United States Tax Court

T.C. Memo. 2022-55

JAN E. POCOCK,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 2558-17, 23569-17L. Filed June 6, 2022.

Jan E. Pocock, pro se.

Miriam C. Dillard and *A. Gary Begun*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

VASQUEZ, *Judge*: In docket No. 2558-17, petitioner seeks review of respondent's determination that she is not entitled to section 6015 relief with respect to joint federal income tax returns filed by her former spouse for taxable years 2006 and 2007.[1] In docket No. 23569-17L, petitioner seeks review of a determination by the Internal Revenue Service (IRS) Office of Appeals (Appeals) denying her section 6015 relief and upholding a notice of intent to levy for taxable year 2008. We consolidated these cases for trial, briefing, and opinion.

[1] Unless otherwise indicated, all statutory references are to the Internal Revenue Code, Title 26 U.S.C., in effect at all relevant times, all regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure. We round all monetary amounts to the nearest dollar.

Served 06/06/22

[*2] The issue for decision is whether petitioner qualifies for relief from her 2006, 2007, and 2008 federal income tax liabilities under section 6015(f). We resolve this issue in petitioner's favor.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. We incorporate the First Stipulation of Facts and accompanying exhibits by this reference. Petitioner resided in Florida when she filed her Petitions.

Petitioner's marriage

In 1972 petitioner graduated from Michigan State University with a degree in art education and returned to her hometown in the suburbs of Detroit, Michigan. There she met Douglas Pocock, a Vietnam veteran and aspiring salesperson. They were married in 1973. They have two children: Hailey DeRosa (Hailey), born in 1978, and Brett Pocock (Brett), born in 1980.

In the 1980s Mr. Pocock started a roofing installation business in Michigan with the help of petitioner's brother, Jack Givens. Mr. Givens owned a manufacturing business that made the roofing material that Mr. Pocock installed. Mr. Pocock's business was initially successful but then fell into arrears. Because these arrears affected Mr. Givens's business, relations between the brothers-in-law soured.

Finding herself in the middle of the dispute, petitioner sought to get a better understanding of the situation. One day, while Hailey and Brett were at school, petitioner confronted Mr. Pocock and pressed him for answers about his business problems. Mr. Pocock responded by picking up an antique glass vase, a gift of petitioner's grandmother, and hurling it at petitioner. She ducked out of the way, but the shattered vase damaged her favorite painting and dented their wall.

As Mr. Pocock stormed out of the house, petitioner realized that pressing her husband about finances was a line she could not cross without jeopardizing her safety. However, she did not consider divorce. Having been raised in the Christian faith, petitioner had a longstanding belief in the institution of marriage. She also believed a two-parent household would benefit her children.

[*3] After his roofing installation business collapsed, Mr. Pocock and petitioner pursued a franchising opportunity involving window blinds. After that venture failed in 1986, the Pocock family moved to Florida.

Petitioner's new life in Florida started favorably. In 1987 she secured a job as a substitute schoolteacher and became a full-time art teacher the following year. Mr. Pocock started a construction cleanup business and secured a contract with Disney Parks. Although Mr. Pocock was still prone to outbursts in their rental home, petitioner took comfort in their improving financial situation. Just as things were looking up, however, Mr. Pocock's construction cleanup business collapsed. In 1990 he left petitioner and moved to Daytona Beach. Petitioner and Mr. Pocock had little contact for the next two years.

Petitioner and Mr. Pocock reconnected in 1992 after he agreed to participate in Christian counseling. Despite their marital problems, petitioner continued to believe a two-parent household would benefit her children. Newly reunited, the Pocock family moved into another rental home. Over the next few years, Mr. Pocock pursued various real estate ventures while petitioner worked as a schoolteacher.

The Pocock household was often tense, especially when the family was experiencing financial stress. During those times, questioning or disturbing Mr. Pocock could result in an explosive reaction. As Brett recounted at trial: "You didn't poke the bear. You learned how to avoid the situation." When family members failed to abide by that strategy, "bad things would happen." On several occasions, Brett suffered physical abuse at the hands of his father.

Mr. Pocock also dominated conversations during family meals and other gatherings. If a family member expressed a dissenting viewpoint, he became verbally abusive—sometimes, in front of household guests. Mr. Pocock was also verbally abusive to Marion Givens, petitioner's mother. On one occasion, he harangued Mrs. Givens when she told him a dish he had washed was still dirty. Over time, petitioner stopped inviting guests over and felt increasingly isolated.

Mr. Pocock's "money brokering" business

In 1997 petitioner left her teaching job to become a traveling salesperson for a golf clothing company. Meanwhile Mr. Pocock spent an increasing amount of time on the family computer. He told petitioner he was using it to start a "money brokering" business. As petitioner understood it, Mr. Pocock sought out investors and connected them with

[*4] medical professionals who were looking to sell or consolidate their practices. According to Mr. Pocock, he was compensated by commission at the closing of a deal.

It was difficult for petitioner to glean additional information about Mr. Pocock's "money brokering" business. When petitioner tried to broach the subject with him, Mr. Pocock normally responded with terse and dismissive answers. If petitioner continued to press him for information, then Mr. Pocock turned to longwinded tangents that made little sense to her. If she continued to question him, then Mr. Pocock became violent, kicking household objects and throwing tools against the wall. After such an outburst, he normally became remorseful and acquiescent until the pattern repeated itself.

Home purchase

Mrs. Givens moved in with the Pocock family in 1999. With the addition of Mrs. Givens, an 87-year-old widow with burgeoning health issues, the Pococks' rental home began to feel cramped. Unhappy with her new living conditions, Mrs. Givens offered to help petitioner and Mr. Pocock buy a new home. Soon thereafter, they contracted to purchase a home in Winter Springs, Florida (Winter Springs home), for $228,990.

Mrs. Givens, petitioner, and Mr. Pocock financed the purchase and closing costs via a mortgage of $108,950 and cash of $121,639. Of the $121,639, Mrs. Givens contributed $110,190, and petitioner contributed $11,449. Petitioner's contribution came from a checking account she maintained at Seminole Schools Federal Credit Union (Seminole account). At the time, petitioner held the Seminole account jointly with Mr. Pocock.

Petitioner, Mr. Pocock, and Mrs. Givens took title to the home on February 28, 2000.

Bank accounts

Petitioner and Mr. Pocock opened a joint account at Huntington Bank (Huntington) in 2000. In 2008 they opened several joint checking and savings accounts at Washington Mutual Bank (WAMU), where Mr. Pocock also maintained a personal checking account.

Mr. Pocock maintained tight control over his and petitioner's mail, which included statements for the Huntington and the WAMU joint accounts. He installed an electronic contraption in the front of the

[*5] house that rang whenever someone opened the mailbox. Mr. Pocock normally retrieved the mail immediately upon delivery. Petitioner, who was afraid to enter her husband's home office, did not review monthly statements for the Huntington and the WAMU joint accounts.

Petitioner conducted her personal banking out of the Seminole account. She regularly reviewed statements for that account.

Federal income tax refunds: 1995–2005

As described above, Mr. Pocock claimed to earn periodic commissions from his "money brokering" business. In reality he was fraudulently overstating his federal income tax withholdings and living off the resulting refunds.

During their marriage Mr. Pocock prepared his and petitioner's joint income tax returns. Other than providing Forms W–2, Wage and Tax Statement, and other tax-related information to her husband, petitioner was not involved in the preparation of the joint returns. Petitioner did not review or sign the returns before they were filed. Having grown up in a household where her father handled the family's tax matters, petitioner was accustomed to relying on Mr. Pocock to prepare the returns.

For taxable years 1995 through 2005, Mr. Pocock fraudulently claimed large refunds on his and petitioner's joint returns by overstating his income and federal income tax withholdings.[2] Because the IRS did not examine or otherwise correct those returns, respondent's account transcripts for those years show balances of zero.[3]

On the joint returns for 1995 through 2005, Mr. Pocock reported federal income tax and withholding as follows:

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[2] Respondent notified Mr. Pocock that petitioner was seeking relief from joint and several liability and that he had a right to intervene in these cases. Mr. Pocock did not exercise his right to intervene.

[3] At trial respondent's counsel stated that she had considered taking action to reopen those years for examination. See § 6501(c)(1) ("In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed . . . at any time."). However, she ultimately decided otherwise, explaining: "I don't know if we will collect what we have here [for taxable years 2006, 2007, and 2008]. It seemed like . . . not a wise use of resources."

[*6]

Tax year	*Filing date*	*Total tax*	*Withholding*	*Overpayment*
1995	9/4/1997	$26,593	$80,674	$54,081
1996	9/8/1997	58,768	98,523	39,755
1997	2/3/1999	61,475	172,406	110,931
1998	12/10/1999	56,158	169,968	113,810
1999	5/4/2001	58,745	174,898	116,153
2000	8/29/2002	51,244	194,170	142,926
2001	12/30/2002	55,060	208,836	153,776
2002	1/11/2005	52,803	219,628	166,825
2003	1/14/2005	47,488	184,828	137,340
2004	10/21/2005	35,253	193,627	158,104
2005	1/17/2008	53,435	149,012	95,577

After receiving the above-described joint returns, the IRS issued Mr. Pocock and petitioner the following refund checks comprising the reported overpayments and, for some years, interest:[4]

Tax year	*Issue date*	*Amount*
1997	4/30/1999	$112,621
1998	2/13/2000	115,137
2000	9/27/2002	142,926
2001	3/21/2003	153,776
2002	4/8/2005	168,594
2003	4/1/2005	138,243
2004	7/14/2006	166,077
2005	2/15/2008	95,577

Petitioner, who believed that Mr. Pocock was earning periodic commissions from his "money brokering" business, endorsed the refund checks for 1997 and 2004. Occasionally she asked about the status of their tax filings, but he never gave her a clear answer. When he showed petitioner the 2004 refund check, Mr. Pocock explained that it was part of his compensation for the closing of a deal. It was difficult for petitioner to press him further on the subject since doing so could result in a violent reaction.

Mr. Pocock signed petitioner's name on the refund checks for 2000, 2001, 2002, 2003, and 2005 before depositing them into the

[4] For taxable years 1995, 1996, and 1999, the record does not include copies of refund checks or establish where they were deposited.

[*7] Huntington or the WAMU joint account.[5] The refund checks were the Pocock family's primary source of income, and Mr. Pocock used the funds to cover the mortgage and other shared living expenses, home improvements, tuition for Brett, furniture, and one cruise trip. Although she did not review statements for the Huntington and the WAMU joint accounts, petitioner was aware Mr. Pocock was making those payments.

When Mr. Pocock's and petitioner's funds ran low, Mrs. Givens covered the bulk of the family's living expenses.

Estate theft

In March 2004 Mr. Pocock's mother, Virginia Pocock, passed away. He was appointed the personal representative of her estate.

In October 2005 petitioner learned from her sister-in-law that Mr. Pocock had misappropriated funds from the estate. The news shocked and angered petitioner and Mrs. Givens. She gave further thought to divorcing Mr. Pocock but was afraid to uproot Mrs. Givens, who had invested a substantial portion of her savings in the Winter Springs home. Mrs. Givens insisted that Mr. Pocock be removed from the deed.

On October 26, 2005, Mr. Pocock was removed as personal representative of his mother's estate. The record includes an unsigned stipulation between Mr. Pocock and the successor personal representative. Thereon he agreed to pay damages of $30,000 within 15 days of the probate court's approval of the agreement.

Chastened by the family's discovery, Mr. Pocock fell into one of his remorseful and acquiescent phases. He agreed to live in a separate part of the house from petitioner and Mrs. Givens. On January 31, 2006, he issued a quitclaim deed releasing his interest in the Winter Springs home to petitioner and Mrs. Givens. After receiving the 2004 refund check in July 2006, he wrote petitioner a $140,000 check. Petitioner deposited the check into her Seminole account, from which she had removed Mr. Pocock as a joint owner.[6]

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[5] Although the record includes a copy of the 1998 refund check, it does not reveal where the check was deposited.

[6] Mr. Pocock also transferred title for his truck to petitioner in 2008. Respondent concedes on brief that tax avoidance was not the principal purpose of the 2006 and 2008 transfers.

[*8] *Years in issue: 2006, 2007, and 2008*

After she stopped working as a golf clothing salesperson in 2004, petitioner worked a series of jobs at a testing service, a fabric store, and a life insurance company when she was not caring for her mother. As was her custom, she gave Mr. Pocock her Forms W–2 and other tax information for 2006, 2007, and 2008 but did not review or sign the returns**.** Petitioner did not think to file separate returns because she was unaware they had any tax problems. Furthermore, it remained risky to question Mr. Pocock about financial matters.

As he had for previous years, Mr. Pocock overstated his income and federal income tax withholding on his and petitioner's 2006, 2007, and 2008 joint returns. He did so by attaching to the returns false Forms W–2 and Forms 1099–MISC, Miscellaneous Income, for the purported entities Deadline, Inc., The Buyers Representative, and BEC Funding. The information returns for those entities reported wages or nonemployee compensation paid to Mr. Pocock, along with substantial federal income tax withholdings.[7] In fact, Mr. Pocock never worked for or received compensation from those entities. Nor did those entities withhold federal income tax on his behalf.

With respect to petitioner, the 2006, 2007, and 2008 joint returns included the Forms W–2 and other tax information she had provided to Mr. Pocock. Those documents were genuine.

Mr. Pocock filed his and petitioner's joint return for 2006 on July 11, 2008. It reported total tax of $67,479, federal income tax withholding of $168,665, excess Social Security withholding of $626, and a telephone excise credit of $40. On August 8, 2008, the IRS refunded the $101,852 overpayment to Mr. Pocock and petitioner by check, which petitioner endorsed. Mr. Pocock made a split deposit of the check into the WAMU joint accounts and his personal account.

By March 2009, the funds from that deposit were largely depleted. Bank statements in the record reflect frequent debits for online and retail purchases, restaurants, and miscellaneous recurring payments.

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[7] For example, Mr. Pocock attached to the joint 2006 return a Form W–2 and a Form 1099–MISC from Deadline, Inc., and BEC Funding, respectively. The Form W–2 reported wages of $263,282 and withholding of $99,590. The Form 1099–MISC reported nonemployee compensation of $86,557 and withholding of $34,322.

[*9] On April 14, 2009, Mr. Pocock filed his and petitioner's joint return for 2007. Thereon he reported total tax of $67,269, income tax withholding of $169,784, and excess Social Security withholding of $581. On May 8, 2009, the IRS issued a $103,096 refund check. After signing petitioner's name on the back of the check, Mr. Pocock deposited it into one of the WAMU joint accounts.

By October 2009, the funds from that deposit were largely depleted. Bank statements in the record reflect frequent debits for online and retail purchases, restaurants, and miscellaneous recurring payments (including the home mortgage).

In April 2009 Mr. Pocock filed a joint return for 2008. Thereon he claimed a refund of $108,253 after reporting total tax of $61,498, income tax withholding of $169,007, and excess Social Security withholding of $744. This time, however, the IRS did not issue a check.

Examination, collection activity, and criminal investigation

When the 2008 refund check did not materialize, Mr. Pocock contacted an IRS customer service office for help. That office connected him with the Taxpayer Advocate Service (TAS), which opened a case to investigate the status of the refund. The TAS investigation drew the attention of the IRS Examination Division, which commenced an examination of Mr. Pocock and petitioner's joint returns for 2006, 2007, and 2008.

Soon thereafter, the IRS reversed and assessed the overstated withholding credits for those years.[8] Account transcripts for 2006 and 2008 show liabilities (including interest and other accruals) of $276,892 and $114,309, respectively. The record does not include an account transcript for 2007.[9] Because the IRS reversed the overstated withholding credit for that year, we infer that petitioner's liability for 2007 is at least the amount of the reported overpayment, $103,096.

In October 2010 petitioner learned about the liabilities via letter from the IRS. Mr. Pocock was out of the house when the mail arrived, giving petitioner a rare chance to intercept it. When he returned,

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[8] The amount of an overstated withholding credit may be summarily assessed and is not subject to the deficiency procedures prescribed in section 6213. *See* § 6201(a)(3); *Bregin v. Commissioner*, 74 T.C. 1097, 1104–05 (1980).

[9] Stipulated Exhibit 70–J purports to be a copy of the 2007 account transcript but is instead a duplicate copy of the transcript for 2008.

[*10] petitioner questioned Mr. Pocock about the letter and pressed him for answers about how the liabilities could be so high. In response, he slammed petitioner against a wall. After he went to sleep that night, petitioner hid his gun, afraid he might use it.

Mr. Pocock and petitioner retained Taxpayer Resolution Services Co. (TRS) to represent them before the IRS. On November 24, 2010, TRS submitted a request for a collection due process (CDP) hearing on behalf of Mr. Pocock and petitioner in response to a notice of intent to levy for 2008. Thereafter, the IRS Criminal Investigation Division (CI) launched an investigation of the joint returns, causing Appeals to suspend the CDP hearing.

On June 30, 2011, CI Special Agents (SAs) Rita Adam and Richard Kim made an unannounced visit to the Winter Springs home. The SAs interviewed Mr. Pocock and petitioner separately. During their interview of petitioner, the SAs presented her with copies of the returns for 2005 through 2008 and the refund checks for 1997, 1998, and 2000 through 2007. Petitioner stated that she had not signed the 2005, 2006, 2007, and 2008 returns. She also acknowledged that she had endorsed the 1997, 2004, and 2006 refund checks but denied signing the others. CI did not recommend petitioner for criminal prosecution.

However, CI continued to investigate Mr. Pocock and, after some internal delays, recommended that he be criminally prosecuted. A grand jury investigation followed, but the U.S. Attorney's Office for Orlando, Florida, ultimately declined prosecution. CI received notice of that decision in October 2015.[10]

Medical treatment, divorce, and other developments

In July 2011 Mr. Pocock's primary care physician recommended that he seek mental health treatment. He was diagnosed with post-traumatic stress disorder arising from his military service. After receiving the diagnosis, Mr. Pocock sought treatment. With medication and therapy, his demeanor began to soften. In the years that followed, he became less reactive and easier to engage.

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[10] By the time the IRS sent the case to the U.S. Department of Justice, the criminal period of limitations for 2005 and 2006 had expired. According to SA Adam, the U.S. Attorney's Office had concerns about the period of limitations for the remaining years.

[*11] Mr. Pocock's improving mental health was not enough to save his marriage, however. After learning he was under criminal investigation, petitioner also discovered that Mr. Pocock was accruing debt under her name. The destruction of her credit was petitioner's final straw. She asked Mr. Pocock for a divorce.

On September 8, 2011, petitioner and Mr. Pocock jointly filed a petition for simplified dissolution of marriage with the 18th Judicial Circuit Court in and for Seminole County, Florida. On November 9, 2011, the circuit court entered its final judgment of dissolution of marriage (final judgment). The final judgment incorporated petitioner and Mr. Pocock's marital settlement agreement, which provided that Mr. Pocock was responsible for all of their joint debts. The agreement also provided: "The parties agree that due to [his] medical situation and lack of finances to pay for housing, [petitioner] will allow [Mr. Pocock] to live under one roof. He will pay rent in the amount of $800 per month."

Petitioner agreed to continued cohabitation with Mr. Pocock because of his ongoing medical issues. Additionally, she was still caring for Mrs. Givens, who was nearly 100 years of age. Mrs. Givens was prone to the occasional fall, and petitioner relied on Mr. Pocock to help lift her up.

Mrs. Givens passed away on July 17, 2013. Around that time, Mr. Pocock was hospitalized with lung embolisms and began experiencing vision problems. Meanwhile, petitioner and her brother, Mr. Givens, listed the Winter Springs home for sale. They sold the property in November 2013 for $315,000. Petitioner used her share of the proceeds to purchase a home in Leesburg, Florida (Leesburg home), for $160,000. Petitioner purchased the property without a mortgage, and it remains unencumbered.

Petitioner has resided at the Leesburg home with Mr. Pocock since November 2013. They live in separate parts of the house and treat each other as roommates. At the time of trial, Mr. Pocock paid petitioner monthly rent of $873. Petitioner relies on the certainty of that payment and is fearful of finding an alternate roommate, who "could disappear at any moment."

Administrative and judicial proceedings

In January 2013 petitioner filed Form 8857, Request for Innocent Spouse Relief (request for relief), for 2006, 2007, and 2008. Respondent's

[*12] Cincinnati Centralized Innocent Spouse Operation evaluated petitioner's 2006 and 2007 tax years but routed 2008 to Appeals, where her CDP hearing for that year remained pending. On November 3, 2016, respondent issued petitioner final determination letters denying her request for relief for 2006 and 2007. Petitioner timely filed a Petition with this Court seeking review of respondent's determinations for those years.

Meanwhile, the end of the criminal investigation allowed for the resumption of petitioner's and Mr. Pocock's CDP hearing for 2008.[11] Appeals allowed each spouse a separate hearing. During petitioner's hearing, Appeals considered her request for relief. The Appeals officer (AO) assigned to the case acknowledged that petitioner would suffer economic harm in the absence of relief. Nevertheless, the AO recommended denying relief after concluding that petitioner, among other things, had reason to know of the overstated withholding credits.

On October 19, 2017, Appeals issued a Notice of Determination Concerning Collection Action(s) Under Section 6330 and Your Request for Relief from Joint and Several Liability under Section 6015. Therein Appeals determined to deny petitioner relief under section 6015 and sustain the proposed collection action for 2008.

Petitioner timely filed a Petition with this Court seeking review of both determinations. After we consolidated these cases for trial, briefing, and opinion, trial was held in Tampa, Florida.

Before trial, petitioner submitted to respondent Form 433–A, Collection Information Statement for Wage Earners and Self-Employed Individuals. Thereon petitioner reported total assets of $191,625. That amount comprised (1) the Leesburg home, valued at $180,000, (2) two vehicles with a value of $850, (3) furniture, art, and jewelry valued at $6,000, and (4) $4,775 held in bank accounts.

Petitioner, who was 68 years old at the time of trial, suffered from hip pain that made work difficult. She planned to undergo hip replacement surgery after trial. Her monthly income was $1,855. That amount comprised her wages, Social Security, and $873 rental payment from Mr. Pocock. Before trial, petitioner applied to the Central Florida

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[11] On June 16, 2016, respondent's Collection Division issued a letter to petitioner and Mr. Pocock regarding their 2006 and 2007 liabilities. Therein the Collection Division stated that it was placing them in "currently not collectible" status for those years.

[*13] Educators Federal Credit Union (credit union) for a $110,000 loan. The credit union denied her application because she had insufficient income.

OPINION

Generally, married taxpayers may elect to file a joint federal income tax return. § 6013(a). If a joint return is made, the tax is computed on the spouses' aggregate income, and each spouse is fully responsible for the accuracy of the return and is jointly and severally liable for the entire amount of tax shown on the return or found to be owing. § 6013(d)(3); *Butler v. Commissioner*, 114 T.C. 276, 282 (2000). Nevertheless, under certain circumstances, a spouse who has made a joint return may seek relief from joint and several liability under procedures set forth in section 6015. Section 6015 provides a spouse with three alternatives: (1) full or partial relief under subsection (b); (2) proportionate relief under subsection (c); and (3) if relief is not available under subsection (b) or (c), equitable relief under subsection (f).

The parties stipulated that petitioner is not entitled to relief under section 6015(b) or (c). Accordingly, our review is limited to section 6015(f).

I. *Jurisdiction, standard of review, and burden of proof*

There are three jurisdictional bases for the Court to review a taxpayer's entitlement to section 6015 relief. *See Maier v. Commissioner*, 119 T.C. 267, 270–71 (2002), *aff'd*, 360 F.3d 361 (2d Cir. 2004). First, a spouse can file a petition pursuant to section 6015(e)(1). *See id.* Second, the Court can review the claim in the context of a CDP case under section 6330(d)(1). *See id.* at 271. Third, the claim can be asserted by a spouse as an affirmative defense in a proceeding to redetermine a deficiency pursuant to section 6213(a). *See id.* at 270.

Section 6015(e)(1)(A) provides that a taxpayer may file a Tax Court petition to determine the appropriate relief available to the taxpayer under section 6015. The petition must be filed (1) within 90 days after the Commissioner's mailing of a notice of his final determination of relief to the taxpayer or (2) if the Commissioner has not yet mailed such a notice, at any time after six months have passed since the taxpayer's election for relief was "filed" (in the case of section 6015(b) and (c)) or the request for relief was "made" (in the case of section 6015(f)).

[*14] With respect to 2006 and 2007, petitioner timely filed a Petition contesting respondent's final determination notices denying relief under section 6015. Accordingly, this Court has jurisdiction under section 6015(e)(1) to determine the appropriate relief available to petitioner for 2006 and 2007.

As for 2008, the notice of determination comprised a determination to sustain the proposed levy and a final determination to deny petitioner section 6015 relief. Because petitioner filed a Petition contesting respondent's denial of section 6015 relief within 90 days of the notice, we have jurisdiction under section 6015(e)(1) to determine the appropriate relief available to petitioner for 2008. *See Francel v. Commissioner*, T.C. Memo. 2019-35, at *37–40 (reviewing the taxpayer's innocent spouse claim under section 6015(e)(1) where the taxpayer raised the claim at a CDP hearing, the notice of determination discussed that claim, and the taxpayer's petition assigned error to the denial of innocent spouse relief).

In resolving section 6015(f) cases brought under section 6015(e)(1), we employ a de novo standard and scope of review.[12] *Porter v. Commissioner*, 132 T.C. 203, 210 (2009). Petitioner generally bears the burden of proving that she is entitled to equitable relief under section 6015(f). *See id.*; *see also* Rule 142(a)(1).

II. *Section 6015(f) relief*

As directed by section 6015(f), the Commissioner has prescribed procedures to determine whether a requesting spouse is entitled to equitable relief from joint and several liability. Those procedures are set forth in Rev. Proc. 2013-34, § 4, 2013-43 I.R.B. 397, 399–403. Although the Court considers those procedures when reviewing the Commissioner's determination, the Court is not bound by them. *See Pullins*, 136 T.C. at 438–39; *Molinet v. Commissioner*, T.C. Memo. 2014-109, at *6. The Court's determination ultimately rests on an evaluation of all the facts and circumstances. *Porter*, 132 T.C. at 210.

Pursuant to the revenue procedure, the Commissioner conducts a multistep analysis when determining whether a requesting spouse is

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[12] The Petitions in these cases were filed before Congress enacted section 6015(e)(7), which generally limits our review to the administrative record. Because section 6015(e)(7) does not apply to petitions filed before the provision's effective date, *see Sutherland v. Commissioner*, 155 T.C. 95, 104 (2020), our scope of review remains de novo, *see Pullins v. Commissioner,* 136 T.C. 432, 438 (2011).

[*15] entitled to equitable relief under section 6015(f). *See* Rev. Proc. 2013-34, § 4. The requirements for relief under the revenue procedure are categorized as threshold or mandatory requirements, streamlined elements, and equitable factors. A requesting spouse must satisfy each threshold requirement to be considered for relief. *See id.* § 4.01, 2013-43 I.R.B. at 399–400. If the requesting spouse meets the threshold requirements, the Commissioner will grant equitable relief if the requesting spouse meets each streamlined element. *See id.* § 4.02, 2013-43 I.R.B. at 400. Otherwise, the Commissioner will determine whether equitable relief is appropriate by evaluating the equitable factors. *See id.* § 4.03, 2013-43 I.R.B. at 400–03.

A. *Threshold requirements*

The requesting spouse must meet seven threshold requirements to be considered for relief under section 6015(f): (1) the requesting spouse filed a joint return for the taxable year for which relief is sought; (2) relief is not available to the requesting spouse under section 6015(b) or (c); (3) the claim for relief is timely filed; (4) no assets were transferred between the spouses as part of a fraudulent scheme; (5) the nonrequesting spouse did not transfer disqualified assets to the requesting spouse; (6) the requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and (7) absent certain enumerated exceptions, the tax liability from which the requesting spouse seeks relief is attributable to an item of the nonrequesting spouse. Rev. Proc. 2013-34, § 4.01.

Respondent concedes that threshold requirements (1), (2), (3), and (5) have been met. However, respondent contends that petitioner has not satisfied threshold requirements (4), (6), and (7).

Before we address each requirement in turn, we will comment on the credibility of the parties' witnesses. "As a trier of fact, it is our duty to listen to the testimony, observe the demeanor of the witnesses, weigh the evidence, and determine what we believe." *Kropp v. Commissioner*, T.C. Memo. 2000-148, 2000 Tax Ct. Memo LEXIS 178, at *9. In *Diaz v. Commissioner*, 58 T.C. 560, 564 (1972), we observed that the process of distilling truth from the testimony of witnesses, whose demeanor we observe and whose credibility we evaluate, "is the daily grist of judicial life."

[*16] At trial petitioner called herself, Brett, Hailey, and Mr. Givens as witnesses. We found each of them to be credible and forthright. We also found respondent's sole witness, SA Adam, to be credible and forthright.

1. *Threshold requirement (4): no assets transferred between spouses as part of a fraudulent scheme*

Rev. Proc. 2013-34, § 4.01, does not define "fraudulent scheme." However, Treasury Regulation § 1.6015-1(d) states that a "fraudulent scheme includes a scheme to defraud the Service or another third party." The basic badges of fraud demonstrate an intent to misrepresent, conceal, or hide information. *See Spies v. United States*, 317 U.S. 492, 499 (1943); *Recklitis v. Commissioner*, 91 T.C. 874, 910 (1988). This Court has previously found a fraudulent scheme when spouses transferred property with the intent to hide such transfers. *See Chen v. Commissioner*, T.C. Memo. 2006-160, 2006 Tax Ct. Memo LEXIS 163, at *14–15 (finding that transfers to "hide the trail of fraud" and fraudulent intent precluded relief under section 6015(f)).

According to respondent, Mr. Pocock transferred assets to petitioner as part of a fraudulent scheme in 2006 and 2008. In 2006 he deeded petitioner and Mrs. Givens his interest in the Winter Springs home and wrote petitioner a check for $140,000. In 2008 he transferred title for his truck to petitioner. Respondent contends that those transfers were part of a scheme to defraud the Estate of Virginia Pocock, from which he had stolen funds.[13]

The record contains no evidence that petitioner schemed with her husband to hide assets from the estate. Nor is there evidence that she concealed from or misrepresented to her in-laws facts about the above-described transfers. To the contrary, Mr. Pocock's quitclaim deed on the Winter Springs home was publicly recorded.

There is also no evidence that Mr. Pocock attempted to thwart collection of any judgments against him in favor of the estate. Although the parties stipulated the opening of a probate case in a Florida circuit court, respondent has directed us to no filings evidencing an attempt by Mr. Pocock to evade collection of a judgment. The only probate document before us is an unsigned stipulation between Mr. Pocock and the successor personal representative of the estate. Under the terms of

[13] The above-described transfers occurred before the IRS examined the joint returns for the years in issue. Respondent concedes that those transfers were not made for tax avoidance purposes.

[*17] that stipulation, Mr. Pocock would pay damages of $30,000 within 15 days of the probate court's approval of the agreement. There is nothing in the record to suggest that he thwarted the consummation or satisfaction of that agreement. Accordingly, respondent's contention that Mr. Pocock and petitioner were hiding Mr. Pocock's assets from the estate is fatally speculative.

Via Simultaneous Answering Brief, respondent also asserts that the transfers were fraudulent under Florida's Uniform Fraudulent Transfer Act (FUFTA). FUFTA provides, in part, that a transfer is fraudulent if the debtor did not receive reasonably equivalent value and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. Fla. Stat. § 726.106(1) (2021). Because respondent's FUFTA argument appeared for the first time in a Simultaneous Answering Brief, we decline to consider it.[14] *See Spireas v. Commissioner*, T.C. Memo. 2016-163, at *35 n.9 ("We are generally reluctant to consider arguments advanced for the first time in a party's answering brief, and we will decline to do so here."), *aff'd*, 886 F.3d 315 (3d Cir. 2018); *see also DiLeo v. Commissioner*, 96 T.C. 858, 891–92 (1991), *aff'd*, 959 F.2d 16 (2d Cir. 1992); *Shelby U.S. Distribs., Inc. v. Commissioner*, 71 T.C. 874, 885 (1979). Accordingly, we need not consider the interplay between state fraudulent transfer law and threshold requirement (4).

Hence, on the basis of the record in these cases, we hold that no assets were transferred as part of a fraudulent scheme.

2. *Threshold requirement (6): did not knowingly participate in the filing of a fraudulent return*

Rev. Proc. 2013-34, § 4.01(6), 2013-43 I.R.B. at 399, provides that the requesting spouse must not knowingly participate in the filing of a fraudulent joint return. This Court has found such participation where the requesting spouse signed fraudulent joint returns with knowledge of the inaccuracies reported thereon. *See Durland v. Commissioner*, T.C. Memo. 2016-133, at *98 (holding that requesting spouse knowingly participated in filing of fraudulent joint returns by signing them with knowledge of omitted income). Petitioner concedes that the joint returns fraudulently overstated Mr. Pocock's federal income tax withholdings.

[14] In any event the record does not establish that Mr. Pocock was or became insolvent when the transfers at issue occurred. The bank statements in the record do not account for the 1998 refund check of $115,137, which is greater than the $30,000 judgment referenced in the unsigned stipulation.

[*18] We must therefore determine whether she was aware of the overstated withholdings when the returns were filed.

Petitioner credibly testified that her involvement in return preparation was limited to providing information returns to her husband. She did not review the returns before they were filed and, therefore, could not have signed them with knowledge of the inaccurately reported withholding credits. Even if she had reviewed and signed the returns, those actions alone would not have alerted her to the overstated withholding credits. The returns did not look false on their face, as SA Adam acknowledged at trial. The SA credibly testified: "[W]hen you just look at the returns, you don't necessarily see anything that would make you think that they were incorrectly prepared or self-prepared."

Respondent asserts that petitioner knew about the fraudulent refund scheme because she was aware of the abnormally large refund checks. Respondent cites petitioner's endorsement of the 1997, 2004, and 2006 refund checks as evidence of her knowledge of and participation in the fraudulent refund scheme.

However, petitioner credibly testified that Mr. Pocock had represented that the large refunds arose from his "money brokering" deals. Although he was not trustworthy, Mr. Pocock's behavior made it difficult for petitioner to question him about his business. When she attempted to do so, he gave her terse and confusing answers before resorting to verbal and physical intimidation. Mr. Pocock kept the details of his business further shrouded by using a mailbox buzzer to keep tight control of the mail. Petitioner's son, Brett, corroborated those dynamics at trial. He credibly testified that the family knew not to disturb Mr. Pocock when he was in front of the computer. Doing so was "risky" because it could "provoke anger." Consequently, Brett was unable to explain to his friends what his father did for a living.

Accordingly, we find it more likely than not that petitioner did not know that Mr. Pocock was claiming fictitious withholdings from nonexistent businesses. Because she had no knowledge of the overstated withholding credits, we hold that she did not knowingly participate in the filing of the fraudulent joint returns.

[*19] 3. *Threshold requirement (7): tax liability attributable to an item of the nonrequesting spouse*

Rev. Proc. 2013-34, § 4.01(7), 2013-43 I.R.B. at 399, requires that "[t]he income tax liability from which the requesting spouse seeks relief [be] attributable (either in full or in part) to an item of the nonrequesting spouse or an underpayment resulting from the nonrequesting spouse's income" unless a specific exception applies. The Commissioner may consider granting relief regardless of whether the underpayment or understatement is attributable to the requesting spouse if any of the following exceptions applies: (1) attribution is solely due to operation of community property law; (2) nominal ownership; (3) misappropriation of funds; (4) abuse; or (5) fraud committed by the nonrequesting spouse. *See id.*

Petitioner argues that she satisfies this threshold requirement because Mr. Pocock prepared the fictitious information returns and claimed the overstated withholding credits without her knowledge. Respondent counters that, because petitioner benefited from the resulting tax refunds, the liabilities at issue are attributable to her. We agree with petitioner.

In deciding the issue of to whom inaccurate, false, or "phony" tax items are attributable, the Court has generally attributed such items to the spouse who wrongfully reported or claimed them. *See Leith v. Commissioner*, T.C. Memo. 2020-149, at *7 n.6 (attributing disallowed deductions claimed on Schedule C, Profit or Loss From Business, to the spouse named thereon as the proprietor); *Lawson v. Commissioner*, T.C. Memo. 1994-286 (attributing recharacterized loss to the spouse who had mischaracterized stock sale as an ordinary loss rather than a capital loss); *Davis v. Commissioner*, T.C. Memo. 1992-240 (attributing phony deduction claimed on Schedule A, Itemized Deductions, to spouse who claimed it), *aff'd without published opinion*, 26 F.3d 130 (9th Cir. 1994).[15]

[15] Although some of the cited cases arose under former section 6013(e), our caselaw interpreting that section remains instructive in interpreting similar terms in cases under section 6015. *See Alt v. Commissioner*, 119 T.C. 306, 313–14 (2002), *aff'd*, 101 F. App'x 34 (6th Cir. 2004); *Juell v. Commissioner*, T.C. Memo. 2007-219, 2007 Tax Ct. Memo LEXIS 222, at *15 n.2. The terms "attributable . . . to an item of the nonrequesting spouse" of Rev. Proc. 2013-34, § 4.01(7), are similar to the terms "attributable to grossly erroneous items of one spouse" of former section 6013(e). The analysis for attributing items to one spouse or the other is essentially the same.

[*20] In these cases Mr. Pocock prepared the joint returns, which included fictitious Forms W–2 and 1099–MISC from nonexistent entities. Those forms reported substantial withholdings from wages and nonemployee compensation purportedly paid to Mr. Pocock. Because the liabilities at issue arose from the reversal of the withholding credits derived therefrom, they are attributable to Mr. Pocock and not to petitioner. Petitioner has therefore satisfied the seventh threshold requirement of Rev. Proc. 2013-34, § 4.01.

B. *Streamlined determination elements*

Having determined that petitioner satisfies the threshold requirements, we next consider whether she is entitled to a streamlined determination. *See* Rev. Proc. 2013-34, § 4.02.

The requesting spouse is eligible for a streamlined determination by the Commissioner only in cases in which the requesting spouse establishes that she (1) is no longer married to the nonrequesting spouse (marital status requirement), (2) would suffer economic hardship if not granted relief (economic hardship requirement), and (3) did not know or have reason to know that the nonrequesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return, or did not know or have reason to know that there was an understatement or deficiency on the joint income tax return (lack of knowledge requirement). *Id.* The requesting spouse must establish that she satisfies each of the three elements to receive a streamlined determination granting relief. *Id.*

1. *Marital status requirement*

For purposes of this element, a requesting spouse is "no longer married to the nonrequesting spouse" if the requesting spouse is divorced from the nonrequesting spouse as of the date of the Commissioner's determination. *See id.* § 4.03(2)(a)(i), 2013-43 I.R.B. at 400. The Seminole County circuit court granted petitioner and Mr. Pocock a divorce on November 9, 2011, which predates respondent's determinations to deny petitioner relief. Accordingly, petitioner satisfies this requirement.

Respondent acknowledges that petitioner's marital status would normally favor relief. Nevertheless, respondent urges us to discard the plain text of the revenue procedure because petitioner continues to live with Mr. Pocock. Respondent relies on *Ohrman v. Commissioner*, T.C. Memo. 2003-301, 2003 Tax Ct. Memo LEXIS 303, at *12–13, *36, *aff'd*,

[*21] 157 F. App'x 997 (9th Cir. 2005), in which the Court upheld a denial of innocent spouse relief to a taxpayer who had resided with her spouse after their legal separation. In doing so, the Court gave little weight to the taxpayer's legal separation because she had obtained it "to shield as many assets and as much of the family's income as possible" from tax collection. *See id.* at *25–26. Respondent contends that petitioner and Mr. Pocock are similarly using state family law to shield assets while continuing to cohabitate. We disagree.

Petitioner credibly testified that she divorced Mr. Pocock because she discovered he was assuming debt in her name. We specifically find that the destruction of petitioner's credit was the final straw of a disintegrating marriage.[16] Petitioner's attempt to salvage her credit is distinguishable from the actions of the *Ohrman* taxpayers. In *Ohrman* the Commissioner issued the taxpayers a notice of proposed changes pertaining to a tax return under examination. *Id.* at *8. Thereafter, the parties entered a separation agreement under which the nonrequesting spouse transferred assets worth $782,000 to the requesting spouse. *Id.* at *9–11. Because the notice of proposed changes preceded the settlement agreement, the Court concluded that the principal purpose of the agreed-upon transfer was tax avoidance. *Id.* at *24–26.

In contrast respondent concedes that tax avoidance was not the principal purpose of Mr. Pocock's asset transfers to petitioner. Those transactions—namely, the 2006 release of his interest in the Winter Springs home, the 2006 transfer of $140,000, and the 2008 transfer of his truck to petitioner—preceded the examination that resulted in the liabilities at issue. Accordingly, *Ohrman* is distinguishable from the cases at bar.[17] We therefore hold that petitioner satisfies the marital status requirement.

2. *Economic hardship requirement*

Economic hardship exists if satisfaction of the tax liability, in whole or in part, would result in the requesting spouse's being unable to

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[16] We do not believe petitioner and Mr. Pocock are continuing to live as de facto spouses. We credit petitioner's testimony that her post-divorce relationship with Mr. Pocock is akin to that of a roommate. Practical concerns, such as ongoing health issues and economic constraints, explain their post-divorce cohabitation to our satisfaction.

[17] Other cases cited by respondent are also distinguishable. *Cf. Doyel v. Commissioner*, T.C. Memo. 2004-35 (upholding denial of innocent spouse relief to taxpayer who, among other things, remained married to nonrequesting spouse); *Von Kalinowski v. Commissioner*, T.C. Memo. 2001-21 (same).

[*22] meet her reasonable basic living expenses. Rev. Proc. 2013-34, § 4.03(2)(b), 2013-43 I.R.B. at 401. The requesting spouse would suffer economic hardship if two requirements are met: (1) either (a) the requesting spouse's income is below 250% of the federal poverty level (FPL) or (b) the requesting spouse's monthly income exceeds her reasonable basic monthly living expenses by $300 or less, and (2) the requesting spouse does not have assets from which she can make payments toward the tax liability and still meet reasonable basic living expenses. *Id.* If the requesting spouse fails to satisfy either requirement, the Commissioner "will consider all facts and circumstances (including the size of the requesting spouse's household) in determining whether the requesting spouse would suffer economic hardship if relief is not granted." *Id.*

On brief, respondent concedes that petitioner's monthly income is $1,855. That amount comprises petitioner's monthly wages, Social Security, and $873 rental payment from Mr. Pocock.

Despite that concession, respondent argues that petitioner's economic outlook is incomplete without considering Mr. Pocock's disability and other monthly income. However, petitioner's monthly income includes the $873 payment she receives from Mr. Pocock. Respondent has not directed us to any evidence that Mr. Pocock pays petitioner more than that amount. Even if we were to consider petitioner and Mr. Pocock as a single economic unit, we doubt it would yield a different result. The record includes a letter from respondent's Collections Division to petitioner and Mr. Pocock, stating: "We determined that you don't have the ability to pay the money you owe at this time."[18]

Thus, we find that petitioner's annual income is $22,260 ($1,855 × 12), which is lower than 250% of the applicable FPL.[19] Petitioner therefore satisfies the first prong of the economic hardship test.

The second prong of the test requires consideration of whether petitioner has any assets from which she can make payments towards

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[18] That determination is consistent with the AO's acknowledgment in his memorandum denying relief that the economic hardship factor favors petitioner. It is also consistent with respondent's counsel's acknowledgment at trial that the chances of collecting the liabilities at issue are doubtful at best.

[19] At the time of trial, 250% of the FPL for a family of one in Florida was $30,350. *See* Annual Update of the HHS Poverty Guidelines, 83 Fed. Reg. 2642, 2643 (Jan. 18, 2018).

[*23] the tax liabilities and still meet reasonable basic living expenses. On her Form 433–A, petitioner reported total assets of $191,625, $180,000 of which is attributable to the Leesburg home. Because the liabilities for the years in issue are at least $485,297, petitioner does not have sufficient assets to satisfy them.

To be sure, respondent correctly notes that the Leesburg home is unencumbered. However, we doubt petitioner could access the equity in the property without selling it.[20] The record includes a statement of credit denial from a credit union, and petitioner credibly testified that her work prospects were diminishing on account of physical ailments. Given these circumstances, we do not believe petitioner could liquidate her assets to make even a partial payment of the liabilities and still meet her reasonable basic living expenses. She therefore satisfies the second prong of the economic hardship test.

In the light of the foregoing, we hold that petitioner satisfies the economic hardship requirement.

3. *Lack of knowledge requirement*

The facts here are atypical for underpayment cases because the joint returns showed overpayments from overstated withholdings—not taxes due.[21] Because these cases involve inaccurate returns, we find caselaw and other authorities on understatements to be instructive.

If the requesting spouse knew or had reason to know of the item giving rise to the understatement as of the date the joint return was filed, this factor will weigh against relief. Rev. Proc. 2013-34, § 4.03(2)(c)(i)(A), 2013-43 I.R.B. at 401. A requesting spouse has knowledge or reason to know of an understatement if she actually knew of the understatement or if a reasonable person in similar circumstances would have known of the understatement. Treas. Reg. § 1.6015-2(c). We

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[20] Respondent does not contend that petitioner could sell the home and still meet her reasonable basic living expenses. To the contrary, respondent states on brief: "Respondent is not arguing that petitioner should have to sell the home in order to pay the tax liability."

[21] In a typical underpayment case, the knowledge factor considers whether the requesting spouse knew or had reason to know that the nonrequesting spouse would not or could not pay the tax liability at the time of filing the joint return. Rev. Proc. 2013-34, § 4.03(2)(c)(ii), 2013-43 I.R.B. at 401.

[*24] must therefore consider whether petitioner actually knew or had reason to know of the overstated withholdings.

a. *Actual knowledge*

For the reasons explained *supra* part II.A.2, we find that petitioner did not have actual knowledge of the overstated withholdings.

b. *Constructive knowledge*

We now consider whether petitioner had reason to know of the overstated withholdings when the returns were filed. Rev. Proc. 2013-34, § 4.03(2)(c)(iii), 2013-43 I.R.B. at 402, states:

> The facts and circumstances that are considered in determining whether the requesting spouse had reason to know of an understatement, or reason to know whether the nonrequesting spouse could or would pay the reported tax liability, include, but are not limited to, the requesting spouse's level of education, any deceit or evasiveness of the nonrequesting spouse, the requesting spouse's degree of involvement in the activity generating the income tax liability, the requesting spouse's involvement in business or household financial matters, the requesting spouse's business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

Taxpayers are generally presumed to have constructive knowledge of information reported on returns that they signed. *Hayman v. Commissioner*, 992 F.2d 1256, 1262 (2d Cir. 1993), *aff'g* T.C. Memo. 1992-228. In addition, taxpayers have a duty to inquire into the amounts of their tax liabilities. *Price v. Commissioner*, 887 F.2d 959, 965 (9th Cir. 1989); *Butler*, 114 T.C. at 284; *Wiener v. Commissioner*, T.C. Memo. 2008-230. Failure to fulfill the duty to inquire may constitute reason to know that the tax would not be paid. *Sleeth v. Commissioner*, T.C. Memo. 2019-138, at *12, *aff'd*, 991 F.3d 1201 (11th Cir. 2021). Innocent spouse relief is not available to those who choose to ignore information in their possession. *Charlton v. Commissioner*, 114 T.C. 333, 340 (2000); *Sleeth*, T.C. Memo. 2019-138, at *12.

Petitioner did not have a clear idea of how Mr. Pocock was earning his purported commissions. Mr. Pocock exhibited a high degree of evasiveness about the details of his purported "money brokering" business. He kept close watch of the mail and refused to give clear

[*25] answers about what he was doing to generate periodic six-figure payouts. Petitioner's involvement in return preparation was limited to providing Mr. Pocock her Forms W–2 and other tax information. These facts tend to support a finding that she did not have reason to know of the overstated withholdings.

However, other facts in the record suggest that petitioner had a duty to inquire about the joint returns that she failed to uphold. Although petitioner did not sign the joint returns at issue, she consented to their filing by regularly relying on Mr. Pocock to file them on her behalf. Having endorsed the refund checks for 1997, 2004, and 2006, petitioner was aware that Mr. Pocock regularly claimed six-figure refunds on their joint returns. She was also aware that Mr. Pocock had stolen from his mother's estate and was therefore untrustworthy. Given these facts, petitioner could not reasonably trust Mr. Pocock to file accurate returns. Furthermore, before Mr. Pocock commenced his fraudulent refund scheme, he moved from one failed business venture to another. His sudden funding of household improvements and other joint expenses with six-figure checks was therefore lavish compared to past spending levels. Such a development would normally warrant an inquiry.

In a vacuum, these circumstances would compel a holding that petitioner had reason to know of the overstated withholdings. However, we do not so hold because petitioner was a victim of spousal abuse.

c. *Abuse*

Notwithstanding the requesting spouse's knowledge or beliefs, that knowledge may be negated if the nonrequesting spouse abused the requesting spouse or maintained control of the household finances by restricting the requesting spouse's access to financial information such that the nonrequesting spouse's actions prevented the requesting spouse from questioning or challenging payment of the liability. Rev. Proc. 2013-34, § 4.02(3)(a), 4.03(2)(c)(i) and (ii). "Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws." *Id.* § 4.03(2)(c)(iv), 2013-43 I.R.B. at 402; *see, e.g.*, *Stephenson v. Commissioner*, T.C. Memo. 2011-16. This Court takes all facts and circumstances into account in determining the presence of abuse, *see* Rev. Proc. 2013-34, § 4.01, and requires substantiation, or at a

[*26] minimum, specificity, with regard to allegations of abuse, *see Nihiser v. Commissioner*, T.C. Memo. 2008-135. A generalized claim of abuse is insufficient. *See Thomassen v. Commissioner*, T.C. Memo. 2011-88, *aff'd*, 564 F. App'x 885 (9th Cir. 2014); *Knorr v. Commissioner*, T.C. Memo. 2004-212.

In these cases the record provides a detailed account of Mr. Pocock's abuse and physical intimidation of petitioner. Petitioner credibly testified that he threw a glass vase at her head when she pressed him for information about a business dispute with her brother. From that incident, petitioner realized that questioning him about business or finances was a risky endeavor. When petitioner attempted to do so in later years, he responded by kicking and throwing household objects. In addition to physically intimidating petitioner, he restricted petitioner's access to financial information. He was evasive about the nature of his business and kept tight control of the mail. Consequently, it was difficult for petitioner to question him about his "money brokering" business and, by extension, the joint returns.

Medical records in evidence corroborate petitioner's account of Mr. Pocock's behavior—in particular, a letter from Mr. Pocock's therapist referencing "abusive behaviors" towards family members and others. Petitioner's son Brett provided further corroboration at trial. Brett credibly testified that the household he grew up in was often tense, especially when the family was experiencing financial stress. During those periods, the family "didn't poke the bear" by engaging with Mr. Pocock. Brett credibly testified about physical abuse he suffered from his father when he did so.

Respondent contends that certain actions by petitioner undermine her allegations of abuse. According to respondent, petitioner confronted Mr. Pocock about finances on several occasions without any apparent fear of retaliation. Respondent asserts that petitioner had no trouble (1) removing him from the joint Seminole account, (2) getting him to relinquish his interest in the Winter Springs home, and (3) negotiating the division of their liabilities in their uncontested divorce proceeding.

With respect to the latter action, Mr. Pocock was receiving mental health treatment at the time of the divorce in 2011. Petitioner credibly testified that medication and therapy softened his irritability and reactivity. Furthermore, Mr. Pocock was particularly vulnerable in 2011 since he was the target of a criminal investigation. Given these

[*27] changed circumstances, petitioner's uncontested divorce does not undercut allegations of earlier abuse.

With respect to the removals of Mr. Pocock from the joint account and the deed, petitioner and her daughter Hailey credibly testified that he exhibited recurring periods of remorse. It was during one of those periods when he assented to the removals. We doubt Mr. Pocock would have been as acquiescent if petitioner had questioned him about their tax returns, given that the refunds were his primary source of income. In fact, when petitioner did so in 2010, he slammed her against a wall. That incident frightened petitioner enough that she hid his gun.

Considering the totality of petitioner's circumstances when the joint returns were filed, we do not believe petitioner could have questioned their accuracy without risking her safety.[22] Because Mr. Pocock's abusive behavior prevented petitioner from questioning the accuracy of the joint returns or payment of the liabilities thereon, she satisfies the lack of knowledge requirement.

III. *Conclusion*

We find that petitioner is entitled to streamlined relief from joint and several liability pursuant to section 6015(f) for the years in issue. We have considered all arguments made in reaching our decision and, to the extent not mentioned, we conclude that they are moot, irrelevant, or without merit.[23]

To reflect the foregoing,

Appropriate decisions will be entered for petitioner.

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[22] Given her allegations of abuse, one might question why petitioner continues to reside with Mr. Pocock. Petitioner credibly testified that her economic situation necessitates having a roommate. She believes her living arrangement with Mr. Pocock is more reliable than a typical rental situation, a sentiment which we observed to be genuine. Since 2011, Mr. Pocock's anger and reactivity have softened with medication and counseling. Given these changed circumstances, petitioner's living arrangement does not contradict her allegations of earlier abuse.

[23] Because petitioner's section 6015(f) relief renders the proposed levy for 2008 moot, we need not consider whether Appeals' determination to sustain the collection action was an abuse of discretion.