OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011391
D. AHLGREN	)
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	)
	)

OPINION ON PETITION FOR REHEARING

Representing the Parties:

For Appellant: D. Ahlgren

For Respondent: Marguerite Mosnier, Tax Counsel IV

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

T. STANLEY, Administrative Law Judge: On April 9, 2019, we issued an opinion determining that appellant filed timely appeals for the 2003 through 2009 taxable years, but finding that appellant's request for innocent spouse relief, which was treated as claims for refund for the 2003 to 2008 taxable years, was untimely filed. We further determined that appellant was not eligible for equitable innocent spouse relief for 2009, and appellant was not entitled to innocent spouse relief beyond the relief already granted for 2010. Appellant then filed a petition for rehearing pursuant to Revenue and Taxation Code (R&TC) section 19048.

Good cause for a new hearing may be shown where one of the following grounds exists, and the rights of the complaining party are materially affected: 1) irregularity in the proceedings by which the party was prevented from having a fair consideration of its case; 2) accident or surprise, which ordinary prudence could not have guarded against; 3) newly discovered, relevant evidence, which the party making the petition for rehearing could not, with reasonable diligence, have discovered and produced prior to issuance of the opinion; 4) insufficiency of the evidence to justify the opinion, or the opinion is against law; or 5) an error in law. (Cal. Code of Regs., tit. 18, § 30604(a)-(e); see also *Appeal of Sjofinar Masri Do* (2018-OTA-002P); and *Appeal of Wilson Development, Inc.* (94-SBE-007) 1994 WL 580654.) Upon consideration of appellant's

petition for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new hearing.

In her petition for rehearing, appellant contends that, although our opinion states that California follows the Internal Revenue Service in granting innocent spouse relief, we did not treat her appeal for the 2003-2009 taxable years as an appeal of the Franchise Tax Board's (FTB) denial of her request for innocent spouse relief for those years. Instead, appellant contends that we incorrectly treated the request for innocent spouse relief as a claim for credit or refund. Appellant contends that she could not have requested the credit or refund within the statute of limitations because she was unaware of her former spouse's inaction until July of 2010. Appellant states that she is not requesting that FTB return the overpayments for 2005 and 2006. Rather, appellant requests that those funds be transferred as credits to the 2010 liability. Appellant maintains that there is no reason that she should owe additional amounts for the 2010 taxable year unless the overpayments from other taxable years do not cover the full 2010 liability.

It appears that appellant contends that a rehearing should be granted with regard to the 2005 and 2006 taxable years on the grounds that there is an insufficiency of the evidence to justify the opinion, or the opinion is against law. Subsection (d) of Regulation 30604 provides that a rehearing may be granted on two distinct grounds of "insufficiency of the evidence to justify the [opinion], or the [opinion] is against law." (*Bray v. Rosen* (1959) 167 Cal.App.2d 680, 683.) To find that there is an insufficiency of evidence to justify the opinion, we must find that, after weighing the evidence in the record, including reasonable inferences based on that evidence, that the panel clearly should have reached a different determination. (*Ibid*.) To find that the opinion is against (or contrary to) law, we must determine whether the opinion is "unsupported by any substantial evidence." (*Appeal of Graham and Smith* (2018-OTA-154P), citing *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 906 (*Sanchez-Corea*).) This requires a review of the decision to indulge "in all legitimate and reasonable inferences" to uphold the decision. (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.) The relevant question is not over the quality or nature of the reasoning behind the decision, but whether the decision can or cannot be valid according to the law. (*Appeal of NASSCO Holdings, Inc*. (2010-SBE-001) 2010 WL 5626976.) In our review, we consider the evidence in the light most favorable to the prevailing party (here, FTB). (*Sanchez-Corea, supra*, 38 Cal.3d at p. 907.)

Appellant's request for innocent spouse relief was properly treated as a claim for credit or refund for the 2003 through 2009 taxable years because the liabilities for those taxable years were fully satisfied. (R&TC, § 18533(e)(3)(A);[1] *Choate v. U.S.* (S.D. Cal. 2003) 218 F.R.D. 677, 679.) Once appellant or someone on appellant's behalf has paid the tax liability, the liability ceases to exist. Thus, there is no liability to divide pursuant to appellant's innocent spouse relief request. For a fully paid liability, the only relief available would be to grant appellant a credit or refund of the amounts already paid. However, a credit or refund is not allowed if the request for innocent spouse relief is barred by the statute of limitations provided by R&TC section 19306. (R&TC, § 18533(e)(3)(A).) The last day to file a claim for credit or 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. (R&TC, § 19306.) As appellant's August 19, 2013 request for innocent spouse relief was made more than four years after the due date of the returns for 2005 and 2006 and was more than one year after the last payment or credit on each taxable year account,[2] the claim for credit or refund is untimely. Even if innocent spouse relief were granted on the basis that FTB should follow the federal grant of innocent spouse relief for the 2005 and 2006 taxable years, appellant is precluded from using the 2005 and 2006 overpayments to satisfy the 2010 tax liability as the innocent spouse relief provisions forbid a credit or refund for taxable years outside the statute of limitations. (R&TC, § 18533(e)(3)(A).) Further, we have no authority to toll the statute of limitations on the basis that appellant was unaware of her former spouse's action until after the statute of limitations expired. (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856.) Because the statute of limitations expired for the 2005 and 2006 taxable years prior to appellant filing her request for innocent spouse relief, we need not address whether she is entitled to innocent spouse relief for 2005 and 2006.

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[1] On pages 7 and 8 of our opinion, we incorrectly referenced this citation as R&TC section 18533(e)(1)(B)(3), and R&TC section 18533(e)(1)(B)(3)(A), respectively. (Emphasis added.) R&TC section 18533(e)(3)(A) provides "Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Section 19306 and Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section."

[2] For 2005, the four-year statute of limitations expired on April 15, 2010, which was the date that was four years after the filing deadline for the 2005 return (April 15, 2006), and the one-year statute of limitations expired on June 1, 2010, which was one year after the date of the last credit applied to the 2005 taxable year account. For 2006, the four-year statute of limitations expired on April 15, 2011, which was the date that was four years after the filing deadline for the 2006 return (April 15, 2007), and the one-year statute of limitations expired on November 2, 2012, which was one year after the date of the last credit applied to the 2006 taxable year account (other than the refunded credit transferred from the 2009 taxable year account).

Accordingly, we find that our opinion is supported by substantial evidence. In addition, we find that appellant has not demonstrated that we clearly should have reached a different determination after weighing the evidence in the record.

Based on the above, appellant has not shown that there is insufficient evidence in the record to support the opinion or that the opinion is contrary to law. In addition, appellant has not shown that any of the other grounds for a rehearing are satisfied. Accordingly, a rehearing is not warranted.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

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