

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18010858
)	
RONALD E. PITT, Appealing Spouse)	Date Issued: August 13, 2018
)	
and)	
)	
SONIA FEREZAN (FORMERLY PITT),)	
Nonappealing Spouse)	
_____)	

OPINION

Representing the Parties:

For Appealing Spouse:	Ronald E. Pitt
For Nonappealing Spouse:	Sonia Ferezan (formerly Pitt)

For Respondent:	Brad Coutinho, Tax Counsel ¹
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For Office of Tax Appeals:	Linda Frenklak, Tax Counsel III
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T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code, sections 18533 and 19045,² Ronald Pitt (appealing spouse or Mr. Pitt) appeals from the action of the Franchise Tax Board (FTB or respondent) granting innocent spouse relief to Sonia Ferezan (nonappealing spouse or Ms. Ferezan) for tax year 2005.

Both the appealing spouse and nonappealing spouse waived their right to an oral hearing and therefore the matter is being decided based on the written record.

¹ We note that Amanda Vassigh, one of the administrative law judges for the Office of Tax Appeals (OTA), previously represented the Franchise Tax Board in this case while she was employed with that agency. However, Ms. Vassigh has been excluded from having any involvement in any aspect of the OTA's consideration of this matter.

² Unless otherwise indicated, all Section references are to sections of the California Revenue and Taxation Code.

ISSUE

The issue presented in this appeal is whether respondent's determination to grant innocent spouse relief to Ms. Ferezan was correct.

FACTUAL FINDINGS

1. Mr. Pitt and Ms. Ferezan (the couple) married in 1994, separated in 2004, and divorced in 2010. On April 15, 2006, the couple electronically filed a joint California Nonresident or Part-Year Resident Income Tax Return (FTB Form 540NR) for 2005.³
2. On April 15, 2007, the couple filed an amended 2005 tax return (FTB Form 540X).
3. The Internal Revenue Service (IRS) subsequently audited the couple's 2005 joint federal return, made adjustments, and assessed additional tax.
4. Based on the federal adjustments, respondent issued a Notice of Proposed Assessment (NPA) dated October 10, 2013, which increased the couple's taxable income for 2005 due to disallowed employee business expenses of \$46,730 and a disallowed medical expense deduction of \$48,948. The NPA proposed an additional tax assessment of \$5,271 plus interest.
5. According to respondent, Mr. Pitt and Ms. Ferezan separately protested the NPA, and Ms. Ferezan requested innocent spouse relief at protest.⁴
6. Respondent issued a Notice of Action (NOA) dated February 24, 2016, which affirmed the proposed assessment and denied Ms. Ferezan's request for innocent spouse relief, indicating that she had failed to provide additional information requested by respondent.
7. Respondent issued Mr. Pitt a Notice of Income Tax Due dated April 25, 2016, for a 2005 balance due of \$8,293.65 that included interest, collection costs, and credits.
8. On July 7, 2016, Ms. Ferezan filed a second request for innocent spouse relief for 2005 by submitting form FTB 705, Request for Innocent Joint Filer Relief, claiming that she and Mr. Pitt separated in 2004.

³ The return details are omitted, except to the extent relevant to the issue of whether innocent spouse relief was properly granted to Ms. Ferezan.

⁴ Copies of the couple's protest letters and Ms. Ferezan's first request for innocent spouse relief are not in the appeal file; however, we accept respondent's unrefuted representations regarding these documents.

9. The evidence shows that the couple did not live in the same household throughout their marriage and separation. Mr. Pitt lived and worked in California and some other states, and Ms. Ferezan lived primarily in Minnesota until after 2007. Mr. Pitt visited Ms. Ferezan's residence infrequently.
10. The couple maintained separate bank accounts and did not have access to each other's bank accounts.
11. The couple separately submitted information to their tax preparer and did not provide it to each other. Signatures were electronically transmitted. Ms. Ferezan had no knowledge of the accuracy of medical and business expense deductions claimed by Mr. Pitt.
12. Respondent sent Mr. Pitt a Non-Requesting Taxpayer Notice dated October 13, 2016, informing him of Ms. Ferezan's request for innocent spouse relief for 2005 and providing him with an opportunity to submit information or file an objection to granting Ms. Ferezan's request for relief.
13. Mr. Pitt opposed Ms. Ferezan's request for innocent spouse relief, claiming they each were obligated to pay one-half of their federal and California state tax debts.⁵ He also claimed that the disallowed medical expenses were Ms. Ferezan's and that she failed to report insurance reimbursements she received.
14. Based on information from Ms. Ferezan and Penny Talbott, an enrolled agent who jointly represented the couple before the IRS for 2005, we find that the medical expenses disallowed by the IRS were neither attributable to Ms. Ferezan, nor to her daughter from another relationship, but rather were attributable to Mr. Pitt's own medical expense claims.
15. Ms. Ferezan presented evidence in support of her claim that Mr. Pitt was "emotionally and physically abusive throughout their marriage" and that he had, "over the years, threatened her life and the life of her daughter."⁶ A medical report dated September 17, 2001, from Ms. Ferezan's physician, indicates that Ms. Ferezan was injured when her husband assaulted her on September 15, 2001. Ms. Ferezan's hair stylist stated under penalty of perjury that she overheard a conversation that she believed constituted verbal

⁵ A copy of the divorce decree was provided by Ms. Ferezan. There is no specific mention of the division of the 2005 tax liability. The decree mentioned only the tax year 2010 liability, which was assigned to each party filing separately.

⁶ Document signed under penalty of perjury by Ms. S., a friend of Ms. Ferezan's.

abuse by Mr. Pitt toward Ms. Ferezan. The evidence supports Ms. Ferezan's claim that she was afraid of her husband.

16. In a Notice of Action-Full Approval, dated November 28, 2016, respondent granted Ms. Ferezan's request for innocent spouse relief for 2005 pursuant to Section 18533(b).
17. In a Notice of Action-Non-Requesting Taxpayer, dated November 28, 2016, respondent informed Mr. Pitt that it had granted Ms. Ferezan's request for relief for 2005 pursuant to Section 18533(b).
18. Mr. Pitt filed this timely appeal.

DISCUSSION

The only issue for decision in this appeal is whether Ms. Ferezan was entitled to innocent spouse relief that would relieve her of California, joint liability for tax year 2005.

When a joint return is filed by a husband and wife, each spouse is jointly and severally liable for the entire tax due for that tax year. (§ 19006(b); Internal Revenue Code (IRC), § 6013(d)(3).)

Both federal and California law provide that an individual who files a joint return may be relieved of all or a portion of such joint and several liability. (§ 18533; IRC, § 6015.) Section 18533, subdivision (b), provides for what is often referred to as "traditional innocent spouse" relief; subdivision (c) provides for separate allocation relief; and, if a requesting spouse is not eligible for relief under subdivisions (b) or (c), a requesting spouse may be eligible for equitable relief under subdivision (f). (Cf. IRC, § 6015(b), (c), & (f).) Determinations under Section 18533 are made without regard to community property laws. (§ 18533(a)(2).)

When a California statute is substantially identical to a federal statute, interpretations of the federal statute are considered highly persuasive in interpreting the California statute. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) Thus, federal authority is applied extensively in California innocent spouse cases. (See, e.g., *Appeal of Patricia Tyler-Griffis*, 2006-SBE-004, Dec. 12, 2006.)⁷ Treasury Regulations are applied in California innocent spouse matters to the extent that such regulations do not conflict with Section 18533 or respondent's regulations. (§ 18533(g)(2).)

⁷ Precedential opinions of the California State Board of Equalization may be found on this website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

Respondent granted Ms. Ferezan the requested relief pursuant to Section 18533(b), which provides that an individual may, in specified circumstances, elect to claim innocent spouse relief with respect to an understatement of tax. Such relief is allowed if the spouse shows he or she satisfies all of the following five requirements: (1) a joint return has been filed; (2) there is an understatement of tax on the joint return attributable to erroneous items of the nonelecting spouse filing the joint return; (3) the individual establishes that he or she did not know of and had no reason to know of the understatement of tax when he or she signed the joint return; (4) taking into account all facts and circumstances, it is inequitable to hold the individual liable for the deficiency in tax attributable to that understatement; and (5) the individual files a timely request for relief no later than two years after the date the FTB has begun collection action with respect to the individual. (§ 18533(b)(1)(A-E).) The requirements of Section 18533(b), like those of IRC section 6013(b)(1), upon which they are based, are stated in the conjunctive; and a failure to meet any one of them disqualifies an individual from relief. (*Alt v. Commissioner* (2002) 119 T.C. 306, 313.)

Ms. Ferezan satisfies the requirement of Section 18533(b)(1)(A) because the couple filed original and amended joint returns for tax year 2005 on April 15, 2006 and April 15, 2007, respectively.

Ms. Ferezan additionally satisfies the income attribution requirement of Section 18533(b)(1)(B) because she has shown that the understatement was attributable to her ex-husband. The understatement of tax on the couple's 2005 joint return was due to the disallowance of claimed deductions for employee business expenses of \$46,730 and medical expenses of \$48,948, as reflected on the NPA. Ms. Talbott, the enrolled agent who represented the couple before the IRS, stated in her April 1, 2009 letter to the IRS that (1) Mr. Pitt received a reimbursement for his medical expense without the knowledge of Ms. Ferezan; and (2) Mr. Pitt disputed the IRS disallowance for his own temporary living expenses. On their 2005 original, federal return, the couple reported net medical and dental expenses of \$68,201. Ms. Ferezan submitted a schedule showing that she claimed \$5,670.37 of those medical and dental expenses, including Lasik eye surgery for her daughter and pharmacy purchases of \$200.83 attributed to Mr. Pitt. Mr. Pitt has not provided any documentation showing that any of the remaining disallowed medical expenses were incurred by, or reimbursed to, Ms. Ferezan. The balance of the disallowed medical expenses must therefore be attributable to Mr. Pitt, who acknowledges he

had major hospital bills during 2005. Mr. Pitt has not substantiated his contentions with respect to the receipt of reimbursements for medical expenses by Ms. Ferezan. Furthermore, Mr. Pitt did not address the disallowed employee business expenses in his appeal letter. Because we find that Mr. Pitt overstated his own medical and business expense deductions, the erroneous items that created an understatement of tax are attributable solely to Mr. Pitt.

Ms. Ferezan satisfies the requirement of Section 18533(b)(1)(C), that she did not know, or had no reason to know of Mr. Pitt's understatement of income. A requesting spouse knows or has reason to know of an understatement if, at the time he or she signed the joint return, he or she had actual knowledge of the understatement, or if a reasonable person in similar circumstances could be expected to know that the joint return contained an understatement. (Treas. Reg. § 1.6015-2(c).) "A spouse has reason to know if a reasonably prudent taxpayer could have been expected to know that the return contained an understatement." (*Busch v. Commissioner*, T.C. Memo. 2017-169 (citations omitted).) In determining whether a requesting spouse knew or had reason to know of an understatement, all of "the facts and circumstances are considered, including, but not limited to, the nature of the erroneous item, the amount of the erroneous item relative to other items, the couple's financial situation, the requesting spouse's educational background and business experience, the extent of the requesting spouse's participation in the activity that resulted in the erroneous item, whether the requesting spouse failed to inquire, at or before the time the joint return was signed, about items on the joint return or omitted from the joint return that a reasonable person would question, and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' joint returns." (Treas. Reg. § 1.6015-2(c); see also *Tompkins v. Commissioner*, T.C. Memo. 2013-24.)

In her April 1, 2009 letter to the IRS, Ms. Talbott stated that Ms. Ferezan had no knowledge that Mr. Pitt received a reimbursement for his medical expenses. The couple was separated, and Mr. Pitt failed to inform Ms. Talbott of his receipt of medical expense reimbursements. In addition, Mr. Pitt does not dispute Ms. Ferezan's assertion that the couple separated in 2004, which would mean they were separated at the time their 2005 return was prepared and filed. Nor does he dispute Ms. Ferezan's assertions that Mr. Pitt provided his claimed deductions to the tax preparer of the couple's 2005 joint return, that the couple had separate checking and savings accounts, and that neither of them had access to the other's

information. In his appeal letter, Mr. Pitt acknowledges that he was working in California when the couple's 2005 joint returns were prepared and filed.

Moreover, the Treasury Regulations provide an exception that relieves a requesting spouse from an obligation to inquire about the understatement. The requesting spouse is relieved of an obligation to challenge the treatment of any items on the return if he or she was the victim of domestic abuse prior to the time when the return was signed, and he or she feared the nonrequesting spouse's retaliation." (Treas. Reg. § 1.6015-3(c)(2)(v).) The evidence shows that Mr. Pitt abused Ms. Ferezan during their marriage. Thus, even if Ms. Ferezan knew or should have known of the understatement on the couple's 2005 joint return, her fear of Mr. Pitt's abuse may have caused her not to challenge the treatment of his claimed deductions on the couple's 2005 joint return. (See *Kistner v. Commissioner* (11th Cir. 1994) 18 F.3d 1521, 1526-1527.) Accordingly, we find that Ms. Ferezan satisfies the requirement that she did not know, or had no reason to know of, the understatement by Mr. Pitt.

Next, Ms. Ferezan satisfies the requirement of Section 18533(b)(1)(D). She has established that, taking into account all of the facts and circumstances, it would be inequitable to hold her liable for the 2005 deficiency. "The most often cited material factors to be considered are (1) whether there has been a significant benefit to the spouse claiming relief, and (2) whether the failure to report the correct tax liability on the joint return results from concealment, overreaching, or any other wrongdoing on the part of the other spouse." (*Alt v. Commissioner*, *supra*, 119 T.C. at p. 314.) Mr. Pitt does not contend, and the evidence does not show, that Ms. Ferezan obtained a significant benefit from the erroneously claimed deductions. Based on Ms. Talbott's statement in her letter to the IRS that Mr. Pitt "failed to inform" Ms. Ferezan that he "received a reimbursement for his medical expense without [Ms. Ferezan's] knowledge," it appears that the failure to report the correct tax liability on the couple's 2005 joint return results from concealment on the part of Mr. Pitt. We do not find credible Mr. Pitt's unsubstantiated contention that, at the time of their divorce, Ms. Ferezan assumed the obligation to pay the couple's Minnesota and California tax debts for 2005 because the couple's divorce decree is silent on this point.

Finally, we conclude that Ms. Ferezan satisfies the requirement of Section 18533(b)(1)(E), because she timely filed her request for innocent spouse relief. Ms. Ferezan filed her request for innocent spouse relief on July 7, 2016, and there is no indication in the

appeal record that the FTB commenced any collection action with respect to her.


For these reasons, we conclude that Ms. Ferezan satisfies all of the requirements for traditional innocent spouse relief under Section 18533(b). Therefore, we do not discuss whether Ms. Ferezan would be entitled to innocent spouse relief under Section 18533(f).

HOLDING


Mr. Pitt has failed to establish that respondent improperly granted innocent spouse relief to Ms. Ferezan for tax year 2005.


DISPOSITION

Respondent's action granting innocent spouse relief to Ms. Ferezan for 2005 pursuant to Section 18533(b), is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Linda Cheng
Administrative Law Judge

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Grant S. Thompson
Administrative Law Judge