service's ability to offset payments made from community property under state law. Subject to other limitations in the Code, IRC 6015(g) allows taxpayers who have received innocent spouse relief

to receive refunds of certain payments they have made toward the liability. However, the Service may still be able to retain all or part of the payments that would otherwise be refundable under IRC 6015(g) if they were made from community property and the Service has a state law remedy against the community property. See *Ordlock v. Commissioner*, 126 T.C. 47(2006).

25.15.5.8
(07-24-2017)

General Provisions of IRC 66

- (1) IRC 66 has three subsections that could affect the reporting of community property income.
 - a. IRC 66(a) provides an exception to the general rule of community property income splitting. See IRM 25.15.5.12, IRC 66(a) Treatment of Community Income Where Spouses Live Apart, for additional information.
 - b. IRC 66(b) allows the Service to shift the incidents of taxation to the other spouse if certain requirements are met. See IRM 25.15.5.13, IRC 66(b) Denial of Community Property Benefits Where Spouse Not Notified, for more information.
 - c. IRC 66(c) grants relief to spouses from reporting half of particular items of community property income. See IRM 25.15.5.14, IRC 66(c) Innocent Spouse Relief, for more information.
- (2) IRC 66 applies only to community income, as defined by state law. Some of the requirements of the section can be quite complex.

25.15.5.9
(07-24-2017)

Other Liabilities and Collection Remedies

- (1) IRC 66 does not negate liability that arises against a spouse under the operation of other (non-community property) laws. For example:
 - It will not negate transferee liability if it applies. See Treas. Reg. 1.66-1(c) for more information.
 - It does not negate any collection remedies based on state law against community property in the hands of the other spouse.

Example: Husband and wife live in Arizona. Both owe taxes. Wife gets relief under IRC 66. The Service can still collect the husband's unpaid liability from all of their community property. See Cf. *United States v. Stolle*, 2000-1 U.S.T.C. ¶ 50,329, (C.D. Cal 2000) (with respect to IRC 6015).

25.15.5.10
(07-24-2017)

Transfer of Liability

- (1) Where IRC 66(c) applies, the items of community property upon which the Requesting Spouse (RS) receives relief are included in the income of the Non-Requesting Spouse (NRS), but only as long as the statute of limitations is open.
- (2) Requests for relief under IRC 66(c), except for equitable relief, usually are required to be filed before the statute of limitations on assessment expires for the NRS's year subject to the request.
- (3) The time for filing a claim for equitable relief under IRC 66(c) is not tied into the statute of limitations for assessments against the NRS. See IRM 25.15.5.16, Time Period for Filing a Request for Relief, for more information.
- (4) Consideration should be given to protecting the statute of limitations of the NRS if it is still open when the request is received.
- (5) If the shifting of the income creates a deficiency for the NRS, then deficiency procedures apply to assess the additional tax.

25.15.5.11
(07-24-2017)

**Relief Not Available If
Fraudulent Scheme,
Closing Agreement or
Offer In Compromise**

- (1) IRC 66(c) relief is not available if:
 - a. One spouse transferred assets to the other spouse as part of a fraudulent scheme. See Treas. Reg. 1.66-4(f) for more information.
 - b. The spouse entered into a closing agreement (other than an agreement pursuant to IRC 6224(c) as to partnership items) that disposes of the same liability that is the subject of the request for relief.
 - c. The RS has entered into an offer in compromise with the Service for the liability. See Treas. Reg. 1.66-4(h) for more information.

25.15.5.12
(07-24-2017)

**IRC 66(a) Treatment of
Community Income
Where Spouses Live
Apart**

- (1) Under IRC 66(a), if spouses meet certain requirements, they do not report most community property income under community property rules. IRC 66(a) provides an exception to the general rule that community income is taxed one-half to each spouse domiciled in a community property state. This is a special rule that allocates earned income to the spouse who earned the income if certain statutory requirements are met. It applies where:
 - 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. For purposes of this requirement, living apart requires that spouses maintain separate residences;

Note: Spouses who maintain separate residences due to temporary absences are not considered to be living apart. See Treas. Reg. 1.66-2(b) for more information.
 - c. The spouses do not file a joint return with each other for the taxable year beginning or ending in the calendar year;
 - d. One or both of the spouses have earned income for the calendar year, which is community income; and
 - e. No portion of the earned income is transferred between the spouses, directly or indirectly, before the close of the calendar year. Transferred income does not include de minimis amounts of earned income transferred between spouses. Amounts transferred for the benefit of the spouses' child are not treated as direct or indirect transfers of income. Income transferred between spouses is presumed to be a transfer of earned income, although the presumption is rebuttable. See Treas. Reg. 1.66-2(c) for more information.
- (2) If all of these criteria are met, spouses in community property states must report their income according to rules of IRC 879(a) which provides:
 - a. Earned income (within the meaning of section 911(d)(2)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services.
 - b. Trade or business income is taxed to the spouse who owns the business unless the other spouse exercised substantially all of the management and control of the business, in which case it is treated as the other spouse's income. See IRC 879(a)(2) and IRC 1402(a)(5).
 - c. A distributive share from a partnership is taxed to the spouse who is the partner.
 - d. Income derived from the separate property of the one spouse is taxed to that spouse. See IRC 879(a)(3)

Caution: All other forms of income are taxed in accordance with normal community property laws. See IRC 879(a)(4). This includes dividend, interest, rents, royalties, capital gains, and earnings of unemancipated minor children.

25.15.5.13
(07-24-2017)

**IRC 66(b) Denial of
Community Property
Benefits Where Spouse
Not Notified**

- (1) IRC 66(b) provides an exception to the general rule that community income is taxed one-half to each spouse. IRC 66(b) authorizes the Service to disregard community property laws by denying the benefits of income splitting between the spouses. IRC 66(b) may be applied under the following conditions:
 - a. The spouse acted as if he/she was solely entitled to such community income, and
 - b. The spouse failed to notify the other spouse of the nature and amount of such income before the due date of the return (including extensions) for the taxable year in which the income was derived.
- (2) IRC 66(b) entitles the Service to shift the item of income and assess additional tax against the spouse earning the income in accordance with deficiency procedures. See IRC 66(b) and Treas. Reg. 1.66-3(b).
- (3) Only the Service can invoke IRC 66(b). It is not a relief provision that can be invoked by a taxpayer to escape liability. *Hardy v. Commissioner*, 181 F.3d 1002 (9th Cir. 1999); *Drummer v. Commissioner*, T.C. Memo, 1994-214, Aff'd without published opinion, 68 F.3d 472 (5th Cir. 1995). Where IRC 66(b) is asserted, it must be clearly reflected on the notice of deficiency. The determination must be supported by evidence that IRC 66(b) applies. If the notice fails to do this, the burden of proof may be shifted to the Service. *Shea v. Commissioner*, 112 T.C. 183(1999).
- (4) Solely entitled to income: to determine whether a spouse has acted as if he or she was solely entitled to the income, consider the facts and circumstances focusing on whether the spouse used, or made available, the item of income for the benefit of the marital community. See Treas. Reg. 1.66-3(a). For instance:
 - Where the community property at issue is deposited into a joint account or an account over which both spouses have signature authority, this is a strong indication that the spouse who deposited the funds did not act as though he or she was solely entitled to the funds. *Cox v. Commissioner*, T.C. Memo. 1993-559; *Drummer v. Commissioner*, T.C. Memo. 1994-214, aff'd without published opinion, 68 F.3d 472 (5th Cir. 1995).
 - Similarly, where a spouse sends a portion of the funds to the other spouse, that spouse has not acted as though he or she was solely entitled to the funds. *Mischel v. Commissioner*, T.C. Memo 1997-350; Treas. Reg. 1.66-3(c), Example 1(ii).
 - If the community income is retained by one spouse and spent at his or her discretion, that spouse has acted as though he or she was solely entitled to the income. See Treas. Reg. 1.66-3(c), Example 1(i) for more information.
- (5) Notification of nature and amount of income: a spouse who provides a copy of a Form 1099 or Form W-2 to the other spouse satisfies the notification of the nature and amount of income requirement. If notification is done before the

due date of the return (including extensions), IRC 66(b) is inapplicable. See Treas. Reg. 1.66-3(c), Example 2, for more information.

25.15.5.14 (07-24-2017) **IRC 66(c) Innocent Spouse Relief**

- (1) IRC 66(c) provides two additional exceptions to the general rule that community income is taxed one-half to each spouse. Unlike IRC 6015, IRC 66(c) provides relief for items of income only, as defined in IRM 25.18.2.2, Income Reporting Considerations of Community Property, not relief from disallowed deductions as defined in IRM 25.18.2.5, Claiming of Deductions.

25.15.5.14.1 (07-24-2017) **Traditional Relief**

- (1) The first part of IRC 66(c), known as traditional relief, applies only to deficiency cases. In cases where relief is granted, the NRS will be solely liable for the tax liability attributable to the item of community property income. See Treas. Reg. 1.66-4. Traditional relief under IRC 66(c) has the following requirements:

- a. A joint return was not filed for the taxable year for which the RS seeks relief;

Note: If a joint return is filed, IRC 66(c) does not apply. Relief on a jointly filed return may be available under IRC 6015.

- b. The RS does not include in gross income for such taxable year an item of community income which would be attributable to NRS under IRC 879(a) (For example, if the spouses were not subject to community property laws the item would be reportable by the NRS);
- c. The RS establishes he/she did not know and had no reason to know of such item of community income; and
- d. Considering all the facts and circumstances, it is inequitable to include such community item in the RS's gross income.

- (2) If all of the requirements are met, then the unreported item of income will be taxed wholly to the NRS, and not split.

- (3) Knowledge or Reason to Know: For purposes of the knowledge requirement of IRC 66(c), a RS has knowledge or reason to know if he or she actually knew of the item of community income or a reasonable person in similar circumstances would have known of the item of community income. All the facts and circumstances are considered. Relevant factors include, but are not limited to, the nature of the item of community income, the amount of the item relative to other income items, the couple's financial situation, the RS's educational background and business experience, and 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). See Treas. Reg. 1.66-4(a)(2) for more information.

- (4) The knowledge requirement is interpreted strictly. If a spouse is aware of the source of community income or an income producing activity, the RS is considered to have knowledge or reason to know of the item of community income even if the spouse does not know the specific amount received. See *McGee v. Commissioner* 979 F.2d 66 (5th Cir. 1992); *Beck v. Commissioner*, T.C. Memo, 2001-198; and Treas. Reg. 1.66-4(a)(2)(ii) for more information. However, if the spouse knows that the earning spouse has some types of income but not other types, he or she may be relieved of tax liability for the latter but not the former. See *Roberts v. Commissioner*, T.C. Memo 1987-391, aff'd, 860 F.2d 1235 (5th Cir. 1988).

- (5) Inequitable: In determining whether it would be inequitable to hold a spouse liable, all the facts and circumstances are considered. An important factor is whether the spouse significantly benefited, directly or indirectly, from the item. This includes transfers of property or rights to property, including transfers several years after the fact. Normal support is not benefit. Other factors include desertion, divorce or separation. See Treas. Reg. 1.66-4(a)(3) and Rev. Proc. 2013-34 for more information.

25.15.5.14.2
(07-24-2017)
**Equitable Relief Under
66(c) Generally**

- (1) If the RS does not qualify for traditional relief under IRC 66(c), and if taking into account all the facts and circumstances it is inequitable to hold the RS liable then the Service will consider equitable relief under IRC 66(c).
- (2) Relief is available for both deficiency (understatement) cases and underpayment cases.
- (3) To qualify for equitable relief a RS must meet the threshold requirements of Rev. Proc. 2013-34. See IRM 25.15.3.9.2, Eligibility Threshold Requirements, for additional information. IRC 66(c) is available for spouses domiciled in a community property state who did not file a joint return, who do not qualify for the traditional relief under the first part of IRC 66(c), and who meet the following threshold requirements:
- The RS must apply for relief while the collection statute or refund statute remains open.
 - No assets were transferred between spouses as part of a fraudulent scheme.
 - The NRS did not transfer disqualified assets to the RS. If disqualified assets were transferred, relief can only be granted to the extent the income tax liability exceeds the value of those assets. See IRM 25.15.3.8.2.6, Disqualified Assets, for more information.
 - The RS did not knowingly participate in the filing of a fraudulent return.
 - The income tax liability from which the RS seeks relief must be attributable to an item of the NRS, unless an exception applies. See IRM 25.15.3.9.2.1, Eligibility Threshold Conditions - Defined, paragraph (7), for the exceptions.
- (4) If all the above threshold requirements are met, the guidelines in Rev. Proc. 2013-34, Section 4.03, should be followed in determining whether to grant relief. See IRM 25.15.3.9.4.1, Equitable Relief Factors (Section 4.03) for all the factors to consider.

Note: Rev. Proc. 2013-34, Section 4.03, applies to taxpayers seeking equitable relief from income tax liability under section 66(c) **or** 6015(f). Therefore consider the factors listed at IRM 25.15.3.9.4.1, Equitable Relief Factors (Section 4.03), for 66(c) requests for relief. The factors in section 4.03 apply in determining whether to relieve a spouse from income tax liability resulting from the operation of community property law under the equitable relief provision of section 66(c).

- (5) If relief is granted, the item of community income is included in the gross income of the NRS and not in the gross income of the RS. The assessment made against the NRS must be made in accordance with the deficiency procedures of IRC 6212 and IRC 6213. Where IRC 66(c) is invoked against the NRS, it must be clearly reflected in the notice of deficiency.

- 25.15.5.15
(07-24-2017)
Requesting Relief under IRC 66(c)
- (1) A RS seeking relief from the operation of community property law under IRC 66(c) must request such relief on 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 Service's reasonable requests for information that will assist in identifying and locating the NRS. See Treas. Reg. 1.66-4(j) for more information.
- 25.15.5.16
(07-24-2017)
Time Period for Filing a Request for 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 file within the time period prescribed in the following subsections.
- 25.15.5.16.1
(07-24-2017)
Traditional Relief
- (1) The **earliest** time for submitting a request for an amount 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 there may be an outstanding liability with regard to that year. See Treas. Reg. 1.66-4(j) for more information.
- (2) The **latest** time for requesting relief, except for requests for equitable relief, is no later than 6 months before the expiration of the period of limitations on assessment, including extensions, against the NRS for the taxable year that is the subject of the request for relief, unless the examination of the RS's return commences during that 6-month period.
- (3) If the examination of the RS's return commences during that 6-month period, the latest time for requesting relief is 30 days after the commencement of the examination.
- 25.15.5.16.2
(07-24-2017)
Equitable Relief
- (1) The **earliest** time for submitting a request for equitable relief relating to a deficiency is the date the RS receives notification of an audit or a letter or notice from the IRS stating there may be an outstanding liability with regard to that year.
- (2) The **earliest** time for submitting a request for equitable relief relating to a liability properly reported but unpaid is upon the filing of the individual Federal income tax return.
- (3) The **latest** time for requesting equitable relief is within any time period that the collection statute or refund statute remains open.
- 25.15.5.16.3
(04-14-2020)
Premature Requests
- (1) The Service will not consider a premature request for relief under IRC 66(c). See Treas. Reg. 1.66-4(j)(2)(iii) for more information.
- (2) In the case of a claim for **traditional relief**, a premature claim is a claim for relief filed for a taxable year prior to a notification of an audit or a letter or notice from the Service indicating there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to IRC 6223 relating to Tax Equity and Fiscal Responsibility Act (TEFRA) partnership proceedings but do include notices of computational adjustment to the partner or partner's spouse, Form 4549, Report of Income Tax Examination Changes, which compute the partner's or partner's spouse's share of the partnership liability.

- (3) In the case of a claim for **equitable relief involving an underpayment**, a premature claim is a claim for relief received prior to the date the RS files an individual federal income tax return for the taxable year in question.
- (4) In the case of a claim for **equitable relief involving a deficiency**, a premature claim is a claim received prior to notification of an audit or letter or notice from the IRS stating there may be an outstanding liability for that year.

25.15.5.17
(07-24-2017)
Invalid Joint Return Elections

- (1) If a RS in a community property state files a claim for relief from liability under IRC 6015 but the joint return election was invalid, the examiner should consider whether any of the provisions of IRC 66 apply. If the joint election is determined to be invalid and IRC 66 does not apply, then the appropriate community property split should be completed for the RS and the returns should be adjusted and/or secured.

25.15.5.18
(07-24-2017)
Assessment Against NRS if Relief Granted

- (1) If it is determined IRC 66(c) applies, the items of community income attributable to the NRS are included in the gross income of the NRS as long as the statute of limitations on assessment is still open. Thus, it is important to track the statute of limitations on assessment against the NRS when processing a claim under IRC 66(c).

25.15.5.19
(07-24-2017)
Substitute for Return

- (1) In many instances for non-filers, the Service has filed substitute returns for the taxpayer under IRC 6020(b). In community property states, where there are indications the taxpayer was married, the Service will file substitute returns for both spouses using the married filing separate rates. Relief under IRC 66(c) may be available to a RS in this instance, as no joint return was filed by the taxpayers.

25.15.5.20
(07-24-2017)
Notification Requirement

- (1) The Service must send a notice to the NRS to inform them the RS filed a claim for relief and provide the NRS an opportunity to submit any information that should be considered in determining whether the RS should be granted relief from the operation of community property law.
- (2) This notice will be sent to the NRS's last known address.
- (3) The Service may share with both spouses the information submitted by the other spouse, unless the Service determines the sharing of such information will impair tax administration.

Caution: 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.

25.15.5.21
(07-24-2017)
Appeal Rights

- (1) Any spouse denied relief may file an appeal with the Appeals Division to administratively review the determination made under IRC 66(c).

Note: See IRM 25.15.6, Field Examination Procedures, for additional information applicable to Area Office examiners.

Note: See IRM 25.15.18, Innocent Spouse Relief Processing Procedures, for information applicable to CCISO examiners.

- (2) In order to seek a Tax Court review of a denial of treatment of community income under IRC 66, an independent basis for Tax Court jurisdiction must exist, as when a statutory notice of deficiency or Final Determination in a Collection Due Process proceeding was issued. The Tax Court cannot review denial of IRC 66 relief in a **stand-alone** proceeding. See *Bernal v. Commissioner*, 120 T.C. 102 (2003).
- (3) The NRS will be given appeal rights when IRS proposes to grant full or partial relief to the RS.

Note: The NRS does not have the right to appeal if the NRS is no longer liable for the tax liabilities at issue, e.g. they were discharged in the NRS's bankruptcy proceedings and/or offer-in-compromise, or the NRS's CSED has expired.

25.15.5.22
(07-24-2017)
Refunds Under IRC 66

- (1) There are no limitations on refunds within IRC 66, but all refunds are subject to the limitations of IRC 6511. Also see IRM 25.15.5.7, Effect of Innocent Spouse Relief, for more information.
- (2) In general, RS is not eligible for refund of any joint payments or payments made by NRS. See Rev. Proc. 2013-34, Section 4.04, *Refunds*, for more information.

25.15.5.23
(04-14-2020)
Letters

- (1) The following sections provide information regarding letters to be issued to taxpayers regarding requests for relief under IRC 66(c). Integrated Data Retrieval System (IDRS) letters are known as "C" letters and are to be used by the Cincinnati Centralized Innocent Spouse Operation (CCISO). All other letters are to be used by Area Office personnel.

Note: For pre-assessment claims considered by Area Office examiners, the determination is generally communicated to both spouses through examination reports. See IRM 25.15.6.10.1, Pre-Assessment Determination and Report Writing, for more information. In post-assessment cases, Technical Services issues determination letters to each spouse after mandatory review of the case. The letters communicate the examiner's determination. See IRM 25.15.6.10.2, Post-Assessment Determination, and IRM 4.8.5, Post Examination Case Processing Requirements, for more information.

Note: CCISO personnel follow the procedures in IRM 25.15.18, Innocent Spouse Relief Processing Procedures.

25.15.5.23.1
(07-24-2017)
**Preliminary
Determination Letters**

- (1) Letter 3663-C/Letter 3663, Requesting Spouse Preliminary Determination IRC Section 66(c) - Advises the **RS** of the preliminary determination and gives them the opportunity to appeal the decision.
- (2) The following letter for CCISO advises the **NRS** of the preliminary determination and gives them the opportunity to respond.
 - a. Letter 5410-C, NRS Preliminary Determination IRC Section 66(c).

25.15.5.23.2
(07-24-2017)
**Final Determination
Letter**

- (1) Letter 3664-C/Letter 3664, Requesting Spouse Final Determination IRC Section 66(c) - Advises the **RS** of the final determination.

25.15.5.23.3
(07-24-2017)
Other Letters

- (1) Letter 3662-C/Letter 3662, Requesting Spouse Initial Contact IRC Section 66(c)- Initial contact letter to the **RS**.
- (2) Letter 3665-C/Letter 3665, Non-Requesting Spouse Initial Contact IRC Section 66(c)- Initial contact letter to the **NRS** giving notice to the NRS and opportunity to participate in administrative proceedings.
- (3) Letter 3666-C/Letter 3666, IRC Section 66(c) Unprocessable/Transferred Request- Unprocessable request for relief letter advising the **RS** their request for relief has been received; however, it cannot be processed.