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Duress: A Perplexing Barrier to Relief from Joint and Several Liability

M. MEGHAN KERNS*

INTRODUCTION

The majority of married taxpayers do not fully appreciate the legal ramifications of executing a joint tax return. Regardless of the actual division of combined income, upon filing a joint return, each spouse is responsible for the accuracy of the entire return and liable for the full amount of any tax deficiency arising from the return.\(^1\) To avoid joint and several liability, a couple could file separate returns; however, this often results in a greater total tax liability. Alternatively, a spouse who qualifies as "innocent" of the erroneous items reported by his or her spouse may claim relief under Internal Revenue Code (I.R.C.) § 6015.\(^2\)

While relief from joint and several liability under I.R.C. § 6015 is an improvement on its predecessor, former § 6013(e), problems still remain that prevent many deserving taxpayers from obtaining relief. This Note focuses on two situations in which the requesting spouse had actual knowledge of the inaccuracy of the joint return, but signed the return anyway. The spouse in the first situation signed the return under duress. The spouse in the second situation signed the return to prevent retaliatory spousal abuse. Under current Treasury Regulations, § 6015 relief is only available to those who sign out of fear of retaliation by an abusive spouse. A spouse who signs under actual duress is required to suffer the tax consequences of a married-filing-separately return (a potentially debilitating outcome in community property states). This distinction between abuse and duress is an affront to common sense and in direct contradiction with both the text of the statute and the legislative intent.

This Note argues that Congress intended § 6015 relief to be fully

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2. Id. § 6015.
available to spouses who sign joint returns under duress and that the regulations should be amended accordingly or withdrawn. Part I of this Note presents a brief history of the joint return and its accompanying joint and several liability. Part II continues with a synopsis of the operation and shortcomings of the previous innocent spouse relief provision, I.R.C. § 6013(e), and an overview of the current relief from joint and several liability available under I.R.C. § 6015. After examining the somewhat analogous relief provided for taxpayers in community property states under I.R.C. § 66(c), Part II concludes with a brief discussion of Tax Court jurisdiction to review Internal Revenue Service (IRS) denials of relief under the above provisions. Part III focuses on the effect given by the Treasury Regulations to a finding of duress in the signing of a joint return, and the resulting inconsistency between these regulations and the legislative intent behind the statutory language. Finally, Part IV recommends that the IRS either withdraw the current regulations or amend them to produce a result that is in harmony with the spirit of the Restructuring and Reform Act of 1998.

I. THE JOINT RETURN

A. A BRIEF HISTORY OF THE JOINT RETURN

The option to file a joint return has been available to married couples since 1918. Whether or not spouses chose to file jointly or separately was primarily based on convenience because, aside from the requirement to share the personal deduction for married couples, husbands and wives were generally treated as separate individuals by the Internal Revenue Service. Early on, married taxpayers tried to take advantage of the progressive rate system by assigning the income of the spouse with higher earnings to the spouse with little or no earnings, thereby decreasing the amount of income taxed at higher rate brackets.

In 1930, the Supreme Court put an end to such income-splitting efforts in Lucas v. Earl, holding that tax burdens can “not be escaped by anticipatory arrangements and contracts however [skillfully] devised to prevent the salary when paid from vesting even for a second in the [person] who earned it.” However, later that year, in Poe v. Seaborn, the

5. See Ann F. Thomas, Marriage and the Income Tax Yesterday, Today, and Tomorrow: A Primer and Legislative Scorecard, 16 N.Y.L. SCH. J. HUM. Rts. 1, 43-44 (1999). Married couples could voluntarily aggregate their incomes; however, to do so would generally result in greater total tax liability due to the progressive tax rate schedule. Id.
7. 281 U.S. 111, 115 (1930).
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Court held that income splitting was mandatory in community property states. In Seaborn, the Court held that in community property states each spouse is liable for the federal income tax due on one-half of the couple's earnings, regardless of the actual division of income. The Seaborn holding put intense political pressure on common law state legislatures to implement community property laws so that their married residents could "enjoy" the tax benefits of income-splitting. By the 1940s, sharply progressive federal tax rates added to this pressure and common law states turned to Congress for a solution that would, without affecting other property rights, put common law couples on equal footing with their peers in community property states with regard to the federal income tax.

Congress responded with the Revenue Act of 1948, which provided that married couples in separate property states could file joint returns with an income-splitting election. In operation, separate property state spouses achieved equality with community property spouses by splitting their combined taxable income in half, computing the tax owed on the marginal rate applicable to that figure, and then multiplying the tax owed by two to determine their total tax liability. This legislation also had the unintended effect of achieving "couples neutrality" in that all married couples with equal aggregate incomes paid the same amount of federal income tax, regardless of the division of income between the spouses. In addition, the 1948 Act created a "marriage bonus" when taxpayers that were either the sole or primary earners in their households filed a joint return with their spouses.

Unfortunately, the marriage bonus achieved by the Revenue Act of 1948 was concomitant with a tax penalty for unmarried taxpayers. Assuming equal incomes, unmarried taxpayers paid more tax because

9. MALMAN ET AL., supra note 6, at 589; see Seaborn, 282 U.S. at 117–18 ("[T]he constitutional requirement of uniformity is not intrinsic, but geographic. And differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity." (citations omitted)).
10. MALMAN ET AL., supra note 6, at 589; Thomas, supra note 5, at 45.
11. MALMAN ET AL., supra note 6, at 589.
12. Thomas, supra note 5, at 45–46.
15. Zelenak, supra note 13, at 4 (emphasizing that this legislation was the result of political pressure in the guise of tax policy).
16. Id.; see also Bradshaw, supra note 14, at 703.
17. Langlotz, supra note 14, at 332.
the rate schedules for married couples filing joint returns were precisely double what they were for unmarried filers. Congress dealt with this issue in the Tax Reform Act of 1969 by introducing lower rate schedules for unmarried taxpayers, which effectively reduced the tax brackets for joint returns to less than double the brackets for unmarried taxpayers. However, this change led to another unintended effect: the marriage penalty.

The marriage penalty is most prominent in dual-income couples with incomes that are relatively equal because their tax liability is greater than it would be had they filed separate returns as unmarried taxpayers. These couples cannot avoid the marriage penalty by filing separately because the 1969 amendments established a new and unfavorable rate schedule for married taxpayers filing separate returns. Thus, the 1969 married-filing-separately rate schedule effectively thwarted attempts to revive the community property debate.

Today, some dual-income couples can achieve tax savings by filing separate returns if they have relatively equal incomes. However, whether they do so largely depends on the credits and deductions available to each individual. Some deductions use a percentage of adjusted gross income (AGI) as a threshold requirement that specified expenses must surpass in order to be deducted. For example, miscellaneous itemized deductions may only be deducted to the extent they exceed 2% of AGI. Dual-income couples reduce their individual threshold requirements for

18. Id.
19. I.R.C. § 1(c) (2000); Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487, 679 (1969); MALMAN ET AL., supra note 6, at 589-90; Langlotz, supra note 14, at 332 (citing EDWARD L. McCAFFERY, TAXING WOMEN 63-64 (1997)). Note that this is the result of incompatible tax policies. Professor Lawrence Zelenak offers the following summary of this phenomenon:

As a matter of arithmetic, it is simply impossible to have a tax system that simultaneously possesses (1) progressive marginal rates, (2) couples neutrality, and (3) marriage neutrality (that is, no marriage bonuses or penalties). A truly flat tax (with no exemption amount or zero bracket) can achieve couples neutrality and marriage neutrality at the sacrifice of progressivity. A separate return system can have progressive rates and marriage neutrality, at the sacrifice of couples neutrality. But if progressive marginal rates and couples neutrality are required, there must be marriage penalties, marriage bonuses, or both.

Zelenak, supra note 13, at 6-7 (footnotes omitted).

20. MALMAN ET AL., supra note 6, at 590. Note that there are only two options: either marriage neutrality or a bonus and penalty. That is, where there is a marriage penalty, there is a bonus to single taxpayers, and where there is a marriage bonus, there is a penalty on single taxpayers. For a discussion of the concept, see id.; Zelenak, supra note 13, at 6. For a general overview of the marriage penalty, see generally Langlotz, supra note 14.

21. MALMAN ET AL., supra note 6, at 590; Thomas, supra note 5, at 52-53. It is still possible to obtain the marriage bonus, generally where incomes are disproportionate. The exact numbers, as well as the bonus or penalty, are a necessary part of the rate structure in I.R.C. § 1.

22. 83 Stat. at 681-82; Thomas, supra note 5, at 53.
23. Thomas, supra note 5, at 53.
such deductions by filing separately.\textsuperscript{26}

Even so, filing joint returns often produces the least tax liability for married couples. In addition to combining income, couples filing joint returns combine credits, deductions, and exemptions.\textsuperscript{27} Furthermore, some credits are only available to joint filers, including the Hope and Lifetime Learning credits,\textsuperscript{28} the elderly or permanently and totally disabled credit,\textsuperscript{29} the adoption expense credit,\textsuperscript{30} the child and dependent care credit,\textsuperscript{31} and the earned income credit.\textsuperscript{32} The same is true for a number of deductions; for example, the ability to deduct a qualified education loan is not available to married-filing-separately taxpayers.\textsuperscript{33}

In contrast to the deductions described in the previous paragraph, some deductions are restricted to a percentage of AGI and thus reward dual-income joint-filers for having a combined AGI.\textsuperscript{34} Finally, for couples subject to the alternative minimum tax, filing jointly allows married couples to shield more "preference income" from taxation than they would be able to as separate filers.\textsuperscript{35}

However, there remain disadvantages to filing a joint return. For example, the IRS may redirect to other government agencies refunds from joint returns to fulfill certain debts owed by one spouse, such as overdue child support or student loans.\textsuperscript{36} Most significantly, spouses filing joint returns are jointly and severally liable for the total tax owed by the couple.\textsuperscript{37}

B. Development of Joint and Several Liability

Although the tax benefit of filing a joint return did not exist until 1948, married couples filing joint returns have been subject to joint and

\textsuperscript{26} Note that if one spouse itemizes deductions, the other must do so too. The American Institute of Certified Public Accountants, 360 Degrees of Financial Literacy: Choosing an Income Tax Filing Status, http://www.360financialliteracy.org/Life-Stages/Career/Articles/Taxes/Choosing+an+income+tax+filing+status.htm (last visited Apr. 1, 2007) [hereinafter American Institute of CPAs].

\textsuperscript{27} I.R.C. § 25A(g)(6) (2000).

\textsuperscript{28} I.R.C. § 22(e)(1).

\textsuperscript{29} I.R.C. § 23(f)(1).

\textsuperscript{30} I.R.C. § 129(b)(1)(B).

\textsuperscript{31} Id. § 32(d); CCH, 2006 U.S. Master Tax Guide 128 (2005); American Institute of CPAs, supra note 26.

\textsuperscript{32} CCH, supra note 33, at 128; American Institute of CPAs, supra note 26.

\textsuperscript{33} I.R.C. § 55; CCH, supra note 32, at 127 (explaining that joint filers have both a larger exemption amount and a greater phase-out of exemption amount than their married-filing-separately counterparts).

\textsuperscript{34} I.R.C. § 6013(a).
several liability for the total of any income tax deficiency since 1918.38 One explanation for this is that joint and several liability is perceived by some to be a necessary evil, aimed at thwarting "the manipulation that might occur [in its absence if the spouse who] is liable for income taxes transferred assets to the other in order to avoid collection."39 Another common justification is that joint and several liability is the cost associated with the tax benefits married couples receive from filing a joint return.40 However, as discussed above, this could not be the legislative purpose behind joint and several liability for two reasons: (1) the cost predates the marriage bonus,41 and (2) the joint return itself sometimes results in a penalty.42

Nevertheless, in the event of a deficiency, the IRS may collect the full amount owed by either spouse.43 If one spouse cannot be located or does not have an attachable income stream, the IRS will pursue the other spouse who is then responsible for the full deficiency as well as any penalties.44 This is true even if the spouses are later divorced.45 After making full payment, the paying-spouse may attempt to recover the deficiency amount not allocable to her by claiming her contribution rights against the other spouse.46 Since there is little information with regard to the frequency of or the effectiveness of such pursuits, enforcement of contribution rights is said to be rare.47 In any event, the potential for inequitable results is immense with the strict enforcement of joint and several liability.48

II. THE DEVELOPMENT OF INNOCENT SPOUSE RELIEF

A. INNOCENT SPOUSE RELIEF PRIOR TO 1998: § 6013(e)

In 1971, Congress responded to the problem of strict enforcement of joint and several liability with a new provision, formerly codified at

38. I.R.C. § 6013(d)(3); Brown, supra note 3, at 1.
41. See supra Part I.A.
42. Kahng, supra note 40, at 274. This article also provides an in-depth analysis of an array of principles that might be said to support joint and several liability and how each rationale fails in the joint return context.
43. I.R.C. § 6013(d)(3).
46. Kahng, supra note 40, at 263–64.
47. See id. at 264.
48. See S. REP. NO. 91-1537, at 2 (1970) (referring to a case in which a wife was held liable for an understatement of tax liability resulting from her husband's unreported embezzled funds).
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26 U.S.C. § 6013(e), and commonly known as “innocent spouse relief.”49 Section 6013(e) relieved “innocent” spouses from the tax liability incurred as a result of their spouses’ fraudulent reporting.50 Innocent spouses include those who did not significantly benefit from or have knowledge of underreported income or improper deductions or credits.51 This exception to joint and several liability sought “to bring government tax collection practices into accord with basic principles of equity and fairness.”52 In operation, however, § 6013(e) relief proved quite difficult to obtain.

To qualify for relief under former § 6013(e), the requesting spouse needed to meet each of the following requirements: (1) the spouses filed a joint return for the taxable year in question; (2) the return showed a “substantial” understatement53 of tax liability and this understatement was the result of “grossly erroneous items”54 of the other spouse;55 (3) the innocent spouse, in signing the return, did not know (and had no reason to know) of the above understatement;56 and (4) considering all facts and circumstances, holding the innocent spouse liable for the tax deficiency would be inequitable.57

A “substantial understatement” of tax liability was one that was greater than $500.58 If the deficiency was linked to an inappropriate credit, deduction, or basis in property, the amount also had to surpass a certain percentage of the innocent spouse’s AGI for the year prior to the one in which the notice of deficiency was mailed.59 This test was presumably more difficult for taxpayers at lower incomes to meet.60


51. See I.R.C. § 6013(e)(1).
53. Id. § 6013(e)(1)(B).
54. Id. § 6013(e)(1)(C).
55. Id. § 6013(e)(1)(D).
56. Id. § 6013(e)(1)(C).
57. Id. § 6013(e)(1)(D).
58. Id. § 6013(e)(3).
59. Id. § 6013(e)(4). This income test was set at 10% for individuals with AGIs at or below $20,000 and 25% for all others. Id.; see Frumkes, supra note 45, at 139.
While any item of unreported income qualified as "grossly erroneous," claims for deductions, credits, and bases in property had to have "no basis in fact or law" in order to qualify. This latter standard was quite an obstacle for taxpayers to overcome because the fact that a deduction, credit or basis was disallowed was not always enough to show that there was no basis in fact or law. Interestingly, the IRS would often argue that a taxpayer's claim for a deduction, credit or basis did have a basis in fact or law even though the tax deficiency arose from the IRS's disallowance of the claim.

With respect to the knowledge requirement, courts were inconsistent in their treatment. The majority of cases held that relief would not be granted to a spouse who knew all of the facts of a transaction connected to the understatement. However, other courts also considered the education and business expertise of the spouse seeking relief. In the case of a deficiency arising from an erroneous deduction, some courts held that knowledge of the deduction alone would bar relief. Although § 6013(e) did not provide for partial relief, some courts would grant partial relief when an innocent spouse met the knowledge requirement for some erroneous items, but not others.

Courts were similarly unpredictable in determining when the denial of relief was inequitable. Whether the spouse seeking relief benefited significantly from the understatement was a very important factor. In addition, consideration was given to whether the couple was divorced or separated and whether the spouse asking for relief had been deserted by the other spouse.

As may be evident at this point, § 6013(e) was unable to live up to its intended purpose. Rarely could any taxpayer meet the stringent requirements. Perhaps the reason for this was that "the prior provisions

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61. I.R.C. § 6013(e)(2).
62. Craig D. Bell, Need-to-Know Divorce Tax Law for Legal Assistant Officers, 177 MIL. L. REV. 213, 325 (2003); see id. at 325 n.580 (citing cases).
63. Harper, supra note 60, at 204.
65. Harper, supra note 60, at 204; Kauffman, supra note 64, at 32. For a concise discussion of this knowledge requirement, see Kahng, supra note 40, at 265-66 & nn.20-23.
66. See Brown, supra note 3, at 32 (citing Reser v. Comm'r, 112 F.3d 1258 (5th Cir. 1997)); Kauffman, supra note 64, at 32 (citing R.D. Bokum v. Comm'r, 992 F.2d 1132 (11th Cir. 1993)).
67. Kauffman, supra note 64, at 32 (citing P.A. Price v. Comm'r, 887 F.2d 959 (9th Cir. 1989)).
68. See Brown, supra note 3, at 23 (citing Park v. Comm'r, 25 F.3d 1280 (5th Cir. 1994)).
69. See Kahng, supra note 40, at 265-66; Kauffman, supra note 64, at 32.
70. Kahng, supra note 40, at 266 & n.24 (citing cases).
71. See id. at 267 (citing Estate of Krock v. Comm'r, 93 T.C. 672, 677-79 (1989) as an example).
72. Kauffman, supra note 64, at 33 ("Relief under the prior innocent spousal provisions was, in fact, so infrequently granted that it was, in the words of the Senate Finance Committee, merely theoretical."); Robert S. Steinberg, Three at Bats Against Joint and Several Liability: (1) Innocent
for innocent spousal relief were themselves a contradiction in terms: If there was a substantial understatement of tax attributable to a grossly erroneous item, should not the spouse seeking relief have had reason to know of the understatement?\(^{73}\) Another commentator criticized the statute for the subjective nature of the knowledge and equity requirements, noting that “a review of the cases makes it clear that the determinative issue was whether the spouse seeking relief under these provisions can move the judge to sympathy.”\(^{74}\) The concern surrounding the inadequacy of § 6013(e) did not escape Congress’ attention. In the Restructuring and Reform Act of 1998, Congress repealed § 6013(e) and replaced it with a new regimen for innocent spouse relief in § 6015.\(^{75}\)

**B. The Restructuring and Reform Act of 1998: § 6015**

The Restructuring and Reform Act of 1998\(^{76}\) made a number of important changes to the innocent spouse rules. First, the 1998 Act broadened the availability of traditional relief under former § 6013(e). Second, recognizing that many requesting spouses fall short of satisfying every requirement necessary to obtain traditional relief, the 1998 Act provided two additional options for obtaining relief: the separate liability election and equitable relief. Congress’ principal objective was to make relief more accessible.\(^{77}\)

1. *Traditional Relief*

Traditional innocent spouse relief, codified as I.R.C. § 6015(b), is a broader version of the relief available under prior law. Taxpayers who satisfy every requirement under this section are relieved of joint and several liability for the tax, interest, and penalties arising from the erroneous item that caused the understatement.\(^{78}\) The 1998 Act expanded the availability of this traditional relief by removing the words “substantial” from the understatement requirement and “grossly” from the erroneous item requirement.\(^{79}\) The joint return, knowledge, and

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\(^{73}\) Kauffman, *supra* note 64, at 33.


\(^{76}\) 112 Stat. at 734.

\(^{77}\) STAFF OF JT. COMM. ON TAXATION, 105TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN 1998, at 67 (Comm. Print 1998) [hereinafter 1998 BLUE BOOK], available at http://www.gpo.gov/congress/joint/hjintotc1p105.html (“Congress was concerned that the innocent spouse provisions of prior law were inadequate. The Congress believed it was inappropriate to limit innocent spouse relief only to the most egregious cases . . . ”).


\(^{79}\) See id. § 6015(b)(1)(B); Bell, *supra* note 62, at 326; Kahng, *supra* note 40, at 267.
equity requirements remain essentially unchanged. In addition, if a spouse meets the knowledge requirement for some, but not all, of the understatement, he may obtain partial relief for the portion that he did not know or have reason to know about. Finally, there is a two-year statute of limitations imposed for seeking relief, starting when the IRS commences collection activities.

2. Separate Liability Election

Section 6015(c) provides a new form of relief and is based on the proportional “innocence” of the spouse requesting relief. This separate liability election is only available to a spouse who is divorced, separated, or has lived apart from the other spouse for the twelve-month period prior to the election for relief. Under § 6015(c), a spouse may elect to limit his liability to that portion of the tax deficiency allocable to him, although he may not escape liability for portions of the deficiency allocable to the other spouse of which he had actual knowledge when signing the return. A principle benefit of the separation of liability election is that a spouse who had “reason to know” but not “actual knowledge” of an erroneous item is not barred from relief. Notably, the bar on actual knowledge of an item giving rise to a deficiency does not apply if the return was signed under duress. However, relief is not available if either spouse acted fraudulently or if assets were transferred between spouses with the primary purpose of tax avoidance. The same statute of limitations articulated under § 6015(b) also applies to a separate liability election under § 6015(c).

Section 6015(d) provides the rules for the allocation of liability that accompanies a § 6015(c) election. Generally, the requesting spouse’s liability is limited to that portion of the tax liability generated from items that would have been allocated to the requesting spouse had the requesting spouse originally chosen to file a separate return for the tax year in question. However, when the filing of a separate return would result in the disallowance of a deduction or credit, the deduction or

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80. See id. § 6015(b)(1)(C)-(D).
81. Id. § 6015(b)(2).
82. Id. § 6015(b)(1)(E).
83. Id. § 6015(c)(3)(A)(i).
84. Id. § 6015(c)(3)(C). Note that whether the spouse had a reason to know of the understatement is immaterial under this subsection. “Actual knowledge” was defined in Cheshire v. Commissioner as “actual and clear awareness...of the existence of an item which gives rise to the deficiency (or portion thereof).” 115 T.C. 183, 195 (2000).
86. Id.
88. Id. § 6015(c)(3)(B).
89. Id. § 6015(d)(3)(A).
credit is calculated as if there was no such prohibition.\textsuperscript{90} If the deduction or credit is the source of the deficiency, then the deficiency is allocated to the spouse to whom the deduction or credit is allocated.\textsuperscript{91} There is an exception to this rule when one spouse benefits from the other’s deduction. In that case, the deficiency is allocated to the spouse who received the benefit in an amount equal to the tax benefit.\textsuperscript{92} Community property laws are generally disregarded for purposes of this section.\textsuperscript{93}

3. \textit{Equitable Relief}

Section \textsection 6015(f) grants equitable relief and is a last resort for spouses who are unable to meet the requirements of either \textsection 6015(b) or (c).\textsuperscript{94} In this situation, the Commissioner of Internal Revenue determines whether holding a spouse liable for all or a portion of the deficiency would be inequitable in light of all facts and circumstances.\textsuperscript{95} Congress intended this provision to provide relief in situations where a joint return reported the correct amount of tax owed (and therefore there was not an understatement), but that amount was not paid in full and the innocent spouse was not aware of the underpayment.\textsuperscript{96} Congress also noted that equitable relief may be available in other situations.\textsuperscript{97} The IRS has provided guidelines for determining when equitable relief should be granted in Revenue Procedure 2003-61.\textsuperscript{98}

Revenue Procedure 2003-61 first sets forth an extensive list of threshold requirements.\textsuperscript{99} If the requirements are satisfied, the IRS

\begin{itemize}
  \item \textsuperscript{90} Id. \textsection 6015(d)(4); 1998 Blue Book, supra note 77, at 68.
  \item \textsuperscript{91} I.R.C. \textsection 6015(d)(3)(A); Harper, supra note 60, at 205; Kaufman, supra note 64, at 35.
  \item \textsuperscript{92} I.R.C. \textsection 6015(d)(3)(B).
  \item \textsuperscript{93} Treas. Reg. \textsection 1.6015-1(f) (2004). The significance of disregarding community property laws is explained infra Part II.C.
  \item \textsuperscript{94} I.R.C. \textsection 6015(f)(2).
  \item \textsuperscript{95} Id. \textsection 6015(f)(1).
  \item \textsuperscript{96} See Kahng, supra note 40, at 269–70 (citing H.R. Rep. No. 105-599, at 254 (1998)).
  \item \textsuperscript{97} See id. at 270 (citing H.R. Rep. No. 105-599, at 254-55); see also Hawkins, supra note 49, at 4–5.
  \item \textsuperscript{99} These requirements mandate that the innocent spouse: (1) filed a joint return for the taxable year in question; (2) be unable to obtain relief via \textsection 6015(b) or (c); (3) meet the two-year statute of limitations beginning on the date of the IRS’s first collection activity; (4) not have engaged in a fraudulent transfer of assets with the other spouse; (5) not have received disqualified assets from the other spouse; (6) not have fraudulent intent with regard to filing or failing to file the return in question; and (7) request relief only with regard to tax liability arising from items attributable to the other spouse. Id. \textsection 4.01. The final threshold requirement, (7), does not apply in the following situations: (a) the attribution to the innocent spouse is solely due to community property law; (b) nominal ownership (when an innocent spouse can rebut the presumption that an item titled in the name of the innocent spouse is attributable to that spouse); (c) the innocent spouse did not know (or have reason to know) that funds that were meant for the payment of tax were misappropriated by the other spouse for the other spouse’s benefit; and (d) the innocent spouse suffered abuse (not amounting to duress) such that fear of retaliation from the other spouse prevented the innocent spouse from challenging the correctness of the return. Id.
\end{itemize}
provides a safe-harbor for the situations involving underpayments (as envisioned by Congress) as well as a list of non-exclusive factors, which are relevant in all other situations. These factors are: marital status, economic hardship, knowledge or reason to know, non-requesting spouse’s legal obligation, significant benefit, compliance with income tax laws, abuse, and mental or physical health.

C. RELIEF FOR SPOUSES IN COMMUNITY PROPERTY STATES: § 66

Innocent spouses who file joint returns in community property states are eligible for innocent spouse relief under § 6015. As noted above, this provides relief from items that, while attributable to community income in a community property state, would otherwise be attributable to the other spouse. Section 6015 does not necessarily prevent an innocent spouse from being taxed on income from the innocent spouse’s half of community property.

For spouses filing separate returns in community property states, there is still the possibility that an innocent spouse will be unfairly burdened by the tax liability of his or her spouse. This is because spouses in community property states are considered to “own” half of the income earned by their spouses and are thus taxed on that amount even when they file separate returns. Thus, an innocent spouse filing a separate return could be held liable for half of the underreported income of the other spouse, even if the innocent spouse did not know of the amount or existence of this income.

Innocent spouse relief in this context is governed by § 66. Section 66(a) provides relief by reallocating the spouses’ income under § 879(a) if the following four requirements are met: (1) the spouses lived apart for the entire year in question and were married at any time during that year, (2) the spouses did not file a joint return for the year in question, (3) at least one of the spouses earned community income, and (4) no transfer of that community income occurred between the spouses. Under § 897(a), three types of community income will be reclassified:

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100. Id. § 4.02.
101. Id. § 4.03.
102. The community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.
103. I.R.C. § 6015(a) (2000) ("Any determination under this section shall be made without regard to community property laws.").
105. GUNN & WARD, supra note 24, at 231–32; see also Poe v. Seaborn, 282 U.S. 101, 118 (1930) (holding that each spouse is required to report one-half of all community income on their separate returns).
106. GUNN & WARD, supra note 24, at 232; Thomas, supra note 104.
earned income; business, trade or partnership income; and income derived from separate property.108 Earned income is allocated to the earning spouse.109 Income from a trade or business or a partner’s share of partnership income is allocated to the spouse who maintains substantial control over the trade or business or the spouse who is a partner.110 Finally, income derived from separate property is allocated to the spouse who owns the separate property.111 The treatment of whatever community income falls outside of these three categories is governed by community property law.112 Thus the combined operation of § 66(a) and § 879(a) does not provide complete relief. In addition, the requirements of 66(a) can be a tough hurdle for some taxpayers to overcome.113

Fortunately, § 66 offers two additional methods for obtaining relief from the community income problem. Under § 66(b), the IRS is permitted to ignore community property law in determining tax liability when a taxpayer treats community income as though he is “solely entitled to such income and fail[s] to notify . . . [his] spouse . . . of the nature and amount of such income” prior to the deadline for filing a return.114 However, it is important to note that the IRS is not required to disregard community property law in this context. The language of the I.R.C. merely states that the IRS “may” choose to do so.115

Section 66(c) offers equitable relief in cases where an innocent spouse: (1) did not file a joint return; (2) did not include any item of community income which, per the rules described above under § 879(a), would be attributable to the other spouse; (3) did not know or have reason to know of such item of community income; and (4) including that item of community income in the innocent spouse’s taxable income would be inequitable, considering all facts and circumstances.116 When these requirements are met, the item of community income will be allocated to the other spouse and the innocent spouse will not be taxed on that item.117 The last sentence under § 66(c) takes equitable relief one step further, providing that the IRS may relieve an innocent spouse of any or all of the tax deficiency if it would be inequitable to hold the spouse liable.118 Section 66(c) is comparable to § 6015(f) and its operation

108. Id. § 879(a).
109. Id. §§ 879(a)(1), 911(d)(2) (defining earned income).
110. Id. §§ 879(a)(2), 1402(a)(5).
111. Id. § 879(a)(3).
112. Id. § 879(a)(4).
114. I.R.C. § 66(b).
115. Id.
116. Id. § 66(c).
117. Id.
118. Id.
is also governed by Revenue Procedure 2003-61 (as described *supra* Part II.B, but with the first two threshold requirements excepted).119

D. REVIEW OF CLAIM DENIALS: TAX COURT JURISDICTION

To obtain relief under § 6015 or § 66 the taxpayer must request relief from the IRS by filing a Form 8857.120 The IRS must grant relief to all qualifying taxpayers requesting relief under § 6015(b) or (c).121 However, whether relief is granted under § 6015(f) or § 66(c) is at the discretion of the IRS.122 In the event that a claim for relief is denied, the United States Tax Court’s jurisdiction to review that denial is often dependant on what type of relief the taxpayer has been denied.123

The extent of the Tax Court’s jurisdiction is dictated by Congress through statutory grants.124 Section 6213(a) grants the Tax Court jurisdiction to review a § 6015 claim when it is raised as an affirmative defense in a deficiency or collection proceeding for the year at issue.125 Additionally, § 6015(e) explicitly provides the Tax Court jurisdiction where a taxpayer “against whom a deficiency has been asserted” has elected relief under § 6015(b) or (c) and the IRS has denied such relief.126 These statutes leave the Tax Court without jurisdiction over a denial of relief in “stand alone” situations, when a taxpayer has elected relief under § 6015(f) and no deficiency is asserted.127

With regard to jurisdiction to review denials of § 66 relief, the Tax Court is much more restricted.128 Section 66 offers no jurisdictional grant to the Tax Court129 and the Court has concluded that it has no jurisdiction to review denials of § 66 relief unless there is an independent ground for jurisdiction.130 The Tax Court’s severely limited jurisdiction over § 66 claims leaves many taxpayers seeking relief under § 66(c) solely at the mercy of the IRS.131

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120. I.R.S. Form 8857.
121. I.R.C. § 6015(b)–(c).
122. *Id.* §§ 66, 6015(f).
123. For a comprehensive evaluation of Tax Court jurisdiction over innocent spouse claims, see generally *Billings v. Commissioner*, 127 T.C. 7 (2006).
124. Hodgkins, *supra* note 113, at 1174 (noting that the Tax Court does not have the Article III powers of the Constitution).
125. I.R.C. § 6213(a); Steinberg, *supra* note 72, at 411.
126. I.R.C. § 6015(e).
127. *Billings*, 127 T.C. at 17 (“Congress’s phrasing of [§ 6015(e)(1)(A)] is a clear, though perhaps inadvertent, deprivation of [the Tax Court’s] jurisdiction over nondeficiency stand-alone petitions.”).
129. I.R.C. § 66.
III. Duress and Innocent Spouse Relief

A. Duress and the Actual Knowledge Requirement

Prior to the Restructuring and Reform Act of 1998, a finding of duress was typically used to circumvent § 6013(a) joint and several liability by voiding the joint return and assessing tax liability as if married-filing-separately returns were originally filed.\(^{132}\) Alternatively, abuse-not-amounting-to-duress was seen as a strong factor in favor of providing equitable relief under former § 6013(e), and was often used to overcome the "actual knowledge or reason to know" prohibition on such relief. In the 1998 Act, however, Congress specifically included statutory language providing that duress would override the actual knowledge prohibition on § 6015(c) relief.\(^{133}\) Since 1998, the IRS has strategically amended its regulations on § 6013(a)\(^ {134}\) regarding joint returns, and has issued final regulations on § 6015,\(^ {135}\) regarding innocent spouse relief, to ensure that a finding of duress in signing a joint return will result in the taxpayer being treated as if she had filed a separate return, thereby precluding any claim for relief under § 6015. Relief for innocent spouses filing separate returns is only available in community property states under § 66. Note that an innocent spouse suffering from abuse-not-amounting-to-duress is still eligible to seek relief under subsections 6015(c)\(^ {136}\) and (f), as well as relief under 66(c).\(^ {137}\) However, as the following analysis will show, the distinction between duress and abuse-not-amounting-to-duress is virtually indistinguishable, and further, it is inequitable and against Congressional intent to deny both remedies to innocent spouses signing returns under duress.

1. Definitions of Duress and Abuse-Not-Amounting-to-Duress

The Internal Revenue Code does not provide a definition of duress and the case law addressing duress does so only under the former

\(^{132}\) Note that calculating tax liability as if a married-filing-separately return had been filed still leaves community property spouses in a perilous situation. Consider the following example. For the taxable year at issue, Husband (H) had a taxable income of $130,000 and wife (W) had a taxable income of $20,000. H only reported a total taxable income of $120,000 for the joint return. W knew that H had understated his income, but signed the joint return under duress. The I.R.S. begins deficiency proceeds for the $30,000 understatement of income. W and H live in a community property state. If W establishes that she signed the return under duress, her tax liability is computed as if she had originally filed a married-filing-separately return. However, the rule of *Poe v. Seaborn* dictates that W must report half of her income and half of her husband's income on her separate return. Therefore, W's taxable income is $75,000 (= \(\frac{1}{2} \times $20,000 + \frac{1}{2} \times $130,000\)). If she lived in a separate property state, she would be taxed only on the income she earned, which is $20,000. See Poe v. Seaborn, 282 U.S. 101, 117-18 (1930).

\(^{133}\) I.R.C. § 6015(c)(3)(C).

\(^{134}\) Treas. Reg. § 1.6013-4(d) (2002).

\(^{135}\) Id. § 1.6015-3(c)(2)(v).

\(^{136}\) Id.

§ 6013(e). So far, the Tax Court has found this case law adequate in analyzing § 6015 cases. The uniform standard adopted by the courts for determining the existence of duress in the signing of a joint return contains the following essential elements: "(1) Whether the taxpayer was unable to resist demands to sign the return; and (2) whether 'she would not have signed the returns except for the constraint applied to her will.'"

For situations involving abuse-not-amounting-to-duress, "abuse" is articulated in the Treasury Regulations as follows:

If the requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the nonrequesting spouse's retaliation, the limitation on actual knowledge in this paragraph (c) will not apply.

This definition is used for the purpose of determining whether a taxpayer falls under the abuse exception to the actual knowledge requirement of § 6015(c). The same definition is also used in determining whether equitable relief should be granted under both § 6015(f) and § 66(c).

2. Cases Involving Duress

In each of the following cases, the court held that the wife signed the joint return(s) under duress. Note that most of these cases involve a history of violence, abuse or threats of abuse at the time of signing the return, and reluctance on the part of the innocent spouse in signing the return. Another common element is a threat to separate the wife from her children.

In Frederick v. Commissioner, the husband had been arrested three
times for assaulting his wife and there was evidence of abuse on several
other occasions. When the wife objected to signing a blank tax return,
the husband grabbed her by the throat and, according to her testimony
said, “if I knowed when I was well off, I would sign.” She signed the
return out of fear of physical harm.

In Brown (Lola) v. Commissioner, the wife testified about her
relationship with her abusive husband, stating that he “would put me in
fear of my life if I didn’t do what he said, as long as I did what he said, he
didn’t threaten me.” When she inquired about the accuracy of the tax
returns her husband merely said that a “C.P.A. fixed them” though he
refused to let her study them. When she asked questions about the
return, he would become incensed and tell her to sign the return “or
else.” The wife further testified that “when I started questioning this,
things got worse. I suffered more and the children suffered more.

In Stanley (Diane) v. Commissioner, a wife submitted her W-2 form
to her husband after he threatened to take away her children. The
husband then filed a joint return by signing the wife’s name without her
permission. The court noted one instance of abuse in which the husband
“forced [her] into their car, drove at a speed in excess of 100 miles per
hour and threatened to push [her] out of the car with his feet.” The
court also noted that the threat to separate a mother from her children
“can be even more important to a mother than her physical safety.”

Pirnia v. Commissioner involved a marital history of both mental
and physical abuse. Again, the threat used by the violent husband was
that he would take the children away if she did not sign the tax return.

The husband in In re Hinckley had been a tax lawyer, but suffered a
head injury that led to the demise of his career and caused erratic and
often abusive behavior. The wife became wary that in her husband’s

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143. 26 T.C.M. (P-H) 864, 865 (1957).
144. Id.
145. Id.
146. 51 T.C. 116, 120 (1968).
147. Id. at 118.
148. Id.
149. Id. at 120.
150. 81 T.C. 634, 636 (1983).
151. Id.
152. Id. at 638.
154. Id. at 2151. This was no empty threat. A few years before the wife signed the returns in
question, the wife told the husband that she and the children were going to leave him. Later that night
the husband said that he was taking the children to the mall and did not return for nine months. Id. at 2150.
155. 256 B.R. 814 (2000). Note that this case takes place after the Restructuring and Reform Act
of 1998 but before the IRS issued regulations. This case involves a finding of duress which, under
6015(c)(3)(C), enables the taxpayer to elect separate liability under § 6015(c).
ment he declined his theory on their tax liability was possibly incorrect.  
However she signed the return to pacify her husband, fearful of what he  
might do to himself or to her if she questioned him.  

3. Cases Involving Abuse-Not-Amounting-to-Duress  
The abuse cases that fall short of duress do not fall far. Each case  
below holds that the abuse suffered did not amount to duress. Again,  
most cases include a history of abuse, often including abuse for  
questioning or not obeying, and the wife signing the return fearing  
further abuse if she refused.  

In Brown (Kenneth) v. Commissioner, relief was granted to a wife  
who suffered repeated physical abuse by her husband.  The husband  
often forced his wife to sign tax returns and other important documents  
without allowing her to read over them first. The court found that the  
wife “always complied with his demands, for fear that she would be  
beaten if she refused” and that she therefore did not know or have  
reason to know of the underreported income on the tax return.  

In Kistner v. Commissioner, the husband refused his wife access to  
their financial data and threatened to hurt her if she asked about the tax  
returns. The court did not find duress, but did find a history of physical  
abuse that overrode any claim that she knew or should have known  
about the erroneous items on the tax return.  

In Makalintal v. Commissioner, the wife repeatedly suffered physical  
abuse by the husband, who had also threatened her life at gunpoint on  
numerous occasions. The husband refused to talk about financial  
matters with his wife and forbade her from driving a car, leaving their  
home, and sometimes even confined her to their bedroom. Thus, the  
court said the wife had no duty to inquire further about the funds her  
husband claimed were tax-free and from his prior business conducted  
outside the country.  

A history of violent abuse, including concussions, cracked ribs, and  
bruised lungs played an important part in negating the reason to know  
requirement in Aude v. Commissioner. Due to the past abuse, the wife  
had every reason to believe that she would be physically attacked if she  
did not sign the returns, even though there was no verbal threat at the

156. Id. at 822.  
157. Id. at 826.  
158. 57 T.C.M. (P-H) 1508 (1988).  
159. Id. at 31–32.  
160. 18 F.3d 1521, 1526 (11th Cir. 1994).  
161. Id. at 1526–27.  
162. 71 T.C.M. (CCH) 1701, 1704 (1996).  
163. Id.  
164. Id. at 1708.  
165. 74 T.C.M. (CCH) 993, 1000 (1997).
time she signed them.\textsuperscript{166}

As the above cases demonstrate, there is no meaningful difference between spouses who sign joint returns under duress and those who sign joint returns under abuse-not-amounting to duress. If like cases should be treated alike, spouses suffering from duress should be granted the same protection from joint and several liability as spouses suffering from abuse-not-amounting-to-duress. The distinction drawn by the Treasury Regulations is simply irrational. Moreover, it is at odds with legislative intent.

B. \textbf{INCONSISTENCY WITH CONGRESSIONAL INTENT}

When interpreting a statute one must first """"presume that a legislature says in a statute what it means and means in a statute what it says there.""""\textsuperscript{167} The statutory language providing the actual knowledge prohibition on separate liability relief under § 6015(c) includes an explicit exception for duress cases: """"This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.""""\textsuperscript{168} However, if there is a need for clarification, the legislative history provides ample guidance. The Congressional Record supplies the following commentary by Senator Daniel Robert Graham of Florida:

[W]e had testimony that some spouses signed the joint return, and may even have had actual knowledge of its contents, but did so under duress, including under physical duress. So we have provided a second provision which says that even if you had actual knowledge at the time you signed the return, that you would not be denied the right to apply for this proportioning of responsibility if you, the individual, can establish that the return was signed under duress.

....

[T]his is a very significant part of the provision of taxpayer relief which is in this legislation. And it is a fairly expensive provision in terms of the potential for lost revenue. But that expense is one that we believe is a just expense because it will lift from the responsibility of taxpayers who were ignorant of circumstances but were entrapped by conditions that were often beyond their control and certainly beyond their

\textsuperscript{166} Id.
\textsuperscript{168} I.R.C. § 6015(c)(3)(C) (2000). The language of this subsection regarding the election of separate liability provides in full:

Election not valid with respect to certain deficiencies. If the Secretary demonstrates that an individual making an election under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under subsection (d), such election shall not apply to such deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.

\textit{Id.}
knowledge and in some cases the result of actual duress and coercion, that we should recognize that and not require them to be responsible for more than their proportional share of the deficiency.\(^6\)

This legislative intent was brought to the attention of the IRS after it issued proposed regulations for § 6015.\(^7\) The IRS responded by stating that to allow the benefits of a joint return in the absence of a valid joint return election... would require that the IRS treat joint return elections as valid for purposes of section 6015(c), but invalid for purposes of section 6015(b) and (f), when the requesting spouse establishes that the return was signed under duress.\(^7\)

This is not so. At the same time the IRS published the regulations for § 6015, it chose to amend regulation section 1.6015-4(d) to provide that a return signed under duress would not constitute a joint return.\(^7\) The IRS could have chosen to adopt regulations that would be more tailored to legislative intent without creating inconsistent treatment between the subsections of § 6015 by providing that all § 6015 relief is available in situations where a joint return is signed under duress.\(^7\)

Moreover, the IRS itself has created a paradox in which a taxpayer suffering abuse-not-amounting-to-duress has more avenues for relief available to him or her than one who suffered abuse in signing the return (which, as noted above, is almost always accompanied by a history of domestic violence). The IRS's current regulations\(^7\) provide an exception to the actual knowledge prohibition under § 6015(c) in cases that involve abuse-not-amounting-to-duress and, under equitable relief § 6015(f) and § 66(c), the IRS has also provided that abuse-not-amounting-to-duress will usually override a knowledge (or reason to know) finding.\(^7\) So why is the IRS concerned with an inconsistency between the subsections within § 6015 that it could easily resolve when it has created a more egregious disparity in tax treatment that deviates from the clear legislative intent?

C. WHY THE SEPARATE RETURN SOLUTION FOR DURESS IS INADEQUATE

The above question becomes even more relevant when viewed in light of potential outcomes resulting from the current regulations. For

instance, take the following hypothetical situations.

Situation 1. Wife, A, has endured a marriage riddled with domestic abuse. She works as a supermarket cashier and makes $X/year. Her abusive husband, B, makes $XXX/year from running the computer repair company he owns. Last year, A asked B how the family was able to afford the lavish cruise they took and B told her never to ask him about money matters and beat her so severely she suffered a concussion. A did not benefit from the cruise because B locked her in the cabin for the majority of the trip. When it came time to sign the joint tax return, A knew that the income reported was inaccurate, but signed it anyway out of fear that her husband would harm her. A and B are now divorced. The IRS discovers that the cruise was improperly paid for by B's company and begins deficiency proceedings against A because B has left the country.

In this situation, A suffered abuse-not-amounting-to-duress in general and did not suffer duress in signing the return. A therefore makes the separate liability election under § 6015(c). Even though she had actual knowledge that the income stated on the return was underreported, the regulations permit her to circumvent this prohibition by establishing the abuse (short of duress) that she suffered and that she signed the return out of fear of her husband's retaliation. She will only have to pay taxes on the amount that is attributable to her income as if she filed a separate return. If the separate return status would cause her to lose a credit or deduction, the credit or deduction is still allowed. If she resides in a community property state, community property laws are ignored and she will not be required to report half of her husband's income on her "separate return." If the IRS denies her claim, the Tax Court has jurisdiction to review the denial.

Situation 2. Wife, C, has endured a marriage riddled with domestic abuse. She works at a retail store and makes $X/year. Her abusive husband, D, makes $XXX/year from running the manufacturing company he owns. Last year, D beat C so severely she suffered a concussion. Afterwards, D took the family on a lavish cruise to "make up for things." When it came time to sign the joint tax return, C asked how D could have afforded a cruise with the income reported on the return. D grew angry and told C she had better sign the return. When he raised his arm to strike C, she signed the return. C and D are now divorced. The IRS discovers that the cruise was improperly paid for by D's company and begins deficiency proceedings against C because D has left the country.

In this situation, C signed the return while under physical duress.

176. This is because she was not being threatened at the time she signed the return.
The regulations under § 6015 provide that § 6015 relief is not available to her. Per the regulations under § 6013, the fact that she signed the return under duress means that her tax liability will be determined as if she had filed a married-filing-separately return. If she resides in a common law state, she may lose all or a portion of certain credits and deductions that would be available to her on a joint return. If she resides in a community property state, separate return status would make her liable for the tax on half of her husband’s income, and potentially half of the deficiency attributable to her husband’s improper financing of the cruise. Therefore, C seeks relief under § 66(c), but is denied because the IRS finds that she significantly benefited from the understatement as a passenger on the cruise. The Tax Court lacks jurisdiction to hear a denial of § 66 relief, so she must pay half of her husband’s tax liability.

Alternatively, C could have chosen not to pursue the claim of duress, and sought relief under § 6015(c) by raising abuse-not-amounting-to-duress as a defense to the knowledge requirement. However, the IRS could conceivably argue that C was in fact under duress in signing the return, and C may end up where she started.

IV. PROPOSED SOLUTION

To correct the inequity described above, the IRS should make the following amendments to its regulations:

1. Treasury Regulation 1.6013-4(d) should read: If an individual asserts and establishes that he or she signed a return under duress, the individual may choose either (1) to nullify the joint return by re-filing with a married-filing-separately tax return or (2) to pursue relief from joint and several liability under § 6015(c).

2. Treasury Regulation 1.6015-1(b) should read: If an individual asserts and establishes that he or she signed a return under duress, the individual satisfies the joint return requirement and is relieved of knowledge or reason to know prohibitions for the purposes of pursuing a claim for § 6015 relief.

Alternatively, Treasury Regulations 1.6013-4(d) and 1.6015-1(b) should be withdrawn. Either way, the result is to remove the barrier to § 6015 relief for spouses who have actual knowledge of a joint return’s inaccuracy but signed the return under duress. This result not only fulfills

177. The rate schedules in § 1 are essentially even right now; however, they have historically been higher for married-filing-separately than for married-filing-jointly. See MALMAN ET AL., supra note 6, at 590.

178. After she pays the tax, she does have the option to sue for a refund in a federal district court, but this is a very expensive way to get relief.
the wishes of the legislature and the mandate of the statute, but also ensures a more evenhanded application of relief from joint and several liability. For example, with the above modifications (or withdrawal of the erroneous regulations), wife C, in Situation 2 above, now has access to all of the benefits of § 6015(c), just like wife A, in Situation 1. This is logical because the two situations are similar in all relevant aspects: both wives signed a joint return that they knew was inaccurate to avoid being subject to violence, and both have since divorced their husbands.

**CONCLUSION**

Section 6015 relief from joint and several liability for tax deficiencies arising from a joint return should be available to spouses who sign joint returns under duress. Moreover, where, as here, the legislature has set forth a specific avenue for relief, it is inappropriate for the IRS to make that form of relief available to only a portion of the intended beneficiaries and provide an inferior form of relief for the remaining intended beneficiaries. But this is exactly what the IRS has done. As a result, spouses suffering from abuse-not-amounting-to-duress may seek relief under § 6015 while those who suffer actual duress in the signing of joint returns are limited to a lesser form of relief, which in community property states carries the potential to be no relief at all. The regulations should be amended or abolished to correct this disparity.

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179. Section 6015(c)(3)(C) states:

If... an individual making [a separate liability election] had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof). . . such election shall not apply to such deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that such individual signed the return under duress.
