

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

October 2, 2023

Report Number: 2024-300-001

HIGHLIGHTS: The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

Final Audit Report issued on October 2, 2023

Report Number 2024-300-001

Why TIGTA Did This Audit

This audit was initiated to assess whether the Innocent Spouse Program is effectively working claims in accordance with Internal Revenue Code (I.R.C.) § 6015, including whether the IRS is protecting taxpayer rights when evaluating innocent spouse claims.

Impact on Tax Administration

When married taxpayers elect to file a joint income tax return, they are held jointly and individually responsible for the tax, interest, or penalties due on the joint return, even if they later separate or divorce (*i.e.*, one spouse can be held responsible for payment of all the tax due). This means that the IRS may look to either spouse or both spouses for the payment of the tax liability, regardless of who earned the income. Because joint and several liability may result in inequitable treatment to one spouse, I.R.C. § 6015 provides an exception to joint and several liability. I.R.C. § 6015 provides three types of relief from joint and several liability to spouses who filed a joint return: § 6015(b) Innocent Spouse Relief; § 6015(c) Separation of Liability; and § 6015(f) Equitable Relief. Taxpayers residing in "community property" States can request innocent spouse under I.R.C. § 66(c), Treatment of Community Income.

What TIGTA Found

The IRS could improve guidance for IRS employees working innocent spouse claims. TIGTA reviewed a statistical sample of 45 innocent spouse claims and determined that IRS employees in the Cincinnati Centralized Innocent Spouse Operations did not fully develop the facts and circumstances in 10 (22 percent) of the claims. Further development of the facts and circumstances in nine of the 10 claims could have resulted in a change of determination. The IRS disagreed or partially disagreed with six of the 10 exceptions, but in five instances, the IRS agreed that at least one factor was inadequately developed.

A lack of specificity in Internal Revenue Manual sections related to equitable relief may have contributed to examiner subjectivity in equitable relief determinations. Also, final determination letters did not fully inform taxpayers of IRS decisions about their tax accounts.

The IRS also failed to take actions in certain situations to suspend only the requesting spouse's Collection Statute Expiration Date rather than suspending it for both the requesting spouse and the non-requesting spouse. Further, tax liabilities are not always collected due to freeze codes remaining on the account after the claim is closed, making the account uncollectible.

Prior to the Coronavirus Disease 2019 (COVID-19) pandemic, innocent spouse claims already exceeded the IRS's 240-day closure goal, taking approximately one year to close. However, after COVID-19 pandemic restrictions, the IRS took an average of 557 days (over 18 months) to close innocent spouse claims. According to IRS management, these extended closure times were the result of staffing shortages and pandemic-related decisions to temporarily suspend enforcement activity; however, the IRS has not performed any analysis on the root cause of the extended claim closures.

What TIGTA Recommended

TIGTA made seven recommendations intended to improve guidance, communication, and the processing of innocent spouse claims to help protect taxpayer rights. In addition, TIGTA recommended monitoring and, if deemed necessary, conducting an analysis of the timeliness of working innocent spouse claims and ensuring that the freeze code is removed after the claim is closed.

The IRS agreed with three of our recommendations and plans to issue employee reminders regarding innocent spouse freeze codes and the Collection Statute Expiration Date for non-requesting spouses and to analyze cycle times. The IRS partially agreed with one recommendation and plans to update the Internal Revenue Manual but will not offer additional training to employees. The IRS also disagreed with three recommendations to make changes to employee reviews, final determination letters, and the mirroring policy that would have improved the administration of the Innocent Spouse Program.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

October 2, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers (Audit # 202230017)

This report presents the results of our review to determine whether the Innocent Spouse Program is effectively working claims in accordance with Internal Revenue Code § 6015. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Increasing Domestic and International Tax Compliance and Enforcement*.

Management's complete response to the draft report is included as Appendix VII. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

Table of Contents

Background	Page 1
Results of Review	Page 5
The IRS Did Not Always Protect Taxpayer Rights in Innocent Spouse Claims	Page 5
Recommendations 1 and 2:	Page 11
Recommendation 3:	Page 12
Innocent Spouse Claims Took More Than 18 Months to Close	Page 12
Recommendation 4:	Page 13
Collection Statute Expiration Date Issues May Cause Harm to Taxpayers and the Government	Page 14
Recommendations 5 through 7:	Page 17
Appendices	
Appendix I – Detailed Objective, Scope, and Methodology	Page 18
Appendix II – Outcome Measures	Page 20
Appendix III – I.R.C. § 6015(b) Innocent Spouse Relief Qualifications	Page.22
Appendix IV – I.R.C. § 6015(c) Election to Allocate a Deficiency	Page.23
Appendix V – I.R.C. § 6015(f) Equitable Relief Requirements	Page.25
Appendix VI – I.R.C. § 6015(f) Equitable Relief Factors	Page.27
Appendix VII – Management’s Response to the Draft Report	Page 31
Appendix VIII – Glossary of Terms	Page 39
Appendix IX – Abbreviations	Page.40

Background

Legal requirements for innocent spouse claims

When married taxpayers elect to file a joint income tax return, they are held jointly and individually responsible for the tax, interest, or penalties due on the joint return, even if they later separate or divorce (*i.e.*, one spouse can be held responsible for payment of all the tax due).¹ This means that the Internal Revenue Service (IRS) may look to either or both spouses for the payment of the tax liability, regardless of who earned the income.

Internal Revenue Code (I.R.C.) § 6015 provides an exception to joint and several liability (often referred to as “innocent spouse” relief).² The IRS Restructuring and Reform Act, signed into law on July 22, 1998, made substantial changes to the way the IRS administers relief from joint and several liability by adding I.R.C. § 6015.³ I.R.C. § 6015 currently provides three types of relief from joint and several liability to spouses who filed a joint return:

- 1) Section 6015(b) – Innocent Spouse Relief.⁴ This provision allows innocent spouse relief from an understatement on a tax return if: (A) a joint return has been made for the taxable year; (B) on the return there is an understatement of tax attributable to erroneous items of the non-requesting spouse; (C) the requesting spouse did not know and had no reason to know of the understatement when the return was signed; (D) taking into account all the facts and circumstances, it would be inequitable to hold the requesting spouse liable for the deficiency; and (E) the requesting spouse elects relief within two years of the IRS’s commencement of collection activity.
- 2) Section 6015(c) – Separation of Liability.⁵ This provision allows a spouse to request allocation of a deficiency or understatement of tax liability under certain conditions.⁶ Under this type of relief, a taxpayer’s liability can be allocated between the taxpayer and their spouse (or former spouse) based on an allocation formula provided in § 6015(d).
- 3) Section 6015(f) – Equitable Relief.⁷ This provision gives discretion to the IRS to grant equitable relief from deficiencies and underpayments if the relief provisions under I.R.C. §§ 6015(b) and 6015(c) are inapplicable and, taking into consideration all the facts and circumstances, it would be inequitable to hold the requesting spouse liable for any unpaid tax or any deficiency.

Equitable relief is addressed under I.R.C. § 6015(b)(1)(D) and I.R.C. § 6015(f). Once the eligibility threshold requirements are met, equitable relief is determined using IRS Revenue Procedure

¹ Internal Revenue Code § 6013(d)(3).

² See Appendix VIII for a glossary of terms.

³ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.).

⁴ See Appendix III for details on I.R.C. § 6015(b).

⁵ See Appendix IV for details on I.R.C. § 6015(c).

⁶ For example, under I.R.C. § 6015(c)(3)(C), the requesting spouse cannot have had actual knowledge of any item giving rise to the deficiency in order to qualify for allocation of the deficiency.

⁷ See Appendices V and VI for details on I.R.C. § 6015(f).

The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

2013-34 under these non-exclusive factors: (1) marital status; (2) economic hardship; (3) in the case of understatement, knowledge, or reason to know of the item giving rise to the understatement; (4) legal obligation; (5) significant benefit; (6) compliance with the tax laws; and (7) mental or physical health.⁸

Other provisions governing innocent spouse relief are set out in the Treasury Regulations. For example, if the IRS determines that assets have been transferred to the other spouse as part of a fraudulent scheme, § 6015 is not available.⁹

Taxpayers residing in “community property” States are subject to different rights and responsibilities with respect to property rights, including income and associated taxes; however, they can also request innocent spouse relief from liability resulting from community property laws under I.R.C. § 66(c), Treatment of Community Income.¹⁰ Each spouse domiciled in a community property State is generally liable for income tax on one-half of the community income when the spouses do not file a joint return, but I.R.C. § 66 grants relief from the income splitting requirements in certain circumstances.

Processing innocent spouse claims

Taxpayers request relief from joint and several liability by filling out and submitting Form 8857, *Request for Innocent Spouse Relief*, or using a written statement containing the same information required on Form 8857, which is signed under penalties of perjury. Innocent spouse claims can be made while an examination is in progress, prior to an assessment of a tax liability (pre-assessment), or after assessment of taxes in an examination (post-assessment). A post-assessment claim may relate to an underpayment of tax, an understatement of tax, or both. An underpayment of tax is the difference between the amount of tax actually paid and the amount of tax which would have been required to be paid to avoid penalty. An understatement of tax is the difference between the total amount of tax that should have been shown on a return and the amount of tax actually shown on the return. For the purposes of I.R.C. § 6015, an understatement and a deficiency are the same. Relief from an understatement can be considered under I.R.C. §§ 6015(b), 6015(c), or 6015(f).

On March 17, 2023, the American Bar Association’s Section of Taxation issued a letter to the IRS Commissioner in response to the IRS’s solicitation of comments on the Form 8857. The recommended improvements to the Form 8857 included suggestions to increase the taxpayers’ understanding and readability of the form to encourage taxpayers to respond more thoroughly to the questions due to the changes made in the Taxpayer First Act of 2019.¹¹

In general, innocent spouse relief requests are received by the Cincinnati Centralized Innocent Spouse Operations (CCISO) of the Small Business/Self-Employed (SB/SE) Division, and most are worked through correspondence with taxpayers. SB/SE Division Collection employees, and employees in other areas of the IRS, may receive innocent spouse requests directly from taxpayers. Procedures are in place to transmit those requests to the CCISO, unless the taxpayer is currently under audit. If the taxpayer files an innocent spouse claim during an open audit, the

⁸ Rev. Proc. 2013-34, § 4.03(2).

⁹ Treas. Reg. § 1.6015-1(d).

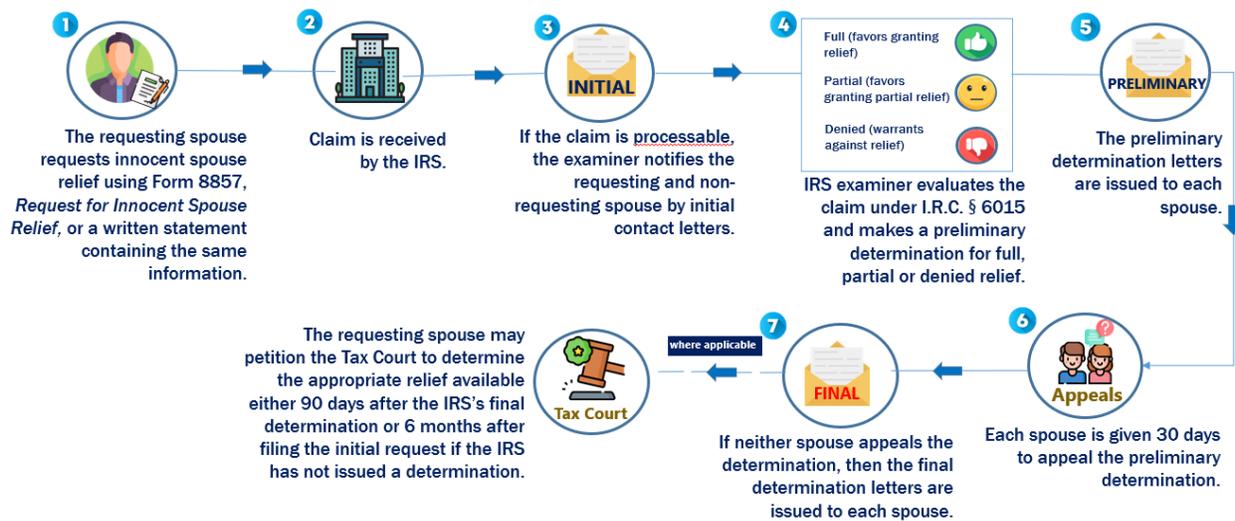
¹⁰ Community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

¹¹ Public Law 116-25, 133 Stat. 981 (codified in scattered sections of 26 U.S.C.).

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

assigned SB/SE Division Field examiner will work the claim, and the completed claim is processed through SB/SE Division Technical Services to ensure that the claim was worked properly.¹² For claims received by the CCISO, the requesting spouse is notified using Letter 3659-C, *Requesting Spouse Initial Contact*, while for claims received by an SB/SE Division Field examiner, the requesting spouse is notified using Letter 3659, *Requesting Spouse Initial/Follow-Up Contact*. These letters notify the requesting spouse of receipt of the innocent spouse claim and may request additional information, if applicable. Figure 1 shows the steps in the process.

Figure 1: Processing Flow Chart for Innocent Spouse Claims



Source: Treasury Inspector General for Tax Administration's (TIGTA) analysis of IRS innocent spouse claim processing.

A thorough review of the taxpayers' account is required for every innocent spouse claim to determine the relevant factors that may affect processing the claim or deciding on the request for relief. The examiner reviews the taxpayer's account for each claim year for any unpaid balance due or payments made to determine if the requesting spouse is eligible for relief. When an innocent spouse claim is received and determined to be processable, the examiner must notify the non-requesting spouse. For claims received by the CCISO, the non-requesting spouse is notified using Letter 3284-C, *Non-Requesting Spouse Initial Contact*, while for claims received by an SB/SE Division Field examiner, the non-requesting spouse is notified using Letter 3284, *Non-requesting Spouse - Initial Contact*. These letters notify the non-requesting spouse of the request for relief and solicits additional information with a 30-day response time. Although examiners must assess complicated fact-based issues that may involve an assessment of mental health, spousal abuse, or other highly personal and complex factors, examiners in the CCISO are not required at any point in the process to speak with the taxpayers by telephone. However, when an innocent spouse claim is filed directly with an SB/SE Division Field examiner during an open audit, the examiner generally meets with and interviews the taxpayer.

¹² Technical Services provides technical and procedural support and guidance for Field Examination and Area management in the SB/SE Division by reviewing and taking specialized action on a wide range of casework.

The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

The Internal Revenue Manual (IRM) requires the IRS examiner to evaluate the equitable relief factors as: *for* (meaning the factor favors granting relief); *neutral* (meaning the factor neither favors nor warrants against relief); or *against* (meaning the factor warrants against relief).¹³ Once information is gathered, a determination is made and both taxpayers are notified of the proposed relief determination and given administrative appeal rights using either a preliminary determination letter or an examination report, depending on whether the request is being worked in the CCISO or by Field Examination. The determination can result in: 1) full relief for the requesting spouse, where the entire tax liability must be paid by the non-requesting spouse; 2) partial relief where the requesting spouse pays a portion of the tax liability that may be associated to them; or 3) denied relief, where the requesting spouse is denied relief and is held responsible for the joint tax liability.

For claims processed by the CCISO, each spouse is notified of the preliminary determination to allow full, partial, or denied relief by either Letter 3660/3660-C, *Non-Requesting Spouse Preliminary Determination*, or Letter 3661/3661-C, *Requesting Spouse Preliminary Determination*. For Field Examination pre-assessment claims, examiners generally issue the examination report with the preliminary determination and special language regarding appeal rights to each spouse. For Field Examination post-assessment claims, Technical Services issues the preliminary determination Letter 3660/3661 to each spouse. The requesting spouse is given 30 days to appeal determinations resulting in partial or denied relief. The requesting spouse also has the right to appeal if they are granted partial or full relief under one I.R.C. section, such as I.R.C. § 6015(c), but believe they are entitled to relief under another I.R.C. section, such as I.R.C. § 6015(b), which could result in a refund. The non-requesting spouse is given 30 days to appeal any determinations resulting in full or partial relief. Additionally, if either spouse files a valid protest that results in either a change in the determination or a referral of the claim to the Independent Office of Appeals, both spouses are notified.

The final determination letters, Letter 3279/3279-C, *Requesting Spouse Final Determination*, and Letter 3323/3323-C, *Non-Requesting Spouse Notice of Final Determination*, are issued to each spouse if neither spouse appeals the determination. These letters provide both parties with the final determination of full, partial, or denied relief. The letters further inform the requesting spouse of the right to petition for review by the U.S. Tax Court. The requesting spouse may petition the Tax Court to determine the appropriate relief available if such petition is filed during the 90-day period beginning on the day after the IRS's final determination for innocent spouse relief is mailed, or six months after filing the initial request if the IRS has not issued a determination.¹⁴

The Taxpayer First Act modified the innocent spouse provisions of I.R.C. § 6015 to limit the scope of review by the Tax Court. These provisions state when the Tax Court reviews a decision rendered by the IRS, the review must consider "(1) the administrative record established at the time of the determination, and (2) any additional newly discovered or previously unavailable evidence," meaning that the Tax Court's scope of review encompasses the workpapers and documents established at the time of the final determination and any newly discovered or previously unavailable evidence. Therefore, examiners must ensure that the administrative case file is properly maintained and complete. In addition, the Taxpayer First Act provisions codified

¹³ See Appendix VI for details on the equitable relief factors.

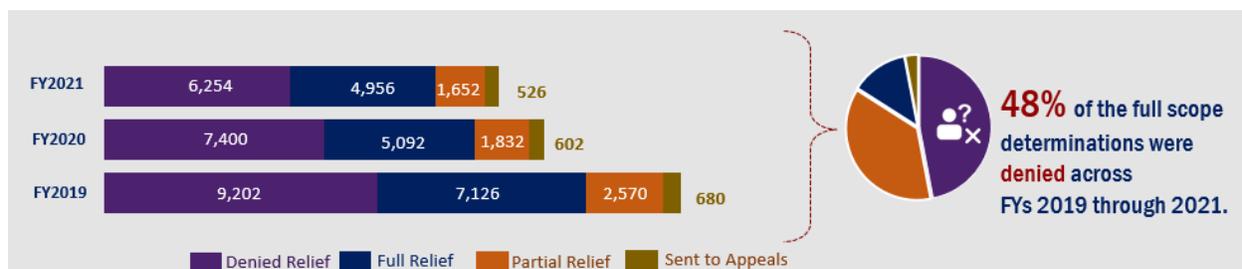
¹⁴ I.R.C. § 6015(e)(1)(A).

The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

the practice of *de novo* review by the Tax Court (meaning without any presumption of correctness of the IRS's initial determination) when the innocent spouse relief has been denied by the IRS.¹⁵

From Fiscal Years (FY) 2019 through 2021, the IRS processed 47,892 full scope determinations (claims that received a determination by the IRS of full, partial, or denied relief). The CCISO processed 46,912 full scope determinations, and Field Examination processed 980 full scope determinations. Figure 2 shows that for these three years, an average of approximately 48 percent of innocent spouse claims were denied relief, 36 percent were granted full relief, and 13 percent were granted partial relief.¹⁶

Figure 2: Results of Innocent Spouse Full Scope Determinations for FYs 2019 Through 2021



Source: TIGTA analysis of innocent spouse claim determination results from SB/SE Division Examination inventory reports for FYs 2019 through 2021.

Results of Review

The IRS Did Not Always Protect Taxpayer Rights in Innocent Spouse Claims

Our review determined that the IRS did not always protect taxpayer rights when working innocent spouse claims, including the:

- CCISO not fully developing the facts and circumstances in innocent spouse claims.
- CCISO not providing specific guidance for employees, which leaves room for subjectivity in equitable relief determinations.
- CCISO and Field Examination generating incomplete final determination letters.

Examiners did not always fully develop the facts and circumstances in the innocent spouse claims

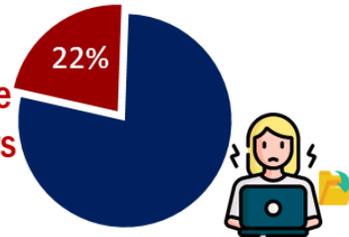
To determine whether the Innocent Spouse Program is effectively working claims in accordance with I.R.C. § 6015, TIGTA reviewed a statistical sample of 45 innocent spouse claims from a population of 48,675 innocent spouse claims opened and closed during Calendar Years 2018 through 2020. After reviewing examiner workpapers and the support used for the final

¹⁵ I.R.C. § 6015(e)(7).

¹⁶ Claims sent to Appeals accounted for 4 percent. Percentages do not total 100 percent due to rounding.

determinations, we identified 10 (22 percent) of 45 claims in which there was inadequate development of the facts and circumstances by examiners before the claim determination was made.

10 of the 45 sampled claims opened and closed during Calendar Years 2018 through 2020 identified inadequate development of the facts and circumstances by examiners before the case determination was made.



In our collective analysis of claims reviewed and interviews with personnel, we found that examiners did not always adequately develop the facts and circumstances of the claim. Underdeveloped factors include domestic abuse, reasonable expectation (knowledge test), compliance, economic hardship, and mental/physical health. The 10 inadequately developed claims were all worked by the CCISO. The IRS disagreed or partially disagreed with six of the 10 claims, stating the determination was made correctly; however, in five of those claims, the IRS agreed that at least one factor was inadequately developed. We considered all 10 claims to be inadequately developed because all the facts were not considered and the workpapers were not fully developed by examiners prior to making the determination. Further development of the facts in nine of the 10 claims could have resulted in a different determination as to whether the taxpayer was entitled to relief. For example, three claims that were denied relief had an underdeveloped factor of domestic abuse. If this factor had been fully developed, the outcome of the determination may have changed to full or partial relief.

Examiners must base the determination for each claim year on the facts and circumstances specific to the respective tax year. A separate determination may be necessary for each year if the facts and circumstances differ. The IRM advises employees that no one factor or majority of factors necessarily controls the determination under I.R.C. § 6015(f). The presence of abuse towards the requesting spouse or others (such as children or other dependents in the household) mitigates the factor of knowledge under I.R.C. §§ 6015(b), (c), and (f). If the non-requesting spouse abused the requesting spouse or maintained control over the household finances by restricting access to financial information, this will mitigate the requesting spouse's actual knowledge, or ability to know, about the tax liability.

Examiner workpapers must support the determination, which is made based on the facts and circumstances of the claim and the examiner's judgement in application of those facts to the law.¹⁷ If examiners are not accurately considering and rating the factors under I.R.C. § 6015, then incorrect decisions may result and taxpayers may experience economic harm.

The IRM lacks specificity and is too subjective for claim determinations under equitable relief

As part of our review of the sample of 45 innocent spouse claims, we conducted a comparative analysis of innocent spouse claims that had similar rating factors with different determination outcomes. Specifically, we identified nine claims that were underpayments, reviewed under the

¹⁷ IRM 25.15.3.12.8 (Jan. 10, 2020).

equitable relief provision I.R.C. § 6015(f), where the “reasonable expectation” factor of the knowledge test (*i.e.*, whether the requesting spouse had a reasonable expectation that the tax would be paid by the non-requesting spouse) was the only factor against innocent spouse relief and the other six factors were either *for* or *neutral*. Of these nine claims, all worked by the CCISO, five requesting spouses were denied relief and four were granted full or partial relief. Although the IRM allows examiners to use their judgement in application of the claim facts to the law, overly subjective criteria can put the taxpayers’ right to a fair and just tax system at risk. IRM guidelines lack specificity and may be open for subjective and varied interpretation.

For example, we identified language in some workpapers where the examiner stated that the “reasonable expectation” factor was a stronger factor and denied relief. In other claims, the examiner suggested the only factor “against” relief is reasonable expectation and granted partial or full relief. IRM guidance states that no one factor or majority of factors necessarily controls the determination. Therefore, depending on the facts and circumstances of the claim, relief may be granted even if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief. The same can be said for the denial of relief—a claim can be denied even if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief.

The weight given to any one factor depends on all the facts and circumstances of the claim. CCISO management asserted that a “determination is not made by a tallying of factors, but careful consideration of all the facts and circumstances of the claim.” The IRM states:

*A case may have several factors documented that would favor relief, yet a determination to deny relief is appropriate. The denial may be based on an item of severity that would cause a granting of relief negligent.*¹⁸

However, it does not further specify how to classify “severity” and what metrics to use to determine the strength of the factor.

The test for knowledge in an underpayment claim is whether the requesting spouse knew, or had reason to know, that the tax liability would not, or could not, be paid at the time the joint return was filed or within a reasonable period of time after the return was filed. The IRM states that this factor will weigh in favor of relief if the requesting spouse had a reasonable expectation that the tax liability would be paid at the time the joint return was filed or within a reasonable period of time after the filing of the joint return.¹⁹ This factor will weigh against relief if the requesting spouse could not reasonably expect that the tax liability would or could be paid at the time the joint return was filed or within a reasonable period of time after filing of the return.

Although the IRM provides guidelines on how to rate factors, it lacks specificity on how to determine the weight of each factor and relies too heavily on the examiner’s interpretation of how to apply the weight of the factor to the final claim determination. For example, the knowledge factor is a complicated test. Taxpayers have the right to expect the tax system to consider the facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. If examiners have a different interpretation of the facts and circumstances (*e.g.*, which facts and circumstances rise to the level of “severity”) and how to apply their understanding to the law, taxpayer’s rights may not be protected.

¹⁸ IRM 25.15.3.12.8 (Jan. 10, 2020).

¹⁹ IRM 25.15.3.9.4.1.3 (July 29, 2014).

We asked SB/SE Division management how the quality of work performed by employees is evaluated for innocent spouse claim determinations. For the CCISO, management stated that determinations are reviewed during the Embedded Quality Review System (EQRS) review process, where two evaluative reviews are conducted for each employee per month. However, the EQRS only measures compliance with the IRM; therefore, if the IRM lacks specificity to guide employees to the right determination, the EQRS may not identify quality-related problems in innocent spouse casework.²⁰ Field Examination innocent spouse reviewers in Technical Services stated that they conduct a mandatory review of all claim determinations. Although the CCISO completes many more innocent spouse determinations than Field Examination, a review of a larger proportion of determinations, especially denials of relief, would help ensure accuracy and consistency in the determinations.

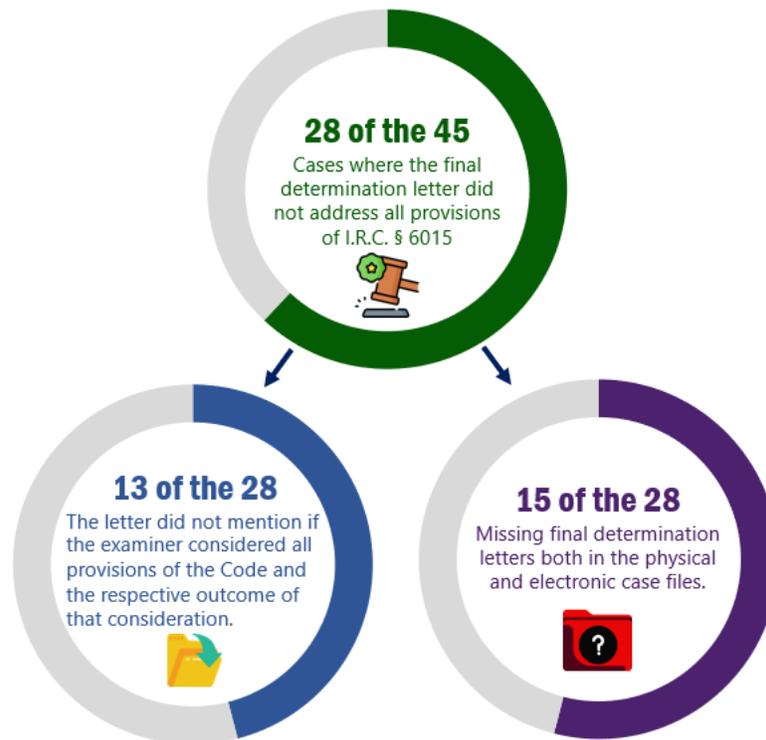
Determination letters sometimes failed to fully inform taxpayers of decisions about their tax accounts

During our case reviews, we identified 28 (62 percent) of 45 claims in which the final determination letter did not address all provisions of I.R.C. § 6015 that can provide taxpayers innocent spouse relief (*i.e.*, §§ 6015(b), 6015(c), and 6015(f)) or was missing from the case file. If final determination letters do not include the outcomes for all provisions of I.R.C. § 6015, or the taxpayer does not receive the letter, the rights of taxpayers can be compromised because they will not be fully informed of IRS decisions about their tax accounts and receive full and clear explanations of the outcomes.

For the 13 of 28 claims in which the final determination letter did not address all provisions of I.R.C. § 6015, the requesting spouse was partially or fully denied under one provision of I.R.C. § 6015, but the letter did not mention if the examiner considered all provisions of the I.R.C. and the respective outcome of that consideration. For example, one final determination letter stated that “we propose to deny relief under I.R.C. § 6015 (b)” but did not specify whether the examiner also considered and denied relief to the requesting spouse under I.R.C. §§ 6015(c) and 6015(f). The remaining 15 of 28 claims were missing final determination letters both in the physical and electronic case files. Without the final determination letter, it cannot be determined whether the taxpayer was properly informed. Figure 3 shows the results of our review of final determination letters.

²⁰ IRM 25.15.8.1.4 (Sept. 19, 2018).

**Figure 3: Results of Review of Sample of
Innocent Spouse Final Determination Letters**



Source: TIGTA's analysis of a sample of innocent spouse claim determinations.

Form 8857 does not require taxpayers to specifically state under which provision(s) of I.R.C. § 6015 they are requesting relief. The form consists of a series of questions that are used by the examiner to consider relief under I.R.C. §§ 6015 (b), (c), and (f), as applicable. IRM criteria lack guidance on the requirements for preliminary and final determination letters to inform the taxpayers of the requirements to qualify for relief under the various provisions of I.R.C. § 6015, as well as CCISO retention of letters in case files. SB/SE Division Examination management asserted that the final determination letters should include the provisions of I.R.C. § 6015 that were considered, along with the outcome. However, to ensure that taxpayers are fully informed of IRS decisions about their tax accounts and receive full and clear explanations of the outcomes, all I.R.C. provisions should be mentioned in the final determination letter, including those provisions for which the taxpayer did not qualify.

SB/SE Division Examination management agreed that language was missing or incorrect from the final determination letters in four of the 13 claims we identified. For the other nine claims, SB/SE Division Examination and Appeals management stated that five involved underpayments of tax; therefore, the claim was considered only under I.R.C. § 6015(f), and the letter addressed all sections considered. Although underpayments are considered only under I.R.C. § 6015(f), the IRS should inform the taxpayer of this fact so that taxpayers are aware of their tax obligations and rights. For the other four claims, SB/SE Division Examination stated the final determination letter included a paragraph that referred the taxpayer to their preliminary determination letter for further information, but the preliminary determination letters were missing from the case files. Therefore, there was no way for us to determine if all sections of I.R.C. § 6015 were addressed.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

SB/SE Division Examination stated that the final determination letters include a paragraph that refers a taxpayer to their preliminary determination letter that addresses the provisions of I.R.C. § 6015. However, for the 15 missing final determination letters, we were able to locate only three of the 15 preliminary determination letters in the case file and none of the three addressed all provisions of I.R.C. § 6015. Furthermore, the IRS states that the decision to limit the amount of information in the determination letters was based on feedback from ongoing Customer Satisfaction Surveys, which indicated that removing information not relevant to a taxpayer's case would improve the clarity of the message on the determination letters. However, taxpayers having full knowledge of IRS decisions about their tax accounts is important to protecting taxpayer rights. Final determination letters inform taxpayers of their right to file a petition with the Tax Court and instruct the requesting spouse to send a copy of the final determination letter if they wish to petition. Therefore, the letter should include a full and clear explanation of all outcomes under I.R.C. § 6015.

CCISO management confirmed that copies of the final determination letters are not always maintained in the case files but that the letters are usually stored electronically with a retention limit of four years. They also stated that as of May 9, 2022, the letters are no longer printed by Campus Support to be associated with the physical case file because they are stored electronically and that the IRM will be updated to include these procedures. However, due to a programming issue, final determination letters were not stored for letters issued from April 19, 2019, through May 9, 2022, and the oldest letters available in their system were dated September 24, 2018.

We asked CCISO and SB/SE Division Field Examination management if final determination letters are reviewed by management. CCISO management stated that the final letter paragraphs are reviewed by a lead financial technician or manager before issuance. SB/SE Division Field Examination management stated that the letters are either prepared or reviewed by experienced innocent spouse reviewers in Technical Services.

Final determination letters are not reviewed under the National Quality Review System (NQRS) in SB/SE Division Field Examination.²¹ However, the CCISO includes a review of final determination letters in its NQRS reviews. We asked CCISO management how the NQRS reviews the final determination letters if they are not included in the case file. CCISO management stated that the information on the paragraphs used in the final letter is input to the Innocent Spouse Tracking System, which is available to the NQRS reviewer, and this information is used to review the letters. However, a review of the paragraphs is not a review of the letter's actual content. Examiners select standardized paragraphs to include in the final determination letters, which they are also able to customize. Unless they can review the actual letter, the customized text is not available to the reviewers. Having a secondary review of the case file, including the language in the final determination letters, would help ensure that claims are developed consistently, and taxpayer's rights are protected.

²¹ The NQRS is an overall program review whereas the EQRS evaluates employee performance.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

The Commissioner, SB/SE Division, should:

Recommendation 1: Provide supplemental training on an annual basis to clarify how the innocent spouse determination factors should be used in making consistent final determinations, including additional examples of case scenarios and domestic violence-related scenarios.

Management's Response: IRS management partially agreed with this recommendation and plans to add examples of domestic violence-related scenarios to the IRM to assist employees with making determinations. However, IRS management did not agree to provide supplemental training on an annual basis to clarify how the innocent spouse determination factors should be used in making consistent final determinations and stated that ad hoc training is completed within the CCISO when issues are identified. In addition, IRS management stated that the IRM is explicit and follows Revenue Procedure 2013-34, which specifically states not to weight the various factors.

Office of Audit Comment: The IRS's plans to add additional examples of domestic violence to the IRM will be helpful for examiners when making determinations; however, supplemental training on an annual basis to clarify how the innocent spouse determination factors should be rated would be helpful in ensuring that final determinations are made accurately and consistently. In the IRS response, management states that Revenue Procedure 2013-34 directs that no one factor controls the determination; however, it also creates an exception where domestic abuse exists directing that greater weight be placed in favor of relief when evidence of domestic abuse is present. Domestic violence was a factor in three of our 10 exception cases. Examiner workpapers must support the determination, which is made based on the facts and circumstances of the claim and the examiner's judgement in application of those facts to the law. If examiners are not accurately and consistently considering and rating the factors under I.R.C. § 6015, incorrect determinations may result and taxpayer rights may be violated.

Recommendation 2: Require a secondary review of a sample of CCISO determinations, including the final determination letters, to ensure that all factors have been developed appropriately and consistently for all provisions of I.R.C. § 6015.

Management's Response: IRS management disagreed with this recommendation. The IRS stated that quality reviews are already performed regularly on CCISO determinations and include two reviews per employee per month, performed by a lead or manager, as well as random Program Analysis System reviews. In addition, IRS management stated that the accuracy of CCISO cases is supported by NQRS data, which reflects FY 2022 overall accuracy of 95.83 percent and FY 2023 to date overall accuracy of 99.6 percent.

Office of Audit Comment: The quality reviews that the CCISO performs are through the EQRS review process, which is performed post-determination after the case is closed. A better protection for taxpayers, especially when so much subjectivity can play a part in determinations, is to require a second review, especially in the case of innocent spouse denials.

Recommendation 3: Update the IRM to ensure that the language in the final determination letters includes notifying the taxpayer of qualifications and determinations under all provisions of I.R.C. § 6015.

Management's Response: IRS management disagreed with this recommendation. The IRS stated that under current IRS procedures in both Field and Campus Examination, the taxpayer notification includes information regarding all applicable sections/provisions of I.R.C. § 6015. IRS management repeated their statement that taxpayer feedback received from ongoing Customer Satisfaction Surveys indicated that removing information not relevant to a taxpayer's case would improve the clarity of the message related to the taxpayer's specific determination, and revisions to all letters were completed in 2018.

Office of Audit Comment: If final determination letters do not include the outcomes for all provisions of I.R.C. § 6015 that can allow relief, the rights of taxpayers can be compromised because they will not be fully informed of IRS decisions about their tax accounts and receive full and clear explanations of the outcomes. Final determination letters inform taxpayers of their right to file a petition with the U.S. Tax Court and instruct the requesting spouse to send a copy of the final determination letter if they wish to petition. Therefore, the final determination letter should include a full and clear explanation of all outcomes under I.R.C. § 6015.

Innocent Spouse Claims Took More Than 18 Months to Close

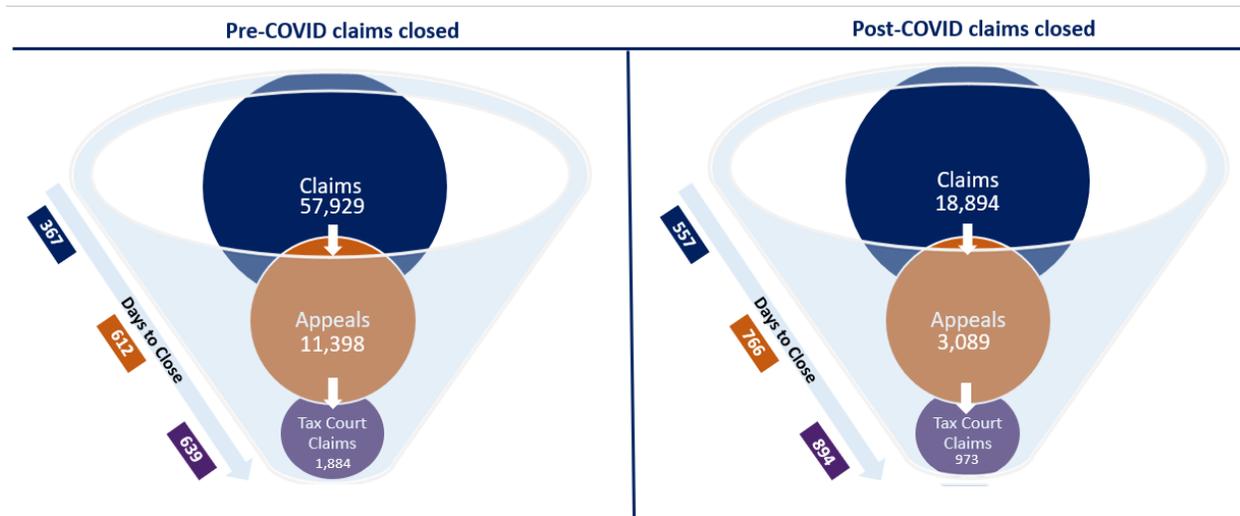
After the Coronavirus Disease 2019 (COVID-19) pandemic restrictions, the IRS took an average of 557 days to close innocent spouse claims.²² If a claim goes to Appeals, the average closing time increased to 766 days and claims going to Tax Court took 894 days to close. Although IRS management does not have a specific standard for the time frame to close an innocent spouse claim, they consider 240 days an appropriate amount of time to make a determination. In fact, the initial contact letters from the IRS advise the taxpayer to expect a response within 240 days and that the CCISO will also issue interim correspondence if a determination is not made during the initial 240 days. The interim correspondence extends the time frame for another 240 days. In addition, the *Innocent Spouse Questions and Answers* page on the IRS.gov website states it may take up to six months before a determination is made.

The IRS tracks progress on innocent spouse relief requests through the various stages from receipt to closure. In efforts to include the effect of the COVID-19 pandemic, we analyzed cycle times before and after COVID-19 restrictions. Our analysis included the time from the receipt of the Form 8857 to the closing date of the claim.²³ Figure 4 illustrates the cycle time (number of days from receipt of the Form 8857 to the closure of the claim) for closed claims with data available as of November 2021.

²² Claims are considered pre-COVID-19 if they were closed before March 30, 2020.

²³ We limited our review to include only the first closing date if a claim had multiple closing dates. Multiple closing dates can be, but not limited to, a claim rework when additional information needs to be considered after a determination has been made, or when an examiner is reworking a claim based on feedback received from Technical Services or Quality Review. Also, we excluded non-qualifying claims. A request is non-qualifying if it fails to meet certain basic requirements for relief under I.R.C. § 6015 or I.R.C. § 66(c).

Figure 4: Innocent Spouse Claims Closing Cycle Times in Days



Source: TIGTA's analysis of claims with similar factor ratings with different determination outcomes from case reviews.

Prior to March 30, 2020, the average cycle time for innocent spouse claims from receipt of the Form 8857 to the closing of the claim was approximately one year (367 days). After the COVID-19 pandemic began, cycle time increased to 557 days. This means that the average innocent spouse claim took over a year and a half to close. Under I.R.C. § 6015(e), the requesting spouse may petition the Tax Court to determine the appropriate relief available if such petition is filed by the 90th day after the final Notice of Determination denying I.R.C. § 6015 relief, or at any time after the claim has been pending for six months and the IRS has not made a final determination. As illustrated in Figure 4, innocent spouse closing cycle times exceed the response time frames in both the I.R.C. § 6015(e) and initial contact letters. Taxpayers have the right to expect the IRS to consider the facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information in a timely manner.²⁴

SB/SE Division Examination management stated that lack of staff is the primary reason for the current backlog of claims. They have not maintained hiring due to attrition and have been working at roughly 63 percent of approved staffing levels for examiners for the last four years. The CCISO is currently operating at 73 percent of approved staffing levels following a recent hiring effort during FY 2021. However, the IRS received approval in FY 2023 to hire 18 employees for the Innocent Spouse Program. SB/SE Division Examination management also stated that the IRS's decision at the onset of the COVID-19 pandemic to suspend enforcement activities, including the issuance of preliminary and final determination letters and statutory notices of deficiency, also caused delays.²⁵

Recommendation 4: The Commissioner, SB/SE Division, should monitor the cycle time for the innocent spouse process after the FY 2023 hiring initiative and, if the cycle time does not improve, analyze the causes of the increased cycle time in the innocent spouse process and initiate action to reduce cycle times.

²⁴ The second taxpayer right is the right to quality service [I.R.C. § 7803(a)(3)(B)].

²⁵ The suspension of enforcement activities ended on July 15, 2020.

Management's Response: IRS management agreed with this recommendation and plans to analyze pre-COVID and post-COVID cycle times and identify opportunities for continued improvement.

Collection Statute Expiration Date Issues May Cause Harm to Taxpayers and the Government

The Collection Statute Expiration Date (CSED) marks the end of the time period established by law for the IRS to collect taxes. The CSED is generally 10 years from the date of the assessment.²⁶ Certain actions can suspend or extend the initial 10-year CSED, such as filing for bankruptcy, requesting an offer in compromise or an installment agreement, or filing an innocent spouse claim.

The CSED collection period is generally suspended for any periods that the IRS is prohibited from collecting tax, meaning that the end date of the CSED collection period is generally moved out by the suspension period. The IRS generally does not take levy action during the time the CSED collection period is suspended and the running of the CSED is also suspended during this period.

When an innocent spouse claim is filed, only the requesting spouse's CSED collection period is suspended from the date the innocent spouse claim was filed until the earlier of: 1) the date a waiver is filed; 2) the expiration of the 90-day period for petitioning the Tax Court; or 3) if the Tax Court is petitioned, the date the Tax Court decision becomes final.²⁷ In each instance, the running of the CSED collection period is suspended an additional 60 days.²⁸ While an innocent spouse claim is being processed, the IRS puts a freeze code on the taxpayer's account, which prevents the IRS from taking action to collect on the tax liability.

Taxpayer CSEDs are not always protected for non-mirrored innocent spouse tax accounts that are denied relief

A total of 69,191 claims were potentially affected by policy changes in the CCISO regarding mirroring the tax accounts of the requesting and non-requesting spouses. The purpose of dividing (mirroring) the spouses' joint tax account into two accounts is to reflect each individual's joint tax liability separately. For example, only the requesting spouse's CSED collection period should be suspended when the innocent spouse claim is filed. Also, there may be tax events that post on the account of one spouse but not the other.

Prior to July 11, 2016, all innocent spouse tax claims worked by the CCISO were mirrored regardless of the final claim determination (full, partial, or denied). However, due to a 2016 policy change, only accounts that resulted in a fully allowed determination were mirrored. After a processing pilot was conducted by the IRS, on January 15, 2020, the policy partly reverted to include mirroring for partial relief claims. The processing pilot determined that the mirrored method of processing was more efficient in claim processing cycle time, reducing the processing cycle time for mirrored claims to 5.7 days compared to the non-mirrored average cycle time of

²⁶ I.R.C. § 6502(a)(1).

²⁷ I.R.C. § 6015(e)(2).

²⁸ I.R.C. § 6503(a)(1).

The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

85 days. Based on these results, SB/SE Division Examination management began mirroring tax accounts in partial relief claims.

Using the Innocent Spouse inventory reports, we identified 11,174 claims that had partial relief granted from July 11, 2016, through January 11, 2020, and 58,017 claims that were denied relief from July 11, 2016, through October 1, 2022.²⁹ From July 2016 through January 2020, the requesting spouse and non-requesting spouse shared the same tax account for partial relief claims, and since July 2016, the requesting spouse and non-requesting spouse shared the same tax account for denied claims. This resulted in CSED issues for the non-requesting spouse in partial relief claims from July 11, 2016, through January 15, 2020, and all denied claims after July 11, 2016.

The non-mirrored accounts create burden for some non-requesting spouses because their joint tax account will reflect the requesting spouse's CSED. This harms the non-requesting spouse by extending the CSED collection period beyond the correct CSED for that taxpayer. Only the CSED for the requesting spouse should be changed to a later date due to the innocent spouse request, not the non-requesting spouse's CSED. We brought our concerns to the attention of SB/SE Division management during our audit, and they updated the IRM to require Collection employees to determine the correct CSED for both spouses separately before taking any enforcement action because the CSED should not be extended for the non-requesting spouse.³⁰ SB/SE Division Collection and Examination management also stated that they are working together to determine if any additional actions are needed due to incorrect CSED dates for non-requesting spouses. Although the IRS has taken steps to protect non-requesting spouses' CSEDs, in order to prevent CSED issues and protect the rights of the non-requesting spouse, we believe all tax accounts in the CCISO should be mirrored, regardless of the outcome.

We met with officials from the Taxpayer Advocate Service (TAS) in January 2022 to discuss the policy changes made by the Innocent Spouse Program. TAS management stated they are concerned that failing to mirror accounts is erroneously extending the non-requesting spouses' CSEDs. In FY 2021, TAS received 629 taxpayer requests for assistance related to innocent spouse claims. Due to data constraints, TAS management was unable to provide the exact number of requests related to non-requesting spouses' CSED extension issues; however, they asserted that they have received complaints about non-requesting spouse CSED extensions and that issue continues to exist for all denied claims. TAS management also had concerns that the IRS is not informing the non-requesting spouse of their potential CSED issues. The determination letters for the requesting and non-requesting spouse do not include language advising taxpayers about the potential effects on CSED dates, and taxpayers may be unaware of how they are affected. TAS is currently in discussion with the IRS about mirroring all tax accounts in innocent spouse claims. Because the CSED issue continues to exist for the non-requesting spouse on denied claims, SB/SE Division Collection employees may attempt to collect a tax liability with an expired CSED and violate the taxpayer's rights.

²⁹ IRS inventory reports are run on a weekly basis. Due to the policy change taking place in the middle of the week, on January 15, 2020, we took a conservative approach and included counts only up to the prior week (January 11, 2020).

³⁰ IRM 25.15.8.6.2.1 (Jan. 27, 2023).

Tax liabilities could not be collected because the SB/SE Division does not always remove freeze codes

TIGTA identified 309 taxpayer accounts with \$11.5 million in tax liabilities that could not be collected because SB/SE Division Collection did not remove the innocent spouse collection freeze code when the innocent spouse claim was closed, resulting in the expiration of the CSED.³¹ We limited our analysis to innocent spouse tax modules that had an expired CSED on the account, the presence of the innocent spouse collection freeze code from April 2016 through January 2022, and a tax liability over \$1,000 on the tax account. The liabilities for these accounts may have been collectible if the SB/SE Division had properly removed the collection freeze code from the tax account.

IRM 25.15.2.4.2 provides guidance on removing a freeze code at the completion of the claim determination.³² SB/SE Division Examination management stated that the collection freeze code should always be removed upon a claim closure; however, our review found that this does not always take place. When the collection freeze code is present on a taxpayer's tax account, the IRS will stop all potential collection actions on the account, including offsets and issuing notices, except for account reminders.

Due to innocent spouse data limitations (purging of electronic data after four years from the closure date), SB/SE Division Examination management was able to review only 30 of the 309 tax accounts we identified. Management stated that a manual review of each claim would be required, which would be time consuming. Therefore, they looked at accounts only with liability amounts over \$100,000, which may not be representative of the entire population of 309 taxpayer accounts. They concluded that in addition to the innocent spouse claim, the 30 tax accounts also had other complicating factors that suspended the running of the CSED, such as indications of activity by Criminal Investigation, Collection Due Process hearings, bankruptcy filings, deficiency litigation, and requests for offers in compromise. SB/SE Division Examination management stated that these indicators have the potential to also suspend or alter the CSED on one or both taxpayers on a joint account. However, without reviewing the physical case files, they were unable to determine if the innocent spouse freeze code was the direct cause for the CSED expiring, or if the accounts would have otherwise been collectible if the innocent spouse freeze code was not present.

Although other factors could affect the collectability of a taxpayer's account if they have an innocent spouse claim, the fact that the innocent spouse collection freeze code was not removed made the tax liability uncollectible on these accounts. The innocent spouse collection freeze code should have been manually removed when the business function closed the claim, (*e.g.*, Appeals, Field Examination, Collection, or the CCISO). Because the collection freeze code was not removed, tax liabilities of up to \$11.5 million were not collected.

³¹ These 309 taxpayer accounts include taxpayers that can have more than one claim for different years.

³² IRM 25.15.2.4.2 (Nov. 3, 2017).

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

The Commissioner, SB/SE Division, should:

Recommendation 5: Resume mirroring all innocent spouse tax accounts in the CCISO, regardless of the claim's determination and, if feasible, correct the prior non-mirrored accounts.

Management's Response: IRS management disagreed with this recommendation. The IRS stated that it stopped mirroring accounts upon receipt in January 2016 and instead only mirrored accounts when a determination was made to allow full or partial innocent spouse relief. Management stated that the findings included reports from CCISO specialists that they spent a great deal of time resolving account issues created by mirroring after the innocent spouse case was closed as denied. Management also asserted that the SB/SE Division Collection function is aware of the innocent spouse indicators and that separate CSEDs exist for each taxpayer.

Office of Audit Comment: The non-mirrored accounts create burden for some non-requesting spouses because their joint tax account will reflect the requesting spouse's CSED. This harms the non-requesting spouse by extending the CSED collection period beyond the correct CSED for that taxpayer. In other words, the IRS might unlawfully collect against the non-requesting spouse because the CSED is incorrect. Only the CSED for the requesting spouse should be changed to a later date due to the innocent spouse request, not the CSED of the non-requesting spouse. On January 15, 2020, the IRS conducted a processing pilot that determined that the mirrored method of processing was more efficient in claim processing cycle time, reducing the processing cycle time for mirrored claims to 5.7 days compared to the non-mirrored average cycle time of 85 days. Based on these results, SB/SE Division Examination management began mirroring tax accounts in partial relief claims. Furthermore, TAS informed TIGTA as part of this audit that its employees have received complaints about non-requesting spouse CSED extensions. To protect the rights of the non-requesting spouse, all tax accounts in the CCISO should be mirrored, regardless of the outcome.

Recommendation 6: Issue a reminder to SB/SE Division Examination and Collection employees reminding them that the non-requesting spouse's CSED should not be suspended when an innocent spouse claim is requested.

Management's Response: IRS management agreed with this recommendation. The IRS plans to issue a reminder to employees in the SB/SE Division's Examination and Collection functions that the non-requesting spouse's CSED should not be suspended when an innocent spouse claim is requested.

Recommendation 7: Issue reminders to the applicable IRS functions to ensure that the innocent spouse freeze code is removed after the innocent spouse claim is closed.

Management's Response: IRS management agreed with this recommendation. The IRS plans to issue a reminder to the impacted functions regarding removing innocent spouse freeze codes after the innocent spouse claim is closed.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether the Innocent Spouse Program is effectively working claims in accordance with I.R.C. § 6015. To accomplish our objective, we:

- Determined the Innocent Spouse Program criteria and guidelines, including any planned changes.
- Determined if there was appropriate guidance and oversight in the Innocent Spouse Program.
- Evaluated innocent spouse claim determinations to determine if the IRS was protecting taxpayer rights in accordance with I.R.C. § 6015. From a population of 48,675 claims that were queried as opened and closed innocent spouse claims during Calendar Years 2018 through 2020, we randomly selected a valid sample of 75 claims.¹

During fieldwork, we were unable to perform a review of all the cases in our sample. We requested the physical case files for the 83 claims in our sample, which included the oversample, and received complete case files for only 45 of the claims. After consultation with TIGTA's contracted statistician, we were able to move forward with the revised sample of 45 items and perform projections based on our findings.

- Evaluated closed claims to determine if the CSEDs expired on tax modules with innocent spouse claims.
- Evaluated IRS policy related to mirroring innocent spouse tax modules.
- Evaluated innocent spouse claim cycle times before and after the COVID-19 pandemic.

Performance of This Review

This review was performed with information obtained from the SB/SE Division Headquarters in Lanham, Maryland, including information from the SB/SE Division's CCISO located in Florence, Kentucky, during the period December 2021 through April 2023. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Robert Jenness, Director; Michele Jahn, Audit Manager; Jessica Davis, Lead Auditor; Lilia Aguilin-Alegre, Auditor; Jonathan Lee, Auditor; and Lance Welling, Information Technology Specialist (Data Analytics).

¹ We used simple random sampling with an expected error rate of 5 percent, a precision of ±5 percent, and a confidence interval of 90 percent. TIGTA's contracted statistician assisted with developing the sampling plan. The sample size was 75 with an oversample of 10 percent, thus we ordered a total of 83 claims. We used a statistically valid sample to project the results to the population.

Validity and Reliability of Data From Computer-Based Systems

We reviewed and analyzed computerized information obtained from IRS systems to include the Individual Master File, Taxpayer Information File (data file 72), and Taxpayer Service and Returns Processing Category Reports. We evaluated the data by: (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: IRS policies and procedures related to innocent spouse claim development and claim determinations. We evaluated these controls by reviewing and analyzing relevant data, interviewing IRS management, and analyzing innocent spouse claim development.

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 69,191 innocent spouse claims with a potential incorrect CSED posted to the non-requesting spouses' accounts that improperly extended the amount of time the IRS has to legally collect delinquent taxes (see Recommendation 5).¹

Methodology Used to Measure the Reported Benefit:

A total of 69,191 claims were potentially affected by policy changes in the CCISO regarding mirroring the tax accounts of the requesting and non-requesting spouses. Using the Innocent Spouse inventory reports, we identified 11,174 claims that were granted partial relief from July 11, 2016, through January 11, 2020, and 58,017 claims that were denied relief from July 11, 2016, through October 1, 2022.² From July 2016 through January 2020, the requesting spouse and non-requesting spouse shared the same tax account for partial relief claims, and since July 2016, the requesting spouse and non-requesting spouse shared the same tax account for denied claims. This resulted in 69,191 (11,174 + 58,017) CSED issues for the non-requesting spouse in partial relief claims from July 11, 2016, through January 15, 2020, and all denied claims after July 11, 2016.

Management's Response: IRS management disagreed with this outcome measure. The IRS stated that most of the accounts reviewed by TIGTA had other complicating factors that suspended the running of the CSED, such as indications of activity by Criminal Investigation, Collection Due Process hearings, bankruptcy filings, deficiency litigation, and requests for offers in compromise. IRS management stated that without reviewing the physical case files, they were unable to determine if the innocent spouse freeze code was the direct cause for the CSED expiring.

Office of Audit Comment: TIGTA's outcome measure was related to the partial and denied innocent spouse claims in which the non-requesting spouse's account was not mirrored and their CSED was improperly extended. It was not related to the suspension of the CSED due to a freeze code on the account.

The non-mirrored accounts create a burden for some non-requesting spouses because their joint tax account will reflect the requesting spouse's CSED. This harms the non-requesting spouse by extending the CSED collection period

¹ One taxpayer could have more than one innocent spouse claim.

² IRS inventory reports are run on a weekly basis. Due to the policy change taking place in the middle of the week, on January 15, 2020, we took a conservative approach and included counts only up to the prior week (January 11, 2020).

The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

beyond the correct CSED for that taxpayer. Due to the lack of mirrored accounts, a total of 69,191 innocent spouse claims with a potential incorrect CSED were posted to the non-requesting spouses' accounts.

Type and Value of Outcome Measure:

- Increased Revenue – Potential; \$11.5 million in tax liabilities that could not be collected for 309 taxpayer accounts with innocent spouse claims closed from April 2016 through January 2022 (see Recommendation 7).

Methodology Used to Measure the Reported Benefit:

TIGTA identified 309 taxpayer accounts with innocent spouse claims with \$11,545,604 in tax liabilities that could not be collected because SB/SE Division Collection did not remove the innocent spouse collection freeze code when the innocent spouse claim was closed, resulting in the expiration of the CSED. We limited our analysis to innocent spouse claims closed from April 2016 through January 2022 with an expired CSED and a tax liability over \$1,000 on the tax account. The liabilities in these accounts may have been collectible if the SB/SE Division had properly removed the collection freeze code from the tax account.

Management's Response: IRS management disagreed with this outcome measure. The IRS stated that most of the accounts reviewed by TIGTA had other complicating factors that suspended the running of the CSED, such as indications of activity by Criminal Investigation, Collection Due Process hearings, bankruptcy filings, deficiency litigation, and requests for offers in compromise. IRS management stated that without reviewing the physical case files, they were unable to determine if the innocent spouse freeze code was the direct cause for the CSED expiring.

Office of Audit Comment: Due to innocent spouse data limitations, the IRS was only able to review 30 of the 309 accounts identified that had the innocent spouse collection freeze code. Although other factors could affect the collectability of a taxpayer's account, the fact that the innocent spouse collection freeze code was not removed made the tax liability uncollectible on these accounts. The innocent spouse collection freeze code should have been manually removed when the business function closed the claim. Because the collection freeze code was not removed, tax liabilities of up to \$11.5 million were not collected.

Appendix III

I.R.C. § 6015(b) Innocent Spouse Relief Qualifications

1. A joint return was filed for the year in which relief is requested.
2. There is an understatement of tax attributable to erroneous items of the non-requesting spouse.
3. The requesting spouse did not know and had no reason to know of the understatement at the time the return was signed.
4. Taking into account all the facts and circumstances, it would be inequitable to hold the requesting spouse liable for the understatement attributable to the non-requesting spouse.
5. The request for relief is made within two years from the date of the first collection activity with respect to the requesting spouse, after July 22, 1998.

Source: I.R.C. § 6015 (b).

Appendix IV

I.R.C. § 6015(c) Election to Allocate a Deficiency

All criteria must be met for relief to be granted under I.R.C. § 6015(c), except listed items not eligible for allocation.
1. A joint return was filed for the year in which relief is requested.
2. There is a deficiency attributable to erroneous items of the non-requesting spouse. A spouse may be relieved for a portion of the tax liability resulting from a joint item adjustment.
3. Requesting spouse is either divorced, widowed, or legally separated from the non-requesting spouse, or requesting spouse and non-requesting spouse were not members of the same household at any time during the 12-month period prior to the date the request was filed. The 12-month separation requirement does not apply to a spouse temporarily absent from the household due to incarceration, illness, business, vacation, education, or other temporary absences.
4. The request for relief is made within two years from the date of the first collection activity with respect to the requesting spouse. The two-year time period for making the request is the same as required under I.R.C. § 6015(b).
<u>Items not eligible for allocation:</u> <ul style="list-style-type: none">• <u>Actual Knowledge</u>: Relief is not available if the IRS demonstrates that the requesting spouse had actual knowledge of the item contributing to the deficiency, unless the return was signed under duress.• <u>Fraudulent Transfers</u>: The election is invalid if assets were transferred between the spouses as part of a fraudulent scheme.• <u>Taxpayer Burden of Proof to Establish Their Allocated Portion of the Liability</u>: The requesting spouse bears the burden of proof in establishing their allocated portion of the liability.• <u>Items Attributable to Requesting Spouse</u>: Generally, the requesting spouse may not be relieved of any part of the deficiency which relates to an item attributable to the requesting spouse.• <u>Fraud</u>: Relief is not available if fraud was established to be performed by one or both spouses.• <u>Disqualified Assets</u>: A disqualified asset is any property or right to property transferred to the requesting spouse by the non-requesting spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax.• <u>Tax Benefit Limitation</u>: An erroneous item that would otherwise qualify for relief does not qualify to the extent the requesting spouse received a tax benefit from that item on the original return.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

- Household Employment Taxes: Because household employment taxes (reported on Form 1040, *U.S. Individual Income Tax Return*, Schedule H, *Household Employment Taxes*) are employment taxes, not income taxes under Subtitle A, they do not qualify for relief. Only Subtitle A taxes are subject to relief.
- Child's Liability: The liability of a child included on a joint return is disregarded in computing the separate liability of either spouse.

Source: I.R.C. §§ 6015 (c) and (d), and IRM 25.15.3.

I.R.C. § 6015(f) Equitable Relief Requirements

1. A joint return was filed for the year in which relief is requested.
2. Unavailability of I.R.C. § 6015(b) and I.R.C. § 6015(c): Relief is not available under I.R.C. § 6015(b) or I.R.C. § 6015(c).
3. Time Limitation: The individual requested relief within any time period that the collection statute or refund statute remains open.
4. No Fraudulent Transfers: Equitable relief will not be considered if assets were transferred between spouses as part of a fraudulent scheme to avoid tax or payment of tax.
5. No Transfers of Disqualified Assets: Equitable relief will not be considered to the extent of the value of disqualified assets which were transferred to the requesting spouse, similar to I.R.C. § 6015(c).
6. No Fraudulent Return: The requesting spouse did not knowingly participate in the filing of a fraudulent joint return.
7. Attributable to the Non-Requesting Spouse: Equitable relief will not be considered if the liability is solely attributable to the requesting spouse unless one of the following exceptions applies. If liability is attributable to both spouses, equitable relief will only be considered for the portion attributable to the non-requesting spouse. Exceptions: <ul style="list-style-type: none">• Attribution. Attribution solely due to the operation of community property law. If an item is attributable or partially attributable to the requesting spouse solely due to the operation of community property law, then that item (or portion thereof) will be considered to be attributable to the non-requesting spouse.• Nominal ownership. If the item is titled in the name of the requesting spouse, the item is presumptively attributable to the requesting spouse.• Misappropriation of funds. If the requesting spouse did not know and had no reason to know that funds intended for the payment of tax were misappropriated by the non-requesting spouse and for the non-requesting spouse's benefit, the IRS will consider granting equitable relief although the underpayment may be attributable in part or in full to an item of the requesting spouse. The IRS will consider granting relief in this claim only to the extent that the funds intended for the payment of tax were taken by the non-requesting spouse.• Abuse not amounting to duress. If the requesting spouse establishes that they were the victim of 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, or question the payment of any balance due reported on

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

the return, for fear of the non-requesting spouse's retaliation, the IRS will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item of the requesting spouse.

- Fraud committed by non-requesting spouse. If the requesting spouse establishes that the non-requesting spouse's fraud is the reason for the erroneous item, the IRS will consider granting equitable relief although the deficiency or underpayment may be attributable in part or in full to an item of the requesting spouse.

Source: I.R.C. § 6015 (f) and IRM 25.15.3.

Appendix VI

I.R.C. § 6015(f) Equitable Relief Factors

Marital Status	<p>This factor will weigh in favor of relief if the requesting spouse is no longer married to the non-requesting spouse, which includes divorced, legally separated, widow/widower, or has not been a member of the same household as the non-requesting spouse during the 12-month period ending on the date the IRS makes its determination. The factor is neutral if the requesting spouse is still married to the non-requesting spouse or a widow/widower and an heir to the non-requesting spouse's estate and there are sufficient assets in the estate to pay the tax liability.</p>
Economic Hardship	<p>An economic hardship exists if paying the tax liability in whole or part will cause the requesting spouse to be unable to pay reasonable basic living expenses. If denying relief will cause the requesting spouse to suffer economic hardship, this factor will weigh in favor of relief. If denying relief will not cause the requesting spouse to suffer economic hardship, this factor will be neutral. If the requesting spouse is deceased, this factor will be neutral.</p> <p>An economic hardship exists if either situation below is present:</p> <ol style="list-style-type: none"> a. Gross income is 250 percent (for the requesting spouse's family size) or less of the poverty level and the requesting spouse does not have assets out of which payments towards the liability can be made. b. Gross income is more than 250 percent of the poverty level but the income minus expenses is \$300 or less. <p>However, when the requesting spouse meets the above criteria but has assets such that the requesting spouse can make payments and still pay reasonable living expenses, the factor is considered neutral. If neither (a) or (b) above applies, the examiner must evaluate on a case-by-case basis if the circumstance would still cause an economic hardship and consider this factor in favor of relief.</p>
Knowledge or Reason to Know	<p>Actual knowledge, or reason to know, of the item giving rise to the understatement or deficiency will not be weighed more heavily than other factors. This factor will weigh in favor of relief if either of the below scenarios exist:</p> <ul style="list-style-type: none"> • The requesting spouse did not know and had no reason to know of the item giving rise to the understatement or deficiency at the time the requesting spouse filed the joint return (including a joint amended return). The examiner will usually consider such factors as the requesting spouse's level of education, any deceit or evasiveness of the non-requesting spouse, the requesting spouse's degree of involvement in the activity and household financial matters, the requesting spouse's business or financial

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

	<p>expertise, and any lavish or unusual expenditures compared with past spending levels.</p> <ul style="list-style-type: none"> The requesting spouse had a reasonable expectation at the time the joint return was filed that the non-requesting spouse would pay the tax liability at the time the joint return was filed or within a reasonable period of time after the filing of the joint return. A reasonable expectation of payment will be presumed if the spouses submitted a request for an installment agreement within 90 days of the due date for payment of the tax or within 90 days of the return being filed, whichever is later. <p>The examiner should also look to prior years to determine payment history. A consistent history of underpayments that the requesting spouse was aware of may show that there was not a reasonable expectation the tax would be paid. On the other hand, a consistent history of returns showing tax due and the non-requesting spouse timely paying those taxes could give a requesting spouse a reasonable expectation that the non-requesting spouse would pay the tax due on the year(s) at issue.</p> <p>If the non-requesting spouse abused the requesting spouse or maintained control over the household finances by restricting the requesting spouse’s access to financial information and, therefore, because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return, or to question the payment of taxes reported as due on the joint return, or challenge the non-requesting spouse’s assurances regarding payment of the taxes, for fear of retaliation, then the abuse or financial control will mitigate the requesting spouse’s knowledge or reason to know. Under these circumstances, this factor will weigh in favor of relief because the abuse or financial control would mitigate the requesting spouse’s knowledge or reason to know of the understatement.</p>
<p>Legal Obligation</p>	<p>This factor will weigh in favor of relief if the non-requesting spouse has the sole legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement. However, it will be deemed neutral if the requesting spouse knew or had reason to know, when entering into the divorce decree or agreement, that the non-requesting spouse would not pay the income tax liability. This factor will weigh against relief if the requesting spouse has the sole legal obligation. The factor will be neutral if both spouses have a legal obligation to pay the tax liability according to the divorce decree or agreement, the spouses are not separated or divorced, and the divorce decree or agreement is silent as to any obligation to pay the tax liability.</p>
<p>Significant Benefit</p>	<p>A determination is performed on whether the requesting spouse received significant benefit (beyond normal support) from the unpaid income tax liability or item giving rise to the deficiency. This factor will weigh against relief if the requesting spouse enjoyed significant benefits, for example, living a lavish lifestyle by owning luxury assets and taking expensive vacations. An exception is made, however, if the non-requesting spouse controlled the household and business finances or there was abuse such that the non-requesting spouse</p>

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

	<p>made the decision on spending funds, then the factor is mitigated so that it will be neutral.</p> <p>This factor will weigh in favor of relief if only the non-requesting spouse significantly benefitted from the unpaid tax or item giving rise to an understatement or deficiency, and the requesting spouse had little or no benefit, or the non-requesting spouse enjoyed the benefit to the requesting spouse's detriment. This factor will be neutral if the amount of unpaid tax or understated tax was small such that neither spouse received a significant benefit. Whether the amount of unpaid tax or understatement is small will vary depending on the facts and circumstances of each claim.</p>
<p>Compliance With Income Tax Laws</p>	<p>This is defined as whether the requesting spouse has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief relates. This factor will weigh in favor of relief if the requesting spouse is compliant for taxable years after being divorced from the non-requesting spouse, or remains married to the non-requesting spouse but files separate returns, and is compliant with the tax laws. This factor will weigh against relief if the requesting spouse:</p> <ul style="list-style-type: none"> • Is not compliant for taxable years after being divorced from the non-requesting spouse. • Remains married to the non-requesting spouse, whether or not legally separated or living apart, and continues to file joint returns with the non-requesting spouse after requesting relief, and the returns are not compliant. • Remains married to the non-requesting spouse and files separate returns, and is noncompliant with the tax laws. <p>However, an exception exists if the requesting spouse's noncompliance is due to the requesting spouse's poor financial or economic situation after the divorce, despite good faith efforts to comply. In this case, the factor will be neutral. This factor will further be neutral if the requesting spouse:</p> <ul style="list-style-type: none"> • Made a good faith effort to comply with the tax laws but was unable to fully comply. • Remains married to the non-requesting spouse, whether or not legally separated or living apart, and continues to file joint returns with the non-requesting spouse after requesting relief, even if they are compliant. • Is not compliant because of the requesting spouse's poor financial or economic situation as a result of being separated or living apart from the non-requesting spouse, despite good faith efforts to comply.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

Mental or Physical Health	A determination is made on whether the requesting spouse was in poor physical or mental health. This factor will weigh in favor of relief if the requesting spouse was in poor mental or physical health at the time the requesting spouse filed the return or returns for which the request for relief relates or at the time the requesting spouse requested relief. The IRS will consider the nature, extent, and duration of the condition. This factor will be neutral if the requesting spouse was in neither poor physical nor poor mental health at the time the requesting spouse filed the return or returns for which the request for relief relates or at the time the requesting spouse requested relief.
----------------------------------	--

Source: IRM 25.15.3.

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 31, 2023

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT
Amalia C. Colbert
FROM: Lia Colbert Colbert
Commissioner, Small Business/Self-Employed Division
SUBJECT: Draft Audit Report – The Innocent Spouse Program Needs
Improved Guidance for Employees and Increased
Communication with Taxpayers (Audit # 202230017)

Digitally signed by Amalia
C. Colbert
Date: 2023.08.31
10:56:50 -04'00'

Thank you for the opportunity to review and comment on the subject draft audit report. In July 1998, Section 3201 of the IRS *Restructuring and Reform Act of 1998* (RRA '98) codified Internal Revenue Code (IRC) section 6015, *Relief from joint and several liability on joint return*. Since that time, the IRS has fully developed guidance and implemented processes to make proper innocent spouse determinations while protecting the rights of both spouses under all subsections of IRC § 6015. For example, the IRS has issued the following guidance –

- 26 CFR Section 1.6015 (regulations providing guidance on requests for relief from joint and several liability), and related proposed regulations, 80 FR 72649-01 issued November 20, 2015, and 78 FR 4942 issued on August 13, 2013.
- Rev. Proc. 2003-19 (provides administrative appeal rights for the non-requesting spouse).
- Rev. Proc. 2013-34 (provides guidelines for taxpayers seeking equitable relief from income tax liability under IRC § 66(c) or 6015(f)).

In addition, the IRS took the following actions to make certain the Innocent Spouse Program met the program's objectives:

- Established the Cincinnati Centralized Innocent Spouse Operation (CCISO), which is a specialized unit that exclusively processes innocent spouse relief requests.
- Developed the Innocent Spouse Tracking System (ISTS) to track each innocent spouse relief request from receipt to closure, provide inventory control, and improve taxpayer service.
- Created Internal Revenue Manual (IRM) procedures for all functions, including CCISO, Field Examination, Collection, and the IRS Independent Office of

The Innocent Spouse Program Needs Improved Guidance for Employees and Increased Communication With Taxpayers

2

Appeals, to address the proper processing of innocent spouse relief requests and taxpayer interactions.

- Created published letters for correspondence with taxpayers through all phases of innocent spouse relief processing.
- Created Publication 971, *Innocent Spouse Relief*, to educate the public on the three types of relief, who qualifies for relief, and how to request relief.
- Published IRS.gov articles explaining innocent spouse relief and a tool to help taxpayers determine the applicability of relief to their circumstances.
- Developed mandatory innocent spouse training for all new hires.
- Conducted a Customer Satisfaction Survey for mail (outgoing correspondence/letters) and analyzed the results to drive letter improvements.
- Strived to continually improve processes. For example, IRS convened the Executive sponsored Employee Driven Team (2015-2016) resulting in significant innocent spouse related process improvements, as well as new IRMs and IRM content.
- Updated Form 8857, *Request for Innocent Spouse Relief*, and its instructions in June 2021, to improve clarity and ease of use for taxpayers.

TIGTA reviewed 45 cases and cited ten CCISO cases as not fully developed. IRS disagreed or partially disagreed with six. The accuracy of CCISO cases is further supported by National Quality Review System (NQRS) data, which reflects FY22 overall accuracy of 95.83% and FY23 to date overall accuracy of 99.6%.

The IRS IRM is aligned with the guidance in Revenue Procedure 2013-34, which clarifies that no one factor, or majority of factors necessarily controls the determination, but rather the final determination should be based on careful consideration of the facts and circumstances, which vary from case to case. As stated in the Revenue Procedure, "...denial of relief may still be appropriate if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief." Judgement is required in the determination process, which is further supported by case law.

IRS disagrees with TIGTA's assertion that existing determination letters are incomplete. Under current IRS examination procedures, determination letters include information on each applicable IRC § 6015 provision: IRC § 6015 (b) which applies to understatements of tax only; IRC § 6015 (c) which applies to understatements only; or IRC § 6015 (f) which only applies if IRC § 6015 (b) and (c) are inapplicable. Rather than telling a taxpayer who applied for relief under IRC § 6015(b) that we denied relief under IRC § 6015(b) and 6015(c) and allowed relief under IRC § 6015(f), the determination letter will simply state that their request was allowed under IRC § 6015(f). The decision to limit the amount of information in the determination letters was based on feedback received from ongoing Customer Satisfaction Surveys, which indicated removing information not relevant to a taxpayer's case would improve the clarity of the message related to each specific taxpayer's determination. Based on this feedback, revisions to all letters were completed in 2018 and continue to be made as needed.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

3

Attached are our comments and proposed actions in response to your recommendations. If you have any questions, please contact me, or Rich Tierney, Director, Examination, Small Business/Self-Employed Division.

Attachment

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

Attachment

Recommendations

The Commissioner, Small Business/Self-Employed Division, should:

RECOMMENDATION 1:

Provide supplemental training on an annual basis to clarify how the innocent spouse determination factors should be used in making consistent final determinations, including additional examples of case scenarios and domestic violence related scenarios.

CORRECTIVE ACTION:

We agree, in part. The current IRM 25.15.3.9, *Equitable Relief*, provides detailed guidance including references to Rev. Proc. 2013-34, which also identifies the factors for determining whether to grant equitable relief. The IRM is explicit and follows Revenue Procedure 2013-34, which specifically states not to weight the various factors. Ad hoc training is completed within CCISO when issues are identified. In addition, CCISO and Field Examination provide innocent spouse training to new hires. However, we will add examples of domestic violence related scenarios to our IRM to assist our employees with making determinations.

IMPLEMENTATION DATE:

October 15, 2024

RESPONSIBLE OFFICIAL:

Director, Small Business/Self-Employed Exam Field and Campus Policy

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:

Require a secondary review of a sample of CCISO determinations, including the final determination letters, to ensure that all factors have been developed appropriately and consistently for all provisions of IRC § 6015.

CORRECTIVE ACTION:

We disagree. IRS recognizes the need for a quality product. Quality reviews are already performed regularly on CCISO determinations and include two reviews per employee per month, performed by a Lead or Manager, as well as random Program Analysis System (PAS) reviews. The accuracy of CCISO cases is supported by National Quality Review System (NQRS) data, which reflects Fiscal Year (FY) 22 overall accuracy of 95.83% and FY23 to date overall accuracy of 99.6%.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

2

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 3:

Update the IRM to ensure that the language in the final determination letters include notifying the taxpayer of qualifications and determinations under all provisions of IRC § 6015.

CORRECTIVE ACTION:

We disagree. Under current IRS procedures in both Field and Campus Examination, the taxpayer notification includes information regarding all applicable sections/provisions of IRC § 6015 (IRC sections (b), (c) and (f)). Taxpayer feedback received from ongoing Customer Satisfaction Surveys indicated that removing information not relevant to a taxpayer's case would improve the clarity of the message related to the taxpayer's specific determination. Based on this feedback, revisions to all letters were completed in 2018 and continue to be made as needed.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 4:

The Commissioner, SB/SE Division, should monitor the cycle time for the innocent spouse process after the FY 2023 hiring initiative and, if the cycle time does not improve, analyze the causes of the increased cycle time in the innocent spouse process and initiate action to reduce cycle times.

CORRECTIVE ACTION:

We agree. SB/SE Examination cycle time increased as a result of reduced staffing due to attrition and lack of hiring of Financial Technicians for more than 5 years. During FY18, there were 28 financial technician vacancies in CCISO. The number of financial technician vacancies increased to 42 in FY20. Minimal hiring reduced the number of

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

3

vacancies in FY21 and FY22 but, even with the hiring, surge efforts kept the total number of vacancies around 20 for both years. SB/SE recently received approval to hire 18 Financial Technicians in FY23, which brought total staffing within four vacancies of authorized staffing levels. Since October 2022, Stage 5 inventory (assigned or awaiting assignment) has already decreased from 13,237 to 7,480, which equates to a 43.5% reduction in inventory. We expect that cycle time will continue to improve with the increased staffing and reduction of existing inventory backlogs. However, we agree to analyze pre-covid and post-covid cycle times and identify opportunities for continued improvement.

IMPLEMENTATION DATE:

October 15, 2024

RESPONSIBLE OFFICIAL:

Director, Small Business/Self-Employed Exam Field and Campus Policy

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 5:

Resume mirroring all innocent spouse tax accounts in CCISO, regardless of the claim's determination and, if feasible, correct the prior non-mirrored accounts.

CORRECTIVE ACTION:

We disagree. CCISO First Read stopped mirroring all accounts upon receipt of Innocent Spouse Requests for Relief on January 13, 2016, because of Employee Driven Team Findings. These findings included reports from CCISO Specialists that they spent a great deal of time resolving account issues created by mirroring after the Innocent Spouse case was closed as determined non-qualifying. Issues they worked included erroneous refunds, duplicate payments, assessments, or abatements to the wrong account. Additionally, mirroring upon receipt created approximately 40,000 new accounts each year. Of the 40,000 there were 22,800 accounts that were not needed as relief was denied and the liability remained joint. From 2001 to 2015, our records showed that 319,200 accounts were created and will never be used. Creation of these accounts causes problems for other areas of the service, takes up space on servers, and causes additional work for employees.

In 2016, IRS stopped mirroring accounts upon receipt and instead mirrored accounts only when a determination was made to allow full or partial innocent spouse relief. In full relief cases, the requesting spouse (RS) account is reduced to zero liability. In partial relief cases the RS liability is the amount of relief denied, but the non-requesting spouse's liability is the total joint liability.

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

4

The joint liability stays on the joint account upon denial of the innocent spouse relief request. Our collection function is aware of the innocent spouse indicators and that separate Collection Statute Expiration Dates (CSEDs) exist for each taxpayer although our IDRS account limitations show only one CSED.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 6:

Issue a reminder to SB/SE Division Examination and Collection employees reminding them that the non-requesting spouse's CSED should not be suspended when an innocent spouse claim is requested.

CORRECTIVE ACTION:

We agree. We will issue a reminder to employees in Examination and Collection regarding the non-requesting spouse's CSED.

IMPLEMENTATION DATE:

February 15, 2024

RESPONSIBLE OFFICIAL:

Director, Small Business/Self-Employed Exam Headquarters

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 7:

Issue reminders to the applicable IRS functions to ensure that the innocent spouse freeze code is removed after the innocent spouse claim is closed.

CORRECTIVE ACTION:

We agree. Guidance on this issue already exists in IRMs 4.8.5.2, *Innocent Spouse Cases*, and 25.15.6, *Field Examination Procedures*, IRM 8.7.12, *Appeals Innocent Spouse Case Procedures*, and IRM 25.15.9 *Account Processing of Requests for Relief from Joint and Several Liability*. All functions are currently instructed to reverse the

**The Innocent Spouse Program Needs Improved Guidance
for Employees and Increased Communication With Taxpayers**

5

innocent spouse freeze code upon closure. A reminder will be issued to impacted functions.

IMPLEMENTATION DATE:

September 15, 2024

RESPONSIBLE OFFICIAL:

Director, Small Business/Self-Employed Exam HQ

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

OUTCOME MEASURE:

Taxpayer Rights and Entitlements – Potential; 69,191 innocent spouse claims with a potential incorrect CSED posted to the non-requesting spouse's accounts, that improperly extended the amount of time the IRS has to legally collect delinquent taxes (see Recommendation 5).

IRS RESPONSE:

We do not agree with the outcome measure. In addition to innocent spouse requests, most of the accounts reviewed by TIGTA had other complicating factors that suspended the running of the CSED, such as indications of activity by Criminal Investigation, collection due process hearings, bankruptcy filings, deficiency litigation, and requests for offers-in-compromise. Without reviewing the physical case files, IRS was unable to determine if the innocent spouse freeze code was the direct cause for the CSED expiring, or if the accounts would have otherwise been collectible if the innocent spouse freeze code was not present.

OUTCOME MEASURE:

Increased Revenue – Potential; \$11.5 million in tax liabilities that could not be collected for 309 taxpayer accounts with innocent spouse claims closed from April 2016 through January 2022 (see Recommendation 7).

IRS RESPONSE:

We do not agree with the outcome measure. In addition to innocent spouse requests, most of the accounts reviewed by TIGTA had other complicating factors that suspended the running of the CSED, such as indications of activity by Criminal Investigation, collection due process hearings, bankruptcy filings, deficiency litigation, and requests for offers-in-compromise. Without reviewing the physical case files, IRS was unable to determine if the innocent spouse freeze code was the direct cause for the CSED expiring, or if the accounts would have otherwise been collectible if the innocent spouse freeze code was not present.

Glossary of Terms

Term	Definition
Collection Statute Expiration Date	Every tax assessment has a CSED. I.R.C. § 6502 provides that the length of the period for collection after assessment of a tax liability is 10 calendar years. The CSED ends the Government’s right to pursue collection of a liability.
Examiner	A CCISO employee or Field Examination employee who works the innocent spouse claim and makes a determination.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government’s fiscal year begins on October 1 and ends on September 30.
Individual Master File	The IRS database that maintains transactions or records of individual tax accounts.
Internal Revenue Code	The Federal tax law, enacted by Congress in Title 26 of the United States Code. It is organized by topics such as income, estate and gift, employment, and miscellaneous excise taxes.
Internal Revenue Manual	The official source of IRS policies, procedures, and guidelines.
Non-Requesting Spouse	The spouse not making the request for innocent spouse relief.
Requesting Spouse	The spouse making the request for innocent spouse relief.
Taxpayer Information File	A database that provides tax account information for taxpayers, generally involving only active accounts, on the database.
Taxpayer Service and Returns Processing Category Reports	The reports identify all taxpayer accounts with a balance due and also show the collection status of the accounts.
Underpayment	The difference between the amount of tax actually paid and the amount of tax which would have been required to be paid to avoid penalty and interest.
Understatement	The difference between the total amount of tax that should have been shown on a return and the amount of tax actually shown on the return.

Abbreviations

CCISO	Cincinnati Centralized Innocent Spouse Operations
COVID-19	Coronavirus Disease 2019
CSED	Collection Statute Expiration Date
EQRS	Embedded Quality Review System
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
NQRS	National Quality Review System
SB/SE	Small Business/Self-Employed
TAS	Taxpayer Advocate Service
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

Information you provide is confidential, and you may remain anonymous.