

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20116965
M. SAUER (NON-REQUESTING SPOUSE))
AND)
M. M. SAUER (REQUESTING SPOUSE))

OPINION

Representing the Parties:

For Non-Requesting Spouse: M. Sauer
For Requesting Spouse Grant Miller, CPA/PFS, CFP, MST
For Respondent: Bradley J. Coutinho, Tax Counsel III

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

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

Neither M. Sauer nor M. M. Sauer requested an oral hearing; therefore, we decide the matter based on the written record.

ISSUE

Did FTB properly grant conforming innocent spouse relief to M. M. Sauer for the 2012 and 2013 taxable years pursuant to R&TC section 18533(i).¹

¹ Although FTB also granted M. M. Sauer conforming innocent spouse relief under R&TC 18533(i) for other taxable years in addition to the 2012 and 2013 taxable years, M. Sauer did not file a timely appeal for the other taxable years for which M. M. Sauer was granted federal innocent spouse relief. We therefore only discuss taxable years 2012 and 2013.

FACTUAL FINDINGS

2012 Taxable Year

1. M. Sauer and M. M. Sauer (collectively referred to as the couple) timely filed a joint California Non-Resident Income Tax Return (Form 540NR) for the 2012 taxable year. The couple claimed an overpayment of tax. FTB accepted the couple's 2012 joint return as filed and issued a refund.
2. FTB subsequently received information from the IRS that showed the IRS disallowed the home mortgage interest deduction the couple claimed on their joint federal income tax return for the 2012 taxable year and assessed additional tax, a late-payment penalty, and an accuracy-related penalty, plus interest.
3. FTB issued the couple a Notice of Proposed Assessment (NPA) dated June 24, 2016, which applied the federal adjustments to the couple's 2012 joint return. The NPA proposed additional tax of \$6,550 and an accuracy-related penalty of \$1,310, plus interest. The couple did not protest the NPA, and the proposed assessment became final.

2013 Taxable Year

4. On June 2, 2014, the couple filed a joint federal income tax return for the 2013 taxable year and self-assessed an unpaid federal tax liability. The IRS accepted and processed the couple's 2013 federal return and imposed a late-payment penalty and a penalty for not pre-paying tax, plus interest.²
5. On May 29, 2018, the couple filed a joint California Resident Income Tax Return (Form 540) for the 2013 taxable year. The couple reported a self-assessed tax of \$56,818. The couple nonetheless reported no income tax withholdings and zero tax due.
6. FTB issued the couple a Notice of Tax Return Change - Revised Balance dated July 19, 2018, which revised the couple's tax due from zero to \$58,121.00 and imposed a late-filing penalty of \$14,530.25, plus interest.

² A copy of the couple's joint 2013 federal return is not in the appeal file.

Collection Action

7. FTB commenced collection action for the couple's 2012 and 2013 balances due. FTB received payments totaling \$6,409.66, which it applied to the couple's 2012 balance due. FTB also credited the couple's 2012 account with income tax withholdings of \$36,650.

Request for Innocent Spouse Relief

8. On June 10, 2019, M. M. Sauer filed an Innocent Joint Filer Relief Request (Form 705) for taxable years 2012 and 2013.³ She indicated on the Form 705 that her divorce was pending. Attached to the Form 705 is a memorandum and exhibits in support of M. M. Sauer's request for innocent spouse relief. The memorandum states that M. M. Sauer concurrently filed a federal Innocent Spouse Relief Request application.
9. In a letter to M. M. Sauer dated March 25, 2020, FTB acknowledged M. M. Sauer's request for innocent spouse relief for the 2012 and 2013 taxable years and requested an update concerning the status of her request for federal innocent spouse relief.
10. In a Non-Requesting Taxpayer Notice dated July 17, 2020, FTB informed M. Sauer that M. M. Sauer requested innocent spouse relief for the couple's 2012 and 2013 tax liabilities and requested M. Sauer to provide information and documents that FTB may consider in making its determination. According to FTB's records, M. Sauer did not respond to the July 17, 2020 notice.
11. In separate Final Determination Notices issued to M. M. Sauer dated August 25, 2020, the IRS informed M. M. Sauer that it granted her innocent spouse relief for the couple's 2012 federal tax liability pursuant to Internal Revenue Code (IRC) section 6015(b) and for the couple's 2013 federal tax liability pursuant to IRC section 6015(f).
12. FTB issued separate Notices of Action to M. Sauer and M. M. Sauer both dated October 19, 2020, stating that it granted M. M. Sauer conforming innocent spouse relief for the 2012 and 2013 taxable years pursuant to R&TC section 18533(i).
13. M. Sauer filed this timely appeal and M. M. Sauer joined the appeal.

³ FTB states in its brief that it received M. M. Sauer's Form 705 on June 14, 2019, but we note that the Form 705's cover letter is date stamped received on June 10, 2019. The Form 705 also requests relief for three other taxable years, which are not years at issue in this appeal.

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).) 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.) R&TC section 18533(i)(1) provides that an individual who filed a joint California return and was granted federal innocent spouse relief under IRC section 6015 shall be eligible for conforming innocent spouse relief if three conditions are satisfied:

- The individual requests innocent spouse relief under R&TC section 18533;
- The facts and circumstances that apply to the understatement and liabilities for which the individual is requesting innocent spouse relief are the same facts and circumstances that applied to the understatement and liabilities for which the individual was granted federal innocent spouse relief under IRC section 6015; and
- The individual requesting innocent spouse relief under R&TC section 18533(i) provides FTB with a copy of the federal determination that granted the individual federal innocent spouse relief under IRC section 6015.

R&TC section 18533(i) does not apply, however, if the other individual who filed the joint return for which innocent spouse relief was requested submits information that indicates innocent spouse 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; and
- Information indicating that the objecting 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.

It is undisputed that M. M. Sauer requested innocent spouse relief under R&TC section 18533 for the 2012 and 2013 taxable years, and FTB received copies of the federal determinations that granted M. M. Sauer federal innocent spouse relief for the 2012 and 2013 taxable years. In addition, M. Sauer does not contend, and there is no evidence that indicates,

that the facts and circumstances that apply to the couple's 2012 and 2013 federal and California tax liabilities differ. The 2012 NPA was based on the adjustments that the IRS made to the couple's 2012 federal return, and the 2013 federal and California tax liabilities both involve self-assessed unpaid taxes. Nor is there any contention that the 2012 or 2013 federal determination granting M. M. Sauer federal innocent spouse relief has been modified, altered, withdrawn, canceled, or rescinded. M. M. Sauer is therefore eligible for conforming relief under R&TC section 18533(i).

On appeal, M. Sauer argues that the IRS improperly granted M. M. Sauer federal innocent spouse relief for the 2012 and 2013 taxable years for the following reasons:

- 1) M. M. Sauer signed the partnership agreements that produced the tax liabilities;
- 2) M. M. Sauer participated in the lawsuit filed against the other partners; 3) M. M. Sauer presented herself as a housewife in her federal request for innocent spouse relief without stating that she signed the partnership agreements and participated in the lawsuit; and 4) M. M. Sauer never forwarded the mail from the IRS to M. Sauer until after the deadline to respond had passed. M. Sauer states that his appeal letter "just hits the highlights" and he has "a substantial number of documents available upon request." Although FTB invited M. Sauer to submit other documents, he did not, nor did he submit other documents in this appeal.

Conversely, M. M. Sauer argues that M. Sauer has not met his burden of proving that he did not have the opportunity to participate, within the meaning of IRC section 6015 and the regulations thereunder, in the federal proceeding that resulted in the IRS granting M. M. Sauer federal innocent spouse relief for the 2012 and 2013 taxable years. M. M. Sauer further asserts that her name does not appear on the partnership lawsuit or on the partnership agreement submitted by M. Sauer, that only M. Sauer's name is on them, and that the documents are irrelevant as to whether she should be granted conforming innocent spouse relief. M. M. Sauer also asserts that M. Sauer presented herself to the IRS as a housewife. M. M. Sauer asserts that she was not employed in 2012 or 2013 and was a homemaker who was the primary caretaker for the couple's children.⁴

We now examine M. Sauer's contention that M. M. Sauer never forwarded to him mail from the IRS until it was too late to respond. M. Sauer is apparently arguing that an exception to conforming relief applies because he did not have an opportunity to participate, within the

⁴ M. M. Sauer reported nominal amounts of income in both 2012 and 2013.

meaning of IRC section 6015 and the regulations thereunder, in the federal proceedings that resulted in the IRS's determinations to grant M. M. Sauer federal innocent spouse relief for the 2012 and 2013 taxable years. (R&TC, § 18533(i)(2)(C).) Yet, M. Sauer has not produced any supporting evidence, such as a date stamp on the forwarded envelope or other evidence that he received the IRS information too late to participate at the federal level. On the other hand, M. M. Sauer asserted that she concurrently filed a request for innocent spouse relief with the IRS and FTB. As indicated on the couple's 2012 federal account transcript, the IRS received M. M. Sauer's request for federal innocent spouse relief on June 11, 2019. Treasury Regulation section 1.6015-6(a)(1) provides that the IRS is required to send a notice to the nonrequesting spouse's last known address informing him or her of the request for innocent spouse relief and providing the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted federal innocent spouse relief. M. Sauer does not specifically deny that he received such a notice from the IRS. In any event, M. M. Sauer produced a copy of an amended proof of service dated October 16, 2019, which indicates that on that date, M. Sauer's divorce attorney was provided documents related to M. M. Sauer's federal and California requests for innocent spouse relief. In addition, M. M. Sauer produced a copy of an email exchange on March 17, 2020, between her divorce attorney and M. Sauer in which M. Sauer instructed M. M. Sauer to write "Not At This Address" on an envelope addressed to him from the IRS (and return the envelope to the United States Postal Service). As noted above, the IRS did not make its determinations to grant M. M. Sauer federal innocent spouse relief for the 2012 and 2013 taxable years until August 24, 2020. Based on the foregoing, M. Sauer had the opportunity to participate in the federal determination process before M. M. Sauer was granted federal innocent spouse relief.

M. Sauer argues that the IRS improperly granted M. M. Sauer federal innocent spouse relief for the 2012 and 2013 taxable years because M. M. Sauer signed the partnership agreements that produced the taxes and participated in the lawsuit suing the other partners. Those allegations, even if true, are not relevant to the limited circumstances under which conforming innocent spouse relief may be denied pursuant to R&TC section 18533(i).

HOLDING

FTB properly granted conforming innocent spouse relief to M. M. Sauer for the 2012 and 2013 taxable years pursuant to R&TC section 18533(i).

DISPOSITION

FTB’s actions are sustained.

DocuSigned by:


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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:


67F043D83FF547C
Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:


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Amanda Vassigh
Administrative Law Judge

Date Issued: 10/7/2021