

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011439  
JANE DOE (APPEALING SPOUSE) AND )  
JOHN DOE (NON-APPEALING SPOUSE) )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appealing Spouse: Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Non-appealing Spouse: Matt Hamilton, Esquire

For Respondent: Bradley J. Coutinho, Tax Counsel III

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

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, Jane Doe (appealing spouse) appeals an action by the Franchise Tax Board (respondent) granting innocent spouse relief to John Doe (non-appealing spouse) for the 2008 tax year.

Appealing spouse waived the right to an oral hearing; therefore, the matter is being decided based on the written record.<sup>2</sup>

**ISSUE**

Whether appealing spouse has shown error in respondent’s determination to grant innocent spouse relief to non-appealing spouse pursuant to R&TC section 18533(i).

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<sup>1</sup> Appealing spouse filed the appeal. Allan Dang of TAAP filed appealing spouse’s reply brief and Brian Mai of TAAP filed appealing spouse’s supplemental brief. Kendall Keshtkar of TAAP represented appealing spouse at the three conferences held in this matter.

<sup>2</sup>This matter was originally set for oral hearing. However, appealing spouse decided instead to have the matter decided based on the written record.

## FACTUAL FINDINGS

### 2008 Return

1. On August 26, 2009, appealing spouse and non-appealing spouse (the couple), filed a joint California income tax return (Form 540) for 2008. Respondent accepted the couple's California tax return as filed.
2. The couple also filed a joint federal return (Form 1040) for the 2008 tax year. As relevant to this appeal, the couple's 2008 federal return includes only one Schedule C, Profit or Loss from Business, which lists appealing spouse as the proprietor of the business (the Schedule C business).
3. Respondent subsequently received information from the Internal Revenue Service (IRS), which shows that the IRS adjusted the taxable income that the couple reported on their 2008 federal return, assessed additional tax, and imposed a late filing penalty and an accuracy-related penalty.
4. Based on the federal adjustments, respondent issued the couple a Notice of Proposed Assessment (NPA), increasing the couple's taxable income for 2008 and imposing an accuracy-related penalty plus interest.
5. After the couple timely protested the NPA, respondent issued to them a Notice of Action (NOA) affirming the NPA.

### Request for Innocent Spouse Relief

6. On June 10, 2016, respondent received non-appealing spouse's FTB Form 705, Request for Innocent Joint Filer Relief, for tax year 2008. Attached to the Form 705 was a letter in which non-appealing spouse asserted that the IRS granted him federal innocent spouse relief for the 2008 tax year.
7. Non-appealing spouse filed a Request for Innocent Spouse Relief (IRS Form 8857) which was acknowledged by the IRS in a letter to non-appealing spouse dated July 29, 2015. On September 28, 2015, the IRS sent a Preliminary Determination to non-appealing spouse indicating that the IRS was proposing to grant full relief to him for the 2008 debt. The letter indicated that the IRS would issue a letter to the person with whom he filed a 2008 joint return to notify her that the IRS proposed to grant full relief to non-appealing

spouse and “[i]f that person doesn’t appeal, we’ll send you a final notice of our decision within 90 days.

8. Appealing spouse sent the IRS a Statement of Disagreement (IRS Form 12509), dated October 25, 2015.
9. Respondent obtained a copy of the Statement of Disagreement (IRS Form 12509) that appealing spouse signed on October 25, 2015, informing the IRS that she disagreed with the IRS’s preliminary determination to grant non-appealing spouse innocent spouse relief from the couple’s 2008 federal tax liability. In her attached supporting letter, appealing spouse stated that she wished to appeal non-appealing spouse’s request for innocent spouse relief for 2008 because he managed the couple’s personal and business finances and he had full knowledge of the couple’s tax liability. She asserted that she and non-appealing spouse were co-owners of the Schedule C business and non-appealing spouse served as its business manager. She also asserted that non-appealing spouse prepared and signed the 2008 federal return.
10. Respondent obtained a copy of a November 9, 2015 IRS letter addressed to appealing spouse (in care of PM). The IRS acknowledged receiving appealing spouse’s Statement of Disagreement and request for an appeals hearing.
11. On January 26, 2016, the IRS made a determination to grant non-appealing spouse relief and on March 23, 2016, the IRS issued a Final Appeals Notice. The Notice was addressed to appealing spouse and informed her that it previously notified her that her former spouse filed a Form 8857 and, after considering the appeal concerning the determination on that request, the IRS made the final determination to allow the request for relief in full for the 2008 tax year. The notice indicated that a copy of the notice was sent to PM; the address listed for appealing spouse is redacted.
12. Respondent issued a Non-Requesting Taxpayer Notice dated July 28, 2016, to appealing spouse, advising her that non-appealing spouse requested innocent spouse relief from respondent for the 2008 tax year and that it received information that the IRS granted him federal innocent spouse relief for the 2008 tax year. The notice provided appealing spouse an opportunity to comment on non-appealing spouse’s request and submit information and documentation showing that conforming relief should not be granted to him pursuant to R&TC section 18533(i).

13. In a letter to respondent dated August 2, 2016, appealing spouse asserted that she opposed the grant of innocent spouse relief to non-appealing spouse for the 2008 tax year, because the 2008 tax liability is attributable to both non-appealing spouse and herself. Appealing spouse stated that the IRS granted non-appealing spouse's federal innocent spouse relief for the 2008 tax year, because she was "never given the opportunity to contest his case." She alleged that PM misrepresented her wishes and informed the IRS that she declined to participate in the deliberations concerning non-appealing spouse's innocent spouse request.
14. Appealing spouse attached to her August 2, 2016 letter copies of emails and apparent texts between non-appealing spouse and herself during 2011 concerning business and taxes, an email from her to PM dated August 24, 2011, indicating that she and non-appealing spouse were splitting equally the bill for PM's services in representing both of their interest in their financial matters with the IRS, plus an email dated February 16, 2011, from appealing spouse to respondent, instructing respondent to direct all correspondence related to the couple to their accountant and tax attorney, PM, who was working with the IRS with respect to the couple's federal taxes. Appealing spouse also submitted to respondent a copy of a two-page unsigned, partial draft agreement between non-appealing spouse, the Schedule C business, and herself that provides that each of the parties agreed to assist PM in reaching an amicable resolution with the IRS and respondent and to pay 50 percent of any settlement amount reached with the IRS and respondent. Appealing spouse also attached copies of documents that reportedly show that non-appealing spouse "handled business and financial matters for [the couple's] company."
15. Respondent issued separate NOAs dated September 26, 2016, to non-appealing spouse and appealing spouse, informing each that it granted non-appealing spouse innocent spouse relief pursuant to R&TC section 18533(i) for the 2008 tax year, because the IRS granted non-appealing spouse innocent spouse relief for the 2008 tax year on January 26, 2016.
16. Appealing spouse filed this timely appeal. Non-appealing spouse subsequently joined this appeal.

17. On appeal, appealing spouse indicates that she paid the 2008 federal tax liability through an offer in compromise settlement with the IRS. She contends that PM failed to notify her that non-appealing spouse was granted federal innocent spouse relief and that she could dispute that determination. Appealing spouse states, “I found out about the IRS’[s] decision after it was too late when I received a notice in the mail.”
18. On appeal, non-appealing spouse has produced copies of the following letters addressed to him from the IRS: 1) a letter dated June 29, 2015, in which the IRS states that it received his IRS Form 8857, Request for Innocent Spouse Relief, for 2008; 2) a letter dated September 28, 2015, in which the IRS states that it would notify the person with whom he filed a 2008 joint return that it proposed to grant full relief to him for the 2008 debt and “[i]f that person doesn’t appeal, we’ll send you a final notice of our decision within 90 days”; and 3) a letter addressed to non-appealing spouse dated November 9, 2015, from the IRS regarding tax year 2010.

#### DISCUSSION

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. (Internal Revenue Code (IRC), § 6013(d)(3); R&TC, § 19006(b).) However, a requesting spouse may seek relief from joint and several liability under innocent spouse relief statutes. (IRC, § 6015; R&TC, § 18533.) In this case, non-appealing spouse requested innocent spouse relief pursuant to R&TC section 18533(i) for the 2008 tax year, based on the fact that the IRS had granted him innocent spouse relief for that tax year.

R&TC section 18533(i)(1) provides that an individual who has made a joint 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 respondent 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 respondent that indicates that 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 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 that resulted in relief under IRC section 6015.

On appeal, appealing spouse addresses the third exception set forth in R&TC section 18533(i). The first exception does not apply because the 2008 NPA states that the adjustments were based on the 2008 federal audit. Appealing spouse does not contend, and the evidence does not show, that the facts and circumstances that apply to the couple's 2008 deficiency assessment for which non-appealing spouse requested innocent spouse relief are not the same facts and circumstances that applied to the 2008 federal tax liability for which non-appealing spouse was granted federal innocent spouse relief under IRC section 6015. The second exception does not apply because appealing spouse does not dispute that the IRS granted non-appealing spouse innocent spouse relief for the couple's 2008 federal tax liability under IRC section 6015, and the federal determination granting relief has not been modified, altered, withdrawn, canceled, or rescinded.

With respect to the third exception, appealing spouse states that she only "found out about the IRS'[s] decision after it was too late when [she] received a notice in the mail."

However, in her October 25, 2015 Statement of Disagreement and supporting letter, appealing spouse concedes that she was aware of non-appealing spouse's request for innocent spouse relief from the couple's 2008 federal tax liability and she informed the IRS that she wanted "to appeal his request." As reflected on the IRS's November 9, 2015 letter addressed to her, the IRS received appealing spouse's October 25, 2015 Statement of Disagreement and supporting letter and documents. The IRS considered appealing spouse's Statement of Disagreement and supporting letter and documents prior to making its final determination to grant non-appealing spouse relief on January 26, 2016. In its March 23, 2016 Final Appeals Notice, the IRS informed appealing spouse that, after considering her appeal concerning its determination to grant non-appealing spouse relief, it made the final determination to grant non-appealing spouse relief from the 2008 federal tax liability. Appealing spouse does not contend that she was prevented from filing an appeal of the IRS's determination to grant non-appealing spouse relief from the 2008 federal tax liability to the Tax Court. Based on the evidence, we conclude that appealing spouse had the opportunity to participate, within the meaning of IRC section 6015 and the regulations thereunder, in the federal administrative proceeding that resulted in the grant of innocent spouse relief to non-appealing spouse under IRC section 6015.

To the extent that appealing spouse argues that non-appealing spouse was not entitled to federal innocent spouse relief under IRC section 6015 because he provided false information in support of his request for federal innocent spouse relief, he had actual knowledge of the erroneous items reported on the couple's 2008 federal return, or he financially and emotionally abused her during their relationship, these arguments do not address the limited circumstances in which respondent may deny relief pursuant to R&TC section 18533(i). We are likewise limited to a review of whether conforming relief under R&TC section 18533(i) was properly applied. Therefore, we do not address the evidence appealing spouse produced in support of her position that the non-appealing spouse is not entitled to innocent spouse relief under R&TC section 18533(b), (c), or (f).

Appealing spouse also argues that she and non-appealing spouse were represented by the same individual, PM, with respect to the 2008 federal tax liability and that PM requested innocent spouse relief on behalf of the non-appealing spouse without her knowledge or consent. She alleges that PM then incorrectly informed the IRS that she did not contest non-appealing spouse's request for federal relief. Relying on Treasury Department Circular No. 230, Rev. 6-

2014, Regulations Governing Practice before the Internal Revenue Service, p. 22, § 10.29, Conflicting Interests,<sup>3</sup> appealing spouse argues that PM “was not permitted to represent [non-appealing spouse] and [herself] before the IRS given the conflicting interests....”

There is no dispute that appealing spouse and non-appealing spouse were both represented by PM concerning the IRS’s audit of the couple’s 2008 federal return, as reflected in appealing spouse’s August 24, 2011 email to PM, which states that she and non-appealing spouse were both paying for PM’s services in representing their interest in their financial matters with the IRS. However, appealing spouse’s contention that PM failed to adequately represent her interests due to a conflict of interest does not address the limited circumstances in which respondent may deny relief pursuant to R&TC section 18533(i). Moreover, the Office of Tax Appeals does not have jurisdiction to review complaints concerning PM’s ethical obligations or the quality of the services that he provided to appealing spouse with respect to the couple’s 2008 federal tax liability.<sup>4</sup>

As explained above, respondent was required by statute to follow the IRS’s determination in this matter, and appealing spouse has not established that any of the statutory exceptions to the granting of conforming relief apply under R&TC section 18533(i).

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<sup>3</sup> Treasury Department Circular No. 230 may be found on the IRS’s website at [www.irs.gov/pub/irs-pdf/pcir230.pdf](http://www.irs.gov/pub/irs-pdf/pcir230.pdf).

<sup>4</sup> Appealing spouse would have to pursue any remedies in a different forum if she were inclined to do so. It does appear that non-appealing spouse’s federal request for innocent spouse relief was filed by a different CPA in the state of Georgia, though.

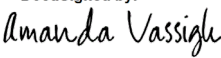


HOLDING


Appealing spouse has failed to show that respondent erroneously granted innocent spouse relief to non-appealing spouse pursuant to R&TC section 18533(i).

DISPOSITION

Respondent's action granting innocent spouse relief to non-appealing spouse pursuant to R&TC section 18533(i) is sustained.

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Amanda Vassigh  
Administrative Law Judge

We concur:

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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

Date Issued: 8/3/2021