

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 18010907
	)	
<b>RAYGENALD PIERRE, Appealing Spouse</b>	)	Date Issued: January 29, 2019
Opposing Relief	)	
	)	
<b>INEZ PIERRE, Non-appealing spouse</b>	)	
Granted Relief	)	
	)	
	)	

---

**OPINION**

Representing the Parties:

For Appellant: Raygenald Pierre

For Respondent: Bradley J. Coutinho, Tax Counsel

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,<sup>1</sup> Raygenald Pierre (appellant) appeals from the action of the Franchise Tax Board (FTB or respondent) granting innocent spouse relief to appellant’s then-spouse, Inez Pierre, for the 2011 and 2012 tax years.<sup>2</sup>

Pursuant to California Code of Regulations, title 18, section 30403(a), the Office of Tax Appeals sent appellant a Notice of Oral Hearing dated August 10, 2018, which required appellant to respond by August 25, 2018, or waive his right to an oral hearing. (Cal. Code Regs., tit. 18, § 30403(c)(1) – (5), (d)(1).) Appellant failed to respond by August 25, 2018, and therefore, this appeal is being decided based on the written record.

---

<sup>1</sup> Unless otherwise specified, all further undesignated statutory references are to sections of the Revenue and Taxation Code.

<sup>2</sup> Appellant and Ms. Pierre filed joint returns self-assessing \$726 tax and a \$16 underpayment of estimated tax penalty for the 2011 tax year, and \$1,651 tax and an underpayment of estimated tax penalty of \$20 (which was later reduced to \$15.95 by FTB) for the 2012 tax year. Appellant and Ms. Pierre also incurred late-filing penalties of \$181.50 and \$412.75 for the 2011 and 2012 tax year, respectively.

## ISSUE

Whether FTB erred in granting conforming innocent spouse relief to Ms. Pierre for the 2011 and 2012 tax years.

## FACTUAL FINDINGS

1. On February 12, 2014, FTB received appellant and Ms. Pierre's late-filed non-remittance joint California Resident Income Tax Returns for the 2011 and 2012 tax years.
2. Subsequently, Ms. Pierre filed an FTB 705 form (*Innocent Joint Filer Relief Request*) dated August 17, 2015, requesting innocent spouse relief for the 2009 through 2013 tax years.
3. FTB subsequently received an Internal Revenue Service (IRS) final determination letter dated July 20, 2015, granting federal innocent spouse relief to Ms. Pierre for the 2011 and 2012 tax years.
4. Thereafter, FTB sent appellant a letter explaining that Ms. Pierre had requested innocent spouse relief for tax years 2011 and 2012, and that Ms. Pierre had been granted full federal relief for those years. Prior to deciding whether to conform to this federal grant of relief, FTB asked appellant to provide it with any information that could help in its determination, including information about the federal granting of relief.
5. Appellant did not respond to FTB's request for information.
6. Pursuant to section 18533(i), FTB issued to Ms. Pierre a Notice of Action, granting conforming innocent spouse relief for the 2011 and 2012 tax years.<sup>3</sup>
7. FTB also issued to appellant a separate Notice of Action – Non-Requesting Taxpayer, notifying him of FTB's decision to grant innocent spouse relief to Ms. Pierre for the 2011 and 2012 tax years. This timely appeal followed.

## DISCUSSION

Under both federal and California law, when a joint return is filed by a married couple, each spouse is jointly and severally liable for the tax due. (IRC, § 6013(d)(3); Rev. & Tax. Code, § 19006(b).) However, an individual who files a joint return may be relieved of all or a

---

<sup>3</sup> As discussed in further detail below, section 18533(i) provides that under certain circumstances, an individual who has filed a joint return and has been granted federal innocent spouse relief under Internal Revenue Code section 6015, is entitled to conforming relief for California tax purposes.

portion of such liability if the individual qualifies as an innocent spouse. (IRC, § 6015; Rev. & Tax. Code, §§ 18533, 19006.) There are several types of innocent spouse relief, but the relief that is relevant to this appeal is found in section 18533(i)(1), which requires FTB to provide conforming innocent spouse relief when the requesting spouse demonstrates that he or she has been granted relief by the IRS pursuant to IRC section 6015 for the same tax year, and the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same as those that applied to the federal determination.

However, the relief provided under section 18533(i)(1) shall not apply where the non-requesting spouse has provided information to FTB demonstrating any of the following: (1) the facts and circumstances that apply to the understatement and liabilities for which relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which the requesting spouse was granted relief under IRC section 6015; (2) 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, canceled, or rescinded; or (3) the non-requesting spouse 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 that resulted in relief under IRC section 6015.<sup>4</sup> (§ 18533(i)(2).)

Appellant argues that the tax liabilities at issue for the 2011 and 2012 tax years were incurred by both him and Ms. Pierre, and that she was fully aware of them. Consequently, appellant contends that it was “totally unfair and unjust” for Ms. Pierre to be relieved of these liabilities.<sup>5</sup> However, as noted above, section 18533(i)(1) requires FTB to follow the IRS determination to grant innocent spouse relief, except in certain circumstances as provided by section 18533(i)(2) above (e.g., the facts and circumstances that apply to the understatement and liabilities for which relief is requested are not the same as those for which the requesting spouse was granted federal relief, etc.). Appellant makes no arguments and presents no evidence pertaining to these specific circumstances, nor are there any facts in the record indicating that

---

<sup>4</sup> This information must be provided by the non-requesting spouse not less than 30 days after being notified by FTB of the requesting spouse’s request for relief.

<sup>5</sup> Appellant also makes a number of statements concerning his present financial difficulties and his lengthy service in the Armed Forces. We recognize and appreciate appellant’s service, and while we are sympathetic to appellant’s situation, we note that these statements are not a valid basis for denying Ms. Pierre innocent spouse relief. Accordingly, we do not discuss them further.

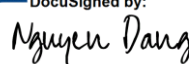
these circumstances are present here. Therefore, even accepting appellant's contentions as true (i.e., Ms. Pierre partially incurred and was aware of the 2011 and 2012 tax liabilities), they are not a valid basis for denying Ms. Pierre innocent spouse relief.

HOLDING

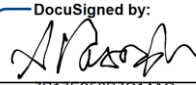
Respondent properly granted Ms. Pierre conforming innocent spouse relief for the 2011 and 2012 tax years.

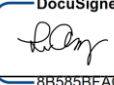
DISPOSITION

Respondent's action is sustained.

DocuSigned by:  
  
4D465973FB44469...  
\_\_\_\_\_  
Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
  
7B17E958B7C14A...  
\_\_\_\_\_  
Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
8B585BFAC08946D...  
\_\_\_\_\_  
Linda C. Cheng  
Administrative Law Judge