

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	}	OTA Case No. 20025881
V. LE (NON-REQUESTING SPOUSE) AND	}	
D. DO (REQUESTING SPOUSE)	}	
_____	}	

OPINION

Representing the Parties:

For V. Le:	Lawrence T. Niermeyer, Attorney
For D. Do:	Vivian Ho, Attorney
For Respondent:	Joel Smith, Tax Counsel III
For Office of Tax Appeals:	Michelle Huh, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, V. Le (VL) appeals an action by respondent Franchise Tax Board (FTB) granting full innocent spouse relief to D. Do (DD) for the 2012 and 2013 taxable years.

Neither VL nor DD requested an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. During the 2012 and 2013 taxable years, VL was self-employed and managed rental properties, and DD was a homemaker.
2. VL and DD (the couple) filed joint federal (Form 1040) and California (Form 540) income tax returns for the 2012 and 2013 taxable years.

3. The Internal Revenue Service (IRS) examined the couple's 2012 and 2013 Forms 1040 and made adjustments that resulted in the imposition of additional tax and the Internal Revenue Code (IRC) section 6662(a) accuracy related penalty.
4. VL and DD separated in September 2013. DD's representative submitted to the Alameda Superior Court a petition for dissolution of marriage in 2015. Subsequently, the Alameda Superior Court entered a judgement of dissolution for the couple.
5. DD filed a petition with the United States Tax Court (Tax Court) for the determination of relief from the couple's liabilities on their joint returns for the 2012 and 2013 taxable years.
6. The Tax Court sent VL a Notice of Filing of Petition and Right to Intervene in DD's federal proceeding for relief from the couple's joint and several liabilities for the 2012 and 2013 taxable years.
7. DD filed with the IRS a completed Request for Innocent Spouse Relief (Form 8857). With her completed Form 8857, DD provided the IRS a notarized affidavit she signed under penalty of perjury in support of her request for federal innocent spouse relief.
8. On October 11, 2017, pursuant to the agreement of the parties, the Tax Court ordered and decided that the couple had deficiencies and penalties due for the 2012 and 2013 taxable years and that DD no longer owed the additional tax and penalties imposed for these years after application of IRC section 6015(c). This decision was issued to all parties, including counsel for VL, intervenor, in the Tax Court case.
9. Based on the IRS adjustments, FTB issued the couple Notices of Proposed Assessment (NPAs), making comparable adjustments to their 2012 and 2013 Forms 540. The 2012 NPA proposed additional tax of \$13,223.00 and an accuracy related penalty of \$2,644.60, plus interest. The 2013 NPA proposed additional tax of \$11,436.00 and an accuracy related penalty of \$2,287.20, plus interest.
10. Because VL and DD did not timely protest the NPAs for the 2012 and 2013 taxable years, the proposed assessments became final.
11. DD submitted a letter to FTB stating that she received federal innocent spouse relief for the 2012 and 2013 taxable years. With her letter, she provided a copy of the Tax Court decision granting her federal innocent spouse relief for the taxable years at issue.

12. VL sent a letter to FTB requesting an explanation for the amount owed for the 2013 taxable year and explaining the current separation circumstances between VL and DD.
13. DD filed with FTB an Innocent Joint Filer Relief Request (Form 705) for the 2012 and 2013 taxable years. With her completed Form 705, DD provided copies of the notice of entry of judgement for the couple's dissolution, the Tax Court decision signed and dated by all parties, her federal Form 8857, and her notarized affidavit.
14. FTB sent VL a Non-Requesting Taxpayer Notice (NRTN) notifying VL of DD's request to FTB for innocent spouse relief. The notice informed VL that the IRS granted DD federal innocent spouse relief for the 2012 and 2013 taxable years and provided VL an opportunity to submit information or file an objection to the granting of innocent spouse relief.
15. After VL did not respond to the NRTN, FTB sent VL and DD separate Notices of Action (NOAs), stating that it approved DD's request for relief of the joint liabilities pursuant to R&TC section 18533(i) based on the Tax Court's grant of DD's request for innocent spouse relief on October 11, 2017, for the 2012 and 2013 taxable years. The NOA issued to VL stated that he remained liable for the balances due, which were \$18,967.18 for the 2012 taxable year and \$17,134.09 for the 2013 taxable year.
16. VL filed this appeal, and DD joined the appeal.

DISCUSSION

Under both federal and California law, when a joint return is filed, each taxpayer 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)(1) 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 conforming innocent spouse relief if the following 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.

However, 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 indicating 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; or
- 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 proceeding that resulted in relief under IRC section 6015.

Here, the three conditions for relief set forth in R&TC section 18533(i)(1) are satisfied. First, DD requested innocent spouse relief under R&TC section 18533 when she filed a completed Form 705 for the 2012 and 2013 taxable years. Second, the facts and circumstances that applied to the understatement and liabilities for which DD's relief was requested are the same facts and circumstances that applied to the understatement and liabilities for which DD was granted relief under IRC section 6015(c). Third, DD provided FTB a copy of the Tax Court's decision dated October 11, 2017, granting her full innocent spouse relief under IRC section 6015(c) from the 2012 and 2013 deficiency assessments. Accordingly, FTB properly granted DD conforming innocent spouse relief when VL did not respond to the NRTN.

On appeal, VL contends that conforming relief should not be granted to DD because he did not have an opportunity to participate in the federal proceedings that resulted in the grant of federal relief to DD, and he did not receive any documents from either the IRS or DD concerning

her request for federal relief. However, VL does not dispute that: (1) the facts and circumstances for the California and federal understatements and liabilities for the 2012 and 2013 taxable years are the same; or (2) there was a federal determination granting DD full federal innocent spouse relief for 2012 and 2013 that has not been modified, altered, withdrawn, canceled, or rescinded.

The Tax Court decision granting DD federal relief for the 2012 and 2013 taxable years shows that VL had an opportunity to participate in the federal proceeding that resulted in DD obtaining federal innocent spouse relief. First, the Tax Court decision lists VL as an intervenor. Second, the Tax Court decision states that all the parties, including VL, agreed to the grant of DD's request for full federal innocent spouse relief for the 2012 and 2013 taxable years. Lastly, VL's representative signed the Tax Court decision as counsel for the intervenor. The signature of VL's representative on the Tax Court decision indicates that VL participated in the federal proceeding of DD's request for federal innocent spouse relief and agreed to the grant of DD's full federal innocent spouse relief for both taxable years through the authorization of his representative. Accordingly, VL has not produced persuasive evidence establishing that any of the statutory exceptions under R&TC section 18533(i)(2) apply. Nor are there any facts in the record indicating that one of the statutory exceptions to the granting of conforming relief applies.

VL further contends in this appeal that DD is not entitled to innocent spouse relief under R&TC section 18533(i) because: (1) VL was not provided a copy of DD's submitted Form 705; (2) DD is not entitled to innocent spouse relief due to her knowledge of all financial matters in the marriage; and (3) DD is responsible for paying 50 percent of the couple's 2012 and 2013 tax liabilities based on the Alameda Superior Court's re-evaluation of the couple's assets and debts. However, VL's contentions are not among the limited circumstances under which FTB may deny conforming relief pursuant to R&TC section 18533(i). Furthermore, there is no statutory requirement that FTB provide the non-requesting spouse with a copy of the requesting spouse's Form 705. Finally, although VL suggests that the Alameda Superior Court determined that DD shares some liability for the couple's 2012 and 2013 taxes (see R&TC, § 19006(b)), no such order from the court is evident in the record. Thus, VL has not established that FTB improperly granted DD conforming innocent spouse relief pursuant to R&TC section 18533(i).

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Nguyen Dang
77AFD3EA552843B...
Nguyen Dang
Administrative Law Judge

Date Issued: 6/16/2021