

Pursuant to Tax Court Rule 50(f), orders shall not be treated as precedent, except as otherwise provided.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RANDAL M. MAYER, PETITIONER AND)	
STACIE WHETZEL, INTERVENOR,)	
)	CT
v.)	Docket No. 23397-17S.
)	
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 with this order to petitioner, intervenor, and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at Anchorage, Alaska 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 for petitioner.

(Signed) Ronald L. Buch
Judge

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

SERVED Jul 17 2019

1 Bench Opinion by Judge Ronald L. Buch

2 June 19, 2019

3 Randal M. Mayer, petitioner and Stacie Whetzel, intervenor
4 v. Commissioner of Internal Revenue

5 Docket No. 23397-17S

6 THE COURT: The following represents the Court's
7 oral findings of fact and opinion. The oral findings of
8 fact and opinion may not be relied upon as precedent in
9 any other case. This opinion is in conformity with
10 Internal Revenue Code section 7459(b) and Rule 152(a) of
11 the Tax Court Rules of Practice and Procedure. Any
12 section references refer to the Internal Revenue Code or
13 the Treasury regulations in effect during the year at
14 issue, and Rule references are to the Tax Court Rules of
15 Practice and Procedure.

16 This is a contested innocent spouse case. Mr.
17 Mayer seeks relief from liability for taxes resulting from
18 the omission from income of a premature retirement
19 distribution made to his ex-wife, Stacie Whetzel. Mr.
20 Mayer is entitled to relief under both section 6015(b) and
21 (c); he is not eligible for relief under section 6015(f).

22 Facts

23 Mr. Mayer and Ms. Whetzel married in 2003,
24 separated in 2015, and divorced in 2016.

25 During their marriage, Ms. Whetzel controlled

1 the family finances. Ms. Whetzel paid the bills out of
2 her account. Mr. Mayer's share of familial expenses were
3 drawn from his separate account and paid into Ms.
4 Whetzel's account through what are identified on the bank
5 statement entries labeled "home banking transfer" from Mr.
6 Mayer's account. Although Mr. Mayer and Ms. Whetzel
7 dispute whether they had a joint account during the
8 marriage, the only account statement in the record shows a
9 separate account, and we find that they had separate
10 accounts and that Ms. Whetzel initiated electronic
11 transfers from Mr. Mayer's account to her account for
12 purposes of paying familial expenses.

13 Managing the family finances also included
14 preparing and filing the joint tax return. Ms. Whetzel
15 took primary responsibility for filing the couple's tax
16 returns, and Mr. Mayer paid little attention to the tax
17 returns.

18 In 2014, at the same time they were having
19 marital difficulties, Mr. Mayer and Ms. Whetzel decided to
20 buy a house. Mr. Mayer borrowed against his retirement
21 account. Ms. Whetzel withdrew from her retirement
22 account. That withdrawal is at the heart of this dispute.

23 When filing their joint 2014 return, Ms. Whetzel
24 erroneously omitted her retirement withdrawal from the
25 joint return she prepared. Mr. Mayer was not aware that

1 it was omitted; he paid little or no attention to the
2 return, and he did not know whether Ms. Whetzel had
3 borrowed or withdrawn from her retirement account.

4 The Commissioner issued a notice of deficiency,
5 adjusting Mr. Mayer and Ms. Whetzel's 2014 joint Federal
6 income tax return to include over \$17,000 of income from a
7 premature distribution from Ms. Whetzel's retirement
8 account. All of the adjustments in the notice of
9 deficiency resulted from the premature retirement
10 distribution.

11 Mr. Mayer requested innocent spouse relief
12 alternatively under section 6015(b), (c), and (f). The
13 Commissioner denied relief, and Mr. Mayer petitioned our
14 Court for relief. Ms. Whetzel intervened, opposing
15 relief.

16 Discussion

17 In this case, we are asked to decide whether Mr.
18 Mayer is entitled to innocent spouse relief under section
19 6015. We begin with a little background.

20 I. General Rules

21 Generally, married taxpayers may elect to file a
22 joint Federal income tax return. Sec. 6013(a). Upon
23 electing to file jointly, each spouse is jointly and
24 severally liable for the entire tax due for that year.
25 Sec. 6013(d)(3). In certain circumstances, however, a

1 spouse who filed a joint return may seek relief from joint
2 and several liability under the procedures in section
3 6015. Sec. 6015(a).

4 Section 6015(a) allows a spouse to seek relief
5 from joint and several liability under subsection (b) or,
6 if eligible, to allocate the liability according to
7 provisions set forth in subsection (c). If a taxpayer
8 does not qualify for relief under either subsection (b) or
9 (c), the taxpayer may be eligible for equitable relief
10 under subsection (f). Except as otherwise provided in
11 section 6015, the taxpayer bears the burden of proving
12 that he is entitled to relief under section 6015. Rule
13 142(a); Alt v. Commissioner, 119 T.C. 306, 311 (2002),
14 aff'd, 101 Fed. Appx. 34 (6th Cir. 2004).

15 Both the scope and standard of our review in
16 cases involving relief from joint and several income tax
17 liability are de novo. Porter v. Commissioner, 132 T.C.
18 203, 210 (2009).

19 II. Section 6015(b) Relief

20 Under section 6015(b), a taxpayer seeking relief
21 from joint and several liability must meet five
22 conditions: (1) a joint return was filed for the taxable
23 year; (2) there was an understatement of tax attributable
24 to an erroneous item of the taxpayer's spouse; (3) at the
25 time of signing the return, the spouse seeking relief did

1 not know and did not have reason to know of the
2 understatement; (4) the requesting spouse sought relief
3 within two years of the first collection activity relating
4 to the liability; and (5) taking into account all the
5 facts and circumstances, it is inequitable to hold the
6 spouse seeking relief liable for the deficiency in tax
7 attributable to the understatement. A taxpayer must
8 satisfy all five requirements to qualify for relief. See
9 Alt v. Commissioner, 119 T.C. 306, 313 (2002).

10 Mr. Mayer meets all five conditions. He and Ms.
11 Whetzel filed a joint return. There was an understatement
12 of tax on that return, and the understatement was entirely
13 attributable to an item attributable to Ms. Whetzel. When
14 Mr. Mayer signed the return, he was not aware that there
15 was an understatement. Mr. Mayer timely sought relief.
16 And, taking into account all of the facts and
17 circumstances, it would be inequitable to hold him liable
18 for an understatement wholly attributable to his ex-wife's
19 omitted item. In particular, it was Ms. Whetzel's income
20 and there is no indication that Mr. Mayer benefitted in
21 any way from that income.

22 Mr. Mayer is entitled to relief under section
23 6015(b).

24 III. Section 6015(c) Relief

25 Under section 6015(c), a divorced or separated

1 spouse may elect to limit liability for a deficiency on a
2 joint return to the portion of the deficiency that is
3 allocable to him under subsection (d). The election may
4 be filed at any time after the deficiency is asserted but
5 not later than two years after the Secretary has begun
6 collection activities. Sec. 6015(c)(3)(B). Additionally,
7 the electing individual: (1) must no longer be married to
8 or must be legally separated from the individual with whom
9 the joint return was filed or (2) must not have been a
10 member of the same household with the individual with whom
11 the joint return was filed during the 12-month period
12 before the election was filed. Sec. 6015(c)(3)(A). These
13 latter two conditions are satisfied in that Mr. Mayer and
14 Ms. Whetzel are no longer married, and Mr. Mayer's claim
15 for relief was timely.

16 Subject to certain limitations, any item giving
17 rise to a deficiency on a joint return is generally
18 allocated to the individuals filing the return in the same
19 manner as it would have been if the individuals had filed
20 separate returns. Sec. 6015(d)(3)(A). Because all of
21 items that remain in dispute are attributable to the
22 reporting of Ms. Whetzel's premature retirement
23 distribution, all of the items would have been reported on
24 Ms. Whetzel's return had she filed separately.

25 An election under section 6015(c) is invalid

1 with respect to all or part of a deficiency if it can be
2 demonstrated that the individual making the election had
3 actual knowledge, at the time of signing the joint return,
4 of any item giving rise to the deficiency (or portion
5 thereof) that is not allocable to that individual under
6 section 6015(d). Sec. 6015(c)(3)(C). Actual knowledge
7 must be demonstrated by a preponderance of the evidence.
8 Culver v. Commissioner, 116 T.C. 189, 196 (2001). The
9 actual knowledge standard is narrower than the "reason to
10 know" standard applied under section 6015(b) and (f).
11 McDaniel v. Commissioner, T.C. Memo. 2009-137. Actual
12 knowledge in this sense refers to "actual knowledge of the
13 factual circumstances which made the item unallowable as a
14 deduction." King v. Commissioner, 116 T.C. 198, 204
15 (2001); see also Treas. Reg. 1.6015-3(c)(2)(B).

16 Mr. Mayer was not aware that Ms. Whetzel took a
17 premature distribution from a retirement account. He took
18 a loan from his account, and did not know that Ms. Whetzel
19 took a distribution.

20 Mr. Mayer satisfies all of the elements for
21 relief under section 6015(c).

22 IV. Section 6015(f) Relief

23 A person who is not eligible for relief under
24 section 6015(b) or (c) may be eligible for relief under
25 section 6015(f). But, if a person is eligible for relief

1 under either section 6015(b) or (c), that person is
2 ineligible for relief under section 6015(f). Sec.
3 6015(f) (2). Because Mr. Mayer is eligible for relief
4 under both section 6015(b) and (c), he is ineligible for
5 relief under section 6015(f).

6 Decision will be entered for Mr. Mayer.

7 (Whereupon, at 9:11 a.m., the above-entitled
8 matter was concluded.)

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