

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18063269
M. BROWN¹)
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OPINION

Representing the Parties:

For Appellant: Tax Appeals Assistance Program (TAAP)²

For Respondent: Mira V. Coutinho, Tax Counsel

For Office of Tax Appeals: Oliver Pfof, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, M. Brown (appellant) appeals an action by respondent Franchise Tax Board (FTB) granting full innocent spouse relief to Ms. Brown for the 2011 taxable year.

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

ISSUE

Has appellant demonstrated that conforming innocent spouse relief should not be granted to Ms. Brown pursuant to R&TC section 18533(i)?

FACTUAL FINDINGS

1. Appellant and Ms. Brown (the couple) timely filed a joint 2011 California Resident Income Tax Return (Form 540). FTB accepted the return as filed and issued the couple a refund.

¹ A. Brown (Ms. Brown), the nonappealing spouse in this matter, did not file an opening brief and is deemed not to have joined the appeal.

² Appellant filed the initial appeal letter, and Kieran Doherty of TAAP filed appellant’s reply brief.

2. The Internal Revenue Service (IRS) subsequently audited the couple's 2011 joint federal return, resulting in numerous federal adjustments. Based on the federal adjustments, the IRS assessed additional tax and imposed an accuracy-related penalty.
3. The couple did not inform FTB of the federal adjustments. On August 10, 2015, the IRS informed FTB of the federal adjustments. FTB made corresponding adjustments to the couple's 2011 California tax account. On October 26, 2016, FTB issued the couple a Notice of Proposed Assessment (NPA) that increased the reported taxable income based on the federal adjustments and proposed additional tax plus interest.
4. The couple did not protest the 2011 NPA, and the proposed tax became a final liability.
5. FTB received an Innocent Joint Filer Relief Request (FTB Form 705) from Ms. Brown dated February 22, 2017, requesting innocent spouse relief for the 2011 taxable year, and indicating that the couple divorced in 2016. After FTB requested additional information, Ms. Brown provided a copy of a final determination from the IRS, stating that the IRS granted her relief under Internal Revenue Code (IRC) section 6015(b) for the entire understatement for the 2011 taxable year.³
6. FTB mailed two Non-Requesting Taxpayer Notices dated February 22 and 26, 2018, to appellant, informing him that Ms. Brown had requested innocent spouse relief for the 2011. The February 26, 2018 notice informed appellant that the IRS had granted Ms. Brown innocent spouse relief for the 2011 taxable year.
7. Appellant did not submit any evidence to support his objection to FTB granting innocent spouse relief to Ms. Brown.
8. FTB issued separate Notices of Action dated April 25, 2018, to appellant and Ms. Brown, informing them that it granted Ms. Brown conforming innocent spouse relief pursuant to R&TC section 18533(i), because the IRS granted Ms. Brown federal relief for the 2011 taxable year on August 12, 2014.
9. Appellant timely filed this appeal.
10. On appeal, FTB produced an IRS examining officer's activity record showing that, prior to the IRS granting Ms. Brown innocent spouse relief, 1) appellant had an opportunity to

³ IRC section 6015(b) provides that a requesting spouse may be granted relief from a federal tax deficiency if the requesting spouse signed a joint return reporting an understatement of tax, the requestor did not know, or have reason to know, the return reported an understatement, and it would be inequitable under the circumstances to hold the requesting spouse liable for the deficiency.

object to innocent spouse relief, and 2) appellant did respond to the IRS's invitation to provide input.

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).) 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 the 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 which granted that individual relief under IRC section 6015.

Ms. Brown requested relief; her request is for relief from additions to tax based on the same adjustments made by both the IRS and by FTB; and the IRS granted her full innocent spouse relief pursuant to IRC section 6015(b). Unless appellant can show an exception exists, FTB is required to grant relief that conforms to the federal relief that was granted.

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

- 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 other individual did not have an opportunity to participate within the meaning of IRC section 6015 and the regulations thereunder in the federal administrative or judicial proceeding which resulted in relief under IRC section 6015.

Appellant argues that he did not have the opportunity to participate in the IRS's determination to grant Ms. Brown federal relief under IRC section 6015(b). Appellant contends he was going through a difficult divorce and was kicked out of his house during the time when the IRS was attempting to contact him. In support of his argument, appellant provided photocopies of his California driver's license with an issue date of September 4, 2014, an envelope addressed to appellant alleged to have been mailed on October 8, 2014, and a letter relating to a child support obligation dated April 25, 2016, each indicating appellant was receiving important mail at a post office box and no longer at his former residence.

However, the IRS examining officer's activity record indicates appellant and the IRS specifically discussed Ms. Brown's request for federal innocent spouse relief. According to the activity record, the IRS received Ms. Brown's request for innocent spouse relief, an IRS Form 8857, on January 17, 2014. The IRS mailed appellant an IRS Form 12508, a Questionnaire for Non-Requesting Spouse (Questionnaire), to a "corrected address" and on March 26, 2014, the IRS received from appellant a completed Questionnaire. According to the IRS examining officer's notes, appellant mentioned his surprise about Ms. Brown's request for innocent spouse relief and stated that "[Ms. Brown] was only filing [the request because she was] angry with the divorce." Based on the activity record, it is clear appellant knew Ms. Brown had requested federal innocent spouse relief and that he received mail from the IRS at a new address regarding Ms. Brown's request. Furthermore, he participated in the IRS proceeding by completing and submitting the Questionnaire. Consequently, we find appellant participated in the federal proceeding granting innocent spouse relief to Ms. Brown.

Second, appellant argues that the IRS should not have granted Ms. Brown innocent spouse relief pursuant to IRC section 6015(b), because Ms. Brown knew of the understatement reported on their joint return and she accepted the financial benefit of the understatement. Nevertheless, such contentions do not specifically address the limited circumstances under which FTB may deny conforming relief pursuant to R&TC section 18533(i). As discussed above, appellant failed to show he did not have the opportunity to participate in the federal innocent

spouse determination. The IRS provided appellant with the opportunity to contest Ms. Brown’s request for federal relief, and FTB is required to follow the IRS’s determination in this appeal.

Lastly, appellant does not contend and the evidence does not show that the facts and circumstances underlying the federal and state liabilities are different, or that the federal innocent spouse determination was not final or had been modified, altered, withdrawn, canceled, or rescinded. The 2011 California tax liability is based on the federal adjustments to the couple’s 2011 federal return, as reflected on the 2011 NPA, and the IRS issued Ms. Brown a final determination letter that confirms that she was granted full innocent spouse relief under IRC section 6015(b) for the 2011 taxable year.

HOLDING

Appellant has not shown that an exception applies or that FTB improperly granted conforming innocent spouse relief to Ms. Brown pursuant to R&TC section 18533(i).

DISPOSITION

FTB’s action is sustained.

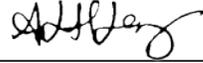
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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

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Andrea L.H. Long
Administrative Law Judge

Date Issued: 12/9/2020