

February 10, 2012

The Honorable Timothy Geithner
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2012-8)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

**RE: Proposed Revenue Procedure Updating Revenue Procedure 2003-61, 2003-2 C.B. 296,
Providing Guidance Regarding Equitable Relief from Income Tax Liability under
I.R.C. §§ 66(c), 6015(f)**

Dear Secretary Geithner,

The National Women's Law Center (the Center) is pleased to submit the following comments in support of the above-referenced proposed Revenue Procedure issued by the Department of the Treasury (Treasury) on January 23, 2012.

Since 1972, the Center has worked to protect and advance the progress of women and their families in core aspects of their lives, with an emphasis on the needs of low-income women. Innocent spouse relief determinations particularly impact low-income women: 65 percent of the taxpayers who request innocent spouse or community property relief make less than \$30,000 per year, and 90 percent of those requesting relief are women.¹ Thus, for women it is especially important that the criteria for awarding equitable relief from joint tax liability adequately take spousal abuse and economic hardship into account.

The Center strongly supports the proposed revisions to Rev. Proc. 2003-61 and applauds Treasury's efforts to clarify the factors for granting equitable relief under section 6015(f) of the Internal Revenue Code (Code). The revisions will help ensure that requests for innocent spouse relief are granted when facts and circumstances warrant, in the most expeditious manner possible, and will minimize inequity and protect women, especially those who are or have been in abusive relationships.

Deadline for Filing Claim for Equitable Relief

The Center welcomes the announcement that the Internal Revenue Service (IRS) has changed the deadline for filing a request for equitable relief from two years after the date of the IRS's first collection activity, to the expiration of the period of limitation on collection under section 6502

¹ Nat'l Taxpayer Advocate, 2 2005 Ann. Rep. to Congress 422 (2005).

of the Code, generally ten years after the assessment of tax (or, if applicable, the period of limitation for credit or refund under section 6511). As the Tax Court stated in *Hall v. Commissioner*, the two-year limitations period effectively deprived eligible innocent spouses of the opportunity to seek equitable relief in cases where an innocent spouse was unaware of the need to or unable to contact the IRS, particularly in cases where the innocent spouse was the victim of abuse.²

Expanded Definition of Spousal Abuse

The Center strongly supports Treasury's revised language regarding spousal abuse throughout the Revenue Procedure. Although Rev. Proc. 2003-61 previously listed spousal abuse as one of the facts and circumstances that must be considered in determining whether to grant equitable relief, the revised guidelines provide a more expansive definition of spousal abuse that includes physical, psychological, sexual, and emotional abuse, and establish that a nonrequesting spouse's control over household finances may amount to abuse of the spouse requesting equitable relief. The proposed changes clarify why spousal abuse should be considered a mitigating factor against a spouse's knowledge, or reason to know, of an item leading to an understatement of tax, tax deficiency, or failure to pay tax liability. This change recognizes that financial control is one of the ways that abuse can manifest itself and will appropriately protect women and families from the consequences of financial decisions made by a spouse over which they had no control.

Added Weight Given to Economic Hardship

The Center also supports the expanded criteria for determining whether the requesting spouse would suffer economic hardship if relief is not granted and the weight given those criteria. More specific criteria providing additional guidance to IRS employees is a welcome development in order to reach consistent case outcomes.³ The revised procedure supplements the determination of economic hardship by providing that, in addition to evaluating economic hardship under Treas. Reg. § 301.6343-1(b)(4), if a spouse's income is below 250 percent of the Federal poverty guidelines, or if the requesting spouse's monthly income exceeds the requesting spouse's reasonable basic monthly living expenses by \$300 or less, then the factor will weigh in favor of relief.

It is important that the tax system not impose additional hardship on taxpayers who are already struggling to pay reasonable basic living expenses. Using income below 250 percent of the Federal poverty guidelines to establish economic hardship is consistent with the Service's

² *Hall v. Comm'r*, 135 T.C. 374, 379 (2010); *see also* *Lantz v. Comm'r*, 132 T.C. 131, 150 (2009), *rev'd*, 607 F.3d 479 (7th Cir. 2010).

³ *See, e.g., Hall, supra* note 3, at 382 (stating that the Internal Revenue Manual provides little direction to IRS employees in the application of economic hardship to case determinations).

guidelines regarding low-income taxpayers in the Offer to Compromise fee rules⁴ and Congress's definition of a low-income taxpayer clinic.⁵

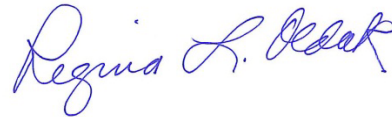
However, the Center recommends that the final guidance provide for an increase in the amount by which the requesting spouse's monthly income may exceed reasonable basic monthly living expenses to account for family size. Treas. Reg. § 301.6343-1(b)(4) and the Federal poverty guidelines both make allowances for varying family sizes. A fixed allowance of \$300 does not provide an adequate cushion for larger families, and the Center therefore recommends that it be increased according to the number of dependents in the household of the requesting spouse. This is especially important for women, who are the large majority of single parents.

The proposed Revenue Procedure represents a significant improvement over Rev. Proc. 2003-61 and furthers the intent of providing equitable relief in appropriate cases. These changes will facilitate the requests of low-income women, and particularly those who have been victims of spousal abuse, for such relief. Thank you for this opportunity to comment.

Sincerely,



Joan Entmacher
Vice President, Family Economic Security



Regina L. Oldak
Senior Counsel, Family Economic Security

⁴ See Treas. Reg. § 300.3(b)(ii) (providing that a low-income taxpayer falls at or below the criteria established by the poverty guidelines or other measures adopted by the Secretary); I.R.S. Fact Sheet FS-2007-16 (Mar. 2007) (providing new guidelines defining a low-income taxpayer as one whose income falls at or below 250 percent of the Federal poverty guidelines).

⁵ See I.R.C. § 7526(b)(1)(B) (requiring that 90 percent of a low-income taxpayer clinic's clients have an income that does not exceed 250 percent of the poverty level).