

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

In the Matter of the Appeal of: ) OTA Case No. 18011805  
AARON MARINUCCI<sup>1</sup> ) Date Issued: May 6, 2019  
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**OPINION**

Representing the Parties:

For Appellant: Aaron Marinucci

For Respondent: Megan McEvelly, Tax Counsel III

For Office of Tax Appeals: Sarah Fassett, Tax Counsel

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045,<sup>2</sup> Aaron Marinucci (appellant or appealing spouse) appeals an action by the Franchise Tax Board (FTB or respondent) granting innocent spouse relief to appellant’s former spouse, Claire Marinucci (Ms. Marinucci or nonappealing spouse), for a joint tax liability for the 2007 tax year.<sup>3</sup>

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

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<sup>1</sup> Claire Marinucci, the nonappealing spouse in this matter, did not file an opening brief and is deemed not to have joined the appeal.

<sup>2</sup> R&TC section 18533 allows taxpayers to dispute respondent’s actions on claims for innocent spouse relief under the statutory provisions applicable to protests, including R&TC section 19045. That section states that taxpayers have 30 days to appeal FTB’s action upon a taxpayer’s protest to the board (Board of Equalization). R&TC section 20(b) provides, “Unless 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.”

<sup>3</sup> The tax liability for 2007 is \$6,767.57, as indicated in appellant’s appeal letter and acknowledged in the California Department of Tax and Fee Administration’s Case Management letter dated October 11, 2017. This amount includes \$2,803 of self-assessed tax liability (underpayment) and \$1,953 of additional tax (deficiency or understatement), along with interest, a late payment penalty, and collection fees.

## ISSUE

Whether appellant has demonstrated that innocent spouse relief should not be granted to Ms. Marinucci.

## FACTUAL FINDINGS

### 2007 Return

1. Appellant and Ms. Marinucci (collectively, the couple) married in 2002, legally separated in 2012, and are divorced.<sup>4</sup>
2. On February 13, 2008, the couple filed a joint California Resident Income Tax Return (Form 540) for the 2007 tax year. On the 2007 Form 540, they reported California adjusted gross income of \$99,056, California taxable income of \$92,024, and exemption credits of \$1,364, for a total tax liability of \$2,803. No payment was remitted with the return and FTB imposed a late payment penalty. The tax liability of \$2,803 represents the self-assessed or underpayment portion of the underlying liability at issue in this appeal.
3. FTB made subsequent efforts to collect the tax liability, received partial bill payments totaling \$111.10 and imposed collection fees of \$187 on January 15, 2009, and \$11.00 on February 25, 2009.
4. The Internal Revenue Service (IRS) subsequently audited the couple's 2007 joint federal return, decreased Schedule C<sup>5</sup> business expenses, which increased the Schedule C income and credit for self-employment tax and assessed additional tax and penalties.
5. Based on the federal information, FTB made corresponding adjustments to the couple's California tax account to the extent applicable and issued a Notice of Proposed Assessment (NPA) dated October 21, 2010. The NPA increased the couple's California taxable income by \$20,981, from \$92,024 to \$113,005, and proposed additional tax of

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<sup>4</sup>The exact date of divorce is not included in the record. The record shows that Ms. Marinucci filed for divorce in March of 2012. In a letter to respondent dated January 25, 2018, which she signed under the penalty of perjury, Ms. Marinucci indicated that the couple is now divorced, but she did not provide respondent with a copy of the divorce decree.

<sup>5</sup>The only income reported on the Form 1040 is from a Schedule C business in appellant's name where he identified himself as a water filter salesman. It does not appear from the record that Ms. Marinucci participated in that business.

\$1,953, plus applicable interest. The additional tax assessment of \$1,953 represents the deficiency or understatement portion of the underlying 2007 liability of the couple.

6. Neither appellant nor Ms. Marinucci protested the NPA, which became final at the end of the protest period, December 21, 2010. FTB made subsequent efforts to collect the tax liability from appellant and Ms. Marinucci, received various partial payments totaling \$714.21, and imposed additional collections fees on January 22, 2011, and October 17, 2014.<sup>6</sup>

#### Request for Innocent Spouse Relief

7. FTB received Ms. Marinucci's request for innocent joint filer relief (FTB Form 705) on May 28, 2015, and requested further information from Ms. Marinucci on July 10, 2015, and July 22, 2016.
8. On September 30, 2016, Ms. Marinucci provided the first page of her petition for dissolution of marriage, the first page of a restraining order she obtained against appellant, and a copy of her federal request for innocent spouse relief for the 2012 and 2013 tax years (IRS Form 8857).<sup>7</sup>
9. Ms. Marinucci provided additional information by letter dated July 13, 2017, in which she asserted that she was a housewife taking care of four children, she did not work outside of the home, appellant was very controlling and abusive, and she had no knowledge of how appellant was managing the finances.
10. FTB sent appellant a Non-Requesting Taxpayer Notice dated July 14, 2017, informing him of Ms. Marinucci's request for innocent spouse relief and providing him with an opportunity to contribute information or file an objection by August 14, 2017, before FTB decided Ms. Marinucci's request for innocent spouse relief.
11. FTB received appellant's response on August 14, 2017. In that response, appellant asserted that Ms. Marinucci participated in the tax preparation for 2007 and in the federal

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<sup>6</sup> FTB ceased collection efforts after it received information that the couple filed bankruptcy, but it resumed collection activities after it received confirmation that the couple was no longer involved in a bankruptcy pertaining to the 2007 tax year.

<sup>7</sup> Although Ms. Marinucci initially requested innocent spouse relief for the 2007 and 2012 tax years, relief is not available for the 2012 tax year because there is no outstanding balance due. The 2007 tax year is thus the only tax year at issue in this appeal. Ms. Marinucci did not request federal innocent spouse relief for tax year 2007. FTB asserts that it only considered the contents of the IRS Form 8857 as it relates to Ms. Marinucci's contentions with respect to the issue of whether she should be granted innocent spouse relief for the 2007 tax year.

audit of that tax year, that the tax liability for 2007 was attributable to “both of us” and that Ms. Marinucci benefited from the unpaid liability because she was “part of the household bills, this liability paid for all children including Claire’s before our marriage .....” Appellant further asserted that it would be fair to continue to hold Ms. Marinucci liable for the 2007 tax liability because she had access to all income, to all household expenditures, and participated in financial decisions for the household expenditures.

12. In a Notice of Action – Full Approval dated August 22, 2017, FTB informed Ms. Marinucci that it granted her full innocent spouse relief pursuant to R&TC section 18533(b). FTB separately issued a Notice of Action – Non-Requesting Taxpayer dated August 22, 2017, informing appellant that it granted Ms. Marinucci’s request for relief pursuant to R&TC section 18533(b).
13. Appellant timely filed this appeal.

Additional Information Requested

14. During the appeal, by separate letters dated December 27, 2017, FTB requested additional information from both appellant and Ms. Marinucci and gave each of them until January 30, 2018, to submit their responses and supporting documentation.
15. FTB received a response and supporting documentation from Ms. Marinucci on January 30, 2018. Ms. Marinucci provided statements and evidence in support of her claim that appellant was a bully and was abusive throughout the marriage (copies of incident reports from the San Jose Police Department, a five-year no-contact restraining order that she obtained against appellant, and a report from Santa Clara Child Protective Services, which determined that appellant was emotionally abusing their two minor children). Her statements asserted that she did whatever he asked, that she “lived in constant fear of appellant and his rage,” that she had no discussion with appellant regarding the 2007 returns and did not prepare anything or assist in the preparation of the returns or the subsequent federal audit.<sup>8</sup>
16. After FTB did not receive a response from appellant, its representative called appellant. Appellant claimed not to have received the December 27, 2017 letter. Respondent re-

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<sup>8</sup> Ms. Marinucci’s two-page statement was signed under penalty of perjury.

sent a copy of the December 27, 2017 letter to appellant and provided an extended due date for appellant to submit the requested information. Appellant did not respond.

## DISCUSSION

### General Legal Background Regarding Innocent Spouse Relief

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. (R&TC, § 19006(b); Internal Revenue Code (IRC), § 6013(d)(3).) Both federal and California law provide, however, 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; IRC, § 6015.) R&TC section 18533(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 subdivision (b) or (c), a requesting spouse may be eligible for equitable relief under subdivision (f). (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, 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. (*Appeal of Tyler-Griffis*, 2006-SBE-004, Dec. 12, 2006.) Treasury Regulations are applied in California innocent spouse matters to the extent that such regulations do not conflict with R&TC section 18533 or FTB's regulations. (R&TC, § 18533(g)(2).)

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.) 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.) Respondent's determinations are generally presumed to be correct, an appellant generally bears the burden of proving error, and unsupported assertions are not sufficient to satisfy an appellant's burden of proof. (*Appeal of Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Traditional relief and separate allocation relief are only available for an understatement of tax, while equitable relief is available for both an underpayment or understatement of tax. (R&TC, § 18533(b)(1)(B), (c)(1) and (f).) Here, both an underpayment (unpaid self-assessed tax) and an understatement (deficiency) of tax exist for the 2007 tax year. As discussed above, the self-assessed tax liability of \$2,803 represents the underpayment portion of the 2007 tax liability at issue in this appeal and the October 21, 2010 NPA's additional tax assessment of \$1,953 represents the deficiency or understatement portion of the underlying liability at issue in this appeal. Traditional relief and separate allocation relief are therefore relevant only to the understatement portion of the 2007 tax liability. Equitable relief is the only potential avenue for innocent spouse relief for the underpayment portion of the 2007 tax liability.

FTB initially granted Ms. Marinucci full innocent spouse relief under R&TC section 18533(b),<sup>9</sup> and subsequently revised that to grant her full relief under R&TC sections 18533(f) and 19006(c), with respect to the underpayment portion of the liability, and full relief under R&TC sections 18533(b), (c), and (f), with respect to the understatement portion of the liability.

#### Traditional Relief

R&TC section 18533 (b), provides that an individual may, with certain qualifications, elect to claim innocent spouse relief with respect to an understatement of tax. Such relief is allowed if the requesting spouse shows that he or she satisfies each 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 nonrequesting spouse; (3) the requesting spouse 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 requesting spouse liable for the deficiency in tax attributable to that understatement; and (5) the requesting spouse files a timely request for relief no later than two years after the date respondent has begun collection action with respect to the requesting spouse. (R&TC, § 18533(b)(1)(A-E).) The requirements of R&TC section 18533(b), like the requirements of IRC section 6013(b)(1) upon which they are based, are stated in the conjunctive;

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<sup>9</sup> FTB concedes that it incorrectly granted relief for the underpayment portion of the 2007 tax liability under R&TC section 18533(b). As mentioned above, traditional relief (R&TC, § 18533(b)) and separate allocation relief (R&TC, § 18533(c)) are only available to understatement (deficiency) tax liabilities.

and a failure to meet any one of them disqualifies an individual from relief. (*Alt v. Commissioner* (2002) 119 T.C. 306, 313; *Tompkins v. Commissioner*, T.C. Memo. 2013-24.)

With respect to the fifth requirement, the appeal record does not sufficiently establish that Ms. Marinucci made a timely request for innocent spouse relief within two years after respondent began collection action against her.<sup>10</sup> Respondent only submitted a sampling of collection notices and did not address whether collection activity, with respect to the understatement portion of the 2007 tax liability, began against Ms. Marinucci in 2011. Respondent did not address whether the couple's bankruptcy tolled the statute of limitations for claiming innocent spouse relief. Ms. Marinucci requested innocent spouse relief on May 28, 2015, approximately six years after respondent appears to have started collection activities with respect to the understatement portion of the liability. As such, we find that Ms. Marinucci does not satisfy the timely election requirement. She is thus not entitled to traditional innocent spouse relief because she fails to satisfy each of the requirements of R&TC section 18533(b). Accordingly, we need not discuss the remaining requirements for traditional relief under R&TC section 18533(b).

#### Separate Liability Allocation Relief

R&TC section 18533 (c), provides that an individual may, with certain qualifications, elect to limit his or her liability for a deficiency with respect to a joint return to the amount that would have been allocable to the electing individual had the spouses filed separate returns. To qualify for separate liability allocation relief, however, the requesting spouse must satisfy the following qualifications. First, at the time the request is filed, the individual requesting relief must no longer be married to, or must be legally separated from, the nonrequesting spouse or, alternatively, that individual must not be a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date he or she files the request for separate allocation relief. (R&TC, § 18533(c)(3)(A).) Second, effective for requests for relief filed on or after January 1, 2011, such as in this appeal, the individual requesting relief must file

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<sup>10</sup> It is unclear why respondent determined that the version of R&TC section 18533 effective prior to January 1, 2011, applied to Ms. Marinucci's request for innocent spouse relief. Requests for innocent spouse relief are determined by reference to the version of the statute effective at the time the request for relief was filed and Ms. Marinucci submitted her Form 705 on May 28, 2015. At that time, R&TC section 18533 no longer contained subdivision (h)(2), and as such the statute of limitations for requests under R&TC section 18533, subdivisions (b) or (c), was two years from the date of the first collection activity.

a timely request for relief no later than two years after the date respondent has begun collection action with respect to the requesting individual. (R&TC, § 18533(c)(3)(B).) This requirement is virtually identical to the timely election requirement of R&TC section 18533(b).

Lastly, if respondent demonstrates that an individual requesting separate liability allocation relief had actual knowledge, when that individual signed the return, of any item giving rise to the deficiency (or portion thereof) that is not allocable to that individual, then separate liability allocation relief will not apply to such deficiency (or portion thereof), unless that individual establishes that he or she signed the return under duress. (R&TC, § 18533(c)(3)(C).) Separate liability allocation relief is also not allowable to the extent that an item that gave rise to the deficiency provided the electing individual a tax benefit. (R&TC, § 18533(d)(3)(B).)

With respect to the timely election requirement, for the same reasons discussed under traditional relief, Ms. Marinucci does not satisfy the timely election requirement of R&TC section 18533, subdivision (c). She is thus not entitled to separate allocation relief because she fails to satisfy each of the requirements of subdivision (c). We therefore need not discuss the remaining requirements for separate liability allocation relief under R&TC section 18533(c).

#### Equitable Relief

R&TC section 18533(f), gives respondent the discretion to provide equitable innocent spouse relief from any unpaid tax or any deficiency when a taxpayer does not qualify for innocent spouse relief under either subdivision (b) or (c) or any portion of either. Determinations to deny equitable relief were previously reviewed under an abuse of discretion standard of review but are now reviewed *de novo*. (See *Wilson v. Commissioner* (9th Cir. 2013) 705 F.3d 980, 995, aff'g T.C. Memo. 2010-134.)

#### IRS Guidance Regarding Claims for Equitable Relief

IRS Revenue Procedure 2013-34<sup>11</sup> provides the current guidance in determining whether to grant equitable relief. Section 4.01 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.01) sets out threshold conditions that a requesting spouse must meet to be eligible for equitable relief. If the requesting spouse establishes that he or she meets all seven threshold

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<sup>11</sup> 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).)



conditions<sup>12</sup> in section 4.01, respondent then considers the factors in section 4.02 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.02). If the requesting spouse meets the requirements of section 4.01 but does not qualify for relief under section 4.02, respondent then considers the section 4.03 factors of Revenue Procedure 2013-34 (hereinafter referred to as section 4.03).

### Section 4.01

Section 4.01 identifies the following threshold requirements that a requesting spouse must satisfy to be eligible for equitable relief:

1. The requesting spouse filed a joint return for the tax year for which relief is sought;
2. Traditional relief or separate allocation relief is not available to the requesting spouse;
3. The requesting spouse makes a timely claim for relief;<sup>13</sup>
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;
6. The requesting spouse did not knowingly participate in the filing of a fraudulent joint return; 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 nonrequesting spouse or an underpayment resulting from the nonrequesting spouse's income unless specific exceptions apply.<sup>14</sup> If the liability is partially attributable to the requesting spouse, then relief is considered only for the portion of the liability attributable to the nonrequesting spouse.

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<sup>12</sup> The Revenue Procedure and federal court cases indicate that, if the requesting spouse cannot satisfy all the 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.)

<sup>13</sup> As relevant here, a request for equitable relief must be made on or before the Collection Statute Expiration Date, which is the date the period of limitation on collection of the income tax liability expires. Generally, for federal purposes, the statute of limitations for collection of outstanding tax liabilities is 10 years after the assessment of the tax. (IRC, § 6502 (a).) However, in California, FTB generally has 20 years from the date a tax liability becomes due and payable to collect. (See R&TC, § 19255.) As a result, the time for making a claim for relief is generally extended in California.

<sup>14</sup> Equitable relief may be granted, even though the understatement or underpayment may be attributable in part or in full to an item of the requesting spouse, if any of the following exceptions apply: 1) attribution solely due to the operation of community property law; 2) nominal ownership; 3) misappropriation of funds; 4) abuse; or 5) fraud committed by the nonrequesting spouse. (Rev. Proc. 2013-34, § 4.01(7).)

In this case there is no dispute that Ms. Marinucci and appellant filed a joint California return for the 2007 tax year. Traditional relief or separate allocation relief is not available because, as discussed above, the appeal record does not establish that Ms. Marinucci timely requested relief during the applicable statute of limitations under R&TC section 18533, subdivisions (b) or (c). However, under the timeliness standard for equitable relief, which in California allows FTB 20 years to collect a liability, Ms. Marinucci made a timely request for equitable relief on May 28, 2015.<sup>15</sup> There is no evidence that disqualified assets were transferred, that the couple engaged in a fraudulent scheme, or that Ms. Marinucci filed the 2007 return with a fraudulent intent. As to the seventh threshold condition, there is nothing in the record to suggest that any of the income reported for the 2007 tax year can be attributed to Ms. Marinucci. She asserted multiple times that she did not work outside the home during 2007 and there is no evidence that Ms. Marinucci assisted in operating appellant's Schedule C business as a water filter salesman in any manner. All the income reported on the 2007 joint tax returns was attributable to appellant's Schedule C business, thus the entire 2007 tax liability was attributable to appellant's income. Therefore, Ms. Marinucci has satisfied the seven threshold conditions for equitable innocent spouse relief set forth in Revenue Procedure 2013-34.

#### Section 4.02

We next consider whether Ms. Marinucci is entitled to a streamlined determination of equitable innocent spouse relief pursuant to section 4.02. A streamlined determination of equitable innocent spouse relief is permitted when the following three criteria have been satisfied: (1) the requesting spouse establishes that he or she is no longer married to the nonrequesting spouse; (2) the requesting spouse establishes that 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.

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<sup>15</sup> As noted previously, R&TC section 19255 (c)(2), provides that if more than one liability is due and payable for a particular tax year, the due and payable date that is later in time is the date upon which the 20-year limitation for collection begins. Here, as discussed above, two liabilities for the 2007 tax year exist, the later due and payable date (for the understatement portion of the 2007 tax year liability) was January 10, 2011, when the proposed assessment became final. Without any tolling of the statute of limitations, respondent has until January 10, 2031 to collect the tax liability for 2007.

Because Ms. Marinucci did not establish that she would suffer an economic hardship if relief were not granted, she did not satisfy each of the three criteria, and thus, a streamlined determination of equitable relief is not available. As such, the criteria for streamlined relief will not be discussed further.

### Section 4.03

If the threshold requirements are satisfied, but a streamlined determination of 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: (1) marital status; (2) economic hardship; (3) knowledge or reason to know; (4) legal obligation; (5) significant benefit; (6) compliance with income tax laws; and (7) mental and physical health. 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.) Abuse or exercise of financial control on the part of the nonrequesting spouse is a factor that may impact the remaining factors. (Rev. Proc. 2013-34, § 4.03(2).) 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. (*Henson v. Commissioner*, T.C. Memo. 2012-288; *Sriram v. Commissioner*, T.C. Memo. 2012-91.)

#### 1. Marital status

Whether the requesting spouse is no longer married to the nonrequesting spouse as of the date the IRS makes its determination.<sup>16</sup> If the requesting spouse is still married to the nonrequesting spouse, this factor is neutral. If the requesting spouse is no longer married to the nonrequesting spouse, this factor will weigh in favor of relief.

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<sup>16</sup> For purposes of this section, a requesting spouse will be treated as being no longer married to the nonrequesting spouse only in the following situations: (i) the requesting spouse is divorced from the nonrequesting spouse, (ii) the requesting spouse is legally separated from the nonrequesting spouse under applicable state law, (iii) the requesting spouse is a widow or widower and is not an heir to the nonrequesting spouse's estate that would have

Ms. Marinucci states she and appellant were separated in February 2012, she filed for divorce in March of 2012, and that the couple was living apart as of July 2013. Because the couple lived apart for more than 12 months before FTB issued its notice to grant Ms. Marinucci innocent spouse relief on August 22, 2017, the couple can be considered as being no longer married as of the date FTB made its determination, and thus, this factor favors relief. (Rev. Proc. 2013-34, § 4.03(2)(a).)

2. Economic hardship

Whether the requesting spouse will suffer economic hardship if relief is not granted. For purposes of this factor, 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. If denying relief from the joint and several liability will cause the requesting spouse to suffer economic hardship, this factor will weigh in favor of relief. If denying relief from the joint and several liability will not cause the requesting spouse to suffer economic hardship, this factor will be neutral.

As discussed above with respect to section 4.02, Ms. Marinucci did not establish that she would suffer an economic hardship if relief is not granted. This factor is thus neutral. (Rev. Proc. 2013-34, § 4.03(2)(b).)

3. Knowledge of the underpayment and/or understatement

a. Underpayment

Whether, as of the date the return was filed or the date the requesting spouse reasonably believed the return was filed, the requesting spouse knew or had reason to know that the nonrequesting spouse would not or could not pay the tax liability at that time or within a reasonable period of time after the filing of the return. This factor will weigh in favor of relief if the requesting spouse reasonably expected the nonrequesting spouse to pay the tax liability reported on the return. This factor will weigh against relief if, based on the facts and circumstances of the case, it was not reasonable for the requesting spouse to believe that the

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sufficient assets to pay the tax liability, or (iv) the requesting spouse has not been a member of the same household as the nonrequesting spouse at any time during the 12-month period ending on the date the Service makes its determination. For these purposes, a temporary absence (e.g., due to incarceration, illness, business, military service, or education) is not considered a separation if the absent spouse is expected to return to the household. (See Treas. Reg. § 1.6015-3(b)(3)(i).) A requesting spouse is a member of the same household as the nonrequesting spouse for any period in which the spouses maintain the same residence.

nonrequesting spouse would or could pay the tax liability shown on the return. Depending on the facts and circumstances, if the requesting spouse was abused<sup>17</sup> by the nonrequesting spouse, or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to question the payment of the taxes reported as due on the return or challenge the nonrequesting spouse's assurance regarding payment of the taxes for fear of the nonrequesting spouse's retaliation, this factor will weigh in favor of relief even if the requesting spouse knew or had reason to know about the nonrequesting spouse's intent or ability to pay the taxes due.

As to the underpayment, the record shows that Ms. Marinucci was aware of appellant's constant financial problems during the marriage and that he opened and closed businesses frequently, giving her knowledge or reason to know that appellant would not or could not pay the tax liability at the time of filing the return. Nevertheless, the record establishes the presence of financial control and abuse against Ms. Marinucci, which results in this factor being satisfied, even though Ms. Marinucci knew or had reason to know about appellant's inability or unwillingness to remit payment for the 2007 tax liability at the time of filing their return.

b. Understatement

Whether the requesting spouse knew or had reason to know of the item giving rise to the understatement or deficiency as of the date the joint return (including a joint amended return) was filed, or the date the requesting spouse reasonably believed the joint return was filed. If the requesting spouse did not know and had no reason to know of the item giving rise to the understatement, this factor will weigh in favor of relief. If the requesting spouse knew or had reason to know of the item giving rise to the understatement, this factor will weigh against relief. Actual knowledge of the item giving rise to the understatement or deficiency will not be weighed more heavily than any other factor. Depending on the facts and circumstances, if the requesting

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<sup>17</sup> For purposes of this revenue procedure, if the requesting spouse establishes that he or she was the victim of abuse (not amounting to duress, see Treas. Reg. § 1.6015-1(b)), then depending on the facts and circumstances of the requesting spouse's situation, the abuse may result in certain factors weighing in favor of relief when otherwise those factors may have weighed against relief. Abuse comes in many forms and can include physical, psychological, sexual, or emotional abuse, including efforts to control, isolate, humiliate, and intimidate the requesting spouse, or to undermine the requesting spouse's ability to reason independently and be able to do what is required under the tax laws. All the facts and circumstances are considered in determining whether a requesting spouse was abused. Depending on the facts and circumstances, abuse of the requesting spouse's child or other family member living in the household may constitute abuse of the requesting spouse.

spouse was abused by the nonrequesting spouse, or the nonrequesting spouse maintained control of the household finances by restricting the requesting spouse's access to financial information, and because of the abuse or financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return for fear of the nonrequesting spouse's retaliation, this factor will weigh in favor of relief even if the requesting spouse knew or had reason to know of the items giving rise to the understatement or deficiency.

As to the understatement, the record does not show that Ms. Marinucci was involved in appellant's business or the tax preparation of the 2007 return, and therefore we find she did not know or have reason to know that a portion of appellant's business expenses would be disallowed and lead to an assessment of additional tax. The knowledge factor thus favors relief for both the underpayment and the understatement portions of the 2007 tax liability. (Rev. Proc. 2013-34, § 4.03(2)(c)(i)(B).)

4. Legal obligation

Whether the requesting spouse or the nonrequesting spouse has a legal obligation to pay the outstanding federal income tax liability. For purposes of this factor, a legal obligation is an obligation arising from a divorce decree or other legally binding agreement.

Neither appellant nor Ms. Marinucci provided a copy of their divorce decree or any other legally binding agreement that discusses the 2007 tax liability. Therefore, this factor is neutral. (Rev. Proc. 2013-34, § 4.03(2)(d).)

5. Significant benefit

Whether the requesting spouse significantly benefited from the unpaid income tax liability or understatement. "A significant benefit is any benefit in excess of normal support." (Treas. Reg. § 1.6015-2(d).)

We find that the amount of the 2007 tax liabilities, \$4,756, to be small enough such that neither appellant nor Ms. Marinucci derived a significant benefit from the unpaid taxes. This factor is thus neutral. (Rev. Proc. 2013-34, § 4.03(2)(e).)

6. Compliance with income tax laws

Whether the requesting spouse has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief

relates. If the requesting spouse is compliant for tax years after being divorced from the nonrequesting spouse, then this factor will weigh in favor of relief. If the requesting spouse is not compliant, then this factor will weigh against relief. If the requesting spouse made a good faith effort to comply with the tax laws but was unable to fully comply, then this factor will be neutral.

According to FTB's records, Ms. Marinucci untimely filed her 2014 and 2015 personal income tax returns, but she had no income tax liability for those years. Further, she did timely file her 2016 and 2017 returns. FTB considered these efforts to comply with the tax laws to be in good faith. We agree with FTB's evaluation and thus find this factor is neutral. (Rev. Proc. 2013-34, § 4.03(2)(f).)

7. Mental and physical health

Whether the requesting spouse was in poor physical or mental health. This factor will weigh in favor of relief if the requesting spouse was in poor mental or physical health at the time the return or returns for which the request for relief relates were filed (or at the time the requesting spouse reasonably believed the return or returns were filed), or at the time the requesting spouse requested relief. The IRS will consider the nature, extent, and duration of the condition, including the ongoing economic impact of the illness. If the requesting spouse was in neither poor physical nor poor mental health, this factor is neutral.

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

In sum, two factors weigh in favor of relief, five are neutral, and none weigh against relief. In our evaluation of the facts and circumstances of this case, the following are significant. First, as discussed above, the record clearly shows Ms. Marinucci was subject to abuse and financial control by appellant, which negated her ability to participate in the preparation of the 2007 tax return, ask any questions about the tax return or inquire as to the payment for the tax liability. Second, the items giving rise to the additional assessment of tax came from appellant's business, and it does not appear that Ms. Marinucci participated in that business in any way. Third, none of the equitable balancing factors weigh against relief. For these reasons, we conclude that Ms. Marinucci satisfies all the requirements for equitable innocent spouse relief

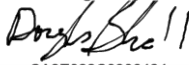
pursuant to R&TC section 18533(f), for both the underpayment and understatement portions of the outstanding 2007 tax liability.

HOLDING

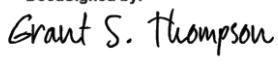
Appellant has failed to establish that respondent erroneously granted innocent spouse relief to Ms. Marinucci for tax year 2007.

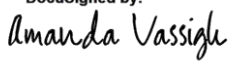
DISPOSITION

Respondent's action granting innocent spouse relief to Ms. Marinucci for 2007 is sustained.

DocuSigned by:  
  
CA2E033C0906484...  
Douglas Bramhall  
Administrative Law Judge

We concur:

DocuSigned by:  
  
FC572D5881AE41B...  
Grant S. Thompson  
Administrative Law Judge

DocuSigned by:  
  
7B17E958B7C14AC...  
Amanda Vassigh  
Administrative Law Judge