

New decision by United States Tax Court discusses expanded rights for testifying for innocent spouse relief

In a recent decision, *Momoudou Fatty v. Comm.*, Docket No. 3787-20S, the U.S. Tax Court has denied innocent spouse relief. By way of background, married individuals may file joint tax returns. (I.R.C. Sec. 6013(a)). When filing jointly, as a general rule, spouses filing joint income tax returns become jointly liable for the total tax due. (I.R.C. Sec. 6013(d)(3)). But an innocent taxpayer can avoid such joint liability by qualifying for innocent spouse relief under I.R.C. Sec. 6015. A change in the law in 2019 stated that when the Internal Revenue Service denies relief and you appeal to the United States Tax Court, the review of the Internal Revenue Service's determination will be reviewed de novo (meaning without presuming the I.R.S. was right) and be based on:

1. The administrative record established at the time of the determination; and
2. Any additional newly discovered or previously unavailable evidence.

Prior to 2019, Courts could not review the evidence mentioned in (2). In the Fatty case, the Fattys had filed a joint return, and then Mr. Fatty sought innocent spouse relief. (most innocent spouse cases are filed by women but the law does apply equally to male taxpayers).

The Court took the opportunity to review newly discovered or previously unavailable evidence. In this case, the Court said that the evidence that Ms. and Mr. Fatty gave under oath and subject to cross-examination was "newly available evidence" because, when Mr. Fatty applied for innocent spouse relief, he was not able to give sworn testimony, and neither party was subject to cross-examination.

Thus, when Taxpayers are rejected at the administrative level and file with the tax court for a fresh look, they should be able to testify to information that was not previously in the record at the administrative level.