

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
)
R. TOUSSIEH (APPEALING SPOUSE) AND)
L. ANTILLON (NON-APPEALING SPOUSE))
)
)

OTA Case No. 21088415

OPINION

Representing the Parties:

For Appellant: R. Toussieh

For Respondent: Bradley J. Coutinho, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, R. Toussieh (Appealing Spouse) appeals an action by respondent Franchise Tax Board (FTB) granting innocent spouse relief to L. Antillon (Non-Appealing Spouse) for the 2014 tax year.

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

ISSUE

Whether Appealing Spouse has established that FTB erred in granting conforming innocent spouse relief to Non-Appealing Spouse for the 2014 tax year.

FACTUAL FINDINGS

California Tax Returns for the 2014 Tax Year

1. On January 14, 2016, Appealing Spouse and Non-Appealing Spouse filed a joint California Resident Income Tax Return for the 2014 tax year. Shortly after, Appealing Spouse and Non-Appealing Spouse filed a first amended joint return to include unreported taxable income earned by Appealing Spouse, which resulted in no tax due after exemption credits.
2. On October 15, 2019, Appealing Spouse and Non-Appealing Spouse filed a second

amended joint return following an FTB audit, resulting in a corrected tax of \$3,152. FTB accepted the second amended return.

3. On October 29, 2020, the IRS granted Non-Appealing Spouse equitable innocent spouse relief for the 2014 tax year.

Non-Appealing Spouse's Innocent Spouse Relief Request

4. On December 1, 2020, Non-Appealing Spouse filed an innocent spouse relief request with FTB for the 2014 through 2016 tax years.¹ Non-Appealing Spouse provided the IRS determination letter explaining that the IRS granted her equitable relief under Internal Revenue Code (IRC) section 6015(f) for the 2014 tax year.²
5. On July 12, 2021, FTB issued two notices: (1) a Notice of Action – Approval; and (2) a Notice of Action – Non-Requesting Taxpayer, granting innocent spouse relief to Non-Appealing Spouse for the 2014 tax year.
6. Thereafter, Appealing Spouse filed this timely appeal.
7. Non-Appealing Spouse filed a brief in response to Appealing Spouse's appeal in support of her request for conforming equitable innocent spouse relief under IRC section 6015(f).

DISCUSSION

Generally, each spouse is jointly and severally liable for the entire tax due for that tax year when a joint return is filed. (R&TC, § 19006(b).) However, R&TC section 18533(i)(1) provides that an individual who made a joint return and has been granted federal innocent spouse relief under IRC section 6015 shall be³ eligible for California innocent spouse relief if the following conditions are satisfied:

¹ The issue in this appeal relates only to the 2014 tax year and therefore the 2015 and 2016 tax years will not be discussed.

² IRC section 6015(f) provides that the IRS may grant equitable innocent spouse relief if the IRS determines that (1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable of any unpaid tax or deficiency (or any portion of either), and (2) relief is not available under IRC section 6015(b) or (c).

³ Office of Tax Appeals notes that conforming innocent spouse relief under IRC section 6015 is mandatory in this appeal provided that all the elements under R&TC section 18533(i)(1) are met unless it is shown otherwise pursuant to R&TC section 18533(i)(2).

1. The individual requests relief under R&TC section 18533;
2. 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 (here, Non-Appealing Spouse) was granted relief under IRC section 6015; and
3. The individual requesting relief furnishes to FTB a copy of the federal determination granting relief under IRC section 6015.

R&TC section 18533(i)(2) provides that relief under R&TC section 18533(i) does not apply if Appealing Spouse submits information to FTB showing any of the following:

1. Information that indicates that the facts and circumstances that apply to the understatement and liabilities for which relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual (here, Non-Appealing Spouse) was granted relief under IRC section 6015;
2. Information that indicates that there has not been a federal determination granting relief under IRC section 6015 or the determination has been modified, altered, withdrawn, cancelled, or rescinded; or
3. Information indicating that Appealing Spouse did not have an opportunity to participate in the federal administrative or judicial proceeding that resulted in relief under IRC section 6015.

Here, Non-Appealing Spouse satisfies the three conditions for innocent spouse relief set forth in R&TC section 18533(i)(1). First, Non-Appealing Spouse filed an innocent spouse relief request for the 2014 tax year with FTB. Second, Non-Appealing Spouse's request filed with FTB seems to be based on the same facts and circumstances underlying the federal determination granting relief, such as the unreported income at issue was solely attributable to Appealing Spouse, Non-Appealing Spouse was not involved in the preparation of the 2014 joint federal or California tax returns, and Non-Appealing Spouse did not have access to Appealing Spouse's financial information. Third, and lastly, Non-Appealing Spouse furnished FTB a copy of the federal determination, which demonstrated that the IRS granted her equitable innocent spouse relief under IRC section 6015(f) for the 2014 tax year. Accordingly, FTB properly granted conforming relief to Non-Appealing Spouse.

On appeal, Appealing Spouse argues that FTB should not have granted innocent spouse relief because Non-Appealing Spouse should be equally responsible for the 2014 tax year’s liabilities. However, Appealing Spouse’s burden is: (1) to provide information showing that the facts and circumstances for the federal and state liabilities are not the same; (2) the IRS modified, altered, withdrew, canceled, or rescinded its determination granting innocent spouse relief; or (3) Appealing Spouse did not have an opportunity to participate in the federal proceeding that resulted in granting innocent spouse relief to Non-Appealing Spouse. (See R&TC, § 18533(i)(2).) Appealing Spouse has not provided any evidence to show that any of those circumstances exist. Therefore, Appealing Spouse has not established error in FTB’s granting conforming innocent spouse relief to Non-Appealing Spouse for the 2014 tax year.

HOLDING

Appealing Spouse has not established that FTB erred in granting conforming innocent spouse relief to Non-Appealing Spouse for the 2014 tax year.

DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:
Eddy Y.H. Lam
Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Teresa A. Stanley
Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Kenneth Gast
Kenneth Gast
Administrative Law Judge

Date Issued: 8/17/2022