OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. KITE (REQUESTING SPOUSE) AND N. KITE (NON-REQUESTING SPOUSE)**	) OTA Case No. 18011701)

OPINION

Representing the Parties:

For S. Kite: Christopher S. Egan

For N. Kite: N. Kite

For Respondent: Maria Brosterhous, Tax Counsel IV

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533, 19006, and 19045, S. Kite (requesting spouse or Ms. Kite) appeals an action by respondent Franchise Tax Board in denying innocent spouse relief for the 1996 tax year. On appeal, respondent reverses its position and now concedes that Ms. Kite is entitled to innocent spouse relief for the 1996 tax year. N. Kite (Mr. Kite) joins the appeal in opposition to respondent's grant of innocent spouse relief to Ms. Kite from joint tax liability for the 1996 tax year.

Mr. and Ms. Kite waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether Ms. Kite is entitled to innocent spouse relief pursuant to R&TC section 18533(b), (c), or (f).

FACTUAL FINDINGS

1. Mr. and Ms. Kite (collectively referred to as the couple) married in 1985, divorced on March 7, 2003, remarried in 2009, and divorced again on February 12, 2010.
2. On October 15, 1997, the couple filed a joint California Non-Resident Return (Form 540NR) for the 1996 tax year. The couple reported taxable income of $47,208 and tax of $1,534. After applying exemption credits of $402, the couple reported tax due of $1,132 and remitted payment of the same amount with the return.
3. The IRS informed respondent that it had adjusted the couple's federal return. Where the state and federal tax laws were the same, respondent also adjusted the couple's joint return and issued a Notice of Proposed Assessment (NPA) on September 29, 2008. The NPA proposed an additional tax of $14,742.00, an accuracy-related penalty of $5,896.80, and an amnesty penalty of $7,996.83.
4. After the couple failed to protest the NPA, the NPA became a final assessment. Respondent pursued involuntary collection actions to collect the 1996 tax liability. In a Balance Due Notice issued to Ms. Kite dated January 9, 2015, respondent billed Ms. Kite for the couple's 1996 balance due of $66,115.32, stating that it previously billed her for the balance, which remained unpaid. Respondent issued Orders to Withhold Personal Income Tax (OTWs) dated July 28, 2015, and December 2, 2015, to Bank of America and PNC Bank, respectively. Respondent issued a Modification of a Withholding Order – Delay to PNC Bank dated December 18, 2015, which provides that the OTW was delayed until January 29, 2016. Respondent also issued a Withdrawal of a Withholding Order to PNC Bank dated January 6, 2016, which provides that the OTW was withdrawn.
5. On January 11, 2016, Ms. Kite filed a Request for Innocent Joint Filer Relief (FTB Form 705), which she signed under penalties of perjury on December 23, 2015. On FTB Form 705, Ms. Kite requested relief from the 1996 tax liability and indicated that she and Mr. Kite divorced on "2003/4." Attached to FTB Form 705 are copies of a letter from Ms. Kite's representative, Ms. Kite's affidavit, and the couple's divorce decree. The couple's divorce decree shows that the couple divorced on March 7, 2003. In her affidavit, which is notarized but not signed under penalties of perjury, Ms. Kite indicated that she had been married to Mr. Kite since 1985 and was a stay-at-home mom who generated no income. She explained that they divorced in 2003 in North Carolina, they remarried in

2009, although they lived separate and apart, and then divorced again in 2010. She stated that Mr. Kite has a law degree, was a tax partner at Arthur Andersen, then a Director of Taxes at Arthur Young, and a tax partner at Coopers and Lybrand thereafter. She indicated that she relied entirely on Mr. Kite to properly complete and file the couple's tax returns. Lastly, she explained that when the NPA was issued in 2008, she was not living with Mr. Kite and was unaware of the audit or any of the financial information related to it.

6. In a letter dated April 18, 2016, respondent acknowledged receiving Ms. Kite's request for innocent spouse relief and requested that Ms. Kite provide additional documentation in support of her request.

7. In a letter to respondent dated May 18, 2016, Ms. Kite's representative asserted that Mr. Kite insisted on handling their divorce, which was "an obvious conflict of interest." The representative also asserted that, because she was not involved in the federal examination, Ms. Kite does not have any federal documents to provide respondent or a copy of her federal or state tax return for 1996. The representative explained that, because she earned no income during 1996, Ms. Kite does not have any Forms W-2 or 1099 to provide, but that she is requesting a Social Security earnings statement to demonstrate this. On appeal, Ms. Kite has provided a copy of her Social Security earnings statement, showing that no wage income was reported to her between 1989 and 2013.

8. In a Non-Requesting Taxpayer Notice dated August 29, 2016, respondent informed Mr. Kite of Ms. Kite's request for innocent spouse relief and requested relevant information and supporting documents. Mr. Kite responded to the notice, asserting that Ms. Kite "knew about [his] stock options and the position [he] took." Mr. Kite contends that Ms. Kite was aware of the possibility of a California assessment after the couple lost their case in federal tax court. He also stated that the couple had a joint checking account during their marriage and that Ms. Kite has an accounting degree.

9. In separate Notices of Action-Denial dated November 11, 2016, respondent informed the couple that it denied Ms. Kite's request for innocent spouse relief under R&TC section 18533(b), (c), and (f), and listed a 1996 balance due of $69,850.56.

10. This timely appeal followed. On appeal, respondent provided a second affidavit from Ms. Kite, in which she states, "At various times during our marriage and post marital relationship, I have been fearful of [N. Kite]." She also stated, "Throughout our marriage,

including our post marital relationship, [N. Kite] has manipulated circumstances to his benefit." The affidavit is notarized but not signed under penalties of perjury. Based upon this affidavit, respondent has now changed its position, concluding that Ms. Kite is entitled to innocent spouse relief under either subdivision (b), (c), or (f) of R&TC section 18533.

DISCUSSION

General Legal Background Regarding Innocent Spouse Relief

When a joint return is filed by a husband and wife, each spouse is jointly and severally liable for the entire tax due for that tax year. (IRC, § 6013(d)(3); R&TC, § 19006(b).) However, 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. (IRC, § 6015; R&TC, § 18533.) For understatement cases, R&TC section 18533, subdivision (b), provides for traditional innocent spouse relief; subdivision (c) provides for separate allocation relief; and, if a requesting spouse is not eligible for relief under either subdivision (b) or (c), a requesting spouse may be eligible for equitable relief under subdivision (f). (Cf. IRC, § 6015(b), (c), & (f).) Determinations under R&TC section 18533 are made without regard to community property laws. (R&TC, § 18533(a)(2).)

When a California statute is substantially identical to a federal statute (as is generally the case in innocent spouse statutes), federal law interpreting the federal statute may be considered highly persuasive with regard to the California statute. (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) Thus, federal authority is applied extensively in California innocent spouse cases. (See R&TC, § 18533(g)(2).) Treasury Regulations are applied in California innocent spouse matters to the extent that such regulations do not conflict with R&TC section 18533 or respondent's regulations. (R&TC, § 18533(g)(2).)

Generally, an individual claiming innocent spouse relief has the burden of establishing each statutory requirement. (*Stevens v. Commissioner*, T.C. Memo. 1988-63; *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 the individual claiming their benefits. (*Friedman v. Commissioner* (2d Cir. 1995) 53 F.3d 523, 528-529.) Respondent's determinations are generally presumed to be correct, an appellant generally bears the burden of proving error, and unsupported assertions are insufficient to satisfy an appellant's burden of proof. (*Todd v. McColgan* (1949) 89

Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

R&TC section 18533(b), (c), and (f) are relevant to the tax year at issue. Subdivisions (b) and (c) require the existence of a tax deficiency (rather than an underpayment of reported tax) and the tax year at issue in this appeal involves a deficiency. Subdivision (f) applies to both a tax deficiency and an underpayment of reported tax. Office of Tax Appeals has the jurisdiction to review respondent's denial of an individual's request for relief under R&TC section 18533(b), (c), and (f). (See R&TC, § 18533(e).)

Traditional Relief

R&TC section 18533(b) provides that an individual may, with certain qualifications, elect to claim traditional innocent spouse relief with respect to an understatement of tax. Such relief may be allowed if the individual can show he or she satisfies all of the following five requirements: (1) a joint return has been filed; (2) there is an understatement of tax on the joint return attributable to erroneous items of the non-requesting spouse filing the joint return; (3) the individual establishes that he or she did not know of and had no reason to know of the understatement of tax when he or she signed the joint return; (4) taking into account all facts and circumstances, it is inequitable to hold the individual liable for the deficiency in tax attributable to that understatement;[1] and (5) the individual files a timely request for relief no later than two years after the date respondent has begun collection action with respect to the individual. The requirements of R&TC section 18533(b) are stated in the conjunctive; a failure to meet any one of them disqualifies an individual from relief. (*Alt v. Commissioner*, *supra*, 119 T.C. 306, 313; *Tompkins v. Commissioner*, T.C. Memo. 2013-24.) In determining whether an individual is entitled to traditional relief under R&TC section 18533(b), the proper standard and scope of review is de novo. (See, e.g., *Porter v. Commissioner* (2009) 132 T.C. 203, 210; *Thomassen v. Commissioner*, T.C. Memo. 2011-88.)

Ms. Kite satisfies the joint return and the timely election requirements set forth in R&TC section 18533(b). The couple filed their 1996 joint return on October 15, 1997. Ms. Kite filed her FTB Form 705 dated December 23, 2015, which is less than two years from July 28, 2015, the date

[1] Essentially, the same language appears in the equities test of R&TC section 18533(b)(1)(D) and R&TC section 18533(f), and the equitable factors considered are the same. Thus, the same conclusion as to whether it is inequitable to hold an individual claiming relief liable would conceivably flow from either provision. (See, e.g., *Alt v. Commissioner* (2002) 119 T.C. 306, 316.)

of the OTW that respondent sent to Bank of America to withhold funds from Ms. Kite's account to satisfy the couple's 1996 tax liability.

She also satisfies the income attribution requirement. As admitted by Mr. Kite, the understatement of tax was related to the exercise of his stock options. Additionally, the Social Security earnings statement supports Ms. Kite's contention that she did not earn any wages during the tax year at issue.

Regarding the third requirement, a requesting spouse knows or has reason to know of an understatement if, at the time he or she signed the joint return, he or she had actual knowledge of the understatement, or if a reasonable person in similar circumstances could be expected to know that the joint return contained an understatement. (Treas. Reg. § 1.6015-2(c).) A spouse has reason to know if a reasonably prudent taxpayer could have been expected to know that the return contained an understatement. (*Busch v. Commissioner*, T.C. Memo. 2017-169.)

A requesting spouse does not meet his or her burden of proof under R&TC section 18533(b) if at the time he or she signed the joint return, he or she had a duty to inquire or investigate further. (*Tompkins v. Commissioner*, *supra*, T.C. Memo. 2013-24, citing *Stevens v. Commissioner* (11th Cir. 1989) 872 F.2d 1499, 1505, affg. T.C. Memo. 1988-63; *Shea v. Commissioner* (6th Cir. 1986) 780 F.2d 561, 566, affg. in part, revg. in part T.C. Memo. 1984-310.) A requesting spouse has a duty to inquire when he or she knows sufficient facts to put him or her on notice that an understatement exists. (*Tompkins v. Commissioner*, *supra*.) In determining whether a requesting spouse knew or had reason to know of an understatement, all of the facts and circumstances are considered, including, but not limited to, the nature of the erroneous item, the amount of the erroneous item relative to other items, the couple's financial situation, the requesting spouse's educational background and business experience, the
extent of the requesting spouse's participation in the activity that resulted in the erroneous item, whether the requesting spouse failed to inquire, at or before the time the joint return was signed, about items on the joint return or omitted from the joint return that a reasonable person would question, and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' joint returns. (Treas. Reg. § 1.6015-2(c); see also *Tompkins v. Commissioner*, *supra*, T.C. Memo. 2013-24.)

Mr. Kite contends that Ms. Kite was aware that he was granted and exercised his stock options during 1996. He asserts that the couple shared a joint checking account where the proceeds of those stock options were deposited. Mr. Kite also asserts that Ms. Kite has a Bachelor of Science

degree in accounting from the University of Southern California and worked as an accountant after graduation. While Ms. Kite had the opportunity to refute Mr. Kite's allegations in her additional brief, she did not. Instead, Ms. Kite confirms that she does have a degree in business administration/accounting but contends that she had no direct knowledge concerning the items of income and did not have access to the financial data necessary to support the information filed on the return or to dispute the additional assessment. As such, Ms. Kite contends that she was unaware of the items that resulted in assessment of additional tax either at the time she signed the joint return or upon the subsequent audit.

It is insufficient for Ms. Kite to merely contend that she did not know that there was an understatement of tax on the 1996 joint return to satisfy the knowledge requirement of R&TC section 18533(b). Ms. Kite knew about the omitted income because she had access to their joint checking account in which the proceeds of the stock options were deposited. (See *Cheshire v. Commissioner* (2000) 115 T.C. 183, 194, affd. (5th Cir. 2002) 282 F.3d 326 [taxpayer had actual knowledge when she knew of the amount, the source, and the date of receipt of the retirement distribution].) As a reasonably prudent taxpayer, Ms. Kite had a duty to question Mr. Kite as to how the couple's 1996 income could only amount to $47,208, when their joint bank account would have seen a substantial increase from the exercise of stock options that year. Moreover, Ms. Kite's professional and educational background would have alerted her to the fact that their income was grossly understated on the return. Under these facts and circumstances, Ms. Kite does not satisfy the knowledge requirement of R&TC section 18533(b).

Respondent's argument for granting relief on the basis of abuse is also unconvincing. The Treasury Regulations provide an exception to the knowledge requirement when "the requesting spouse shows that he or she was the victim of domestic abuse prior to the time when the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the non-requesting spouse's retaliation." (Treas. Reg. §§ 1.6015-2(c), 1.6015-3(c)(2)(v).) Claims of abuse cannot be generalized and require substantiation or at least specificity with regard to the allegations. (See *Deihl v. Commissioner*, T.C. Memo. 2012-176.) Citing Internal Revenue Manual section 25.15.3.7.3 (12-12-2016), respondent contends that Ms. Kite satisfies the abuse based upon the statements made by Ms. Kite in her two submitted affidavits, where she claimed that she was fearful of Mr. Kite and that Mr. Kite had "manipulated circumstances to his benefit" during and after their marriage.

Prior to addressing the abuse exception, respondent must first establish that Ms. Kite satisfies the knowledge requirement set forth in R&TC section 18533(b). That is, the abuse exception only applies after there is a finding that requesting spouse knew or had reason to know about the understatement when she signed the return. Otherwise, there is no reason to address any allegation of abuse.

Even if respondent did establish that Ms. Kite had knowledge of the omitted income, neither one of the affidavits, which were not signed under penalties of perjury, despite respondent's contention to the contrary, supports a finding of abuse.

We do not treat allegations of abuse lightly, but we also cannot accept a taxpayer's uncorroborated or nonspecific abuse allegations at face value. (*Pullins v. Commissioner* (2011) 136 T.C. 432; *Johnson v. Commissioner*, T.C. Memo. 2014-240.) "A generalized claim of abuse is insufficient." (*Contreras v. Commissioner*, T.C. Memo. 2019-12, citations omitted.) The Treasury Regulations require us to focus on actions that occurred *prior* to the time the requesting spouse signed the joint return and that the *prior* abuse resulted in the requesting spouse not challenging the return. Moreover, absent any specificity by Ms. Kite as to why she was fearful of Mr. Kite and that her fear kept her from questioning the items reported on their 1996 joint return, we cannot find that abuse is a mitigating factor to the knowledge requirement. As such, Ms. Kite does not meet the traditional requirements for relief. We therefore need not discuss the remaining requirements for traditional relief under R&TC section 18533(b).

Separate Liability Allocation Relief

R&TC section 18533(c) provides that an individual may, with certain qualifications, elect to limit his or her liability for a deficiency with respect to a joint return to the amount that would have been allocable to the electing individual had the spouses filed separate returns. To qualify for separate liability allocation relief, however, the requesting spouse must satisfy the following qualifications. First, at the time the request is filed, the individual requesting relief must no longer be married to, or must be legally separated from, the non-requesting spouse or, alternatively, that individual must not be a member of the same household as the non-requesting spouse at any time during the 12-month period ending on the date he or she files the request for separate allocation relief. (R&TC, § 18533(c)(3)(A).) Second, separate allocation relief is not allowable if assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals. (R&TC, § 18533(c)(3)(A)(ii).) Third, the individual requesting separate allocation

relief must file a timely request for relief no later than two years after the date respondent has begun collection action with respect to the requesting individual. (R&TC, § 18533(c)(3)(B).)

Lastly, if respondent demonstrates that an individual requesting separate liability allocation relief had actual knowledge, when that individual signed the return, of any item giving rise to the deficiency (or portion thereof) that is not allocable to that individual, then separate liability allocation relief will not apply to such deficiency (or portion thereof), unless that individual establishes that he or she signed the return under duress. (R&TC, § 18533(c)(3)(C).) In determining whether an individual is entitled to separate liability allocation relief under R&TC section 18533(c), the proper standard and scope of review is de novo. (See, e.g., *Porter v. Commissioner*, *supra*, 132 T.C. 203, 210; *Thomassen v. Commissioner*, *supra*, T.C. Memo. 2011-88.)

In its opening brief, respondent concedes that it lacks any evidence that would establish Ms. Kite had actual knowledge of the items giving rise to the deficiency at the time she signed the joint return. On appeal, Mr. Kite disputes respondent's determination that Ms. Kite satisfies the knowledge requirement of R&TC section 18533(c). Accordingly, we will decide whether Ms. Kite satisfies this requirement based on the preponderance of the evidence as presented by all three parties. (See, e.g., *Pounds v. Commissioner*, T.C. Memo. 2011-202.)

At the time of Ms. Kite's request for innocent spouse relief, she was no longer married to Mr. Kite. Therefore, she satisfies the first requirement. For the reasons discussed with respect to the timely election requirement of R&TC section 18533(b), Ms. Kite satisfies the second requirement. With respect to the actual knowledge requirement, respondent states in its opening brief that it does not have any evidence that would establish that Ms. Kite had actual knowledge of Mr. Kite's exercise of stock options in 1996 or his receipt of the proceeds of the stock options that were omitted from the couple's 1996 joint return.

Treasury Regulation section 1.6015-3(c)(2)(i)(A) provides that knowledge of the item includes knowledge of the receipt of the income. We are unpersuaded by Ms. Kite's blanket denial of knowledge based on her educational background and experience as an accountant, and it seems more like a deliberate effort to avoid learning about the omitted income to shield herself from the tax liability. (See Treas. Reg. § 1.6015-3(c)(iv).) Instead, we find Mr. Kite's contentions credible that Ms. Kite knew about Mr. Kite's stock options, which he exercised and thereby recognized income during 1996. According to the 1996 NPA, the couple's 1996 joint return understated more

than one quarter of one million dollars of capital gains. Coupled with the fact Ms. Kite does not refute Mr. Kite's allegation that the two of them shared a joint account in which the proceeds were put into that joint account, we find that Ms. Kite had actual knowledge of the omitted income. (See *Cheshire v. Commissioner*, *supra*, 115 T.C. 183, 194 [taxpayer had actual knowledge when she knew of the amount, the source, and the date of receipt of the retirement distribution].)

Ms. Kite does not satisfy the knowledge requirement of R&TC section 18533(c). She is thus not entitled to separate allocation relief because she fails to satisfy each of the requirements of subdivision (c). We therefore need not discuss the remaining requirements for separate allocation relief under R&TC section 18533(c).

R&TC section 18533(f)

R&TC section 18533(f) gives respondent the discretion to provide equitable innocent spouse relief from any unpaid tax or any deficiency when a taxpayer does not qualify for innocent spouse relief under either subdivision (b) or (c). Determinations to deny equitable relief are reviewed de novo. (See *Wilson v. Commissioner* (9th Cir. 2013) 705 F.3d 980, 995, affg. T.C. Memo. 2010-134.) The requesting spouse bears the burden of proof. (*Porter v. Commissioner*, *supra*, 132 T.C. 203, 210.)

IRS Guidance Regarding Claims for Equitable Relief

R&TC section 18533(g)(2) provides that it is the Legislature's intent that, in construing R&TC section 18533, "any regulations that may be promulgated by the Secretary of the Treasury under [IRC] section 6015 . . . shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by [respondent]." IRS regulations reference Revenue Procedure 2000-15 (which was a predecessor of Revenue Procedure 2013-34) or "other guidance" published by the Treasury and the IRS in determining eligibility for equitable relief. (Treas. Reg. § 1.6015-4.) Revenue Procedure 2013-34 provides the current guidance of the IRS with respect to determining whether equitable relief is warranted.[2]

Threshold Conditions

Section 4.01 of Revenue Procedure 2013-34 provides that a requesting spouse must satisfy each of the following threshold conditions to be eligible to submit a request for equitable relief:

[2] Respondent erroneously cites to Notice 2012-8, which is the proposed form of Revenue Procedure 2013-34.

1. The requesting spouse filed a joint return for the taxable year for which she seeks relief;
2. Relief is not available to her under R&TC section 18533(b) or (c);
3. The requesting spouse applies for relief within the applicable statute of limitations for requesting relief;
4. No assets were transferred between spouses as part of a fraudulent scheme by the spouses;
5. The non-requesting spouse did not transfer disqualified assets to the requesting spouse;
6. The requesting spouse did not file the return with a fraudulent intent; and
7. The income tax liability from which the requesting spouse seeks relief is attributable (in whole or in part) to an item of the individual with whom the requesting spouse filed the joint return, unless a specific exception applies.

There is no dispute that Ms. Kite satisfies the threshold requirements, and therefore satisfies section 4.01.

Section 4.02

We next consider whether Ms. Kite is entitled to a streamlined determination of equitable innocent spouse relief. Section 4.02 of Revenue Procedure 2013-34 provides the following list of factors which, if met, permit a streamlined determination of equitable innocent spouse relief: (1) the requesting spouse is no longer married to the non-requesting spouse; (2) the requesting spouse would suffer economic hardship if relief were not granted; and (3) the requesting spouse did not know or have reason to know that there was an understatement on the return.

The first factor is satisfied as the couple was divorced as of February 12, 2010.

As for the second factor, economic hardship exists if the satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable to pay reasonable basic living expenses. (Rev. Proc. 2013-34, §§ 4.02(2) & 4.03(2)(b).) The taxing agency will compare the requesting spouse's income to the federal poverty guidelines for the requesting spouse's family size and will determine by how much, if at all, the requesting spouse's monthly income exceeds the spouse's reasonable basic monthly living expenses. (Rev. Proc. 2013-34, § 4.03(2)(b).) Generally, economic hardship will be established if the requesting spouse's income is below 250 percent of the federal poverty guidelines, or if the requesting spouse's monthly income exceeds his or her reasonable basic monthly living expenses by $300 or less. (*Ibid*.) Further, the taxing agency is directed by the Revenue Procedure to seek additional guidance in Treasury Regulation

section 301.6343-1(b)(4), which generally provides circumstances to consider in determining whether to release a tax levy. (*Ibid*.)

Here, there is no evidence indicating that it would be an economic hardship to hold Ms. Kite liable for the 1996 tax liability.

As for the knowledge factor, respondent concludes on appeal that Ms. Kite satisfies this factor but applies the wrong analysis to this appeal. Respondent indicates that the inquiry is whether Ms. Kite knew or had reason to know that Mr. Kite would not or could not pay the tax, which is the applicable analysis in underpayment cases. In contrast, the proper analysis in understatement cases, which is the situation in this appeal, is whether the requesting spouse knew or had reason to know that there was an understatement or deficiency on the return as of the date the return was filed. (Rev. Proc. 2013-34, §§ 4.02(3)(a) & 4.03(2)(c)(i).) As discussed above, we find that Ms. Kite had actual knowledge of the items that gave rise to the 1996 deficiency as of the date the return was filed. She thus fails to satisfy the knowledge factor of section 4.02.

Accordingly, Ms. Kite is not entitled to a streamlined determination of equitable innocent spouse relief under section 4.02.

Section 4.03

If the threshold requirements are satisfied, and streamlined equitable innocent spouse relief is unavailable, equitable relief may be available to a requesting spouse based on the following nonexclusive factors pursuant to section 4.03 of Revenue Procedure 2013-34: (1) the requesting spouse's marital status; (2) whether the requesting spouse would suffer an economic hardship if relief is not granted; (3) for understatement cases, whether the requesting spouse knew or had reason to know of the item giving rise to the understatement or deficiency as to the date of the joint return was filed; (4) the non-requesting spouse's legal obligation to pay the tax liability; (5) whether the requesting spouse significantly benefited from the unpaid tax liability; (6) the requesting spouse's compliance with income tax laws in the following tax years; and (7) the requesting spouse's mental and physical health at the time she signed the returns.

No single factor is determinative, the list of factors is not exhaustive, and the degree of importance of each factor varies depending on the requesting spouse's facts and circumstances. (Rev. Proc. 2013-34, § 4.03(2).) Section 3.05 of Revenue Procedure 2013-34 states that, depending on the facts and circumstances of the case, relief may still be appropriate if the number of factors weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of

relief may still be appropriate if the number of factors weighing in favor of relief exceeds the number of factors weighing against relief. (Rev. Proc. 2013-34, § 3.05.) While the guidelines provided by the Revenue Procedure are relevant to our inquiry, we are not bound by them as our analysis and determination ultimately turn on an evaluation of all the facts and circumstances. (See *Henson v. Commissioner,* T.C. Memo. 2012-288; *Sriram v. Commissioner,* T.C. Memo. 2012-91.) Equitable relief may be inappropriate even if a simple counting of factors would seem to favor relief. (Rev. Proc. 2013-34, §§ 3.05 & 4.03(2); *Henson v. Commissioner, supra*; *Hudgins v. Commissioner*, T.C. Memo. 2012-260.)

Marital Status. The couple was divorced as of February 12, 2010. This factor favors relief.

Economic Hardship. As discussed above, the record does not show that Ms. Kite would suffer an economic hardship if relief is not granted. This factor is neutral.

Knowledge of the Understatement. As discussed above, Ms. Kite had actual knowledge that there was an understatement reported on the return as of the date the return was filed. This factor weighs against relief.

Legal Obligation. There is no legally binding agreement assigning the legal obligation to pay the outstanding tax liability to Mr. Kite. This factor is neutral.

Significant Benefit. The amount of the 1996 tax liability is small enough ($5,974) such that neither Ms. Kite nor Mr. Kite derived a significant benefit from the unpaid tax. (See Rev. Proc. 2013-34, § 4.03(2)(e).) This factor is neutral.

Compliance with Income Tax Laws. According to respondent's records, Ms. Kite is not a California resident and does not have a California filing history. This factor is neutral.[3]

Mental or Physical Health. The evidence in the record does not show, nor has Ms. Kite alleged, that she was in poor physical health or poor mental health. This factor is neutral.

In sum, one factor weighs in favor of relief, five are neutral, and one weighs against relief. After considering all the facts and evidence presented before us, we are not convinced that it would be inequitable to require Ms. Kite to be jointly liable for the assessed tax. Ms. Kite has been unable to explain why she was ignorant of Mr. Kite's receipt of the proceeds from the sale of the stocks

[3] Revenue Procedure 2013-34 states: "If the requesting spouse is compliant for taxable years after being divorced from the non-requesting spouse, then this factor will weigh in favor of relief. If the requesting spouse is not compliant, then this factor will weigh against relief. If the requesting spouse made a good faith effort to comply with the tax laws but was unable to fully comply, then this factor will be neutral." Because Ms. Kite's circumstances do not fall within any situations described in the Revenue Procedure, we find that this factor is neutral.

during 1996. Given Ms. Kite's professional background in accounting, it should have been obvious to her that income reported on the 1996 return was grossly understated. The innocent spouse relief statutes do "not protect a spouse who turns a blind eye to facts readily available to her." (*Briley v. Commissioner*, T.C. Memo 2019-55, quoting *Porter v. Commissioner, supra,* (2009) 132 T.C. 203, 211-212).) Therefore, we find that Ms. Kite is not entitled to equitable relief for the tax liability at issue.

HOLDING

Ms. Kite has not established that she is entitled to innocent spouse relief pursuant to R&TC section 18533(b), (c), or (f).

DISPOSITION

Respondent's action in granting Ms. Kite's innocent spouse relief is reversed.

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Andrea LH Long
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Andrea L.H. Long
Administrative Law Judge

We concur:

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 3/3/2020