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(In)Equitable Relief: How Judicial Misconceptions about Domestic Violence Prevent Victims from Attaining Innocent Spouse Relief under I. R. C. Sec. 6015(F)

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(IN)EQUITABLE RELIEF:
HOW JUDICIAL MISCONCEPTIONS
ABOUT DOMESTIC VIOLENCE
PREVENT VICTIMS FROM ATTAINING
INNOCENT SPOUSE RELIEF UNDER
I.R.C. § 6015(F)

JACQUELINE CLARKE

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INTRODUCTION

In April of 2007, thirty-one year old Valerie Stephenson attempted to file her federal income taxes for the first time.¹ Unsure how to pay the small liability she owed, Valerie telephoned the Internal Revenue Service (IRS) to inquire how to proceed.² However, in addition to receiving payment instructions, Valerie learned she had a massive liability of \$77,865, which stemmed from her 1999 federal income tax return, which she had jointly filed with her ex-husband, Sean.³

Valerie was extremely troubled by this news—during the marriage, Sean had sole control over the family’s finances.⁴ He did not allow Valerie access to the filing cabinet that contained the couple’s checkbook and financial documents, both of which required a key that only Sean possessed.⁵ When Sean needed Valerie to sign something, he placed the document in front of her and told her where to sign the document.⁶ Any time Valerie inquired about the contents of the document, Sean made threats of violence or mocked her for being unable to understand the document’s contents.⁷ Furthermore, Sean physically assaulted Valerie on several occasions, but she had remained in the relationship for fear of retaliation.⁸ With less than a high school education,⁹ no job,¹⁰ and over

1. Stephenson v. Comm’r of Internal Revenue, 101 T.C.M. (CCH) 1048, 1050 (2011).

2. *Id.*

3. *Id.* at 1048-49.

4. *Id.* at 1048. According to the United States Tax Court, Valerie and Sean had one joint checking account, but most of Valerie’s purchases had to be approved by Sean. *Id.* at n.4.

5. *Id.* at 1048. According to the court, Valerie had to hide important personal documents from Sean, such as her birth certificate and passport. *Id.* at n.7

6. *Id.* at 1048.

7. *Id.*

8. *Id.* at 1049. In 2003, Valerie had attempted to leave Sean. *Id.* However, Sean threatened to kill her or himself if she left him. *Id.* Valerie testified that she was so frightened by the encounter, that she decided to remain married to Sean. *Id.*

9. *Id.* at 1048. The alleged facts reveal that Valerie dropped out of high school during her junior year in order to follow her ex-husband, Sean, out to California. *Id.* Valerie also attempted unsuccessfully to earn her GED three times. *Id.*

10. *Id.* at 1050. At the time Valerie learned about the 1999 liability, she had divorced Sean and was renting a room in a friend’s house. *Id.* Since then, Valerie held four jobs and quit three of them. *Id.* Her current income is ten dollars an hour. *Id.* at

\$10,000 in unpaid rent, Valerie's \$77,865 tax liability appeared insurmountable.

Unfortunately, Valerie's case is not uncommon. In fact, it is estimated that 50,000 individuals a year face income tax liabilities stemming from marriage.¹¹ Furthermore, only twenty-two percent of these cases receive full relief.¹² The Internal Revenue Code (the Code) provides that when a married couple signs a joint return, each spouse will be jointly and severally liable for the amount of tax due as well as any other resulting liabilities.¹³ As demonstrated by Valerie's case, an "innocent spouse" will be liable for tax deficiencies belonging to her spouse, even if she had no knowledge of the liabilities or knew of the liabilities but feared to confront her spouse with them, as is quite common within the domestic violence context.¹⁴

Prior to 1998, relief was available to innocent spouses but under rather restrictive conditions.¹⁵ In 1998, as part of the IRS Restructuring and Reform Act of 1998 (RRA), Congress enacted legislation that granted several exceptions to joint and several liability.¹⁶ Section 6015, known as the innocent spouse provision, offers three avenues of relief: (1) a release from all liabilities because the innocent spouse had no knowledge of any understatements or deficiencies;¹⁷ (2) partial liability if the spouses are now divorced or separated and the innocent spouse elects to have her liability

n.18.

11. *Aiding Innocent Spouses from Joint Tax Liabilities*, YOURABA, Sept. 2011, <http://www.americanbar.org/newsletter/publications/youraba/201109article09.html>; see also Jason Alderman, "Innocent Spouse Relief" Protects Against Tax Fraud, HUFFINGTON POST (June 28, 2012, 1:24 PM), http://www.huffingtonpost.com/jason-alderman/innocent-spouse-relief_b_1631665.html (stating that each year tens of thousands of people file for "Innocent Spouse Relief" with the IRS).

12. Carla Fried, *For "Innocent Spouses," a Helpful Shift in I.R.S. Policy*, N.Y. TIMES (Feb. 11, 2012), <http://www.nytimes.com/2012/02/12/business/yourtaxes/innocent-spouses-get-more-relief-from-irs.html>.

13. I.R.C. § 6013(d)(3) (2013).

14. See *Stephenson*, 101 T.C.M. (CCH) at 1052.

15. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-02-558, TAX ADMINISTRATION: IRS'S INNOCENT SPOUSE PROGRAM PERFORMANCE IMPROVED; BALANCED PERFORMANCE MEASURE NEEDED 03 (Apr. 2002); see also I.R.C. § 6013, *repealed by* Pub. L. 105-206, tit. III, § 3201(e)(1), 112 Stat. 740 (1998).

16. I.R.C. § 6015 (2013). Prior to 1998, there was only one way to obtain innocent spouse relief under the now-repealed § 6013(e). RRA of 1998, Pub. L. No. 105-206, 112 Stat. 685, 734-35 (1998). The only way that an innocent spouse could obtain relief under § 6013(e) was in the instance of a substantial understatement of tax. *Id.*

17. I.R.C. § 6015(b)(1)(C).

limited to only items which would be allocable to her,¹⁸ and (3) discretionary equitable relief for those taxpayers who can demonstrate that full payment of the liability would be unfair because of the presence of factors like economic hardship and abuse.¹⁹

While the creation of innocent spouse relief has provided tax assistance to many taxpayers, the factors currently used by the IRS and the United States Tax Court (Tax Court) often produce inequitable results when the taxpayer is a victim of domestic abuse. Currently, the Code provides no guidance for how the Tax Court should assess the merits of a claim of abuse.²⁰ Even more troubling is the fact that Tax Court opinions contain conflicting and often unattainable requirements for how taxpayers must corroborate abuse claims. For instance, some judges will not uphold the claim unless a personal protection order has been granted;²¹ other judges deem the abuse “not serious” if the couple has joint custody of a child.²² These judicially created requirements fail to account for the power and control dynamics of domestic abuse, even when the actual relationship between the parties has terminated.

An empirical analysis was conducted on the sixty Tax Court cases where a spouse seeking innocent spouse relief also alleged the presence of domestic violence in the relationship. This study examined whether and with what evidence the Tax Court upholds claims of domestic violence, and whether finding that domestic violence exists significantly impacts the taxpayer’s ability to attain equitable relief under §6015(f). Finally, in lieu of the empirical results, two additional areas for expansion in the IRS’s newly proposed innocent spouse regulation are suggested, which would provide Tax Court judges with a list of non-exhaustive criteria to utilize in analyzing a claim of abuse. The goal is to provide equitable tax relief to

18. I.R.C. § 6015(c)(3)(A)(i)(1).

19. I.R.C. § 6015 (f).

20. All that exists is Revenue Procedure Ruling 2003-61, which gives a list of several factors that should be examined by the Tax Court when it assess claims for innocent spouse relief. *See* Rev. Proc. 2003-61, 2003-32 I.R.B. 296.

21. *See* *Acoba v. Comm’r of Internal Revenue*, No. 4002-05S, 2010 WL 1993610, at *5 (T.C. May 19, 2010) (“The [order enjoined] Acoba from “assaulting, harassing, molesting or disturbing the peace of” petitioner . . . [b]ut there is no evidence to indicate whether the restraining order was the result of historical abuse or was a prophylactic measure taken by the court as an outcome of the divorce.”).

22. *See* *Sotuyo v. Comm’r of Internal Revenue*, No. 25692-10S, 2012 WL 1021306, at *5 (T.C. Mar. 27, 2012) (“Petitioners sought and received joint legal and shared physical custody of their daughter . . . and the family court did not order supervised visitation. . . . Ms. Caro’s evidence of abuse does not rise to the level of abuse that would keep her from challenging the omission of income for fear of Mr. Sotuyo’s retaliation.”).

victims of domestic abuse who, because of the misconceptions of domestic violence in the present tax system, might otherwise be unsuccessful in their endeavors.

I. THE CURRENT STATE OF INNOCENT SPOUSE LAW

Reform in the Code has never come swiftly for married couples. Although spouses first faced joint and several liability beginning in 1938,²³ it was not until 1971, thirty-three years later, that any sort of relief was available to innocent spouses.²⁴ Therefore, until 1971, a woman who lacked knowledge of her husband's misstated income or who complied with his demands for her signature out of fear of retaliation was not only left without relief, but she was often on the hook for massive liabilities.²⁵ In 1998, three distinct provisions were created to provide innocent spouse relief—sections 6015(b), (c), and (f). For purposes of this Article, only subsection (f) will be considered.

A. Equitable Relief Under § 6015(f)

Subsection (f) grants a spouse relief from either a tax understatement or underpayment if “taking into account all of the facts and circumstances, it would be inequitable” to hold her liable.²⁶ In order to assist IRS employees' analysis of whether a requesting spouse should be entitled to equitable relief, the Commissioner prescribed a series of revenue procedure guidelines.²⁷ According to Revenue Ruling 2003-61, a requesting spouse must satisfy seven threshold conditions before the Commissioner will consider a request for equitable relief.²⁸ If these initial seven conditions are

23. See Revenue Act of 1938, Pub. L. No. 554, § 51(b), 52 Stat. 447 (1939). Scholars have posited that the reasons for creating joint return liability are unknown. See Richard C.E. Beck, *The Failure of Innocent Spouse Reform*, 51 N.Y.L. SCH. L. REV. 929, 934 (2006) (arguing that although some argue joint and several liability was thought to have been created due to the economic nature of the family, “[t]here is no evidence, however, that couples ordinarily share all or most of their property, much less that they ignore separate ownership to such an extent that they can be presumed indifferent to . . . tax liability”).

24. Revenue Act of 1971, Pub. L. No. 91-679, § 1, 84 Stat. 2063 (1971) (codified at I.R.C. § 6013(e)).

25. For example, in the case of *Scudder v. Commissioner of Internal Revenue*, the wife was held liable by the Tax Court for the assessed tax that was the result of her husband's embezzling endeavors, of which she had no knowledge. *Scudder v. Comm'r of Internal Revenue*, 48 T.C. 36, 41 (1967).

26. I.R.C. § 6015(f).

27. Rev. Proc. 2003-61, 2003-32 I.R.B. 296.

28. *Id.* The seven threshold conditions include: (1) IRC Sections 6015(b) and (c) are not available, (2) there was a timely application for relief, (3) there is no evidence

satisfied, the requesting spouse can automatically qualify for equitable relief if she further meets three “safe harbor” factors: (1) she is legally separated or divorced from the non-requesting spouse at the time relief was requested; (2) she had no knowledge or reason to know at the time the return was signed that the non-requesting spouse would not pay the liability;²⁹ and (3) she would suffer economic hardship if relief is not granted.³⁰

The requesting spouse must meet all three requirements in order to qualify for the safe harbor provision.³¹ When a requesting spouse fails to satisfy the safe harbor conditions, the Commissioner may determine through a balancing test whether equitable relief is appropriate.³² Revenue Ruling 2003-61 contains a non-exhaustive list of balancing factors to be utilized in deciding whether an innocent spouse should be granted equitable relief.³³ Furthermore, the Ruling provides that “no single factor will be determinative in any particular case.”³⁴ In addition to the three safe harbor factors, additional inquiries include whether the requesting spouse received a significant benefit from the nonpayment of taxes, was abused, or was in poor mental or physical health at the time of signing the relief.³⁵

When balancing the non-exhaustive list of factors, the IRS will determine whether the factor weighs in favor of relief, weighs against relief, or is neutral.³⁶ The two factors that are the most applicable in the

of fraudulent transfers of assets, (4) there is no evidence of disqualified assets transferred, (5) there is no evidence a fraudulent joint return was presented, (6) the tax is attributable to the non-requesting spouse, and (7) a joint return was filed. *Id.*

29. In determining whether the requesting spouse had reason to know, the court inquires into (1) the requesting spouse’s level of education, (2) any deceit or evasiveness of the nonrequesting spouse, (3) the requesting spouse’s degree of involvement in the activity generating the income tax liability, (4) the requesting spouse’s involvement in business and household financial matters, (5) the requesting spouse’s financial expertise, and (6) any lavish expenditures. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(a)(iii)(C).

30. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(a)(ii); *see also* *Butner v. Comm’r of Internal Revenue*, 93 T.C.M. (CCH) 136, 151 (2007). To determine economic hardship, the IRS will use the factors provided in § 301.6343-1(b)(4) including (1) the requesting spouse’s age, employment status, history, ability to earn, and number of dependents, (2) the amount reasonably necessary for food, clothing, housing, medical expenses, and transportation, (3) costs of living in the geographic area, and (4) any other factor the requesting spouse presents.

31. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.02(1)(a)-(c).

32. *Butner*, 93 T.C.M. (CCH) at 154.

33. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(a)-(b).

34. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2).

35. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(a)(C)(v).

36. *See* Rev. Proc. 2003-61, 2003-32 I.R.B. 296 § 4.03(2)(a)(B).

domestic violence context are whether the requesting spouse had knowledge of the liability and whether she can prove that she was abused throughout the relationship. If the requesting spouse fails to prove that she lacked knowledge or had no reason to know, this factor will weigh against relief; however, if she cannot prove that she was abused, this factor will be neutral and not weigh against relief.³⁷

B. Duress Versus Abuse and the Knowledge Requirement

Although duress and abuse require many of the same pieces of evidence, they differ when the events occur. Duress relates to the moment the return is signed and exists when a spouse forces her spouse to sign a tax return.³⁸ Although not explicitly defined in the Code,³⁹ the Tax Court provided some guidance in the 1966 case of *Stanley v. Commissioner of Internal Revenue*.⁴⁰ In *Stanley*, the Tax Court found that, although the requesting spouse had suffered long-term physical abuse at the hands of her husband, she failed to show that she signed the tax return under duress.⁴¹ The *Stanley* court stated, “Not only must fear be produced in order to constitute duress, but the fear must be a cause inducing entrance into a transaction . . . without which the transaction would not have occurred.”⁴² Thus, although the requesting spouse lived in constant fear of her husband, the requisite causal link between fear and signing the return was not established.⁴³

On the contrary, in *Hiramanek v. Commissioner of Internal Revenue*, the requesting spouse was viciously beat by her husband after she refused to sign the couple’s tax return.⁴⁴ The wife had recorded in her diary numerous instances of threats against her life, physical assault, and verbal abuse leading up to the evening when her husband demanded that she sign the return.⁴⁵ The next day, when presented with the return, which still had an incorrect deduction, the wife signed out of fear of another violent attack.⁴⁶

37. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(b)(i)-(ii).

38. *Brown v. Comm’r of Internal Revenue*, 51 T.C. 116, 119-20 (1968).

39. The Tax Court has only held “[d]uress may exist not only when a gun is held to one’s head while a signature is being subscribed to a document. A long-continued course of mental intimidation can be equally effective, and perhaps more so, as a form of duress.” *Brown*, 51 T.C. at 119-20 (1968).

40. *See Stanley v. Comm’r of Internal Revenue*, 45 T.C. 555, 564 (1986).

41. *Id.* at 565-66.

42. *Id.* at 563.

43. *Id.* at 565-66.

44. *Hiramanek v. Comm’r of Internal Revenue*, 102 T.C.M. (CCH) 546, 550 (2011).

45. *Id.* at 549.

46. *Id.* at 550.

The court analyzed two prongs in finding that she signed the return under duress: (1) that she was unable to resist her spouse's demands that she sign the return, and (2) that the requesting spouse would not have signed the returns without the constraint the spouse placed on her.⁴⁷ If duress is proven, courts hold that no joint return was filed, thereby relieving the coerced spouse of the joint liability.⁴⁸

If the IRS rejects the duress argument, however, then the requesting spouse must establish that she is entitled to innocent spouse relief from joint liability.⁴⁹ Abuse not amounting to duress differs from duress in two key aspects: (1) abusive conduct is viewed as being less severe, and (2) the abusive conduct occurred either before or after the return was signed.⁵⁰ Although abusive conduct may not amount to duress, it can still weigh in favor of relief and also mitigate the knowledge requirement. For instance, in *Venables v. Commissioner of Internal Revenue*, the Tax Court initially held that because the requesting spouse knew her family was experiencing financial difficulty at the time she signed the return, the knowledge factor weighed against relief.⁵¹ However, the Tax Court acknowledged that her husband exerted financial control over her by threatening her with physical harm every time she asked to make a withdrawal from the couple's joint checking account.⁵² The *Venables* court thus concluded that the financial and physical abuse the requesting taxpayer suffered mitigated the knowledge requirement and she ultimately was granted relief.⁵³ The abuse factor will be discussed in more detail below in relation to what pieces of evidence the court examines when assessing a claim of abuse, as well as the potential biases and inconsistencies that often emerge in the analyses.

II. EMPIRICAL STUDY

Scholars have estimated that since the RRA was enacted, the IRS has received over 1,000 applications for innocent spouse relief per week.⁵⁴

47. *Id.* at 554-55; *see also Brown*, 51 T.C. at 119. Important to note is that the Tax Court considers the totality of the circumstances under a "wholly subjective standard." *Id.*

48. *Id.* at 119.

49. *See Stergios v. Comm'r of Internal Revenue*, 97 T.C.M. (CCH) 1057, 1061 (2009).

50. *See Rev. Proc.* 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(a)(ii).

51. *Venables v. Comm'r of Internal Revenue*, No. 22068-08S, 2010 WL 1980316, at *6 (T.C. May 18, 2010).

52. *Id.* at *1.

53. *Id.* at *7.

54. *See Kari Smoker*, Comment, *Internal Revenue Service Restructuring and Reform Act of 1998: Expanded Relief for Innocent Spouses—At What Cost?* A

One issue that has consistently baffled both the IRS and the Tax Court is the interplay between domestic violence and innocent spouse cases.⁵⁵ In *Nihiser v. Commissioner of Internal Revenue*,⁵⁶ Judge Holmes expressed his frustration with how courts handle allegations of domestic violence, stating that “[t]his is not a terribly well developed corner of tax law, and it is not one in which we can really get much help by looking at detailed regulations or the ordinary canons of construction.”⁵⁷ Similarly, scholars have noted that, in general, there has been a lack of empirical research into innocent spouse cases and even less investigation into how Tax Court judges respond to allegations of domestic abuse.⁵⁸

In 2011, Professor Stephanie McMahon from the University of Cincinnati College of Law conducted an empirical study of 444 litigated claims for innocent spouse relief between 1998 and 2011.⁵⁹ Professor McMahon looked at the factors listed under Revenue Ruling 2003-61 that the Tax Court examines in an innocent spouse case.⁶⁰ This Article goes into more depth on the issue of abuse and examines the fifty-six cases where the requesting spouse claimed she was abused by the non-requesting spouse during the marriage.⁶¹ It evaluates the differences between cases where the abuse claim was sustained versus denied in order to ascertain what factors courts are evaluating when a claim of abuse is presented.⁶²

Feminist Perspective, 60 OHIO ST. L.J. 2045, 2088 (1999); Steve Johnson, *The 1998 Act and the Resources Link Between Tax Compliance and Tax Simplification*, 51 U. KAN. L. REV. 1013, 1044 (2003).

55. See Fed Stokeld, *Taxpayer Advocate Blasts IRS’s Handling of Innocent Spouse Case*, TAX NOTES, Jan. 31, 2011, http://www.woodporter.com/Publications/Articles/pdf/Taxpayer_Advocate_Blasts_IRS_Handling.pdf (describing how National Taxpayer Advocate Nina Olson criticized the IRS for “display[ing] an astonishing ignorance about what happens to people in abusive relationships”).

56. *Nihiser v. Comm’r*, 95 T.C.M. (CCH) 1531, 1531 (2008).

57. *Id.* at 1541.

58. See Michael Bommarito et al., *An Empirical Survey of the Populations of U.S. Tax Court Written Decisions*, 30 VA. TAX. REV. 523, 526 (2011); Daniel M. Schneider, *Empirical Research on Judicial Reasoning: Statutory Interpretation in Federal Tax Cases*, 31 N.M. L. REV. 325, 325 (2001).

59. Stephanie Hunter McMahon, *An Empirical Study of Innocent Spouse Relief: Do Courts Implement Congress’s Legislative Intent?*, 12 FLA. TAX REV. 629, 635 (2012) [hereinafter McMahon Study].

60. *Id.* at 631.

61. *Id.* at 694-95.

62. *Id.* at 695.

A. Brief Explanation of the McMahon Study

The cases used in this study include all recorded tax decisions in the Westlaw database handed down between November 16, 2000, and March 30, 2013, that included the words “innocent spouse,” “tax,” “6015,” and “abuse.” The 444 cases used for the McMahon Study were narrowed down using the Westlaw search terms to those fifty-six instances where the spouse seeking relief alleged that domestic violence occurred during the marriage. Each case was coded for a variety of information and compiled into a spreadsheet, including information about the parties (gender, education, employment history, etc.) and their relationship (type of abuse, evidence of abuse, role in family finances, etc.). While the purpose of the McMahon Study was to examine patterns within cases,⁶³ this Article takes on the additional task of examining the variables utilized by the Tax Court to determine whether to uphold or reject an abuse claim.

This study focuses exclusively on cases handled by the Tax Court as this court is where a majority of taxpayers seeking innocent spouse relief appeal the IRS’s denial of their claims.⁶⁴ It is important to note that the study does not include every innocent spouse case heard by the Tax Court where abuse was alleged. Much like the McMahon Study, only so much information can be gathered from cases located on research databases. Many cases are unpublished or settled before litigation,⁶⁵ and many others never reach litigation because requesting spouses often do not have the resources to appeal an IRS decision.

B. The Requesting Spouse: Profile of a Battered Taxpayer

One of the many misconceptions of domestic violence is the expectation that a victim fit a particular stereotype.⁶⁶ This stereotype is often a woman belonging to a lower socioeconomic class who is perhaps a racial minority or a recent immigrant.⁶⁷ The fear many scholars share is that judges

63. *Id.* at 648.

64. *Id.* at 648, 650-51. According to the McMahon Study, 89.2% of all appeals from IRS decisions were brought before the Tax Court. *Id.* The remaining percentages of cases were split between the Court of Claims, District Courts, and Circuit Courts. *Id.*

65. See Bommarito et al., *supra* note 58, at 530 (noting that “not all cases that are filed result in a written opinion. . . . Some are settled before a judgment can be reached, and others result in an unwritten bench opinion”).

66. Cynthia Willis Esqueda & Lisa A. Harrison, *The Influence of Gender Role Stereotypes, the Woman’s Race, and Level of Provocation and Resistance on Domestic Violence Culpability Attributions*, 53 *SEX ROLES* 821, 822 (2005); Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 *COLUM. J. GENDER & L.* 1, 6, 10 (1998).

67. See Alana Bowman, *A Matter of Justice: Overcoming Juror Bias in*

inexperienced in handling domestic violence matters will view a victim's claim with less credibility if she does not conform to a specific stereotype.⁶⁸ Thus, to prove that there is no stereotypical victim, it is necessary to explore the diverse profiles of domestic violence victims who seek innocent spouse relief from the Tax Court. Furthermore, it is also essential to investigate whether, despite the lack of a single victim profile, Tax Court judges are still awarding relief based on stereotypes.

1. *Gender of the Requesting Spouse*

The RRA was originally crafted to provide relief to female taxpayers who were unknowing victims of liabilities attributable to their spouses.⁶⁹ According to a 1998 Congressional Conference Report, 90% of the innocent spouse cases brought before the passage of the RRA were by women.⁷⁰ Similarly, the McMahon Study found that women continue to make up the majority of requesting spouses, with 338 women, as opposed to 59 men bringing cases before the Tax Court, representing 85% of the cases.⁷¹ The following chart illustrates the number of women as compared to men who have sought innocent spouse and alleged they were abused by their spouse.

Prosecutions of Batterers Through Expert Witness Testimony of the Common Experiences of Battered Women, 2 S. CAL. REV. L. & WOMEN'S STUD. 219, 242 (1992) (explaining that jurors in criminal cases have certain expectations of who the victim is and victims who do not fit within a particular stereotype are bewildering to the jurors). Similarly, there are additional false impressions as to the identity of the batterer. See James Martin Truss, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 St. Mary's L.J. 1149, 1167 (1995).

68. See MARY ANN DUTTON, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN, UPDATE OF THE "BATTERED WOMAN SYNDROME" CRITIQUE 4 (Aug. 2009), available at http://www.vawnet.org/Assoc_Files_VAWnet/AR_BWSCritique.pdf; Wendy McElroy, *Domestic Violence: Behind the Stereotypes*, IFEMINISTS.COM (Nov. 10, 2004), <http://www.ifeminists.net/introduction/editorials/2004/1110.html> ("[S]tereotypes that have defined the issue of domestic violence are inadequate and they are hurting victims who do not conform"); Martha Shaffer & Nicholas Bala, *The Role of Family Courts in Domestic Violence*, in PROTECTING CHILDREN FROM DOMESTIC VIOLENCE: STRATEGIES FOR COMMUNITY INTERVENTION 171, 175 (Peter G. Jaffe ed., 2004).

69. See 144 Cong. Rec. S7657 (July 8, 1997); S. REP. NO. 89-144, at 7649 (1998) (CONF. REP.) ("All too often women are stuck holding bills of their ex-husbands, only then finding out that their ex-spouse had not legally filed a tax return.").

70. 144 Cong. Rec. S76430-02 (July 8, 1998); see also Stephen Zorn, *Innocent Spouses, Reasonable Women and Divorce*, 3 MICH. J. GENDER & L. 421, 424 (1996).

71. McMahon Study, *supra* note 59, at 662 (noting that women bring approximately 84.3% of the trial cases and 88% of the appellate cases).

| Gendered Relief | | | |
|---------------------------|----------------|-----------------------|----------------|
| Brought Trial Case | | Won Trial Case | |
| Wife | Husband | Wife | Husband |
| 55 | 5 | 26 [47.27%] | 2 [40%] |

Much like the McMahon Study, 91.67% of the requesting taxpayers who alleged abuse were women.⁷² Women have won 93% of the total taxpayer victories where abuse was alleged and, according to the McMahon Study, 89.50% of victories in general.⁷³ Thus, innocent spouse relief in general and allegations of abuse in particular appear to be gendered within the tax context.

It is not quite clear how these numbers correlate with allegations of domestic abuse in other circumstances. Studies that have examined the gendered nature of domestic abuse have shown extremely inconsistent results.⁷⁴ Furthermore, it is important to note that many members of the judiciary, in both family courts and tax courts, lack an understanding about domestic violence and its seriousness. Oftentimes, judges and legal personnel make gender-biased assumptions to the effect that women falsely raise abuse issues for tactical gain.⁷⁵ Thus, in analyzing the likelihood that a woman, because of her gender, is likely to gain innocent spouse relief, it is crucial to be aware of the persistent biases that exist in the legal field.

Furthermore, it is important for judges to not overlook men when

72. *Id.* McMahon pointed out that Congress classified innocent spouse relief as a women’s issue. *Id.* In McMahon’s study, wives sought innocent spouse relief in 85.4 percent of the total cases, thus corroborating Congress’s claim. *Id.* Similarly, this study further perpetuates the idea that it is mostly wives who are seeking innocent spouse relief.

73. *Id.*

74. For example, according to a study conducted by the National Coalition Against Domestic Violence, 85% of domestic violence victims are women. CALLIE MARIE RENNISON, U.S. DEP’T OF JUSTICE, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001 (2003), available at [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf). However, according to a 2010 national survey by the U.S. Department of Justice and the Centers for Disease Control and Prevention, more men than women were victims of domestic abuse and over 40% of the severe physical violence was directed at men. NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (Nov. 2011), available at http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf.

75. For instance, “[w]omen who raise concerns about a violent partner . . . are unlikely to be believed because lawyers and judges tend to overemphasize the possibility that false allegations are being used to further . . . claims.” Peter G. Jaffe, et al., CHILD CUSTODY AND DOMESTIC VIOLENCE: A CALL FOR SAFETY AND ACCOUNTABILITY, 17 (2003).

analyzing their claims of abuse. As noted by many victim advocates, men are largely silent on issues of domestic abuse because of gender roles and social stereotypes that hold that men are supposed to be the physically stronger and more dominant partner in the relationship.⁷⁶ Furthermore, men may be less inclined to report instances of abuse because of fear of ridicule from judges, law enforcement personnel, and the public in general.⁷⁷ Therefore, when a man presents a claim of abuse during an innocent spouse proceeding, there is the chance that he may not have corroborating documents due to the fact that he did not report the abuse or that his claim was not taken seriously by police officers or judges because of his gender. Conversely, there also needs to be an awareness that men who are abusers may in fact falsely raise accusations of domestic abuse for a tactical gain in an innocent spouse proceeding.⁷⁸ Thus, many men winning protective orders or seeking innocent spouse relief are themselves abusers who intimidated their partners into being silent or dominated and controlled their partners in such a way that they did not even recognize that they were being abused. Lawyers, tax court judges, and legal personnel need to gain an increased awareness of the multitude of different dynamics and scenarios that domestic violence plays in an innocent spouse case and the possibility that the individual seeking relief may in fact be the abuser.

2. Marital Status of the Requesting Spouse

The Tax Court gives great weight to an individual's marital status at the time relief is requested.⁷⁹ A spouse is required to be separated or divorced before she can attain relief under §6015(c).⁸⁰ If the requesting spouse is

76. Ruth S., *Men: The Overlooked Victims of Domestic Violence*, DOMESTIC VIOLENCE STAT. (May 16, 2012), <http://domesticviolencestatistics.org/men-the-overlooked-victims-of-domestic-violence>; DENISE A. HINES, OVERLOOKED VICTIMS OF DOMESTIC VIOLENCE: MEN (2011), available at <http://www.clarku.edu/faculty/dhines/May%202011%20Canada%20roundtable%20presentation.pdf> (conducting a study of 302 instances of abuse where men between the ages of eighteen and fifty-nine were the victims).

77. See *Domestic Violence*, CLARK CNTY. PROSECUTING ATT'Y, <http://www.clarkprosecutor.org/html/domviol/men.htm> (last visited Feb. 28, 2014) (“Men often suffer physical abuse in silence because they are afraid that no one will believe them or take them seriously. In fact, some men who do try to get help find that they are mocked and ridiculed.”).

78. For instance, scholars have noted that “genuine batterers routinely denounce their accuser and commonly retaliate with accusations that their partners are actually the aggressors, are unfit, or are systematically brainwashing children” Peter G. Jaffe, et al., CHILD CUSTODY AND DOMESTIC VIOLENCE: A CALL FOR SAFETY AND ACCOUNTABILITY, 17 (2003).

79. Rev. Proc. 2003-61, 2003-32 I.R.B. 296, § 4.03(2)(a)(ii).

80. I.R.C. § 6015(c).

still married, she may be able to obtain relief under §6015(f), but her marital status will weigh against her in the Tax Court’s balancing test.⁸¹ Unlike “neutral” factors that will not count against the requesting spouse, marital status is given significant weight and is often determinative of whether relief is granted.⁸² The following chart illustrates how the Tax Court evaluates the requesting spouse’s marital status and whether there is a correlation between the status and relief.

| Marital Status of Those Seeking Relief | | | | |
|---|--------------------------|---------------------------|-------------------------|---------------------------|
| | At Time of Filing | | At Time of Trial | |
| | Wife Requesting | Husband Requesting | Wife Requesting | Husband Requesting |
| Married | 46 | 5 | 1 | 0 |
| Separated (Legally or Physically) | 4 | 0 | 6 | 2 |
| Divorced | 4 | 0 | 38 | 3 |
| Widowed | 1 | 0 | 10 | 0 |
| Other/Never Legally Married | 0 | 0 | 0 | 0 |
| Marital Status of Winning Taxpayers | | | | |
| | At Time of Filing | | At Time of Trial | |
| | Wife Requesting | Husband Requesting | Wife Requesting | Husband Requesting |
| Married | 20 | 2 | 0 | 0 |
| Separated (Legally or Physically) | 1 | 0 | 2 | 1 |
| Divorced | 1 | 0 | 17 | 1 |
| Widowed | 0 | 0 | 3 | 0 |
| Other/Never Legally Married | 0 | 0 | 0 | 0 |

As expected, most couples were married (76.67%) when they filed their tax returns but divorced (68.3%) when the requesting spouse sought relief. Interestingly, 16.67% of requesting spouses filed for relief when widowed.

81. I.R.C. § 6015(f).

82. § 6015(f).

This information contrasts a bit with the McMahon Study, where only 13% sought relief when widowed and 25% sought relief while still married to the non-requesting taxpayer.⁸³ Here, only 2% were still married to the non-requesting spouse when they filed for relief. Women who were divorced at the time they filed for innocent spouse relief had a 45% rate of obtaining relief. This statistic contrasts with the 30% chance women who were widowed or separated had for relief. It is necessary to further explore how domestic violence may impact a woman's marital status and when she chooses to file for relief. Additionally, in lieu of the relationship between marital status and domestic violence, judges may need to revise how they weigh the marital status factor in order for it to not serve as an inequitable barrier to relief.

i. Widow Status Provides Safety from Retaliation for Abuse Victims.

When compared to the McMahon Study, the rise in the number of women who brought abuse claims *after* their spouse was deceased may be attributed to the very nature of the abusive relationship. As noted by scholars, domestic abuse does not always end with the termination of the relationship.⁸⁴ Instead, abusers still have access to their victims through joint custody of children or, ironically, shared marital debt.⁸⁵ It has also been stressed that a woman faces an increased risk of violence or homicide in the time immediately following her separation or divorce from her batterer.⁸⁶ Filing for innocent spouse relief after a separation or divorce may actually incite the batterer to retaliate. Therefore, it is not surprising

83. McMahon Study, *supra* note 59, at 663 (noting that women bring approximately 84.3% of the trial cases and 88% of the appellate cases).

84. Orly Rachmilovitz, *Bringing Down the Bedroom Walls: Emphasizing Substance Over Form in Personalized Abuse*, 14 WM. & MARY J. WOMEN & L. 495, 501 (2008) (“[W]hen the relationship comes to an end, the abuser may still exploit the relationship, continuing to access the victim, carrying on the abusive and controlling behavior.”); Lauren A. Kent, Comment, *Addressing the Impact of Domestic Violence on Children: Alternatives to Laws Criminalizing the Commission of Domestic Violence in the Presence of a Child*, 2001 WIS. L. REV. 1337, 1364 (2001) (arguing that in situations of joint custody, abusers still have access to their victims even after divorce, which allows them to continue abuse).

85. See Vicki Coggins, *Domestic Violence—Using Children to Control*, STANLY NEWS & PRESS (Feb. 22, 2012), <http://thesnaponline.com/opinion/x2136342002/Domestic-violence-using-children-to-control>.

86. The rate of attack against women divorced from their husbands is twenty times higher than that of married women. Further, it is estimated that 73% of emergency room visits and up to 75% of calls to the police for domestic violence incidents occur after separation. See Teresa Meuer & Kathryn Webster, *Effects of Domestic Abuse on Child Witnesses*, 1997 WILEY FAM. L. UPDATE § 9.6, at 219.

that many women do not feel safe filing for innocent spouse relief until after their abuser is deceased.

The Tax Court needs to be increasingly cognizant of the increased risk of violence following the termination of the relationship. According to this study, women who were widowed at the time of filing for innocent spouse relief only had a 30% chance of obtaining relief. In *Lepordo v. Commissioner of Internal Revenue*,⁸⁷ for instance, the Tax Court did not uphold a woman's allegation of abuse nor grant her relief because her husband was deceased and "not available to defend himself against the abuse allegations or to otherwise verify them."⁸⁸ Although the judge may have been trying to prevent a potentially false claim of abuse, he did not consider whether the spouse did not seek relief while her husband was alive because she feared the consequences.

Current Tax Court case law also reveals that judges are disinclined to grant relief when the victim signed the contentious return after the relationship had ended. For example, the court in *O'Neil v. Commissioner of Internal Revenue* did not find Mrs. O'Neil's statement that she feared retaliation if she did not sign the return to be credible because she was legally separated from her husband when the return was signed.⁸⁹ Despite Mrs. O'Neil's statement that she was threatened with "trouble" if she did not sign the return, the court chose not to grant relief.⁹⁰ Once again, although there is an objective rule that examines the marital status of the taxpayer, judges may need to view this factor with more scrutiny than in instances where abuse has not been alleged.

ii. The Presence of Violence May Prevent a Woman from Obtaining a Divorce.

An additional problem with the marital status factor is that courts do not consider why a taxpayer may still be married to the spouse at the time relief is sought, especially in instances where abuse has been alleged. In *Sriram v. Commissioner of Internal Revenue*, the requesting spouse was still married to her husband at the time she filed for innocent spouse relief.⁹¹ The court failed to give weight to her argument that her cultural practices prevented her from divorcing her husband.⁹² The requesting spouse in

87. *Lepordo v. Comm'r of Internal Revenue*, No. 12911-06S, 2008 WL 65176, at *1 (T.C. Jan. 7, 2008).

88. *Id.* at *9.

89. *O'Neil v. Comm'r of Internal Revenue*, 104 T.C.M. (CCH) 724, 733 (2012).

90. *Id.*

91. *Sriram v. Comm'r of Internal Revenue*, 103 T.C.M. (CCH) 1482, 1487 (2012).

92. *Id.* at 1490.

Wilson v. Commissioner of Internal Revenue was prevented from divorcing her abusive husband because she lacked the financial means to obtain a divorce.⁹³ In fact, her husband deliberately withheld finances from her so that she could not seek legal assistance in both tax and divorce-related matters.⁹⁴

This judicial oversight is particularly problematic when judges are considering whether to give weight to a taxpayer's claim for abuse.⁹⁵ For instance, judges have maintained that abuse is not "serious enough" when the couple was still married, shared joint custody of their children, or maintained regular contact with one another.⁹⁶ Tax Court judges are not the only professionals who give in to stereotypes—domestic relations mediators and family court judges awarding custody of children may also lack the requisite knowledge about the complicated nature of domestic abuse. Numerous studies show the frequency to which alleged abusers are awarded sole or joint custody of minor children.⁹⁷ Therefore, it should not automatically count against a requesting spouse in an innocent spouse case if she is still married to her abuser or shares children with him.

3. Domestic Abuse Victims' Education and Work Experience

A final stereotype of the domestic violence victim is that the wife is from a lower socioeconomic class and is both controlled by and reliant upon her abusive husband.⁹⁸ An appeal from the IRS's denial of innocent spouse relief to the Tax Court requires a significant amount of time and

93. *Wilson v. Comm'r of Internal Revenue*, 99 T.C.M. (CCH) 1552, 1554 (2010).

94. *Id.*

95. *See infra* Part II(C)(1)-(2).

96. *See, e.g., Bruen v. Comm'r of Internal Revenue*, 98 T.C.M. (CCH) 400, 403 (2009) ("Moreover, in spite of these allegations, the family court allowed Ms. Bruen and Mr. Bruen to live together with their children for 9 months after their divorce.").

97. Joan Zorza, *How Abused Women Can Use the Law to Help Protect Their Children*, in *END THE CYCLE OF VIOLENCE: COMMUNITY RESPONSES TO CHILDREN OF BATTERED WOMEN* 147, 147-69 (E. Peled ed., 1995); Amy Levin & Linda G. Mills, *Fighting for Child Custody When Domestic Violence Is at Issue: Survey of State Laws*, 48 *SOCIAL WORK* 463 (2003) ("There is ample evidence that judges fail to take the violence seriously and award sole or joint custody to wife beaters. Many judges believe that women either exaggerate men's violence or otherwise deliberately alienate their children from fathers during divorce to gain a custody advantage."); *see also* M.B. Liss et al., *Domestic Violence and Child Custody*, in *BATTERING AND FAMILY THERAPY: A FEMINIST PERSPECTIVE* 181, 181-83 (M. Hensen ed., 1993).

98. *International Women's Day: 10 Misconceptions About Domestic Violence* (Mar. 8, 2013, 2:50 PM) available at <http://metro.co.uk/2013/03/08/international-womens-day-top-10-misconceptions-about-domestic-violence-3533055/>; *Domestic Violence Myths*, BOSTON UNIVERSITY, available at http://www.bu.edu/police/prevention/domestic_violence_myth.htm

resources.⁹⁹ Thus, the numbers here may not present a completely accurate picture of the victims seeking relief. Nevertheless, the charts do help to dispel some victim stereotypes, while simultaneously raising some interesting questions regarding the batterer’s control.

| Education Level of Petitioning Spouse | | | | | | |
|--|--------------------------|-------------|--------------|-----------------------|-------------|--------------|
| | Requesting Relief | | | Winning Relief | | |
| | Husband | Wife | Total | Husband | Wife | Total |
| Less than High School | 0 | 3 | 3 | 0 | 0 | 0 (0%) |
| High School/ GED | 2 | 20 | 22 | 0 | 13 | 13 (59%) |
| Some College | 0 | 6 | 6 | 0 | 6 | 6 (100%) |
| College Degree | 2 | 10 | 12 | 1 | 6 | 7 (58%) |
| Post-Graduate | 0 | 2 | 2 | 0 | 1 | 1 (50%) |

| Employment | | | | | | |
|--|--------------------------|-------------|--------------|-----------------------|-------------|--------------|
| | Requesting Relief | | | Winning Relief | | |
| | Husband | Wife | Total | Husband | Wife | Total |
| Non-Requesting Spouse Is Primary Earner | 1 | 32 | 33 | 1 | 21 | 22 (69%) |
| Requesting Spouse Is Primary Earner | 4 | 16 | 20 | 0 | 5 | 5 (31%) |

The charts demonstrate that victims seeking innocent spouse relief have varying levels of education and that there does not seem to be any

99. For instance, it takes at least six months after a petition to the Tax Court is filed for a case to be heard. See *About the Court*, US TAX COURT (2011) <https://www.ustaxcourt.gov/about.htm>. Small cases often take a year to decide and regular cases take much longer. *Id.* The problem with small tax cases is that taxpayers are unable to appeal these decisions. *Id.* Additionally, interest also accrues on the unpaid tax balance while the proceedings are pending. *Id.*

correlation between an individual's education and her prospects for relief. When compared with the results of the McMahon Study, however, the numbers are interestingly inverted. Importantly, this study details situations where the individual requesting relief also alleged she suffered from domestic abuse. The McMahon study, by contrast, also included cases where the requesting spouse did not allege the presence of domestic abuse. According to the McMahon Study, the number of women with college degrees seeking innocent spouse relief were double that of women with only a high school education.¹⁰⁰ However, women in the McMahon Study with college degrees were only 32% likely to obtain relief versus the 45% of women with a high school education who obtained relief.¹⁰¹

Another difference between women filing for innocent spouse relief in general and those alleging domestic abuse is the role they have in providing for their families. Scholars have noted that abusers oftentimes control their victims by forbidding them from working outside the home in an attempt to isolate them.¹⁰² In this study, in over 60% of the cases where an individual seeking innocent spouse relief stated she experienced domestic abuse, the abuser was the primary wage earner in the family. In fact, other studies have shown that there is a 50% chance that a battered woman will drop below the poverty line when she leaves her abuser.¹⁰³ However, the statistics in this study stand in stark contrast to those in the McMahon Study, where a mere 36% of non-requesting spouses were the primary wage earners.¹⁰⁴ Many studies have painted conflicting pictures as to educational background and independent financial resources of victims and perpetrators of domestic violence.¹⁰⁵ Thus, it appears that the educational

100. McMahon Study, *supra* note 59, at 666. 104 of the individuals petitioning for innocent spouse relief had at least a college degree, while thirty-two had only a high school education. *Id.*

101. *Id.*

102. *What Is Domestic Violence?*, U.S. DEP'T OF JUSTICE (last updated Mar. 2013), <http://www.ovw.usdoj.gov/domviolence.htm>; ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* 1862 (1987).

103. Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 *YALE J.L. & FEMINISM* 359, 368 (1996).

104. McMahon Study, *supra* note 59, at 667.

105. For example, in her study entitled *Gender, Status, and Domestic Violence: An Integration of Feminist and Family Violence Approaches*, Dr. Kristin Anderson of Western Washington University found that "men who have both higher and lower educational resources than their female partners are more likely to perpetrate violence acts than those possessing the same level of education as their female partners." 59 *J. MARRIAGE & FAM.* 655, 664 (August 1997). Dr. Anderson concluded that socioeconomic status "is not a central mechanism through which race, education, age, and cohabiting status are associated with domestic violence." *Id.* Conversely, in the empirical analysis conducted in *For Women, Breadwinning Can Be Dangerous:*

background and socioeconomic status of both the victim and abuser are relevant to the presence of abuse, but other factors such as culture, race, and the individuals' gender ideologies must also be considered.¹⁰⁶ Nevertheless, Tax Court judges appear to be cognizant of the financial dilemmas that plague a victim who not only faces a massive tax liability, but also must be able to economically provide for herself when she was previously dependent upon her abuser.

C. Definitions of Abuse

Tax Court judges must not only be aware of the ways in which victims of abuse seeking tax relief differ from other taxpayers, but they must also work towards understanding how to properly weigh allegations of abuse within an innocent spouse case. Just as there are problematic victim stereotypes, misconceptions also exist about what exactly constitutes abuse. Many individuals have the misconception that domestic abuse frequently involves physical violence and police intervention.¹⁰⁷ Thus, when a requesting spouse alleges she has suffered from mental or emotional abuse, judges may be less inclined to grant relief because the type of abuse does not conform to their misconceptions. Similarly, a woman who alleges physical violence but fails to provide evidence of police reports or medical documents may have a difficult time proving the abuse element in Tax Court.¹⁰⁸

The Tax Court's narrow interpretation as to what constitutes abuse recently garnered media attention. Certified Public Accountant Peter Reilly wrote a December 2012 article for *Forbes Magazine* discussing the Tax Court's controversial *O'Neil v. Commissioner of Internal Revenue* decision.¹⁰⁹ In *O'Neil*, Allison, the requesting spouse, alleged that her

Gendered Resource Theory and Wife Abuse, Drs. Maxine P. Atkinson and Theodore N. Greenstein of North Carolina State University and Dr. Molly Monahan Lang of Baldwin-Wallace College concluded that "low-income husbands . . . are no more nor less likely to abuse their wives than are high-income husbands." 67 J. MARRIAGE & FAM. 1137, 1145 (Dec. 2005). However, the authors noted that domestic violence may be premised more on the husband's gender ideology as opposed to earning potential. *Id.* at 1146. For instance, "[w]hen men accept an ideology that defines masculinity in relationship to being the breadwinner, and their wives earn a significant portion of couple income, violence might be used to reassert dominance." *Id.*

106. See sources in previous footnote.

107. In many cases, this popular mythology, created and retold by the media, is extremely damaging to the prosecution, particularly when there is only one incident of violence in a new relationship, such as a punch to the jaw, or where the defendant claims that she was fighting back.

108. See *infra* Part II(C)(2)(a)-(b).

109. Peter J. Reilly, *Tax Court Not Quick to Find Abuse in Innocent Spouse Case*,

husband “emotionally and psychologically” bullied her and threatened her with “trouble” if she did not sign the return.¹¹⁰ Judge Holmes held that Allison did not make a sufficient showing of abuse because she did not present any documentation of the abuse.¹¹¹ Reilly interviewed attorney Cathy Brennan on her reaction to the *O’Neil* decision.¹¹² Brennan replied that the Tax Court took too narrow a view of abuse and that it “ignore[d] the dynamics of an abusive relationship . . . [how] the abuser dominates all aspects of his partner’s life and uses all tactics available to him to control her.”¹¹³ In order to adequately address the needs of domestic violence victims in the tax context, it is essential to explore where the Tax Court’s misconceptions exist.

1. Introduction to Abuse in Innocent Spouse Cases

Many practitioners have hypothesized that there is a strong correlation between whether a judge upholds an abuse claim and whether a judge ultimately grants tax relief.¹¹⁴ An inquiry must be made whether the opposite is also true. The following charts document the number of cases since 1998 where abuse was alleged, the success of those claims, and whether innocent spouse relief was granted.

| Claims of Abuse | | | |
|------------------------|---------------------------|-------------------------------------|-----------------------------------|
| | Total Abuse Claims | Judge Dismisses Abuse Claims | Judge Upholds Abuse Claims |
| Number of Cases | 60 | 40 | 20 |
| Taxpayer Wins | 29 | 11 | 18 |

FORBES MAGAZINE (Dec. 18, 2012), <http://www.forbes.com/sites/peterjreilly/2012/12/18/tax-court-not-quick-to-find-abuse-in-innocent-spouse-case>; *see also* *O’Neil v. Comm’r of Internal Revenue*, 104 T.C.M. (CCH) 724, 733 (2012).

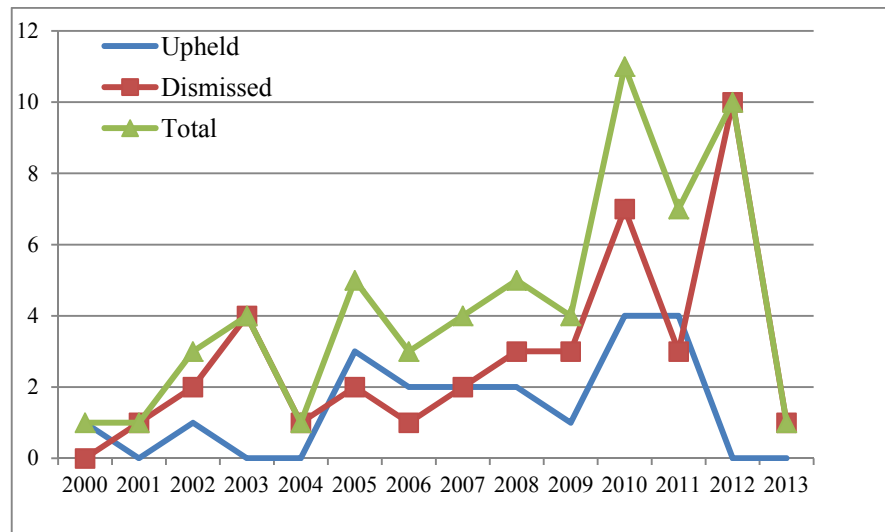
110. *O’Neil*, 104 T.C.M. (CCH) at 733.

111. *Id.* (stating that “Allison appears not to have had a happy marriage with Michael . . . [b]ut we have no basis to find “bullying” or intimidation here—much less more substantial abuse.”).

112. *See* Reilly, *supra* note 110.

113. *Id.*

114. *See Aiding Innocent Spouses from Joint Tax Liabilities*, *supra* note 11.



In 66.67% of the cases in which abuse was alleged, the judge found that there was no abuse. Furthermore, tax practitioners' hypotheses are correct—there is in fact a correlation between the judicial recognition of abuse and an ultimate grant of relief. In 90% of the cases where abuse was found, the taxpayer was ultimately granted equitable relief. On the contrary, if the taxpayer's abuse claim was dismissed, there was only a 27.5% chance that the judge would grant relief. The strong correlation between a finding of abuse and ultimate tax relief necessitates a greater understanding of the dynamics of domestic abuse as well as consistent application of judicially created factors in analyzing whether the abuse claim should be upheld to ensure equitable relief.

2. Criteria for a Finding of Abuse

The sharp decline of abuse claims that were upheld in 2012 may mean that judicial interpretation of what constitutes a successful allegation is shifting. Although initially designed to give judges discretion in handling the unfamiliar issue of domestic abuse, the lack of both a clear definition of abuse as well as a non-exhaustive list of criteria have proved problematic.¹¹⁵ The only guidance for judges comes from Revenue Ruling 2003-61, which requires that the requesting spouse was a victim of abuse *prior to* the time the return was signed and that, because of the abuse, she

115. *Nihiser v. Comm'r of Internal Revenue*, 95 T.C.M. (CCH) 1531, 1539 (2008). *Black's Law Dictionary* defines abuse as "physical or mental maltreatment, often resulting in mental, emotional, sexual, or physical injury." BLACK'S LAW DICTIONARY 10 (9th ed. 2009).

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did not challenge any items on the return for fear of retaliation.¹¹⁶ This Revenue Ruling grants Tax Court judges too much discretion and provides little guidance in determining an issue with which they have no experience. Furthermore, the criteria enunciated by some judges are either ignored or misapplied by other judges, thus creating an ambiguous and often unachievable standard.

| Dismissed Claims Versus Upheld Claims: What Is the Difference? | | | |
|---|---|----------------------------|-------------------|
| | Requesting Spouse in Therapy | Police Intervention | PPO Issued |
| Dismissed Claims | 4 | 10 | 2 |
| Upheld Claims | 3 | 10 | 5 |
| Reasons Provided for Dismissing Abuse Claims | | | |
| Reasons | Mentioned in Case Dismissing Abuse | | |
| Specificity Issues | 5 | | |
| Return Signed Post-Separation, “Could Not Be Abused at the Time of Signing,” and/or “Did Not Sign Out of Fear” | 5 | | |
| Substance Abuse Addiction Not Enough | 2 | | |
| Did Not Corroborate | 18 | | |
| Did Not Mitigate Knowledge Requirement | 1 | | |
| Behavior Did Not Rise to Level of Abuse | 8 | | |

i. The Need for Corroboration

Judges have held that a claim of abuse must be corroborated to weigh in favor of the requesting spouse.¹¹⁷ However, the amount of evidence necessary to provide corroboration is unclear. For instance, in *Collier v. Commissioner of Internal Revenue*, the requesting spouse insisted she

116. Rev. Proc. 2003-61, 2003-32 I.R.B. 296.

117. See *Pullins v. Comm’r of Internal Revenue*, 136 T.C. 432, 454 (2011); *Venables v. Comm’r of Internal Revenue*, No. 22068-08S, 2010 WL 1980316, at *7 (T.C. May 18, 2010); *Bruen v. Comm’r of Internal Revenue*, 98 T.C.M. (CCH) 400, 410 (2009); *Fox v. Comm’r of Internal Revenue*, 91 T.C.M. (CCH) 731, 736 (2006); *Bright v. Comm’r of Internal Revenue*, No. 3839-04S, 2005 WL 2444050, at *4 (T.C. Oct. 4, 2005); *Rooks v. Comm’r of Internal Revenue*, No. 11874-02S, 2003 WL 21350037, at *4 (T.C. June 11, 2003).

suffered constant verbal and mental abuse from her husband during their marriage.¹¹⁸ Mrs. Collier introduced testimony from a friend who witnessed the verbal lashings as well as testimony from a psychologist who treated her for depression.¹¹⁹ The Tax Court, however, found her friend's testimony to be "conclusory and lacking in any specificity" and the psychologist's testimony to not "establish[]" abuse.¹²⁰ Consequently, Mrs. Collier's abuse claim was denied.¹²¹ Conversely, in *Chadwick v. Commissioner of Internal Revenue*, the Tax Court held that, although the only evidence of physical and emotional abuse was Mrs. Chadwick's own testimony, it was "credible" enough to establish that she was abused during her marriage.¹²²

Although sufficient corroborating evidence is necessary to protect against frivolous allegations, Tax Court judges have failed to recognize that some victims cannot produce corroborating evidence because of the very nature of the abuse. Domestic violence is well-known to be a common, yet under-reported, crime.¹²³ Estimates provide that victims report only 14.5% of serious assaults to the police.¹²⁴ Nevertheless, a spokesperson from the New South Wales Women's Refuge Movement Working Party Inc. described the misconceptions that still existed, stating that "[t]he word of a woman making an allegation of violence . . . without documented evidence is treated with disbelief, without providing opportunities for corroboration by other means."¹²⁵ Many victims fail to disclose instances of abuse for fear of retaliation, endangering her children, and shame.¹²⁶ Additionally,

118. *Collier v. Comm'r of Internal Revenue*, 83 T.C.M. (CCH) 1790, 1799 (2002).

119. *Id.*

120. *Id.*

121. *See id.* at 1791 (finding that Ms. Collier failed to carry her burden of showing abuse).

122. *Chadwick v. Comm'r of Internal Revenue*, No. 4991-04S, 2005 WL 2649124, at *18 (T.C. Oct. 17, 2005).

123. *See* SHANNAN M. CATALANO, U.S. DEP'T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION, 2003, at 1 (2003) (showing only 48% of all violent victimizations being reported).

124. KRISTIN A. KELLY, DOMESTIC VIOLENCE AND THE POLITICS OF PRIVACY 3 (2003).

125. New South Wales Women's Refuge Movement Working Party Inc, *Submission FV 188* (June 25, 2010); *see also* K. Johnstone, *Submission FV 107* (June 7, 2010).

126. *See* Barbara R. Barreno, *In Search of Guidance: An Examination of Past, Present, and Future Adjudications of Domestic Violence Asylum Claims*, 64 VAND. L. REV. 225, 243 (2011) ("Domestic violence is viewed as a "hidden problem," and its victims are often "invisible" to society because they choose not to disclose their situations for such reasons as fear, shame, and the social stigma attached to abuse.");

many victims do not want to bring claims of abuse out of the private sphere into a courtroom in emotional and intrusive trials.¹²⁷ Thus, many who seek innocent spouse relief will not have a paper trail of police reports or personal protection orders.

Some victims, such as the requesting spouse in *Collier v. Commissioner of Internal Revenue*, may only have a friend or family member who can provide some corroboration of abuse. While some judges do not give weight to this form of corroboration, others do. In *Thomassen v. Commissioner of Internal Revenue*, the court upheld a claim of abuse that was corroborated by the requesting spouse's children and family friends, even though no other evidence was presented.¹²⁸ Judges need to be mindful of the discrepancies in their criteria. Furthermore, judges need to be cognizant that some requesting spouses may not even have family members or friends to corroborate the allegations. A key tactic utilized by abusers is isolation to instill dependence and cut the victim off from outside resources.¹²⁹ Thus, abusers often isolate victims from friends and family members, thus preventing the victims from confiding instances of abuse in these individuals.¹³⁰

Furthermore, as noted by some Tax Court judges, victims do not check the box on the Innocent Spouse Relief Request Form 8857 indicating that they have been abused.¹³¹ By law, the IRS is required to contact the

Leigh Goodmark, *Telling Stories, Saving Lives: The Battered Mother's Testimony Project, Women's Narratives, and Court Reform*, 37 ARIZ. ST. L.J. 709, 744 n.186 (2005) (“[W]omen are actually reluctant to disclose abuse to legal system professionals, particularly in custody cases, because of fear of both the abuser and the system’s perception of women who make such claims.”) (citing Martha Albertson Fineman, *Domestic Violence, Custody, and Visitation*, 36 FAM. L. Q. 211, 222-23 (2002)).

127. Joy M. Bingham, *Protecting Victims by Working Around the System and Within the System: Statutory Protections for Emotional Abuse in the Domestic Violence Context*, 81 N.D. L. REV. 837, 843 (2005); PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NAT’L VIOLENCE AGAINST WOMEN SURVEY (July 2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf> (“Most victims of intimate partner violence do not consider the justice system an appropriate vehicle for resolving conflicts with intimates.”).

128. *Thomassen v. Comm’r of Internal Revenue*, 101 T.C.M. (CCH) 1397, 1409 (2011).

129. *Coercive Control*, in ENCYCLOPEDIA OF DOMESTIC VIOLENCE 166, 169 (Nicky Ali Jackson ed., 2007).

130. *Id.*

131. See *Pullins v. Comm’r of Internal Revenue*, 136 T.C. 432, 453 (2011) (noting that the requesting spouse failed to “check the box” that she had been abused during the relationship).

requesting spouse's partner or former partner for the opportunity to intervene in the case, even in instances of domestic violence.¹³² Although the IRS does not disclose personal information to the alleged abuser during the pendency of the innocent spouse petition, if the case is appealed to the Tax Court, all of this information will become available to the abuser.¹³³ Thus, a woman may be dissuaded from filing to obtain relief or alleging abuse because of the presence of her abuser.¹³⁴

ii. Police Intervention and Personal Protection Orders

An interesting consideration is whether the presence of a police report would provide sufficient corroboration for an abuse claim to be successful. Courts have reached divergent results. For instance, in *McKnight v. Commissioner of Internal Revenue*, the requesting spouse alleged numerous instances of physical violence in the relationship with her deceased husband.¹³⁵ The police were called to the home on two separate incidents following violent altercations.¹³⁶ The court acknowledged that, although Mrs. McKnight did not want to press criminal charges against her husband or seek medical treatment for fear of the consequences to her husband, her claim for abuse was sufficiently corroborated by the presence of the police report.¹³⁷ Conversely, in *Sotuyo v. Commissioner of Internal Revenue*, the requesting spouse also introduced a police report into evidence that detailed an incident of domestic violence where the wife was the victim.¹³⁸ The court, however, dismissed the abuse claim and held that “[the wife’s] evidence of abuse does not rise to the level of abuse that would keep her from challenging the omission of income for fear of [her husband’s] retaliation.”¹³⁹

132. *IRS Innocent Spouse Questions and Answers*, INTERNAL REVENUE SERV., <http://www.irs.gov/Individuals/Innocent-Spouse-Questions-&-Answers> (last visited Feb. 28, 2014). However, to protect the requesting spouse’s privacy, the IRS will not disclose her personal information.

133. *Id.* Under Tax Court Rule 27(d)(1), the requesting spouse can request a protective order from the court to require redaction of personal information.

134. See *Evidence of Family Violence: Difficulties in Giving Evidence*, AUSTRALIAN L. REFORM COMM’N, <http://www.alrc.gov.au/publications/18.%20Evidence%20of%20Family%20Violence/difficulties-giving-evidence> (citing Victorian Law Reform Commission, *Review of Family Violence Laws: Report* § 11.1 (2006)).

135. *McKnight v. Comm’r of Internal Revenue*, 92 T.C.M. (CCH) 76, 85 (2006).

136. *Id.*

137. *Id.*

138. *Sotuyo v. Comm’r of Internal Revenue*, No. 25692-10S, 2012 WL 1021306, at *5 (T.C. March 27, 2012).

139. *Id.*; see also *Ladehoff v. Comm’r of Internal Revenue*, No. 16814-10S, 2012

Additionally, when a woman reports an incident of domestic violence, “the belief that it is a private matter continues to play a significant role. The refusal of the police to arrest offenders and the reluctance of judges to sentence them has been widely documented.”¹⁴⁰ Thus, many judges do not consider instances where a woman tries to obtain assistance or create a paper trail of her abuse, but her efforts are rebuffed by law enforcement and the justice system.

iii. Verbal and Mental Abuse

Tax Court judges have expressed hesitancy in upholding an abuse claim when no physical abuse was alleged.¹⁴¹ They fear that these verbal, mental, and financial abuse allegations naturally “spring from the dissolution of troubled marriages, and there is an obvious incentive to vilify the non-requesting spouse.”¹⁴² Below is a chart that describes the various types of abuse that requesting spouses bring.

| Types of Claims | | | | | |
|------------------|----------|--------|----------------------|-----------|-------------|
| | Physical | Verbal | Mental/ Emotional | Addiction | Combination |
| Number of Claims | 18 | 4 | 11 | 1 | 24 |
| Claims Upheld | 6 | 0 | 1 | 0 | 12 |

In *Nihiser v. Commissioner of Internal Revenue*, the court posed the question of whether “psychological mistreatment” without the presence of physical abuse could be enough.¹⁴³ The requesting spouse in *Nihiser* never alleged that her former spouse physically abused her.¹⁴⁴ Instead, she stated that her husband verbally abused her, suffered from a drug addiction, and

WL 612501, at *3 (T.C. Feb. 27, 2012) (holding that the evidence of battery contained in two police reports “does not rise to the level of abuse that would keep him from challenging the treatment of the items on the return for fear of his ex-wife’s retaliation”).

140. KELLY, *supra* note 127, at 3.

141. See *Nihiser v. Comm’r of Internal Revenue*, 95 T.C.M. (CCH) 1531, 1540 (2008) (noting that “[w]e are aware of the danger that requesting spouses, in trying to escape financial liability, may easily exaggerate the level of nonphysical abuse”).

142. *Id.*

143. *Id.*

144. *Id.* at 1541.

oftentimes threatened to commit suicide.¹⁴⁵ The *Nihiser* opinion was the first time the Tax Court recognized the various ways batterers could exert control over their spouses without physically harming them—isolation, threatening to commit suicide, engaging in drug abuse, and using degrading language, to name a few.¹⁴⁶ The court did not choose to make these various factors dispositive, but rather referred to them as “objective indications” that abuse was present in the relationship, and not “just a deviation from the ideal of marital harmony.”¹⁴⁷

iv. The Interplay of Financial Abuse

A final issue that continues to perplex the Tax Court is whether financial control could potentially be its own “category” of abuse, including whether it should provide circumstantial evidence of other types of abuse and whether it could mitigate other factors such as whether the requesting spouse had “knowledge” of the misstatements on the income tax return. As evidenced below, abuse victims are often unaware of their tax and financial situations because the non-requesting spouse strictly controls this information.

| Family Finances | | | | |
|---|------------------------|----------------------------|-------------------|---------------------------|
| | Number of Cases | Percentage of Cases | Number Won | Winning Percentage |
| Wife Controls Finances & Seeks Relief | 2 | 3.27% | 0 | 0% |
| Wife Controls Finances/Husband Seeks Relief | 2 | 3.27% | 1 | 50% |
| Husband Controls Finances & Seeks Relief | 2 | 3.27% | 0 | 0% |
| Husband Controls Finances/Wife Seeks Relief | 30 | 49% | 19 | 63% |
| Separate Finances | 1 | 1.64% | 0 | 0% |
| Both Controlled | 24 | 39.34% | 9 | 37.5% |

145. *Id.*

146. *Id.* at 1542 (quoting MARY ANN DOUGLAS, *The Battered Woman Syndrome, in DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE* 39 (Daniel Jay Sonkin ed., 1987)).

147. *Id.*

| Additional Financial Information | | |
|---|--|--|
| | Requesting Spouse Received an Allowance | Requesting Spouse Had No Conception of Finances |
| Number of Cases | 17 | 14 |
| Number Won | 11 | 9 |
| Winning Percentage | 65% | 64% |

In *Bishop v. Commissioner of Internal Revenue*, the requesting spouse, a college-educated accountant, was denied access to the couple's bank account by her spouse.¹⁴⁸ She was only given a weekly allowance to pay for the couple's groceries.¹⁴⁹ Although Mrs. Bishop did not allege that her ex-husband physically abused her, the Tax Court upheld her claim of mental and emotional abuse in part because of the evidence of financial control.¹⁵⁰ Several years prior, however, the Tax Court had dismissed a requesting spouse's abuse claim even though the facts were very similar to the *Bishop* case. In *Smith v. Commissioner of Internal Revenue*, the Tax Court disbelieved the requesting spouse's argument that her ex-husband had controlled all of the family's finances prior to their divorce.¹⁵¹ Part of the Tax Court's denial of her claim stemmed from the fact that because she was a nurse and "neither uneducated nor intelligent . . . we do not believe that she would have been . . . oblivious about the family resources from which the taxes could have been paid."¹⁵² The judicial reluctance to accept the presence of abuse is very troubling, especially since many women can produce evidence of financial abuse but may not have corroborating evidence of physical abuse. Thus, the recognition of the seriousness of financial abuse as a form of control in and of itself, as well as an underlying precursor of other types of abuse, could be crucial in permitting more victims, especially those that lack corroborating evidence of abuse, to obtain innocent spouse relief.

III. SUGGESTIONS FOR REFORM

On January 6, 2012, the IRS issued a proposed revenue procedure that

148. *Bishop v. Comm'r of Internal Revenue*, No. 7595-06S, 2008 WL 852028, at *2-4 (T.C. Mar. 31, 2008).

149. *Id.*

150. *Id.* at *18.

151. *Smith v. Comm'r of Internal Revenue*, 82 T.C.M. (CCH) 963, 967 (2001).

152. *Id.* at 969.

would alter the way innocent spouse relief requests would be handled under Section 6015(f).¹⁵³ Notice 2012-8, which explains the proposed regulation, focuses in part on how the presence of abuse may impact a spouse's willingness and ability to challenge misstatements on a return.¹⁵⁴ This proposed regulation is a step in the right direction, but more guidance must be provided on what criteria judges should examine when they choose whether to uphold or dismiss a claim for abuse. In particular, many victims do not possess vital documents, such as police reports or personal protection orders that many judges essentially require.¹⁵⁵ In addition to the beneficial changes proposed in Notice 2012-8, there needs to be further emphasis on what circumstantial evidence judges should consider in their investigation.

A. Considering Family Finances and Economic Circumstances Throughout the Relationship

As explained by this Article, there is no single profile of the average domestic abuse victim seeking tax relief.¹⁵⁶ The education level of the various taxpayers, for example, are exceptionally diverse. Nevertheless, despite the victim's education and employment qualifications, a persistent theme in the data was the economic dependence and financial control exerted by the alleged abusive spouse.¹⁵⁷ In over half of the cases (53%), the non-requesting spouse had absolute control over the family finances.¹⁵⁸ Many requesting spouses additionally reported that they were either given a strict allowance by the alleged abuser or had no conception of the couple's financial situation whatsoever.¹⁵⁹ What is especially telling about these cases is that requesting spouses were only making allegations of physical, verbal, or emotional abuse—not financial abuse per se.¹⁶⁰ Thus, the presence of financial control seems to underlie many of the allegations of abuse.

Currently, there is no regulation that considers how the presence of financial control may serve as circumstantial evidence for a claim of abuse. In instances where a requesting spouse cannot provide documented

153. This proposed revenue procedure, if adopted, would supersede Rev. Proc. 2003-61, 2003-32 I.R.B. 296.

154. Examination of Returns and Claims for Refund, Credit, or Abatement: Determination of Correct Liability, 26 C.F.R. § 601.105 (2013).

155. See discussion *supra* Part II(C)(1)-(2).

156. See discussion *supra* Part II(B)(3).

157. See discussion *supra* Part II(C)(2)(d).

158. See discussion *supra* Part II(C)(2)(d).

159. See discussion *supra* Part II(C)(2)(d).

160. See discussion *supra* Part II(C)(2)(c).

evidence of abuse to sufficiently corroborate her allegations, courts should consider the presence of financial abuse as a factor. The same controlling behavior that manifests itself in financial abuse could naturally carryover into other types of behavior.

Additionally, the presence of financial abuse can be used to supplement many of the other factors under Revenue Ruling 2003-61. For instance, one of the factors entitled “knowledge or reason to know” requires that the requesting spouse “did not know and had no reason to know of the item giving rise to the deficiency.”¹⁶¹ Financial abuse coupled with allegations of other types of abuse could singlehandedly provide enough evidence for the taxpayer to be successful on this knowledge factor. If the victim of domestic violence does not have any knowledge of the couple’s finances and faces some form of abuse whenever she asks about financial matters, she should be granted relief under this factor. Thus, the proposed regulation should include a section discussing this suggestion and the underlying rationale.

*B. Instances of Inconsistent Allegations in Various Proceedings:
Considering the Period After the Separation*

An additional consideration that perplexes many judges is why women do not allege the presence of domestic violence in divorce proceedings or even on their innocent spouse request forms, but do so later when the case is before the IRS or Tax Court.¹⁶² Although judges fear the woman may be lying about or exaggerating the abuse, judges fail to recognize that a woman may have been afraid to disclose this information at an earlier proceeding or unwilling to handle the legal repercussions of the disclosure at the time.¹⁶³ Therefore, an addition to the proposed regulation might provide for a situation where a woman’s abuse claim has not been consistent across her innocent spouse or other legal proceedings. In analyzing whether the taxpayer’s election to allege abuse is credible, judges should consider factors such as (1) the length of time between legal proceedings where abuse was not alleged and the current innocent spouse case, (2) whether the non-requesting spouse resides in close proximity to the victim or whether he has relocated, (3) whether the victim and abuser are in new personal relationships, and (4) whether there are children from the marriage.

A victim of abuse who is separated from her abuser by time, physical distance, and legal obligations may no longer be in fear of her former

161. Rev. Proc. 2003-61, 2003-32 I.R.B. 296.

162. See discussion *infra* Part II(C)(1).

163. See discussion *infra* Part II(C)(1).

spouse retaliating against her if she alleges that the relationship was plagued by abuse. Furthermore, scholars have detailed the potential psychological traumas that accompany an abusive relationship—namely, a woman’s inability to realize the direness of her situation or her attempts to make excuses for her spouse.¹⁶⁴ Thus, a victim may not initially consider her situation to be one of direness or even abuse; she may need some time apart from the batterer’s control to actually come to terms with the nature of the relationship. Thus, a requesting spouse should not be penalized when she maintains she was not abused in one instance but alleges abuse during her innocent spouse case.

CONCLUSION

Although innocent spouse relief has been in existence for a number of years, judges are still grappling with many of the intricacies of the factors promulgated by Revenue Ruling 2003-61. Domestic abuse is a concept not normally addressed by Tax Court judges and tax practitioners alike. Even the U.S. Department of the Treasury, the IRS, and various Tax Court judges have acknowledged that they are not well-versed in the complexities of domestic violence.¹⁶⁵ Thus, more needs to be done to ensure that requesting taxpayers who are victims of domestic abuse have the ability to attain equitable relief or, perhaps more significantly, that these individuals are not barred from relief simply because the presiding judge does not understand the intricacies of a relationship plagued by domestic violence.

164. MARGI LAIRD MCCUE, *DOMESTIC VIOLENCE: A REFERENCE HANDBOOK* 21 (2008) (“Denial and minimization enable a woman to live with what is happening and to avoid feelings of terror and humiliation.”); PETER G. JAFFE ET AL., *CHILD CUSTODY AND DOMESTIC VIOLENCE: A CALL FOR SAFETY AND ACCOUNTABILITY* 35 (2003) (“Because secrecy, denial, and cover-up are all integral threads in the fabric of violence, clinically validating a history of domestic violence requires sophisticated and sensitive interviewing skills.”).

165. See, e.g., Bernie Becker, *Advocate: IRS Needs Greater Understanding of Domestic Violence*, *HILL* (Jan. 11, 2012, 8:25 PM) (stating that IRS employees need more of an understanding of abuse victims).