

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