

Tax Litigation Issues

Expert Analysis

Innocent Spouses Falling Victim To Jurisdictional Time Bars

Spouses filing joint returns are both responsible for their tax obligations. Recognizing the potential unfairness of holding spouses jointly and severally liable, the Internal Revenue Service offers “innocent spouse” relief in limited circumstances. When the IRS rejects a claim for “innocent spouse” status, the requesting spouse has 90 days to seek judicial review of that adverse decision.

In *United States v. Wong*, 135 S. Ct. 1625 (2015), the U.S. Supreme Court held that a litigant’s failure to comply with a jurisdictional filing deadline will “deprive a court of all authority to hear a case,” regardless of any equitable considerations. Given such “harsh consequences,” the government bears the burden of proving that Congress “clearly stated” its intention to promulgate a

JEREMY H. TEMKIN is a principal in Morvillo Abramowitz Grand Iason & Anello P.C. MARINA INDENBAUM, an associate at the firm, assisted in the preparation of this article.

By
Jeremy H.
Temkin



jurisdictional, rather than claim-processing, rule.

While *Wong* set a “high bar” that was not supposed to be easily met, the U.S. Courts of Appeals for the Second and Third Circuits have recently concluded that the 90-day deadline to challenge the denial of innocent spouse status constitutes a jurisdictional “adjudicatory rule” and that the failure to comply with that deadline will preclude judicial review. As those courts make clear, in the context of a claim for innocent spouse relief, the line between “adjudicatory” and “claims processing” rules can be especially harsh.

Innocent Spouse Relief

Under §6013(d)(3) of the Internal Revenue Code, spouses who file joint returns are both responsible

for their tax obligations. Congress, however, has recognized that spouses often do not participate equally in financial decisions and that one spouse may be unaware of the other’s economic malfeasance. Thus, §6015 of the Code includes several exceptions to the general rule of joint and several liability, including relieving a spouse of financial responsibility where: (1) the other spouse understates income without their partner’s knowledge, (2)

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the spouses are separated, or (3) it would be inequitable to hold the spouse liable. I.R.C. §6015 (b)(1), (c), (f). Together, the exceptions in §6015 constitute “innocent spouse relief.”

If the IRS denies an application for relief, the requesting spouse

has 90 days from the date of the IRS's final determination to seek review in the U.S. Tax Court. I.R.C. §6015(e)(1)(A). Importantly, section 6015(e)(1)(A) grants the Tax Court "jurisdiction" to determine appropriate relief available to an "innocent spouse" who files a timely petition.

'Rubel' and 'Matuszak'

This past March, the Third Circuit addressed the nature of the 90-day window in *Rubel v. Comm'r of Internal Revenue*, 856 F.3d 301 (3d Cir. 2017). In *Rubel*, a couple filed joint returns reflecting unpaid liabilities for each year from 2005 through 2008. In 2015, *Rubel* filed a series of applications seeking innocent spouse relief for all four years in question. The IRS rejected those applications on Jan. 4 and 13, 2016. In a subsequent letter, the IRS mistakenly informed *Rubel* that she had until April 19, 2016 to file a petition in the Tax Court, and *Rubel* mailed her pro se petition on that date. In what might be described as the height of chutzpah, the IRS moved to dismiss the petition as untimely. The Tax Court agreed with the IRS and dismissed the petition, and *Rubel* appealed.

In affirming the Tax Court's determination that it lacked jurisdiction to consider *Rubel*'s petition for innocent spouse relief, the Third Circuit described Congress's use of the term "jurisdiction" in

the statute as an "explicit statement that §6015(e)(1)(A)'s time limit is jurisdictional." The court further noted that the "Supreme Court has historically found that filing deadlines in tax statutes are jurisdictional because allowing case-specific exceptions and individualized equities could lead to unending claims and challenges and upset the IRS's need for 'finality and certainty.'"

Significantly, while the Third Circuit recognized that "the IRS's administrative mistake in its ... letter may have contributed to

Since reliance on IRS advice is not a consideration or excuse for delay, it falls upon innocent spouses and their attorneys to ensure that the consequences of the jurisdictional time bar do not further penalize spouses already victimized by their partners' criminal activities.

Rubel's delay and resulting inability to have the IRS's innocent spouse determination subjected to judicial review," it held that the 90-day deadline cannot be altered "regardless of the equities" of the case. In a footnote that was likely of little comfort to *Rubel*, the court noted: "While the Tax Court and this Court cannot alter a jurisdictional deadline, and the taxpayer is responsible for calculating when

the deadline expires, we remind the IRS to exercise care when drafting correspondence to a taxpayer to assure it is accurate."

Earlier this month, the Second Circuit decided *Matuszak v. Comm'r of Internal Revenue*, No. 16-3034, 2017 WL 2854346 (2d Cir. July 5, 2017), which presented almost identical circumstances to those at issue in *Rubel*. In *Matuszak*, the petitioner and her husband filed joint tax returns in 2007 and 2008. In 2012, *Matuszak*'s husband pled guilty to defrauding his employer out of more than \$1 million and filing false tax returns. Pursuant to his plea agreement, Mr. *Matuszak* filed amended returns that resulted in a federal income tax liability of almost \$450,000. In a final notice of determination dated Oct. 7, 2014, the IRS partially denied Ms. *Matuszak*'s request for innocent spouse relief. In accordance with §6015(e)(1)(A), Ms. *Matuszak* had to file a petition with the U.S. Tax Court by Jan. 5, 2015 to seek review of the IRS's adverse decision. She filed a pro se petition on Jan. 6, 2015, one day after the deadline.

In affirming the Tax Court's dismissal of the petition, the Second Circuit cited *Wong* and recognized that the "ninety-day deadline at issue ... is one of the 'rare' statutory periods that speak in clear jurisdictional terms," placing heavy emphasis on §6015(e)(1)

(A)'s use of the word "jurisdiction." Thus, the Second Circuit found that the Tax Court was barred from reviewing the IRS's determination because the "timeliness requirement is explicitly linked to [§6015(e)(1)(A)'s] grant of jurisdiction." The court also looked to the statutory context and found that the statute immediately following §6015(e)(1)(A)—which imposed limitations on the IRS's ability to collect a spouse's tax liability pending innocent spouse relief—confirmed the court's jurisdictional analysis. See I.R.C. §6015(e)(1)(B).

As was the case in *Rubel*, *Matuszak* sought to excuse her tardy filing by arguing that two IRS agents informed her that she had "until the end of business on January 7" to petition the Tax Court. The Second Circuit was untroubled by the IRS agents' error, concluding that the time bar for innocent spouse relief is jurisdictional, and therefore that *Matuszak's* failure to file a timely petition was dispositive.¹

Available Alternatives

By applying §6015(e)(1)(A)'s 90-day time limit, the Second and Third Circuits' decisions in *Matuszak* and *Rubel* provide important reminders of the harsh realities of jurisdictional time bars. The result in these cases was especially severe given the nature of the relief being sought, the petitioners' reliance on

erroneous advice from the IRS, and their pro se status.²

Absent review by the Supreme Court or action by Congress, taxpayers denied innocent spouse relief who miss the 90-day limit will have to rely on the IRS's largesse to avoid the harsh consequences of their failure to comply with the filing deadline. In certain circumstances, the IRS may provide relief to a petitioner who relied on erroneous written advice "under reasonable cause" as long as the IRS determines that the "taxpayer exercised ordinary business care and prudence in relying on the IRS's written advice." I.R.M. §20.1.1.3.3.4.1. Relief for reliance on erroneous oral advice is less clear, although "[a]dministratively, the IRS has extended ... relief to include erroneous oral advice when appropriate." I.R.M. §20.1.1.3.3.4.2.

Any equitable considerations in the Internal Revenue Manual provisions, however, will be framed by the unforgiving jurisdictional time bar of the 90-day deadline for innocent spouse relief. The courts are clear: A petitioner's failure to comply with the time bar in §6015(e)(1)(A) deprives the Tax Court of jurisdiction to review the petitioner's claim for innocent spouse relief. Since reliance on IRS advice is not a consideration or excuse for delay, it falls upon innocent spouses and their attorneys to ensure that the consequences of

the jurisdictional time bar do not further penalize spouses already victimized by their partners' criminal activities.



1. In between the Third Circuit's decision in *Rubel* and the Second Circuit's decision in *Matuszak*, the Tax Court addressed the stringent jurisdictional time bar in *Naufflett v. Comm'r of Internal Revenue*, Tax Court Docket No. 24427-15 (May 25, 2017). In circumstances similar to those in both *Matuszak* and *Rubel*, *Naufflett* relied on verbal advice provided by an IRS employee, who erroneously told *Naufflett* that the last date to timely file a petition for innocent spouse relief was a week after the correct date. The court appeared uninterested in the error, however, and found that *Naufflett's* petition for relief was properly dismissed.

2. Although pro se plaintiffs are provided leeway as to their pleadings, this flexibility leeway does not appear to extend to procedural rules or missed deadlines. See *Kees v. I.R.S.*, No. Civ.A. 1:04-CV-768, 2005 WL 1026064 (E.D. Tex. April 12, 2005) (dismissing action filed by pro se litigant, and finding that "courts have continuously held that ignorance of the law and inadvertent noncompliance, including missed deadlines and defective pleadings, are unexcusable even when the plaintiff is proceeding pro se.").