

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JIM STUART BROOKS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 20779-16S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

This case is an appeal by petitioner Jim Stuart Brooks, pursuant to 26 U.S.C. section 6015(e)(1)(A), asking this Court to review the IRS’s denial of his request for “innocent spouse” relief, pursuant to section 6015(f), for tax years 2003 and 2006. See order of January 1, 2017. The case is currently before the Court on a motion for summary judgment filed by respondent, the Commissioner of the Internal Revenue Service (IRS), on July 11, 2017. The IRS’s motion asserts that: for 2003, Mr. Brooks’s income tax liability has been written off by the IRS due to the running of the statute of limitations for collection, so that this case is moot as to that year; and for both 2003 and 2006, Mr. Brooks is not entitled to relief under section 6015 as a matter of law. We conclude that this case is not moot as to 2003; and we will deny the IRS’s motion on the merits, so that the case will proceed to trial at our session in Columbia, South Carolina, beginning September 11, 2017.

Background

We assume the following facts, derived from the parties’ submissions:

Income in 2003 and 2006

During 2003 and 2006, Mr. Brooks worked for mortgage companies. He earned the significant majority of the combined taxable income that he and his wife

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received in 2003 and 2006, and his wife's income appears to have consisted only of social security benefits. The amount of social security benefits that Mr. Brooks's wife received in 2003 is unclear; but in 2006 she received \$7,500 in taxable social security benefits, and the combined income of Mr. Brooks and his wife that year was \$74,000.

Hardship

Mr. Brooks's income dramatically decreased following the economic downturn that began in 2007. He has since then been diagnosed with Barrett's Syndrome and diplopia.

Mrs. Brooks's bankruptcy discharge

In 2014 Mr. Brooks's wife's Federal tax liability for the 2003 and 2006 tax years was discharged by order of the United States Bankruptcy Court for the District of South Carolina. Mr. Brooks was not a party to the bankruptcy proceeding, and his liabilities for 2003 and 2006 were not discharged.

Tax Court proceedings

On August 5, 2015, petitioner submitted an Offer in Compromise to the IRS, seeking to reach a compromise as to the then-outstanding liabilities for tax years 2003 and 2006. On August 25, 2016, the IRS's Office of Appeals sent petitioner a letter denying the Offer in Compromise request. On September 21, 2016, petitioner filed with this Court a petition seeking to dispute (according to the face of the petition) a Notice of Determination concerning petitioner's request for relief from joint and several liability; on the petition, petitioner wrote "The letter does not discuss my equitable claim to be released from joint and several liability and only rules on a Hardship issue. It does not explain why the request for joint and several liability was denied."

Respondent filed a motion to dismiss for lack of jurisdiction on November 10, 2016, and on January 31, 2017, we ordered that we had jurisdiction to hear petitioner's claim, characterized as one for relief from joint and several liability under section 6015.

On July 11, 2017, the IRS moved for summary judgment. In support of the motion, the IRS has submitted copies of petitioner's account transcripts for tax years 2003 and 2006.

Discussion

Mootness

In support of its contention of mootness for 2003, the IRS submits a 2003 account transcript that does indicate that Mr. Brooks's unpaid Federal income tax liabilities for 2003 were written off on November 7, 2016, as uncollectible. However, that account transcript also indicates that, on April 15, 2015, the IRS had applied an overpayment by Mr. Brooks of \$364 for tax year 2014 to offset, in part, Mr. Brooks's then-remaining 2003 liability. Mr. Brooks filed his petition in this case on September 21, 2016.

Pursuant to section 6015(g), we may order credit or refund as appropriate in a section 6015 case. Thus, despite the fact that the IRS has ceased his efforts to collect more of Mr. Brooks's 2003 Federal income tax liability, the IRS did collect some of that amount within two years of the filing of the petition in this case. Consequently, if on the merits we were to determine that Mr. Brooks was entitled to relief under section 6015, that relief might include a refund of the \$364 that the IRS collected in 2015, and we would have jurisdiction to order such refund. See Minihan v. Commissioner, 138 T.C. 1, 14 & n.11. This case is therefore apparently not moot as to the 2003 tax year.

Entitlement to relief under section 6015

Section 6013(d)(3) provides that, if spouses file a joint tax return, then the tax is computed on the taxpayers' combined income, and the liability for that tax is joint and several, owed by both spouses and by each of them. Mr. Brooks's tax returns for 2003 and 2006 were joint returns, made with his spouse. We analyze the IRS's motion under section 6015(f), because (as Mr. Brooks concedes), section 6015(b) and (c) are not applicable to this case. Section 6015(f) provides:

Under procedures prescribed by the Secretary, if--

- (1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and
- (2) relief is not available to such individual under subsection (b) or (c),

the Secretary may relieve such individual of such liability.

We apply a de novo standard of review to the Commissioner's determination in section 6015(f) cases. Porter v. Commissioner, 132 T.C. 203, 210 (2009). The Commissioner has promulgated guidelines for determining whether an individual qualifies for relief under section 6015(f) in Revenue Procedure 2013-43 ("the Revenue Procedure"). "The Court considers these guidelines in the light of the attendant facts and circumstances to determine whether equitable relief is appropriate, but is not bound by them." Sriram v. Commissioner, T.C. Memo. 2012-91, at *10. Mr. Brooks bears the burden of proving his entitlement to relief under section 6015(f), and all facts and circumstances are relevant. Id.

The Revenue Procedure provides seven threshold conditions that a requesting spouse may satisfy in order to be eligible for relief and additional factors in order to receive "streamlined" relief from the IRS. Mr. Brooks argues that he satisfies the threshold conditions and acknowledges that he is not entitled to streamlined relief because, among other reasons, he remains married to his spouse.

Where streamlined relief is not available, a requesting spouse who satisfied all seven of the threshold conditions may request equitable relief under section 4.03 of the Revenue Procedure, which calls for consideration of the following factors: (1) marital status, (2) economic hardship, (3) legal obligation to pay the Federal tax liability, (4) mental or physical health, (5) subsequent compliance with Federal tax laws, (6) significant benefit, and (7) knowledge or reason to know about the deficiency or unpaid tax liability. The Court may choose to assign varying weight to the listed factors, or to include other factors, depending on the circumstances of the case. See Hall v. Commissioner, T.C. Memo. 2014-171, at *38. The Revenue Procedure, at section 4.03(2)(e), clarifies the sixth factor by explaining that it is "any benefit in excess of normal support."

Analyzing the Revenue Procedure's factors as applied to Mr. Brooks, he remains married to his spouse; he does not dispute his legal obligation to pay the Federal tax liability; there is no evidence that Mr. Brooks received any benefit in excess of normal support from his wife's social security benefits; and he does not dispute his knowledge or reason to know about the deficiency. Thus, the first, third, sixth and seventh factors do not weigh in favor of granting relief under section 6015.

Mr. Brooks has made a plausible allegation of economic hardship and health problems, as well as subsequent compliance with Federal tax laws, and these factors weigh in favor of relief.

Mr. Brooks stresses the inequity that results from his wife's being declared bankrupt, which leaves him solely liable for what was a joint liability. While bankruptcy of a non-requesting spouse does not count against a requester under the IRS's matrix for purposes of whether he has legal obligation to pay the Federal tax liability-the Revenue Procedure, see section 4.03(2)(d), we can imagine circumstances in which it would be inequitable to leave one spouse liable after the other had been relieved via bankruptcy.

However, in evaluating the presence of such an inequity, it would be important to know what portion of the liability was attributable to the non-requesting, bankrupt spouse. The record before us seems not to show that fact.

At trial, the parties should be prepared to show us what Mr. Brooks's own income tax liability would have been in 2003 and 2006 if he had filed separately from his wife and had not reported her social security benefits (or other items that pertained to her). The portion of the joint liability that exceeds what would have been his separate liability may be subject to a different analysis than the portion that would have been his separate liability in any event.

It is therefore

ORDERED that respondent's motion for summary judgment filed July 11, 2017, is denied, and this case will proceed to trial. The facts assumed in this order are not findings for purposes of trial, and each party should be prepared to prove the facts on which he relies for his case.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
August 29, 2017