

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18032514  
N. KRAUTHEIM<sup>1</sup> )  
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**OPINION**

Representing the Parties:

For Appellant: N. Krautheim

For Respondent: Brad Coutinho, Tax Counsel

For Office of Tax Appeals: Ellen L. Swain, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 18533, N. Krautheim (appellant) appeals an action by respondent Franchise Tax Board (FTB) granting partial innocent spouse relief to appellant’s former spouse for taxable year 2011.<sup>2</sup>

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

**ISSUE**

Has appellant shown that FTB erred by granting appellant’s former spouse innocent spouse relief?

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<sup>1</sup> Appellant’s former spouse (D. Wyse) was given an opportunity to participate in this appeal but did not file an opening brief.

<sup>2</sup> Initially, appellant appeared to base this appeal on the fact that she neither resided in California nor worked there during 2011. In answer to an additional briefing request, appellant clarified that she was appealing FTB’s grant of partial innocent spouse relief to her former spouse.

### FACTUAL FINDINGS

1. Appellant and her then-husband, D. Wyse, (taxpayers) timely filed their 2011 resident California tax return (Forms 540) using a California address and reporting married filing jointly status. Taxpayers married on August 15, 1981, separated on April 2, 2012, and divorced on October 29, 2012.
2. Appellant operated a business called Oh! Chocolate LLC, with a Mercer Island, Washington address and reported wages and Schedule E non-passive losses.<sup>3</sup> Taxpayers also reported that appellant's former spouse operated a sole proprietorship which reported a net profit.
3. The Internal Revenue Service (IRS) audited taxpayers' return and made adjustments that increased adjusted gross income and taxable income. The IRS assessed an accuracy-related penalty.
4. Based on the federal adjustments, FTB made corresponding adjustments to the taxpayers' California 2011 tax account to the extent applicable under California law.
5. FTB issued a Notice of Proposed Assessment on January 30, 2017, proposing to assess additional tax and an accuracy-related penalty, plus interest.
6. Appellant's former spouse filed an Innocent Joint Filer Relief Request asking FTB to grant partial relief that he obtained from the IRS.
7. FTB issued a Notice of Action (NOA) granting partial innocent spouse relief to appellant's former spouse.
8. Appellant was sent a copy of the NOA, which was timely appealed.

### DISCUSSION

Each spouse is jointly and severally liable for the entire tax due when a couple files a joint return. (R&TC, § 19006(b); Int.Rev. Code (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.) Therefore, when appellant signed the California tax returns for the year at issue, she became jointly and severally liable for the self-assessed, unpaid liabilities.

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<sup>3</sup>The taxpayers' Judgment of Dissolution reflects that appellant is the sole owner and operator of this business.

However, federal and California law each provide that an individual who files a joint return may be relieved of all or a portion of such joint and several liability if the individual qualifies as an “innocent spouse.” (R&TC, § 18533; IRC, § 6015.) R&TC section 18533(i), provides that when the IRS grants innocent spouse relief to an individual who filed a joint return under IRC section 6015, the individual shall be eligible for relief for California tax purposes if three conditions are satisfied (called “conforming relief”). To be eligible for conforming relief, all three conditions must be satisfied; namely, that 1) the individual requested relief, 2) the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted federal relief, and 3) the requesting individual must provide FTB with the federal determination granting relief. (R&TC, § 18533(i).)

In the instant appeal, the three conditions for relief set forth in R&TC section 18533(i) are satisfied. First, D. Wyse requested innocent spouse relief by filing an Innocent Joint Filer Relief Request for taxable year 2011. Second, the facts and circumstances that applied to the federal tax liability are identical to the facts and circumstances from which the California tax liability arose, as both result from the same federal adjustments made to the 2011 tax return. Finally, FTB received a copy of the IRS final federal determination granting D. Wyse partial innocent spouse relief.

However, the other individual who filed the joint return may dispute the grant of conforming relief by filing a statement within 30 days of FTB’s decision on an innocent spouse relief. (R&TC, § 18533(i)(2).) The objecting individual may show that relief should not be granted based on showing the following information: 1) the facts and circumstances that apply to the understatement and liabilities for which the relief was requested are not the same facts and circumstances that applied to the understatement and liabilities for which the individual was granted federal relief; 2) there has not been a federal determination granting relief, or the determination was modified, altered, withdrawn, canceled, or rescinded; or 3) the objecting individual did not have the opportunity to participate. (*Ibid.*)

Here, appellant did not dispute FTB’s grant of partial innocent spouse relief to her former spouse within 30 days of its notice dated July 13, 2017. When appellant filed her appeal on February 14, 2018, she did not provide a statement alleging any of the three grounds listed in R&TC section 18533(i)(2). Nor has appellant done so in her documents submitted on appeal.


Consequently, appellant has not met her burden of showing that FTB erred in conforming to the federal grant to D. Wyse of partial innocent spouse relief.

HOLDING

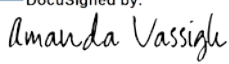
Appellant has failed to establish that FTB should not have granted partial innocent spouse relief to her former spouse for taxable year 2011.

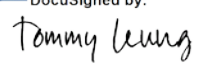
DISPOSITION

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

DocuSigned by:  
  
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Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
7B17E998B7C14AC  
Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
0C90542BE68D4E7  
Tommy Leung  
Administrative Law Judge

Date Issued: 2/27/2020