

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

SUNGMI BANG,	)	
	)	
Petitioner,	)	<b>CT</b>
	)	
v.	)	Docket No. 16550-19S
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER**

In her petition, filed September 9, 2019, petitioner seeks section 6015<sup>1</sup> relief from her 2012, 2013, and 2014 joint and several Federal income tax liabilities. Attached to the petition is a notice of final determination denying her request for relief for 2014. The case is now before the Court on respondent’s motion to dismiss for lack of jurisdiction as to 2012 and 2013, filed December 6, 2019. According to the motion, respondent did not issue a notice of final determination to petitioner for 2012 or 2013. Petitioner’s objection was filed on December 30, 2019, to which respondent responded on January 16, 2020.

Petitioner does not seem to dispute respondent’s claim that a notice of final determination for 2012 and/or 2013 has not been issued to her. We point out that respondent’s failure to issue a final notice of determination in response to a taxpayer’s section 6015 election or request for relief for any given year does not, as respondent’s motion proceeds, necessarily preclude the Court’s jurisdiction over that year for purposes of section 6015 relief. See sec. 6015(e)(1)(A)(i)(II). The Commissioner’s failure to act in response to a taxpayer’s request for section 6015 relief within a certain period allows the taxpayer to seek relief here.

From what has been submitted, it appears that petitioner did make a request for section 6015 relief for 2012 and 2013 (2012 and 2013 request). According to respondent, the 2012 and 2013 request was “declined because a requesting spouse

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

**SERVED May 20 2020**

is barred from relief from joint and several liability under section 6015 by res judicata for any tax year for which a court of competent jurisdiction has rendered a final decision on the requesting spouse's tax liability \* \* \*." Apparently, the declination was communicated to petitioner in other than a notice of final determination. Regardless, we cannot tell from what has been submitted when petitioner made the 2012 and 2013 request. That being so, it is unknown at this point whether the Court acquires jurisdiction over 2012 and 2013 because petitioner otherwise complied with the provisions of section 6015(e)(1)(A)(i).

As indicated above, respondent's motion also suggests that petitioner is barred from relief for 2012 and 2013 by res judicata. See sec. 6015(g)(2). The application of res judicata, however, even if appropriate, does not operate to deny the Court's jurisdiction over 2012 and 2013 in this case. Res judicata is an affirmative defense. See Rule 39; Koprowski v. Commissioner, 138 T.C. 54 (2012).

Because the application of res judicata, if appropriate, would not affect the Court's jurisdiction in this case over petitioner's 2012 and 2013 request for section 6015 relief, and because the ground for dismissal advanced in support of respondent's motion does not take into account section 6015(e)(1)(A)(i)(II), it follows, and is

ORDERED that respondent's motion is denied.

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

Dated: Washington, D.C.  
May 20, 2020