

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
PRISCILLA MYERS

) OTA Case No. 18010928
)
) Date Issued: May 30, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Priscilla Myers

For Respondent: Meghan McEvilly, Tax Counsel III

For Office of Tax Appeals: Neha Garner, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 18533, appellant appeals an action by respondent Franchise Tax Board (FTB) denying her request for innocent spouse relief.

Appellant waived her right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUES

1. Did appellant show error in FTB’s denial of her request for innocent spouse relief for the 2008, 2009, and 2011 taxable years?
2. Did appellant show error in FTB’s denial of relief from joint liability pursuant to R&TC section 19006, subdivision (c), for the 2008, 2009, and 2011 taxable years?

FACTUAL FINDINGS

1. Appellant and her late spouse, Dr. Myers, (collectively, the couple) filed joint California returns for 2008 on April 15, 2009, for 2009 on June 15, 2010, and for 2011 on October 11, 2012.
2. Taxable Year 2008: The couple reported California adjusted gross income (AGI) of \$452,096, total tax of \$25,620, plus an underpayment of estimated tax penalty of \$216,

for a self-assessed balance due of \$25,836. The couple paid \$800 with their return. Because the tax liability shown on the return was not paid by the original due date of the tax return, FTB imposed a late-payment penalty of \$5,372.62 and accepted the return as filed. In addition to Dr. Myers' earnings, the couple's income included profit and loss from a business operated by appellant.

3. Taxable Year 2009: The couple reported California AGI of \$231,800, total tax of \$14,622, plus an underpayment of estimated tax penalty of \$418, for a self-assessed balance due of \$15,040. The couple paid \$5,100 with their return. Because the tax liability shown on the return was not paid by the original due date of the tax return, FTB imposed a late-payment penalty of \$2,686.50 and accepted the return as filed. In addition to Dr. Myers' earnings, the couple's income included profit and loss from a business operated by appellant, as well as wage income reported on a Form W-2 issued to appellant.
4. Taxable Year 2011: The couple reported California AGI of \$251,093, total tax of \$16,701, plus an underpayment of estimated tax penalty of \$373, for a self-assessed balance due of \$17,074. FTB abated the \$373 estimated tax penalty, resulting in a decrease in the balance due to \$16,701. Because the tax liability was not paid by the original due date of the tax return, FTB imposed a late-payment penalty of \$4,175.25. The return was filed after the date of Dr. Myer's death on March 4, 2012, and, therefore, was not filed by him. All of the income reported on this return appears to have been earned by Dr. Myers.
5. FTB issued various notices to the couple, including multiple Income Tax Due Notices, a Final Notice, Annual Notices, Intent to Record a Notice[s] of State Lien, Final Notice[s] Before Levy and Lien, and a notice of Intent to Offset Federal Payments.
6. In April 19, 2012, appellant purchased a single-family residence for \$645,000, with an assessed value of \$753,335.
7. The couple filed a joint Chapter 11 bankruptcy action on September 11, 2009. In that action, the couple listed FTB as a creditor for 2008 state income tax.¹
8. On March 9, 2015, appellant filed an FTB Form 705, Request for Innocent Spouse Relief, and attached a copy of an Internal Revenue Service (IRS) Form 8857, Request for

¹ *In re Manual Leon Myers and Priscilla Myers* (Bankr. C.D.Cal. 2009, 2:09-bk-34526-RK).

Innocent Spouse Relief.² Appellant stated that she would be amending the IRS Form 8857 to include additional expenses. As relevant here, she further reported that:

- Dr. Myers handled the couple's taxes and he passed away on March 4, 2012;
 - Appellant knew Dr. Myers made approximately \$400,000 per year as a physician with Kaiser Permanente;
 - During the taxable years at issue, there were large expenses for medical school (approximately \$100,000 per year) and vacations (\$10,000);
 - Appellant admitted that when the returns were filed, she knew they were having financial problems because Dr. Myers had to pay alimony to his ex-wife and college tuition for his son and daughter as well as the couple's living expenses;
 - Appellant's involvement in the household expenses was that she paid the household expenses that she was asked to pay;
 - Appellant admitted that she signed the tax returns but claimed that she did not examine them so she was not aware that there was a balance due until after her husband passed away.
 - Appellant's monthly income (\$9,260) reported on her Form 8857 request exceeded her reported expenses (\$8,034, including \$1,200 in personal care products and services, and \$3,333 in monthly estimated taxes) by \$670.
9. FTB issued a Request for Information Notice, acknowledging receipt of appellant's request and asking that she provide additional supporting documentation. Appellant faxed a letter stating that the couple was married on July 13, 2002, that Dr. Myers was the wage earner and she was a homemaker, and that she was not aware of any tax liabilities until after Dr. Myers had passed away on March 4, 2012.

² FTB noted that the IRS form appears to be fully completed, but is not signed or dated by the taxpayer or her representative.

10. FTB received a fax from appellant attaching IRS correspondence which indicated that appellant's request for federal innocent spouse relief was preliminarily denied.³
11. On February 27, 2017, the United States Tax Court held that appellant was not entitled to innocent spouse relief for her 2008, 2009, and 2011 federal tax liabilities.⁴
12. On August 8, 2017, FTB issued a Notice of Action – Denial. The bases for the denial included: (1) that appellant did not demonstrate that she had no knowledge or reason to know of the liabilities; (2) that appellant did not establish that she had a reasonable belief that the tax liabilities would be paid when the returns were filed; (3) that appellant did not provide sufficient documentation to show that it would be inequitable to hold her liable for the taxes owed; and (4) that appellant cannot be relieved of tax on her own income.

DISCUSSION

Issue 1 – Did appellant show error in FTB's denial of her request for innocent spouse relief for the 2008, 2009, and 2011 taxable years?

When a joint return is filed, each spouse is jointly and severally liable for the entire tax due for that taxable year. (Int.Rev. Code (IRC), § 6013(d)(3); R&TC, § 19006(b).) The entire amount of tax due may be collected from either or both persons filing the return. (*Murchison v. Murchison* (1963) 219 Cal.App.2d 600, 604.) Therefore, when appellant signed the California tax returns for the years at issue, she became jointly and severally liable for the self-assessed, unpaid liabilities.

However, federal and California law each 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." (R&TC, §§ 18533, 19006; IRC, § 6015.) R&TC section 18533, subdivision (b), provides for "traditional" innocent spouse relief; subdivision (c) provides for separate allocation relief; and, if a requesting spouse is not eligible for relief under

³ FTB noted that appellant's submission contained portions of two separate communications sent from the IRS. The first page of an IRS LTR 4985C – Preliminary Determination Letter, addressed to the Estate of Manuel Myers, stated that the IRS proposed to deny appellant's claim for innocent spouse relief. FTB noted that appellant also provided what appeared to be the second page of IRS LTR 4988C – Requesting Spouse Preliminary Determination Letter on Disallowed Innocent Spouse Claims, which indicated that the IRS preliminarily determined that appellant significantly benefited from the unpaid tax or unreported income and that appellant failed to comply with all income laws in the years following those at issue. Lastly, FTB noted that appellant provided a copy of appellant's IRS Form 12509 – Statement of Disagreement with the IRS' preliminary determination.

⁴ *Priscilla Myers v. Commissioner of Internal Revenue* (Feb. 27, 2017 11084-16) [nonpub. opn.].

subdivision (b) or (c), a requesting spouse may be eligible for equitable relief under subdivision (f).⁵ (Cf. IRC, § 6015(b), (c), & (f).) Determinations under R&TC section 18533 are made without regard to community property laws. (R&TC, § 18533(a)(2).)

When a California statute is substantially identical to a federal statute, as in the case of the innocent spouse statutes, applications and interpretations of the federal law may be considered highly persuasive with regard to 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 *Appeal of Tyler-Griffis*, 2006-SBE-004, 2006 WL 3768792; R&TC, § 18533(g)(2).)

Generally, an individual claiming innocent spouse relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Stevens v. Commissioner* (11th Cir. 1989) 872 F.2d 1499, 1504.) Because 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* (2d Cir. 1995) 53 F.3d 523, 528-529.) However, FTB's determinations are generally presumed to be correct, and a taxpayer generally bears the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers*, 2001-SBE-01, 2019 WL 1187160.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow*, 82-SBE-274, 1982 WL 11930.)

Although subdivisions (b), (c), and (f) of R&TC section 18533 provide three potential avenues for innocent spouse relief, neither subdivision (b) nor (c) is relevant to the taxable years at issue in this appeal because these subdivisions apply only to understatements of tax due or deficiencies assessed by FTB, whereas this case involves underpayments of self-assessed taxes.

FTB has discretion to provide equitable innocent spouse relief from any unpaid tax or deficiency when a taxpayer does not qualify for innocent spouse relief under either subdivision (b) or (c). (R&TC, § 18533(f).) IRS Revenue Procedure 2013-34, section 4.01, provides that equitable relief is warranted only if all of the following requirements are met: (1) the requesting spouse filed a joint return for the taxable year for which relief is requested; (2) traditional innocent spouse relief or separate liability allocation relief is not available to the requesting spouse; (3) the request for relief is timely filed; (4) no assets were transferred between the

⁵ The relief under R&TC section 18533, subdivision (b) is commonly referred to as "traditional" relief, as its statutory basis predates the relief provided in subdivisions (c) and (f).

spouses as part of a fraudulent scheme; (5) no disqualified assets were transferred to the requesting spouse by the nonrequesting spouse; (6) the requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and (7) the income tax liability is attributable (either in full or in part) to an item of the nonrequesting spouse or to an underpayment resulting from the nonrequesting spouse's income, unless specific exceptions apply. If the liability is partially attributable to the requesting spouse, then relief is potentially available only for the portion of the liability attributable to the nonrequesting spouse. If a taxpayer cannot satisfy all seven threshold requirements, equitable relief is not available. (See *Reilly-Casey v. Commissioner*, T.C. Memo. 2013-292.)

Appellant meets conditions 1, 2, and 3. With respect to conditions 4, 5, and 6, there is no evidence to suggest that any assets were transferred or that fraud was involved. With respect to condition 7, the unpaid tax liabilities for all the taxable years at issue are attributable in part to Dr. Myers. In 2008 and 2009, the tax liabilities were partially attributable to the appellant, and relief may only be considered for the portion of the liability attributable to Dr. Myers' income. As for 2011, information available to FTB indicates that Dr. Myers' income constituted the sole source of the couple's reported income. Consequently, appellant has satisfied all threshold conditions.

If the threshold conditions for equitable relief are met, the Revenue Procedure applies a streamlined determination of equitable relief in cases of understatements, as well as underpayments, of income tax liabilities. To be eligible, appellant must satisfy each of the following requirements: (1) that she was divorced, legally separated, a widow(er), or had lived apart from her spouse for 12 months prior to the date the determination is made; (2) that she will suffer an economic hardship if relief is not granted; and (3) that she did not know or have reason to know that there was an understatement or deficiency or did not know or have reason to know that her spouse would not or could not pay the tax reported on the joint income tax return. (Rev. Proc. 2013-34, § 4.03(2)(c)(i), (ii).) When the requesting spouse is a widow, as in this case, she must also show that she was not an heir to her deceased husband's estate that would have had sufficient assets to pay the tax liability. (Rev. Proc 2013-34, § 4.03(2)(a)(iii).)

Dr. Myers passed away on March 4, 2012; however, appellant has not established whether she was an heir to Dr. Myers' estate, or that its assets were insufficient to pay the tax

liabilities for the taxable years at issue. Therefore, appellant has not established that she meets the first requirement.

With regard to the second requirement, an economic hardship exists if satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable to pay reasonable, basic living expenses. (Rev. Proc. 2013-34, §§ 4.02(2), 4.03(2)(b).) A taxpayer's ability will vary according to the taxpayer's unique circumstances; however, it may not include the maintenance of an affluent or luxurious standard of living. (Treas. Reg., § 301.6343-1(b)(4).) A factor that weighs in favor of granting relief is when a requesting spouse's income is below 250 percent of the federal poverty guidelines and does not have other assets which can be used to pay the tax liability while still being able to pay reasonable living expenses. (Rev. Proc. 2013-34, § 4.03(2)(b).)

Appellant states that she is currently not working and is living on Dr. Myers' retirement income. However, appellant reported a monthly income of \$9,260, which exceeds her reported monthly living expenses of \$8,034, even if 100 percent of her "personal care products and services" can be considered as basic living expenses instead of maintaining a luxurious standard of living. Appellant has not provided sufficient evidence to show that the factors enumerated in Treasury Regulation section 301.6343-1(b)(4) weigh in favor of granting relief. Furthermore, records provided by FTB show that on or about April 19, 2012, appellant purchased a residence in Altadena, California, for approximately \$645,000. Therefore, we cannot conclude that paying her tax liabilities would cause an economic burden such that appellant would be unable to pay reasonable, basic living expenses.

Regarding the third requirement, if at the time the tax liability was due, or within a reasonable time thereafter, the requesting spouse reasonably expected the nonrequesting spouse to pay the liability reported on the return, the factor will weigh in favor of relief. (Rev. Proc 2013-34, § 4.03(c)(ii).)⁶ Conversely, if it was not reasonable for the requesting spouse to believe that the nonrequesting spouse would or could pay tax reported on the return, the factor will weigh against relief. (*Ibid.*) To determine whether appellant had a reasonable belief that Dr. Myers could or would pay the reported tax liabilities, facts and circumstances to consider include: (1) the requesting spouse's level of education; (2) any deceit or evasiveness of the

⁶ An exception to this requirement exists when there has been abuse of the requesting spouse by the nonrequesting spouse. Abuse has neither been alleged nor is there evidence of any in the record.

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 or household financial matters; (5) the requesting spouse's business or financial expertise; and, (6) any lavish or unusual expenditures compared with past spending levels.

Appellant has provided limited information concerning her knowledge or understanding about whether Dr. Myers would pay the self-assessed liabilities at the time the returns were filed. Appellant claims she had no knowledge of the tax liabilities until after the passing of Dr. Myers, stating that Dr. Myers handled the taxes and that she "paid the household expenses that [she] was asked to pay." However, substantial evidence counters her assertion.

Appellant stated that she was not involved in the preparation of the tax returns and merely signed them without examining them. However, appellant is well-educated and earned a master's degree. During the 2008 and 2009 taxable years, appellant ran her own business and earned part of the household income, and she presumably provided business income and expense information so it could be accurately reported on the couple's returns. In addition, the couple's income for 2009 included wage income appellant received, which was reported on a Form W-2. The couple's 2011 tax return was not filed until several months after Dr. Myers' death, and therefore, it can be assumed he was not involved in tax preparation for that year. Furthermore, bank records establish that both appellant's and Dr. Myers' names were on the account and that both had access to the bank account and knowledge or reason to know of the banking activity. Appellant utilized the couple's funds to pay bills that she was directed to pay. Appellant also stated that she knew Dr. Myers' yearly income and was aware that at the time the tax returns were filed, they were having financial problems. Lastly, the couple filed a Chapter 11 bankruptcy action, signed by both parties, that listed the 2008 state tax debt the couple owed.⁷ Under these facts and circumstances, we conclude appellant knew or should have known that tax liabilities were owed, and that they were not being paid by appellant or by Dr. Myers. Based on our review of the record, appellant did not establish the third factor, and she does not meet all the requirements under Revenue Procedure 2013-34 section 4.02.

If the threshold conditions for equitable relief are met, but the individual requesting relief does not meet all the requirements under section 4.02, then relief may still be granted under

⁷ We note that the case was dismissed on August 22, 2014, for failure to pay quarterly trustee fees and therefore has no impact on the joint liability owed for the 2008 taxable year.

Revenue Procedure 2013-34, section 4.03. Section 4.03 provides a list of factors relevant to a determination of whether it would be inequitable to hold the requesting spouse liable for all or part of the tax liability. Under this section, no single factor or a majority of factors necessarily determines the outcome in any particular case. (Rev. Proc. 2013-34, § 4.03(2).) Depending on the requesting spouse's facts and circumstances, each factor's degree of importance varies, and the list is not intended to be exclusive. (*Ibid.*) In the case of an underpayment of a tax liability, the factors include the three discussed above: (1) marital status, (2) economic hardship, and (3) knowledge or reason to know. With respect to marital status, as discussed above, appellant has not established that she was not an heir to Dr. Myers' assets. Therefore, this factor is neutral. With respect to economic hardship, as discussed above, the evidence weighs against relief. With respect to the knowledge factor, also discussed above, the evidence indicates that appellant knew or had reason to know about the tax liability and that Dr. Myers would not or could not pay the self-assessed liabilities when the returns were filed or within a reasonable time thereafter. The knowledge factor therefore weighs against granting relief.

Additional factors not yet discussed include whether there was a legally binding agreement for one spouse or the other to pay the tax liability at issue. (See Rev. Proc. 2013-34, § 4.03(2)(e).) There is no evidence of a legally binding agreement regarding the payment of tax liabilities existing in this case. Therefore, this factor is neutral.

When a requesting spouse has significantly benefited from the unpaid income tax liability; i.e., has enjoyed a lavish lifestyle, such as owning luxury assets and taking expensive vacations, it may weigh against granting relief. (Rev. Proc. 2013-34, § 4.03(2)(e).) A significant benefit is any benefit in excess of normal support. (Treas. Reg., § 1.6015-2.) In determining whether a spouse seeking relief received a significant benefit from the understatement, a court might compare the requesting spouse's standard of living in the year at issue with his or her standard of living in prior years. (See *Sanders v. United States* (5th Cir. 1975) 509 F.2d 162, 168.) If the requesting spouse enjoyed the benefits of a lavish lifestyle from the unpaid income tax liability or understatement, then this factor will weigh against relief.

Here, appellant has provided little information with respect to her standard of living. The total unpaid tax for the three years at issue (\$64,282.69, plus interest) is not an insignificant amount. The couple had a California taxable income of \$363,401 in 2008, \$251,093 in 2009, and \$242,365 in 2011. Therefore, the unpaid taxes for those taxable years represents 10 percent

to 15 percent of their total taxable income. It is logical to assume that the money that would have otherwise been used to pay the tax liability was spent on something else. Appellant reported that the couple spent \$10,000 on a vacation during the years at issue, and that she owned a \$750,000 home and a \$100,000 automobile at the time she filed her request for relief. We give considerable weight to the fact that appellant purchased her home for \$645,000 on April 19, 2012, only a few days after the 2011 tax liability at issue in this case became due. When the couple's bankruptcy action was filed in September 2009, they reported owning real property valued at \$1,700,000, and \$778,650 of unspecified personal property. Under these facts and circumstances, we find that appellant received a significant benefit beyond normal support and enjoyed a higher standard of living than the couple's income could support.

FTB must also consider whether appellant made a good faith effort to comply with the income tax laws in the taxable years following the taxable years for which relief is requested. (Rev. Proc. 2013-34, § 4.03(2)(f).) FTB records indicate that during subsequent years, appellant has filed her returns on time. However, appellant did not pay her tax liabilities timely for each subsequent year. For the 2013 taxable year, FTB issued a billing notice on December 3, 2014, and a Final Notice Before Levy on February 6, 2015. For the 2014 taxable year, appellant reported an incorrect estimated tax amount of \$9,495, and had an outstanding balance due as of February 27, 2018. At the federal level, the IRS' preliminary determination of appellant's federal request for innocent spouse relief indicates that appellant was not tax compliant for the 2013, 2014, 2015 and 2016 taxable years. Appellant has not been tax compliant during the years at issue, and therefore, this factor weighs against relief.

With respect to the mental or physical health factor, appellant has not alleged that she was in poor physical or mental health when she signed the returns for the taxable years at issue. (Rev. Proc. 2013-34, § 4.03(2)(g).) On appeal, appellant states that she has a health issue, but without further information, it is unclear whether appellant had a mental or physical health issue at the time she requested relief. Therefore, this factor is neutral.

In summary, after reviewing the record, we find that no factors weigh in favor of relief for appellant, some factors are neutral, and the remainder weigh against relief. Considering all the facts and circumstances, we conclude that appellant did not establish that it would be inequitable to hold her liable for the unpaid tax liabilities for the 2008, 2009, and 2011 taxable years.

Issue 2 –Did appellant show error in FTB’s denial of relief from joint liability pursuant to R&TC section 19006, subdivision (c) for the 2008, 2009, and 2011 taxable years?

R&TC section 19006, subdivision (c), provides that the FTB may revise an unpaid tax liability as to one spouse for the payment of taxes that were reported due on a joint tax return, i.e., a self-assessed tax liability. However, no revision of an unpaid tax liability shall be made for “any taxable year which has been closed by a statute of limitations, res judicata, or otherwise.” (R&TC, § 19006(c)(5).) In general, FTB must issue a proposed assessment within four years of the date the taxpayer filed his or her California return. (R&TC, § 19057.) Except under certain circumstances not relevant here, once the statute of limitations period has closed for a particular year, FTB can no longer issue a deficiency assessment for that year nor can a taxpayer claim a refund of any overpayment. (See, e.g., R&TC, § 19306.)

Taxable years 2008 and 2009 were closed by the statute of limitations in R&TC section 19057 on April 15, 2013, and on June 15, 2014, respectively. Appellant did not request relief until March 9, 2015. Appellant’s request for those closed tax years is therefore barred pursuant to R&TC section 19006(c)(5).

With respect to taxable year 2011, appellant’s return was filed on October 11, 2012. Therefore, appellant’s request was filed prior to the expiration of the statute of limitations on October 11, 2016. However, a liability shall not be revised to relieve a spouse of the tax liability on income earned by or subject to the exclusive management and control of that spouse. (R&TC, § 19006(c)(1)(A).) In addition, the liability shall not be revised to relieve a spouse of the liability below the amount actually paid on the liability prior to granting relief. (R&TC, § 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. (R&TC, § 19006(c)(2).) “Reason to know” means whether or not a reasonably prudent person would have reason to know of the nonpayment. (*Id.*)

Appellant is not entitled to relief from liability for payment pursuant to R&TC section 19006(c). As stated above, appellant’s claims for 2008 and 2009 are time barred, and for 2011 the facts indicate that appellant knew or should have known that the self-assessed liabilities would not be paid because at the time the 2011 return was prepared and filed, Dr. Myers had already died and appellant was solely responsible for the preparation of the return and payment of thereported

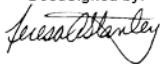
tax liability. Therefore, appellant is not entitled to relief from liability for payment under R&TC section 19006, subdivision (c).

HOLDINGS


1. Appellant did not show error in FTB’s denial of her request for innocent spouse relief for the 2008, 2009 and 2011 taxable years.
2. Appellant did not show error in FTB’s denial of relief from joint liability pursuant to R&TC section 19006, subdivision (c) for the 2008, 2009, and 2011 taxable years.


DISPOSITION

Based on the foregoing, FTB’s action is hereby sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

0C90542BE88D4E7
Tommy Leung
Administrative Law Judge

DocuSigned by:

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Patrick J. Kusiak
Administrative Law Judge