



for a study being conducted by the Service and Treasury on certain joint return and community property issues, particularly as they affect divorced and separated taxpayers. This study was initially described in Announcement 96-5, “Administrative Initiatives to Enhance Taxpayer Rights,” 1996-4 I.R.B. 99 at 101 (Jan. 22, 1996).

BACKGROUND

Section 6013(a) of the Internal Revenue Code generally provides that spouses may file a joint return even though one of the spouses has neither gross income nor deductions. Section 6013(d)(3) states that spouses are jointly and severally liable for the taxes on a joint return.

For married taxpayers who filed jointly but then divorce or separate, joint and several liability means that a former spouse remains liable for all taxes, additions to tax, penalties and interest due with respect to the joint return even if all the income was earned by the other spouse. This liability remains regardless of the terms of any divorce decree or separation agreement.

Congress was concerned that the joint and several liability standard could unfairly attribute tax liability on a joint return to a spouse who should not be held liable for such taxes under certain circumstances. Congress thus enacted the innocent spouse provisions of § 6013(e). Section 6013(e), however, establishes a detailed set of requirements that must be met to obtain innocent spouse relief. As a result, the innocent spouse provisions do not apply in many situations.

“Community property” laws also present unique issues for divorced or separated taxpayers. Community property laws generally consider each spouse to own one-half of the community income of the spouses. Consistent with these general principles of community property laws, the Supreme Court in 1930 held that spouses who live in community property jurisdictions but file separate returns must each include half of the community income in his or her return, even if all the income was earned by one spouse. *Poe v. Seaborn*, 282 U.S. 101 (1930). Under this rule, each spouse would be liable for taxes, additions to tax, penalties and interest due with respect

Study of Certain Joint Return and Community Property Issues For Divorced and Separated Taxpayers

Notice 96-19

This Notice invites public comments

to the amount required to be reported on his or her return.

Congress recognized that the rule of *Poe v. Seaborn* could cause hardship for taxpayers in community property states. Congress thus amended the Internal Revenue Code to provide that under certain conditions, the community property laws would be disregarded in determining certain types of income for federal income tax purposes. In particular, §§ 66 and 879(a) overrule *Poe v. Seaborn*, in part, generally by taxing income to the spouse who earned, managed or controlled such income. The requirements of these sections, however, can be difficult to meet and they do not apply in many situations.

The community property laws also present unique issues regarding which assets and income may be collected to satisfy federal tax liabilities. For example, all or a portion of the community property of the spouses may be used to satisfy a separate tax obligation of one spouse, even if the tax arose before the marriage or even during a previous marriage.

REQUEST FOR PUBLIC COMMENT

The Service and Treasury are studying the effects of certain proposals to change current law regarding the tax treatment of divorced and separated taxpayers. The Service and Treasury request comments on the following proposals:

A. *Replace the Joint and Several Liability Standard with a Proportionate Liability Standard*

A proportionate liability standard would hold each spouse liable for only that portion of the tax attributable to a joint return that relates to that spouse's contribution to the aggregate joint return tax liability of both spouses. Please comment on the effects of changing the current joint and several liability standard to a proportionate liability standard, particularly as it would affect divorced and separated taxpayers. Comments on the following issues would be particularly helpful:

1. How would such a system work if the former spouses are not cooperating with one another, or with the Service, regarding their respective shares of the tax liability?

2. Would a proportionate liability standard allow taxpayers to take undue

advantage of the tax system by inter-spousal property transfers, particularly in view of the nonrecognition of gain on such transfers under § 1041?

3. Under a proportionate liability standard, how would the Service trace assets and allocate deductions and credits between the spouses to determine each spouse's correct tax liability and to collect amounts due in the most efficient manner possible?

4. Would a proportionate liability standard create burdensome filing requirements by requiring additional schedules or columns for reporting the items attributable to each spouse, such as those on some state income tax returns?

5. If a proportionate liability standard is adopted, what changes would be necessary to the current rules concerning communications with taxpayers, examinations, assessments, collections, payments and refunds of tax, penalties and interest?

6. How would adoption of a proportionate liability standard affect state, local, and other tax systems?

B. *Base the Respective Spouses' Tax Obligations and Liabilities on the Terms of a Divorce Decree, Separation Agreement or Other Property Settlement*

Please comment on the effects of basing the respective spouses' tax obligations and liabilities on the terms of a divorce decree, separation agreement or other property settlement. In particular, please comment on the following:

1. Would the Service be required to be a party to divorce or separation proceedings? If not, how could the interests of the government be represented in such cases?

2. What rule would apply if the divorce decree or separation agreement did not provide for allocation of tax liability?

3. How would this proposal affect those spouses less able to influence the terms of a divorce decree or separation agreement (e.g., because of limited financial or legal resources)?

C. *Reform the Innocent Spouse Provisions*

Under the current joint and several liability standard, please comment on

the specific requirements of §§ 66 and 6013(e), particularly with respect to divorced and separated taxpayers.

1. Are there situations in which the innocent spouse provisions do not function in an appropriate manner? Describe these situations.

2. Are there situations in which expanded innocent spouse relief could be abused by taxpayers seeking inappropriate relief? If so, what limitations would prevent such abuses?

3. Are there changes to the Service's administrative practices that should be made with respect to the innocent spouse provisions?

D. *Further Limit the Income-Splitting Effect of Poe v. Seaborn in Community Property Jurisdictions*

Please comment on the effects of further limiting the income splitting rule of *Poe v. Seaborn* in favor of some form of income tracing, such as in § 879, particularly as it would affect divorced and separated taxpayers.

1. Would this proposal present the same issues as those raised above with respect to proportionate liability? Why or why not?

2. How would this proposal work if the divorced or separated taxpayers live in different jurisdictions with different property laws?

3. Would further limiting *Poe v. Seaborn* affect the assets or income of a divorced or separated spouse that could be collected to satisfy the federal income tax liability of each spouse?

E. *Limit the Amount of Community Property Subject to Collection Actions*

Please comment on the effects of limiting the amount of community property that is subject to collection actions to satisfy the separate tax liabilities of one of the spouses that arose before the couple's marriage.

1. Would this proposal require changes to state or federal law?

2. What specific changes, if any, would be required?

Time and Address for Comments

The Service and Treasury would appreciate written comments on the

above issues. Comments should be submitted by June 30, 1996, to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Attn: CC:CORP:T:R:ITA (Branch
4), Room 5228
Washington, D.C. 20044

The comments you submit will be available for public inspection and copying.

DRAFTING INFORMATION

For further information regarding this notice, contact Joel Rutstein on (202) 622-4530 (not a toll-free call).
