

YOUNG TAX LAWYERS COMMITTEE

The Young Tax Lawyers Committee (“YTLC”) is composed of an executive board that works with regional chapters to provide education and support for new tax lawyers throughout California. The purpose of the YTLC is to provide opportunities for new tax lawyers to further their personal and professional development through participation in Taxation Section activities. Local chapters hold periodic meetings on current tax developments and facilitate educational talks on noteworthy tax topics while providing networking opportunities to meet fellow young tax attorneys and to meet more senior tax practitioners who often speak at the meetings. There are presently chapters in Los Angeles, Sacramento, San Diego, Silicon Valley and the San Francisco Bay Area.

If you are interested in becoming a member or submitting a topic to speak or write on, please contact **Kevan P. McLaughlin**, at kevan@mclaughlinlegal.com.

Committee Activities

The **San Diego Chapter of the Young Tax Lawyers** (“SDYTL”) recently held an event on “Migrating Practices – Changing Careers in Tax Law” at the University of San Diego School of Law. Those in attendance were treated to an introduction for young tax lawyers to the many different ways to practice tax law – whether working for the government, “BigLaw,” or as a solo practitioner. For more information on upcoming San Diego YTL events, please contact Co-Chairs Paula Oliveira Brunoro at pbrunoro@brunorolaw.com or Alex Bruin at alex@cmdblaw.com.

The **Young Tax Lawyers Los Angeles Chapter** (“LAYTL”) continues to hold networking events. For more information on upcoming LAYTL events, please contact Co-Chairs Michael Tan at michael.w.tan@irscounsel.treas.gov or Chris Gurley at cgurley@KPMG.com.

The **Young Tax Lawyers San Francisco Bay Area Chapter** (“BAYTL”) continues to host and sponsor various education and networking events. If you wish to be added to the BAYTL list serve or have any questions about how to get more involved, please contact Matthew Miller at bayareaytl@gmail.com.

The **Young Tax Lawyers Silicon Valley Chapter** (“SVYTL”) is taking suggestions for educational and networking events for the fall of 2017 and spring of 2018. To make suggestions or volunteer to help plan events, please contact SVYTL Co-Chairs, Jessica Anderson and Monica Frassa at siliconvalleyytl@gmail.com.

The **Young Tax Lawyers Sacramento Chapter** (“SYTL”) recently hosted a mixer sponsored by Wagner Kirkman Blaine Klomparens and Youmans LLP at Claimstake Brewing Company. More information will be provided through the SYTL email list. If you are not yet on the SYTL email list and would like to be, please contact either our Chair, Michael R. Laisné, at michael.laisne@ftb.ca.gov or our Vice-Chair, Maria Huseinbhai, at maria.huseinbhai@ftb.ca.gov. SYTL continues seeking input from members on the types of events and topics that you would like to see our chapter cover. If you have questions, or if you would like to volunteer yourself or a colleague to speak at an event, please contact Mr. Laisné or Ms. Huseinbhai.

Quick Point

A New Home for Innocent Spouses? The Bankruptcy Court’s Jurisdiction over Equitable Relief Innocent Spouse Claims

A recent decision may open the door for debtor-taxpayers to assert innocent spouse claims in bankruptcy court.

The facts in *In re: Pendergraft*, 2017 WL 1091935 (S.D. Tex. Mar. 22, 2017), are relatively straightforward. Husband and Wife divided responsibilities: he was primarily responsible for financial affairs (including filing and paying taxes) and she was responsible for child care and maintaining the household. Husband fell short on his duties. After Wife signed the tax returns, he failed to file them and pay the

corresponding tax liabilities. Wife eventually found out about Husband’s shortcomings when the Internal Revenue Service (“IRS”) levied her bank accounts. Husband confessed that he “forgot” to pay the tax liabilities and, later, claimed he established an installment agreement to resolve the issue.

In 2016, Husband and Wife attended a meeting with their legal counsel. Wife allegedly learned for the first time that Husband had not paid their income or property taxes for 15 years and they owed over \$2 million in taxes. Husband apparently had all notices sent to his office and may have misappropriated money allocated for the installment agreement. Their legal counsel advised Wife to join Husband

in filing for bankruptcy, which she did. The IRS filed a proof of claim for the taxes, penalties and interest.

A few months after filing for bankruptcy, the bankruptcy court issued an order authorizing Husband and Wife to get a divorce.

Thereafter, Wife filed for innocent spouse relief. More specifically, she objected to the IRS's proof of claim pursuant to Internal Revenue Code ("IRC") section 6015. In response, the IRS moved to dismiss Wife's complaint on the grounds that the bankruptcy court lacked subject matter jurisdiction to determine whether Wife is entitled to innocent spouse relief.

In reaching its decision, the bankruptcy court closely analyzed IRC section 6015(f) and section 6015(e)(1)(A). Subsection (f) provides, in relevant part, that (1) if it is inequitable to hold an individual liable for unpaid taxes, and (2) relief is not otherwise available "the Secretary may relieve such individual of such liability" (emphasis added). From this, the bankruptcy court decided it did not have initial subject matter jurisdiction because only the Secretary has the initial subject matter jurisdiction. Thus, a taxpayer must submit Form 8857 to the IRS and wait for either a denial or six months to pass with no determination before requesting innocent spouse relief in bankruptcy court.

According to the bankruptcy court, subsection (e)(1)(A) ultimately allows a bankruptcy court to grant innocent spouse relief. The pertinent portion of subsection (e)(1)(A) states that when a taxpayer requests equitable relief under section 6015(f), "In addition to any other remedy provided by law, the individual may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual..." (emphasis added). The IRS argued that this subsection only granted jurisdiction to the Tax Court, not to the bankruptcy court, to review the Secretary's determination. The bankruptcy court found otherwise.

The bankruptcy court held that 11 U.S.C. ("U.S.C.") section 505 is another "remedy provided by law". U.S.C. Section 505(a)(1) provides bankruptcy courts with remedial powers over tax liabilities: "...the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax..." The bankruptcy court also reviewed the legislative history and found "Section 505's enactment shows that Congress drafted the provision for the purpose of providing a forum for the swift determination of claims, including tax claims, so that such claims would not delay the administration of a bankruptcy estate." *Pendergraft* at *4.

The bankruptcy court ultimately concluded that Wife had to follow the procedures of IRC section 6015(f) before it could exercise its subject matter jurisdiction (i.e., Wife had to file a Form 8857 and wait until the earlier of the Secretary's final determination or six months after requesting the relief).

For California attorneys, it is important to recognize that this case is from the Fifth Circuit. The bankruptcy court relied heavily on Fifth Circuit precedential case law that grants the bankruptcy court broad jurisdiction to determine the legality of any tax liability of the debtor. *In re Luongo*, 259 F.3d 323, 327 (5th Cir. 2001). Further, the IRS cited to California precedent in support of its argument that the bankruptcy court did not have subject matter jurisdiction. Specifically, the IRS cited two California cases that held federal district courts do not have jurisdiction over innocent spouse cases unless the taxpayer filed a refund suit in district court while a IRC section 6015 petition is pending in Tax Court. *United States v. LeBeau*, 2012 WL 835160, at *3 (S.D. Cal. Mar. 12, 2012); *United States v. Boynton*, 2007 WL 737725, at *4 (S.D. Cal. Feb. 1, 2007). In that scenario, the Tax Court would be divested of its jurisdiction over the innocent spouse issue and the district court would be entitled to determine its applicability.

In *Boynton*, the district court determined it did not have subject matter jurisdiction to review the taxpayer's innocent spouse claim in the government's action to reduce to judgment tax liabilities. The district court rationalized "It is difficult to believe that Congress would have created a situation fraught with possibilities for inconsistent judgment and contrary to the principles of judicial economy with the phrase, '[i]n addition to any other remedy provided by law.'" The bankruptcy court dismissed *Boynton* as being based on a hypothetical: "Initially, that is not the situation in this case: there is no Tax Court proceeding. Moreover, the Court cannot determine its subject matter jurisdiction based on a hypothetical possibility that concurrent proceedings could produce inconsistent results. That issue, if it ever exists, should be left to Congress." *Pendergraft* at *5.

So, although *Pendergraft* provides some authority that a bankruptcy court has subject matter jurisdiction to grant innocent spouse relief if the IRS has filed a proof of claim and the debtor-taxpayer has followed the procedures outlined in IRC section 6015(f), it is by no means binding. The diligent representative should be aware of conflicting California (and other circuit) case law and be prepared to defend its position against the IRS.

— Ashley B. Kerns, San Diego, CA