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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2011-28

RE: IRS Notice 2011-70 and Statute of Limitations for Innocent Spouse Relief

Internal Revenue Service Notice 2011-70, effective July 25, 2011, and operational for purposes of Hawaii income tax law, expands the period within which individuals may request equitable relief from joint and several liability under section 6015(f) of the Internal Revenue Code (IRC).

BACKGROUND

Hawaii Revised Statutes (HRS) section 235-2.45(k) makes IRC § 6015 operative for purposes of Hawaii income tax law. In the case of married individuals who file joint income tax returns, each spouse is jointly and severally liable under HRS § 235-93. IRC § 6015 provides for relief from joint and several liability in certain circumstances (known as "Innocent Spouse Relief"). IRC § 6015(f) provides for equitable relief from understatements and underpayments when relief is not available under IRC § 6015(b) or (c). By regulation, the Department of Treasury established a two-year deadline to request equitable relief under subsection (f). This two-year deadline was incorporated into Hawaii Tax Law.

The Department of Treasury and the IRS have concluded that the regulations issued under IRC § 6015 should be revised so that individuals who request equitable relief under IRC § 6015(f) will no longer be required to submit a request for equitable relief within two years of the first collection activity against the requesting spouse. In its Notice 2011-70, the IRS has created new, transitional rules for the period of time within which a requesting spouse must request equitable relief under IRC § 6015(f). The Department of Taxation will follow the transitional rules laid out in Notice 2011-70.

TRANSITIONAL RULES

Pending modification of the Treasury regulations under IRC § 6015(f) to formally remove the two-year deadline for requests for equitable relief, the following transitional rules apply:

- Future Requests: Individuals may request equitable relief under IRC § 6015(f) after July 25, 2011 without regard to when the first collection activity was taken. Requests

must be filed within the period of limitation on collection for requests relating to unpaid tax liabilities under HRS § 235-111(a)[1] or, for any credit or refund of tax, within the period of limitation under HRS § 235-111(b).[2]

- Requests Pending with the Department: For individuals who have already submitted requests for relief under IRC § 6015(f) that the Department has under consideration or in suspense, the Department will consider the request for equitable relief even if the request was submitted more than two years after the first collection activity was taken, so long as the applicable period of limitation under HRS § 235-111(a) or (b) was open when the request for equitable relief was filed with the Department. Individuals with cases under consideration or in suspense should not reapply for relief under IRC § 6015(f).

- Requests that Were Denied Solely for Untimeliness and Not Litigated: Individuals whose requests for equitable relief under IRC § 6015(f) were denied by the Department solely for untimeliness and were not litigated may reapply for relief under IRC § 6015(f) after the effective date of this Announcement by filing a new Form N-379: Request for Innocent Spouse Relief. In considering this request for relief, the Department will treat the original Form N-379 as a claim for refund for purposes of the period of limitation on refunds provided by HRS § 235-111(b). This means that any amount for which a refund was available as of the date the original Form N-379 was filed and any amount subsequently collected may be eligible for refund if warranted by the Department's reconsideration of equitable relief. The Department can only grant relief with respect to unpaid liabilities if the period of limitation on collection, under HRS § 235-111(a), remains open as of the date of the reapplication for relief.

These transitional rules are effective as of July 25, 2011. They may be relied upon until final regulations modifying the two-year rule are published in the Federal Register. See IRS Notice 2011-70 for more information. For more information related to this Announcement, please contact the Rules Office at 808-587-1577.

FREDERICK D. PABLO
Director of Taxation

[1] For any tax assessed prior to July 1, 2009, the statue of limitations on collection is June 30, 2024. Therefore, the deadline for Innocent Spouse Relief requests relating to tax assessed prior to July 1, 2009 is June 30, 2024. For any tax assessed July 1, 2009 or later, the deadline for Innocent Spouse Relief requests is fifteen years from the date of the final assessment.

[2] Generally, three years from the time the return was filed or the due date of the return, or two years from the time the tax was paid, whichever is later.