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RICHARD C.E. BECK

The Failure of Innocent Spouse Reform

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I. INTRODUCTION

Our rules for income taxation of the family are so complex, arbitrary, and inconsistent that it is impossible to imagine anyone could ever have planned them. Because intelligent design must be ruled out, that leaves only evolution as an explanation. This article examines only a small part of that evolution — the rule of joint and several liability of spouses who file joint returns. This rule, as we will see, was unfair and unjustified when it was first enacted in 1938. When its inevitable problems became insupportable in the 1970s, instead of repealing the rule, exceptions known as the "innocent spouse" rules were enacted which were inadequate and poorly conceived. The painful shortcomings of the 1971 innocent spouse rules did not lead to repeal of joint return liability, as they should have, but instead provoked yet more rounds of reform legislation to expand innocent spouse relief in the vain hope that the old medicine might still work if only enough were taken. The most recent of these reforms occurred in the Restructuring and Reform Act of 1998,[1] as a result of which the relief rules, already complex and confusing, mushroomed into an enormous body of new law. The purpose of this article is to provide a report card for these reforms, to explain why they are a failure, and to show that no further expansion of relief can ever solve the problem. The only solution is to start over by repealing joint return liability. Ironically, the hearings which led to the 1998 Reform Act were prompted by a very worthwhile attempt to do exactly that, but behind closed doors, repeal was quietly killed and replaced with yet more of the same ill-conceived relief rules.

The underlying problem is this: Since 1938, the Internal Revenue Code ("I.R.C.") has required spouses filing joint returns to be jointly and severally liable for each other's income taxes. This joint return liability ("JRL") extends not only to the amount which is self-assessed and appears on the return itself, but also to any and all additional taxes which may be due to omitted items and to disallowance of deductions or credits.[2] No warning of this limitless liability appears anywhere on the tax return itself, and very few people who are not tax professionals are aware of the liability, or have any reason to be, until it is too late. Separate filing as married persons entails no such liability at all, but by the time this advantage is appreciated, it is no longer of any use because amending a return from joint to separate is not permitted.[3]

The problem is enormous and potentially affects all married taxpayers. About ninety-eight percent of married couples file jointly because that status usu-

1. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, §§ 3201(a), (e)(1), 12 Stat. 734, 739 (codified at I.R.C. § 6015 (2000)).

2. I.R.C. § 6013(d)(3) (2000).

3. The two percent of married couples who file separately are permitted to amend their returns later and switch to joint status, but the ninety-eight percent who file jointly may not amend and re-file separately. Quite obviously, the sole purpose of the one-way statutory rule is to prevent the taxpayer from extracting herself from the JRL booby trap. Until 1922, the Bureau of Internal Revenue by administrative rule allowed taxpayers to amend and re-file in either direction, but then changed its rule to forbid re-filing in either direction. *See* Grant v. Rose, 24 F.2d 115 (D.Ga. 1928).

ally provides a small but irresistible[4] tax advantage over filing separately as married persons.[5] Of these, I estimate that at least 50,000[6] women are probably forced to pay taxes on their husband's or ex-husband's income each year, and perhaps some 15,000 of these victims are separated or divorced at the time they are forced to pay. Although the statute is gender-neutral, in practice the vast majority of victims of JRL, probably more than ninety-five percent, are women, and so for convenience, unless otherwise indicated, I will call these victims "wives" or "women."

There exists, of course, statutory relief in the form of the so-called "innocent spouse" rules,[7] but they are still far too restrictive and generate an inordinate amount of friction and litigation. Taxpayers make about 50,000 innocent spouse claims to the I.R.S. each year.[8] Between forty and fifty innocent spouse ("IS") decisions are reported in the courts every year, which is nearly one *each week*, making the IS relief under section 6015 arguably *the most frequently litigated issue in the Code.*[9]

The most difficult barrier to relief has always been, and remains, that under the "innocence" rule the wife loses if she has any knowledge of (or reason to know of) the husband's tax items which trigger the understatement of tax.[10] It will be argued in this article that such knowledge and ignorance is a hopelessly irrational basis for offering relief, and that this is the main reason the new relief rules, like the old ones, are a failure.

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4. Irresistible, that is, only as long as one is unaware of the JRL trap.

5. On the other hand, about forty percent of married persons would pay less taxes if they were not married at all, or were allowed to file using the rates applicable to single persons.

6. This estimate is based upon the General Accounting Office's figures for 1999–2001 showing about 50,000 innocent spouse claims made per year, of which about seventy percent are denied relief. U.S. GEN. ACCOUNTING OFFICE, INNOCENT SPOUSE PROGRAM 15 (2002) [hereinafter GAO, INNOCENT SPOUSE PROGRAM]. To these must be added those women, perhaps much more numerous, who make no resistance but simply pay and suffer in silence.

7. I.R.C. § 6015 (2000).

8. GAO, INNOCENT SPOUSE PROGRAM, *supra* note 6, at 15.

9. NAT. TAXPAYER ADVOCATE, ANNUAL REPORT TO CONGRESS 532 (2005) [hereinafter NTA REP. 2005]. The NTA counts innocent spouse relief as the eighth most frequently litigated issue. However, five of the more frequently litigated issues on its list are penalties which apply to a vast number of substantive issues, and similarly, business deductions under section 162 (and other sections) cover an enormous number of unrelated issues, as does the number one issue of collection due process appeals. Family status issues (seventh on the NTA list, including dependent exemptions, EITC, child care credit, and more) are also far more diverse than IS relief, which makes I.R.C. section 6015 relief the most litigated substantive liability rules in the Code. The NTA's 2006 Report again listed JRL as the eighth most litigated issue, and counted fifty-one reported decisions for the year. NAT. TAXPAYER ADVOCATE, ANNUAL REPORT TO CONGRESS 553 (2006) [hereinafter NTA REP. 2006].

10. As a result of the 1998 reforms, the wife may obtain relief for underpayments as well, but again only if she can show she had no reason to know that the husband would not pay.

On the other hand, no relief rules short of outright repeal of JRL can ever provide sufficient relief because JRL itself is unfair.[11] The United States is virtually the only country in the developed world which insists upon JRL,[12] even among countries which permit income-splitting to married persons filing jointly.[13] Almost without exception other industrialized countries do not impose any tax liability on women for their husbands' income.[14] By contrast, under U.S. law, women are routinely subjected to assessment or collection, even after separation or divorce, for no reason other than that they elected to file jointly.[15]

A great opportunity to repeal JRL was squandered in 1998, and the new I.R.C. section 6015 which was enacted instead is, for all its great complication, not much more than business as usual. The reason, at bottom, appears to be the I.R.S.'s unwillingness to give up its power to seize whatever assets lie in easy reach, even if they belong to the wrong taxpayer.

Section II of this article will explore the surprisingly shaky foundation of the rule of JRL itself. Section III then explores the profound irrationality of conditioning relief upon "innocence" and the historical misunderstandings which led to the choice of that form of relief. Next, the uncertainties of the old IS rules are explained and the reasons for general dissatisfaction with them are described. Section IV traces the background reasons for the 1998 reforms, explains the new rules and their shortcomings, and comes to the unhappy conclusion that they are

11. The excellent account in the National Taxpayer Advocate's 2005 Annual Report to Congress. NTA REP. 2005, *supra* note 9, at 530–35.

12. Joint liability is rooted in long outdated assumptions of the economic unity and permanence of marriage. Rules holding spouses liable for each other's taxes are an anachronism, and have been repealed, or severely limited, in all other developed countries where they once existed. For example, no marital liability for income taxes is imposed in any form in Canada, Australia, Japan, Italy, Spain, Sweden, or the United Kingdom. *See* JOSEPH PECHMAN, COMPARATIVE TAX SYSTEMS: EUROPE, CANADA AND JAPAN TAX ANALYSTS (1987).

13. Compare Germany, which provides for favorable rates on joint returns through income-splitting computed as under U.S. law, with France and Belgium, which both provide systems of income-splitting which are more generous than under U.S. law because income is further split with children as well as spouses.

14. In France, joint liability is imposed in principle (Code General des Impots [CGI] art. 1685), but the tax administration must attempt collection from the husband before turning to the wife. *See* Instruction Administrative of Feb. 18, 1985, 5-B-10-85, No. 14.

In the U.K., husbands were formerly liable for tax on their wives' income, but wives were never liable for their husbands' taxes. This system was abolished in 1990 in favor of completely separate liability for both spouses. Finance Act of 1988, ss 32, 148, Sched. 14 Part VII.

In Germany, joint and several liability is imposed in principle (under Abgabeordnung 44), but either spouse has the right to request individual assessment at any time before the tax is paid (under Einkommensteuergesetz 26(b)).

For details, as well as the treatment of spousal tax liability at the state level, see Richard C.E. Beck, *The Innocent Spouse Problem: Joint and Several Liability for Income Taxes Should be Repealed*, 43 VAND. L. REV. 317 (1990).

15. The I.R.S. keeps no statistics on the number of instances of collection from the wrong spouse, nor of the amounts involved. It appears that such collections may be on the order of some 50,000 instances annually. *See supra* note 6 and accompanying text.

fatally flawed in their conception and execution. Because this is a story of the evolution of law, we begin at the beginning.

II. ORIGINS OF JOINT RETURN LIABILITY

The rule of joint return liability was first enacted in 1938. Until then, filing jointly (which had been allowed since 1918) did not entail joint and separate liability of the spouses, despite the government's insistence to the contrary. The issue was litigated several times, and was not finally resolved until the Ninth Circuit's 1935 decision against the government in *Cole v. Commissioner*.[16] In *Cole*, the Ninth Circuit held that a taxpayer's "cardinal right to be taxed only on his own income"[17] was unchanged by joint filing, and rejected the government's argument that "administrative necessity" requires joint and several liability because the respective separate incomes of the spouses are not ascertainable.[18] The government argued that because joint returns do not explicitly set forth the respective separate incomes and deductions of the spouses, it was unable to determine the separate amounts for which each spouse should be liable.

Surprisingly, there was no apportionment difficulty even in the *Cole* litigation. The proper allocation of tax items was stipulated. The Bureau of Internal Revenue had simply assessed the husband by mistake and then negligently allowed the statute of limitations run as to the wife. The Ninth Circuit correctly pointed out that in case of doubt, the I.R.S. could always assess both spouses, and let the taxpayers themselves prove the sources of their income.[19] In fact, allocation of tax items has almost never been any problem, then or now. In all the vast body of innocent spouse litigation over the last thirty-five years (perhaps 700 reported decisions), there are few, if any, in which the principal issue was proper allocation of a tax item.[20] It is a non-problem.

A far more focused solution for rescuing the I.R.S. from its own blunders in situations such as *Cole* (if any were needed at all) would have been possible in other ways. For example, if one accepts the I.R.S.'s argument at face value, an easy solution lay within its own power, namely to print two-column forms showing the separate items of the spouses, as several states do.[21] The I.R.S.'s claim that its own forms do not provide adequate information is a weak argument at best, and tantamount to claiming that its forms should determine the law rather than the other way around. It is telling that this same suspect argument of "ad-

16. Cole v. Comm'r, 81 F.2d 485 (9th Cir. 1935), *rev'g* 29 B.T.A. 602 (1933).

17. *Cole*, 81 F.2d at 487.

18. *Id.* at 488.

19. *Id.*

20. MICHAEL SALTZMAN, IRS PRACTICE AND PROCEDURE ¶ 7B.10[3][c] (2002), cites no decisions.

21. The NTA recommends introducing split-column returns and repealing JRL. NTA REP. 2005, *supra* note 9, at 408–09.

ministrative necessity" was the only justification put forth by the government when Congress legislatively overruled *Cole* three years later by enacting the predecessor of I.R.C. section 6013(d)(3) in 1938. The argument was not persuasive then, and it is even less so today, but this was how the I.R.S. obtained its enormous and all-too-easily abused power of coercing payment from either spouse (or ex-spouse) at its pleasure.

At the very same time of the *Cole* litigation, the Treasury was insisting upon new regulations (later invalidated) which would limit each spouse's charitable contributions separately on joint returns, a calculation which, ironically, required the government to make the very same determination of the separate net incomes of the spouses which in *Cole* it claimed it could not do. Today there is no difficulty in determining each spouse's income on a joint return, and such allocations are routinely made under I.R.C. section 6015 as well as in other circumstances. The audit process almost necessarily reveals the source of any asserted deficiency.[22] Unwinding a joint return is often required for a variety of reasons, such as in order to limit the amount of each spouse's separate losses which may be carried forward or back to offset that spouse's share of income in a joint return year, and in order to calculate the amount of each spouse's separate right to a refund from a joint return.[23] The method used is to calculate each spouse's net income as if she had filed separately. There are adequate rules under current law for apportioning personal deductions and dependent exemptions for this purpose.[24]

Persuasive reasons for imposing joint return liability have never been provided. A frequently advanced canard is that JRL may be justified by the economic unity of the family. There is no evidence, however, that couples ordinarily share all or most of their property, much less that they ignore separate ownership to such an extent that they can be presumed indifferent to the incidence of tax liability.[25] The limited studies available all point to the exact opposite conclusion.[26] Couples who have incomes and savings which exceed their minimum needs tend to make individual spending decisions regarding their own money,

22. Most deficiencies are assessed as a result of matching the return with information forms W-2, 1099, K-1, and the like, which reveal the source of income.

23. See Rev. Rul. 80-7, 1980-1 C.B. 296 and Rev. Rul. 80-8, 1980-1 C.B. 298 for "separate tax method of allocation" applied to refunds. For losses, see Rev. Rul. 60-216, 1960-1 C.B. 126, Rev. Rul. 65-140, 1965-1 C.B. 127, and Rev. Rul. 75-368, 1975-2 C.B. 480. The Treasury has apparently never experienced any difficulty administering these rules.

24. Over one million separate returns are filed each year by married persons, with no apparent difficulty. On the other hand, it is not clear how many of these involve couples who are still living together and whose personal finances are commingled.

25. *See* NTA REP. 2005, *supra* note 9, at 421 & nn.81–87.

26. *See* Shari Motro, *A New 'I Do': Towards a Marriage-Neutral Income Tax*, 91 IOWA L. REV. 1509, 1523–26 (2006), and sources cited therein; *see also* Beck, *supra* note 14, at 380–81; Marjorie E. Kornhauser, *Love, Money, and the IRS: Family, Income-Sharing, and the Joint Income Tax Return*, 45 HASTINGS L.J. 63 (1993); NTA REP. 2005, *supra* note 9, at 421 (citing Frances Woolley, *Control Over*

however much they may regard economic pooling as an ideal. Married women often say they work chiefly in order to have their own discretionary income. Moreover, even if pooling of resources could be regarded as the norm,[27] it still would not justify joint liability. Pooling is after all a voluntary and private arrangement which the spouses are free to change at any time and in any way they please. Why such voluntary sharing should give the I.R.S. the right to compulsory collection from a non-earning wife has never been explained.[28]

The difficulty becomes even greater after termination of the supposed economic unity of the family by divorce.[29] Joint filing is completely unrelated to pooling. Some couples still file jointly even after they are separated legally and economically, just to obtain a tax advantage. Other couples who happily share hearth, home, and income will file separately if their software indicates a lower tax. Filing separately does not suggest even the slightest whiff of marital discord.

Another rationalization for JRL is the much-repeated error that it was enacted as the "price one must pay" for lower tax rates on joint returns.[30] The favorable tax rates for joint returns computed by income-splitting were not in-

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Money in Marriage, *in* MARRIAGE AND THE ECONOMY 105 (Shoshana A. Grossbard-Schechtman ed., 2003).

27. It should be noted here that the concept of "pooling" or "economic unity" is quite vague, and any attempt to sharpen a definition for the purpose of basing law upon it is sure to raise controversy and confusion. For example, should a prenuptial agreement in some or any of its endless possible forms negate pooling? Are the children of a prior marriage part of the family's "economic unity"? Do equal-earning spouses who always go out "Dutch" pool more or less than a single-earner couple which goes out less often?

28. *See* Bryan Camp, *The Unhappy Marriage of Law and Equity in Joint Return Liability*, 108 TAX NOTES 1307, 1309 (2005). According to Professor Camp, JRL can be justified by the economic unity of the family. He points out that family members are often treated differently by the tax law than unrelated individuals, citing as an example I.R.C. section 267 which disallows loss deductions between family members. This is quite true as far as it goes, and every tax system I know of takes account of family relationships in one way or another both for purposes of rates and of anti-abuse provisions. But this is a far cry from justifying joint liability. The example of I.R.C. section 267 itself proves too much: Brothers are not liable for their sisters' taxes, nor mothers for their sons, despite the disallowance of losses between them. Professor Camp does write that development of a full justification is beyond the scope his article (though he is confident the full argument can be made), and so we should perhaps leave the matter at that. It is noteworthy though that to my knowledge the full argument has never even been attempted by anyone since the issue surfaced more than seventy years ago. As we will see, when Congress asked the Treasury in 1997 to defend JRL, the Treasury gave no justification at all and discussed some procedural issues instead. *See infra* note 63.

29. If a separated or divorced couple has already made a final division of their property, imposition of joint liability will have the effect of upsetting that agreement by forcing the equivalent of a transfer of property from wife to husband. The I.R.S. is not bound by any agreement between the spouses as to liability for contingent tax obligations.

Application of JRL against separated and divorced women seems to be an unintended consequence of the original enactment of joint return liability. Not one of the half-dozen cases litigated before its enactment in 1938 involved separation or divorce. The I.R.S. seems to have developed its aggressive position in this area in the 1960s, during the post-war explosion of divorce rates. This social development could not have been foreseen in 1938.

30. *See* Camp, *supra* note 28, at 1307–08.

troduced until 1948, some ten years after enactment of joint return liability.[31] Moreover, the right of spouses filing jointly to offset deductions and losses against each other's income and gains had been available to taxpayers from 1918 until 1938 without the "price" of joint and several liability. Joint returns were introduced in 1918, apparently for the sole purpose of convenience both for taxpayers and for the government, without any thought of a special rate advantage for married persons.[32] For many two-earner married couples, filing jointly is disadvantageous compared to filing as single persons.[33]

Even for those couples who do enjoy valuable tax benefits by filing joint returns under the current rules, the size of the benefits bears no relation to the joint return liability assumed, which may be unlimited in amount. The quid-pro-quo explanation cannot justify joint liability for amounts which may be far in excess of the tax saving from filing jointly. Also, the "benefits" usually inure to the husband, while the liability is almost always borne by the wife.[34]

III. THE INNOCENT SPOUSE RULES

A. Dubious Origins

Congress enacted the first "innocent spouse" rules under former I.R.C. section 6013(e) in 1971 in order to mitigate the harsh effects of joint return liability, particularly in the wake of the Supreme Court's 1961 decision in *James v. United States* which held embezzlements to be taxable.[35] Because the first IS rules track almost exactly the terms of judicial relief from JSL granted by the Sixth Circuit in some of these embezzlement cases, right down to the fateful "innocence" criterion, it is worthwhile to look at the judicial origins of the IS rules.

From its enactment in 1938 until 1971, the only escape from JRL was to show that the filing was not joint, for example, because the wife's signature obtained by duress.[36] Inventive lawyers pushed this duress defense to include in-

31. Income-splitting was not enacted as compensation for assuming joint return liability, but for the entirely different purpose of equalizing the tax burden between the common law states and the community property states, where income-splitting was already allowed on separate returns. This doctrine was established in *Poe v. Seaborn*, 282 U.S. 101 (1930).

32. A larger standard deduction was available to married persons, however, whether or not they filed jointly.

33. That is the "marriage penalty." The tax advantage of joint filing is modest in most cases. This "advantage" would disappear for many couples if married persons were allowed to file separately as unmarried persons.

34. Fewer women than men are self-employed, and self-employed persons have much greater opportunity to conceal income and to take aggressive tax positions. Also, criminal enterprise and risky behavior in general which results in unreported income is probably more common among men than women. Thus, joint return deficiencies are more likely to be caused by the husband, and are also likely to be greater in amount than deficiencies caused by the wife. Equal application of the law thus has distinctly unequal consequences.

35. James v. United States, 366 U.S. 213 (1961).

36. *See, e.g.*, Furnish v. Comm'r, 262 F.2d 727 (9th Cir. 1958).

validation of signatures procured by fraud and trickery, and this too was successful at least in the very sympathetic cases brought to the Sixth Circuit involving wives who were assessed taxes (plus the fifty percent fraud penalty and interest) on their husbands' embezzlements, even though they knew nothing of the embezzlements and had not profited from them. The taxpayers' theory was that if the wife had known of the embezzlements, she would never have signed the joint return.

The Tax Court uniformly rejected this argument on the ground that there was no showing that the wife's signature was the direct result of the husband's concealment.[37] This implies, correctly I think, that the wife might well have signed anyway even if she had known of the embezzlements. This did in fact often occur in later cases and still does today because the wife has almost certainly has no inkling of the concealed JRL she assumes by signing.[38]

In *Scudder v. Commissioner*, the first and most egregious of the Sixth Circuit cases, the business which the husband managed and from which he had embezzled was actually owned by the wife and her sisters.[39] She was nevertheless held liable by the Tax Court for the tax and the fifty percent fraud penalty as well. The result was of course outrageous. The Tax Court was well aware of that, and expressed its sympathy and regret, but it felt its hands were tied. The Sixth Circuit reversed, stating:

> We just cannot persuade ourselves that the executions of the joint returns here were not the product of conduct equivalent in wrong to the fraud, trickery and indeed, the duress which the Tax Court appears to

37. Another weakness in the argument is that it was well settled that fraud of a primary obligor in obtaining the promise of a guarantor does not affect the rights of the promisee, and unless the promisee knew of or participated in the fraud, the promisee can still enforce the guarantee. *See, e.g.*, Cresap v. Furst & Thomas, 105 So. 848 (Miss. 1925). The JRL of a wife is similar to the obligation of a guarantor.

38. The IS case law is replete with sad examples of women who signed joint returns in circumstances where it was obvious to anyone that the husband could not or would not pay. *See, e.g.*, Newberry v. Johnson, 743 S.W.2d 811 (Ark. 1988) (husband's lawyer's failure to warn wife of JSL as she signed delinquent joint returns at divorce spelled out cause of action for malpractice when she was later forced to pay); *see also* Etkin v. Comm'r, 90 T.C.M. (CCH) 417 (2005) (wife had reason to know that husband would not pay 2000 tax liability because she knew he had not paid 1997–1999 liabilities); Levy v. Comm'r, 89 T.C.M. (CCH) 1101 (2005) (wife knew of collection actions taken against gambler husband); Johnson v. Comm'r, 65 T.C.M. (CCH) 2760 (1993) (wife signed joint return the day before husband entered guilty plea to forty-one counts of embezzlement); Negoescu v. Comm'r, T.C. Summ. Op. 2005-161, 2005 WL 3068362 (U.S. Tax Ct. Nov. 8, 2005) (no equitable relief available to divorced wife for husband's items on 1991 and 1992 returns; she had reason to know he would not pay because he had not paid tax on time and in full for any of their joint returns since 1984); Griffin v. Comm'r, T.C. Summ. Op. 2005-41, 2005 WL 845904 (U.S. Tax Ct. Apr. 13, 2005) (wife liable and had reason to know husband could not pay delinquent taxes because they were in bankruptcy when she signed joint returns — prepared by an enrolled agent — for seven prior years of non-filing).

39. Scudder v. Comm'r, 405 F.2d 222 (6th Cir. 1968), *rev'g* 48 T.C. 36 (1967), *cert. denied*, 396 U.S. 886 (1969).

> concede will insulate its victim from liabilities which would otherwise accrue.[40]

This did not quite answer the Tax Court's point that there had been no showing that the wife's signature was the direct result of the husband's deception.[41] In any event, it noted the Tax Court's observation that the husband would have been unlikely to view his unauthorized loans as taxable because embezzlements only became taxable through retroactive application of the Supreme Court's later decision in *James v. United States*.[42] If the husband himself did not believe his withdrawals belonged on the joint return in the first place, his motive in leaving them off could not have been to trick his wife into signing an inaccurate return.

On the other hand, if the wife does know of her husband's inaccuracies on the return, she will be unlikely to fall into the trap of JRL unless she is duped by the government. She would not deliberately incur her husband's understated tax liabilities if she knew of JRL; she would simply file separately instead. This is why the government is not eager for her to know about JRL, and almost certainly why there is not and never has been any warning on the signature line, or anywhere else on the joint return.[43]

It is difficult to imagine a more unfortunate choice of terms than "innocent spouse" to describe the relief which was enacted in 1971.[44] The term was apparently imported from matrimonial law at a time when the no-fault revolution in divorce was already rendering the term obsolete.[45] Unlike the divorce situation in which the guilty spouse has caused harm to the innocent spouse, the tax situation involves no harm to anyone. Innocence implies lack of guilt, but the wife who happens to know of her husband's tax cheating is not guilty of anything. She is not cheating or misreporting herself,[46] and she is under no pre-existing duty to

40. *Scudder*, 405 F.2d at 226.

41. To make things more confusing, the Sixth Circuit held (on an issue not before it) that the embezzlements were actually loans and not taxable in the first place, on the ground that the wife and her sisters accepted them after the fact as loans and entered them as such on the partnership's books, and also because the matter was never prosecuted. *Id.* at 227. This despite the fact that in the Tax Court the parties had stipulated that the withdrawals were embezzlements.

42. *James*, 366 U.S. 213.

43. It appears that very few taxpayers are, or have any reason to be, aware of this assumption of liability. There no warning on the Form 1040 and tax preparers rarely inform wives of their potential liability. Preparers of joint returns nearly always ignore their almost inherent conflict of interest.

44. The term is not in the statute itself; however, it does appear in the 2002 Treasury Regulations at section 1.6015-1(a)(i) and on the new Form 8857 for claiming "innocent spouse" relief. It has always been the popular name for the relief provisions. SALTZMAN, *supra* note 20, uses the term throughout his work.

45. Under the older "fault" system, only the spouse who had not violated the marriage contract (using criteria which varied greatly from state to state) was entitled to a divorce, and then divorce was granted only if the other spouse was guilty of such a violation, typically including at least adultery or abandonment.

46. It may be that the *Scudder* court was particularly exercised by the government's imposition of the fifty percent fraud penalty where the wife was concededly innocent (in the plain English sense) of any fraud.

report her husband's cheating to the government, much less to stop him, or to pay the tax herself. Her knowledge does not harm the government any more than her ignorance protects it. Her only "fault" is to have signed a joint return instead of filing separately. The innocent spouse rules have accidentally created a sort of quasi-duty of due diligence; if the wife fails to read the return and to ask about potentially dubious items, she may be ineligible for relief and hence liable for the tax herself.[47] This due diligence is pointless, however, because exercising it does not benefit the government, and failure to do so does not injure the government or anyone else.[48]

It is true that a wife who neither knew of nor profited from the husband's tax delinquency seems more sympathetic, all else equal, than a wife who both knew of and enjoyed some of the proceeds of his misreporting. But that does not mean that there are any plausible grounds to tax the "aware" spouse just because of her awareness, or a benefited spouse, just because she profited. A wife filing separately would have no liability for her awareness any more than a girlfriend would, even if she enjoyed some or all of the proceeds.

Despite all this, the term itself "innocent spouse" through its associations seems to have exercised an unfortunate degree of influence in making the relief rules seem fair although they plainly are not. I think there are several reasons for this. First, it makes it easier for administrators and judges to impose liability if the wife is not "innocent" — the liability is then her own fault and the punishment can be imposed on her with a clear conscience. In short, it makes it easy to blame the victim. Conversely, if the husband has abused the wife physically, emotionally or by deceit in financial affairs, the IS rules allow the exonerating administrator or judge to assume the chivalrous pose of protecting her, when in fact she is only paying her own correct amount of tax. Finally, the IS rules have had the soothing effect of diverting attention away from the arbitrary and unfair rule of JRL and toward the more satisfying task of measuring and judging the moral conduct of the spouses instead.[49] It is unfortunately only a slight exaggera-

In one of the earliest mentions of an "innocent spouse," the reference seems to be to the fraud penalty. Spanos v. United States, 212 F. Supp. 861, 864 (D. Md. 1963).

47. Note also that even if the wife is aware of her "duty" to certify the accuracy of the return, the penalty for breaching it is unfair. If a professional return preparer or an I.R.S. agent fails to use due diligence, he does not become liable for the tax deficiency he could reasonably have been expected to discover on someone else's return. And yet such persons have both tax expertise and awareness of their professional duties, upon which the I.R.S. does reasonably rely.

48. One might add that the original purpose of the joint return (convenience) is at least partly defeated if the wife must review it at her peril. Return preparation is an unpleasant business at best, and it is efficient to allocate this chore to one spouse.

49. Professor Camp has written a far more positive account of the IS rules: "[T]he substance of spousal relief provisions since 1971 has remained the same: Spousal relief is available only to the extent that the assumption of economic unity underlying the joint liability rule can be shown to be false." Camp, *supra* note 28, at 1314. As noted above, I do not think that JRL can be justified by a theory of economic unity as a starting point. Nor do I think the IS rules flow easily from this assumption. For example, in the statute

tion to describe the wife who is assessed with her husband's taxes as doomed to exploitation and abuse. If her husband did not abuse her, the I.R.S. will.

The Sixth Circuit did not have the power to write JRL out of the Code. It could only stretch the law in certain situations to try to show that the return was not joint. The innocence defense (actually, "defrauded" defense would be more accurate) had no other purpose, and should not have been taken seriously as anything other than what it was: a makeshift *ad hoc* argument whose success owed less to its plausibility than to the fact that allowing the government to win would have been an outrage. The drafters of fresh legislative relief from JRL were not under the limitations of the *Scudder* court, and yet their 1971 IS relief rules were little more than a slavish copying of the "innocence" rule in *Scudder.*[50]

Lack of benefit would have been a far more promising basis for legislative relief than the "awareness" factor, especially if liability were limited to the amount of money or property the wife received and had control over. This would have avoided some severe problems that have always plagued the IS rules. Knowledge seems to require liability even where there is no benefit at all. And even without knowledge, any "significant" benefit may trigger a liability which is hugely disproportionate. If benefit were the sole test, and if the I.R.S. were forbidden to attempt collection from the wife until exhausting all possibilities of collection from the husband, it would have become clear that no relief rules were needed at all. Repeal of JRL and the use of transferee liability[51] instead would have accomplished much the same result. But the drafters of the IS rules apparently never considered this alternative, and since then every problem of unfair enforcement of JRL has been misperceived as a mere glitch that could be corrected by amending the IS rules yet again.

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as well as the regulations and the case law, the primacy which has always been put upon the factor of innocence points away from this interpretation. There are many decisions holding in favor of the unaware wife even where the husband has shared some or all of the money which should have been paid in taxes, as long as the sharing was not so lavish or unusual to put the wife on notice. Refusal to share money is almost nonexistent as a factor in the case law compared to refusal to share information about money. Thus a much better case could be made for marital trust as a consistently important factor than for economic sharing — to the extent that any such generalizations can be made.

50. The *Scudder* decision was mentioned in the S. REP. NO. 91-1537, at 2 (1970). The fact that the wife did not benefit in *Scudder* was strictly speaking irrelevant to the validity of her signature, but it did clearly influence the Sixth Circuit's decision, and found its way into the new relief rules as well.

51. Transferee liability under I.R.C. section 6901 would apply only to the extent of property transferred to the wife, and cannot apply absent such a transfer, unlike I.R.C. section 6013(d). Also, the I.R.S. would generally be required prove that the husband was insolvent at the time of a transfer, or that he became insolvent as a result, and that the property was transferred without adequate or fair consideration. In determining insolvency, debts include unpaid income tax liabilities, whether assessed or not.

B. Haphazard Relief under Former I.R.C. Section 6013(e)

Under former I.R.C. section 6013(e), as it stood before the 1998 reforms,[52] a wife could be relieved of liability for tax items of the husband only if they were "grossly erroneous";[53] they caused a "substantial understatement";[54] the wife did not know, and had no reason to know of the substantial understatement caused by such items ("innocence"); and taking into account all the facts and circumstances, it would be inequitable to hold the wife liable for the understatement ("equity"). The wife had the burden of proof as to each of the elements for relief. The relief rules were unsatisfactory because they were vague and unpredictable due to the nature of the "innocence" and "equity" requirements.[55] There is a large body of case law interpreting the innocence requirement. Factors which have been used by the courts as indicating that the wife had "reason to know" include lavish or unusual expenditures, involvement in the family budget or the husband's business, higher education or business experience, and whether the husband was secretive in his business affairs. The courts have not applied these factors consistently, and so the decisions are in conflict, and the outcomes are largely unpredictable.[56] The same may be said of the equity requirement, which

52. There were many rounds of reform of the innocent spouse rules between 1971 and 1998. The most important of these was the 1984 amendments which for the first time expanded relief from its original limitation to omissions of income to include as well erroneous deductions and credits.

53. An item of omitted income was "grossly erroneous" per se. Erroneous claims of deduction, credit, or basis may also qualify for relief, but such items were required in addition to be "without foundation in fact or law." This phrase was given conflicting interpretations by the courts, and severely limited relief for such items. Mere disallowance of a deduction was not enough. Note that it is sometimes difficult to determine whether an item is income or deduction, such as reallocation of capital gain to ordinary income, over which there is a split of authority.

    Items other than omitted income, and erroneous claims of deduction, credit, or basis were ineligible for relief, such as the alternative minimum tax, and the self-employment tax. There was no relief for simple nonpayment of tax where the return was correct; relief was in effect limited to items of negligence and fraud. There was no obvious reason for these limitations, and they had the somewhat bizarre effect of putting the wife in a better position if the husband misreported than if he reported honestly. Unfortunately, this is still the case to some extent under new I.R.C. section 6015.

54. There were dollar limitations under former I.R.C. sections 6013(e)(3) and (4) restricting relief to items exceeding $500, and in the case of erroneous claims of deduction, credit, or basis, the item was in addition required to exceed a percentage-of-income floor.

55. The rules also limited relief in many deserving cases due to the arbitrary restrictions to "grossly erroneous" items and to "substantial understatements," but these requirements were eliminated in the 1998 reforms.

56. For example, the cases are split as to whether the wife has a duty to review the return. Compare, for example, the pre-1998 tax shelter decisions in *Cohen v. Commissioner*, 54 T.C.M. (CCH) 944 (1987), and *Shapiro v. Commissioner*, 51 T.C.M. (CCH) 818 (1986), where taxpayers lost, with the decisions in *Hinds v. Commissioner*, 56 T.C.M. (CCH) 104 (1988) and *Estate of Killian v. Commissioner*, 53 T.C.M. (CCH) 1438 (1987), where taxpayers won.

    Another inconsistency concerns the doctrine that if the wife is aware of the existence of the underlying transaction, ignorance of the tax consequences is no excuse, which originated in *McCoy v. Commissioner*, 57 T.C. 732 (1972) (holding the wife liable for section 357(c) gain from husband's incorporation of deficit partnership where both were ignorant of tax consequences), and was inaptly interpreted as analogous to the criminal law doctrine that "innocence of the law is no excuse" (in dictum) in *Sanders v. United*

focused on whether the wife received a significant benefit from the husband's understatement.[57] Unfortunately, the same inconsistencies still plague cases under the current I.R.C. section 6015. Because of the difficulties in applying the innocence test in particular, the IS rules tended to degenerate into a global subjective test of whether the spouse seeking relief can move the judge to sympathy. If she can, difficulties disappear because the factors are flexible enough to accommodate almost any conclusion. So, for example, if circumstances seem to require it, money which the wife received from the husband can be interpreted as benefiting her children and not herself, or the other way around, the funding of her children's education with untaxed dollars may be held a significant benefit to her instead.[58] Similarly, clues to possible misbehavior of the husband may be interpreted as perfectly innocent when viewed from her circumstances, or held to be reasons for her to have looked further and found out the offending item(s), as needed. If the wife fails to elicit sympathy, the judge might add insult to injury with such comments as Congress did not intend to offer relief for "willful ignorance" or "turning a blind eye" or for an "ostrich imitation."[59] If she succeeds, on the other hand, she might be commended on what the judge views as her good

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States, 509 F.2d 162, 169 n.14 (5th Cir. 1975). The Tax Court affirmed this doctrine in *Bokum v. Commissioner*, 94 T.C. 126 (1990). Both *McCoy* and *Bokum* involved wives still living with their husbands at the time of trial. Indeed denying relief to wives still living with their husbands seems to have been the real reason for the otherwise inexplicably absurd McCoy doctrine.

The McCoy doctrine has been glossed over without mention in many cases allowing divorced or widowed women relief. *See, e.g.*, Guth v. Comm'r, 897 F.2d 441 (9th Cir. 1990) (wife participated in creation of phony charitable contributions); Ratana v. Comm'r, 662 F.2d 220 (4th Cir.1981) (deserted wife knew of husband's employment); Hayes v. Comm'r, 57 T.C.M. (CCH) 869 (1989) (deserted wife knew of husband's employment); and Estate of Vella, 43 T.C.M. (CCH) 528 (1982) (widow knew of husband's sale of property). For details, see Richard C.E. Beck, *Looking for the Perfect Woman: The Innocent Spouse in the Tax Court*, REV. TAX'N INDIVIDUALS, Winter 1991, at 3.

57. The principal factor considered under the equity test is whether the wife benefited from the item over and above ordinary support. *Sanders*, 509 F.2d at 168 n.14. The courts have been inconsistent in interpreting the meaning of "benefit." Some courts have held small divorce settlements (or inheritances) partially paid out of untaxed income to be a "benefit," and other courts have held large amounts not to be a "benefit." *Compare, e.g.*, Levin v. Comm'r, 53 T.C.M. (CCH) 6 (1987), *with* Estate of Brown v. Comm'r, 55 T.C.M. (CCH) 1249 (1988). For details, see Beck, *supra* note 56, at 17–29.

Note also that because all elements for relief had to be met, the wife may lose even if she did not benefit at all, if she is found to have had reason to know of the item. The same is true under I.R.C. section 6015(b).

58. *Compare* Madden v. Comm'r, 91 T.C.M. (CCH) 652 (2006) (tuition for child benefited wife for purposes of I.R.C. section 6015(f)) *and* Levy v. Comm'r, 89 T.C.M. (CCH) 1101 (2005), *with* Sanders v. United States, 369 F. Supp. 160, 167 (1973), *aff'd*, 509 F.2d 162 (5th Cir. 1975) ("[P]robably most of any benefit from any of Charles' omissions from gross income will eventually accrue to the [adopted] child — for his feeding, shelter, and education.").

59. *See, e.g.*, Cohen v. Comm'r, 54 T.C.M. (CCH) 944 (1987) (divorced schoolteacher held liable for husband's tax shelter deduction because she did not read return, although her husband was CPA and Peat Marwick tax partner).

character or responsible behavior as wife and mother.[60] Taxation obviously should not depend on subjective and idiosyncratic sympathies, and that is a major reason why the innocent spouse rules failed, and still fail to provide an acceptable and predictable remedy for the unjust effects of joint return liability.

IV. THE FAILURE OF REFORM

A. Background

The American Bar Association ("ABA") recommended repeal of JRL in 1995, essentially for the reasons stated in the preceding section.[61] The ABA was persuaded that JRL could be repealed without changing the current rates, forms or filing statuses, and without creating significant new opportunities for taxpayer abuse. In the Taxpayer Bill of Rights II, Congress directed both the General Accounting Office and the Treasury Department to conduct a study of innocent spouse issues, and specifically requested an evaluation of the ABA proposal (among others).[62] The Treasury's Report was over a year late, and arrived only just in time for the House Subcommittee on Oversight Hearings of February 24, 1998,[63] after the House version of the 1998 bill "Taxpayer Bill of Rights III" had already been passed.[64] The Treasury Report did not concede very much. It recommended abolishing the "grossly erroneous" dollar thresholds for relief, and the "without foundation in fact or law" limitation on deductions, both of which had long been recommended by reformers.[65] These are certainly improvements at the margin, but neither one mattered a great deal as long as the all-important "innocence" test remained in place; that was the wall against which most relief claims shattered.[66]

60. Many of the inconsistencies in the Tax Court's decisions can be explained by its distinct preference for the traditional wife and mother as opposed to the educated and independent modern woman. For details, see Beck, *supra* note 56.

61. *See* Domestic Relations Comm., Am. Bar Assoc. Section on Tax'n, *Comments on Liability of Divorced Spouses for Tax Deficiencies on Previously Filed Joint Returns*, 50 TAX LAW. 395 (1997).

62. Taxpayer Bill of Rights II, Pub. L. No. 104-168, § 401, 110 Stat. 1452, 1459 (1996).

63. *See Treasury Department Report on Innocent Spouse Relief: Hearing Before the Subcomm. on Oversight of the Comm. on Ways & Means*, 105th Cong. (1998) [hereinafter *1998 Report on IS Relief Hearing*].

64. Taxpayer Bill of Rights III, Pub. L. No. 105-92, tit. III, 112 Stat. 685 (1998). However, the Treasury's views had apparently been shared with the House draftspersons. *See* Toni Robinson & Mary Ferrari, *The New Innocent Spouse Provision: 'Reason and Law Walking Hand in Hand'?*, 80 TAX NOTES 835, 849 nn.65–66 (1998).

65. *See, e.g.*, Jerome Borison, *Innocent Spouse Relief: A Call for Legislative and Judicial Liberalization*, 40 TAX LAW. 819 (1987).

66. As for the dollar limitations, relief claims for under $500 are now allowed, but query whether many will bring them in view of the high cost of tax litigation, and general anxiety about antagonizing the I.R.S. Most potential claimants probably just fold and pay. Data as to this are lacking, as they are for most IS issues. The House bill (and the Treasury Report) also proposed two other forms of relief, both of which were enacted: (i) partial relief for items of which the wife knew or had reason to know of only a portion,

The Treasury also promised to centralize innocent spouse decisions to ensure greater uniformity, to notify affected taxpayers of the existence of IS relief, and to publish forms and instructions to make IS relief requests easier, all of which was in fact done.[67] It is difficult to quarrel with these improvements, except to point out that they do nothing to alleviate the underlying problem. It is a bit like addressing a problem of thousands of wrongly incarcerated persons by supplying them with easy-to-use forms for requesting a pardon from the governor. The Treasury could easily have put a warning of JSL on the signature line of the Form 1040,[68] but this was not even considered, nor was it brought up at the House Subcommittee hearings.

Another and still more significant potential improvement was (and remains) in the Treasury's power to implement administratively, but which the Treasury also failed even to consider. This was to exhaust all possibilities for collection from the husband before starting any collection attempts against the wife. The issue was brought up briefly in the House Oversight Subcommittee hearings, but the Treasury's spokesman Donald Lubick managed to duck the question.[69] Any such limitation would undercut the Treasury's chief reason for insisting on JRL, which is to allow agents to collect from the wife if she appears to have assets that are easy to reach ("low-hanging fruit")[70] without troubling themselves over the husband.

The most interesting omission from the Treasury Report, however, is any estimate of what it might cost the Treasury if JRL were to be repealed. It would appear indispensable to know this in order to make any serious evaluation of the IS problem in general, and the ABA repeal proposal in particular. And yet the I.R.S. never even attempted to keep records, according to the U.S. General Accounting Office. Nobody at the Treasury or any other office in the government office knows even now, for example, in how many JRL collection cases the husband could pay if he were pursued (and why he was not pursued), how much extra effort such collections might cost, and whether transferee liability might apply as an alternative.[71] If one considers as well the costs of processing some 50,000 or more IS cases per year, and litigating fifty or so in the courts, all on an

and (ii) expansion of Tax Court review to include all IRS denials of relief. *See* Taxpayer Bill of Rights III, 112 Stat. 685; *see also 1998 Report on Hearing, supra* note 63.

67. *See* discussion *infra* Part IV.C.

68. In the private sector, it is unthinkable that a person could become liable as a guarantor of another's debts by signing a form which fails to even mention the guarantee obligation, much less its (unlimited) amount. Imagine a bank explaining to its perplexed victim that her status as guarantor is all explained in the (separate) instructions.

69. *1998 Report on IS Relief Hearing, supra* note 63, at 29–31 (question by Congressman Weller to Mr. Lubick who replied, in essence, that agents would be given sensitivity training about IS problems).

70. *Id.* at 35 (statement of Lynda Willis).

71. The estimates should exclude JRL assessments which are not realistically collectible in the first place from either spouse.

individual fact-intensive basis, together with the foregone revenue from assigning audit personnel to these IS cases,[72] quite possibly the real net revenue costs of repealing JRL might be small. In any event, however, it seems odd that the Treasury is insistent that it needs to keep JRL when it apparently does not know why and is not concerned enough to find out. One might almost call this the Treasury's own "willful ignorance" or "ostrich imitation."

Regarding the ABA proposal itself, the Treasury Report trotted out the old canard that JRL is justified by the tax savings,[73] and finished up by blaming the victims of JRL. The Treasury Report blandly states in the pertinent part of its conclusions (not a single one of which had been discussed in the text itself) as follows:

> Second, the basic principle that taxpayers who file joint income tax returns are jointly and severally liable for the correct amount of the tax due for the period covered by the return is appropriate in the vast majority of cases. By signing and filing a joint return, and thus obtaining the advantages of joint filing, each spouse voluntarily undertakes the responsibility for the correct joint liability. Taxpayers who wish to avoid this rule, and in effect obtain proportionate liability, already may elect to file separate returns using married filing separate status, although there is usually an economic penalty for doing so. Undeniably, however, additional effort should be made to ensure that taxpayers are fully aware of their filing status options and the consequences of each filing status.[74]

The House Bill retained JRL, as the Treasury wanted, and also kept the IS rules as they were, but stripped them of the "grossly erroneous" requirements of the dollar limitations and the rule limiting relief from non-income items to those having "no basis in fact or law."

The Senate version was quite different, and followed the ABA proposal that a married person could elect to be taxed only upon her own income (which the Treasury Report had termed "back-end proportional liability"). The Conference Committee eventually combined these two very different proposals into a highly complex compromise. The House proposal became new I.R.C. section 6015(b), applicable to all taxpayers. The Senate proposal for separate liability became new I.R.C. section 6015(c) and was limited to requests from separated and di-

72. *See* Steve Johnson, *The 1998 Act and the Resources Link Between Tax Compliance and Tax Simplification*, 51 KAN. L. REV. 1013, 1058–59 (2003). Professor Johnson argues that the new IS rules waste scarce audit resources and create unreasonable costs.

73. However, Mr. Lubick also states later on in the same report that the I.R.S. does not have the resources to process up to forty-nine million new returns. *See 1998 Report on IS Relief Hearing, supra* note 63, at 8 (statement of Mr. Lubick). It has been estimated that it would cost $200 million to do so. Thus, joint filing is convenient and beneficial to the government as well as the taxpayer, just as Congress intended in 1918.

74. *Id.* at 57.

vorced persons, watered down with some anti-abuse provisions and a new and weaker innocence test: The wife must not have "actual knowledge" (as opposed to constructive knowledge under I.R.C. section 6015(b) and former I.R.C. section 6013(e)) in order to obtain relief, and the burden of proving actual knowledge is borne by the government. A third form of relief (and indirectly a third form of innocence) was enacted in I.R.C. section 6015(f) which grants discretion to the Secretary to dispense equitable relief where appropriate in cases where I.R.C. sections 6015(b) and (c) do not apply. The principal focus of equitable relief is cases of underpayment where the return was correct but the tax was not paid,[75] a situation for which there was no relief under former I.R.C. section 6013(e). The bottom-line effect of all this is slightly more relief for some separated or divorced taxpayers, and for a very few women whose husbands failed to pay, but at an unreasonable cost both in complexity and in fairness to most other taxpayers.

B. *The New Rules*

Since 1998 there are three provisions for IS relief, new I.R.C. sections 6015(b), (c) and (f), each with its own peculiarities. Former I.R.C. section 6013(e) occupied one short subsection of the Code, but the new IS relief takes up an entire new section 6015, which has eight subsections of its own, some of which are longer than the entire former provision. In addition there are new regulations which became final in July of 2002 and now occupy thirteen double-column pages in my CCH edition, which is more than a ten-fold increase in size. Even all this does not contain the rules for equitable relief under I.R.C. section 6015(f), which are separately promulgated in Revenue Procedure 2003-61. Forms have been published for the first time specifically for requesting IS relief,[76] together with ancillary questionnaires, and informational notices of taxpayer rights. The new rules are not only numerous, they are also very complex, confusingly repetitive and overlapping, and sometimes arbitrary and even incomprehensible.

Of the three new forms of relief under I.R.C. sections 6015(b), (c) and (f), the first is very similar to former I.R.C. section 6013(e). As under former law, the wife may obtain IS relief if (i) there is an understatement of tax attributable to the husband, (ii) the wife establishes that she did not know, and had no reason to know, of the understatement,[77] (iii) taking into account all of the facts and

75. The Treasury probably thought that in many such situations its only opportunity for collection might be from the wife, rather than just its easiest one. For that reason, one supposes, the Treasury opposed codifying equitable relief, and kept the rulemaking in its own hands. The resulting rules are very strict, and almost all taxpayers lose.

76. Form 8857, Request for Innocent Spouse Relief (and Separation of Liability and Equitable Relief), *available at* http://www.irs.gov/pub/irs-pdf/f8857.pdf.

77. This reason-to-know requirement was the bane of prior case law interpreting the former I.R.C. section 6013(e). Sadly, it was not repealed, and sadly, all the baneful old decisions under the case law remain precedent under new I.R.C. section 6015(b).

circumstances, it is inequitable to hold her liable for the deficiency, and if (iv) she makes a new election[78] to be relieved of the liability not later than two years after the date that collection activities have begun with respect to the deficiency.[79] When the I.R.S. initiates collection activity, it must provide the taxpayer with information regarding her rights to apply for innocent spouse relief, and if the I.R.S. fails to do so, the two-year time period is tolled.[80] If an individual fails to qualify for relief under I.R.C. section 6015(b) only because of the "knew or had reason to know" requirement, she may qualify for partial relief by establishing that she was not aware of the full extent of the understatement.[81]

Under I.R.C. section 6015(c), the second of the three forms of relief, taxpayers who are legally separated, divorced, or who have been living apart for a full year are eligible to elect "proportional" or separation of liability, and in principle they receive (unless some anti-abuse restrictions apply) nearly complete relief so that they are liable for taxes only on their own individual income. The separated-or-living apart requirement is a dubious policy decision.[82] Married women should not be punished for staying married, nor should the tax law provide an incentive to end (or pretend to end) a marriage to avoid a large tax liability. Although it may seem that, all else being equal, it is more unfair to inflict JRL upon divorced than still-married women, it is rare that all else is equal. Extracting a large amount from a still-married woman may be far more injurious than a small amount from a divorced woman.[83]

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78. Such an election was not required under the former law, and its purpose is obscure. An election is also required under I.R.C. sections 6015(b), (c) and (f). The election has provoked considerable litigation over unnecessary questions of timeliness.

79. Collection activities do not include a mere notice of deficiency or even a notice of intent to levy or a demand for payment. Only such activities as an actual levy, or commencement of a collection suit will start the two-year clock. So will the I.R.S. offset of a refund.

80. *See, e.g.*, Ferris v. Comm'r, T.C. Summ. Op. 2005-131, 2005 WL 2090804 (U.S. Tax Ct. Aug. 31, 2005); Nelson v. Comm'r, T.C. Memo 2005-9, 2005 WL 152020 (U.S. Tax Ct. Jan. 25, 2005); McGee v. Comm'r, 123 T.C. 314 (2004).

81. I.R.C. § 6015(b)(2) (2000).

82. If it was a policy decision at all. All four witnesses at the televised Senate Finance Commmittee 1998 Hearings who related their highly-publicized horror stories of I.R.S. persecution on account of JRL were divorced women. It may be that the Treasury simply wanted to limit its losses by confining any substantial new relief to this highly vocal group. *Proposals to Reform the Innocent Spouse Tax Rules: Hearings Before the Senate Committee on Finance*, 98 TNT 32-23, Doc. 98-6302 (unofficial transcript); *see also* Robinson & Ferrari, *supra* note 64, at 844 n.69.

83. Consider the recent case of *Korchak v. Commissioner*, 92 T.C.M (CCH) 199 (2006), in which the wife succeeded in obtaining relief under I.R.C. section 6015(b), despite the fact that the return in question showed a refund of nearly $100,000 due to deductions of twice that amount. The Korchaks, both Ph.D.s in the sciences, had been happily married for forty-eight years at the time of trial in 2006. Helen Korchak, an academic researcher in immunology and mother of three, was sixty-five years old and planning to retire the next year. She faced a deficiency assessment of over two million dollars due entirely to Ernest Korchak's 1982 disallowed partnership losses from 1982. Ernest, now seventy, could not pay because he had subsequently lost some $700,000 in trying to turn around a business he invested in and

The rules for allocation of the deficiency under separation of liability are set forth in I.R.C. section 6015(d) and in detailed regulations.[84] In order to qualify, the wife may not have actual knowledge of the item giving rise to the deficiency. Although the statute puts the burden of establishing actual knowledge on the I.R.S., the case law has somewhat weakened the intended remedial effect. Actual knowledge has been held to mean mere knowledge of the existence of the underlying transaction, even if the wife had no reason to suspect that her husband misreported it.[85] Additional restrictions apply if there was a transfer of certain "disqualified assets" between the spouses,[86] or if the I.R.S. demonstrates that assets were transferred between the spouses pursuant to a fraudulent scheme.[87] As under I.R.C. section 6015(b), the election must be made within two years after collection activities have begun. Inexplicably, no refunds are allowed under I.R.C. section 6015(c),[88] though they are permitted under (b) and (f).

The third and last form is equitable relief under I.R.C. section 6015(f), which may apply if an individual fails to qualify under I.R.C. section 6015(b) or (c), and taking into account all of the facts and circumstances it would be "inequitable" to hold her liable, as determined by the I.R.S. The principal focus is to allow relief where the joint return was correctly filed, but the tax was not paid. Revenue Procedure 2003-61[89] sets forth certain threshold conditions that must be satisfied for any request for equitable relief to be considered, which include the two-year election and the separated-or-divorced requirements of I.R.C. section

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managed. The I.R.S. wanted to seize Helen's life savings (her retirement accounts) and her home on the eve of her planned retirement, and asserted that payment would cause her no hardship.

84. Items giving rise to a deficiency are allocated first in full to the spouse who incurred them, and then allocated to the individuals filing the return in the same manner as it would have been if they had filed separate returns for the year.

85. *See* Cheshire v. Comm'r, 282 F.3d 326 (5th Cir. 2002) (wife had actual knowledge of husband's early withdrawal from IRA even though she did not know that it was taxable and was advised that it was not). The Tax Court also decided *en banc* against the taxpayer in *Cheshire*, 115 T.C. 183 (2000), however the dissents seem to me to have the better argument. *See also* Svetlana G. Attestatova, *The Bonds of Joint Tax Liability Should Not be Stronger Than Marriage: Congressional Intent Behind Section 6015(c) Separation of Liability Relief*, 78 WASH. L. REV. 831 (2003). The government's principal argument was that ignorance of the law is no excuse. This maxim of the criminal law makes sense only for the substantive tax law as applied to the husband or earning taxpayer; it is nonsense when applied to the wife whose "knowledge" is supposedly being tested for JRL liability. *See* Beck, *supra* note 56, at 25–28. For more confusion between substantive liability and derivative liability through JRL, *see infra* note 91.

86. I.R.C. § 6015(c)(4)(B) (2000).

87. I.R.C. § 6015(c)(3)(A)(ii). Both anti-abuse provisions seem to have been added either at the insistence of the Treasury, or in order to humor it. The Treasury Report resisted repeal of JSL because it saw hobgoblins of abuse waiting to pounce, in the form of fraudulent schemes where one spouse would transfer all the couple's assets to the other to put them beyond the I.R.S.'s reach. The Report gave no examples of such schemes, and did not ask why savvy couples do not now file separately to employ these hobgoblins.

88. I.R.C. § 6015(g)(3).

89. Rev. Proc. 2003-61, 2003-2 C.B. 296.

6015(c), together with an even larger array of anti-abuse conditions too lengthy to catalog here, plus a threshold requirement that the requesting spouse will suffer economic hardship if relief is not granted. In addition, the unpaid items must be those of the husband (with a surprising exception which apparently makes it possible in some situations (absurdly) to relieve a taxpayer of liability for *her own* tax items).[90] If all these threshold conditions are met, the I.R.S. may grant relief if it determines that it would be "inequitable" to hold the requesting spouse liable, taking account of all the facts and circumstances.

Revenue Procedure 2003-61 goes on to list some factors which will incline the I.R.S. favorably or unfavorably toward granting relief. Some of the favorable factors seem to duplicate the "threshold" factors, such as marital status and economic hardship. Others track the requirements of I.R.C. section 6015(b), *viz.* lack of knowledge, actual or constructive,[91] and lack of significant benefit. Still others are peculiar to equitable relief, such as liability of the husband to pay the tax pursuant to a divorce or separation agreement, and whether the wife has kept current with her taxes — a sort of good citizenship test. The negative factors listed are for the most part simply the contrary of the positive ones. No one factor is to be given determinative weight. With such a long and difficult obstacle course it is not surprising that very few women have qualified for equitable relief.

Finally, for relief under I.R.C. sections 6015(b) and (c) — but, inexplicably, not for equitable relief under (f) — the statute requires that the non-requesting spouse be afforded notice and the opportunity to become a party in the relief

90. Rev. Proc. 2003-61, section 4.01(7) makes it a threshold condition for relief from tax on an item that the item be attributable to the wife, but with exceptions, notably that of section 4.01(7)(c) which is nonpayment of tax due to misappropriation by the husband of funds intended to pay the tax. It is not clear whether this is even limited to funds provided by the wife. Needless to say, if a third party misappropriates funds intended to pay tax, no relief is available. Rev. Proc. 2003-61, 2003-2 C.B. 296.

This provision revises Rev. Proc. 2000-15, section 4.03(1)(f) which stated that if an item is "attributable to non-requesting spouse" that is simply one factor among six which should be considered in favor of granting relief — in other words, relief appeared to be available from one's own items under the right circumstances. Rev. Proc. 2000-15, 2000-1 C.B. 447. This is testimony to the powerful appeal of innocence doctrine as a source of liability. Nobody appears ever to have qualified, however.

91. The "innocence" test has become so far unmoored from its origins in *Scudder* that it has now drifted to situations where no signature at all was ever at issue and the question of fraud or duress is irrelevant. I.R.C. section 66(c), for example, which provides for limited relief from community property liability for income of the other spouse under *Poe v. Seaborn*, 282 U.S. 101 (1930), now contains the same innocence test as I.R.C. section 6015(b), even though the liability routinely applies to taxpayers filing separate returns or even no returns at all. The flush language of I.R.C. section 66(c), which was added by the 1998 Reform Act, provides for "equitable relief" which the courts have interpreted as interchangeable with the conditions for such relief under I.R.C. section 6015(f). *See, e.g.*, Bennett v. Comm'r, T.C. Summ. Op. 2005-84, 2005 WL 1405977 (U.S. Tax Ct. June 16, 2005) (wife filing separately challenged her W2 statement as phony concoction of husband; her argument was accepted but she was subjected instead to Seaborn liability for tax on half her husband's salary, and because she knew he was employed, no relief available under I.R.C. section 66(c)).

proceedings.[92] The notice and intervention rule has been held to apply to all deficiency proceedings in which an innocent spouse claim is raised, as well as to "stand-alone" proceedings, i.e., those which are not ancillary to deficiency or collection due process claims, in which equitable relief is the only issue.[93] This provision seems to have no other purpose than to invite the husband to testify against the wife on the all-important factual question of innocence.[94] As under prior law, if the wife is forced to pay the liability of the husband is extinguished,[95] and this invites hostile and self-serving testimony as to the degree of knowledge of, or the economic benefits enjoyed by the petitioning spouse. It would have been preferable to invite the husband to become a party only in the (extraordinarily rare) case of uncertainty as to which spouse should be attributed the item of income or deduction at issue.

C. *The New Rules in Action*

The 1998 Reforms ushered in a new administrative system as well as new rules and new forms. The I.R.S. now has an entire processing center in Covington, Kentucky devoted to the processing of IS claims which was staffed as of 2001 by 157 employees.[96] In all, it is reported that the equivalent of 953 full-time employees were expected to work exclusively on IS case processing in 2001, with most or all of them drawn from the ranks of auditing personnel.[97] Despite this, claims processing is painfully slow, in part because of the unexpectedly large number of claims for relief,[98] and in part because each claim must be decided on a case-by-case individual basis. In FY 2005, the I.R.S. took an average 192 days

92. I.R.C. §§ 6015(e)(4), (h)(2).

93. *See* King v. Comm'r, 115 T.C. 118 (2000).

94. See *Van Arsdalen v. Commissioner*, 123 T.C. 135 (2004), cited in the National Taxpayer Advocate's 2005 annual report to Congress: "[T]he I.R.S. served notice on Ms. Van Arsdalen's former spouse, Mr. Murray, of his right to intervene in the case for the *sole purpose of challenging* Ms. Van Arsdalen's right to Section 6015 relief. Mr. Murray filed a notice of intervention and expressed his intent to intervene for the sole purpose of *supporting* his former wife's right to relief." The Tax Court decided that the intervenor's rights were not so restricted, and the I.R.S. subsequently revised its notice of filing. NTA REP. 2005, *supra* note 9, at 534.

In *Baronowicz v. Commissioner*, 423 F.3d 972 (9th Cir. 2005), it was held that the husband had no right to appeal a decision in favor of his wife, on the ground that he remained liable for the full amount whatever the outcome, and that he was therefore not aggrieved. This seems doubtful. It supposes that if the I.R.S. won it would ignore its victory and collect from the husband instead. However, the court was refreshingly direct in stating that the government was harmed by its loss in being "deprived of an additional source from which to recover." *Id.* at 975.

95. Except for liability for contribution under state law, if the innocent spouse is forced to pay, which is a rare and expensive proceeding.

96. GAO, INNOCENT SPOUSE PROGRAM, *supra* note 6, at 10.

97. Ryan J. Donmoyer, *The New Innocent Spouse Relief: More Popular than Anyone Thought*, 87 TAX NOTES 1023 (2000).

98. Everyone agrees that the 50,000 or so new claims per year is a huge increase since the 1998 reforms, but no one knows exactly how huge because the I.R.S. did not keep records for earlier years.

to process IS claims which were ultimately allowed in full by the examination function, and 807 days for claims which went to the Appeals function.[99] The outcomes are still more painful, because relief was granted in only about 30% of claims.[100]

The National Taxpayer Advocate ("NTA") paints a depressing picture of the typical victim of JRL. She is overwhelmingly likely to be a relatively low-income single mother forced to pay the taxes of a wealthier husband or ex-husband:

> . . . [sixty-five] percent of the taxpayers who request innocent spouse or community property relief make less than $30,000 per year. Ninety per cent are women. Thirty-four percent are single filers and another 51 percent file as "head of household," meaning they are unmarried and maintain a home for children of other persons. . . . On average, women earn only 25 percent of the income reported on a joint return. Thus, the most frequent effect of joint and several liability may be to require low income women who are often raising children by themselves, to insure the I.R.S. against underreporting or underpayment of tax earned by a husband or former husband.[101]

If one examines the post-reform court decisions, the record is no less depressing. The NTA counted forty-five IS decisions between June 1, 2004 and May 31, 2005. Of these, thirty-three were decided in favor of the I.R.S., eleven in favor of the taxpayer, and one was a split decision. Where one of the three forms of substantive relief was litigated, every case considered the innocence issue, and most turned upon it, or at least appeared to. The NTA's 2006 Report counted fifty-one court decisions, of which thirty-one were decided in favor of the government, ten in favor of the taxpayer, and two sere split decisions.[102]

Of the new forms of relief, the separation of liability issue of actual knowledge was litigated in four cases in 2005, and the I.R.S. lost all four for failure to carry its burden of proof as to "actual knowledge" under I.R.C. section 6015(c)(3)(C). In 2006, the opposite occurred, and the I.R.S. won eight out of nine litigated decisions under I.R.C. section 6015(c). It seems uncertain whether the actual knowledge standard of I.R.C. section 6015(c) favors separated and divorced taxpayers as intended, at least to judge by their success rate as compared to the two other forms of relief. As noted above,[103] separated and divorced taxpayers often enjoyed an unstated preference and sometimes an explicit one under the general "equitable under the circumstances" test under former I.R.C. section 6013(e), and so it is difficult to be sure how great an improvement the new

99. NTA REP. 2005, *supra* note 9, at 423.

100. *Id.*

101. *Id.* at 422 (using I.R.S. statistics from 2001).

102. NTA REP. 2006, *supra* note 9, at 617.

103. *See* discussion *supra* note 54.

standard has brought. That there is some advantage at the margin is clearly shown by decisions in which the taxpayer requests relief under both I.R.C. sections 6015(b) and (c) for the same item, and the taxpayer loses under (b) because she had "reason to know" but wins under (c) because the I.R.S. is unable to prove actual knowledge.[104]

It seems fair to say, however, that the new standard of actual knowledge is just as flexible as the others in the interest of justifying a desired result. For example, in *Zachry v. Commissioner*,[105] the Tax Court allowed the government to win by using a surprisingly stringent standard for actual knowledge under I.R.C. section 6015(c), and ignoring the I.R.S.'s burden of proof altogether.[106] In *King v. Commissioner*,[107] on the other hand, the Tax Court arguably used too lenient a standard, and held that the I.R.S. had not carried its burden of proof despite the wife's admissions of knowledge of all the factual circumstances necessary to determine whether the husband's deductions were allowable.[108]

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104. *See, e.g.*, Levy v. Comm'r, 89 T.C.M. (CCH) 1101 (2005). In *Levy*, the husband, a surgeon with a gambling problem, filed for bankruptcy two months after signing a divorce agreement in which he promised to be responsible for over $700,000 of tax debts, and fully discharged the tax debts leaving his wife to hold the bag. She was exonerated for 1979 under I.R.C. section 6015(c) for a tax shelter deficiency. For the years 1991–1999 there were underpayments but no deficiency and so the only relief available was under I.R.C. section 6015(f). After a lengthy weighing of factors, the Tax Court relieved her of liability for 1991–1995, but not for 1996–1999 on the ground that she had learned of her husband's prior unpaid taxes for the first time in 1997, and thus had "reason to know" that he might not pay the taxes for 1996–1999. Note, however, that she signed these returns anyway under the advice of their accountant.

105. Zachry v. Comm'r, T.C. Summ. Op. 2005-55, 2005 WL 1041130 (U.S. Tax Ct. May 5, 2005).

106. The wife testified that she knew her ex-husband had received about $200,000 from his mother's estate, but that she thought it had all come from sale of the mother's home, and did not know that some of the money had come from the mother's retirement account. Her ex-husband as intervenor testified that she did know. The court stated that it found neither spouse's testimony to be credible. It then said that the Petitioner had "offered no evidence other than her own testimony, to substantiate her lack of knowledge" and that therefore the I.R.S. had not abused its discretion by denying relief under I.R.C. section 6015(c). This seems to ignore the fact that the burden of proof is on the I.R.S. to show that the wife had actual knowledge, and that the I.R.S. had introduced no evidence at all other than the intervenor's discredited testimony.

107. King v. Comm'r, 116 T.C. 198 (2001).

108. The wife participated in the operation of husband's livestock farm and kept all its books and records. She was aware of the farm's losses, but she believed (and thought her husband believed) that it would gradually become profitable. The I.R.S. disallowed the husband's losses under I.R.C. section 183 after determining that he did not have the requisite primary motive to earn a profit. The Tax Court exonerated the wife, however, on the ground that the I.R.S. did not carry its burden of proof to show that the wife had actual knowledge of the husband's lack of a primary objective to make a profit. The problem with this conclusion is that nobody can know what the husband's primary motive is except the husband. The I.R.S. and the court can only infer from the facts what his motive was likely to be, and the wife knew first-hand at least as much of the facts as they did, and probably much more. On the other hand, neither taxpayer had challenged the assessment itself, and it is possible that the judge did not believe that I.R.C. section 183 should have applied in the first place. Or perhaps the judge was simply put off by the husband's intervention and testimony against his ex-wife.

Equitable relief was litigated very frequently, if only because it was thrown in along with claims for innocent spouse and separation of liability relief. As of this writing, the Tax Court does not have jurisdiction to decide "stand-alone" cases of equitable relief, i.e., those which are not ancillary to deficiency or collection due process claims.[109] Of the twenty-three cases reported for 2005, eighteen taxpayers lost and five won. Of these five, one was relieved of a penalty only, and another three were exonerated apparently only because of spousal abuse. These figures bear out at least in part the general observation that equitable relief under I.R.C. section 6015(f) is extremely difficult to obtain.[110] One has to sample the case law to see just how difficult.

Consider *Chadwick v. Commissioner*[111] taken from our survey of 2005 decisions. There the wife was denied relief because she did not furnish any "documentary evidence" to support her uncontradicted testimony that she had no reason to know her husband did not pay his share of the joint taxes along with all the other household bills she trusted him to pay.[112] Exactly what sort of documents would have backed up her testimony the court does not tell us, and none leaps to mind.[113]

On the other hand, in the rare event that a court is moved to sympathize with the wife, it may ignore virtually all of the factors for equitable relief except the factor of spousal abuse. Consider, for example, *Bright v. Commissioner*, in which the wife was relieved from liability for a 1995 underpaid joint return and found to have no reason to know that her husband would not pay.[114] She testified that her husband had a longstanding pattern before 1995 of filing late, not making full payment with the return, and entering into installment agreements for the delinquent taxes. Because the prior installments had ultimately been paid,

109. *See* Billings v. Comm'r, 127 T.C. 7 (2006) (9–8 decision, en banc). The difficulty is due to a drafting glitch. *See* Bryan Camp, *Between a Rock and a Hard Place*, 108 TAX NOTES 359 (2005). The Tax Court's jurisdiction will probably be reinstated. Senators Feinstein and Kyl have introduced a bill to do just that, S. 3523, 109th Cong., § 1 (2006), *cited in Billings*, 127 T.C. at 30 n.16 (Chiechi, J., dissenting). In *Billings*, the "equities" were all on the taxpayer's side. The petitioner husband filed an amended return and paid the tax as soon as he learned of his wife's embezzlements. For this responsible behavior the I.R.S. punished him because at the time of the *amended* return he (of course) knew of the embezzlement! The Tax Court pointed out that the taxpayer had a strong case in light of precedent (and might have added, in light of fairness and common sense as well).

110. For that reason Professor Johnson believes that it was a mistake to enact I.R.C. section 6015(f) because it is wasteful of I.R.S. resources. Johnson, *supra* note 72, at 1058.

111. Chadwick v. Comm'r, T.C. Summ. Op. 2005-154, 2005 WL 2649124 (U.S. Tax Ct. Oct. 17, 2005).

112. *Id.*

113. Nor does the court explain why she should still have such records — whatever they might have been — ten years later. It was also found that the wife would not suffer hardship if she had to pay the tax. Her income and expense statement, which was accepted by the court, showed monthly income of $1353 and expenses of $1220 (including monthly food and clothing of $100 each, and nothing for entertainment) leaving $133 per month to pay taxes. The unpaid tax including interest and penalties appears to have been about $7000, or about one-half of a year's take home pay.

114. Bright v. Comm'r, T.C. Summ. Op. 2005-145, 2005 WL 2444050 (U.S. Tax Ct. Oct. 4, 2005).

the court the court found that the wife had no reason to think they would not be paid for 1995 as well, albeit late. The wife filed no income and expense statement to prove payment would cause her hardship, but this also did not interfere with the court's decision in her favor. The reason for this surprising outcome seems to be that the husband abused alcohol and drugs and threatened his wife and their son with violence.[115] But for the abusive behavior, the case appears difficult to distinguish from another 2005 decision of the same court, *Negoescu v. Commissioner*.[116]

Finally, it is interesting to note that when intervenors were present in six of the cases in 2005–2006 sample, the wife obtained relief in five cases anyway. The courts generally did not believe the husbands' testimony, and their presence seems generally to backfire and perhaps even favor the wife's chances of success.

Summing up, it seems fair to say that there are now more cases than before the 1998 reforms, and that the law and the decisions are more complex, but that there is no more certainty, consistency or rationality in the case law than before. And because the ratio of wins and losses appears very similar in samples taken nearly twenty years apart, one may perhaps conclude also that the quality and consistency of the administrative dispositions are also no better now than before.[117]

V. CONCLUSIONS

The IS rules can never provide a satisfactory solution to the inequities of JRL. In part this is because innocence is an irrational basis for relief and can never be made rigorous or consistent. But the primary reason is that JRL itself lacks any justification: Everyone deserves to be taxed only on her own income, and that means everyone deserves relief. There is no natural stopping point for relief, and therefore the present rules as well as any future ones are necessarily arbitrary.

One day JRL will have to be repealed because civilized society cannot tolerate forever the tax persecution of women. If the 1998 reforms have any value, it is perhaps that they may bring that day nearer. The extremely high cost of processing case-by-case the present avalanche of claims may shake the I.R.S out of

115. *Id.*; *see also* Baumann v. Comm'r, 2005 T.C.M. (RIA) 2005-031, 2005 WL 407648 (U.S. Tax Ct. Feb. 22, 2005) (finding that documented abuse trumped even the factor of actual knowledge of the husband's gambling).

116. *Negoescu*, 2005 WL 3068362. Note as well that in *Negoescu*, subsequent tax behavior was held against the wife because her 1993 joint taxes were not fully paid until 1995, although she was not divorced until 1997, and despite the fact that she appears to have been current with her taxes from 1995 until trial in 2005. In *Bright*, on the other hand, the wife's late payment of taxes for 2001, several years after her 1998 divorce, was excused. *Bright*, 2005 WL 2444050.

117. A sampling for the calendar year 1987 found thirty-two reported IS decisions, and in twenty-three of them the petitioner lost. Two of the thirty-two petitioners were men, and both lost. *See* Beck, *supra* note 14, at 327 n.33.

its intransigence and force it to recalculate whether all this work and expense is really worth the ill-gotten gains. At a time when the "tax gap" is perceived to be widening, and tax morality falling, it is short-sighted policy at best to alienate taxpayers with glaringly unfair collection practices. JRL should be repealed.

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