

## Innocent Spouses Must Actually Be Innocent

In a recent Tax Court case of *Sutherland v. Comm.*, TC Memo 2021-110, the Tax Court has found that a wife was not entitled to equitable innocent spouse relief because she had knowledge or reason to know that the couple's tax liability would not be paid.

**Background of Innocent Spouse Law.** A Taxpayer may receive innocent spouse relief under Code Sec. 6015(f) under equitable relief rules laid out in Rev. Proc. 2013-34, Sec. 4.03, 2013-43 IRB. That section lists seven factors for the court to consider in whether relief should be granted. The listed factors are:

1. Marital status, 2. Economic hardship, 3. Significant benefit, 4. Subsequent compliance with Federal tax laws, 5. Legal obligation to pay the outstanding tax liability, 6. Knowledge or reason to know that the tax liability would not be paid, and 7. Mental or physical health.

**Facts of Sutherland case.** Donna Sutherland is married to Scott Sutherland who owned a business while Donna though not an employee of the business, helped with the bookkeeping.

The business was behind in remitting payroll taxes that it collected from its employees and the couple failed to file income tax returns for 2005 and 2006.

The IRS brought a criminal case against Scott for failure to remit the payroll taxes. He pleaded guilty, and as part of his plea agreement he was required to submit delinquent income tax returns for several years, including 2005 and 2006.

The 2005 and 2006 returns showed tax liabilities of \$19,000 and \$21,000, respectively, which remain unpaid. Donna signed those returns in the courthouse cafeteria less than an hour before Scott's sentencing in 2011. She testified as to her belief that signing the returns might help Scott avoid prison time. She did not review the returns with any care before signing them.

Subsequently, Donna filed a Form 8857, Request for Innocent Spouse Relief, which was denied.

**Sutherland Ruling.** The Court found that six of the seven factors were neutral with regards to Donna. But the Court found that factor 6 (knowledge or reason to know that the tax liability would not be paid) weighed against her and therefore found against her..

The court held that she knew that he would not be able to pay the tax liability. Further, since she had done bookkeeping for the business, she should have known that the business was in no financial position to pay the payroll taxes.

For these reasons the Court concluded that Donna knew or should have known, when signing the returns in June 2011, that Scott would not or could not pay the tax liability at that time or within a reasonable period of time after the filing of the returns.