

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18010796
SHARON E. MCDANIEL (APPEALING SPOUSE) AND)	Date Issued: October 2, 2019
DAVID D. MCDANIEL (NONAPPEALING SPOUSE))	
_____)	

OPINION

Representing the Parties:

For Appealing Spouse:	Tax Appeals Assistance Program (TAAP) ¹
For Nonappealing Spouse:	David D. McDaniel
For Respondent:	Bradley J. Coutinho, Tax Counsel
For Office of Tax Appeals:	Neha Garner, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) sections 18533 and 19045, Ms. Sharon McDaniel appeals from the action by respondent Franchise Tax Board (FTB) granting innocent spouse relief to Mr. David McDaniel for the 1999 tax year.²

Office of Tax Appeals (OTA) Administrative Law Judges John O. Johnson, Tommy Leung, and Sara A. Hosey held an oral hearing for this matter in Sacramento, California, on June 26, 2019. At the conclusion of the hearing this matter was submitted for decision. The record was closed by order dated June 27, 2019.

¹ Ms. McDaniel filed the appeal. Kenneth Curry of TAAP filed the reply brief and represented her at the hearing.

² FTB notes that the tax year on appeal is more than ten years from the date of the appeal because Mr. McDaniel’s innocent spouse request was received on June 3, 2015, and he was granted full innocent spouse relief on March 21, 2016.

ISSUE

Whether Mr. McDaniel is entitled to innocent spouse relief for the 1999 tax year.

FACTUAL FINDINGS

1. Ms. McDaniel and her former spouse, Mr. McDaniel (the “McDaniels”), filed their joint California income tax return for 1999 on April 15, 2000.³ The McDaniels were married in 1999 and this was their first joint tax return.⁴ The McDaniels reported taxable income of \$149,598, and a total tax liability of \$10,686. After applying withholdings and estimated tax payments, they claimed a refund of \$245.⁵
2. FTB later received information that the Internal Revenue Service (IRS) adjusted the taxable income reported on the McDaniels’ 1999 joint federal return and assessed additional tax. Based on the federal adjustments, FTB issued a Notice of Proposed Assessment (NPA) dated July 28, 2006, increasing the McDaniels’ taxable income for 1999 by \$40,599 from \$149,598 to \$190,197. The adjustments consisted of disallowed costs of sales – purchases of \$43,050 less a self-employed adjusted gross income adjustment of \$2,451. The NPA proposed additional tax of \$3,776 and imposed a post-amnesty penalty of \$716.06. The McDaniels did not protest the proposed assessment for the 1999 tax year and it became final.
3. After the McDaniels failed to pay the 1999 balance due, FTB initiated involuntary collection action by issuing an Order to Withhold Personal Income Tax dated May 20, 2009, to Mr. McDaniel’s bank for \$15,950.05. FTB has not received any payments towards the 1999 balance due.
4. The McDaniels divorced in 2014.
5. On June 3, 2015, FTB received Mr. McDaniel’s FTB Form 705, Request for Innocent Joint Filer Relief, for tax years 1998 through 2002.⁶ On November 19, 2015, FTB issued

³ FTB asserts that it no longer has a copy of the joint 1999 income tax return.

⁴ A 2014 divorce decree lists the McDaniels’ date of marriage as January 1, 1999.

⁵ FTB informed the McDaniels of a discrepancy in their reported withholding payments, and the difference was subsequently remitted to FTB, with interest, via a transfer from their 2000 tax year account. The 1999 return was otherwise accepted by FTB as submitted.

⁶ FTB asserts that the McDaniels did not file joint California returns for the 1998, 2000, 2001, or 2002 tax years. Accordingly, the only tax year at issue with respect to the grant of innocent spouse relief is the 1999 tax year.

- to Mr. McDaniel a Request for Information for the 1999 tax year. In response, Mr. McDaniel submitted information in support of his position.⁷
6. Also on November 19, 2015, FTB issued a Non-Requesting Taxpayer Notice to Ms. McDaniel, advising her of Mr. McDaniel's request for innocent spouse relief and providing her the opportunity to comment on his request and submit information and documentation. Ms. McDaniel responded to FTB's notice, asserting that Mr. McDaniel had knowledge of the item that resulted in the additional tax assessment, that he benefited from her business, and that the tax liability should be attributed to both spouses.
 7. On March 21, 2016, FTB issued separate Notices of Action (NOA) to Mr. McDaniel and Ms. McDaniel, informing them that it granted Mr. McDaniel equitable innocent spouse relief pursuant to R&TC section 18533(f) for the 1999 tax year. Ms. McDaniel filed this timely appeal.
 8. On appeal, Ms. McDaniel states, "I do not dispute I owe tax for 1999," referring to the "around \$3,800" amount, but "I do not believe I should be responsible for all the penalties and interest that has accrued, since I was unaware of the liability." She also states, "I understand that it was MY business that resulted in the additional taxes; however, he greatly benefitted from the profits of MY business[.]" In a prepared statement, Ms. McDaniel affirmed at the hearing that she never disputed making an accounting error in duplicating business deductions. Accordingly, it is undisputed that the tax liability at issue is solely attributable to Ms. McDaniel.⁸

DISCUSSION

When a joint return is filed, the R&TC and the Internal Revenue Code (IRC) provide that each spouse is jointly and severally liable for the entire tax due for that tax year. (IRC,

⁷ FTB asserts that the documents Mr. McDaniel provided concern marital issues between the McDaniels, Ms. McDaniel's relationship with another former spouse, and correspondence with the IRS and FTB for tax years not at issue in this appeal. FTB states that, because the documents did not appear to have a bearing on the 1999 tax year, they would only be provided on request.

⁸ On appeal and during the hearing, Ms. McDaniel, through her representative, asserted that many facts were unknown without the 1999 California tax return. However, Ms. McDaniel did not assert what facts could have been gleaned from the 1999 tax return that would have assisted her position on appeal, especially given the concession that the understatement at issue is solely attributable to her. At the hearing, Mr. McDaniel indicated that he might have documents from the IRS relating to the 1999 tax year. However, it is unclear what documents he might have and whether they have been provided previously or not, or how they might be relevant to the matters on appeal. Accordingly, we determined that delaying the proceedings for additional briefing was not appropriate.

§ 6013(d)(3); R&TC, § 19006(b).) However, a requesting spouse may seek relief from joint and several liability under innocent spouse relief statutes. (IRC, § 6015; R&TC, § 18533.) 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).⁹ (See also IRC, § 6015(b), (c), & (f).)

When a California statute is substantially identical to a federal statute (as in the case of the innocent spouse statutes IRC section 6015 and R&TC section 18533), federal law interpreting the federal statute 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 R&TC, § 18533(g)(2).) Treasury regulations are applied in California innocent spouse matters to the extent that such regulations do not conflict with R&TC section 18533 or respondent's regulations. (*Ibid.*)

In the present appeal, Mr. McDaniel was granted innocent spouse relief by FTB for the 1999 tax year with respect to an amount of additional tax of \$3,776 and related penalties and interest. FTB determined that Mr. McDaniel qualified for equitable relief under subdivision (f). FTB also considered Mr. McDaniel's request for relief under subdivisions (b) and (c) but determined that he was ineligible under those subdivisions due to the expiration of the statute of limitations for timely requesting relief under those subdivisions.¹⁰

R&TC section 18533(f) gives FTB 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). Determinations to deny equitable relief were previously reviewed under an abuse of discretion standard of review, but are now reviewed *de*

⁹ Relief may also be granted when certain conditions are met and relief was granted by the IRS. (R&TC, § 18533(i).) However, Mr. McDaniel clarified on appeal that he did not request innocent spouse relief from the IRS.

¹⁰ On appeal, FTB asserts that Mr. McDaniel's request for relief should have been granted under subdivisions (b) and (c), and provides an argument as to why his request was timely as to those subdivisions. We consider this as an argument in the alternative, and discuss it herein.

novo.¹¹ (See *Wilson v. Comm'r* (9th Cir. 2013) 705 F.3d 980, 995, aff'g T.C. Memo. 2010-134 (*Wilson*).)¹²

IRS Guidance Regarding Claims for Equitable Relief

R&TC section 18533(g)(2) provides that “[i]t is the intent of the Legislature that, in construing this section . . . , any regulations that may be promulgated by the Secretary . . . shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the [FTB].” IRS regulations reference Revenue Procedure 2000-15 (which was a predecessor of Revenue Procedure 2013-34) or “other guidance” published by the IRS in determining eligibility for equitable relief. (See, e.g., Treas. Reg. § 1.6015-4.) Revenue Procedure 2013-34 provides the current guidance of the IRS with respect to determining whether equitable relief is warranted, and we consider it proper guidance for our determinations as well. (*Conrad v. Comm’r*, T.C. Memo. 2017-116.)

Section 4.01 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.01) sets forth threshold conditions that must be satisfied before a requesting spouse may be entitled to equitable relief. If a requesting spouse satisfies each of the threshold conditions of section 4.01, then he or she may be considered for streamlined equitable relief under section 4.02 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.02). If a requesting spouse satisfies the threshold requirements of section 4.01, but does not satisfy the requirements for streamlined relief under section 4.02, then the determination of whether equitable relief should be granted is determined based on whether it would be inequitable to hold the requesting spouse liable for all

¹¹ We note that prior administrative precedential law as contained in the *Appeal of Tyler-Griffis* (2006-SBE-004) 2006 WL 3768792 (*Tyler-Griffis*) stated that the standard of review for determinations of equitable relief was abuse of discretion; however, as stated above, that finding in *Tyler-Griffis* has been superseded by subsequent developments in the law. (See *Wilson v. Comm'r* (9th Cir. 2013) 705 F.3d 980, 995, aff'g T.C. Memo. 2010-134.) Additionally, *Tyler-Griffis* stated that the Board of Equalization (and OTA as its successor) did not have jurisdiction to hear an appeal of a determination of equitable relief (as we have in this appeal) unless the request for relief also included a request for relief under subdivisions (b), (c), or both. R&TC section 18533 has been amended to explicitly provide jurisdiction to OTA for appeals of respondent’s determinations on requests for equitable relief. (R&TC, § 18533(e)(1)(A)(iii).) Accordingly, *Tyler-Griffis* is also superseded by subsequent legal development in this regard.

¹² The court in *Wilson* found that the appropriate scope of evidentiary review in these appeals was *de novo*, meaning that they could consider new evidence outside of the administrative record. (*Wilson, supra*, at p. 988.) It then found that the abuse of discretion standard of review was incompatible with a *de novo* scope of evidentiary review, and therefore applied the *de novo* standard of review. (*Id.* at p. 993.) Appeals before the OTA are not bound by prior administrative records, and parties are welcomed to submit any relevant evidence in all appeals. (See generally Cal. Code Regs., tit. 18, § 30214.) Accordingly, the determination that *de novo* is the appropriate standard of review applies equally to OTA appeals of innocent spouse relief determinations.

or part of the unpaid income tax liability or deficiency, with the assistance of the nonexclusive factors set forth in section 4.03 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.03).

Threshold Conditions

Section 4.01 provides that a requesting spouse must satisfy each of the following threshold conditions to be eligible to submit a request for equitable relief:

- the requesting spouse filed a joint return for the tax year for which relief is requested;
- traditional innocent spouse relief or separate liability allocation relief is not available to the requesting spouse;¹³
- the request for relief is timely filed;
- no assets were transferred between the spouses as part of a fraudulent scheme by the spouses;
- no disqualified assets were transferred to the requesting spouse by the nonrequesting spouse;
- the requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and
- 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 considered only for the portion of the liability attributable to the nonrequesting spouse.

If the spouse requesting innocent spouse relief cannot satisfy all seven threshold conditions, equitable relief is not available. (See, e.g., *Reilly-Casey v. Comm'r*, T.C. Memo. 2013-292; *Stanwyck v. Comm'r*, T.C. Memo. 2012-180; *Franc v. Comm'r*, T.C. Memo. 2010-79; *O'Meara v. Comm'r*, T.C. Memo. 2009-71.)

¹³ We note that FTB's alternative argument, that Mr. McDaniel is entitled to innocent spouse relief under 18533(b) or (c), would be inconsistent with a finding that Mr. McDaniel satisfies this threshold condition for equitable relief under 18533(f). Furthermore, the question of whether Mr. McDaniel qualifies under subdivision (b) or (c) is essentially moot, for purposes of this appeal. As held herein, Mr. McDaniel is entitled to innocent spouse relief under 18533(f). If we were to instead find that Mr. McDaniel was not entitled to relief under subdivision (f) based solely on the fact that he was entitled to relief under subdivision (b) or (c), the result would still be a finding that Mr. McDaniel is entitled to innocent spouse relief. As such, any additional inquiry or evidentiary requests regarding this issue would only delay resolution of this appeal for the 1999 tax year without the potential for any possible substantive change in the disposition. In this appeal, neither spouse seems to argue that Mr. McDaniel is entitled to relief under subdivision (b) or (c), and FTB's original determination included a denial of relief under subdivisions (b) and (c) based on the statute of limitations. We find no evidence to refute that position in the record. Accordingly, we determine that, as stated in section 4.01, "[r]elief is not available to [Mr. McDaniel] under [subdivision] (b) or (c)," and that this threshold condition is met.

Here, Mr. McDaniel meets all the threshold conditions. With regard to the third condition, Mr. McDaniel's request for innocent spouse relief is not barred by the 20-year California collection statute of limitations because he filed his request for relief approximately six years after FTB issued the Order to Withhold to his bank for the 1999 tax year. Ms. McDaniel mistakenly relied on the 10-year federal collection statute of limitations pursuant to IRC section 6502 when she argued that the statute of limitations for Mr. McDaniel to request equitable innocent spouse relief expired.¹⁴ As for the seventh and final condition, Ms. McDaniel has stated on appeal that the tax liability at issue is fully attributable to her business. The other factors are clearly satisfied by the evidentiary record in Mr. McDaniel's favor, or are otherwise not disputed on appeal. Mr. McDaniel thus satisfies each of the threshold conditions of section 4.01.

Section 4.02

A streamlined determination of equitable relief will only be made if all of the requirements of section 4.02 are satisfied:

- The requesting spouse is divorced, legally separated, a widow(er), or has lived apart from his or her spouse for 12 months prior to the date the determination is made;
- The requesting spouse will suffer economic hardship if relief were not granted, as set forth in section 4.03(2)(b); and
- The requesting spouse did not know or have reason to know that there was an understatement or deficiency on the joint return as of the date the return was filed, as set forth in section 4.03(2)(c)(i).

Here, Mr. McDaniel has failed to substantiate the second condition. Mr. McDaniel did not provide evidence or argument showing that payment of all or part of the outstanding liability would create an economic hardship that would cause him to be unable to pay reasonable basic living expenses. Because appellant is unable to satisfy the economic hardship requirement, we need not consider the other requirements for a streamlined determination.

¹⁴ At the oral hearing, the parties were asked to further discuss their positions with regard to the statute of limitations. While the two-year statute of limitations applicable under 18533(b) and (c) were discussed, Ms. McDaniel, and her representative at the hearing, did not provide any further arguments regarding the statute of limitations for equitable relief under 18533(f).

Section 4.03

If the threshold conditions for equitable relief are met, but the individual requesting relief does not meet all of the requirements under section 4.02, then relief may still be granted under section 4.03. Section 4.03 provides a list of factors that are 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, all factors are to be considered and weighed, and the list of factors is not intended to be exclusive. Depending on the requesting spouse's facts and circumstances, each factor's degree of importance varies.

Several of the factors in the nonexclusive list provided by section 4.03 weigh in favor of relief. These include the following:

- **Marital Status.** The marital status factor weighs in favor of relief because Mr. McDaniel filed his request for relief after the couple divorced. (Rev. Proc. 2013-34, § 4.03(2)(a).)
- **Knowledge Factor.** As discussed under traditional innocent spouse relief, Mr. McDaniel has established that he did not know or have reason to know of the deficiency at the time or within a reasonable period of time after the filing of the couple's joint 1999 return. Therefore, this factor weighs in favor of relief.
- **Compliance with Income Tax Laws.** FTB's records indicate that after the divorce, Mr. McDaniel has filed income tax returns for the 2003 through 2007 tax years. Mr. McDaniel has a balance for the 2007 tax year, but he has agreed to a payment plan with FTB until the balance is paid in full. Accordingly, Mr. McDaniel has made a good faith effort to comply with the income tax laws in the tax years following the 1999 tax year. This factor thus weighs in favor of relief. (Rev. Proc. 2013-34, § 4.03(2)(f).)

The remaining factors, discussed below, all weigh neutral on the determination of Mr. McDaniel's request for relief. None of the factors provided in section 4.03 weigh against relief.

- **Economic Hardship.** As discussed in section 4.02 above, Mr. McDaniel has not shown that he would suffer an economic hardship if relief is not granted. The economic hardship factor will thus be neutral. (Rev. Proc. 2013-34, § 4.03(2)(b).)

- **Legal Obligation.** The legal obligation factor is neutral because there is no evidence that either spouse has a legal obligation to pay the outstanding income tax liability. (Rev. Proc. 2013-34, § 4.03(2)(d).)
- **Significant Benefit.** The amount of underreported tax at issue is \$3,776. An analysis of the potential benefit to Mr. McDaniel reveals that this is not an amount substantial enough to be considered a significant benefit.¹⁵ While Ms. McDaniel asserts that her business profits paid off Mr. McDaniel's truck (approximately \$7,000) and his country club membership (approximately \$16,000), the benefit to be analyzed is any benefit that might have been received through the understatement of tax only. Accordingly, the significant benefit factor is thus neutral. (Rev. Proc. 2013-34, § 4.03(2)(e).)
- **Mental or Physical Health.** The mental or physical health factor is neutral because Mr. McDaniel does not contend and there is no evidence that indicates that he suffered from any mental or physical health problem at the time the couple filed their 1999 joint return or at the time he filed his request for innocent spouse relief.

In summary, three factors weigh in favor of relief, four are neutral, and none of the factors weigh against relief. In evaluating whether equitable relief is warranted, we are cognizant that the case law and Revenue Procedure 2013-34 provide that the availability of relief does not depend on a simple counting of the factors for and against relief. Instead, the determination of whether it would be inequitable to hold the requesting spouse liable for the understatement is based on all the facts and circumstances. (Rev. Proc. 2013-34, §§ 3.05 & 4.03(2); see, e.g., *Henson v. Comm'r*, T.C. Memo. 2012-288; *Hudgins v. Comm'r*, T.C. Memo. 2012-260.)

We weigh heavily the fact that the liability is solely attributable to Ms. McDaniel. Ms. McDaniel's primary argument appears to be that Mr. McDaniel received a significant benefit from the understatement of tax, to which Mr. McDaniel counters with evidence asserting

¹⁵ Respondent raised as persuasive the decision in the U.S. Tax Court case of *Howerter v. Comm'r*, T.C. Summary Opinion 2014-15. As a summary opinion, this decision holds no authoritative or precedential weight for any other case; however, if the facts are analogous, it applies the same body of law, and the reasoning is sound, it may be considered as persuasive. The Tax Court in *Howerter* examined a tax liability of \$2,901, split evenly between the spouses to reach an individual potential benefit of \$1,450, and determined that this amount was too small to allow either spouse to enjoy a significant benefit. We find this analysis persuasive and applicable to these facts.

that he did not receive any financial benefit from Ms. McDaniel’s reporting mistake during the year at issue. However, as discussed above, the amount of the understatement is not substantial enough to be considered a significant benefit to either spouse. Based on the foregoing, we thus conclude that Mr. McDaniel is entitled to full equitable innocent spouse relief for the 1999 tax year under R&TC section 18533(f).

HOLDING

Mr. McDaniel is entitled to innocent spouse relief for the 1999 tax year.

DISPOSITION

FTB’s action granting innocent spouse relief to Mr. McDaniel for the 1999 tax year pursuant to R&TC section 18533(f) is sustained.

DocuSigned by:
John O Johnson
873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:
Sara A Hosey
8D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge