



**Under What Circumstances Can a Bankruptcy Court Grant Innocent Spouse Relief to a Debtor?**

**Noreen Gilroy, J.D. Candidate 2019**

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**Introduction**

The United States tax system allows married couples to file joint tax returns.<sup>1</sup> For those married couples that jointly file, there is joint and severable liability for the taxes due on those returns.<sup>2</sup> Because spouses who file joint tax returns are held both jointly and severally liable for those joint returns, the drafters of the Tax Code created an exemption from liability for innocent spouses in Section 6015 of the Tax Code.<sup>3</sup> Section 6015(e) of the Tax Code expressly grants subject matter jurisdiction to the Tax Courts to review determinations of innocent spouse relief.<sup>4</sup> However, the language of Section 6015(e) can also be interpreted to recognize that a request for innocent spouse relief may be reviewed and determined by a court other than the tax court provided it is another “remedy provided by law.”<sup>5</sup> The “in addition to any other remedy provided by law” language of Section 6015(e) raises a question of whether Section 6015(e) of the Tax Code permits bankruptcy courts to determine a request for innocent spouse relief under Section 505(a)(1) of the Bankruptcy Code.

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<sup>1</sup> See 26 I.R.C §6013 (2015).

<sup>2</sup> See *id.*

<sup>3</sup> See 26 I.R.C. §6015.

<sup>4</sup> See *id.* at §6015(e).

<sup>5</sup> *Id.*

This article will explore whether bankruptcy courts have the subject matter jurisdiction to determine a debtor's request for innocent spouse relief on taxes affecting the bankruptcy estate in two parts. Part I examines how some courts have concluded that bankruptcy courts do not have the authority to determine a debtor's request for innocent spouse relief. Part II explores how other courts have determined that bankruptcy courts have the authority to grant innocent spouse relief to a debtor under Section 505(a)(1) of the Bankruptcy Code only if the debtor complies with the procedures of Section 6015(e) of the Tax Code.

### **Executive Summary**

Under Sections 6015 of the Internal Revenue Code, the innocent spouse exception allows an individual to request relief, from the Secretary of the United States Department of the Treasury (the "Secretary"), from joint and several liability for any unpaid tax or deficiency caused by the illegal actions<sup>6</sup> of their spouse.<sup>7</sup> Once a taxpayer requests relief from the Secretary under the proscribed process, the taxpayer may, "in addition to any other remedy provided by law," petition the Tax Court to determine the taxpayer's innocent spouse claim.<sup>8</sup>

Courts have held that one such "other remedy provided by law" is a determination of the request for innocent spouse relief by a bankruptcy court after the debtor has received a final determination by the Secretary or has failed to receive a final determination within six (6) months after filing the request.<sup>9</sup> Conversely, a small number of courts have concluded that a

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<sup>6</sup> See 26 I.R.C. §6015(b)(1) (providing that an innocent spouse may file for relief on tax liability on a joint return where an understatement of tax attributable to erroneous items of one individual filing the joint return was made and the other individual filing the joint return did not know or have any reason to know of the understatement).

<sup>7</sup> See 26 I.R.C. §§ 6015(a), (b), (f).

<sup>8</sup> 26 I.R.C. §6015(e)(1)(A).

<sup>9</sup> See *Luongo v. Luongo (In re Luongo)*, 259 F.3d. 323, 328 (5th Cir. 2001); 11 U.S.C. §505(a)(1)(2015) (stating that a bankruptcy court "may determine the amount or legality of any tax, any fine or penalty relating to a tax or any addition related to any tax").

bankruptcy court cannot grant innocent spouse relief finding Section 6015(e) of the Tax Code to be an exclusive grant to the Tax Courts.<sup>10</sup>

**I. Some courts have held that bankruptcy courts do not have the power to determine requests for innocent spouse relief because Section 6015 of the Tax Code requires a request for innocent spouse relief to be filed with the Secretary and appealed to the Tax Court**

Despite Section 6015(e)(1)(a) of the Tax Code and Section 505(a)(1) of the Bankruptcy Code, some courts have determined that bankruptcy courts do not have the authority to determine innocent spouse relief claims. For example, the court in *Simmons Perrine Moyer Bergman, PLC v. Coleman*, determined that a bankruptcy court did not have the authority to determine innocent spouse relief because Section 6015(e)(1)(A) of the Tax Code only permits an innocent spouse claim to be pursued before the Secretary and appealed to the Tax Court.<sup>11</sup> The court in *Coleman* relied heavily on another court's finding in *United States v. Elman*, that “[a]lthough the statute itself does not address whether the tax court's jurisdiction is exclusive, courts interpreting the statute have concluded that it is.”<sup>12</sup> Similarly, in *United States v. LeBeau*, the court held that “under 26 U.S.C. § 6015, a taxpayer seeking to file an election under the innocent spouse statute must do so in the first instance with the Secretary of the IRS and then may appeal to the Tax Court.”<sup>13</sup>

Accordingly, some courts have determined that bankruptcy courts do not have the power to determine requests for innocent spouse relief claims because Section 6015(e) of the Tax Code requires a request for innocent spouse relief to be pursued before the Commissioner and appealed to the Tax Court.

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<sup>10</sup> See *United States v. Elman*, No. 10 CV 6369, 2012 WL 6055782 at \*3 (N.D. Ill. 2012).

<sup>11</sup> See *Simmons Perrine Moyer Bergman, PLC v. Coleman*, No. C11-0131, 2013 WL 1080666 at \*7-8 (N.D. IA. 2013).

<sup>12</sup> *Elman*, 2012 WL 6055782 at \* 3 (N.D. Ill. 2012).

<sup>13</sup> *United States v. LeBeau*, No. 10cv817 BTM(NLS), 2012 WL 835160 at \*3 (S.D. Cal. 2012).

**II. Other courts have held that a bankruptcy court the authority under Section 505(a)(1) of the Bankruptcy Code to determine a debtor’s request for innocent spouse relief only if the procedures of Section 6015 of the Tax Code are met.**

A bankruptcy court has broad discretionary authority to determine the legality of a tax that is attributable to the bankruptcy estate.<sup>14</sup> In addition, the “Bankruptcy Code requires bankruptcy courts to deter to tax courts only where a claim was contested and adjudicated by the tax court before commencement of the bankruptcy case.”<sup>15</sup> Some courts have relied on the bankruptcy courts power to determine tax issues involved with a debtor’s estate to hold that; (a) bankruptcy courts have the authority under Section 505(a)(1) of the Bankruptcy Code to determine a debtor’s request for innocent spouse relief; and (b) bankruptcy courts can only exercise that authority if the debtor follows the procedures of Section 6015 of the Tax Code.

**A. Bankruptcy courts may determine the appropriate relief available to a debtor seeking innocent spouse relief because Section 505(a)(1) of the Bankruptcy Code is another remedy provided by law under Section 6015(e) of the Tax Code.**

Under Section 505(a)(1) of the Bankruptcy Code, a bankruptcy court may “determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.”<sup>16</sup> Under Section 6015(e) of the Tax Code, a taxpayer seeking innocent spouse relief may “in addition to any other remedy provided by law” petition the Tax Court to determine the appropriate relief available to the individual under Section 6015 if such a petition is filed according to the proscribed process.<sup>17</sup>

A bankruptcy court’s authority to determine the legality of a tax attributable to a debtor’s estate

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<sup>14</sup> See 11 U.S.C. §505(a)(1); *In re D’Alessio*, 181 B.R. 756, 759 (Bankr. S.D. NY. 1995); see also 124 Cong. Rec. H11095 (1978) (providing evidence that Congress intended to expand the bankruptcy court’s authority to determine certain tax issues including personal tax liability involved with the debtor’s estate); *In re Stevens*, 210 B.R. 200, 202 (Bankr. M.D. Fla. 1997) (“Congress wanted to provide a forum for the quick resolution of disputed tax claims in order to avoid any delay in the conclusion of the administration of the bankruptcy case.”).

<sup>15</sup> *United States v. Wilson*, 974 F.2d. 514, 517 (4th Cir. 1992).

<sup>16</sup> 11 U.S.C. §505(a)(1).

<sup>17</sup> 26 I.R.C 6015(e)(1)(A).

under Section 505(a)(1) of the Bankruptcy Code may be one “such other remedy provided by law.”<sup>18</sup> As such, Section 505(a)(1) of the Bankruptcy Code provides bankruptcy courts with the authority to determine the relief available to a debtor seeking innocent spouse relief under Section 6015 of the Tax Code.<sup>19</sup>

Accordingly, some courts have held that bankruptcy courts have the subject matter jurisdiction to determine the appropriate relief available to a debtor seeking innocent spouse relief because Section 505(a)(1) of the Bankruptcy Code is another remedy provided by law under Section 6015(e) of the Tax Code.

**B. A bankruptcy court has the authority to grant innocent spouse relief only if an individual seeking such relief files a request with the Secretary and either receives or fails to receive a final determination within six (6) months of filing.**

The bankruptcy court may not exercise its authority under Section 505(a)(1) of the Bankruptcy Code until the Secretary either makes or fails to make a determination of the debtor’s equitable entitlement to innocent spouse relief under Section 6015 of the Tax Code.<sup>20</sup> After a taxpayer’s request for equitable relief from the Secretary is properly filed, Section 6015(e)(1)(a) of the Tax Code allows the taxpayer “in addition to any other remedy provided by law” to petition the Tax Court “to determine the appropriate relief available” either after the date the Secretary mails the notice of final determination to the taxpayer or six (6) months after the date the individual filed the request with the Secretary, whichever happens earlier.<sup>21</sup> If the Secretary makes a final determination, the request for relief by “any other remedy provided by

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<sup>18</sup> *In re Pendergraft*, NO. 16–33506, 2017 WL 1091935 at \*4 (Bankr. S.D. TX. 2017).

<sup>19</sup> *See id.*

<sup>20</sup> *See Pendergraft*, 2017 WL 1091935 at \*6; *see also* U.S. v. Hirsch, 2014 WL 4385839 at \*7 (E.D.N.Y. 2014) (explaining that Section 6015(e) is a grant to review denials of innocent spouse relief applications or review applications in which the Secretary fails to make a determination within six (6) months of filing the request); *Ogonoski v. C.I.R.*, 87 T.C.M. (CCH) 1038 (T.C. 2004) (“[I]f taxpayer’s request for relief under [S]ection 6015 is denied, the taxpayer may petition this Court under Section 6015(e)(1) for a review of the Commissioner’s determination.”).

<sup>21</sup> 26 I.R.C. §6015(e)(1)(A).

law” or petition to the tax court must be made “no later than the close of the 90th day after” the Secretary mails the notice of final determination to the taxpayer.<sup>22</sup>

Courts have held that the bankruptcy courts’ authority to determine innocent spouse requests by a debtor under Section 505(a)(1) of the Bankruptcy Code is limited by the procedures of Section 6015(e) of the Tax Code.<sup>23</sup> Because Section 6015(e) of the Tax Code prohibits a tax court, “in addition to any other remedy provided by law” from exercising its jurisdiction until the Secretary either issues a notice of final determination or fails to issue a determination within six months of receiving the request, a bankruptcy court acting as “another remedy provided by law” must wait a similar period.<sup>24</sup> In addition, some courts have expressly disagreed with prior court rulings against bankruptcy courts’ authority to determine requests for innocent spouse relief as contrary to the legislative history of the Bankruptcy Code and the plain language of Section 6015(e) of the Tax Code.<sup>25</sup>

Accordingly, some courts have found that bankruptcy courts have subject matter jurisdiction over a debtor’s request for innocent spouse relief only if the debtor; (1) follows the

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<sup>22</sup> *Id.* at §6015(e)(1)(A)(i)(I).

<sup>23</sup> *See Pendergraft*, 2017 WL 1091935 at \*6; *see* 11 U.S.C. §505(a)(1); 26 I.R.C. §6015(e)(1)(A).

<sup>24</sup> 26 I.R.C. §6015(e)(1)(A). *See Pendergraft*, 2017 WL 1091935 at \*6 (recognizing that the statutory delay in Section 6015(e)(1)(A) is ambiguous as to whether it applies only directly to the tax court, the Court determined that the best interpretation of the statute as a whole “requires that the ‘any other remedy provided by law,’ including a bankruptcy courts determination of innocent spouse relief under 11 U.S.C. § 505(a)(1), must wait a similar period of time”); *U.S. v. Hirsch*, 2014 WL 4385839 at \*7 (emphasizing Section 6015(e) is a grant of the power to review); *Ogonoski v. C.I.R.*, 87 T.C.M. (CCH) at 1038 (determining that a tax court has the jurisdiction to review the determination of an innocent spouse request in respect to all relief afforded under Section 6015).

<sup>25</sup> *See Hinsley v. Hinsley*, 99 Fed.Appx. at \*3 (5th Cir. 2003) *quoting In re Luongo*, 259 F.3d at 328 (cautioning “against taking too narrow a view of the goals of the Bankruptcy Code, stating that ‘[t]he bankruptcy court’s responsibility in administering the estate is not only to achieve a fair and equitable distribution of assets to the creditors, but also to “relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh””); *In re Stevens*, 210 B.R. 200, 200 (Bankr. M.D. Fla 1997) (“[p]ursuant to the legislative history of §505(a)(1), Congress clearly intended for the statute to allow bankruptcy courts to rapidly determine tax issues necessary for the efficient administration of the estate.”) (citing *In re Millsaps*, 133 B.R. at 554); *In re Luongo*, 259 F.3d at 329 (“absent the express statutory limitations in §505(a)(2)(A) and (B), bankruptcy courts have universally recognized their jurisdiction to consider tax issues brought by the debtor, limited only by their discretion to abstain.”); *In re Pendergraft*, 2017 WL 1091935 at \*5 (“Section 6015(e) explicitly contemplates that an individual may petition the tax court or elect to use “any other remedy provided by law” to review the Secretary’s determination of relief or lack thereof.”).

procedures of Section 6015(e) of the Tax Code, and (2) after either receiving a notice of final determination or failing to receive a final determination within six (6) months of filing the request, petitions the bankruptcy court for remedial relief under Section 505(a)(1) of the Bankruptcy Code.

### **Conclusion**

Some courts have determined that bankruptcy courts do not have the subject matter jurisdiction to determine requests for innocent spouse relief because Section 6015(e) of the Tax Code requires a taxpayer to request relief from the Secretary and appeal to the tax courts. Other courts have found that such a denial of subject matter jurisdiction flows from the improper interpretation of the Tax and Bankruptcy Codes. Those courts have concluded that Section 6015(e) of the Tax Code and Section 505(a)(1) of the Bankruptcy Code should be read together to grant bankruptcy courts the subject matter jurisdiction to determine a request for innocent spouse relief by a debtor if: (1) the debtor first files the request with the Secretary, and (2) the Secretary either makes a final determination or fails to make a final determination within six (6) months of the filing date.