

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

ELAINE S. THOMAS,	)	
	)	
Petitioner, and	)	
	)	
ROBERT ROY THOMAS,	)	
	)	
Intervenor,	)	
	)	
v.	)	Docket No. 5680-18S
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner, to intervenor and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Los Angeles, California, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

**(Signed) Lewis R. Carluzzo  
Special Trial Judge**

Dated: Washington, D.C.  
April 16, 2019

**SERVED Apr 18 2019**

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo  
2 March 28, 2019  
3 Elaine S. Thomas, Petitioner, and Robert Roy Thomas,  
4 Intervenor v. Commissioner of Internal Revenue  
5 Docket No. 5680-18S

6 Bench Opinion

7 THE COURT: The Court has decided to render oral  
8 findings of fact and opinion in this case and the  
9 following represents the Court's oral findings of fact and  
10 opinion (bench opinion). Section references made in this  
11 bench opinion are to the Internal Revenue Code of 1986, as  
12 amended, in effect for the relevant period, and Rule  
13 references are to the Tax Court Rules of Practice and  
14 Procedure. This bench opinion is made pursuant to the  
15 authority granted by section 7459(b) and Rule 152.

16 This section 6015(e) proceeding is a small tax  
17 case subject to the provisions of section 7463 and Rules  
18 170 through 174. Except as provided in Rule 152(c), this  
19 bench opinion shall not be cited as authority, and  
20 pursuant to section 7463(b) the decision entered in this  
21 case shall not be treated as precedent for any other case.

22 Elaine S. Thomas (petitioner) appeared on her  
23 own behalf. Robert Roy Thomas (intervenor) appeared on  
24 his own behalf. Justine S. Coleman appeared on behalf of  
25 respondent.

1           Some of the facts have been stipulated and are  
2 so found. Petitioner and intervenor married in 1987;  
3 their marriage ended by divorce in 2016. At the time the  
4 petition was filed in this case in 2018, they were living  
5 at separate addresses in California. They have at least  
6 two children. The record shows that both children were  
7 enrolled in private schools during 2009, 2010, 2011 and  
8 2012. No doubt the children were enrolled in private  
9 schools for other years as well.

10           Apparently over the course of their marriage  
11 petitioner and intervenor routinely elected to file joint  
12 Federal income tax returns, which they did for 2012. They  
13 reported a \$5,551 Federal income tax liability on their  
14 joint 2012 Federal income tax return (return), but as of  
15 the date of trial only a small portion of that liability  
16 had been paid, and what has been paid is mostly through  
17 income tax withholdings withheld from petitioner's wages  
18 for that year.

19           Decisions have consequences and petitioner's  
20 decision to elect to file a 2012 joint Federal income tax  
21 return (joint return) with intervenor rendered her jointly  
22 and severally liable for the income tax liability reported  
23 on that return, see sec. 6013(d)(3), even though, as the  
24 parties stipulated, that liability is attributable to  
25 intervenor. We should comment that at trial, the Court

1 questioned that attribution, but after careful review of  
2 the evidence now agree, more or less with that  
3 stipulation. In this proceeding petitioner seeks to be  
4 relieved on the liability arising from the joint return,  
5 because, according to petitioner, after "taking into  
6 account all of the facts and circumstances, it \* \* \*  
7 [would be] inequitable to hold \* \* \* [her] liable for any  
8 unpaid tax", or "any portion" of it. See sec. 6015(f)(1).  
9 Respondent disagrees, and so notified petitioner in a  
10 notice dated January 25, 2018. It is now up to the Court  
11 to "determine the appropriate relief available" to  
12 petitioner under section 6015(f). See sec. 6015(e)(1)(A).

13           We begin by noting that respondent's thoroughly  
14 prepared pretrial memorandum accurately and thoroughly:  
15 (1) sets forth the background of this case; (2) describes  
16 the procedures respondent follows in such matters; and (3)  
17 lists the factors considered by respondent in responding  
18 to a taxpayer's request for section 6015 relief. The  
19 pretrial memorandum also correctly notes that the Court,  
20 in general, considers the same set of factors respondent  
21 considers, although we are not limited to those factors or  
22 bound by respondent's conclusions with respect to each  
23 factor. Having said that, we agree with much of the  
24 analysis and conclusions reached in respondent's pretrial  
25 memorandum, and we see no benefit in repeating in this

1 bench opinion the detail shown in the pretrial memorandum.  
2 Instead we will comment on the one or two areas of  
3 disagreement with the position taken by respondent and  
4 provide brief explanations for our disagreements.

5 First, contrary to the position taken by  
6 respondent, which was supported by intervenor, we find  
7 that petitioner did not know, or have reason to know that  
8 intervenor would not pay the unpaid liability shown on the  
9 return. We accept the intervenor's description of the  
10 poor financial position they were in at the time, and  
11 petitioner more or less agrees. But petitioner supported  
12 her credible testimony that she believed intervenor would  
13 pay the tax by pointing to the substantial monthly  
14 payments being made on an installment agreement in effect  
15 at the time covering Federal income tax liabilities for  
16 other years. As petitioner explained, those liabilities  
17 were being paid so she had every reason to expect the 2012  
18 liability would be paid.

19 We are more persuaded by the specific conduct  
20 pointed out by petitioner than we are by the general  
21 description of her and intervenor's financial condition at  
22 the relevant time. We consider this factor neutral,  
23 rather than weighing against relief, as respondent scored  
24 it.

25 On the other hand, because in the marital



1 separation agreement, petitioner agreed to pay half of the  
2 2012 liability, we weigh the legal obligation factor  
3 against granting relief, even though respondent scored the  
4 factor as neutral. Where does that leave the analysis of  
5 the various factors? Mathematically pretty much as shown  
6 in respondent's pretrial memorandum, that is one factor in  
7 favor, one (maybe two) weighing against relief, and the  
8 rest neutral. Petitioner's entitlement to the relief she  
9 seeks, of course, is not determined merely by comparing  
10 the factors that favor relief to those that weigh against  
11 relief or are neutral, but in so doing the comparison as  
12 well as the circumstances and equities strongly suggests  
13 some, but not all the relief she seeks.

14 We are particularly influenced by petitioner's  
15 agreement to pay half of the 2012 liability. We are also  
16 influenced by the decision made by petitioner and  
17 intervenor to pay certain expenses rather than their 2012  
18 income tax liability. Although the record shows their  
19 financial situation was less than comfortable, the record  
20 also shows that they had the resources to pay the  
21 liability but chose to save or allocate funds for other  
22 purposes. Lastly, we are influenced by the fact that the  
23 unpaid 2012 liability is mostly, if not entirely  
24 attributable to intervenor. Giving effect to the marital  
25 settlement agreement, we see no reason why petitioner



1 should continue to be liable for his share, nor do we see  
2 any reason why, or consider it inequitable to continue to  
3 hold her liable for hers.

4 Taking into account all of the facts and  
5 circumstances, we find that petitioner is entitled to  
6 section 6015(f) relief, but only to the extent of one-half  
7 of the unpaid 2012 Federal income tax liability reported  
8 on the 2012 return.

9 To reflect the foregoing, decision will be  
10 entered under Rule 155. This concludes the Court's bench  
11 opinion in this matter.

12 (Whereupon, at 9:47 a.m., the above-entitled  
13 matter was concluded.)

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