Innocent Spouse Relief from Joint and Several Federal Tax Liability: Updates, Hurdles, and Considerations

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Vol. 97, No. 2   March/April 2023   Pg 30 Charlotte A. Erdmann**[**Tax**](https://www.floridabar.org/journal_article_section/tax/)

Married couples can choose to file either joint tax returns or separate tax returns for federal income tax purposes.[**[1]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6d99) In almost every situation, a married couple will have a lower tax liability if they choose to file jointly than if they choose to file their returns separately.[**[2]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6d9d) When a married couple chooses to file a married filing jointly return, each spouse becomes jointly and severally liable for the full amount of the tax liability, regardless of the source of income giving rise to the liability.[**[3]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6d9f) Joint and several liability is an important counterbalance to the financial advantages both spouses receive when filing as “married filing jointly.”[**[4]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da1)

Joint and several liability can, however, provide for injustices in certain circumstances, which would leave a taxpayer to unjustly be liable for the tax liability alone. Innocent spouse relief is designed to provide relief from the joint and several tax liability that has been assessed against the spouse requesting relief. It reduces, and in some cases, completely removes the tax liability from the “innocent” spouse so that they can be free from IRS collection activities such as bank and wage levies, oppressive payment plans, tax refunds being seized, and a whole host of other tax issues.

Consider a spouse whose husband runs his own businesses. While she knows of one business, she does not know of a second business. That second business has its own bank account, and the husband pays himself in his own secret personal bank account from that second business. She raises their children and while she has a comfortable living situation, she does not live extravagantly. She signs the return that was prepared by their accountant and does not understand the return in its entirety or the items that are in it but can pick out the business income. Later, the couple gets audited, and it is discovered that the husband failed to report the income from the second business. Their marriage is ruined, and the couple gets divorced, and she struggles to reenter the workforce.

Or consider a married couple who maintain their own individual bank accounts but share a third, joint account, that they each deposit money into for shared living expenses. All income items are deposited into their own respective accounts. At tax time, they gather their tax forms and have an accountant prepare their return. From those items provided, they each know what the other earns. However, one spouse did not produce all the tax documents, and after the return is filed, the automated underreported unit for the IRS recognizes that the returns do not match the tax forms that the IRS has on file and assesses a deficiency against both taxpayers.

Finally, consider a woman who is emotionally, verbally, and financially abused by her husband. She lacks a higher education. She knows about her husband’s business and the family finances, as well as his shady business dealings, but nonetheless signs the return given to her. After escaping her abusive husband, she is struggling to get on her own financial footing.

**Innocent Spouse Relief — Avoiding the Consequences of a Joint Return**

To alleviate some of these unjust situations, Congress enacted the Innocent Spouse Relief section as contained in I.R.C. §6015. Prior to 6015 and its predecessor statute, 6013(s), the Tax Court only had jurisdiction to hear a claim for innocent spouse relief when the claim was raised as an affirmative defense in a case brought under the court’s jurisdiction in a deficiency proceeding.[**[5]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da3) Innocent spouse caselaw and legislation has greatly evolved, particularly in the last 25 years since the innocent spouse provisions in §6015 were enacted in 1998 as part of the Restructuring and Reform Act of 1998 (RRA 98).

The Restructuring and Reform Act of 1998 liberalized the availability of innocent spouse relief while providing new procedural requirements, including the ability for the nonrequesting spouse, to have procedural process.[**[6]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da6) Revenue Procedure 2013-34 replaced Rev. Proc. 2003-61, which expanded the impact of the presence of all forms of abuse on innocent spouse relief and attempted to liberalize the availability of innocent spouse relief overall.[**[7]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da8) Finally, the Taxpayer First Act of 2019 changed the judicial scope of review when the court reviews an IRS innocent spouse determination.[**[8]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6daa)

**The Timing of Requesting Innocent Spouse Relief**

There are a few different procedural avenues for a taxpayer who wants to claim innocent spouse relief. A taxpayer can ask for innocent spouse relief at any time after the joint return was filed, depending on which provision relief is requested under. This can be done even during IRS audits/examinations or automated under-reporter proceedings. It can also be requested as part of a Tax Court deficiency case and brought as an affirmative defense. If the case is in IRS collections, innocent spouse relief can be filed at anytime, however, depending on the type of innocent spouse relief sought and when relief is requested, relief could be time barred, which is discussed below. Innocent spouse can also be requested as part of a “collection due process” or “equivalency” hearing with IRS appeals.[**[9]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dac)

**The Three Relief Provisions Under I.R.C. §6015**

Section 6015 provides for three avenues of relief from joint and several liability: 1) full or partial relief under 6015(b), which is the general relief provision applicable to all joint filers; 2) proportionate relied under 6015(c), which requires the spouses be divorced or legally separated; and 3) equitable relief under 6015(f) if relief is not available under 6015(b) or 6015(c).[**[10]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dae)

• *Section 6015(b) Relief (General Relief)* — To be entitled to relief under §6015(b), a taxpayer requesting relief must satisfy five requirements: 1) a joint return was filed for the year(s) at issue; 2) the return(s) contain an understatement of tax attributable to an erroneous item of the nonrequesting spouse; 3) at the time of signing the return, the requesting spouse did not know and had no reason to know of the understatement; 4) taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liability for the deficiency attributable to the understatement; and 5) the requesting spouse’s claim for relief is timely.[**[11]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db0) With 6015(b) claims, the biggest hurdle to relief is usually overcoming the knowledge requirement. The requesting spouse must be able to show that not only did they not know of the understatement on the return at the time the return was signed, but also, they had *no reason* to know of the understatement.[**[12]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db2) A taxpayer has knowledge or reason to know of the understatement if he or she actually knew of the understatement or if a reasonable person in similar circumstances would have known of the understatement.[**[13]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db4) Usually, the requesting spouse’s lack of actual knowledge is not difficult to show, especially in circumstances involving a spouse who is not aware of the nonrequesting spouses’ business operations or is not involved in the day-to-day affairs of a business.

The “reason to know” inquiry is more complex. A requesting spouse has a reason to know of an understatement if a reasonable person in similar circumstances could be expected to know there was an understatement or that further investigation was warranted.[**[14]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db6) In determining whether a requesting spouse had reason to know of an understatement, all the facts and circumstances are considered, including the requesting spouse’s level of education, the requesting spouse’s level of involvement in the family’s business and financial affairs, the presence of unusual or lavish expenses compared to the family’s past level of income and expenditures, and the nonrequesting spouse’s level of evasiveness or deceit regarding the family’s finances.[**[15]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db8) The extra layer of the “reason to know” inquiry exists because innocent spouse relief provisions are “designed to protect the innocent, not the intentionally ignorant.”[**[16]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dba) The “reason to know” standard establishes a duty of inquiry on the requesting spouse, who, if he or she does not meet it, will be deemed to have constructive knowledge of the understatement.[**[17]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dbc) As such, a requesting spouse cannot satisfy the lack of knowledge requirement simply by claiming that he or she did not review the return at issue before signing it.[**[18]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dbe)

• *Section 6015(c) Relief (Proportional Relief)* — Section 6015(c) relief provides for the allocation of the tax liability between the spouses as if they had filed separate returns reporting their respective tax items.[**[19]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc0) Unlike 6015(b) and (f) cases, equitable factors are not considered.[**[20]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc5) The threshold requirements of §6015(c) relief require the requesting spouse to 1) have joined in the filing of a joint return for the year(s) at issue; 2) be divorced or legally separated from the nonrequesting spouse at the time relief is sought; and 3) seek relief no later than two years after the date on which the IRS first commences collection activity for the year at issue.[**[21]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc7) If the IRS demonstrates that the requesting spouse had actual knowledge of an erroneous item that is allocable to the nonrequesting spouse, then the innocent spouse relief as to that item would be denied.[**[22]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc9) Regarding the actual knowledge standard as it applies to §6015(c) relief, it is only*actual* knowledge, and not the *reason to know* standard that is applicable in this type of innocent spouse relief. Furthermore, the statute places the burden of production and the burden of persuasion, by a preponderance of the evidence, on the IRS to establish that actual knowledge exists in order to invalidate an item that otherwise meets the threshold requirements of §6015(c) relief.[**[23]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dcb) Actual knowledge means an “actual and clear awareness (as opposed to reason to know)” about the item giving rise to the deficiency.”[**[24]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dcd) A taxpayer lacks actual knowledge if he or she “is unaware of the circumstances that give rise to error on the tax return.”[**[25]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dcf) In the context of a disallowed deduction, the inquiry is whether the requesting spouse “had actual knowledge of the factual circumstances which made the item unallowable as a deduction.”[**[26]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd2) Once it has been determined that the requesting spouse is entitled to proportional innocent relief under §6015(c), the tax liability is proportionally separated such that the erroneous items “shall be allocated to each spouse as though each had filed a separate return for the taxpayer year.”[**[27]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd4)

The proportional relief provision of §6015(c) is powerful. What sets this relief provision apart from the other two is that the requesting spouse does not need to prove that he or she did not have actual knowledge or reason to know of the erroneous tax items. The reason to know inquiry is not even a part of the 6015(c) inquiry and actual knowledge, if applicable at all, must be proven by the IRS, not the taxpayer. This relief provision also does not consider equitable factors. Furthermore, for a requesting spouse that did not have his or her own income, it can have the impact of completely removing the liability.

• *Section 6015(f) Relief (Equitable Relief)*— Section 6015(f) provides innocent spouse relief in cases where no relief is available under 6015(b) or (c).[**[28]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd6) It takes into consideration all facts and circumstances in its inquiry as to whether it would be inequitable to hold the requesting spouse jointly and severally liable for the tax liability.[**[29]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd8) To qualify for equitable relief, a requesting spouse needs to overcome several threshold conditions, which are similar to the threshold conditions under 6015(b) relief: 1) a joint return was filed for the year(s) at issue; 2) the tax liability from which the requesting spouse is seeking relief is attributable in full or in part to a tax item of the nonrequesting spouse; 3) relief is not available to the requesting spouse under 6015(b) or (c); 4) no assets were transferred between the spouses as part of a fraudulent scheme; 5) the nonrequesting spouse did not transfer disqualified assets to the requesting spouse;[**[30]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6ddc) 6) the requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and 7) the claim for relief is timely filed.

Upon meeting the threshold questions, the inquiry turns to whether the requesting spouse is eligible for streamlined relief. Streamlined determinations are granted when the requesting spouse establishes that he or she is 1) no longer married to the nonrequesting spouse; 2) would suffer economic hardship if relief were not granted; and 3) lacked knowledge or reason to know of the understatement at the time the return at issue was signed.[**[31]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dde) Once again, we see the importance of the knowledge and reason to know requirement.

If a requesting spouse does not qualify for equitable relief under the streamlined relief questions, the inquiry finally turns on a facts and circumstances inquiry weighing seven factors as laid out in Rev. Proc. 2013-34.[**[32]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de1) They are 1) marital status; 2) economic hardship; 3) knowledge; 4) legal obligation to pay the tax (in a state court order); 5) the amount of benefit derived from the understatement or underpayment; 6) compliance with income tax laws; and 7) mental and physical circumstances.[**[33]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de3) While the revenue procedure clarifies that “no one factor or a majority of factors necessarily controls the determination,”[**[34]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de5) and that relief can still be granted even if the majority of factors against relief outweigh those in favor or denial may be appropriate when the number of factors weight for relief in stead of against it, caselaw has developed in such a way that the courts will rule against equitable innocent spouse relief under 6015(f) when the knowledge requirement weighs against the requesting spouse, unless there is the presence of economic hardship.[**[35]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de7)

This has been the situation in many cases although we will only consider a couple for illustration purposes. In *Grady v. Commissioner*, 2012 Tax Ct. Summary 2021-29, Docket 16411-17S, the requesting spouse had a series of medical issues and suffered emotional abuse by the nonrequesting spouse, her husband, who had a substance abuse issue. As their son grew older, he too, had substance abuse issues. Ms. Gans, the requesting spouse, later divorced the abusive husband and remarried and filed for innocent spouse relief. After meeting the initial threshold requirements, Ms. Gans also had every factor weigh in her favor (or be neutral), except for the knowledge requirement. The court reasoned that Ms. Gans had reason to know that her ex-husband was not making installment agreement payments and not paying the tax. The court stated that knowledge is only one of the factors and is not determinative of the court’s decision.

In *Goode v. Commissioner*, T.C. Summ. Op. 2021-34, the Tax Court considered the seven factors in Rev. Proc. 2013-34 and decided that three factors weighed in favor of relief (compliance, significant benefit, and marital status), three factors were neutral (health, legal obligation, economic hardship), and one, the knowledge requirement, weighed against relief. The court decided not to grant innocent spouse relief. While the court reiterates that no single factor is dispositive,[**[36]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de9) it continues to place the “knowledge and reason to know” factor as a more important factor. The court reasoned “[t]he degree of importance of each factor varies depending on the requesting spouse’s facts and circumstances.”[**[37]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6deb) “In [§]6015(f) cases… we do not simply count factors. We evaluate all of the relevant facts and circumstances to reach a conclusion.”[**[38]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6ded)

On the one hand, it seems like the courts (both the Tax Court and the appellate courts that uphold these decisions) are ignoring the guidance in Rev. Proc. 2013-34 to weigh the factors and not consider any one factor as dispositive. It looks like the knowledge factor *is* the dispositive factor, which, if negative, can only be outweighed by the presence of economic hardship or abuse. This may be, in part, because the predecessor revenue procedure did place more emphasis on the knowledge factor.[**[39]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6def) It directed that actual knowledge of the understatement would be treated “as a strong factor weighing against relief.”[**[40]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df4) The new revenue procedure showed the intention to liberalize relief and expressly abandon the prior revenue procedure it supersedes. Rev. Proc. 2013-34 expressly states that “actual knowledge of the item giving rise to an understatement or deficiency will no longer be weighed more heavily than other factors, as it did under Rev. Proc. 2003-61.”[**[41]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df6) On the other hand, the factors are guidance to a broader facts and circumstances inquiry and are to be considered among any other relevant factors.[**[42]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df8) Innocent spouse relief is intended to “protect the innocent, not the intentionally ignorant.”[**[43]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dfa)

In a Seventh Circuit case, the appellate court considered whether the Tax Court inappropriately considered knowledge as a super factor when it denied innocent spouse relief when all other factors weighed in favor of relief.[**[44]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dfc) In that case, the court was reviewing a Tax Court decision that gave the requesting spouse relief for tax year 2010 but not 2011. The requesting spouse’s wife had committed embezzlement from her employer. In 2011, she was charged and convicted. The Tax Court held that innocent spouse relief was appropriate for tax year 2010 since the requesting spouse did not know or have reason to know of the embezzlement (as the deposits in the bank account looked like her income in terms of amounts deposited), but he did have reason to know about the 2011 liability since that was the year she was charged and convicted.[**[45]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dfe) The court stated that the Tax Court did not error in its decision and that ”nothing in the record indicates the Tax Court misapprehended the weight to be accorded Jacobsen’s knowledge or treated it as a decisive factor barring relief.”[**[46]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e01)

*Far from demonstrating that the Tax Court erred, the court’s consideration of his role in preparing the 2011 return demonstrates its commitment to heed the Revenue Procedure’s directive that the seven listed factors merely provide “guides” as opposed to an “exclusive list” and that “other factors relevant to a specific claim for relief may also be taken into account.*[***[47]***](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e03)

“The Tax Court did not engage in a mechanical balancing of the factors where the number of factors factoring relief necessarily counterbalanced the ultimate question of whether it was inequitable to hold Jacobsen liable for the 2011 deficiencies.”[**[48]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e05)

In looking at whether a requesting spouse has reason to know of the understatement on a tax return, the courts place a lot of weight on a requesting spouse’s duty to review the return and inquire about its contents.[**[49]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e07) It seems that the courts are weighing this precedent more heavily then the “reason to know” factors of Rev. Proc. 2013-34. When looking at the factors a court considers when they are considering the knowledge or reason to know factor, they look at the level of the requesting spouse’s education, any evasiveness or deceit by the nonrequesting spouse, how involved the requesting spouse was in the income earning activities, the requesting spouse’s overall involvement in the financial matters of the household, the requesting spouse’s business or financial expertise, and any lavish or unusual expenditures compared to past spending levels.[**[50]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e0b) When one signs the tax return or the 8879 authorization form to electronically file a tax return, a taxpayer is signing under penalties of perjury as to the correctness of its contents.

Yet, how many people *actually* review their returns and know what is in them? Even though inquiry is given as to the financial literacy of a requesting spouse and his or her education, many educated people do not know how to read a return, or they have their accountant prepare it and give them the bottom line and trust the accountant as to the return’s accuracy. They often do not know the difference between a deduction and a credit. Are the courts placing too high of a standard on taxpayers to know what is in their return, given that it takes years of education for even tax professionals to understand what is in a return? Without specialized knowledge, and with the modernization of questionnaire-based tax return preparation software, the vast majority of taxpayers do not know what is in their returns, they may only know the bottom line of whether they owe or not. The law is clear, however, that a “taxpayer who signs a return is generally charged with constructive knowledge of its contents.”[**[51]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e0d) “A requesting spouse cannot satisfy the lack of knowledge requirement simply by claiming that he or she did not review the return at issue before signing it.”[**[52]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e0f)

The overarching purpose of innocent spouse relief is to grant relief to spouses who are harmed by a tax liability that was created by nonrequesting spouses when the requesting spouse did not know, or have reason to know, about the understated items.

**Presence of Abuse: An Important Factor Under §6015(b) and (f)**

In the spirit of the purpose of the innocent spouse provisions, the presence of abuse among the requesting and nonrequesting spouses is an important overarching factor considered in §6015(b) and (f) cases, particularly since its import was given greater deference in Rev. Proc. 2013-34 than in Rev. Proc. 2003-61.[**[53]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e11) “The Service recognizes that the issue of abuse can be relevant with respect to the analysis of other factors and can negate the presence of certain factors. This change is intended to give greater weight to the presence of abuse when its presence impacts the analysis of other factors.”[**[54]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e13) The abuse factor is particularly important when attempting to overcome the knowledge or reason to know factor. Rev. Proc. 2013-34 clarifies for the purpose of the knowledge factor, that:

*If the nonrequesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse’s access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return, or to question the payment of the taxes, for fear of the nonrequesting spouse’s retaliation, then the abuse or financial control will result in this factor being satisfied even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency or knew or had reason to know that the nonrequesting spouse would not pay the tax liability.*[***[55]***](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e15)

The revenue procedure also acknowledges what is commonly known; that there are many forms of abuse:

*Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, and to undermine the requesting spouses ability to reason independently and be able to do what is required under the tax laws. All facts and circumstances are considered in determining whether a requesting spouse was abused. The impact of a nonrequesting spouse’s alcohol or drug abuse is also considered in determining whether a requesting spouse was abused. Depending on the facts and circumstances, abuse of the requesting spouse’s child or other family member living in the household may constitute abuse of the requesting spouse.*[***[56]***](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e17)

When deciding whether to request innocent spouse relief, one must consider that the innocent spouse relief provisions require the IRS to give notice to the nonrequesting spouse an application for innocent spouse relief has been received. The nonrequesting spouse will have an opportunity to comment on whether the IRS should grant the request, even when there is the presence of domestic violence or abuse. [**[57]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e19) This is not only true in the administrative proceeding, but also in a Tax Court proceeding. When one spouse files a Tax Court petition seeking review of an administrative denial of relief, the commissioner must notify the nonrequesting spouse of the action and provide an opportunity to become a party to the case.[**[58]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e1b) The nonrequesting spouse may intervene simply by filing a “notice of intervention.”[**[59]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e1d) The right to intervene exists in both “stand alone” innocent spouse Tax Court cases and in deficiency proceedings, where innocent spouse relief is considered an affirmative defense.[**[60]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e22)

While the IRS will not provide the nonrequesting spouse with a copy of the innocent spouse request form (Form 8857) and application package, the nonrequesting spouse is able to acquire the form and application package through a Freedom of Information Act (FOIA) request. With victims of domestic violence, they could be placing their lives in the hands of document reviewers in the hopes that the information contained in the application package, including addresses, was properly redacted, if requested. Because of the procedural notification requirement to the nonrequesting spouse, one must consider the presence of abuse and the disclosure requirements, as well as other forms of resolution with the IRS before proceeding with an innocent spouse claim.

It is important to note that even if a victim of abuse signs a joint return, that return is not necessarily considered signed under duress. If a return is signed under duress or if a signature has been forged or a joint return electronically filed without form 8879 authorization, then the return cannot be deemed a jointly filed return.[**[61]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e24) If a return is not a joint return, then the threshold requirements of any form of innocent spouse relief are not met and innocent spouse relief is not an applicable remedy. If a return is signed under duress, a spouse seeking relief could be granted relief from joint and several liability, similar to the relief sought in innocent spouse cases, but under a different procedural remedy. Duress is defined in the tax context as “a constraint of will so strong that it makes a person reasonably unable to resist a demand to sign.”[**[62]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e27) The presence of abuse does not necessarily mean a return was signed under duress, although abuse can certainly rise to that level when abuse is so strong that a victim is unable to resist a demand to sign a joint return.

Finally, it is also important to note that a state court order, like a final order in a divorce proceeding, that requires only one spouse to pay the tax liability for tax years with jointly filed returns, has no binding effect on the IRS when the creditor is the federal government and collection is being pursued pursuant to federal law.[**[63]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e29) If the IRS pursues the spouse who thought to be relieved of the liability based on the divorce order, succeeds in its collection efforts against that spouse, then that spouse has remedies in state court to uphold the order or seek reimbursement against the responsible spouse. In divorce situations, it may be recommended to seek innocent spouse relief concurrently with or shortly after divorce proceedings. While the divorce order or orders ratifying marital settlement agreements may not be binding on the IRS, they can certainly contribute to assisting a requesting spouse in his or her innocent spouse application, particular since state orders are an equitable relief factor under §6015(f) relief.

**The Taxpayer First Act and the Standard of Review**

The Taxpayer First Act (TFA) changed the Tax Court’s scope of review.[**[64]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e2b) The Taxpayer First Act amended §6015 to add a new subsection that provides for a Tax Court de novo standard of review of an IRS innocent spouse determination based upon 1) “the administrative record established at the time of the determination”; and 2) “any additional newly discovered or previously unavailable evidence.”[**[65]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e2d) Effectively, the Tax Court, upon review of innocent spouse cases, is now limited in its review to the administrative record unless there is newly discovered evidence or evidence that was previously unavailable.[**[66]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e30)

The taxpayer requesting innocent spouse relief generally bears the burden of proving that he or she is entitled to relief.[**[67]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e32) This, coupled with the new limitations on what evidence the Tax Court can consider in its review, makes it all the more important to make sure the administrative record is fully developed by submitting a complete and well thought out application package. Developing the administrative record may also include talking to the application examiner and submitting new evidence to the IRS making its determination.

In deficiency cases and innocent spouse cases where innocent spouse relief was at issue prior to the Taxpayer First Act, the requesting spouse would have the opportunity to testify and introduce other evidence.

*Until recently, the scope of review in a Tax Court case involving a request for innocent spouse relief is also de novo. People would come, they’d introduce evidence, and I as a judge would look at it with fresh eyes. Congress has more recently changed that scope of review. Now I am supposed to look at what is called the administrative record. The administrative record consists of all the documents and the evidence that the IRS looked at when [the taxpayer] first applied for relief.*[***[68]***](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e34)

The two exceptions are evidence that is “newly discovered” or evidence that was “previously unavailable.”

The *Fatty v. Commissioner*, 2021 U.S. Tax Ct. Lexis 36, case was once of the first cases to go to trial after the Taxpayer First Act changes. It is also a Small Tax Court case that makes the case non-precedential. However, in that case, Judge Holmes accepted testimony under oath and cross examination as “newly available evidence” since sworn testimony and cross examination were not able to be given as part of the initial administrative consideration. Judge Holmes likewise considered oral testimony under oath as “newly discovered evidence in a second case, as well.[**[69]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e36) Again, the opinion was nonprecedential, so no new caselaw has been made because of the decision, but it does provide some clarity and direction as to the new scope of review rules. It is sensible to allow sworn testimony and cross examination in as evidence as newly available evidence since such evidence is not obtained at the administrative level. While the innocent spouse form 8857 requires the requesting spouse to sign it under penalties of perjury attesting to the correctness of the information and documents accompanying the form, that is not the same as testimony under oath subject to cross-examination.[**[70]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e3a)

**Conclusion**

Innocent spouse relief has continued to evolve, especially over the last 25 years. While the trend has been generally to liberalize the availability of relief to those who should qualify, there are still significant hurdles, as well as procedural considerations, to those seeking relief. Rev. Proc. 2013-34 considers the knowledge requirement as one of many factors instead of a super factor of its predecessor. It also expanded the importance of the presence of abuse. The more recent Taxpayer First Act limits the Tax Court’s scope of review to the administrative record although provides the court exceptions to consider newly discovered or previously unavailable evidence. In addition to the legal considerations, innocent spouse relief is also time consuming and costly. One must consider not only the cost and length of time to process these applications, but also consider the presence of abuse and the notice requirements to the nonrequesting spouse. While innocent spouse relief is a vital relief provision, one must consider whether it is the best option for tax relief among all other procedural remedies.

[**[1]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6d98) I.R.C. §6013(a). In some situations, a party in a marriage may also choose to file as head of household if they meet the requirements of head of household filing status.

[**[2]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6d9c) Boris I. Bittker, *Federal Income Taxation and the Family*, 27 Stan. L. Rev. 1389, 1412-1414 (1975).

[**[3]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6d9e) I.R.C. §6013(d)(3).

[**[4]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da0)*Sonnenborn v. Commissioner,* 57 T.C. 373, 381 (1971).

[**[5]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da2)*Butler v. Commissioner*, 114 T.C. 276, 287-289 (2000).

[**[6]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da5)*See* Frances D. Sheehy,*The Right to Intervene in Innocent Spouse Cases Disappears When the Affirmative Defense of Innocent Spouse Is Withdrawn,* 87 Fla. B. J. 30 (2013).

[**[7]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da7) Rev. Proc. 2013-34.

[**[8]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6da9) Taxpayer First Act, Pub. L. No. 116-25, §1203, 133 Stat. 988 (2019).

[**[9]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dab) 6030(c)(2)(A)(i), provides for “appropriate spouses defenses.”

[**[10]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dad) I.R.C. §6015(b), (c), (f); *see also Soler v. Commissioner*, T.C. Memo. 2022-78.

[**[11]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6daf) I.R.C. §6015(b); *Alt v. Commissioner,* 119 T.C. 306, 313 (2002), *aff’d*, 101 F. App’x 34 (6th Cir. 2004).

[**[12]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db1) I.R.C. §6015(b).

[**[13]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db3) Treas. Reg. §1.6015-2(c).

[**[14]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db5)*Butler v. Commissioner*, 114 T.C. 276, at 283; Treas. Reg. §1.6015-2(c).

[**[15]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db7)*Price v. Commissioner*, 887 F.2d 959 at 964 (9th Cir. 1989); Treas. Reg. §1.6015-2(c).

[**[16]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6db9)*Dickey v. Commissioner*, T.C. Memo. 1985-478.

[**[17]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dbb)*Stevens v. Commissioner*, 872 F.2d 1499, 1505 (11th Cir. 1989), *aff’g*, T.C. Memo. 1989-63; Butler, 114 T.C. at 283-84.

[**[18]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dbd)*Porter* *v. Commissioner*, 132 T.C. 203 at 211.

[**[19]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dbf)*McDonald v. Commissioner*, T.C. Summ. Op. 2016-79.

[**[20]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc3)*Cheshire v. Commissioner,* 115 T.C. 183, 194 (2000), *aff’d*, 282 F.3d 326 (5th Cir. 2002).

[**[21]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc6) I.R.C. §6015(c)(1), (3).

[**[22]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dc8) I.R.C. §6015(c)(3)(C), Treas. Reg. §1.6015-3(c)(2)(i).

[**[23]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dca) Treas. Reg. §1.6015-3(c)(2)(i).

[**[24]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dcc)*Cheshire,*115 T.C. at 195.

[**[25]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dce)*King v. Commissioner,* 116 T.C. 198, 204 (2001) (quoting*Bokum v. Commissioner,* 94 T.C. 126, 145-146 (199), *aff’d*, 992 F.2d 1132 (11th Cir. 1993)).

[**[26]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd1)*Id*.

[**[27]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd3)*Estate of Capehart v. Commissioner*, 125 T.C. 211, 215 (2005).

[**[28]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd5) I.R.C. §6015(f).

[**[29]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dd7) I.R.C. §6015(f)(1).

[**[30]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dda) As defined under I.R.C. §6015(c)(4)(B).

[**[31]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6ddd) Rev. Proc. 2013-34, §4.02.

[**[32]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de0) Rev. Proc. 2013-34, §4.03.

[**[33]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de2)*Id.*

[**[34]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de4)*Id.*

[**[35]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de6) While no one factor is determinative, pursuant to the Rev. Proc. 2013-34, based on caselaw (*See Jacobson v. Commissioner*, 950 F.3d 414 (2020), where there were four positive factors and two neutral, but knowledge was a negative factor, and *Sleeth v. Commissioner*, 991 F.3 1201, where the knowledge factor seems determinative in spite of three other positive factors), the courts tend to treat the knowledge factor as a determinative or super factor.

[**[36]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6de8)*Goode*, T.C. Summ. Op. 2021-34; *see also* *Pullins v. Commissioner,* 136 T.C. 432 at 448.

[**[37]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dea) Rev. Proc. 2013-34, §4.03(2); *Pullins*, 136 T.C. at 448.

[**[38]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dec)*Id.*

[**[39]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dee) Rev. Proc. 2003-61. 2003 C.B. 296.

[**[40]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df2)*Id.*

[**[41]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df5) Rev. Proc. 2013-34.

[**[42]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df7)*Goode,*T.C. Summ. Op. 2021-34.

[**[43]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6df9)*See note* 26, *Dickey v. Commissioner,* T.C. Memo. 1985-478.

[**[44]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dfb)*Jacobsen v. Commissioner*, 950 F.3d 414 (7th Cir. 2020).

[**[45]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6dfd)*Id.*at 422.

[**[46]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e00)*Id.*

[**[47]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e02)*Id*., *quoting* Rev. Proc. 2013-34.

[**[48]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e04)*Id.*

[**[49]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e06)*Price v. Commissioner*, 887 F.2n 959 (9th Cir. 1989);*Porter v. Commissioner*, 132 T.C. at 211.

[**[50]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e09) Prev. Proc. 2013-34, 4.03(2)(c)(iii).

[**[51]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e0c)*Soler v. Commissioner*, T.C. Memo. 2022-78, *citing* *Porter*, 132 T.C. at 211.

[**[52]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e0e)*Id.*

[**[53]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e10) Rev. Proc. 2013-34, §3.

[**[54]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e12)*Id*.

[**[55]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e14) Rev. Proc. 2013-34 §4.02(3)(a).

[**[56]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e16) Rev. Proc. 2013-34 §4.03(2)(c)(iv).

[**[57]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e18) I.R.C. §6015(h)(2)

[**[58]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e1a) I.R.C. §6015(e)(4); Tax Ct. R. 325; *see also*Sheehy,*The Right to Intervene*.

[**[59]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e1c) Tax Ct. R. 325; *see also*Sheehy,*The Right to Intervene.*

[**[60]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e20) I.R.C. §6015(e); *see also*Sheehy,*The Right to Intervene*.

[**[61]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e23) I.R.C. §6013; Treas. Reg. §1.6013-4(d).

[**[62]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e26)*Wilson v. Commissioner,* 705 F.3d 980, 983 n.10 (9th Cir. 2013).

[**[63]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e28)*United States v. Mitchell,*403 U.S. 190, 204 (1971).

[**[64]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e2a) Taxpayer First Act, Pub. L. No. 116-25, §1203, 133 Stat. 988 (2019).

[**[65]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e2c) I.R.C. §6015(e)(7).

[**[66]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e2f) Section 6015(e)(7) is effective for petitions filed in Tax Court on or after July 1, 2019, under §1203(b) of the Taxpayer First Act. *See*note 64*.*The act also added §6015(f)(2) to the code that specifies that it is effective for requests pending with the IRS on or after July 1, 2019. So for innocent spouse administrative requests that were pending prior to July 1, 2019, those are not subject to the new scope of review rules*. See Sutherland v. Commissioner*, 155 T.C. 95 (2020).

[**[67]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e31) Tax Ct. R. 142(a); *Porter*, 132 T.C. at 210.

[**[68]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e33)*Fatty v. Commissioner*, 2021 U.S. Tax Ct. Lexis 36.

[**[69]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e35)*Bacigalupi v. Commissioner,* 2022 U.S. Tax C. Lexis 600.

[**[70]**](https://www.floridabar.org/the-florida-bar-journal/innocent-spouse-relief-from-joint-and-several-federal-tax-liability-updates-hurdles-and-considerations/#u6e38)*See* IRS Form 8857, *available at* https://www.irs.gov/pub/irs-pdf/f8857.pdf.

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