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BOARD OF EQUALIZATION
STATE OF CALIFORNIA

In the Matter of the Appeal of:) **FORMAL OPINION**
PATRICIA TYLER-GRIFFIS) **ON PETITION FOR REHEARING**
(party denied innocent spouse relief)) **2006-SBE-004**
Case No. 281239

Representing the Parties:
For Appellant: William E. Taggart, Jr., Attorney
For Respondent: Mark McEvilly, Tax Counsel III
Counsel for the Board of Equalization: Ian C. Foster, Tax Counsel

This appeal was made pursuant to sections 18533 and 19045 of the Revenue and Taxation Code¹ from the action of the Franchise Tax Board in denying innocent spouse relief to Patricia Tyler-Griffis in the amounts of \$78,880 for 1984, \$788 for 1986, and \$432 for 1987. Appellant later withdrew the appeal with respect to 1986 and 1987.

On November 15, 2005, we issued a decision in which we sustained respondent’s denial of innocent spouse relief for 1984. Appellant then filed a petition for rehearing pursuant to section 19048. During the pendency of appellant’s petition for rehearing, the Ninth Circuit Court of Appeals issued a decision in *Commissioner v. Ewing* (9th Cir. 2006) 439 F.3d 1009 [*“Ewing”*] holding that the tax court does not have jurisdiction to review a denial of equitable relief under Internal Revenue Code (IRC) section 6015(f). Because of similarities between the federal and state laws governing innocent spouse

¹ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code.

1 claims, we felt compelled to review this petition in light of *Ewing*. Upon consideration of the petition
2 for rehearing, we conclude that the grounds set forth therein do not constitute good cause for a new
3 hearing, as required by the *Appeal of Wilson Development, Inc.* (94-SBE-007), decided by this Board on
4 October 5, 1994, and that this Board does have jurisdiction to review respondent's denial of equitable
5 relief in innocent spouse matters.

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7 I. Factual and Procedural Background

8 Appellant and her husband married on May 7, 1971, and remained married through the
9 year at issue. Appellant and her husband filed a joint California income tax return for 1984 on August
10 12, 1985, reporting taxable income of \$246,557 and a tax liability of \$23,866. Appellant and her
11 husband claimed withholding credits of \$4,144 and submitted payment of \$20,125 with their return.
12 Because the return was not filed by the April 15, 1985, due date, respondent imposed a late filing
13 penalty totaling \$1,371.89. Thereafter, the Internal Revenue Service (IRS) notified respondent that it
14 had made income adjustments to the 1984 federal joint return (increasing the reported joint income by
15 \$717,072). Respondent accordingly issued a Notice of Proposed Assessment (NPA) on March 21, 1990,
16 mirroring the federal change and proposing to assess an additional \$78,880 in California income tax.
17 The NPA went final without protest and respondent's subsequent efforts to collect the tax liability were
18 unsuccessful.

19 On December 1, 2003, appellant submitted to respondent a request for innocent spouse
20 relief. Respondent considered appellant's request for relief under section 18533, subdivision (b) (known
21 as "traditional" innocent spouse relief), and section 18533, subdivision (f) (known as "equitable"
22 innocent spouse relief). On June 30, 2004, respondent denied appellant's request for innocent spouse
23 relief under subdivisions (b) and (f) of section 18533.

24 Appellant then filed this appeal. We conducted an oral hearing on November 15, 2005,
25 and concluded that respondent correctly denied innocent spouse relief. We informed appellant of our
26 decision in a letter dated November 16, 2005. Appellant then filed her petition for rehearing.

1 II. Law and Analysis

2 A. *Jurisdiction Over Subdivision (f) Claims*

3 There are three types of innocent spouse relief under section 18533: traditional relief
4 under subdivision (b), separate liability election under subdivision (c), and equitable relief under
5 subdivision (f). The administrative appeal rights for California innocent spouse cases are set forth in
6 subdivision (e) of section 18533. When a California statute is substantially similar to a federal statute,
7 federal law interpreting the federal statute may be considered highly persuasive. (*Douglas v. State of*
8 *California* (1942) 48 Cal.App.2d 835.) In particular, federal precedent is applied extensively in
9 California innocent spouse cases. (Rev. & Tax. Code, §18533, subd. (g)(2).)

10 Internal Revenue Code section 6015 governs innocent spouse relief at the federal level
11 and is structured similar to section 18533. IRC section 6015 contains provisions for traditional relief in
12 subsection (b), separate liability election in subsection (c), equitable relief in subsection (f), and appeal
13 rights in subsection (e).

14 While appellant's petition for rehearing was pending, the Ninth Circuit held that the tax
15 court does not have jurisdiction to review a denial of equitable relief under IRC section 6015(f).
16 (*Commissioner v. Ewing* (9th Cir. 2006) 439 F.3d 1009.) As previously stated, the result in *Ewing*
17 prompted us to revisit the issue of whether we have jurisdiction to review respondent's denial of a
18 request for relief under subdivision (f). We asked the parties to brief that question and we now proceed
19 to discuss the jurisdictional issue.

20 Prior to 2000, IRC section 6015(e)(1) granted a right to appeal to "an individual who
21 elects to have subsection (b) or (c) apply." The current version of IRC section 6015(e)(1) grants a right
22 to appeal to "an individual against whom a deficiency has been asserted and who elects to have
23 subsection (b) or (c) apply." (Emphasis added.)

24 Under the prior version of IRC section 6015(e)(1), which did not contain the requirement
25 that a deficiency be asserted, the tax court held that it had jurisdiction over a denial of equitable relief
26 under IRC section 6015(f). (*Fernandez v. Commissioner* (2000) 114 T.C. 324 [*"Fernandez"*].) The
27 court noted that the scope of the appeal right was a determination of "the appropriate relief available"
28 under IRC section 6015, which includes subsection (f). (*Id.* at p. 331.) Finding one limitation on

1 jurisdiction, the court stated that in order for an individual to have the right to appeal a denial of
2 equitable relief under subsection (f), that individual also must have requested relief under subsection (b)
3 or (c). (*Id.*)

4 Federal courts have reached mixed results on the jurisdiction issue under the current
5 version of IRC section 6015(e). At least two bankruptcy courts determined that there is no right to
6 appeal a denial of subsection (f) equitable relief. (*In re French* (Bankr. N.D. Ohio 2000) 255 B.R. 1; *In*
7 *re Mira* (Bankr. M.S. Pa 1999) 245 B.R. 788.) However, at least two circuit courts assumed jurisdiction
8 over subsection (f) cases without expressly discussing jurisdiction as a separate issue. (*Cheshire v.*
9 *Commissioner* (5th Cir. 2002) 282 F.3d 326; *Mitchell v. Commissioner* (D.C. Cir. 2002) 292 F.3d 800.)

10 Most recently, in *Ewing*, the Ninth Circuit focused on the language in the current version
11 of IRC section 6015(e)(1) that requires that a deficiency be asserted. In *Ewing*, the taxpayer had
12 requested equitable relief under IRC section 6015(f) and, because the liability at issue had been self-
13 assessed on the joint return, there was no “deficiency” asserted. The tax court held that it had
14 jurisdiction to hear the appeal. The Ninth Circuit reversed, noting that the plain language of section
15 6015(e)(1) requires the assertion of a deficiency. The court therefore stated: “We hold that the tax court
16 erred in concluding that it had jurisdiction over *Ewing*’s petition because no deficiency had been
17 asserted.” (*Ewing, supra*, 439 F.3d at p. 1014.)

18 We note that California’s administrative appeal language differs from the current version
19 of IRC section 6015(e), under which *Ewing* was decided. Section 18533, subdivision (e)(1)(A)(iii),
20 states:

21 “The individual making the election under subdivision (b) or (c) may
22 appeal the determination of the Franchise Tax Board of the appropriate
23 relief available to the individual under this section if that appeal is filed
24 [within 30 days of the notice of the Franchise Tax Board’s determination]
25 and the appeal shall be treated as an appeal to the Board under Section
26 19045. Notwithstanding the preceding sentence, the individual making
27 the election under subdivision (b) or (c) may appeal to the board at any
28 time after the date that is six months after the date the election is filed with
the Franchise Tax Board and before the close of the [foregoing 30-day]
period.” (Emphasis added.)

1 To the extent there are relevant differences in the statutory language, it is California’s language in
2 section 18533, not federal authority, that governs our jurisdiction to hear requests for equitable relief
3 under subdivision (f).

4 The appeal provision in section 18533 first sets forth who may file the appeal.
5 Subdivision (e)(1)(A)(iii) provides a right of appeal to “The individual making the election under
6 subdivision (b) or (c)” Therefore, if an individual requested relief under subdivision (b) and/or (c)
7 and respondent denied such relief, that individual has the right to file a timely appeal. Unlike the current
8 version of IRC section 6015(e), California’s appeal provision contains no requirement that there be a
9 deficiency. Thus, we find *Ewing*, which focused on the requirement that there be a deficiency, to be of
10 little use in interpreting California’s appeal provision.

11 The appeal provision in section 18533 then sets forth what is at issue in the appeal.
12 Subdivision (e)(1)(A)(iii) states that the subject of the appeal is “. . . the determination of the Franchise
13 Tax Board of the appropriate relief available to the individual under this section” The subject
14 matter of the appeal is not limited to respondent’s determination under subdivision (b) and/or (c).
15 Rather, the scope of the appeal includes the relief available “under this section,” which includes
16 subdivisions (b), (c), and (f). Therefore, assuming that a timely appeal is filed by an individual who has
17 a right to appeal, the Board may review respondent’s determination under subdivisions (b), (c), and (f).
18 Interpreting substantially identical language in the prior version of IRC section 6015(e)(1), the tax court
19 in *Fernandez* came to the same conclusion.

20 Based on the foregoing analysis, we conclude that we have jurisdiction to review
21 respondent’s denial of equitable relief under subdivision (f) if the request for relief under subdivision (f)
22 was coupled with a request for relief under subdivision (b) and/or (c).² If the request for relief under
23 subdivision (f) stands alone, this Board does not have jurisdiction to review respondent’s denial of
24 equitable relief.

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² For sake of this analysis, we assume that the appeal meets all other requirements; e.g., the appeal is timely and includes all of the information required by this Board’s Rules of Practice.

1 In the present appeal, appellant's request for relief under subdivision (f) was coupled with
2 a request for relief under subdivision (b). Therefore, this Board has jurisdiction to review respondent's
3 denial of appellant's request for relief under subdivision (f).

4 B. *Potential Grounds for a Rehearing*

5 Having concluded that we have jurisdiction over all aspects of this appeal, including
6 appellant's request for relief under section 18533, subdivision (f), we will proceed to discuss the present
7 petition for rehearing.

8 In her petition for rehearing, appellant contends that we made an error of law when we
9 decided the appeal in respondent's favor. Specifically, appellant contends that we erred by failing to
10 independently consider and analyze her request for relief under both subdivisions (b) and (f) of section
11 18533. Appellant also contends that we improperly used an abuse-of-discretion standard when
12 reviewing respondent's denial of relief.

13 Appellant's allegations of error are not supported by the record or the law. First, we note
14 that the parties separately analyzed subdivisions (b) and (f) in their briefing. Our staff's Hearing
15 Summary, prepared prior to the oral hearing, also separately analyzed subdivisions (b) and (f). After
16 due consideration of the briefing, the Hearing Summary, and the discussion at the oral hearing, we
17 concluded that appellant was not entitled to relief under either subdivision (b) or subdivision (f).
18 Appellant improperly inferred otherwise from the fact that our notice of the decision did not contain
19 separate findings or analysis regarding subdivisions (b) and (f).³ Next, we note that federal courts have
20 found abuse of discretion to be the proper standard of review for a denial of equitable relief. (*Jonson v.*
21 *Commissioner* (2002) 118 T.C. 106; *Butler v. Commissioner* (2000) 114 T.C. 276.) Thus, we correctly
22 used an abuse-of-discretion standard to review respondent's denial of relief under subdivision (f).

23 As set forth in the *Appeal of Wilson Development, supra*, an error of law may be a proper
24 ground for granting a rehearing. However, we believe more is required than a mere allegation of error
25 that is easily rebutted. Here, appellant's allegations of error are easily rebutted by the record and the
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28 ³ Our authority to use brief "letter decisions," such as the one used to notify appellant of the outcome of her appeal, has been
recognized by the Court of Appeal. (*Nast v. State Board of Equalization* (1996) 46 Cal.App.4th 343, at fn. 4.)

1 law. Therefore, we conclude that the grounds set forth in appellant’s petition do not constitute good
2 cause for a rehearing.

3 III. Conclusion

4 For the reasons set forth in this opinion, we conclude that we have jurisdiction to review
5 respondent’s denial of appellant’s request for relief under section 18533, subdivision (f). We further
6 conclude that appellant has failed to demonstrate proper grounds for a rehearing. Appellant’s petition
7 for rehearing is therefore denied.

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ORDER

Pursuant to the views expressed in the opinion of the Board on file in this proceeding,
and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 19048
of the Revenue and Taxation Code, that this Board's decision of November 15, 2005, is affirmed, and,
further, that the action of the Franchise Tax Board in denying Patricia Tyler-Griffis' request for innocent
spouse relief in the amount of \$78,880 for 1984 be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of December, 2006, by the State Board of
Equalization, with Board Members Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel
present.

John Chiang, Chair

Claude Parrish, Member

Betty Yee*, Member

Bill Leonard, Member

Marcy Jo Mandel**, Member

*Acting Board Member, 1st District

**For Steve Westly per Government Code section 7.9.