

UNITED STATES TAX COURT
WASHINGTON, DC 20217

STEPHANIE LYNN CHRISTIE A.K.A.)	
STEPHANIE LYNN FORAN, PETITIONER)	DRB
AND JOHN FORAN A.K.A. ARTHUR J.)	
MAURELLO, INTERVENOR,)	
)	
Petitioner,)	
)	
v.)	Docket No. 24515-12S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is before the Court to review respondent's determination denying petitioner's request for so-called innocent spouse relief. See sec. 6015(e).¹

Intervenor moved for summary judgment (the motion), supported by his affidavit and his memorandum in support of the motion (memo.). We ordered petitioner and respondent to respond. Petitioner failed to respond. Respondent responded, stating he had no objection to our granting the motion. Because the motion presents a question of first impression, involving a novel issue concerning the Court's authority under section 6015(e) to determine appropriate relief from joint and several liability under section 6015, we wish to have respondent address the merits of intervenor's argument in support of the motion. Relying principally on a State court judgment and decree of divorce (judgment) that, in part, addressed intervenor's and petitioner's responsibilities, respectively, for any unpaid 2008 Federal income tax, intervenor argues that petitioner is estopped from raising before this Court "the question of in what proportion * * * [intervenor and petitioner] should be responsible for their 2008 federal income tax liability." Memo. p. 12.

¹All section references are to the Internal Revenue Code of 1986, as amended.

Our authority under section 6015(e) is to determine the appropriate relief available to an individual who, (1) having elected to have section 6015(b) or (c) apply or (2) having requested equitable relief under section 6015(f), is denied by respondent the relief requested. We may relieve the individual from some or all of the joint and several liability from tax imposed by section 6013(d)(3) on married individuals making a joint return of income pursuant to section 6015(a).

Respondent was not a party to the proceeding giving rise to judgment. We have, on numerous occasions, held that the Commissioner is not bound by a provision in a divorce agreement allocating tax liability. See, e.g., Pesch v. Commissioner, 78 T.C. 100, 129 (1982). Moreover, in Bruner v. Commissioner, 39 T.C. 534 (1962), concerning the allocation of dependency exemptions to divorced spouses, we held that we are not bound by a community property settlement approved by the divorce court.

We wish respondent to discuss several questions presented by the motion. May an intervenor move for summary adjudication in a proceeding brought pursuant to section 6015(e)? If so, does intervenor present an issue for which there is no genuine dispute as to any material fact and with respect to which a decision may be rendered as a matter of law? See Rule 121(b), Tax Court Rules of Practice and Procedure. In answering the last question, discuss whether interpretation of the judgment presents an issue of fact. If the issue presented by intervenor is ripe for summary adjudication, does petitioner's claim for relief in this proceeding raise any issue identical to an issue decided in the judgment, by the State Court? If so, are the other elements of collateral estoppel satisfied? If they are, what is the issue and what effect does it have on us to determine the appropriate relief we may accord petitioner under section 6013(e). Respondent may address any other issues that he deems relevant. The Court expects respondent to coordinate his response with his national office.

It is, therefore

ORDERED that respondent shall by October 9, 2013, supplement his response to the motion as contemplated above.

**(Signed) James S. Halpern
Judge**

Dated: Washington, D.C.
September 6, 2013