

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18042827  
C. ATHERLEY )  
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**OPINION**

Representing the Parties:

For Appellant: C. Atherley

For Respondent: Meghan McEvelly, Tax Counsel III

For Office of Tax Appeals: Matthew D. Miller, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, C. Atherley (appellant or appealing spouse) appeals an action by the Franchise Tax Board (FTB) granting innocent spouse relief to appellant’s former spouse, A. Atherley (Ms. Atherley or nonappealing spouse), for the 2012 taxable year.

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

**ISSUE**

Whether appellant demonstrated that Ms. Atherley does not qualify for equitable innocent spouse relief for the 2012 taxable year.

**FACTUAL FINDINGS**

1. Appellant and Ms. Atherley (collectively, the couple) filed a joint 2012 California Resident Income Tax Return (Form 540) reporting total tax due of \$3,469 but remitting only \$150 with the return.
2. FTB processed the return, and since timely payment was not received, FTB imposed a late payment penalty of \$415.59.

3. The Internal Revenue Service (IRS) subsequently audited the couple's 2012 federal return and made adjustments due to unreported pension/annuities income attributable to appellant. The IRS provided FTB with a federal report summarizing the changes it made to the return, and to the extent applicable under California law, FTB made corresponding adjustments to the couple's 2012 California taxable income.
4. Based on the IRS adjustments, FTB issued a Notice of Proposed Assessment (NPA) proposing the assessment of \$1,085 of additional tax, plus applicable interest.
5. As no timely protest was filed, the NPA became final.
6. Subsequently, Ms. Atherley filed a Request for Innocent Joint Filer Relief (FTB Form 705), requesting innocent spouse relief for the 2012 taxable year. Ms. Atherley submitted documents supporting her request for innocent spouse relief, such as a statement of facts, copies of correspondence between appellant and Ms. Atherley's attorney, copies of Ms. Atherley's pay stubs, evidence of Ms. Atherley's monthly expenses, and a copy of the couple's divorce decree, dated February 24, 2017.
7. FTB sent appellant a Non-Requesting Taxpayer Notice, informing him of Ms. Atherley's request for innocent spouse relief and providing him with an opportunity to submit information or file an objection to Ms. Atherley's request for relief. Appellant did not respond.
8. FTB issued Ms. Atherley a Notice of Action – Full Approval, informing her that it granted her equitable innocent spouse relief under R&TC section 18533(f). FTB determined that Ms. Atherley satisfied all seven of the IRS Revenue Procedure 2013-34 (Rev. Proc.) section 4.01 threshold requirements, but did not qualify for streamlined equitable relief under Rev. Proc. section 4.02. However, under the Rev. Proc. section 4.03 analysis, three factors weighed in favor of relief, three factors were neutral, and one factor weighed against relief. FTB separately issued a Notice of Action – Non-Requesting Taxpayer informing appellant that it granted Ms. Atherley's request for relief.

### DISCUSSION

When a couple files a joint return, each person is jointly and severally liable for the income on the return. (Int.Rev. Code (IRC), § 6013(d); R&TC, § 19006.) The entire amount of tax due may be collected from either spouse or may be collected from both spouses (although the total tax liability may only be collected once). (R&TC, § 19006.)

Both federal and California law 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, 19006; IRC, § 6015.)<sup>1</sup> Generally, an individual claiming relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Stevens v. Commissioner* (1988) 55 T.C.M. (CCH) 135; *Appeal of Dillett* (85-SBE-012) 1985 WL 15791.) Because the innocent spouse provisions are remedial in nature, they are construed and applied liberally in favor of those individuals claiming their benefits. (*Friedman v. Commissioner* (2d Cir. 1995) 53 F.3d 523, 528-529.)

There are three types of innocent spouse relief under R&TC section 18533: traditional relief under subdivision (b), separate allocation relief under subdivision (c), and equitable relief under subdivision (f). The relief that is relevant to this appeal is found in R&TC section 18533, subdivision (f), which provides that FTB may relieve an individual from a tax liability arising from a joint return filing if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for the unpaid tax or understatement, and the individual does not otherwise qualify for relief under subdivisions (b) and (c). Traditional relief and separate allocation relief are only available for an understatement of tax (e.g., in this appeal, the NPA imposition resulting from the IRS adjustment(s)), while equitable relief is available for both an underpayment (arising from the couple's failure to pay the balance due on their 2012 tax return) or understatement of tax (the aforementioned NPA deficiency). (R&TC, § 18533(b)(1)(B), (c)(1) and (f).)

FTB's determinations are presumed correct, and appellant bears the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) In the absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, they must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.) Thus, the burden is on appellant to explain why Ms. Atherley is not entitled to innocent spouse relief and provide documentation that verifies his explanation. Unsupported assertions are not sufficient to satisfy appellant's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

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<sup>1</sup> When California law is substantially identical to federal law (as in the case of the innocent spouse relief statutes), federal law interpreting the federal statute is highly persuasive in interpreting that California law. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) Thus, federal regulations and authorities are used extensively in California innocent spouse cases. (See generally R&TC, § 18533(g)(2).)

The Rev. Proc. provides guidance in determining whether to grant equitable relief under R&TC section 18533(f). Rev. Proc. section 4.01 sets out seven threshold conditions that a requesting spouse must meet to be eligible for equitable relief.<sup>2</sup> Once those conditions are met, we then need to consider whether the requesting spouse is entitled to a streamlined determination of equitable innocent spouse relief under Rev. Proc. section 4.02. If the requesting spouse meets the requirements of Rev. Proc. section 4.01 but does not qualify for relief under Rev. Proc. section 4.02, we then consider the Rev. Proc. section 4.03 factors.

Despite being given an opportunity to provide evidence showing error in FTB's action and why Ms. Atherley should be denied equitable innocent spouse relief, appellant failed to do so. For example, appellant did not address any of the Rev. Proc. factors considered by FTB in granting equitable innocent spouse relief to Ms. Atherley. Instead, appellant argued that he is not liable for any of the tax at issue because he became a resident of Texas in July 2012. He also asserted that he was married to Ms. Atherley in 2012, and, therefore, she is jointly liable for any outstanding liability. In support of his contentions, appellant submits a copy of his Texas driver license with an issue date of April 10, 2015. Appellant also appears to dispute the underlying liability.<sup>3</sup>

Accordingly, appellant did not satisfy his burden of proof, and we therefore conclude that Ms. Atherley met all the requirements for equitable innocent spouse relief under R&TC section 18533(f) for both the underpayment and understatement portions of the outstanding 2012 tax liability. Thus, FTB's action must be sustained.

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<sup>2</sup>The Rev. Proc. 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. C.I.R.* (2013) 106 T.C.M. (CCH) 707; *Stanwyck v. Commissioner* (2012) 103 T.C.M. (CCH) 1955; *Franc v. Commissioner* (2010) 99 T.C.M. (CCH) 1341; *O'Meara v Commissioner* (2009) 97 T.C.M. (CCH) 1360.)

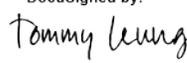
<sup>3</sup>Appellant and Ms. Atherley did not pay the balance due on their 2012 joint California Resident return and the final NPA deficiency; therefore, no refund can be claimed. (R&TC, § 19301.) Thus, both the self-assessed liability and the deficiency assessment are not appealable at this time.

HOLDING

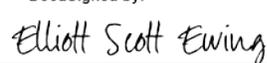
Ms. Atherley qualifies for equitable innocent spouse relief under section 18533(f) for the 2012 taxable year.

DISPOSITION

FTB’s action in granting innocent spouse relief to Ms. Atherley for the 2012 taxable year is sustained.

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Tommy Leung  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

DocuSigned by:  
  
0CC6C6ACC6A44D  
Teresa A. Stanley  
Administrative Law Judge

Date Issued: 3/2/2020