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Breaking the Taxing Bonds of Marriage: Partial Relief for the Innocent Spouse

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NOTE

BREAKING THE TAXING BONDS OF MARRIAGE:
PARTIAL RELIEF FOR THE INNOCENT SPOUSE

I. INTRODUCTION

One of the many benefits of marriage is the opportunity to file a joint tax return. Married couples often file joint tax returns to take advantage of lower tax rates. However, there is a cost associated with this privilege. In the event of a deficiency in tax payment, both spouses who signed the joint return will be held to a standard of joint and several liability, regardless of which spouse actually earned the income. This general rule may, however, be mitigated by section 6013(e) of the Internal Revenue Code ("IRC"), which provides that a spouse may be relieved from joint and several liability resulting from a substantial understatement of tax on a joint return, if in signing the return she did not know, and had no reason to know, of the understatement. Furthermore, the spouse must establish that taking into account all of the circumstances, it would be inequitable to hold her liable for the deficiency in tax. Failure to meet any of the conditions of the innocent spouse provi-

1. Section 6013 of the Internal Revenue Code allows joint returns by a husband and a wife with noted exceptions. See I.R.C. § 6013 (1994). For many years, all individuals were taxed under a single set of tax rates. This changed, however, after the Supreme Court held that in community property states, earnings and other income of either spouse were taxable one-half to each spouse. See Poe v. Seaborn, 282 U.S. 101, 118 (1930). As a result, married taxpayers in community property states could benefit from lower rates by allocating their income equally between them, thus falling into a lower tax bracket. The 1948 Revenue Act fixed this inequity by changing the rates for married couples filing a joint return. See Revenue Act of 1948 §§ 301-305, Pub. L. No. 471, 62 Stat. 110, 114-16. The new formula calculated the tax by doubling the tax on one-half of the couple's combined net taxable income, thereby extending the benefits of community property law to common law taxpayers. See I.R.C. § 12(d) (1939).

2. See I.R.C. § 6013(d)(3). The Internal Revenue Code states: "If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several." Id.

3. See id. § 6013(e)(1)(B)-(C).

4. See id. § 6013(e)(1)(D).
sion will prevent any and all relief. Accordingly, the taxpayer will be held liable for the entire amount of the deficiency.

Meeting all of the criteria has proven to be a very difficult task as few petitioners are successful at obtaining innocent spouse status and relief. Commentators agree that the innocent spouse rules are too restrictive, thus preventing many deserving cases from succeeding.

This Note will focus on the "reason to know" requirement, which is the most difficult requirement to prove, particularly when the tax deficiency is due to an erroneous deduction, credit, or basis. Inconsistent judicial interpretations of "reason to know" have led to varying results. Some courts interpret section 6013(e) narrowly in an effort to preserve

5. See infra Part II.C.
6. The Internal Revenue Service does not keep records of how many taxpayers petition for or receive innocent spouse relief. See Paul Wiseman, Ex-Spouses Seek Relief from IRS, USA TODAY, Feb. 5, 1998, at 1B. As a result, some commentators have attempted to estimate the success rate of such petitioners. One such commentator reports that less than half of the taxpayers seeking relief actually obtain it. See id. Another commentator noted that in 1987, of the 32 cases reported where the innocent spouse defense was raised, only nine petitioners were granted relief. See Richard C.E. Beck, The Innocent Spouse Problem: Joint and Several Liability for Income Taxes Should be Repealed, 43 VAND. L. REV. 317, 327 n.33 (1990). Similarly, a more recent review of cases decided from late 1993 to 1995 revealed that only 4 of 20 petitioners seeking relief were successful. See Ted S. Biderman, Note, The Continued Folly of the Innocent Spouse Defense: Is it Viable?, 45 DRAKE L. REV. 551 (1997). Another commentator estimates that less than ten percent of cases brought under section 6013(e) are won by the taxpayer. See Leonard G. Florescue, Tax Indemnity Letters and the Innocent Spouse, N.Y. L.J., Nov. 8, 1993, at 3, 3.
7. Most commentators advocate amending the statute or allowing for a broad reading of it in order to provide greater spousal relief. See Jerome Borison, Innocent Spouse Relief: A Call for Legislative and Judicial Liberalization, 40 TAX LAW. 819, 863-64 (1987); Michael F. Lax, The Innocent Spouse Provision Under Section 6013(e) of the Internal Revenue Code: Relief or Refuse?, 12 U. ARK. LITTLE ROCK L.J. 25, 35 (1989-1990); J. Timothy Philpips & L. Bradford Bradf ord, Even a Tax Collector Should Have Some Heart: Equitable Relief for the Innocent Spouse Under I.R.C. § 6013(e), 8 N. ILL. U. L. REV. 33, 60-65 (1987). There is also a strong movement towards repealing joint and several liability and adopting a system of proportionate liability in its place. See Beck, supra note 6, at 393-408; C. Ian McLachlan, Spousal Liability and Federal Income Taxes, 10 J. AM. ACAD. MATRIM. LAW 65 (1993) (noting the recommendation of the ABA Tax Section's Domestic Relations Committee for a proportionate liability system).
In 1997, the General Accounting Office ("GAO") released a report that studied several issues relating to joint and several liability and innocent spouse relief. See U.S. GEN. ACCOUNTING OFFICE, TAX POLICY: INFORMATION ON THE JOINT AND SEVERAL LIABILITY STANDARD (1997). As a result of the study, the GAO recommended that the IRS (1) inform taxpayers about the availability of innocent spouse relief; (2) develop procedures for requesting and granting/denying innocent spouse relief; (3) provide its employees with additional guidance on innocent spouse relief; and (4) update existing tax regulations to reflect the current law governing innocent spouse relief. See Sidney Kess, Innocent Spouse Relief from Joint and Several Liability, N.Y. L.J., June 16, 1997, at 3.
9. Tax deficiencies may arise from either an omission of income or an erroneous deduction, credit, or basis. The courts have applied different standards depending upon the cause of the deficiency. See infra Part III.
the theory of joint and several liability, while other courts interpret it broadly, attempting to give as much effect to the innocent spouse provision as possible. A problem arises because the same set of facts could result in either one hundred percent relief, or more likely, no relief at all depending upon which interpretation of the reason to know requirement is applied. This Note considers the rationales underlying both interpretations and proposes a method by which innocent spouses may be partially relieved, thereby giving effect to both interpretations.

Part II traces the history and origins of the innocent spouse provision, highlighting the reasons behind its adoption. Part III explores the inconsistent approaches to the provision and the rationales underlying those approaches. Part IV proposes that the courts liberally interpret the innocent spouse provision and apportion relief to the spouse in accordance with her innocence.

II. BACKGROUND

A. Joint and Several Liability

The filing of a joint tax return was first authorized by the Revenue Act of 1918, which was further clarified by the Revenue Act of 1921. A joint return allows a husband and wife to include "[t]he income of each ... in a single joint return, in which case the tax shall be computed on the aggregate income." The 1921 Act, however, did not specify which spouse, or in what proportion each spouse, would be liable for tax deficiencies arising from a joint return. This question became the subject of much controversy. Married taxpayers claimed that liability for deficient tax payments and penalties should be allocated according to individual income, while the Bureau of Internal Revenue contended that spouses were jointly and severally liable. In rejecting joint and several

10. Compare Bokum v. Commissioner, 94 T.C. 126, 153-60 (1990) (holding petitioner was not an innocent spouse within the meaning of section 6013(e)), with Price v. Commissioner, 887 F.2d 959, 963-66 (9th Cir. 1989) (granting relief where petitioner proved she had no reason to know of a substantial understatement). See also infra Part III.

11. For purposes of this Note, it will be presumed that the husband is the guilty spouse, while the wife is the innocent spouse. Many commentators have made similar presumptions even though section 6013(e) is gender neutral. See Beck, supra note 6, at 320 n.4; Borison, supra note 7, at 820 n.4. But see Jenkins v. Commissioner, 55 T.C.M. (CCH) 1354 (1988) (finding the husband of an embezzler to be an innocent spouse).


15. See Crowe v. Commissioner, 86 F.2d 796, 797 (7th Cir. 1936); Cole v. Commissioner,
liability, the Ninth Circuit noted the fundamental principle that tax should be assessed in accordance with the ability to pay, and that imposing joint and several liability would strip each taxpayer of the right to be taxed only in proportion to each spouse's income. Other circuits came to similar conclusions.

Despite these holdings, Congress expressly established in the Revenue Act of 1938 that married couples filing joint returns be held jointly and severally liable. The explanation given for imposing this type of liability was administrative necessity.

B. Origins of Innocent Spouse Relief

Once the Revenue Act of 1938 was passed, the courts were bound to enforce the joint and several liability provision, even if the resulting outcome would be unjust. For example, a wife could be held liable for a deficiency or fraud penalty that was solely attributable to her husband. Although the statutory law was clear, courts often expressed their discomfort with the results of their decisions.

Although we have much sympathy for petitioner's unhappy situation and are appalled at the harshness of this result in the instant case, the inflexible statute leaves no room for amelioration. It would seem that only remedial legislation can soften the impact of the rule of strict individual liability for income taxes on the many married women who are unknowingly subjected to its provisions by filing joint returns.

We therefore, with considerable reluctance, uphold [Commissioner's] determination of deficiencies . . . .

81 F.2d 485, 486 (9th Cir. 1935).
16. See Cole, 81 F.2d at 487.
17. See Sachs v. Commissioner, 111 F.2d 648 (6th Cir. 1940) (per curiam); Commissioner v. Rabenold, 108 F.2d 639, 640 (2d Cir. 1940); Crowe, 86 F.2d at 798. But see Rogers v. Commissioner, 111 F.2d 987, 989 (6th Cir. 1940) (holding joint and several liability was proper where spouses failed to provide sufficient information regarding their separate incomes); Anderson v. United States, 48 F.2d 201, 202-03 (5th Cir. 1931) (same).
18. See Revenue Act of 1938, ch. 289, § 51 (b), 52 Stat. 476. See generally Beck, supra note 6, at 332-47 (providing a detailed discussion regarding the origins of joint return liability).
19. See H.R. Rep. No. 75-1860, at 30 (1938). Administrative necessity is not defined, but it is assumed to mean that since a joint return does not segregate the income and expenses of each spouse, it would be impossible to determine the liability attributable to each. But see Beck, supra note 6, at 343-47 (founding administrative necessity to be an unsatisfactory basis for imposing joint and several liability).
The situation worsened with the Supreme Court’s decision in *James v. United States*. In *James*, the Court held that embezzled funds constitute income to the embezzler and, therefore, are to be reported as gross income. The combination of *James* and the joint and several liability rules meant that the Internal Revenue Service (“IRS”) could impose liability for tax deficiencies on an embezzler’s wife, even if the wife knew nothing about the embezzlement.

To avoid such inequitable results, the courts attempted to find ways to circumvent the joint and several liability rules. For example, if the wife could prove she had no intention to file jointly and only signed a joint return due to a mistake, she could be relieved of liability. Other successful defenses included signing a return under conditions of duress or fraud.

Other situations required even more stretching of the court’s power. An exemplary case is *Scudder v. Commissioner*. There, petitioner’s husband embezzled thousands of dollars from a business in which she was a partner. The husband failed to report the money on the couple’s joint return, which, unaware of the embezzled funds, the petitioner voluntarily signed. Based on the settled law that fraud may be cause to void a person’s signature on a joint return, petitioner argued that, in substance, no joint return had been filed because of her husband’s fraud in concealing the embezzled funds.

The Tax Court found that petitioner failed to prove that her signature was procured through fraud and held her liable for the deficiency. Obviously aware of the unjustness of the Tax Court’s holding, the Sixth Circuit held on appeal “that the Tax Court was overly modest in measuring its own prerogatives and powers.” The circuit court remanded the

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*Huelsman v. Commissioner*, 416 F.2d 477, 480 (6th Cir 1969), quoted the trial judge below as saying: “I apologize or I express [m]y sympathies to Mrs. Huelsman. I wish I could do otherwise but I can’t, and I might say that if you can get me reversed on appeal, . . . God bless you. I’d love to be reversed.”

23. *See id.* at 218-21.
26. *See Scudder*, 48 T.C. at 40 (“[F]raud may void a person’s signature for purposes of liability on a purported joint return . . . .”).
27. 48 T.C. 36 (1967).
28. *See id.* at 37.
29. *See id.*
30. *See id.* at 39.
31. *See id.* at 41.
case, holding that the circumstances surrounding the Scudder case were equivalent to the type of fraud, trickery, and duress which the Tax Court acknowledged would protect an innocent spouse.33

Scudder is representative of the need for change at that time. Finally, the call for legislative action was answered. Congress responded by enacting the Innocent Spouse Act of 1971 ("Act").34 The purpose of the legislation was to "correct the unfairness in the situations brought to the attention of [Congress] and to bring government tax collection practices into accord with basic principles of equity and fairness."35 The brief legislative history describes the typical situation, which, prior to the Act, would result in "grave injustice," as one whose facts closely resemble Scudder.36 Reference in the legislative history to the courts' pleas for legislative relief is proof that the Act was enacted in response to the potentially inequitable results of joint and several liability.37

C. Requirements of IRC Section 6013(e)

In its original form, the Act granted relief where: (1) gross income attributable to the prospective culpable spouse in an amount exceeding twenty-five percent of the gross income stated in the joint return (2) had been omitted from the return without knowledge of the prospective innocent spouse (3) under circumstances in which it would be inequitable to treat that spouse as liable for the deficiency attributable to the omission.38 The Senate report accompanying the 1971 enactment stated that the lack of knowledge element "imposes on the innocent spouse the burden of showing that he or she did not know of, and had no reason to know of, the omission from income."39

Because the Act was aimed at circumstances similar to those of Scudder, as originally enacted, relief was available only where the defi-

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33. See id. at 226.
36. See S. REP. No. 91-1537, at 2; H.R. REP. No. 91-1734, at 2.
37. See S. REP. No. 91-1537, at 2; H.R. REP. No. 91-1734, at 2.
38. See Innocent Spouse Act § 1, 84 Stat. at 2063.
39. S. REP. No. 91-1537, at 3.
ciency was due to an omission of income. Relief was unavailable for deficiencies attributable to erroneous deductions, credits, or bases and omissions of income below the twenty-five percent requirement. Over time, it became evident that the Act needed revision to include these situations. Congress accomplished this through the Deficit Reduction Act of 1984 ("DRA").

While the basic requirements of innocent spouse relief remained the same, the DRA made three important changes. First, the deficiency must be attributable to "grossly erroneous items," defined as any omission of gross income and any claim of a deduction, credit, or basis for which there is no basis in fact or law. Second, the understatement must be "substantial," defined as in excess of $500. Third, where the understatement results from an erroneous deduction, credit, or basis, it must meet an additional amount requirement.

Taking into account the changes enacted by the DRA, innocent spouse relief is now available to a taxpayer who has filed a joint income tax return and who establishes: (1) that a substantial understatement of tax has resulted from a grossly erroneous item—be it an omission, deduction, credit, or basis with no basis in fact or law—attributable to the other spouse; (2) that, in signing the return, the taxpayer establishes that she did not know, or have reason to know, of that understatement; and (3) that, in light of the facts and circumstances, it is inequitable to hold her liable for the resulting deficiency.

40. See Innocent Spouse Act § 1, 84 Stat. at 2063.
41. See, e.g., Resnick v. Commissioner, 63 T.C. 524, 526 (1975) (denying relief where the deficiency resulted from an erroneous deduction because "[i]t is manifest from the plain language of section 6013(e) . . . that the section is applicable only where a tax liability arises by reason of an omission from gross income").
43. The DRA left the knowledge requirement unchanged. See IRC § 6013(e)(1)(C); see also supra note 39.
44. I.R.C. § 6013(e)(1)(B), (e)(2).
45. Id. § 6013(e)(1)(B), (e)(3).
46. See id. § 6013(e)(4). If the spouse's adjusted gross income ("AGI") for the "preadjustment year," the most recent taxable year of the spouse ending before the date the deficiency notice is mailed, see id. § 6013(e)(4)(C), is $20,000 or less, the spouse is eligible for relief only if the liability exceeds ten percent of AGI for that year. See id. § 6013(e)(4)(A). If the spouse's AGI exceeds $20,000, the liability must exceed 25% percent of AGI for the spouse to be eligible for relief. See id. § 6013(e)(4)(B).
47. See id. § 6013(e)(1). Presently, section 6013 reads, in pertinent part:
(e) Spouse relieved of liability in certain cases
(1) In general
Under regulations prescribed by the Secretary, if—
(A) a joint return has been made under this section for a taxable year,
A spouse claiming relief must satisfy each of the requirements in order to qualify for relief. Judicial interpretations of section 6013(e) are generally consistent, except as to the “reason to know” requirement. All courts agree, however, that actual knowledge clearly prevents relief, as does willful blindness.

III. REASON TO KNOW

“[B]etween the extremes of having actual knowledge and burying one’s head in the sand, there is a vast desert the courts have trouble traversing.” It comes as no surprise that the most frequently litigated element of innocent spouse relief is the lack of knowledge requirement. In analyzing the “reason to know” standard, courts make a distinction between cases involving deficiencies due to omissions of income (“omission cases”) and those due to erroneous deductions, credits, or bases (“deduction cases”).

(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,
(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and
(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,
then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

(2) Grossly erroneous items
For purposes of this subsection, the term “grossly erroneous items” means, with respect to any spouse—
(A) any item of gross income attributable to such spouse which is omitted from gross income, and
(B) any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

(3) Substantial understatement
For purposes of this subsection, the term “substantial understatement” means any understatement (as defined in section 6661(b)(2)(A)) which exceeds $500.

Id. § 6013(e)(1)-(3).

48. See Stevens v. Commissioner, 872 F.2d 1499, 1504 (11th Cir. 1989) (“The taxpayer bears the burden of providing each of these elements by a preponderance of the evidence.”).
49. See Donald C. Haley, The Innocent Spouse Relief: A Reconciliation of Conflicting Judicial Interpretations, 10 AKRON TAX J. 47, 49 (1993) (“Although there continues to be ongoing litigation as to the interpretation of each of the key provisions and definitions . . . there has been a clear narrowing of differences between taxpayers, the IRS and the courts in most areas . . .”).
50. See I.R.C. § 6013(e)(1)(C).
51. See infra note 68.
53. See Borison, supra note 7, at 830.
A. Omissions

The “reason to know” requirement does not pose a problem in omission cases. Most courts agree that in cases where income is omitted, mere knowledge of the transaction that resulted in the omitted income can be sufficient grounds to deny relief. Thus, the question is whether the spouse seeking relief knew, or had reason to know, of an income-producing transaction that the other spouse failed to report as income on the couple’s joint return. If so, no relief will be granted. This is commonly referred to as the “knowledge of the underlying transaction” test.

In McCoy v. Commissioner, the Tax Court held that this test is based on the notion that ignorance of the law is no excuse for failure to comply with it. Mr. McCoy incorporated a partnership which he operated. Under section 357(c) of the IRC, gain must be recognized where liabilities of the business assumed exceed the adjusted basis of the transferred assets. Mr. McCoy knew that liabilities exceeded the adjusted basis, but did not report the gain as required by section 357(c). Mrs. McCoy was not aware of the gain or the requirements of section 357(c), but because she knew the partnership had been incorporated, she was held liable for the deficiency. She could not claim ignorance of the tax law as a basis for relief from liability.

Since McCoy, courts have continued to distinguish between ignorance of the existence of a transaction and ignorance of the tax consequences of a transaction. In nearly every omission case, if the wife is

54. See, e.g., Reser v. Commissioner, 112 F.3d 1258, 1265 (5th Cir. 1997); Park v. Commissioner, 25 F.3d 1289, 1294 (5th Cir. 1994); Hayman v. Commissioner, 992 F.2d 1256, 1261 (2d Cir. 1993); Erdahl v. Commissioner, 930 F.2d 585, 589 (8th Cir. 1991); Guth v. Commissioner, 897 F.2d 441, 444 (9th Cir. 1990).

55. See Erdahl, 930 F.2d at 589.

56. See id.

57. Id.


[W]e do not think section 6013(e) was designed to abate joint and several liability where the lack of knowledge of the omitted income is predicated on mere ignorance of the legal tax consequences of transactions the facts of which are either in the possession of the spouse seeking relief or reasonably within his reach.

59. See id. at 733.

60. See I.R.C. § 357(c) (1994).

61. See McCoy, 57 T.C. at 733-34.

62. See id.

63. See id. at 734.

64. "The knowledge contemplated by the statute is not knowledge of the tax consequences of a transaction but rather knowledge of the transaction itself." Resser v. Commissioner, 74 F.3d
aware of the transaction underlying the omission, relief will be denied.

**B. Deductions**

In contrast, the proper test to be used in deduction cases has been the source of much debate. The problem arose only after the DRA extended relief to deduction cases.65 The Tax Court simply applies the "knowledge of the underlying transaction" test it used in omission cases to deduction cases.66 Other courts have questioned the Tax Court's application.67 Of great concern is that the transaction approach would essentially wipe out all relief where the understatement of tax is due to an erroneous deduction. This is because unlike omissions, deductions appear on a tax return in black and white. Thus, merely reading a return imparts knowledge that some transaction apparently occurred which gave rise to a deduction.68 It is nearly impossible for a spouse to prove that she read and reviewed the return and yet was unaware that a transaction existed which gave rise to a deduction.69 For this reason, many courts have refused to apply the transaction approach to deduction cases.70

The problem arises in the interpretation of section 6013(e)(1)(C), which requires that in signing the return, the innocent spouse "did not know, and had no reason to know, that there was such substantial understatement."71 The Tax Court interprets the "reason to know" standard literally, to mean that if the spouse was aware of the transaction underlying the deduction, she knew or had reason to know of the tax understatement.72 The "nontransactional" courts believe that merely knowing

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65. See supra Part II.C.
66. See Price, 887 F.2d at 963 n.9.
67. See Reser v. Commissioner, 112 F.3d 1258, 1258 (5th Cir. 1997); Hayman, 992 F.2d at 1256; Erdahl v. Commissioner, 930 F.2d 585, 585 (8th Cir. 1991); Price, 887 F.2d at 959.
68. A taxpayer has a duty to review a completed tax return prior to signing it, and even when the taxpayer can prove she did not read it, she will nevertheless be charged with constructive knowledge of its contents. See Silverman v. Commissioner, 67 T.C.M. (CCH) 2631, 2635 (1994); see also Hayman, 992 F.2d at 1262.
69. When a grossly erroneous deduction, credit, or basis is large, a duty of inquiry arises whereby the taxpayer must have attempted to verify the accuracy of the return in order to qualify for relief. See Guth v. Commissioner, 897 F.2d 441, 444-45 (9th Cir. 1990); Price, 887 F.2d at 965-66; Stevens v. Commissioner, 872 F.2d 1499, 1505-06 (11th Cir. 1989).
70. These courts will hereinafter be referred to as "nontransactional" courts.
72. See Erdahl, 930 F.2d at 589.
that a transaction has occurred does not necessarily mean that a spouse had reason to know of a substantial understatement.\footnote{See Price, 887 F.2d at 963 n.9.}

These courts do not, however, find knowledge of the underlying transaction irrelevant. Instead of relying solely on that knowledge as the Tax Court does, nontransactional courts consider knowledge of the underlying transaction in conjunction with additional factors, such as the spouse’s level of education, the spouse’s involvement in the business and financial affairs, lavish or unusual expenditures, and the guilty spouse’s deceit concerning the couple’s finances.\footnote{See Hayman v. Commissioner, 992 F.2d 1256, 1261 (2d Cir. 1993); Price, 887 F.2d at 965; Stevens, 872 F.2d at 1505.}

The Tax Court agrees that these factors should be used in determining whether the taxpayer had reason to know.\footnote{See Acquaviva v. Commissioner, 72 T.C.M. (CCH) 1487, 1493 (1996); Fields v. Commissioner, 72 T.C.M. (CCH) 675, 686 (1996).} Where it disagrees, however, is how to apply them in conjunction with the facts and circumstances of each individual case. The Tax Court applies the additional factors to determine if the spouse knew, or should have known, of the transaction, whereas the nontransactional courts use the factors to determine if the spouse knew, or should have known, of the understatement.\footnote{See Acquaviva, 72 T.C.M. (CCH) at 1493; Fields, 72 T.C.M. (CCH) at 686.} Looking to the Code, section 6013(e) requires that the spouse “did not know, and had no reason to know, that there was such substantial understatement.”\footnote{See I.R.C. § 6013(e)(1)(C) (1994) (emphasis added).} Therefore, based on a plain reading of the statutory language, it seems that the focus should be on the understatement itself, and not on the underlying transaction.

Still, the Tax Court continues to decide cases using its narrow interpretation—\footnote{See, e.g., Bellour v. Commissioner, 69 T.C.M. (CCH) 3010 (1995) (denying relief where petitioner knew of the transaction underlying an erroneous deduction).} but not without criticism. The transactional approach has been called a “‘Catch 22’” and described as “‘damned if you do, damned if you don’t.’” The Tax Court’s illogic is exemplified by the following case. In denying relief to an ex-wife in Bokum v. Commissioner, the Tax Court stated that Mrs. Bokum had a duty to inquire about a transaction when she signed the return because the deduction was very large.\footnote{Borison, supra note 52, at 159.} But had she inquired, relief still would not have been possible because then she would have been aware of the transaction.

\footnote{See Bokum v. Commissioner, 94 T.C. 126, 148 (1990), aff’d, 992 F.2d 1132 (11th Cir. 1993).}
which, according to the Tax Court, precludes relief. This is exactly the situation the nontransactional courts anticipated and sought to avoid.

The distinction may seem small, but its effects are large. The specific situation where the results are different is when a spouse seeking relief has knowledge of a transaction, without having knowledge of the resulting understatement. This problem is best illustrated by comparing a Tax Court's holding in this type of situation with that of the nontransactional court to which the case was appealed.

C. Case Law

1. Differing Results

The facts of Price v. Commissioner\(^8\) follow: Patricia and Charles were married in 1969.\(^9\) Charles worked as an investment broker and Patricia, who had majored in sociology at a junior college, worked for a car pooling agency. During their seventeen-year marriage, they held a joint checking account used for household expenses, while Charles alone maintained a separate checking account for investments. Charles made all investment decisions, and Patricia trusted him in financial matters because of his experience and reputation.\(^10\)

In 1976, Charles invested in a gold-mining operation called Cal- Colombian Mines, Ltd. ("CCM").\(^11\) Patricia knew Charles had acquired the shares, but she did not know the price per share, and other than seeing pictures of the site where the operation was located, she knew nothing else about the investment.

In 1981, an accountant prepared a joint return for the couple, which Charles gave to Patricia to sign on the day of the filing deadline.\(^12\) Patricia reviewed the return and asked Charles about a deduction in the amount of $90,000, taken for mining expenses. Assured by his answer that a Certified Public Accountant would not have prepared and signed the return if there were any problems, Patricia signed the return. Several years later, the IRS notified the couple of a deficiency in the amount of $40,120 due to the disallowed deduction. Patricia asserted that she was not liable for the tax deficiency because she was an innocent spouse under IRC section 6013(e).

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81. 887 F.2d 959 (9th Cir. 1989).
82. See id. at 960.
83. See id. at 961.
84. See id. at 960.
85. See id. at 961.
The Tax Court denied Patricia innocent spouse relief because she failed to carry her burden of proving that she did not know, and had no reason to know, that there was a substantial understatement. Since she knew about the existence of Charles's investment in CCM, the court rejected her claim that she was an innocent spouse. 86

Patricia appealed the decision of the Tax Court to the Ninth Circuit Court of Appeals. 87 The court began its analysis with a plain meaning reading of section 6013(e). 88 In doing so, the court concluded that the Code "requires a spouse . . . to establish that she did not know and did not have reason to know that the deduction would give rise to a substantial understatement." 89 In an explanatory footnote, the court noted why it declined to follow the Tax Court. 90 It believed that superimposing the legal standard developed in omission cases onto deduction cases essentially eliminates protection for the innocent spouse in deduction cases. 91 Such a result would give no effect to Congress's intent of expanding coverage to reach deduction cases, which was expressed by the passage of the DRA. 92

Once the standard was established, the court applied it to the facts and circumstances of Patricia's case. Patricia had limited involvement

86. See id. at 962.
87. On appeal, a Tax Court's decision is reviewed under the clearly erroneous standard. See Reser v. Commissioner, 112 F.3d 1258, 1262 (5th Cir. 1997); Guth v. Commissioner, 897 F.2d 441, 443 (9th Cir. 1990).
88. See Price, 887 F.2d, at 963.
89. Id.
90. See id. at 963 n.9.
91. See id. The court explained how innocent spouse relief would be wiped out:
   Such a standard may be workable in omission cases simply because the understatement is caused by includable income being left off a return. Therefore, it is considerably easier for a spouse to show that she was unaware of the transaction giving rise to the omission, and thus to qualify for relief. But because deductions are necessarily recorded, any spouse who at least reads the joint return will be put on notice that some transaction allegedly has occurred to give rise to the deduction. As a result, if knowledge of the transaction, operating of itself, were to bar relief, a spouse would be extremely hard-pressed ever to be able to satisfy the lack of actual and constructive knowledge element of section 6013(e)(1) in a deduction case.

Id. (citations omitted).
92. See id. Interestingly, the court explains that the standard it announces for deduction cases is actually the same inquiry as in omission cases. See id. at 964 n.9. This is because, in omission cases, knowledge of the income-producing transaction is virtually equivalent to knowledge of the understatement itself. See id. Therefore, "the omission cases that have examined whether a spouse had knowledge of the transaction in a sense really have been looking to discern whether she knew or had reason to know of the substantial understatement," which is the standard announced by the circuit court for deduction cases. Id. From this analysis, it seems that the Tax Court has applied only the language, and not the substance, of the omission standard to deduction cases.
in the couple’s financial affairs and did not experience unusual or lavish expenditures. Further, because she lacked a general understanding of business, Charles was able to mislead her. The court concluded that Patricia was an innocent spouse within the meaning of section 6013(e) because a reasonably prudent taxpayer in her position at the time she signed the return could not be expected to know that the return contained a substantial understatement.  

Two standards, and two very different results. Despite the well-reasoned opinion of the Ninth Circuit, the Tax Court continues to apply its narrow interpretation of the “reason to know” standard in deduction cases.

2. Similar Results

There are cases, however, where determination of the standard is irrelevant because the result would be the same either way. Consider Park v. Commissioner. Petitioner, a licensed real estate agent, opened the family mail, wrote most of the checks, and balanced the checkbooks on a monthly basis. She opened statements from an investment company who had sold Government National Mortgage Association (“GNMA”) securities to her husband and, on one occasion, wrote them a check for $13,000 at her husband’s request. An accountant prepared the couple’s joint return, which showed losses of over $100,000 due to the GNMA investments. The IRS disallowed the deduction, and petitioner filed for innocent spouse relief.

The Tax Court determined that she had reason to know of the understatement and therefore did not qualify for protection under section 6013(e). Petitioner appealed on the ground that the Tax Court used an inappropriate standard in considering the “reason to know” requirement. Although it described both the Tax Court and the Price ap-

93. See id. at 965.
94. Taxpayers may bring an innocent spouse claim in the United States Tax Court or a federal district court. If brought in the Tax Court, the court must follow a court of appeals decision that is “squarely in point” where an appeal lies to that court. Golsen v. Commissioner, 54 T.C. 742, 757 (1970), aff’d, 445 F.2d 985 (10th Cir. 1971). The Tax Court has acknowledged that it will follow Price in cases where appeal lies to the Ninth Circuit. See Bokum v. Commissioner, 94 T.C. 126, 151 (1990), aff’d, 992 F.2d 1132 (11th Cir. 1993).
95. 25 F.3d 1289 (5th Cir. 1994).
96. See id. at 1290.
97. See id. at 1291.
98. The standard used by the Tax Court was previously announced in Bokum v. Commissioner, where the Tax Court denied petitioner relief because she had reason to know of the understatement since she knew that a sale of property, the underlying transaction, had taken place but knew little else about it. See Bokum, 94 T.C. at 150. In reaching its decision, the Tax Court con-
proaches, the Fifth Circuit did not specifically rule on which approach was proper. The Court determined that under either approach, petitioner had reason to know of the overstated deductions. Petitioner knew about the investment, satisfying the Tax Court’s test, had access to all of the investment records, and actually wrote out one of the checks. Hence, under Price as well, petitioner had reason to know of the understatement.

The holding of the Fifth Circuit in Park has raised the question of whether the two standards are actually different. The Tax Court itself indicated that the standards may not conflict at all, and if they do, then only as to the extent of knowledge of the underlying transaction that is required to prevent relief. This may be true, but the differences between the approaches cannot be fully understood by analyzing cases alone. The approaches can be truly distinguished by looking to the policy concerns underlying each approach.

3. Summary of the Circuits’ Positions

Six circuits have addressed the reason to know requirement of section 6013(e) in the context of an erroneous deduction. The Eighth,
Second, and Fifth Circuits expressly adopted the Ninth Circuit's nontransactional approach announced in Price. The Eleventh and Seventh Circuits have reached decisions which cite Price and are consistent with the nontransactional approach. The Sixth Circuit has avoided the issue by affirming the Tax Court on other grounds.

4. The Sympathy Factor

Just as courts found creative ways to avoid the inequitable results of joint and several liability prior to the enactment of section 6013(e), the same type of creativity continues today. At least one commentator has noted that sometimes the “overriding consideration” of the courts is sympathy. The commentator describes the case of an unemployed, disabled widow held liable for the omitted income of her deceased husband. During the year in question, the woman cashed checks and paid bills in amounts far in excess of that reported by her husband on their joint return. The court, however, held that she had no reason to know of the omitted income and relieved her of liability, because according to the commentator, any other decision “would have been heartless.”

Although section 6013(e) was created to eliminate the potentially inequitable consequences of joint and several liability, as currently drafted, it is not broad enough to encompass every situation. Courts continually feel compelled to grant relief in situations that may not fit squarely within the rule. This sympathy factor is a reality that should be considered in any attempt to synthesize the inconsistent applications of innocent spouse relief.

D. The Real Tension

The problem is philosophical—how to balance when to allow relief from joint and several liability for a person who claims she did not know what was on the return or what its tax consequences were with

108. See Hayman, 992 F.2d at 1261.
109. See Reser, 112 F.3d at 1267.
110. See Kistner, 18 F.3d at 1527.
111. See Resser, 74 F.3d at 1535.
112. See Purcell v. Commissioner, 826 F.2d 470, 471, 476 (6th Cir. 1987).
113. See id. at 355-56 (discussing Smith v. Commissioner, 53 T.C.M. (CCH) 743, 743-44 (1987)).
114. See id. at 355-56.
115. See id.
116. Id. at 356.
117. It is possible that the equity requirement in section 6013(e)(1)(D) was included in the provision for just this reason.
one of the most fundamental tax rules, i.e., one is obligated to examine one's return for correctness before signing it under penalties of perjury.\footnote{118}

In other words, how can someone be relieved of liability when the standard of liability is joint and several? Section 6013(e) and joint and several liability are inconsistent concepts. It is the inharmonious nature of these rules that has caused the present controversy over the "reason to know" standard.

_Bokum v. Commissioner_\footnote{119} highlights the Tax Court's steadfast adherence to the principle of joint and several liability. In deciding _Bokum_, the court quoted _Sonnenborn v. Commissioner_,\footnote{120} a case decided in 1971—the same year that the innocent spouse provision was enacted:

> It is important that these provisions be kept in proper perspective. The filing of a joint return is a highly valuable privilege to husband and wife since the resulting tax liability is generally substantially less than the combined taxes that would be due from both spouses if they had filed separate returns. This circumstance gives particular emphasis to the statutory rule that liability with respect to tax is joint and several, regardless of the source of the income or of the fact that one spouse may be far less informed about the contents of the return than the other, for both spouses ordinarily benefit from the reduction in tax that ensues by reason of the joint return. However, some highly inequitable results were called to the attention of Congress . . . . It was in an effort to eliminate the unfairness of the joint and several liability provisions in such circumstances that section 6013(e) was enacted . . . . It must be kept in mind that Congress still regards joint and several liability as an important adjunct to the privilege of filing joint returns, and that if there is to be any relaxation of that rule the taxpayer must comply with the carefully detailed conditions set forth in section 6013(e).\footnote{121}

In summary, the benefit of filing a joint return and receiving a lower tax rate is exchanged for the burden of joint and several liability, and according to the Tax Court, only in very limited situations can the principles of joint and several liability be compromised. For this reason, the Tax Court has adopted a narrow interpretation of the innocent spouse provision.

Nontransactional courts, such as the Ninth Circuit, focus more on giving effect to the innocent spouse provision, the purpose of which is

\footnote{118} Borison, supra note 52, at 154.
\footnote{119} 94 T.C. 126 (1990), _aff'd on other grounds_, 992 F.2d 1132 (11th Cir. 1993).
\footnote{120} 57 T.C. 373 (1971).
\footnote{121} _Bokum_, 94 T.C. at 151-52 (quoting _Sonnenborn_, 57 T.C. at 380-81).
to eliminate the inequities caused by joint and several liability. In nearly 
every opinion upholding the *Price* approach, there is an expressed con-
cern of "‘wip[ing] out innocent spouse protection.’"\textsuperscript{122} Furthermore, 
these courts recognize that section 6013(e) "‘was passed as an exception 
to the normal rule of joint and several liability.’"\textsuperscript{123}

The problem is simple: Some courts are trying to preserve the rule 
of joint and several liability, while other courts are favoring the excep-
tion to that rule. Can both the rule and the exception co-exist? The solu-
tion to the problem would have to give effect to both.\textsuperscript{124}

IV. **PARTIAL RELIEF**

In the cases discussed above, the courts tried to determine if the 
petitioner had reason to know of an understatement. Courts use a num-ber of subjective factors in an objective formula to arrive at a conclu-
sion. Either she had reason to know, or she did not; total relief or no re-

dief at all. Perhaps the more appropriate inquiry is: How much did she 
know and how much should she have known? One hundred percent? 
Fifty percent? If the latter is the answer, maybe the spouse should be 
relieved of only half of the liability.

For example, suppose there is a deficiency on a joint return due to 
a disallowed business expense related to an unincorporated business that 
Husband owns. Wife knows Husband owns a business, but knows 
nothing about its operations. She obtained a degree in marine biology 
from a state school, but never worked outside the home. Wife cares for 
the house and children; Husband pays all the bills and balances the 
checkbook. Each year, Husband prepares a tax return, and wife signs it 
after briefly looking it over. Wife completely trusts Husband due to his 
business expertise. For most of their fifteen-year marriage, finances 
have been sparse and the couple has had to budget their money carefully 
to make ends meet. However in 1992, the year of the deficiency, things 
changed. The couple dined out frequently, vacationed in the Caribbean, 
and bought a luxury car. When Wife asked about the success of the 
business, Husband always seemed willing to explain, but due to her lack 
of financial knowledge, she did not understand his answers. His expla-
nations were always thorough, and without any evasive undertones.

\textsuperscript{122.} Hayman v. Commissioner, 992 F.2d 1256, 1261 (2d Cir. 1993) (quoting Price v. Com-
missioner, 887 F.2d 959, 963 n.9 (9th Cir. 1989)); Erdahl v. Commissioner, 930 F.2d 585, 589 
(8th Cir. 1991) (quoting *Price*, 887 F.2d at 963 n.9).

\textsuperscript{123.} *Erdahl*, 930 F.2d at 589 (quoting Sanders v. United States, 509 F.2d 162, 166 (5th Cir. 
1975)).

\textsuperscript{124.} *See infra* Part IV.
When signing the 1992 return, Wife noticed that the amount of tax due was about the same as it had been in the past. She saw a large deduction and asked Husband about it, but once again she did not understand the answer.

In 1998, the IRS issues a notice of deficiency relating to the 1992 return due to the disallowed business deduction. Husband died in 1993 and Wife asserts protection under section 6013(e). What result? Clearly, under the transaction approach of the Tax Court, Wife’s knowledge of the existence of the business precludes all relief. Under the Ninth Circuit’s approach, it is possible for Wife to get total relief because of her lack of financial knowledge and involvement in the couple’s financial affairs, coupled with the lack of Husband’s evasiveness. But, neither one of these results is completely fair.

Total relief seems questionable considering Wife had a duty to review the return, and the deduction was right there in black and white. Her lack of knowledge regarding tax law is not a reason to qualify for relief. Moreover, Wife has a college degree. True, it is not a business degree, but it was obtained from a four-year college, which means that Wife is educated. Furthermore, Wife experienced lavish expenditures that were unusual when compared to her prior standard of living.

However, denying relief doesn’t seem fair either. Husband and Wife agreed before they married that he would handle the money and she would raise their children. Wife believed Husband to be an honest man and she had no reason to think he would claim a fraudulent deduction. Wife was not involved in the couple’s financial affairs and Husband never acted suspiciously. Husband has been deceased for five years and it would be a financial hardship for Wife to pay the tax liability in 1998. Holding Wife liable for the entire amount seems inequitable, which is why section 6013(e) was enacted.

Here is a situation where perhaps total relief should not be given because petitioner signed the return and saw the deduction. However, relief should not be totally denied because that would be inequitable. An equitable solution would be for the court to apportion relief, or hold Wife liable for only a portion of the liability. The amount she is held liable for should be proportionate to the amount of knowledge she had, or should have had. Since the question of knowledge is largely determined by the facts of each case, the portion to be relieved and the portion to be paid should be determined by the court after weighing all of the facts

125. See Ratana v. Commissioner, 662 F.2d 220, 224 (4th Cir. 1981); Bell v. Commissioner, 56 T.C.M. (CCH) 1467, 1471-75 (1989).
and circumstances. In addition to utilizing the established factors, the court may wish to consider additional factors such as culture, intelligence, domestic violence, or other unique circumstances that may apply. It is against the factual "backdrop" of each case that a petitioner's qualification for protection under section 6013(e) should be determined.

A. The Language of the Statute

Apportionment is supported by the language of section 6013(e). First, apportionment is not prohibited by section 6013; relief is not required to be awarded in the absolute. In fact, the language tends to support a reading of partial relief: Relief of tax liability under that statute is afforded "to the extent that such liability is attributable to such substantial understatement." Use of the words "to the extent" implies that the innocent spouse may be entitled to obtain relief on something other than an all-or-nothing basis. Furthermore, it is a cardinal rule of construction of taxing statutes that there can be no tax imposed by implication or construction, and in case of doubt or ambiguity, either as to the fact of the imposition or as to the amount

126. See supra text accompanying note 74.
127. See Ratana, 662 F.2d at 222 ("In the Thai culture a wife submits to her husband and does not question his decisions.").
128. See Peterson v. Commissioner, 73 T.C.M. (CCH) 1714, 1717 (1997) ("It is not uncommon for courts to conclude that highly educated intelligent taxpayers are entitled to innocent spouse relief.").
129. See Kistner v. Commissioner, 18 F.3d 1521, 1526 (11th Cir. 1994) ("Where physical or mental abuse is shown, even when the abuse does not rise to the level of coercion, a basis may exist for allowing innocent spouse relief.").
130. See, e.g., Ratana, 662 F.2d at 222 (noting that spouses who are members of Gamblers Anonymous are "encouraged to accept, without question, any money offered by the gambler"). But see Purificato v. Commissioner, 9 F.3d 290 (3d Cir. 1993).

The income tax laws do not as a general rule provide that those who have experienced unhappiness, tragedy, or abuse at the hands of family members may pay less tax than other people in identical financial circumstances who have experienced happiness, good fortune, and considerate treatment by their families. Given that these facts and circumstances are generally deemed irrelevant for purposes of tax liability, . . . we do not believe that Congress intended to require investigations and trials delving into such intensely private, non-financial matters.
Purificato, 9 F.3d at 297.
133. The wording of a statute is the most persuasive evidence of congressional intent. See United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940); Sierra Club v. Train, 557 F.2d 485, 489 (5th Cir. 1977).
thereof, it must be resolved in favor of the taxpayer.\textsuperscript{134}

The possibility of partial relief is extremely favorable to the taxpayer when compared to no relief at all, which would be the most likely result under the present interpretation. Therefore, the taxpayer should be entitled to relief whenever possible.

\textbf{B. Equity}

The original purpose\textsuperscript{135} of the innocent spouse provision was to "bring government tax collection practices into accord with basic principles of equity and fairness" in order to eliminate "grave injustice."\textsuperscript{136}

Apportioning damages is the most equitable reading of the innocent spouse provision because it allows protection to reach a greater number of deserving spouses, who would otherwise be completely ineligible for relief due to a slight amount of knowledge.

\textbf{C. Apportionment in Omission Cases}

Apportionment has already been utilized by both the Tax Court and appellate courts, but only in omission cases.\textsuperscript{137} The most recent case of this type is \textit{Wiksell v. Commissioner}.\textsuperscript{138} In \textit{Wiksell}, after several years of nonlucrative occupations, petitioner's husband started his own company which became very successful. Petitioner, however, had nothing to do with the business and was scared to ask her husband any questions because he was domineering and abusive. He wrote most of the checks and kept all business documents in a locked file cabinet. During 1984 and 1985, petitioner received $54,500 and $140,500, respectively, from her husband, which she deposited into her own account; yet, the couple's joint returns for those years reported only $10,525 and $4,298 of income. Sometime in 1985, an investigation of the husband's business was initiated, whereby he eventually pleaded guilty to criminal charges and was imprisoned. The assessed tax deficiencies were $221,294 for

\begin{thebibliography}{9}
\bibitem{134} Cole v. Commissioner, 81 F.2d 485, 487 (9th Cir. 1935) (emphasis added). \textit{But see} Bokum v. Commissioner, 94 T.C. 126, 155 (1990) ("[E]xemptions from taxation are to be construed narrowly."), aff'd, 992 F.2d 1132 (11th Cir. 1993).
\bibitem{135} Purpose is a vital component of construing tax statutes. See Deborah A. Geier, \textit{Interpreting Tax Legislation: The Role of Purpose}, 2 FLA. TAX REV. 492 (1995).
\bibitem{137} \textit{See} Ballard v. Commissioner, 740 F.2d 659 (8th Cir. 1984); Ratana v. Commissioner, 662 F.2d 220 (4th Cir. 1981); Bell v. Commissioner, 56 T.C.M. (CCH) 1467 (1989); Jenkins v. Commissioner, 55 T.C.M. (CCH) 1354 (1988).
\bibitem{138} 90 F.3d 1459 (9th Cir. 1996).
\end{thebibliography}
1984 and $789,919 for 1985.\textsuperscript{139}

The Tax Court found that petitioner had reason to know of the understatement and denied relief. On appeal, the Ninth Circuit took a different approach. While agreeing with the Tax Court that there was overwhelming evidence showing that petitioner had reason to know of a substantial understatement, the circuit court found little evidence that she knew of the \textit{magnitude} of the understatement.\textsuperscript{140} Petitioner had reason to know that their reported income was understated because she had received close to $200,000, an amount far in excess of that reported, from her husband during the years in question.\textsuperscript{141} She may not, however, have reason to know of the rest of the understatement, which was over one million dollars in total.\textsuperscript{142} For this reason, the Court found that apportioning damages was proper.\textsuperscript{143}

The court supported its decision by noting that although the statute does not expressly provide for apportionment, it does not prohibit it either.\textsuperscript{144} Furthermore, applying the statute without apportionment could generate inequitable results because “relief might be wholly lost if culpability can be shown even as to a minute portion of the understatement.”\textsuperscript{145} Finally, the court pointed to other innocent spouse cases which have been decided using apportionment principles.\textsuperscript{146} Finding “no com-

\textsuperscript{139} See id. at 1461.
\textsuperscript{140} See id. at 1463.
\textsuperscript{141} See id. at 1461.
\textsuperscript{142} See id.
\textsuperscript{143} See id. at 1463-64.
\textsuperscript{144} See id. at 1463.
\textsuperscript{145} See id. at 1463.
\textsuperscript{146} Id.
\textsuperscript{139} See id. at 1461.
\textsuperscript{140} See id. at 1463.
\textsuperscript{141} See id. at 1461.
\textsuperscript{142} See id.
\textsuperscript{143} See id. at 1463-64.
\textsuperscript{144} See id. at 1463.
\textsuperscript{145} Id.
\textsuperscript{146} Id. The cases cited, in order, were: \textit{Ratana v. Commissioner}, 662 F.2d 220 (4th Cir. 1981); \textit{Ballard v. Commissioner}, 740 F.2d 659 (8th Cir. 1984); \textit{Bell v. Commissioner}, 56 T.C.M. (CCH) 1467 (1989); and \textit{Jenkins v. Commissioner}, 55 T.C.M. (CCH) 1354 (1988).

The methods of apportionment used in \textit{Ratana} and \textit{Jenkins} are similar to \textit{Wiksell}. In \textit{Ratana}, petitioner sought relief for deficiencies of over a half a million dollars resulting from unreported income earned by her husband in a lucrative narcotics trade which she knew nothing about. See \textit{Ratana}, 662 F.2d at 222. Petitioner was held liable for the tax on $30,000, which she had actually received from her husband, and for expenses paid in excess of income reported because she had actual knowledge of this income. See id. at 225. She was relieved, however, with regard to all other income received by her husband because “receipt of $30,000 . . . did not alert her to the far greater sums he had received in the narcotics trade.” Id. at 224.

Similarly, in \textit{Jenkins}, petitioner’s wife embezzled close to $25,000, which she failed to report. See \textit{Jenkins}, 55 T.C.M. (CCH) at 1356. Of this amount, petitioner was held liable for the deficiency relating to $14,000, because that amount was deposited by his wife in their joint checking account and he believed it to be salary earned by his wife. See id. at 1357. Petitioner was relieved of the remaining deficiency because he had no knowledge of the embezzlement. See id.

The idea of apportionment is mentioned only in dicta in \textit{Ballard}. See \textit{Ballard}, 740 F.2d at 665. In holding that the act of endorsing checks did not impart constructive knowledge of income on the petitioner, the court noted that “[e]ven if . . . endorsement of checks . . . did put her on no-
PELLING reason why the statute cannot be so interpreted,” the case was remanded to the Tax Court to determine what portion of the deficiency was subject to relief.147

The DRA made section 6013(e) equally applicable to deduction cases as it is to omission cases,148 and therefore, the same reasoning can justify apportioning relief in deduction cases.

D. Comparative Negligence

The notion of partial relief in innocent spouse cases may be likened to the defense of comparative negligence.149 Prior to the development of comparative negligence, the defense was based upon the common law doctrine of contributory negligence, whereby any negligence on the part of the plaintiff, even if slight, barred all recovery. As a result, all of the damages fell on one party, even though two parties were responsible.

Over time, courts became reluctant to rule that a plaintiff was negligent due to the inevitable and inequitable result of denying all recovery. Furthermore, the harshness of the doctrine led courts to find some other way to deal with cases where both parties were negligent.150

One of these attempts was to apportion damages.151 Under this method, damages would be divided between the parties at fault.152 The defense of comparative negligence has been adopted by many states, both statutorily and judicially.153

As presently interpreted, innocent spouse relief is similar to the

147. *Wiksell*, 90 F.3d at 1463. On remand, the Tax Court held that petitioner had no reason to know of the “portions of the understatements” in excess of the amounts received from her husband and afforded her relief for such amounts. See *Wiksell* v. Commissioner, 75 T.C.M. (CCH) 1512, 1514 (1998).

148. See supra Part II.C.


150. See id. at 469.

151. See id. at 470.

152. See id.

153. See id. at 471.
doctrine of contributory negligence in that, just as slight negligence on the part of the plaintiff bars all recovery, slight knowledge on the part of the petitioner bars all relief. Also similar is the reluctance of the courts to impose such a harsh result. Just as the doctrine of contributory negligence evolved into a more equitable defense, so too can the innocent spouse provision. Apportionment in section 6013(e) deduction cases would impose liability only to the extent liability is due, based on the degree of knowledge petitioner had or should have had. If a judge or jury is capable of determining percentages of fault in comparative negligence cases, that same judge or jury is just as capable of apportioning damages in innocent spouse relief cases.154

E. Balancing the Tax Court and Nontransactional Courts

Apportionment in innocent spouse deduction cases balances the rationales and concerns of both the Tax Court and the nontransactional courts. On one end of the spectrum, in cases where the petitioner appears completely innocent, the court may still hold her liable for a small portion of the deficiency due to the fact that she signed the return, thereby agreeing to be joint and severally liable. This gives effect to the Tax Court's concern of preserving the theory of joint and several liability. On the other end of the spectrum, there may be strong evidence that petitioner should have known of the deduction, but also some indications that she was in fact innocent. In this situation, the court may hold her liable for some, but not all, of the deficiency.

It is important to note that even if a court finds apportionment to be an appropriate option, it is not required to make use of it. In clear cases, courts may continue to grant all, or no relief. But these cases are rare. In reality, most petitioners fall between the two extremes, and apportionment is the method by which those petitioners can benefit from the protections of the innocent spouse provision.

V. CONCLUSION

Section 6013(e) is a source of disagreement between the Tax Court and several circuit courts of appeals. However, since the circuits are generally in agreement, or affirm the Tax Court without directly confronting the question of which standard should prevail, it is unlikely that

the Supreme Court will agree to hear an appeal until such time as one circuit court expressly disagrees with the rest. Until the calls for legislative relief are answered by Congress, the courts should interpret the innocent spouse provision as allowing partial relief in both omission and deduction cases.

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