

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of:)
)
R. GOODWIN AND)
R. GONZALES)
)
)

OTA Case Nos. 18053099, 18053190

OPINION

Representing the Parties:

For Appellant R. Goodwin:	R. Goodwin
For Appellant R. Gonzales:	R. Gonzales
For Respondent:	Bradley J. Coutinho, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Goodwin (Ms. Goodwin) and R. Gonzales (Mr. Gonzales) (together, appellants) separately appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$64,263.00, a late filing penalty of \$16,065.75, an accuracy related penalty of \$12,852.60, and applicable interest, for the 2011 tax year.^{1, 2, 3}

In addition, pursuant to R&TC section 18533, Ms. Goodwin appeals FTB’s denial of innocent spouse relief to Ms. Goodwin, and FTB’s grant of separate allocation of liability relief to Mr. Gonzales.

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

¹ Appellants are former spouses who filed a joint California return for the 2011 tax year, and both appeals are from a single Notice of Action issued to them jointly, affirming a proposed assessment based on a final federal determination by the IRS.

² Office of Tax Appeals consolidated the appeals based on FTB’s request.

³ In their requests for appeal, appellants do not object to FTB’s imposition of the late filing penalty and accuracy related penalty, and do not provide a basis for abating those penalties. Therefore, OTA does not address FTB’s imposition of those penalties.

ISSUES

1. Whether appellants have established error in FTB's proposed assessment based on a final federal determination.
2. Whether Ms. Goodwin has established that she is entitled to innocent spouse relief.
3. Whether Ms. Goodwin has established error in FTB's grant of separate allocation of liability relief to Mr. Gonzales pursuant R&TC section 18533(c).⁴

FACTUAL FINDINGS

1. Appellants married on April 5, 2003, separated on October 1, 2012, and divorced on October 22, 2013.
2. Appellants operated a ranch and cattle business called RG Land & Cattle.⁵
3. On November 5, 2012, appellants untimely filed their 2011 California return as married filing jointly. On the federal return attached to the California return, appellants reported zero net income from a Schedule C business (which was reported as Ms. Goodwin's business described as "other business services"),⁶ a Schedule E loss of \$208,397, and a net operating loss of \$162,566. On Schedule E, appellants reported rental real estate income of \$29,997 and nonpassive losses of \$238,394 from RGG Enterprises, Inc.
4. With respect to RGG Enterprises, Inc., the 2011 Schedule K-1s report that each appellant was a 50 percent shareholder of the S corporation. The record does not establish the type of business in which RGG Enterprises, Inc. was engaged.⁷ However, the Superior Court

⁴ FTB denied traditional innocent spouse relief to Mr. Gonzales under R&TC section 18533(b) and equitable relief to Mr. Gonzales under R&TC section 18533(f). However, Mr. Gonzales has not appealed or otherwise challenged FTB's determination regarding his request for innocent spouse relief. Therefore, OTA does not address whether Mr. Gonzales is entitled to traditional innocent spouse relief under R&TC section 18533(b) or equitable relief under R&TC section 18533(f) for the portion of the deficiency that FTB determined is allocable to Mr. Gonzales under R&TC section 18533(c).

⁵ Mr. Gonzales claims he was responsible for the day-to-day operations of the RG Land & Cattle business and that Ms. Goodwin was responsible for the financial aspects of the business. However, Ms. Goodwin claims that Mr. Gonzales was involved in all aspects of the business, including placing orders, writing checks, and reviewing tax returns.

⁶ On the Schedule C, appellants reported gross income of \$9,076 and "nominee-RGG Enterprises Inc" expenses of \$9,076.

⁷ Ms. Goodwin claims that Mr. Gonzales used RGG Enterprises, Inc. for a consulting business and "deposited his checks in [RGG Enterprises, Inc.'s] account." However, Mr. Gonzales claims that he had "no involvement in" RGG Enterprises, Inc.'s business activities.

of California’s Judgment of Marital Dissolution, dated October 22, 2013, states that the parties agreed during the divorce proceedings that: (1) RGG Enterprises, Inc. was a community asset during the marriage; (2) RGG Enterprises, Inc. became Mr. Gonzales’ sole and separate property after October 22, 2013; (3) appellants are responsible for the corporation’s liabilities incurred prior to October 22, 2013; and (4) Mr. Gonzales is solely liable for the corporation’s liabilities after October 22, 2013, including the corporation’s 2013 tax liability. The stipulated Judgment of Marital Dissolution further provides that appellants “acknowledge that they shall be bound by this Judgment.”

5. Mr. Gonzales provided FTB a copy of a settlement proposal that Ms. Goodwin sent to Mr. Gonzales on February 25, 2013, before the court signed the stipulated Judgment of Marital Dissolution. Ms. Goodwin proposed, among other things, that the parties keep their individual bank accounts and that their joint accounts be closed with the proceeds “split.” The court’s stipulated Judgment of Marital Dissolution states that the parties agreed to “retain any bank accounts in their individual name” and that “all community accounts have previously been divided between the parties to their mutual satisfaction.”
6. On November 9, 2015, FTB received a FEDSTAR IRS Data Sheet report (Fedstar report) indicating that the IRS adjusted appellants’ 2011 federal tax return. Among other adjustments, the IRS increased the Schedule C gross receipts to \$528,719; changed RGG Enterprises, Inc.’s flow through loss of \$238,394 to a gain of \$320,346; and disallowed net operating losses of \$162,566. Appellants’ federal account transcript for the 2011 tax year shows that the IRS’ assessment is consistent with the adjustments in the Fedstar report.
7. The IRS increased the Schedule C gross receipts after performing a bank deposit analysis on three bank accounts. The signors on the first account (ending in 0636) are Mr. Gonzales and Ms. Goodwin doing business as RG Land & Cattle. The IRS calculated \$136,212.12 of unreported taxable income from this account. The signor on the second bank account (ending in 6624) is Ms. Goodwin. The IRS calculated \$1,983.21 of unreported taxable income from this account. The signors on the third bank account (ending in 7162) are Mr. Gonzales and Ms. Goodwin, as joint tenants with a right of survivorship. The IRS calculated \$399,599.35 of unreported taxable income from this account.

8. Although the IRS assessed the unreported income as Ms. Goodwin's Schedule C business income, almost all of the unreported income—\$535,811.47 of \$537,794.68—were from appellants' joint bank accounts.
9. On February 3, 2017, FTB issued a Notice of Proposed Assessment (NPA) to appellants for the 2011 tax year, adopting the IRS' adjustments. Appellants separately protested the NPA.⁸ FTB issued a Notice of Action (NOA) affirming the NPA, which appellants separately appealed.
10. After filing his appeal to OTA, Mr. Gonzales requested innocent spouse relief on September 6, 2018. Mr. Gonzales provided documents in support of his request, including the stipulated Judgment of Marital Dissolution and the settlement proposal. Mr. Gonzales did not provide any documentation to establish the nature of the Schedule C business.
11. FTB granted separate allocation of liability relief to Mr. Gonzales under R&TC section 18533(c), allocating one-half of the Schedule E and net operating loss adjustments to each appellant, and the entire Schedule C (and related) adjustments to Ms. Goodwin on the basis that appellants reported the Schedule C activity as Ms. Goodwin's business. Mr. Gonzales has not appealed or otherwise challenged FTB's determination regarding his request for innocent spouse relief.
12. On November 15, 2018, Ms. Goodwin also requested innocent spouse relief, which FTB denied. Ms. Goodwin appeals FTB's denial of innocent spouse relief to Ms. Goodwin and FTB's grant of separate allocation of liability relief to Mr. Gonzales.

DISCUSSION

Issue 1: Whether appellants have established error in FTB's proposed assessment based on a final federal determination.

Appellants contend that FTB's proposed assessment, which is based on the IRS' adjustments to appellants' 2011 federal tax return, is incorrect. If the IRS adjusts a federal tax return, R&TC section 18622(a) requires a taxpayer to report those adjustments to FTB and either concede the accuracy of the federal adjustments or establish why they are incorrect. A proposed

⁸ A copy of Ms. Goodwin's protest is not in the record. FTB indicated that it could not locate Ms. Goodwin's protest.

assessment based on federal adjustments is presumed correct and a taxpayer bears the burden of proving otherwise. (*Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB’s assessment is incorrect, it must be upheld. (*Ibid.*)

FTB’s proposed assessment for the 2011 tax year is presumed correct because it corresponds to the federal changes as reflected on the Fedstar report and appellants’ federal account transcript. Although Mr. Gonzales stated in his protest letter that he appealed the federal assessment, and Ms. Goodwin stated in her appeal letter that she intends on filing an audit reconsideration with the IRS, there is nothing in the record to indicate that the IRS granted an audit reconsideration or otherwise modified the adjustments reflected on the Fedstar report and federal account transcript.

Appellants have not presented any evidence establishing that any of the federal adjustments are incorrect. Accordingly, FTB’s assessment must be upheld.

Issue 2: Whether Ms. Goodwin has established that she is entitled to innocent spouse relief.

Each spouse is jointly and severally liable for the total amount of tax due on a joint return. (R&TC, § 19006(b); Internal Revenue Code (IRC), § 6013(d).) However, an individual who files a joint return may be relieved of all or a portion of the joint and several liability if the individual qualifies for innocent spouse relief. (R&TC, § 18533(a); IRC, §6015(a).) Three types of innocent spouse relief may apply here. R&TC section 18533(b) provides for traditional innocent spouse relief; R&TC section 18533(c) provides for separate allocation of liability relief; and, if a requesting spouse is not eligible for relief under (b) or (c), a requesting spouse may be eligible for equitable relief under R&TC section 18533(f).

When a California statute is substantially similar to a federal statute, as in the case of the innocent spouse provisions, federal law interpreting the federal statute may be highly persuasive in interpreting the California statute. (*Appeal of Pifer*, 2021-OTA-338P.) Federal treasury regulations relating to innocent spouse relief are applied in California innocent spouse matters to the extent they do not conflict with California’s innocent spouse statute or regulations. (R&TC, § 18533(g)(2).)

Determinations of innocent spouse relief are reviewed *de novo*. (*Appeal of Pifer*, *supra*; IRC, § 6015(e)(7).) Generally, an individual claiming innocent spouse relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Appeal of Pifer*, *supra*.) A taxpayer must provide credible, competent, and relevant evidence to establish each

statutory requirement. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Traditional Innocent Spouse Relief

To be entitled to traditional innocent spouse relief for an understatement of tax pursuant to R&TC section 18533(b), the requesting spouse must satisfy all five requirements of R&TC section 18533(b)(1). (R&TC, § 18533(b)(1)(A)-(E); IRC, § 6015(b); Treas. Reg. § 1.6015-2(a).) Here, Ms. Goodwin has failed to satisfy at least one of those requirements—whether the understatement of tax is attributable to erroneous items of the nonrequesting spouse. Therefore, she is not entitled to traditional relief.

More specifically, in determining whether an erroneous item is attributable to the nonrequesting spouse, the federal treasury regulations provide that an erroneous item is generally attributable to the individual whose activities gave rise to such item. (Treas. Reg. § 1.6015-1(f)(1), (h)(4).) The erroneous item, such as unreported income, must be solely attributable to the other spouse. (*Appeal of Pifer, supra.*) Joint ownership alone does not dictate whether an erroneous item is allocated to both spouses. (*Ibid.*) Even where a requesting spouse is listed as a corporate director, relief may be available where the requesting spouse did not actually participate in the business activity. (*Ibid.*)

Here, Ms. Goodwin has not provided any evidence to establish that any item resulting in FTB's proposed assessment is attributable solely to Mr. Gonzales. Accordingly, Ms. Goodwin has not shown that she is entitled to traditional innocent spouse relief. (See *Appeal of Pifer, supra* [unsupported assertions are not enough to satisfy a taxpayer's burden of proof].)

Separate Allocation of Liability Relief

The separate allocation of liability rules under R&TC section 18533(c) generally allow a qualifying spouse to be relieved of joint and several liability for any portion of a deficiency that is allocated to the nonrequesting spouse, as if the spouses had filed separate tax returns. To show entitlement to relief, a requesting spouse has the burden of proving: (1) that the requesting spouse is no longer married to or is legally separated from the joint filer at the time the election is filed, or that the requesting spouse and the joint filer were not a member of the same household at any time during the 12-month period ending on the date the election is filed; (2) that the requesting spouse made an election for separate liability relief no later than two years

after the date on which FTB began collection activities with respect to the individual making the election; and (3) the portion of the deficiency that should be allocated to the requesting spouse. (R&TC, § 18533(c)(2), (c)(3).) However, if FTB establishes that the requesting spouse had actual knowledge of any item giving rise to a deficiency at the time the requesting spouse signed the return, the requesting spouse generally is not entitled to relief for that item. (R&TC, § 18533(c)(3)(C).)

Generally, any item giving rise to a deficiency on a joint return is allocated in the same manner as it would have been allocated if the individuals had filed separate returns for the tax year. (R&TC, § 18533(d)(3)(A).) Erroneous items of income and deductions related to a business or an investment generally are allocated to the spouse who owned the business or investment. (Treas. Reg. § 1.6015-3(d)(2)(iii), (iv).) If both spouses owned an interest in the business or the investment, the erroneous item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or the investment. (*Ibid.*) In the absence of clear and convincing evidence supporting a different allocation, an erroneous item relating to an asset that the spouses owned jointly is generally allocated 50 percent to each spouse. (*Ibid.*)

Here, there is no dispute that appellants were divorced at the time Ms. Goodwin requested relief in 2018, and that her request was timely. The issue is whether Ms. Goodwin has established the portion of the deficiency that is allocable to her.

With respect to the Schedule C (and related) adjustments, appellants reported the Schedule C business as Ms. Goodwin's sole proprietorship. All of the unreported income, as determined by the IRS' bank deposit analysis, are deposits made to Ms. Goodwin's individual and joint accounts. Ms. Goodwin has not provided any evidence that would allocate a portion of the deficiency related to the Schedule C adjustment to herself or Mr. Gonzales. Therefore, Ms. Goodwin remains jointly and severally liable for the assessment related to the Schedule C (and related) adjustments.

With respect to the net operating loss adjustment, Ms. Goodwin has not established the source of these losses. Therefore, Ms. Goodwin remains jointly and severally liable for the assessment related to the net operating loss adjustment.

Lastly, with respect to the Schedule E adjustment, the adjustment relates to pass-through items from RGG Enterprises, Inc., which OTA finds appellants equally owned based on the

evidence in the record, including the Schedule K-1s and stipulated Judgment of Marital Dissolution. Therefore, 50 percent of the Schedule E adjustment is allocable to Ms. Goodwin. (Treas. Reg. § 1.6015-3(d)(2)(iii) [if both spouses owned an interest in the business, the erroneous item of income is allocated between the spouses in proportion to each spouse's ownership interest in the business].) Accordingly, Ms. Goodwin is entitled to separate allocation of liability relief for 50 percent of the assessment related to the Schedule E adjustment.

Equitable Relief

With respect to the portion of the deficiency for which Ms. Goodwin remains liable, OTA considers whether Ms. Goodwin is entitled to equitable relief under R&TC section 18533(f). (See *Barnes v. Commissioner*, T. C. Memo. 2004-266 [where requesting spouse is relieved of portion of deficiency allocable to other spouse, tax court reviewed whether requesting spouse is eligible for equitable relief of the remaining portion of the deficiency allocable to the requesting spouse].) Under R&TC section 18533(f), a requesting spouse may be relieved from joint and several liability if the requesting spouse does not otherwise qualify for traditional innocent spouse relief or separate allocation of liability relief and it is inequitable to hold the requesting spouse liable for the unpaid tax or understatement (or any portion of either) after considering all the facts and circumstances. (R&TC, § 18533(f); IRC, § 6015(f).)

A requesting spouse must satisfy seven threshold conditions to be eligible for equitable relief. (Rev. Proc. 2013-34, § 4.01(1)-(7), 2013-43 I.R.B. 397; *Appeal of Pifer, supra.*) One of these conditions is that the requesting spouse must show that the tax liability is attributable (in full or in part) to an item of the other spouse. (Rev. Proc. 2013-34, § 4.01(7), *supra.*) If the liability is partially attributable to the requesting spouse, then relief can be considered only for the portion of the liability that is attributable to the nonrequesting spouse. However, there may be relief regardless of whether the understatement or deficiency is attributable (in full or in part) to the requesting spouse if any of the following exceptions applies: (1) the item is attributable or partially attributable to the requesting spouse solely due to the operation of community property law; (2) if the requesting spouse merely has nominal ownership over the item; (3) if the requesting spouse did not know, and had no reason to know, that funds intended for the payment of tax were misappropriated by the other spouse; (4) the requesting spouse establishes that he or she was a victim of abuse prior to the time the return was filed; or (5) the requesting spouse establishes that the other spouse's fraud caused the erroneous item. (*Appeal of Pifer, supra.*) If

the requesting spouse satisfies the threshold requirements, then the requesting spouse must establish that he or she qualifies for equitable relief under the streamlined determination in section 4.02 of Rev. Proc. 2013-34 or the nonexclusive factors in section 4.03 of Rev. Proc. 2013-34. (Rev. Proc. 2013-34, *supra*.)

Here, Ms. Goodwin has not established that any item is attributable in full or in part to Mr. Gonzales, or that any of the exceptions apply. Accordingly, Ms. Goodwin is not entitled to equitable relief for the portion of the deficiency for which she remains jointly and severally liable.

Issue 3: Whether Ms. Goodwin established error in FTB’s grant of separate allocation of liability relief to Mr. Gonzales pursuant to R&TC section 18533(c).

FTB granted separate allocation of liability relief to Mr. Gonzales pursuant to R&TC section 18533(c), allocating one-half of the Schedule E and net operating loss adjustments to each appellant, and the entire Schedule C (and related) adjustments to Ms. Goodwin on the basis that appellants reported the Schedule C activity as Ms. Goodwin’s sole business. Ms. Goodwin appeals FTB’s determination, asserting, without evidence, that Mr. Gonzales “does not deserve” innocent spouse relief because “he had full control of the whole ranch,” his “name was on the business checks and accounts,” he wrote checks, and he reviewed and signed tax returns. In other words, she claims that “he ran the whole show” and he “is not innocent by any means.”

As noted above, determinations of innocent spouse relief are reviewed *de novo*. (*Appeal of Pifer, supra*.) Generally, an individual claiming innocent spouse relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Ibid.*) As noted above, for separate allocation of liability relief, the requesting spouse has the burden of proving: (1) that the requesting spouse is no longer married to or is legally separated from the joint filer at the time the election is filed, or that the requesting spouse and the joint filer were not a member of the same household at any time during the 12-month period ending on the date the election is filed; (2) that the requesting spouse made an election for separate liability relief no later than two years after the date on which FTB began collection activities with respect to the individual making the election; and (3) the portion of the deficiency that should be allocated to the requesting spouse. (R&TC, § 18533(c)(2), (c)(3).)

However, if FTB establishes by a preponderance of the evidence that the requesting spouse had actual knowledge of any item that is allocable to the nonrequesting spouse, the

requesting spouse generally is not entitled to relief for that item. (R&TC, § 18533(c)(3)(C); Treas. Reg. § 1.6015-3(c)(2)(i).) Whether or not the requesting spouse had actual knowledge of an erroneous item at the time he or she signed the return depends on “all of the facts and circumstances.” (Treas. Reg. § 1.6015-3(c)(2)(iv).) A “factor that may be relied upon in demonstrating that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the nonrequesting spouse jointly owned the property that resulted in the erroneous item.” (*Ibid.*) A “requesting spouse who resided in a community property state at the time the return was signed will be considered to have had an ownership interest in an item only if the requesting spouse’s name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item.” (*Ibid.*)

In cases involving unreported income, as is the case here, actual knowledge means “actual and clear awareness” of the existence of the unreported income, and includes “knowledge of the receipt of the income.” (*Cheshire v. Commissioner* (2000) 115 T.C. 183, 195, *affd.* (5th Cir. 2002) 282 F.3d 326; Treas. Reg. § 1.6015-3(c)(2)(i)(A).)

In situations like this, where FTB favors granting relief, and the only party opposing relief is the nonrequesting spouse, the United States Tax Court has stated that it is unclear who bears the burden of proof on the “actual knowledge” issue. (*Lassek v. Commissioner*, T.C. Memo. 2019-145; *Young v. Commissioner*, T.C. Memo. 2012-255.) The United States Tax Court has resolved this conflict by determining whether actual knowledge has been established by a preponderance of the evidence presented by all three parties—that is, the requesting spouse, the nonrequesting spouse, and the taxing agency. (*Knight v. Commissioner*, T.C. Memo. 2010-242; *McDaniel v. Commissioner*, T.C. Memo. 2009-137; *Stergios v. Commissioner*, T.C. Memo. 2009-15; *Pounds v. Commissioner*, T.C. Memo. 2011-202.)

In summary, OTA must decide whether (1) Mr. Gonzales has carried his burden of establishing the three statutory requirements listed above by a preponderance of the evidence, and (2) whether the preponderance of the evidence presented by all three parties establishes that Mr. Gonzales had actual knowledge of any items allocated to Ms. Goodwin, such that he is not entitled to separate allocation of liability relief for those items.

OTA finds that Mr. Gonzales has satisfied the first two statutory requirements because appellants were divorced when Mr. Gonzales requested relief in 2018, and Mr. Gonzales’ request is timely because FTB has not commenced collection activities. With respect to the third

statutory requirement—whether Mr. Gonzales has established the portion of the deficiency that should be allocated to him—any item giving rise to a deficiency on a joint return generally is allocated in the same manner as it would have been allocated if the individuals had filed separate returns for the tax year. (R&TC, § 18533(d)(3)(A).) However, erroneous items of income and deductions related to a business or an investment generally are allocated to the spouse who owned the business or the investment. (Treas. Reg. § 1.6015-3(d)(2)(iii), (iv).) If both spouses owned an interest in the business or the investment, the erroneous item is generally allocated between the spouses in proportion to each spouse’s ownership interest in the business or the investment. (*Ibid.*) In the absence of clear and convincing evidence supporting a different allocation, an erroneous item relating to an asset that the spouses owned jointly is generally allocated 50 percent to each spouse. (*Ibid.*)

With respect to the net operating loss adjustment, Mr. Gonzales has not presented any evidence establishing the nature or source of those losses, or what portion of those losses should be allocated to Mr. Gonzales or Ms. Goodwin. Therefore, Mr. Gonzales remains jointly and severally liable for the net operating loss adjustment.

With respect to the Schedule E adjustment, which relates to flow through income from RGG Enterprises, Inc., the stipulated Judgment of Marital Dissolution establishes that the parties agree that: (1) RGG Enterprises, Inc. was a community asset during the marriage; (2) RGG Enterprises, Inc. became Mr. Gonzales’ sole and separate property after October 22, 2013; (3) appellants are responsible for the corporation’s liabilities incurred prior to October 22, 2013; and (4) Mr. Gonzales is solely liable for the corporation’s liabilities after October 22, 2013, including the corporation’s 2013 tax liability. As noted above, OTA finds that each spouse was a 50 percent shareholder of RGG Enterprises, Inc. in 2011 and, therefore, 50 percent of the Schedule E adjustment should be allocated to Mr. Gonzales. (Treas. Reg. § 1.6015-3(d)(2)(iii) [if both spouses owned an interest in the business, the erroneous item is generally allocated between the spouses in proportion to each spouse’s ownership interest in the business].)

With respect to the Schedule C (and related) adjustments, nearly all of the unreported income—\$535,811.47 of the \$537,794.68—were deposits to appellants’ joint bank accounts. It is unclear why the IRS decided to assess the unreported income as Ms. Goodwin’s separate Schedule C income. OTA finds that Mr. Gonzales has not carried his burden of establishing that the unreported income should be allocable solely to Ms. Goodwin. Mr. Gonzales asserts that

Ms. Goodwin controlled the finances in their marriage, including the funds in the joint accounts. However, Mr. Gonzales has made statements to FTB and on appeal that puts his credibility at issue. For example, he asserted in his request for innocent spouse relief that he had “no involvement in” RGG Enterprises, Inc. However, during the divorce proceedings, he agreed that RGG Enterprises, Inc. was his community asset before the divorce, including in 2011; that he is jointly responsible for RGG Enterprises, Inc.’s liabilities incurred before the divorce, including those incurred in 2011; and that RGG Enterprises, Inc. is his sole and separate property after the divorce. In any event, putting aside Mr. Gonzales’ credibility, Mr. Gonzales has not presented any evidence establishing the nature and ownership of the Schedule C business, or the source of the deposits to his joint accounts.


Accordingly, OTA finds that Ms. Goodwin and Mr. Gonzales remain jointly and severally liable for the Schedule C (and related) adjustments.

HOLDINGS


1. Appellants have not established error in FTB’s proposed assessment based on a final federal determination.
2. Ms. Goodwin has established that she is entitled to separate allocation of liability relief pursuant to R&TC section 18533(c) for the portion of the deficiency related to one-half of the Schedule E adjustment.
3. Ms. Goodwin has established error in FTB’s grant of separate allocation of liability relief to Mr. Gonzales pursuant to R&TC section 18533(c). Mr. Gonzales is entitled to separate allocation of liability relief only for the portion of the deficiency related to one-half of the Schedule E adjustment.


DISPOSITION

Ms. Goodwin and Mr. Gonzales are entitled to separate allocation of liability relief for the portion of the deficiency related to one-half of the Schedule E adjustment. Ms. Goodwin and Mr. Gonzales are jointly and severally liable for the portion of the deficiency related to all other adjustments.

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 Ovsep Akopchikyan
 Administrative Law Judge

We concur:

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 Andrea L.H. Long
 Administrative Law Judge

Date Issued: 10/17/2022