

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011391
DEBBORA AHLGREN)
) Date Issued: April 9, 2019
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OPINION

Representing the Parties:

For Appellant (Requesting Spouse): Debbona Ahlgren

For FTB: Marguerite Mosnier, Tax Counsel IV

Office of Tax Appeals: Mai C. Tran, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) sections 18533 and 19045, Deborah Ahlgren (appellant) appeals the action by respondent Franchise Tax Board (FTB) denying claims for refund for the 2003 through 2010 taxable years, and partial denial of innocent spouse relief (IS relief) for the 2010 taxable year.¹

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

ISSUES

1. Did appellant file a timely appeal for taxable years 2003-2009?
2. Has appellant shown that she filed timely claims for refund (encompassed in her request for IS relief) for the 2003 through 2008 taxable years?
3. Is appellant eligible for equitable IS relief pursuant to R&TC section 18533(f) for 2009?
4. Is appellant entitled to IS relief beyond the relief already granted by FTB pursuant to R&TC section 18533(i) for the 2010 taxable year?

¹ The current value of the tax accounts for 2003, 2004, 2007, 2008, and 2009 are zero. The refund amounts claimed for 2005, 2006 and 2010 are \$8,923, \$8,685, and \$13,758, respectively. FTB granted appellant partial relief for the 2010 taxable year based on the IRS granting partial federal IS relief for the same year. Note: numbers in this decision may be rounded to the nearest dollar.

FACTUAL FINDINGS

1. Appellant and Mr. Arthur Kahn (Kahn) were married in 1996 and separated in 2011.² During the years at issue, appellant worked as a corporate marketing executive for international companies and traveled extensively for work. Appellant relied on Kahn to take care of the household finances, including filing the couple's tax returns and paying their taxes.
2. In June 2011, Kahn permanently left the family home. In July 2011, appellant discovered that Kahn had not filed tax returns for multiple years. Further, appellant discovered that Kahn had hidden prior tax agency notices from her.
3. With the exception of tax year 2009, FTB issued notices to appellant informing her that she may be required to file a tax return for the taxable years at issue. Appellant did not respond to any of these notices, and FTB initiated filing enforcement action by issuing Demands for Tax Return (Demands) and Notices of Proposed Assessment (NPAs) for each of these years. The NPAs went final at the end of the protest period for each year. Thereafter, FTB undertook collection actions and received various payments which were applied to appellant's liabilities.
4. For the 2003 taxable year:
 - a. FTB issued a Demand dated February 14, 2005, and an NPA dated May 16, 2005. The NPA proposed a \$6,936 tax liability, a \$1,734 late-filing penalty, a \$6,604 demand penalty, a \$90 filing enforcement fee, and interest.
 - a. Appellant and Khan filed their 2003 California tax return on June 27, 2007, reporting married filing joint status. The couple reported a total tax liability of \$23,522 and withholding payments of \$17,477.
 - b. FTB processed the return and adjusted the penalties accordingly.
 - c. After FTB processed the return, there was a remaining balance due. Due to FTB's collection activities and a credit transferred from the 2004 tax account, the 2003 obligation was fully paid.
 - d. The last credit to the couple's tax account occurred on September 2, 2008.

² Kahn was given the opportunity to participate in this appeal, but failed to file an opening brief. He is therefore not a party to this appeal.

5. For the 2004 Taxable Year:
 - b. FTB issued a Demand dated March 2, 2006, and an NPA dated May 30, 2006. The NPA proposed a \$908 tax liability, a \$227 late-filing penalty, a \$3,721 demand penalty, a \$120 filing enforcement fee, and interest.
 - c. Appellant and Khan filed their 2004 California tax return on June 27, 2007, reporting married filing joint status. The couple reported a total tax liability of \$11,223 and withholding payments of \$14,487.
 - d. FTB processed the return and abated the late-filing penalty and the filing enforcement fee because there was no underpayment of tax.
 - e. After FTB processed the return, there was an overpayment of \$4,915, which was then transferred to the couple's 2003 tax account. Following the credit transfer (to the 2003 tax liability), the 2004 tax account reflected a zero balance.
 - f. The last credit to the couple's tax account occurred on December 21, 2006.
6. For the 2005 Taxable Year:
 - a. FTB issued a Demand dated January 22, 2007, and an NPA dated April 2, 2007. The NPA proposed a \$1,616 tax liability, a \$404 late-filing penalty, a \$5,036 demand penalty, a \$125 filing enforcement fee, and interest.
 - b. As a result of FTB's collection actions, FTB received full payment for the 2005 tax liability. The last credit to the couple's tax account occurred on June 1, 2009.
 - c. Appellant and Khan filed their 2005 California tax return on July 15, 2011, reporting married filing joint status.
 - d. FTB processed the return and abated the late-filing penalty and filing enforcement fee because there was no underpayment of tax.
 - e. After FTB processed the return, there was an overpayment of \$8,923 for the 2005 tax account. FTB did not refund or credit this amount due to the expiration of both the four-year and one-year statutes of limitations.
 - f. The last credit to the couple's tax account occurred on June 1, 2009.
7. For the 2006 Taxable Year:
 - a. FTB issued a Demand dated March 10, 2008, and an NPA dated May 19, 2008. The NPA proposed a \$9,876 tax liability, a \$2,469 late-filing penalty, a \$10,198 demand penalty, a \$122 filing enforcement fee, and interest.

- b. Appellant and Khan filed their 2006 California tax return on July 15, 2011, reporting married filing joint status. They reported a total tax liability of \$34,024, withholding of \$31,695, and a \$2,329 balance due.
 - c. FTB processed the return and adjusted the penalties accordingly.
 - d. After processing the return, there was an overpayment on the 2006 tax account, including a \$6,181 credit transfer from the 2009 taxable year on October 6, 2011. Only the \$6,181 portion of the overpayment was available for a credit or refund.
 - e. FTB transferred \$237 of the overpayment to Vehicle Registration Collections on January 26, 2012, and issued a refund of \$5,988 to the couple on the same date.
 - f. The last credit to the couple's tax account (other than the refunded credit transfer from 2009) occurred on November 2, 2011.³
 - g. FTB did not refund or credit the remaining \$8,866 overpayment due to the expiration of the statute of limitations.
8. For the 2007 Taxable Year:
- a. FTB issued a Demand dated January 23, 2009, and an NPA dated March 30, 2009. The NPA proposed an \$8,292 tax liability, a \$2,073 late-filing penalty, a \$13,140 demand penalty, a \$119 filing enforcement fee, and interest.
 - b. Appellant and Khan filed their 2007 California tax return on August 10, 2011, reporting married filing joint status. They reported a total tax liability of \$51,732, withholding of \$47,831, estimated tax payments of \$31,142, and an overpayment of \$27,241, which they claimed as a refund.
 - c. FTB processed the return, corrected the estimated tax payments to zero based on its records, and adjusted the penalties accordingly.
 - d. After processing the return, there was an overpayment on the 2007 tax account of \$12,363. FTB transferred \$9,447 to the 2008 tax account and \$2,915 to the 2009 tax account. Thereafter, the 2007 tax account reflected a zero balance.
 - e. The last credit to the couple's tax account occurred on July 8, 2010.
9. For the 2008 Taxable Year:
- a. FTB issued a Demand dated February 9, 2010, and an NPA dated April 12, 2010.

³ FTB's opening brief stated that the final payment was a credit transfer on October 6, 2011. However, the Tax Year History of Activity Display (Exhibit T) reports an "AL1 bill pmt" of \$1,991.67 on November 2, 2011.

The NPA proposed a \$3,986 tax liability, a \$997 late-filing penalty, a \$9,554 demand penalty, a \$113 filing enforcement fee, and interest.

- b. Appellant and Khan filed their 2008 California tax return on August 15, 2011, reporting married filing joint status. They reported a total tax liability of \$49,580, withholding payments of \$38,408, and a balance due of \$11,172.
 - c. FTB processed the return, accepted it as filed, and adjusted the penalties accordingly.
 - d. After the return was processed, a balance due of \$9,447 remained. FTB transferred that amount from the 2007 tax account to satisfy the liability for 2008. The last credit to the couple's tax account occurred on September 23, 2011.
10. For the 2009 Taxable Year:
- a. Appellant and Khan filed their 2009 California tax return on September 6, 2011, reporting married filing joint status. They reported a total tax liability of \$32,309, withholding payments of \$36,473, and an overpayment of \$4,164, which they claimed as a refund.
 - b. FTB processed the return and accepted it as filed. In addition to the withholding payments, the couple also had a credit of \$2,915 which had been transferred from the 2007 account.
 - c. After processing the return, the 2009 tax account had an overpayment of \$6,613, which FTB transferred to the 2010 tax account, leaving a zero balance in the 2009 tax account.
 - d. For the 2009 taxable year, the couple filed a joint federal tax return on September 30, 2011, reporting a federal tax liability of \$98,929, and withholding of \$98,086. The couple reported an underpayment of \$843 on their federal tax return.
11. For the 2010 Taxable Year:
- a. FTB issued a Demand dated February 1, 2012, and an NPA dated September 24, 2012. The NPA proposed a \$959 tax liability, a \$240 late-filing penalty, a \$240 demand penalty, an \$82 filing enforcement fee, and interest.
 - b. Appellant and Kahn filed their 2010 California tax return on August 7, 2013, reporting married filing joint status. The couple reported a total tax liability of \$17,122, withholding payments of \$6,586, and a balance due of \$10,536.

- c. FTB processed the return, and issued a Return Information Notice to the couple showing reduced withholding of \$2,036 based on FTB's records, and adjusting the penalties accordingly.
 - d. On November 8, 2013, FTB transferred to the couple's 2010 tax account the overpayment of \$6,613 from the 2009 tax account. FTB issued a Statement of Tax Due, and imposed a collection cost recovery fee. The couple's total tax liability as of August 7, 2017, was \$23,510.
 - e. After applying the 2009 overpayment to the 2010 tax account, there remained an unpaid balance due on the 2010 tax account of \$16,897.
12. On August 12, 2013, appellant submitted a request for IS relief for the 2003 through 2010 taxable years, which FTB received on August 19, 2013.
 13. On May 20, 2013, the Internal Revenue Service (IRS) granted to appellant partial IS relief from her federal tax liability for the 2003, 2007, 2009 and 2010 taxable years. With regard to the 2010 taxable year, the IRS determined that appellant was entitled to partial IS relief under Internal Revenue Code (IRC) section 6015(f). The IRS allocated the \$23,510 liability due for 2010 as of August 7, 2017 as follows: \$18,310 to appellant and \$5,200 to Kahn. The IRS also applied the entire \$6,613 2009 overpayment to appellant's share of the 2010 liability, further reducing the amount owed by her. However, the IRS determined that appellant was not entitled to penalty relief because appellant had a non-delegable duty to file tax returns, she had minimal withholding, she had not made estimated tax payments, and her extensive history of noncompliance reflected a lack of good faith effort in meeting her tax obligations in a timely matter. Appellant agreed with the IRS' determination, which granted her relief from taxes and penalties.
 14. On November 2, 2013, the IRS also granted appellant partial IS relief from her federal tax liability for the 2004, 2005, and 2006 taxable years. Appellant agreed with the IRS' determination for these tax years.⁴
 15. FTB treated appellant's August 12, 2013 request for IS relief for the 2003 through 2009 taxable years as claims for refund.

⁴ Subsequently, on June 7, 2014, appellant filed a Claim for Refund or Credit for taxable years 2003 to 2010; however, a request for innocent spouse relief may be, and was treated as claims for refund for all overpaid taxable years at issue.

16. On December 3, 2013, FTB denied appellant's requested IS relief for the 2003 through 2009 taxable years. The tax liabilities for those years were fully paid as of the date of appellant's request for IS relief. No payment or credit for those taxable years occurred within the year prior to FTB's receipt of the request for IS relief.⁵
17. FTB issued a Notice of Action (NOA) on April 4, 2014, denying appellant's claims for the 2005 and 2006 taxable years based on untimeliness. The NOA informed appellant that she could file an appeal by July 3, 2014.
18. FTB granted partial relief for the 2010 taxable year in accordance with the federal grant of partial relief for that year. FTB issued a Notice of Action – Partial Approval to appellant, dated March 11, 2014, granting partial relief of \$1,409 pursuant to R&TC section 18533(i). FTB also issued a separate Notice of Action – Non-Requesting Taxpayer to Kahn.
19. Thereafter, appellant filed this timely appeal.

DISCUSSION

Issue 1 - Did appellant file a timely appeal for taxable years 2003-2009?

R&TC section 19331 provides that, if FTB fails to mail an NOA on any refund claim within six months after the claim is filed, the taxpayer may consider the claim disallowed and file an appeal to this agency. In addition, California Code of Regulations, title 18 (Regulation) section 30102(a)(4), provides that this agency has jurisdiction over a timely appeal when FTB fails to act on a claim for refund within six months after the claim is filed with FTB.

Appellant did not have any unpaid tax liabilities for 2003 through 2009, as of the date of appellant's request for IS relief on August 12, 2013. FTB properly treated appellant's request for IS relief for each of those years as claims for refund. (R&TC, § 18533(e)(1)(B)(3).) With respect to taxable years 2003, 2004, 2007, 2008, and 2009, this agency has jurisdiction to consider whether the claims were timely pursuant to R&TC section 19331 and Regulation section 30102(a)(4). Appellant's claims are deemed denied, and therefore, this appeal was timely filed with respect to those taxable years.

R&TC section 19045(b)(2) provides that, when FTB issues an NOA, as it did for the 2005 and 2006 taxable years, if a taxpayer appeals the NOA on or before the date for filing an

⁵ Upon further review, FTB acknowledged that the request for relief for 2009 was timely made.

appeal specified in the notice, the appeal shall be treated as timely filed. Regulation section 30102(a)(3) provides that this agency has jurisdiction to consider a timely appeal when FTB mails an NOA denying a claim for refund. Regulation sections 5422 and 30203(b)(2) extend appellant's filing due date from April 10, 2014 to April 20, 2014. The appeal was timely filed. Accordingly, we have jurisdiction to consider whether the claims for refund were timely for the 2005 and 2006 taxable years.

Issue 2 – Has appellant shown that she filed timely claims for refund (encompassed in her request for IS relief) for the 2003 through 2008 taxable years?

When a joint return is filed, each individual who signed the return is jointly and severally liable for the tax liability. (R&TC, § 19006; IRC, § 6013(d)(3).) 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.) 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 and 19006; IRC, § 6015.)⁶

A claim for IS relief for fully paid taxable years may be treated as a claim for refund. (R&TC, §18533(e)(1)(B)(3)(A); *Choate v. United States* (S.D. Cal. 2003) 218 F.R.D. 677, 679.) As relevant to this appeal, if IS relief is granted pursuant to R&TC section 18533(f), a credit or refund shall be allowed so long as the request for relief is made within the statute of limitations provided in R&TC section 19306. (R&TC, § 18533(e)(3)(A).)

R&TC section 19306 generally provides that the last day to file a claim for refund is the later of either (a) four years from the due date of the return, without regard to extensions, or (b) one year from the date of the overpayment.

The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Avril*, 78-SBE-072, Aug. 15, 1978.)⁷ “[A] taxpayer’s failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date.” (*Appeal of Matthiessen*, 85-SBE-077, July 30, 1985.) Fixed deadlines may appear harsh, but the

⁶ When a California statute is substantially identical to a federal statute (as in the case of the IS relief statutes) 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.) Federal authority applies, and is extensively used, in California innocent spouse cases. (R&TC, § 18533(g)(2).)

⁷ Precedential decisions of the State Board of Equalization (SBE) may be found on the SBE website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

harshness is redeemed by the clarity of the legal obligation. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Appellant filed her request for IS relief on August 19, 2013. For 2003, the four-year statute of limitations expired on April 15, 2008, and the one-year statute of limitations expired on September 2, 2009. For 2004, the four-year statute of limitations expired on April 15, 2009, and the one-year statute of limitations expired on December 21, 2007. For 2005, the four-year statute of limitations expired on April 15, 2010, and the one-year statute of limitations expired on June 1, 2010. For 2006, the four-year statute of limitations expired on April 15, 2011, and the one-year statute of limitations expired on November 2, 2012. For 2007, the four-year statute of limitations expired on April 15, 2012, and the one-year statute of limitations expired on July 8, 2011. For 2008, the four-year statute of limitations expired on April 15, 2013, and the one-year statute of limitations expired on September 23, 2012.

Since appellant's request was filed on August 19, 2013, more than four years after the due date of the returns for the 2003 through 2008 taxable years, and more than one year after the last payment or credit on each taxable year's account, the claims for refund therein are untimely. Appellant contends that the IRS granted relief for the majority of these taxable years and that FTB should follow the final federal determination. However, even if FTB granted appellant IS relief for these years, no refunds would be payable because the claims for refund were untimely. (R&TC, § 18533(e)(3)(A).)

Appellant contends that she relied on Kahn to manage the couple's taxes, and he withheld tax notices from her such that she was unaware of the couple's tax issues. Although that may be true, the language of the statute of limitations is clear. We may not toll the statute based on appellant's contentions. (*Appeal of Matthiessen, supra.*) We find that FTB properly denied appellant's claims for the 2003 through 2008 taxable years as these claims for refund were untimely.

Issue 3 - Is appellant eligible for equitable IS relief pursuant to R&TC section 18533(f) for 2009?

R&TC section 18533(f) provides that, “[u]nder procedures prescribed by [FTB], if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), [FTB] may relieve the individual of that liability.” Thus, to be

eligible to seek equitable IS relief under R&TC section 18533(f), there must be an unpaid tax for the year as of the date the requesting spouse requests relief.

An underpayment of tax is defined as “the unpaid amount due from self-assessed taxes on either an original or amended joint return (the amount due after credits and payment made by the due date of the return).” (Internal Revenue Manual (IRM) section 25.15.3.5 (12-12-2016).) Withholding payments are deemed to have been paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(2).) “If the original return was fully paid when filed, then there is no underpayment of tax, therefore, no relief is available under IRC [section] 6015.” (IRM section 25.15.3.9.1 (03-08-2013).)

Generally, an individual claiming 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 bears the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett*, 86-SBE-109, June 18, 1986.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow*, 82-SBE-274, Nov. 17, 1982.)

Appellant and Kahn filed their 2009 California tax return on September 6, 2011, and reported a total tax liability of \$32,309 and withholding payments of \$36,473. Because the couple fully paid the self-assessed tax through withholding, there was no underpayment of tax. Therefore, appellant is ineligible for equitable relief for 2009 pursuant to R&TC section 18533(f).⁸

Appellant contends that she is entitled to relief for 2009 based on the IRS granting her relief for the same year. R&TC section 18533(i) provides that FTB will grant IS relief in accordance with a final federal determination to grant relief if certain conditions are satisfied. As relevant to this appeal, one of these conditions is that the facts and circumstances that apply to the understatement and liabilities at the federal level are the same facts and circumstances at the state level. (R&TC, § 18533(i)(1)(B).) Appellant and Kahn had a federal underpayment of tax of \$843 when they filed their 2009 federal tax return and therefore appellant was eligible to seek

⁸ FTB agreed to credit all 2009 remaining overpayments to appellant’s 2010 tax liability.

relief pursuant to IRC section 6015(f). In contrast, the couple did not have any unpaid tax when they filed their 2009 California tax return. Therefore, the facts and circumstances at the federal and state levels are not the same, and appellant does not qualify for relief under R&TC section 18533(i) for the 2009 taxable year. Accordingly, we find that appellant is ineligible for equitable relief for the 2009 taxable year.

Issue 4 – Is appellant entitled to IS relief beyond the relief already granted by FTB pursuant to R&TC section 18533(i) for the 2010 taxable year?

R&TC section 18533(f) provides that FTB may relieve a taxpayer from a tax liability if, based on all the facts and circumstances, it is inequitable to hold the taxpayer liable for the unpaid tax or deficiency, and the taxpayer does not otherwise qualify for relief under subdivisions (b) and (c) of R&TC section 18533.⁹ Since the tax liability here is due to self-assessed, unpaid tax, and because appellant and Khan did not separate until 2011, appellant may only seek equitable relief pursuant to R&TC section 18533(f).

As stated above, R&TC section 18533(i) provides that FTB will grant IS relief in accordance with a federal determination granting IS relief if the facts and circumstances at the federal level are the same at the state level. Here, the IRS granted appellant partial equitable relief pursuant to IRC section 6015(f) and relieved appellant of the portion of taxes and penalties attributable to Kahn. The IRS, however, did not abate the federal tax or penalties attributable to appellant for the 2010 taxable year, and appellant agreed to that determination.

Appellant contends that FTB has not considered the federal determination of granting partial relief. The record shows that, on the contrary, FTB has already granted partial relief for the 2010 taxable year consistent with the IRS grant of partial relief for the same year. Furthermore, we note that the IRS, in making its determination, considered the same contentions appellant has made in this appeal. Since the analysis for equitable relief under R&TC section 18533(f) is the same as it is under IRC section 6015(f), and FTB has already granted partial relief

⁹ Relief under R&TC section 18533(b) is limited to understated taxes on a joint return. Relief under R&TC section 18533(c) may generally only be elected when the electing individual was no longer married to, or was legally separated from, the individual with whom the electing party filed the joint return. The individual seeking R&TC section 18533(c) relief must not have been a member of the same household as the non-electing individual during the taxable year for which relief is sought. Thus, appellant may only apply for relief under R&TC section 18533(f).

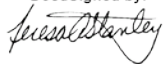
based on the IRS determination, we find that no further relief is available to appellant for the 2010 taxable year.

HOLDING

1. The appeal for the 2003-2009 taxable years was timely filed.
2. Appellant’s claims for refund, based on her request for IS relief for the 2003 through 2008, are untimely.
3. Appellant is not eligible to seek equitable relief under R&TC section 18533(f) for 2009 as appellant did not have an unpaid tax liability when she requested relief.
4. Appellant is not entitled to relief beyond the partial relief FTB already granted for 2010.

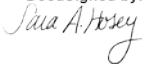
DISPOSITION

For the foregoing reasons, FTB’s action is modified to reflect FTB’s concession that the overpayment of \$6,613 transferred from 2009 to 2010 will be allocated entirely to appellant’s liability for the 2010 taxable year. FTB’s actions are otherwise sustained.


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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Sara A. Hosey
 Administrative Law Judge

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 Amanda Vassigh
 Administrative Law Judge