

Erroneously claimed single status does not foreclose switching to a joint return

The definition of a 'separate return' subject to a Sec. 6013(b) election and its limitations extends only to married-filing-separately status, the Tax Court holds.

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The Tax Court, reversing its holding in prior cases and following two earlier circuit court decisions, held that rules barring married taxpayers from changing their filing status from separate to joint do not extend to a return originally filed as single but later switched to joint.

Facts: The petitioners, Fansu Camara and Aminata Jatta, were married during all relevant years. On April 15, 2013, Camara erroneously filed his 2012 income tax return electing single status; Jatta did not then file a return for that year. In a notice of deficiency to Camara issued on Feb. 10, 2015, the IRS changed his filing status from single to married filing separately. On May 8, 2015, Camara and his wife petitioned the Tax Court with respect to the notice. On May 27, 2016, Camara and his wife filed a joint return for 2012.

Issues: Sec. 6013(b)(1) allows married taxpayers who could have filed a joint return for a tax year but who instead file "a separate return" to elect to switch to a joint return with their spouse for that tax year. Sec. 6013(b)(2), however, lists four limitations on this election, including barring the election from being made three or more years after the unextended filing deadline of the return. Another limitation bars the election from being made after the IRS mails either spouse a notice of deficiency and that notice is subsequently the cause of a timely filed petition with the Tax Court.

The IRS conceded that Camara and his wife otherwise met the substantive requirements to have filed a joint return for 2012 and that the joint return they filed on May 27, 2016, with several agreed-upon changes, correctly reflected their 2012 tax liability. The IRS contended, however, that Camara's original 2012 single return was a separate return and that the couple were procedurally barred under Sec. 6013(b)(2) from the benefits of joint status because their joint return was filed both (1) more than three years after Camara filed a separate return, and (2) after Camara had received a notice of deficiency and petitioned the Tax Court.

Holding: The Tax Court held that a single return was not a separate return for purposes of Sec. 6013(b). As such, it determined that Camara and his wife could file a joint return for 2012. In reaching this conclusion, the court noted that Sec. 6013(b)(1) describes the filing of a separate return as an election and that two circuit courts had earlier held that filing a return with an erroneous and impermissible filing status does not constitute an election for this purpose (*Ibrahim*, 788 F.3d 834 (8th Cir. 2015), and *Glaze*, 641 F.2d 339 (5th Cir. 1981)). The Tax Court also examined the legislative history of Sec. 6013(b) and determined that the provision was originally intended to provide flexibility to taxpayers in switching from a proper, though perhaps improvident, initial filing of a separate return to a potentially more advantageous filing of a joint return. With respect to the limitations imposed by Sec. 6013(b)(2) and that, according to the IRS, barred the joint filing, the Tax Court held that because the 2012 return filed by Camara was not a separate return under Sec. 6013(b), the limitations of Sec. 6013(b)(2) did not apply.

Less than a month later, the Tax Court applied the same reasoning in *Knez*, T.C. Memo. 2017-205, holding that a married taxpayer who erroneously claimed head-of-household status could subsequently file an amended joint return with her husband for the same tax year, enabling them to claim an earned income tax credit.

- *Camara*, 149 T.C. No. 13 (2017)
- *Knez*, T.C. Memo. 2017-205

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