

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010871
)
RICHARD T. OBERG) Date Issued: August 23, 2018
)
)
_____)

OPINION

Representing the Parties:

For Appellant (Requesting Spouse):	Richard T. Oberg
For Non-Requesting Spouse:	Donna Heischober
For Respondent:	Bradley J. Coutinho, Tax Counsel
Office of Tax Appeals:	Mai C. Tran, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code sections¹ 18533, 19006 and 19045,² Richard T. Oberg (appellant) appeals an action by the Franchise Tax Board (FTB) in denying innocent spouse relief for the 2007 through 2011 tax years (tax years at issue). We note, however, that during the pendency of this proceeding, FTB has agreed to provide partial innocent spouse relief to appellant.

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

¹ Unless otherwise indicated, all "Section" references are to sections of the California Revenue and Taxation Code.

² Sections 18533 and 19006 allows taxpayers to dispute the Franchise Tax Board's actions on claims for innocent spouse relief under the statutory provisions applicable to protests, including Section 19045. Section 19045 states that taxpayers have 30 days to appeal FTB's action upon a taxpayer's protest to the board (Board of Equalization). (See *Appeal of Patricia Tyler-Griffis*, 2006-SBE-004, Nov. 15, 2005.) Section 20(b) provides, "[u]nless the context requires otherwise, as used in this code or any other code, 'board' with respect to an appeal, means the Office of Tax Appeals."

ISSUES

1. Whether appellant is entitled to equitable innocent spouse relief pursuant to Section 18533(f) for the 2007, 2008, 2009, 2010 and 2011 tax years?
2. Whether appellant is entitled to court-ordered relief under Section 19006(b) or (c)?

FACTUAL FINDINGS

1. Appellant and Ms. Heischober were married on January 14, 1995, separated on October 19, 2012, and divorced on June 21, 2016. The couple has two minor children from the marriage. Ms. Heischober has had a gambling addiction since 1995 that continued through the years at issue. In 1997, Ms. Heischober, a dentist, acquired an interest in a “very large dental practice.” Appellant did not help with the bookkeeping for Ms. Heischober’s dental practice. During the years at issue, Ms. Heischober was employed as a dentist. Appellant earned a Bachelor of Science degree in mechanical engineering. In 2000, appellant began working for the Sacramento Municipal Utilities District (SMUD) and appellant continued to be employed at SMUD during the years at issue.
2. The couple subsequently experienced financial difficulties, including tax debt, due in part to Ms. Heischober’s gambling addiction. In hopes of improving the couple’s financial circumstances, Ms. Heischober sold her interest in the dental practice in 2005. The sale of the dental practice resulted in a capital gain and corresponding tax liability, which increased the couple’s tax debt. The couple’s financial difficulties also resulted in the foreclosure of their home.
3. The couples’ financial difficulties continued unabated. FTB issued a Tax Lien Notice dated January 21, 2009, to appellant for the tax years 2004, 2005, 2006 and 2007. In 2009, the couple filed for bankruptcy, which was finalized on August 31, 2012. Appellant states that the bankruptcy “eliminated a significant amount of [the couple’s] tax debt” and other personal debt. Although some of the tax debt was discharged, the tax liabilities at issue were not discharged by the bankruptcy filings.³ Appellant also states that neither he nor Ms. Heischober have been able to “accumulate significant sav[ings] post bankruptcy.”

³ A portion of the fees for the 2008 tax year were discharged.

4. The couple filed for divorce on May 8, 2013. In the Stipulated Judgment executed on June 21, 2016, they agreed that each was liable for one-half of any unpaid joint federal and state tax debts that existed as of that date. The liability for 2007 was fully paid as of December 7, 2015, approximately seven months before the Stipulated Judgment was signed. In addition, Ms. Heischober received a one-half marital interest in appellant's pension and in his deferred compensation plan. The couple also agreed to alternate claiming their children as dependents on their individual tax returns. The divorce was finalized on June 30, 2016.
5. During the years at issue, appellant and Ms. Heischober did not maintain joint accounts. Ms. Heischober did not maintain a bank account. Appellant paid for the couple's household expenses, including mortgage, rent, insurance, utilities, and groceries. Ms. Heischober occasionally provided funds to appellant.
6. Appellant was involved in the preparation of the couple's tax returns for the years at issue. He gathered the necessary tax documents and provided them to the couple's accountant. Appellant withheld taxes from his salary, but he did not know how Ms. Heischober expected to pay for the taxes attributed to her income. Appellant contends that Ms. Heischober was less than forthcoming with her tax documents, which led to delays in their return filings. Appellant acknowledges that he had "no faith" that Ms. Heischober's gambling records were accurate and that it was "impossible to pay the resulting tax liabilities."
7. Appellant continues to be employed as an engineer by SMUD where he has worked for 17 years. Appellant's employer provides health insurance coverage. Appellant's 2016 Form W-2 lists appellant's state wages as \$156,359. Appellant indicates that his household includes three people (his two children and himself). According to appellant's bi-monthly wage statements from December 2016, appellant received gross wages of \$6,078.40 every two weeks. According to appellant's income and expense report signed by appellant on March 22, 2017, appellant has total monthly take home pay of \$6,928 and total monthly expenses of \$6,186, which includes amounts for "children's activities."
8. Appellant states that he lives alone, but has the two children on alternate weeks. Appellant is currently renting his home in a community for adults over 55 years old. As for assets, appellant has a pension valued at \$214,879 as of June 30, 2016, and a deferred

compensation plan valued at \$139,081 as of February 28, 2017. Appellant and Ms. Heischober each have a 50 percent interest in the pension and the deferred compensation plan. Appellant also has loans against the deferred compensation plan, which he agreed was his responsibility as part of the divorce settlement.⁴

9. For the 2007 tax year, appellant and Ms. Heischober filed a timely tax return on October 15, 2008, claiming married filing joint status. On the return, the couple reported total tax of \$28,222, withholding of \$12,633, and a balance due of \$16,262. The couple did not remit payment of the balance due. FTB processed the return, adjusted the amount due to \$15,589, and imposed both an underpayment of estimated tax penalty (Section 19136) and an underpayment penalty (Section 19132). Through its collection activity, FTB was able to collect the balance for the 2007 tax year liability by December 2015.
10. For the 2008 tax year, FTB issued a Demand for Tax Return (Demand) to appellant dated February 17, 2010. FTB also issued a separate Demand to Ms. Heischober on May 5, 2010. Neither appellant nor Ms. Heischober responded to the Demands, and FTB issued a separate Notice of Proposed Assessment (NPA) to each of them. Appellant and Ms. Heischober did not protest the NPAs and they became final liabilities. On April 15, 2011, the couple filed their 2008 California tax return, reporting married filing joint status, total tax of \$24,868, withholding of \$11,669, and a balance due of \$13,199. The couple did not remit payment of the balance due. FTB processed the return as filed. Through its collection activity, FTB received payments totaling \$7,361.50.
11. For the 2009 tax year, FTB issued separate Demands to appellant and Ms. Heischober on February 2 and 8, 2011, respectively. Neither appellant nor Ms. Heischober responded to the Demands, and FTB issued separate NPAs to each of them. Appellant and Ms. Heischober did not protest the NPAs and they became final liabilities. On April 15, 2011, the couple filed their 2009 California tax return, reporting married filing joint status, total tax of \$21,270, withholding of \$12,880, and a balance due of \$8,390. The couple also self-assessed interest, the late-filing penalty, the late payment penalty and the underpayment of estimated tax penalty, increasing the total amount due to \$11,216. The

⁴ According to appellant's income and expense report, the loan of \$28,505 will be paid off on January 1, 2020.

- couple did not remit payment of the balance due. FTB processed the return as filed. FTB has not received any payments through its collection activities.
12. For the 2010 tax year, FTB issued a Demand dated February 9, 2012 to appellant. When appellant failed to respond to the Demand by the due date, FTB issued an NPA dated February 15, 2012. The couple filed their 2010 tax return on August 28, 2012, claiming married filing joint status. On their return, the couple reported total tax of \$10,591, withholding of \$6,555, and a balance due of \$4,036. The couple did not remit payment of the balance due. FTB processed the return, adjusting the balance due to \$4,120, revised the late-filing penalty, and imposed an estimated tax penalty. FTB has not received any payments through its collection activities.
 13. For the 2011 tax year, the couple filed a timely tax return on October 12, 2012, claiming married filing joint status. On the return, the couple reported total tax of \$18,945, withholding of \$16,297, excess SDI of \$615, and a balance due of \$2,033. The couple self-assessed a late payment penalty of \$163 and reported interest due of \$30, resulting in a total balance due of \$2,226. The couple did not remit payment of the balance due. FTB processed the return and revised the penalty. FTB has not received any payments through its collection activities.
 14. FTB received appellant's request for innocent spouse relief on December 9, 2013. After reviewing the information provided by appellant and Ms. Heischober, FTB denied appellant's request. FTB issued Notices of Action (NOAs) dated June 23, 2015 to appellant and Ms. Heischober, informing them of FTB's determination. During the course of this appeal, FTB determined that appellant is entitled to innocent spouse relief from one-half of the unpaid outstanding tax liabilities as of June 21, 2016. Based primarily on the Stipulated Judgment, FTB reasoned that it would be inequitable to hold appellant responsible for more than one-half of the unpaid liabilities. Since the 2007 year did not have an unpaid balance, the liability for that year was not covered by the Stipulated Judgment, and therefore FTB did *not* allow any relief for that year.
 15. Appellant also requested innocent spouse relief from the Internal Revenue Service (IRS) for federal tax liabilities for the years at issue in this appeal. Appellant's requests for relief were denied by the IRS. In making its determination, the IRS noted that appellant had conceded that he had no expectation that Ms. Heischober could pay the outstanding

tax liability when the returns were filed. The IRS also noted that appellant could have, but chose not to, file a separate return for the years at issue. The IRS further determined that appellant would not suffer economic hardship if relief was denied, noting that not all of appellant's expenditures were necessary basic living expenses and that appellant had available assets.

16. Appellant timely appealed FTB's determination.

DISCUSSION

1. Whether appellant is entitled to equitable innocent spouse relief pursuant to Section 18533(f) for the 2007, 2008, 2009, 2010, and 2011 tax years?

Section 19006(b) states the general rule that "[w]henver a joint return is filed by a husband and wife, the liability for the tax on the aggregate income is joint and several." (See also Int. Rev. Code, § 6013(d).) The "spouse who controls the disposition of, or receives or spends, community income, as well as the spouse who is taxable on the income, is liable for the payment of the taxes imposed ... on that income. (§ 19006(a).) The entire amount of tax due may be collected from either spouse or may be collected from both spouses (although the total tax liability may only be collected once). (§ 19006.)

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 if the individual qualifies as an innocent spouse. (§§ 18533, 19006; Int. Rev. Code, § 6015.)⁵ Generally, an individual claiming relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Stevens v. Commissioner*, T.C. Memo. 1988-63; *Appeal of Dillett*, 85-SBE-012, Feb. 5, 1985.)⁶ Since the innocent spouse provisions are remedial in nature, they are construed and applied liberally in favor of the individual claiming their benefits. (*Friedman v. Commissioner*

⁵ When a California statute is substantially identical to a federal statute (as in the case of the innocent spouse relief statutes), federal law interpreting the federal statute is highly persuasive in interpreting the California statute. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) Thus, federal regulations and authorities are applied extensively in California innocent spouse cases. (See generally § 18533(g)(2).)

⁶ Pursuant California Code of Regulations, title 18, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are viewable on BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm>.

(2d Cir. 1995) 53 F.3d 523, 528-529.) Nevertheless, unsupported assertions are not sufficient to satisfy an appellant's burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

There are three types of innocent spouse relief under Section 18533: traditional relief under subdivision (b), separate liability election under subdivision (c), and equitable relief under subdivision (f). Traditional relief and separate liability election only apply to deficiency assessments. (§ 18533(b) & (c).) As the tax liabilities here are due to self-assessed unpaid tax, appellant may only seek equitable relief pursuant to Section 18533(f).

Section 18533(f) provides that FTB may relieve an individual from a tax liability arising from a joint return filing if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for the unpaid tax or understatement, and the individual does not otherwise qualify for relief under subdivisions (b) and (c). A tax agency's decision to deny equitable relief is reviewed de novo, and the requesting spouse bears the burden of proving that he or she is entitled to equitable relief. (*Wilson v. Commissioner* (9th Cir. 2013) 705 F.3d 980; *Pullins v. Commissioner* (2011) 136 T.C. 432.)

IRS Revenue Procedure 2013-34 provides guidance in determining whether to grant equitable relief.⁷ Section 4.01 of Revenue Procedure 2013-34 identifies the following threshold requirements⁸ for a taxpayer requesting equitable relief:

1. The requesting spouse filed a joint return for the taxable year for which relief is sought;
2. Relief is not available to the requesting spouse under Section 18533(b) or (c);
3. The requesting spouse applies for relief within the applicable statute of limitations for requesting relief;
4. No assets were transferred between spouses as part of a fraudulent scheme by the spouses;
5. The non-requesting spouse did not transfer disqualified assets to the requesting spouse;

⁷ Section 18533(g)(2) provides that “[i]t is the intent of the Legislature that, in construing this section ..., any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the [FTB].” The applicable Treasury regulations refer taxpayers to Revenue Procedure 2000-15 (which was a predecessor to Revenue Procedure 2013-34) “or other guidance published by the Treasury or IRS” for guidance as to the application of equitable innocent spouse relief provision. (Treas. Reg., § 1.6015-4(c).)

⁸ The Revenue Procedure and federal court cases indicate that, if the requesting spouse cannot satisfy all of these threshold conditions, then the claim for equitable relief must be denied. (See, e.g., *Reilly-Casey v. Commissioner*, T.C. Memo. 2013-292; *Stanwyck v. Commissioner*, T.C. Memo. 2012-180; *Franc v. Commissioner*, T.C. Memo. 2010-79; *O'Meara v Commissioner*, T.C. Memo. 2009-71.)

6. The requesting spouse did not file the return with a fraudulent intent; and
7. The income tax liability from which the requesting spouse seeks relief is attributable (in whole or in part) to an item of the individual with whom the requesting spouse filed the joint return, unless a specific exception applies.

There is no dispute that the first six conditions have been satisfied. Further, as for the seventh condition, Ms. Heischober earned significant income during the tax years at issue. Therefore, part of the tax liabilities for each year at issue is attributable to Ms. Heischober and appellant has satisfied the threshold conditions for equitable innocent spouse relief set forth in Revenue Procedure 2013-34.

We next consider whether appellant is entitled to a “streamlined determination” of equitable innocent spouse relief pursuant to Section 4.02 of Revenue Procedure 2013-34. A streamlined determination of equitable innocent spouse relief is permitted when the following three criteria have been satisfied: (1) the requesting spouse establishes he or she is no longer married to the nonrequesting spouse; (2) the requesting spouse establishes he or she would suffer economic hardship if relief were not granted; and (3) the requesting spouse establishes he or she did not know or have reason to know that the non-requesting spouse would not or could not pay the underpayment of tax reported on the joint income tax return.

The first factor is satisfied as appellant and Ms. Heischober divorced as of June 30, 2016.

As for the second factor, economic hardship exists if satisfaction of the tax liability in whole or in part would cause the requesting spouse to be unable to pay reasonable basic living expenses. (Rev. Proc. 2013-34, §§ 4.02(2) & 4.03(2)(b).) The taxing agency will compare the requesting spouse’s income to the federal poverty guidelines for the requesting spouse’s family size and determine by how much, if at all, the requesting spouse’s monthly income exceeds the spouse’s reasonable basic monthly living expenses. (Rev. Proc. 2013-34, § 4.03(2)(b).) Generally, economic hardship will be established if the requesting spouse’s income is below 250 percent of the federal poverty guidelines, or if the requesting spouse’s monthly income exceeds his or her reasonable basic monthly living expenses by \$300 or less. (*Id.*) In determining whether the requesting spouse would suffer economic hardship if relief were not granted, the taxing agency applies rules similar to those developed in Treasury Regulation section 301.6343-1(b)(4), regarding when economic hardship exists for purposes of determining whether to release a tax levy. (Rev. Proc. 2013-34, § 4.03(2)(b).) Treasury Regulation section 301.6343-1(b)(4)(i)

provides generally that in evaluating each taxpayer's unique circumstances, an affluent or luxurious standard of living is not a "unique circumstance" to be considered.

Here, the evidence in the record supports a finding that appellant would not suffer an economic hardship if relief is not granted. Appellant has steady employment at SMUD where he has been employed as an engineer for over 17 years. Appellant earned wages in 2016 of \$170,129. Appellant states that he lives alone, but has the two children on alternate weeks.⁹ According to the federal poverty guidelines for 2016, the poverty guideline for a household of three is \$20,160. Appellant's yearly income of over \$156,359 far exceeds 250 percent of the federal poverty guidelines (i.e., $\$20,160 \times 250\% = \$50,400$).¹⁰ According to appellant, he has total monthly net income of \$6,928 and total monthly expenses of \$6,186,¹¹ which leaves appellant with \$742. In addition, appellant's employer provides health insurance and a pension valued at \$214,879. Appellant also has a deferred compensation plan valued at \$139,081. As part of the divorce settlement, Ms. Heischober acquired a one-half marital interest in appellant's pension and deferred compensation plan. We find that appellant's remaining one-half interest in the pension and deferred compensation plan is a significant asset which he may draw upon when he retires. Appellant contends that the pension and deferred compensation plan should not be taken into account for the economic hardship factor because he has no access to the funds until retirement. Even without consideration of the pension and the deferred compensation plan, appellant's monthly income exceeds his monthly expenses by more than \$700. Accordingly, appellant's available monthly income, even according to his own calculations, significantly exceeds the \$300 threshold that the IRS uses to evaluate economic hardship. Furthermore, FTB already has relieved appellant from one half of the unpaid liability that existed as of June 21, 2016. For these reasons, appellant has not shown that it would be an economic hardship within the meaning of the applicable Treasury Regulations to hold him liable for the remaining portion of the tax liability.

⁹ Appellant is currently renting a home in a "Senior 55 and Only Community," which corroborates his statement that he lives alone.

¹⁰ We further note that appellant's net take home pay of \$83,139.03 also exceeds the threshold guidelines.

¹¹ We note that some of the expenses appellant listed may not be considered reasonable basic living expenses, such as children's activities.

As for the knowledge factor, we find that appellant did not have a reasonable expectation that Ms. Heischober would pay the taxes at the time of filing. Appellant knew that the couple experienced financial difficulties which included the loss of their home, the sale of Ms. Heischober's dental practice in 2005, and substantial prior tax debts. Appellant acknowledged that he had no idea how Ms. Heischober would pay her share of taxes when the returns were filed. Furthermore, since Ms. Heischober was unable to pay the taxes for the 2007 tax return when it was filed in 2008, appellant had no reason to believe that she would pay the taxes at the time the returns for the subsequent years at issue were filed in 2011 and 2012. Therefore, we find that appellant had no reasonable expectation that Ms. Heischober would be able to pay the taxes when they filed the returns for the years at issue. Accordingly, appellant is not entitled to a streamlined determination of equitable innocent spouse relief.

If the threshold requirements are satisfied, but streamlined equitable innocent spouse relief is unavailable, equitable relief still may be available to a requesting spouse based on the following nonexclusive factors set forth in section 4.03 of Revenue Procedure 2013-34: (1) the requesting spouse's marital status; (2) whether the requesting spouse would suffer an economic hardship if relief is not granted; (3) the requesting spouse's knowledge or reason to know that the non-requesting spouse would or could pay the tax liability shown on the return; (4) the non-requesting spouse's legal obligation to pay the tax liability; (5) whether the requesting spouse significantly benefited from the unpaid tax liability; (6) the requesting spouse's compliance with income tax laws in the following tax years; and (7) the requesting spouse's mental and physical health at the time she signed the returns.

No single factor is determinative, the list of factors is not exhaustive, and the degree of importance of each factor varies depending on the requesting spouse's facts and circumstances. (Rev. Proc. 2013-34, § 4.03(2).) Section 3.05 of Revenue Procedure 2013-34 states that, depending on the facts and circumstances of the case, relief still may be appropriate if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief may still be appropriate if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief. (Rev. Proc. 2013-34, § 3.05.) While the guidelines provided by the Revenue Procedure are relevant to our inquiry and we consider them below, we are not bound by them as our analysis and determination ultimately turn on an evaluation of all the facts and circumstances. (See *Henson v. Commissioner*, T.C.

Memo. 2012-288; *Sriram v. Commissioner*, T.C. Memo. 2012-91.) Equitable relief may be inappropriate even if a simple counting of factors would seem to favor relief. (Rev. Proc. 2013-34, §§ 3.05 & 4.03(2); *Henson v. Commissioner*, *supra*; *Hudgins v. Commissioner*, T.C. Memo. 2012-260.)

1. Marital status

Appellant and Ms. Heischober divorced as of June 30, 2016. This factor favors relief. (Rev. Proc. 2013-34, § 4.03(2)(a).)

2. Economic hardship

As discussed above, the record shows that appellant would not suffer an economic hardship if relief is not granted. This factor is neutral. (Rev. Proc. 2013-34, § 4.03(2)(b).)

3. Knowledge of the underpayment

As discussed above, appellant knew or should have known that Ms. Heischober could not pay the taxes when the returns were filed. Due to the couple's long history of financial difficulties (including prior tax debt) and appellant's knowledge of Ms. Heischober's gambling addiction, appellant had no reasonable expectation that Ms. Heischober could pay the taxes within a reasonable time of filing the returns. This factor weighs against relief. (Rev. Proc. 2013-34, § 4.03(2)(c)(i)(B).)

4. Legal obligation

For purposes of this factor, a legal obligation is an obligation arising from a divorce decree or other legally binding agreement. (Rev. Proc. 2013-34, § 4.03(2)(d).)

According to the Stipulated Judgement, appellant and Ms. Heischober agreed to be responsible for one-half of the unpaid joint tax debts for the years at issue. Based on that judgment, FTB has conceded that appellant is entitled to relief from the liability that Ms. Heischober agreed to pay in the judgment, so the only remaining unpaid liability is that which appellant agreed to pay in the judgment. Therefore, this factor weighs against relief from the remaining unpaid liability. (Rev. Proc. 2013-34, § 4.03(2)(d).)

5. Significant benefit

Appellant contends that Ms. Heischober's earnings were spent on gambling, and not used to benefit the couple's household. FTB acknowledges that the amount of the liabilities for each tax year are small enough such that appellant did not derive a significant benefit from the unpaid taxes. This factor is neutral. (Rev. Proc. 2013-34, § 4.03(2)(e).)

6. Compliance with income tax laws

According to FTB's records, appellant timely filed and paid all liabilities for all tax years following his separation from Ms. Heischober in 2012. This factor weighs in favor of relief. (Rev. Proc. 2013-34, § 4.03(2)(f).)

7. Mental and physical health

Appellant has not alleged that he was in poor mental or physical health at the time he signed the returns or when he requested relief. This factor is neutral. (Rev. Proc. 2013-34, § 4.03(2)(g).)

In sum, two factors weigh in favor of relief, three are neutral, and two weigh against relief. Appellant contends that relief should be granted because his circumstance is closely aligned to the taxpayer in *Boswick v. Commissioner*, T.C. Memo. 2010-61. But in *Boswick*, the taxpayer was a spouse who was not allowed to be involved in the family's finances and was "browbeaten" into signing the return. In contrast, here appellant was heavily involved in the family's finances and preparation of the tax returns. Accordingly, *Boswick* is inapplicable here.

In our evaluation of the facts and circumstances of this case, the following are significant. First, as discussed above, appellant had actual knowledge of the tax liabilities for the appeal years, and he knew that Ms. Heischober would be unable to pay the taxes when they filed the returns for the years at issue. Second, despite such knowledge, appellant elected not to file separate tax returns for the years at issue, which would have relieved him of any tax liability on Ms. Heischober's income. Third, as discussed above, appellant has not shown that it would be an economic hardship within the meaning of the applicable Treasury Regulations to hold him liable for the remaining portion of the tax liability. Fourth, the IRS denied innocent spouse relief based on these same factors. Based on the foregoing, we would conclude that appellant is not entitled to innocent spouse relief for any of the appeal years, but for the Stipulated Judgment.

We give great weight to the Stipulated Judgment, because with full knowledge of the foregoing, both appellant and Ms. Heischober each expressly agreed to pay one half of the then-unpaid tax liabilities,¹² and the court affirmed that agreement and adopted it as part of its judgment. On these facts, it would be inequitable to hold appellant liable for more (or less) than the amount to which he (and the court) agreed that he would pay. Considering all the facts and circumstances, we find that appellant has not shown that he is entitled to additional equitable relief beyond the relief already provided by FTB.

2. Whether appellant is entitled to court-ordered relief under Section 19006(b) or (c)?

Section 19006(b) provides an exception to the general rule that spouses are jointly and severally liable for tax on the aggregate income stated on a joint tax return. It provides that joint and several liability may be revised by a court order issued in a proceeding for dissolution of marriage, provided that the order revising tax liability may not relieve a spouse of the tax liability on income earned by, or subject to the exclusive management and control of, that spouse. (§ 19006(b)(1).) The order revising tax liability: (1) must separately state the income tax liabilities for the taxable years for which revision of tax liability is granted; (2) shall not revise a tax liability that has been fully paid prior to the effective date of the order (however, any unpaid amount may be revised); (3) shall become effective when the FTB is served with or acknowledges receipt of the order; and (4) shall not be effective if the gross income reportable on the return exceeds one hundred fifty thousand dollars (\$150,000) or the amount of tax liability the spouse is relieved of exceeds seven thousand five hundred dollars (\$7,500), unless a tax revision clearance certificate is obtained from the FTB and filed with the court. (§ 19006(b)(2).)

Here, the Stipulated Judgment and dissolution order does not satisfy the statutory requirements of Section 19006(b)(2). For example, it does not separately state the tax liability for each year, it does not separately state the specific amount as to which a revision of liability is granted for each tax year, and it has not been served on FTB. Consequently, appellant does not qualify for court-ordered relief pursuant to this section.¹³ (Appellant also contends that he is

¹² 2007 had previously been paid and is not covered by the Stipulated Judgment.

¹³ Furthermore, our jurisdiction in this appeal is provided by Section 18533(e), and neither this provision nor Section 19006 provides an avenue for us to review FTB's determination to deny relief under Section 19006(b). (Contrast Section 19006(c)(4), which provides an appeal right from FTB's determination of whether it would be inequitable to hold the requesting spouse liable.)

entitled to reimbursement of \$3,750 paid to Ms. Heischober's employer which was court-ordered during the couple's divorce proceedings. The FTB was not a party to that proceeding and we do not have the jurisdiction to consider appellant's request.)


Section 19006(c) provides that the FTB may revise an unpaid tax liability as to one spouse for payment of taxes that were reported due on a joint tax return. However, the liability shall not be revised to relieve a spouse of tax liability on income earned by or subject to exclusive management and control of that spouse. (§ 19006(c)(1)(A).) In addition, the liability shall not be revised to relieve a spouse of liability below the amount actually paid on the liability prior to granting of relief. (§ 19006(c)(1)(B).) The liability may be revised only if the spouse whose liability is to be revised establishes that he or she did not know, and had no reason to know of, the nonpayment at the time the return was filed. (§ 19006(c)(2).) "Reason to know" means whether or not a reasonably prudent person would have reason to know of the nonpayment. (*Id.*) As discussed above in connection with Issue 1, appellant knew or should have known that Ms. Heischober could not pay the taxes when the returns were filed due to appellant's knowledge of Ms. Heischober's gambling addiction and the couple's long history of financial difficulties and prior tax debts. Therefore, appellant is not entitled to relief under this provision.

HOLDINGS

1. Appellant is not entitled to equitable relief of the entire tax liabilities for the years at issue.
2. Appellant is not entitled to relief under Sections 19006(b) or (c).

DISPOSITION

FTB's actions are modified to reflect FTB's concession that appellant is entitled to partial relief for half of the outstanding tax liabilities as of June 21, 2016, for the 2008 through 2011 tax years. FTB's actions in denying relief for the remaining tax liabilities are otherwise sustained.

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 Jeffrey G. Angeja
 Administrative Law Judge

We concur:

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Linda C. Cheng

Administrative Law Judge

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Grant S. Thompson

Administrative Law Judge