

the aggregate of the amounts shown as tax on the separate return of each spouse, and such excess is attributable to negligence, intentional disregard of rules and regulations, or fraud at the time of the making of such separate return, there shall be assessed, collected, and paid in the same manner as if it were a deficiency an additional amount as provided by the following:

(i) If any part of such excess is attributable to negligence, or intentional disregard of rules and regulations, at the time of the making of such separate return, but without any intent to defraud, this additional amount shall be 5 percent of the total amount of the excess.

(ii) If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, this additional amount shall be 50 percent of the total amount of the excess. The latter addition is in lieu of the 50 percent addition to the tax provided in section 6653(b).

(2) For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns), the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under section 6013(b) after the filing of a separate return.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7670, 45 FR 6929, Jan. 31, 1980; T.D. 8725, 62 FR 39117, July 22, 1997]

§ 1.6013-3 Treatment of joint return after death of either spouse.

For purposes of section 21 (relating to change in rates during a taxable year), section 443 (relating to returns for a period of less than 12 months), and section 7851(a)(1)(A) (relating to the applicability of certain provisions of the Internal Revenue Code of 1954 and the Internal Revenue Code of 1939), where the husband and wife have different taxable years because of death of either spouse, the joint return shall be treated as if the taxable years of both ended on the date of the closing of the surviving spouse's taxable year. Thus, in cases where the Internal Revenue Code of 1939 otherwise would apply to the taxable year of the decedent spouse and the Internal Revenue Code of 1954

would apply to the taxable year of the surviving spouse, this provision makes the Internal Revenue Code of 1954 applicable to the taxable years of both spouses if a joint return is filed.

§ 1.6013-4 Applicable rules.

(a) *Status as husband and wife.* For the purpose of filing a joint return under section 6013, the status as husband and wife of two individuals having taxable years beginning on the same day shall be determined:

(1) If the taxable year of each individual is the same, as of the close of such year; and

(2) If the close of the taxable year is different by reason of the death of one spouse, as of the time of such death.

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married. However, the mere fact that spouses have not lived together during the course of the taxable year shall not prohibit them from making a joint return. A husband and wife who are separated under an interlocutory decree of divorce retain the relationship of husband and wife until the decree becomes final. The fact that the taxpayer and his spouse are divorced or legally separated at any time after the close of the taxable year shall not deprive them of their right to file a joint return for such taxable year under section 6013.

(b) *Computation of income, deductions, and tax.* If a joint return is made, the gross income and adjusted gross income of husband and wife on the joint return are computed in an aggregate amount and the deductions allowed and the taxable income are likewise computed on an aggregate basis. Deductions limited to a percentage of the adjusted gross income, such as the deduction for charitable, etc., contributions and gifts, under section 170, will be allowed with reference to such aggregate adjusted gross income. A similar rule is applied in the case of the limitation of section 1211(b) on the allowance of losses resulting from the sale or exchange of capital assets (see § 1.1211-1). Although there are two taxpayers on a joint return, there is only one taxable income. The tax on the joint return

shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. For computation of tax in the case of a joint return, see § 1.2-1. For tax in the case of a joint return of husband and wife electing to pay the optional tax under section 3, see § 1.3-1. For the election not to show on a joint return the amount of tax due in connection therewith, see paragraph (c) of § 1.6014-1 and paragraph (d) of § 1.6014-2. For separate computations of the self-employment tax of each spouse on a joint return, see paragraph (b) of § 1.6017-1.

(c) *Definition of executor or administrator.* For purposes of section 6013 the term “executor or administrator” means the person who is actually appointed to such office and not a person who is merely in charge of the property of the decedent.

[T.D. 6500, 25 FR 12108, Nov. 26, 1960, as amended by T.D. 7102, 36 FR 5497, Mar. 24, 1971]

§ 1.6013-5 Spouse relieved of liability in certain cases.

(a) *In general.* A person shall be relieved from liability for any tax, penalties, additions to tax, interest, or other amounts, to the extent that such liability is attributable to an omission from gross income in a taxable year, and:

(1) He filed a joint return with a spouse in such taxable year,

(2) An amount of income which exceeds 25 percent of the amount of gross income which is stated in the return (as determined in a manner provided by section 6501(e)(1)(A) of the Code) and which is attributable to such person's spouse was omitted from the return, and should have been, under chapter 1 of the Code, included in the return,

(3) He establishes that he did not know of, and had no reason to know of such omission, and

(4) It is inequitable to hold the taxpayer liable for the deficiency in tax for such taxable year attributable to such omission.

(b) *Inequitable defined.* Whether it is inequitable to hold a person liable for the deficiency in tax, within the meaning of paragraph (a)(4) of this section, is to be determined on the basis of all the facts and circumstances. In making

such a determination a factor to be considered is whether the person seeking relief significantly benefited, directly or indirectly, from the items omitted from gross income. However, normal support is not a significant “benefit” for purposes of this determination. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the year in which the omitted item of income should have been included in gross income. Thus, for example, if a person seeking relief receives from his spouse an inheritance of property or life insurance proceeds which are traceable to items omitted from gross income by his spouse, that person will be considered to have benefited from those items. Other factors which may also be taken into account, if the situation warrants, include the fact that the person seeking relief has been deserted by his spouse or the fact that he has been divorced or separated from such spouse.

(c) *Community property laws.* The determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to any applicable community property laws.

(d) *Omission of income.* Section 6013(e) of the Code shall apply only to income which is properly includible as gross income under chapter 1 of the Code, which was, in fact, omitted from a joint return. Section 6013(e) shall not apply to a tax deficiency resulting from erroneous or fraudulent deductions, claims, or other evasions or avoidances of tax.

(e) *Scope of section.* This section does not apply to any taxable year for which a claim for credit or refund is barred by operation of any law or rule of law.

[T.D. 7320, 39 FR 28279, Aug. 6, 1974]

§ 1.6013-6 Election to treat non-resident alien individual as resident of the United States.

(a) *Election for special treatment—(1) In general.* Two individuals who are husband and wife at the close of a taxable year ending on or after December 31, 1975, may make an election under this section for that taxable year if, at the