

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18011406
)	
DANIEL FARINO, Appealing Spouse,)	Date Issued: June 20, 2018
Opposing Relief)	
)	
DEBORAH CONVERSE, Nonappealing)	
Spouse,)	
Granted Relief)	
_____)	

OPINION

Representing the Parties:

For Appealing Spouse: Daniel Farino

For Respondent: Brad Coutinho, Tax Counsel

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

L. CHENG, Administrative Law Judge: Pursuant to Revenue and Taxation Code sections 18533 and 19045 of the Revenue and Taxation Code (Section),¹ appellant (appealing spouse or Mr. Farino) appeals from the action of the Franchise Tax Board (FTB or respondent) granting innocent spouse relief to Deborah Converse (nonappealing spouse or Ms. Converse) for tax year 2011.²

Both appellant and Ms. Converse waived their right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUE

Whether respondent’s determination to grant innocent spouse relief to Ms. Converse was

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

² Respondent’s action granting innocent spouse relief to Ms. Converse also encompassed tax year 2010, which had a final liability of \$190.71, which was paid in full since the appeal was file. Hence, the appeal is moot as to tax year 2010.

correct.

FACTUAL FINDINGS

1. Appellant and Ms. Converse (the couple) married in 2003, separated in 2013, and divorced in 2014. On April 15, 2012, the couple filed a joint California resident income tax return (FTB Form 540) for 2011.³
2. The Internal Revenue Service (IRS) subsequently audited the 2011 joint federal return, made adjustments increasing their Schedule C income and self-employment tax credit, and assessed additional tax.
3. Based on the federal adjustments, respondent issued a Notice of Proposed Assessment (NPA) dated January 27, 2014, which increased the couple's taxable income for 2011 by \$82,717, from \$18,994 to \$101,711. The NPA set forth an additional tax of \$4,521, plus interest.
4. Neither appellant nor Ms. Converse protested the NPA, and the proposed assessment became a final liability on February 29, 2016.
5. On July 24, 2015, Ms. Converse filed a request for innocent spouse relief, FTB Form 705, for tax year 2011, on the ground that she was unaware of appellant's additional business income that gave rise to the proposed tax liability because she was never involved in appellant's business and the couple maintained separate bank accounts. According to Ms. Converse, appellant provided her with his income and expense information, on which she relied to prepare their joint tax returns.
6. In support of her innocent spouse relief request, Ms. Converse submitted a copy of the IRS closing agreement (Form 870-IS) dated July 1, 2015, granting her equitable relief from the portion of the federal tax liability attributable to appellant's unreported Schedule C income.
7. Corresponding IRS workpapers dated April 30, 2015 indicated that the couple maintained separate bank accounts and had been separated for 11 months, and that there was no evidence that Ms. Converse was involved or had knowledge of appellant's Schedule C income. The workpapers also indicated that appellant did not respond to the IRS

³ The return details are excluded, other than those relevant to the issue of whether innocent spouse relief applies.

determination granting Ms. Converse innocent spouse relief. Accordingly, the IRS relieved Ms. Converse of tax liability stemming from appellant's unreported Schedule C income.

8. Respondent sent appellant a Non-Requesting Taxpayer Notice dated January 28, 2016, informing him of Ms. Converse's request for innocent spouse relief and providing him with an opportunity to submit, by February 29, 2016, information or file an objection to granting Ms. Converse's request for relief.
9. Appellant did not respond to respondent's notice.
10. In a Notice of Action – Full Approval dated March 17, 2016, respondent granted Ms. Converse's request for innocent spouse relief pursuant to Section 18533(i).
11. Also on March 17, 2016, respondent separately issued a Notice of Action – Non-Requesting Taxpayer, informing appellant that it granted Ms. Converse's request for relief pursuant to Section 18533(i).
12. Appellant filed this timely appeal.

DISCUSSION

This decision is limited to whether appellant has shown error in respondent's action granting innocent spouse relief to Ms. Converse for 2011.

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. (Int.Rev. Code (IRC), § 6013(d)(3); Section 19006(b).) Section 18533(i), provides that an individual who has made a joint return and has been granted federal innocent spouse relief under IRC section 6015 shall be eligible for relief if three conditions are satisfied:

- The individual requests relief under section 18533;
- The facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under IRC section 6015; and
- The individual requesting relief under section 18533(i) furnishes the FTB with a copy of the federal determination which granted that individual relief under IRC section 6015.

However, section 18533(i) does not apply if the other individual that filed the joint return for which relief was requested submits information to the FTB which indicates that relief should not be granted. Section 18533(i)(2), provides that information which indicates that relief should not be granted is limited to the following:

- Information indicating that the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under IRC section 6015;
- Information indicating that there has not been a federal determination granting relief under IRC section 6015, or that the federal determination granting relief has been modified, altered, withdrawn, or rescinded; and
- Information indicating that the other individual did not have an opportunity to participate, within the meaning of IRC section 6015 and the regulations thereunder, in the federal administrative or judicial proceeding which resulted in relief under IRC section 6015.

In the instant appeal, the three conditions for relief set forth in section 18533(i) are satisfied. First, Ms. Converse requested innocent spouse relief on July 24, 2015, by filing FTB Form 705, for tax year 2011. Secondly, the request for relief stated the same facts and circumstances as those underlying the federal determination from which the IRS granted innocent spouse relief, i.e., Ms. Converse was not involved in appellant's business and was thus unaware of his business income, and the couple maintained separate bank accounts. Thirdly, Ms. Converse provided a copy of IRS Form 870-IS, dated July 1, 2015, granting her innocent spouse relief from the 2011 deficiency assessment. Accordingly, respondent had adequate grounds to grant Ms. Converse innocent spouse relief pursuant to section 18533(i).

On appeal, appellant has not shown any of the three exceptions under section 18533(i)(2) exists such that relief should not be granted. Specifically, appellant does not dispute that respondent's determination granting Ms. Converse relief is based on the same facts and circumstances underlying the federal determination granting her relief.

Appellant does, however, contend that there has been no final federal determination regarding Ms. Converse's request for innocent spouse relief, specifically that the IRS informed appellant that it has not made a final decision on the matter. For support, appellant refers to an

IRS letter purportedly attached to his appeal letter. Appellant's argument lacks merit for two reasons. First, a final federal determination in the form of a closing agreement, IRS Form 870-IS, was signed on July 1, 2015, granting Ms. Converse relief from the deficiency assessment arising from appellant's unreported income. According to IRS workpapers, a copy of IRS letter 3323C, Notice to Non-Electing Spouse of Final Determination on Innocent Spouse Relief Claim, was mailed to appellant on or around July 2, 2015. Nothing in the record indicates this final determination has since been withdrawn or rescinded. Secondly, contrary to appellant's claim that he enclosed with his appeal letter a notice from the IRS stating that the federal determination is not yet final, that document appears to be a copy of the Notice of Action dated March 17, 2016 issued by respondent to appellant. Absent documentary support that the IRS subsequently withdrew or rescinded its final determination, appellant's claim that the IRS determination is not final lacks merit.

Appellant further contends that he did not have an opportunity to participate in a federal administrative or judicial process resulting in the federal determination granting Ms. Converse innocent spouse relief. IRC section 6015(h)(2) requires that the non-requesting spouse be given notice and an opportunity to participate in any federal administrative proceeding with respect to the determination on an innocent spouse claim. (Int.Rev. Code, § 6015(h)(2.)) Treasury Reg. section 1.6015-6(a) defines the requirement as sending notice to the non-requesting spouse's last-known address and giving the non-requesting spouse an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief. (26 Code Fed. Regs. Section 1.6015-6(a).) The IRS is required to consider all relevant information submitted by the non-requesting spouse in determining whether relief is appropriate. (26 Code Fed. Regs. Section 1.6015-6(b).)

Here, the record indicates that appellant was afforded an opportunity to participate in the federal administrative process with respect to Ms. Converse's innocent spouse claim. The IRS workpapers indicate that it sent appellant notice that Ms. Converse was granted preliminary innocent spouse relief on June 10, 2015⁴ and notice of the final determination on July 2, 2015, and that appellant did not respond. Appellant does not dispute receiving the notices, nor does he explain why he did not respond to the notices. Instead, appellant offers conflicting arguments in

⁴The notice was returned as undeliverable on the first mailing attempt. The notice was re-sent to an updated address and was not returned as undeliverable.

rebutting the evidence that he was afforded an opportunity to participate in the IRS administrative process but failed to do so. That is, appellant contends that he contacted the IRS, who advised him that no final determination had yet been made. Although appellant references an IRS letter attached to his appeal letter supporting that contention, the document is not an IRS notice but a copy of the NOA issued by respondent. However, to the extent appellant did contact the IRS before the final determination was issued and the IRS had considered the information he submitted, that fact would support a finding that appellant was provided an opportunity to participate in the federal administrative process in determining Ms. Converse's request for innocent spouse relief. In other words, appellant has not provided any evidence to support his claim that he was not provided an opportunity to participate in the federal determination process.

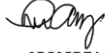
Accordingly, appellant has not met his burden of showing that an exception exists in respondent's action properly granting innocent spouse relief to Ms. Converse.

HOLDING


Appellant has failed to establish that respondent should not have granted innocent spouse relief to Ms. Converse for tax year 2011.

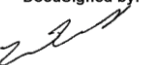
DISPOSITION

Respondent's action granting innocent spouse relief to Ms. Converse for 2011 pursuant to section 18533, subdivision(i), is sustained.

DocuSigned by:

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Linda C. Cheng
Administrative Law Judge

We concur:

DocuSigned by:

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Jeff G. Angeja
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge