

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18032503
)
K. TSUKIYAMA (NONREQUESTING)
SPOUSE) AND)
S. MONOD DE FROIDEVILLE)
(REQUESTING SPOUSE))

OPINION

Representing the Parties:

For Nonrequesting spouse: K. Tsukiyama
For Requesting spouse: S. Monod De Froideville
For Respondent: Brian Werking, Tax Counsel

For Office of Tax Appeals: Linda Frenklak, Tax Counsel V

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, K. Tsukiyama (KT) appeals an action by respondent Franchise Tax Board (FTB) granting full innocent spouse relief to S. Monod De Froideville (SF) for the 2010 taxable year.

Neither KT nor SF requested an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Did FTB properly grant conforming innocent spouse relief to SF pursuant to R&TC section 18533(i)?

FACTUAL FINDINGS

1. On April 11, 2011, KT and SF (the couple) filed a joint California Resident Income Tax Return (Form 540) for the 2010 year.

2. Subsequently, FTB obtained information from the Internal Revenue Service (IRS) that indicated that the IRS adjusted the couple's joint 2010 federal return, assessed additional tax and imposed an accuracy-related penalty.
3. FTB issued the couple a Notice of Proposed Assessment (NPA) which applied the federal adjustments to the couple's joint 2010 California return and proposed additional tax and an accuracy-related penalty, plus interest. The couple did not protest the NPA and the proposed assessment became final.
4. FTB commenced collection action which did not satisfy the balance of the liability.
5. On June 21, 2017, SF filed with FTB a Form 705, Innocent Joint Filer Relief Request, requesting innocent spouse relief for the 2010, 2013, and 2014 taxable years.¹
6. With the Form 705, SF submitted a copy of the couple's divorce judgement showing a final divorce date of December 18, 2015.
7. The IRS, on April 18, 2017, granted SF full relief from the couple's 2010 federal tax liability pursuant to Internal Revenue Code (IRC) section 6015(c).²
8. FTB sent KT a letter dated December 21, 2017, stating that SF had requested innocent spouse relief from the 2010 California tax liability, and that the IRS had granted full federal relief for that year. FTB asked KT to provide it with any information or documents showing why SF should not receive California innocent spouse relief. FTB's records reflect that KT did not send any evidence to support his objection to SF's relief.
9. On appeal, KT provided a copy of the couple's marital settlement agreement that states "[a]ny and all outstanding tax liability will be split jointly for the years in which taxes were filed together."
10. FTB issued separate Notices of Action to SF and KT informing them that it granted SF conforming innocent spouse relief for the 2010 taxable year pursuant to R&TC section 18533(i).
11. KT filed this timely appeal, and SF joined the appeal.

¹ Our record does not show FTB's disposition of SF's requests for relief for 2013 and 2014. The notice to KT granting SF's request was issued only for taxable year 2010, and that is the only year at issue in this appeal.

² IRC section 6015(c) provides that a requesting spouse may limit his or her liability for a deficiency with respect to a joint return to the amount that would have been allocable to the requesting spouse had separate returns been filed, if the requesting spouse meets certain requirements.

12. On appeal, SF produced a printout of an email dated August 23, 2016, she received from KT, stating that her attempt to “obtain a release of the tax debt that was the result of the 2010-2011 audit” would not be “accepted by the IRS” because it would be a breach of the couple’s order (marital settlement agreement) in which they agreed that each of them was responsible for 50 percent of the outstanding tax debt.
13. KT’s and SF’s separate 2010 federal account transcripts dated August 13, 2018, show that on June 20, 2016, the IRS received an innocent spouse claim and on May 22, 2017, the IRS wrote off SF’s balance due, but not KT’s balance due.

DISCUSSION

Under both federal and California law, when a joint return is filed by a married couple, each spouse is jointly and severally liable for the tax due. (IRC, § 6013(d)(3); R&TC, § 19006(b).) However, an individual who files a joint return may be relieved of all or a portion of such liability if the individual qualifies as an innocent spouse. (IRC, § 6015; R&TC, §§ 18533, 19006(c).) There are several types of innocent spouse relief. As relevant to this appeal, R&TC section 18533(i) provides that an individual who has filed a joint California return and has been granted federal innocent spouse relief under IRC section 6015 shall be eligible for relief if three conditions are satisfied:

- The individual requests relief under R&TC section 18533;
- 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 relief under IRC section 6015; and
- The individual requesting relief under R&TC section 18533(i) furnishes FTB with a copy of the federal determination that granted that individual relief under IRC section 6015.

R&TC section 18533(i) does not apply if the other individual who filed the joint return for which relief was requested submits information to FTB that indicates relief should not be granted. R&TC section 18533(i)(2) provides that information which indicates that relief should not be granted is limited to the following:

- Information indicating that the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under IRC section 6015;
- Information indicating that there has not been a federal determination granting relief under IRC section 6015, or that the federal determination granting relief has been modified, altered, withdrawn, canceled, or rescinded; and
- Information indicating that the objecting individual did not have an opportunity to participate, within the meaning of IRC section 6015 and the regulations thereunder, in the federal proceeding that resulted in relief under IRC section 6015.

Here, KT argues that conforming relief should not be granted to SF because he did not have an opportunity to participate in the IRS's determination to grant SF federal relief under IRC section 6015(c). We note that Treasury Regulation section 1.6015-6(a)(1) provides that the IRS is required to send a notice to the nonrequesting spouse's last known address informing them of the requesting spouse's request for innocent spouse relief and providing him or her with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted federal relief. SF produced a printout of an email from KT that indicates that, as of August 23, 2016, KT was aware that SF had requested federal innocent spouse relief from the couple's "tax debt that was a result of the 2010-2011 audit." KT sent SF this email approximately eight months before the IRS issued its final determination letter on April 18, 2017, granting SF full relief from the couple's 2010 federal tax liability pursuant to IRC section 6015(c). KT has failed to produce any evidence, such as correspondence, indicating that he objected to the IRS before or after it granted SF federal relief for the 2010 taxable year. The appeal record supports our finding that KT was provided an opportunity to participate in the IRS's determination to grant SF federal relief.

Moreover, KT has not shown, or even asserted, that the facts and circumstances for the state and federal understatements and liabilities differ. As discussed above, FTB issued the 2010 NPA based on federal adjustments to the couple's 2010 federal return. KT does not dispute that the IRS granted SF federal innocent spouse relief for the 2010 taxable year. Although he asserts that he is attempting to persuade the IRS to reverse its determination, KT did not provide

evidence that he attempted to request that the IRS modify its decision. Moreover, KT does not contend, and the 2010 federal account transcripts dated August 13, 2018, which is approximately five months after KT filed this appeal, do not show that the IRS modified, altered, withdrew, canceled, or rescinded its determination to grant SF federal relief. OTA provided KT an opportunity to file a reply brief after FTB and SF filed their briefs, but he declined to do so. KT has not otherwise produced any information or documents indicating that the IRS was reconsidering its determination. Accordingly, KT has not produced credible evidence establishing that any of the statutory exceptions under R&TC section 18533(i) apply. Nor are there any facts in the record indicating that one of the statutory exceptions to the granting of conforming relief applies.

To the extent that KT argues that SF is not entitled to federal innocent spouse relief under IRC section 6015, because she is responsible for paying 50 percent of the couple's 2010 tax liability pursuant to the couple's marital settlement agreement, this argument does not address the limited circumstances under which FTB may deny relief pursuant to R&TC section 18533(i).³ The IRS provided KT with the opportunity to contest SF's claim for federal innocent spouse relief, and FTB was required to follow the IRS's determination in this matter.


³ The marital settlement agreement would not have altered the IRS's determination because the IRS granted SF relief based on separate allocation under IRC section 6015(c). To the extent KT argues that SF violated that agreement, it is not our role to adjudicate the marital settlement agreement. The proper place for consideration of any issues pertaining to the marital settlement agreement is in a state court with jurisdiction over the matter.

HOLDING


FTB properly granted conforming innocent spouse relief to SF pursuant to R&TC section 18533(i).


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

0CCBC8ACCC6A44D
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

1A8C8E38740B4D5
Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

7B17E958B7C14AC
Amanda Vassigh
Administrative Law Judge

Date issued: 8/19/2020