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Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **T. BABBITT**	OTA Case No. 19105342

OPINION

Representing the Parties:

For Appellant:	T. Babbitt
For Respondent:	Christopher Cook, Tax Counsel
For Office of Tax Appeals:	Neha Garner, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, T. Babbitt (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying her innocent spouse relief (ISR) for the 2015 taxable year.

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

ISSUE

Whether appellant has established that she qualified for ISR for the 2015 taxable year.

FACTUAL FINDINGS

1. Appellant and Mr. Babbitt (collectively, the couple) filed their joint 2015 California tax return (Form 540) on May 29, 2018, after FTB's Notice of Proposed Assessment (NPA), which imposed tax, a late filing penalty, a demand penalty, a filing enforcement fee, and interest, went final.
2. The Form 540 reported self-assessed tax due that was more than the amount of tax proposed in the NPA and a balance due which was unpaid. FTB processed the return and made several adjustments to the couple's outstanding balance, including the amount of tax and penalties due.

3. No California income tax was either paid by appellant or withheld from appellant's wages.
4. Appellant requested ISR, which FTB denied. Appellant's federal income tax transcript shows that she did not receive ISR from the Internal Revenue Service (IRS) for the 2015 taxable year.

DISSCUSSION

When a joint return is filed by a married couple, each spouse is jointly and severally liable for the entire tax due for that taxable year. (Int. Rev. Code (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 liabilities. (IRC, § 6015; R&TC, § 18533.) R&TC section 18533(b) provides for traditional ISR; R&TC section 18533(c) provides for separate allocation relief. If a requesting spouse is not eligible for ISR under either R&TC section 18533(b) or (c), a requesting spouse may be eligible for equitable relief under R&TC section 18533(f). Traditional relief and separate allocation relief are only available for an understatement of tax, while equitable relief is available for both an underpayment and understatement of tax. (R&TC, § 18533(b)(1)(B), (c)(1) & (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 of the ISR statutes, IRC section 6015 and R&TC section 18533), federal law interpreting the federal statute may be considered highly persuasive with regard to the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.) Thus, federal authority is applied extensively in California ISR cases. (See *Appeal of Tyler-Griffis* (2006-SBE-004) 2006 WL 3768792; see also R&TC, § 18533(g)(2).) Treasury Regulations are applied in California innocent spouse cases to the extent that such regulations do not conflict with R&TC section 18533. (R&TC, § 18533(g)(2).)

Generally, an individual claiming relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Stevens v. Commissioner* (11th Cir. 1989) 872 F.2d 1499, 1504.) Since the ISR 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.) FTB's determinations are generally presumed to be correct, and unsupported assertions are not sufficient to satisfy an appellant's burden of proof.

(*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellant contends that she is entitled to ISR due to a restraining order she has against Mr. Babbitt for domestic violence. Appellant also contends that she received ISR from the IRS for the 2016 taxable year (which is not the year at issue in this appeal).

Traditional and Separate Liability Allocation Relief

Both R&TC section 18533(b) and (c) provide that an individual may request ISR only if there is an understatement of tax. Because the 2015 tax was self-assessed and there is no understatement of tax on appellant's tax return, appellant is not entitled to traditional or separate liability allocation ISR.

Equitable Relief

R&TC section 18533(f) provides that FTB may relieve a taxpayer from a tax liability if, taking into account all the facts and circumstances, it is inequitable to hold the taxpayer liable for the unpaid tax or understatement, and the taxpayer does not otherwise qualify for ISR under section 18533(b) or (c). Determinations to deny equitable relief are reviewed de novo, and the requesting spouse bears the burden of showing that he or she is entitled to equitable relief. (*Wilson v. Commissioner* (9th Cir. 2013) 705 F.3d 980, 982; *Porter v. Commissioner* (2009) 132 T.C. 203, 210.)

IRS Revenue Procedure 2013-34 provides guidance in determining whether to grant equitable relief.[1] Section 4.01 of Revenue Procedure 2013-34 (section 4.01) sets out threshold conditions that a requesting spouse must meet to be eligible for equitable relief. If the requesting spouse establishes that he or she meets all seven threshold conditions in section 4.01, FTB then considers whether the requesting spouse is entitled to a streamlined determination of equitable innocent spouse relief under section 4.02 of Revenue Procedure 2013-34 (section 4.02). If the requesting spouse meets the conditions of section 4.01, but does not qualify for relief under section 4.02, FTB then considers the section 4.03 factors of Revenue Procedure 2013-34.

[1] R&TC section 18533(g)(2) provides that "[i]t is the intent of the Legislature that, in construing this section ..., any regulations that may be promulgated by the Secretary ... shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by [FTB]." The applicable Treasury regulations refer taxpayers to Revenue Procedure 2000-15 (which was a predecessor of Revenue Procedure 2013-34) or other guidance published by the Treasury or IRS for guidance as to the application of equitable relief. (Treas. Reg. § 1.6015-4(c).)

Section 4.01 lists the following threshold conditions for a taxpayer requesting equitable relief.

1. The taxpayer filed a joint return for the taxable year for which ISR is sought;
2. Relief is not available under traditional innocent spouse relief or separate allocation ISR;
3. The requesting spouse applies for ISR within the applicable statute of limitations for requesting ISR;
4. No assets were transferred between spouses as part of a fraudulent scheme by the spouses;
5. The nonrequesting 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 ISR is attributable, in full or in part, to an item of the individual with whom the requesting spouse filed the joint return, unless a specific exception applies.

Appellant meets the first three conditions. With respect to conditions 4, 5, and 6, there is no evidence to suggest that any assets were transferred or that fraud was involved. However, appellant does not satisfy condition 7, because the outstanding tax liability is attributable to her. Mr. Babbitt earned approximately 73 percent of the couple's reported total income and his California income tax withholdings paid approximately 74 percent of the total tax reported on their 2015 tax return. Furthermore, no California income tax was either paid by appellant or withheld from appellant's wages. Because Mr. Babbitt has already paid his share of the couple's total tax, the unpaid tax due is attributable solely to appellant's earnings. Appellant has thus failed to satisfy the seventh threshold condition. As appellant fails to satisfy each of the threshold conditions under section 4.01, she is not entitled to equitable relief.

<u>Federal ISR</u>

R&TC section 18533(i)(1) provides that an individual who has made a joint return and has been granted federal ISR under IRC section 6015 shall be eligible for California ISR if three conditions are satisfied:

- The individual requested ISR under R&TC section 18533;
- The facts and circumstances that apply to the understatement and liabilities for which the ISR is requested are the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted ISR under IRC section 6015; and

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

Here, appellant's 2015 federal transcript does not indicate that ISR was granted, and appellant does not allege that ISR was granted by the IRS for the 2015 taxable year. Therefore, appellant has not shown that FTB erred when it denied her ISR.

HOLDING

Appellant has failed to establish that she qualified for ISR for the 2015 taxable year.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Michael Geary
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Michael Geary
Administrative Law Judge

Date Issued: 3/24/2021