

FAMILY LAW NEWS



Issue 4, 2015 | Volume 37, No. 4

Innocent Spouse Relief

Donald John Miod



Donald John Miod, CPA, ABV, CVA, CBA, FCPA, CFF, CFS, CGMA, MAFF and Partner is the founding partner of Miod and Company, LLP. He oversees all aspects of the company's accounting, tax and litigation services. His vast background includes developing leading proprietary asset tracing models, several professional certifications, published articles and speaking engagements at professional conferences. He was voted one of the Top 25 CPAs in the San Fernando Valley and is the recipient of the California Society of Certified Public Accountants Family Law Sections Distinguished Service Award.

This flowchart was prepared by the Family Law Section of the Litigation Sections of the California Society of Certified Public Accountants. The Flowchart is designed to assist the user, but no assurance is given that the Flowchart is comprehensive in its coverage of the subject matter or that it is suitable in dealing with a particular issue or circumstance. Accordingly, the Flowchart

should not be relied upon as a substitute for independent research to original sources of authority. Readers should refer to the Internal Revenue Code, Treasury Department Regulations and relevant court cases. The Family Law Section does not render any accounting, legal or other professional advice, nor does it have any responsibility for updating this flowchart.

Table of Contents

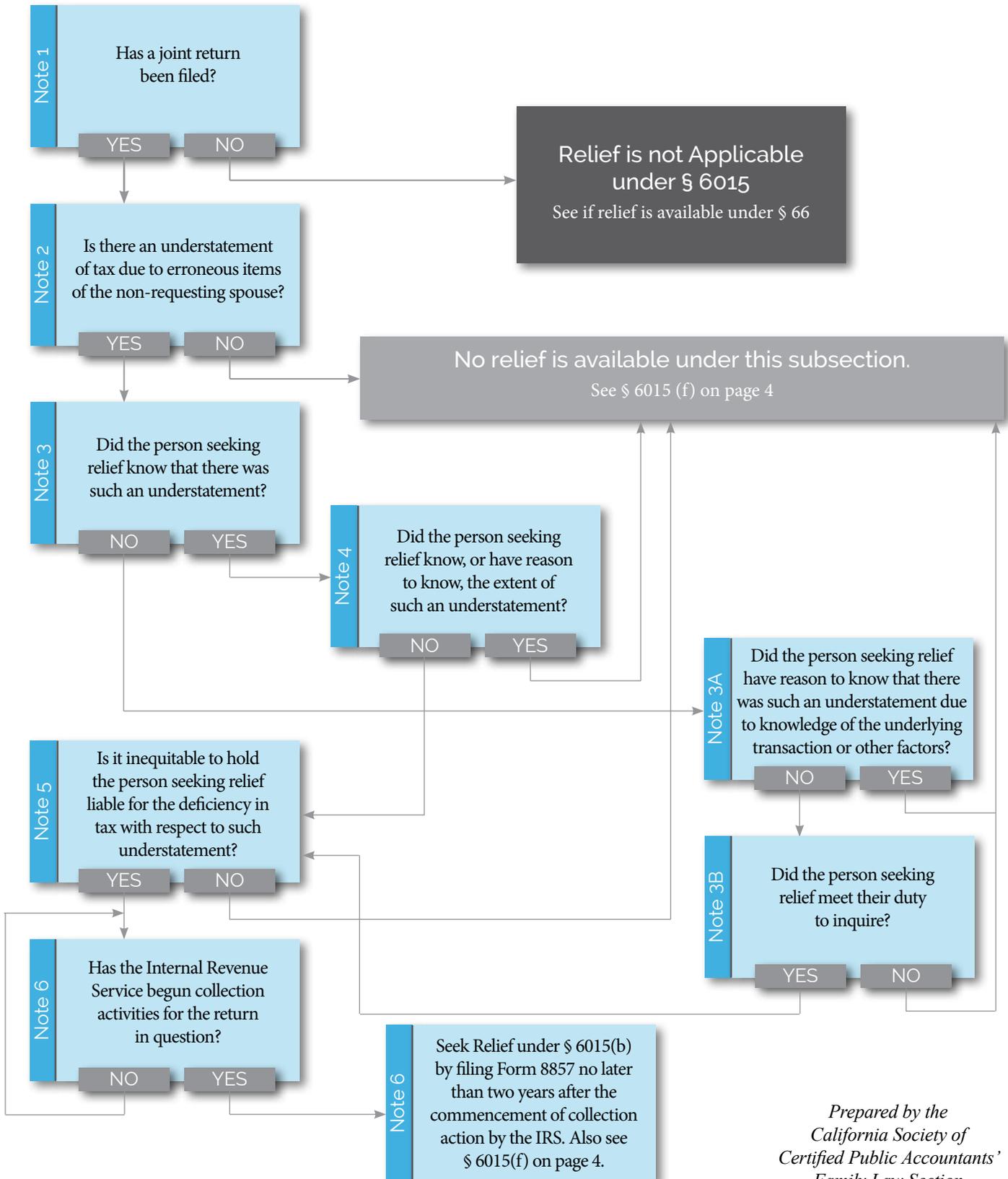
Relief from Liability, All Joint Filers § 6015 (b)	2
Separate Liability Election, § 6015 (c)	3
Equitable Relief, § 6015 (f)	4
Disqualified Asset	5
Computation of Separate Liability, § 6015 (d)	6
Footnotes*	7

The Family Law Section gratefully acknowledges the contribution made by Donald John Miod, CPA to the development of this flowchart. The Family Law Section also extends special thanks to members Leslie O. Dawson, CPA, Lorna Riff, CPA and Beverly Brautigam, CPA.

The California Society of Certified Public Accountants is headquartered in Redwood City, California.

Relief from Joint Liability – All Joint Filers

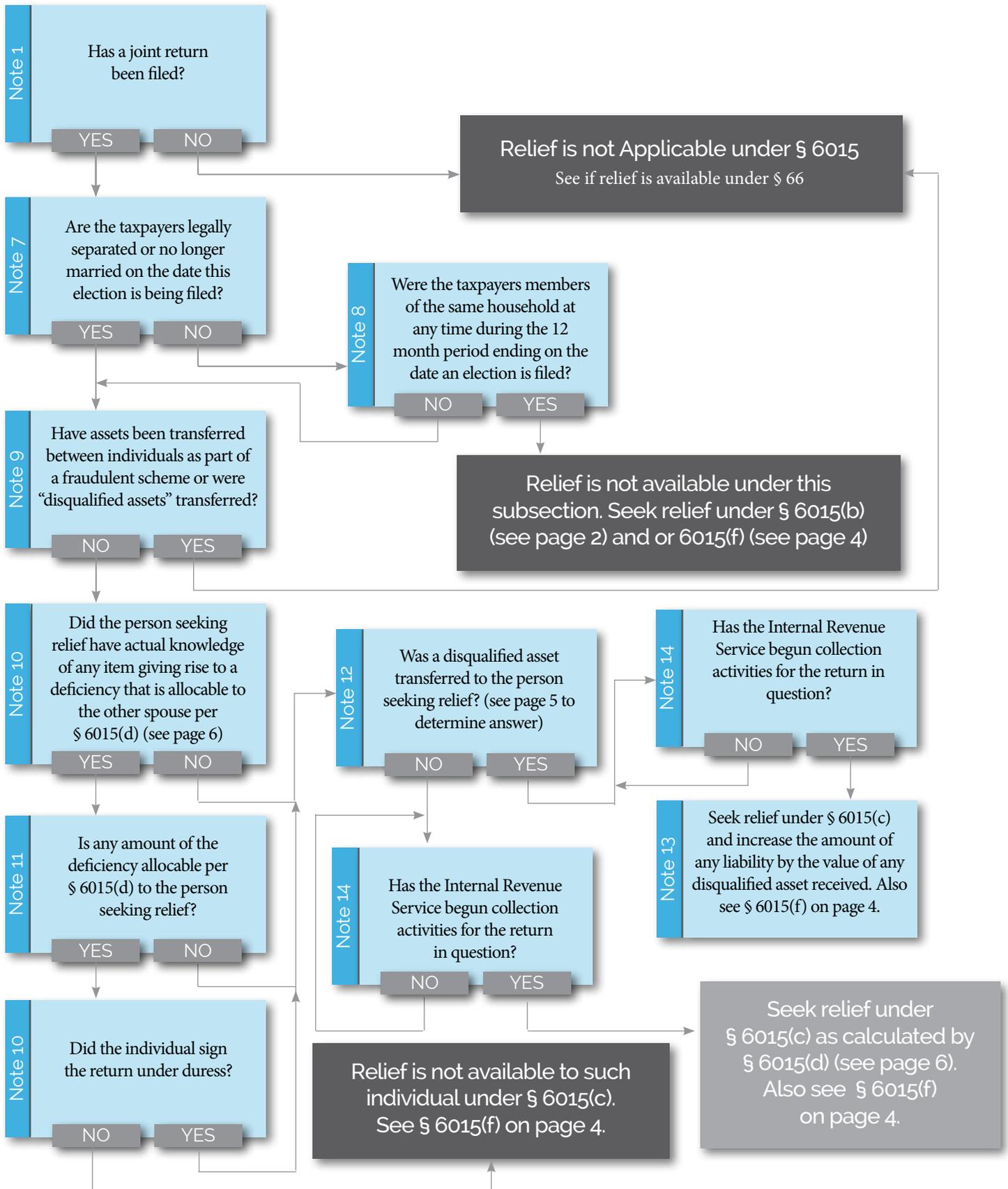
§ 6015 (b)



Prepared by the
California Society of
Certified Public Accountants'
Family Law Section

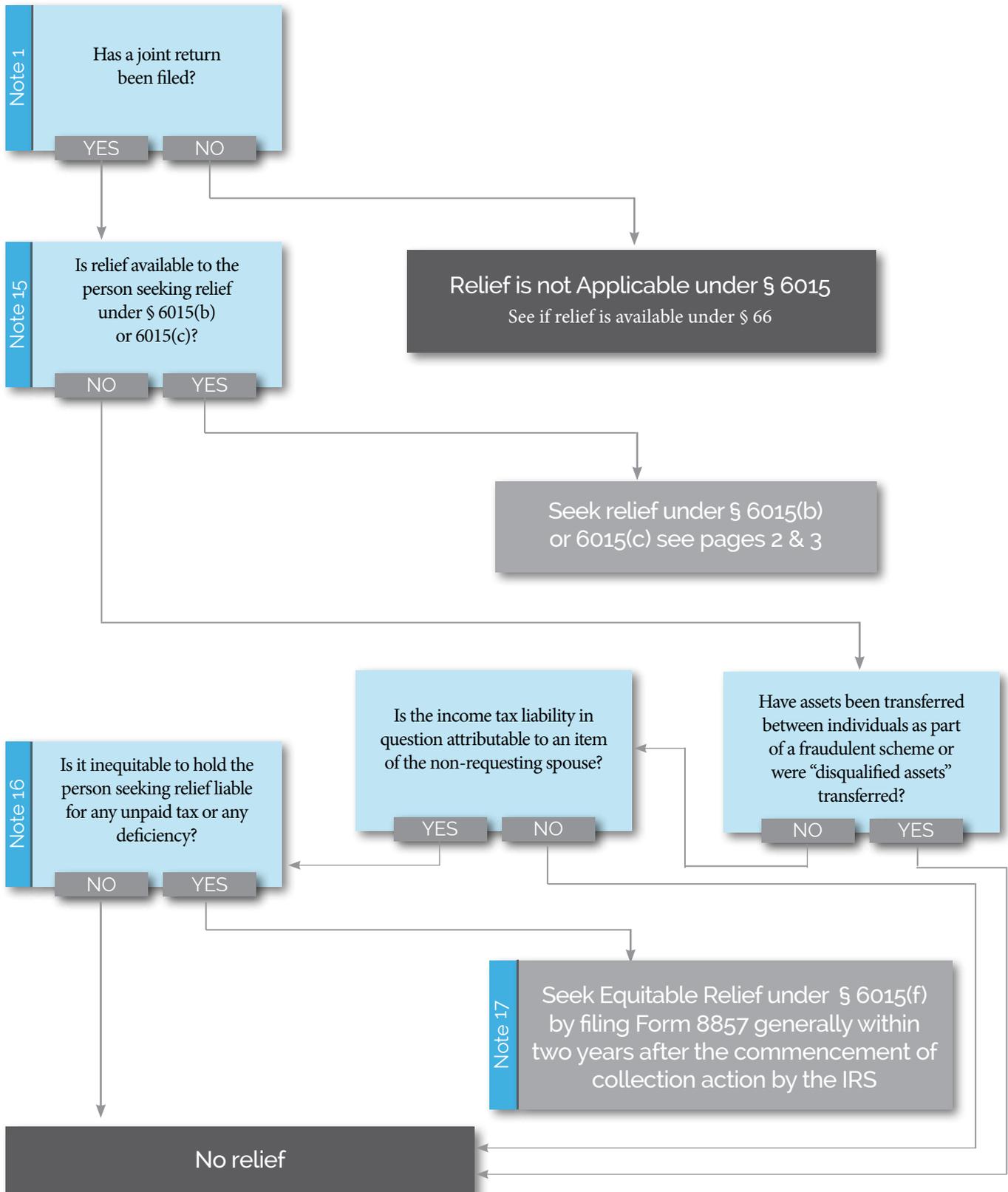
Separate Liability Election

§ 6015 (c)

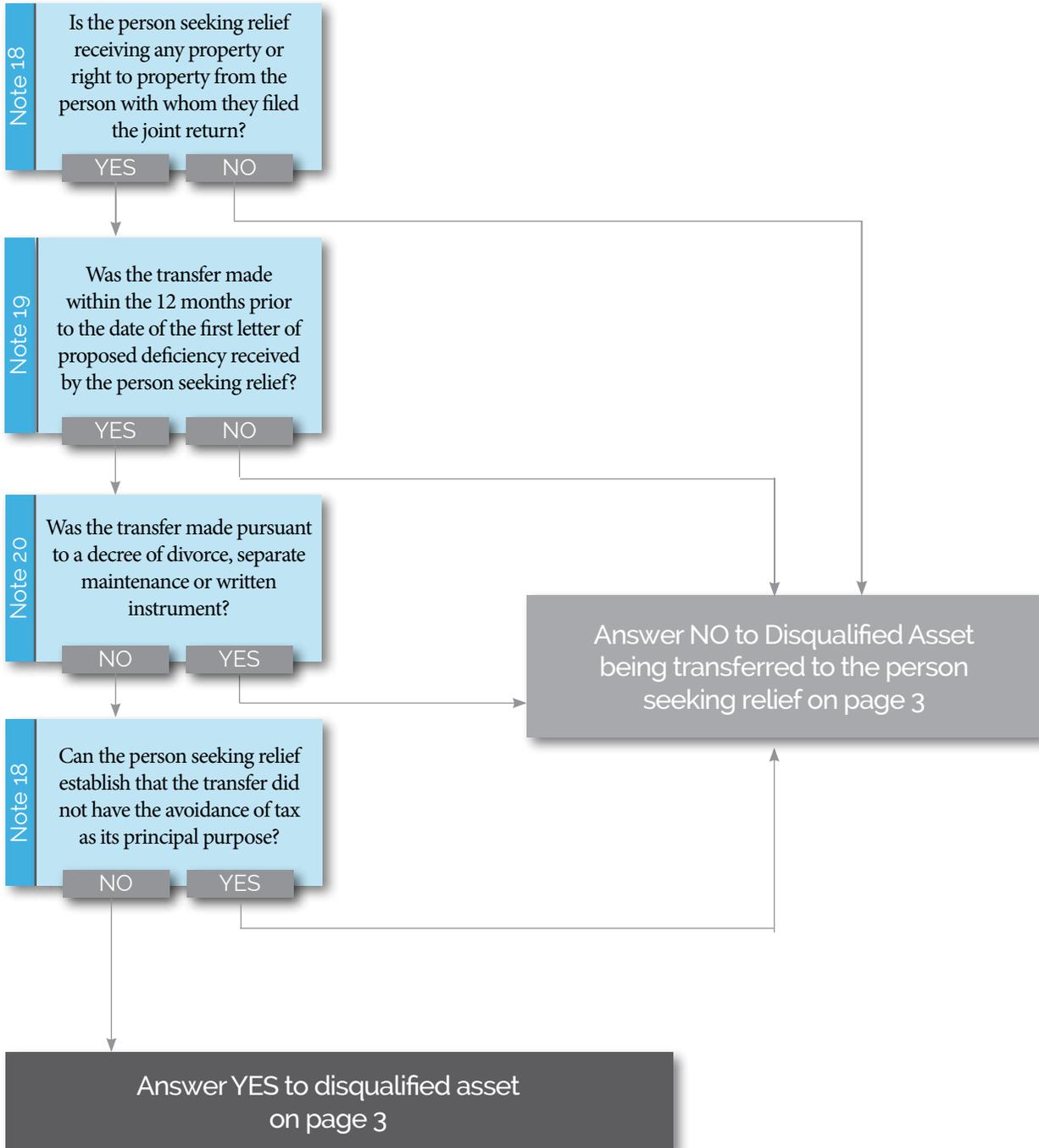


Equitable Relief

§ 6015 (f)



Disqualified Asset



Computation of Amount of Separate Liability

§ 6015 (d)

Note 21

Step 1 Compute the net income and deduction utilized in calculating the understatement of the person seeking relief.

Additional items of income <i>of the person seeking relief</i>	\$ 500
<i>Plus:</i>	
Disallowed deductions <i>of the person seeking relief</i>	400
<i>Less:</i>	
Additional deductions allowed <i>of the person seeking relief</i>	(300)
Net income and deductions	\$ 600

The above calculations are to be made without regard to community-property laws

Step 2 Determine allocation percentage of the person seeking relief.

1. Enter the net income and deductions per step 1 above	\$ 600
2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax (per IRS notice or audit report)	\$ 2,710
3. Divide line 1 by line 2. Enter amount as a decimal (rounded to at least 3 places) This is your allocation percentage.	22.1%

Step 3 Determine the understatement of tax of the person seeking relief.

1. Enter the total understatement of income tax (per IRS notice or Audit Report).....	1.	\$ 743
2. Enter the credits and other taxes taken into account in computing the understatement of tax and <i>allocated to the other spouse</i>	2.	336
3. Enter the credits and other taxes taken into account in computing the understatement of tax and <i>allocated to the person seeking relief</i>	3.	0
4. Add lines 2 and 3	4.	336
5. Subtract line 4 from line 1	5.	407
6. Multiply line 5 by the allocation percentage from step 2	6.	90
7. Add line 6 and 3. This is the understatement of the person seeking relief.	7.	\$ 90

Sample

Footnotes

* All citations are to: Internal Revenue Code of 1986

- 1 IRC § 6015 (a) (1)
- 2 IRC § 6015 (b) (1) (B)
- 3 IRC § 6015 (b) (1) (C)
- 3a *Cheshire v. Commissioner* - 115 tC 183 (2000) - aff'd 282 F.3d 326 (5th Cir. 2002)
- 3b *Morello v. Commissioner* - TC Memo 2004-181 - stating innocent spouse rules were "designed to protect the innocent, not the intentionally ignorant"
- 4 IRC § 6015 (b) (2)
- 5 IRC § 6015 (b) (1) (D) - Example contained in *Alt v. Commissioner* - 119 TC 306 (2002)
- 6 IRC § 6015 (b) (1) (E)
- 7 IRC § 6015 (c) (3) (A) (i) (I)
- 8 IRC § 6015 (c) (3) (A) (i) (II)
- 9 IRC § 6015 (c) (3) (A) (ii)
- 10 IRC § 6015 (c) (3) (C) - Actual knowledge of the item is required - "reason to know" standard does not apply (*Charlton v. Commissioner* - 114 TC 333 (2000)). It is not necessary to know that the tax consequences were incorrect - knowledge of the underlying income is sufficient to deny relief (*Cheshire v. Commissioner* - supra).
- 11 IRC § 6015 (d) (1)
- 12 IRC § 6015 (c) (4) (B)
- 13 IRC § 6015 (c) (4) (A)
- 14 IRC § 6015 (c) (3) (B)
- 15 IRC § 6015 (f) (2)
- 16 IRC § 6015 (f) (1) - "taking into account all the facts and circumstances". See the factors cited in Rev.Proc. 2003-61 including 1) marital status; 2) economic hardship; 3) knowledge or reason to know of the transaction; 4) legal obligation for the tax per the marital settlement agreement; 5) significant benefit; 6) demonstrated compliance with tax law; 7) abuse or duress; 8) mental and/or physical health.
- 17 See IRS publication 971 for potential exceptions to the two year filing requirement.
- 18 IRC § 6015 (c) (4) (B) (i)
- 19 IRC § 6015 (c) (4) (B) (ii) (I)
- 20 IRC § 6015 (c) (4) (B) (ii) (II)
- 21 IRC § 6015 (a)