

Foreword

One of my favorite quotations in the history of tax is from Justice Benjamin Cardozo, noting, “Life in all its fullness must supply the answer to the riddle” of statutory language.¹ The opinion from which it is extracted has come under criticism, including feminist criticism.² But for anyone working in the field of tax controversy, it is hard to escape the sense that tax law, far from being a dry, static practice, actually requires the practitioner to not only know the law but also know something about the vagaries of human existence.

This is especially true for one of the foundational building blocks of the individual income tax, namely, the taxable unit. In many countries, the income tax is applied to the individual taxpayer. Not so the United States: Its Internal Revenue Code recognizes both a single taxpayer, a marital unit filing jointly, and a marital unit filing separately (as well as head of household filing status). The treatment of a married taxpayer as different from a single individual brings all sorts of complications—including when a married taxpayer will be considered not married under the Code. But the introduction of joint and several liability exponentially ramps up the

¹ *Welch v. Helvering*, 290 U.S. 111, 115 (1933).

² See, e.g., Mary Louise Fellows, *Welch v. Helvering*, in *FEMINIST JUDGEMENTS: REWRITTEN TAX OPINIONS* 103 (Bridget J. Crawford and Anthony C. Infanti eds., 2017); Ajay K. Mehrota, *Life in All Its Fullness: Cardozo, Fellows, and the Critical Context of Welch v. Helvering*, 151 *PITTSBURGH TAX REVIEW* 15 (2019).

complexity and consequences of filing jointly with one's spouse. Add in the power imbalance that exists in many marital relationships, and you have an environment rife with inequitable outcomes.

Congress recognized the seriousness of these consequences and tried on several occasions to address them, short of repealing joint and several liability.³ As discussed in Chapter 1 of this guide, Congress legislated in 1971, and again in 1984, creating an equitable relief provision known colloquially as "innocent spouse." It legislated again in 1998, with the Senate holding a separate hearing on the issue, with two panels, one of spouses who had been denied relief under the current law, and one of experts.⁴

As this book shows, I.R.C. § 6015 as enacted in 1998 still would require much clarification by the IRS and the courts, along with several legislative amendments, and we aren't done with it yet. That's where Christine Speidel and Audrey Patten come in, updating Robert Nadler's *Practitioner's Guide to Innocent Spouse Relief* and providing a roadmap through the decision to file jointly (Chapter 2), the legislative language and courts' interpretation of that language (Chapters 3 to 6), including community property issues (Chapter 7). The authors then move to practical advice, covering the administrative process (Chapter 9), the stages of petitioning and trial in the Tax Court (Chapters 10 through 12), obtaining a refund (Chapter 13), and on to a discussion of other collection alternatives, should the taxpayer be denied relief from joint and several liability (Chapter 14). The final chapter (Chapter 15) has a helpful state-by-state summary of state innocent spouse relief. Throughout, the authors point out areas that are still unsettled and suggest possible approaches. They highlight how the specific facts of the taxpayer's situation, including physical, emotional, or financial marital abuse, can tip the scale toward or away from relief. The discussion in Chapter 8 about meeting the client and building the case for relief demonstrates this point.

Who will benefit from this book? Anyone, really, who has an interest in the way law approaches marital property and taxes. It will be an invaluable guide to practitioners who concentrate on tax controversy practice; it will also guide the family law practitioner whose clients may face tax liabilities; it will be a refresher for academics and students alike on the current state of the law relating to I.R.C. sections 6015 and 66. It is a fascinating read, richly illustrated with stories (cases) of how the tax code, the Internal

³ In 2001 and again in 2005, I recommended that Congress repeal I.R.C. 6013(d) (joint and several liability) and legislatively overrule *Poe v. Seaborn*, 282 U.S. 101 (1930). See NATIONAL TAXPAYER ADVOCATE 2001 ANNUAL REPORT TO CONGRESS 128 and NATIONAL TAXPAYER ADVOCATE 2005 ANNUAL REPORT TO CONGRESS 407.

⁴ *IRS Restructuring (Innocent Spouse Rules): Hearing on H.R. 2676 Before the Sen. Comm. On Finance*, 105th Cong. 529 (1998).

Revenue Service, and the courts deal with the "fullness" of married (or formerly married) taxpayers' tax debts. While it does not solve the riddle for every case, it gives us many helpful clues to achieve the best possible resolution of a troubling and built-in problem with our tax law. I am grateful to Christine and Audrey for undertaking this update.

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