

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 21047660
K. TANTUWAYA (REQUESTING SPOUSE))	
AND)	
L. TANTUWAYA (NON-REQUESTING)	
SPOUSE))	

OPINION

Representing the Parties:

For L. Tantuwaya:	L. Tantuwaya
For K. Tantuwaya:	Kevan P. McLaughlin, Attorney
For Respondent:	Bradley J. Coutinho, Tax Counsel III

For Office of Tax Appeals:	Linda Frenklak, Tax Counsel V
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O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 19045 and 18533, L. Tantuwaya (Dr. Tantuwaya) appeals an action by respondent Franchise Tax Board (FTB) (1) proposing additional tax of \$128,587, plus interest, for the 2012 tax year, and \$57,616, plus interest, for the 2013 tax year, and (2) granting innocent spouse relief to K. Tantuwaya (Ms. Tantuwaya) for the 2012 and 2013 tax years. Ms. Tantuwaya became a party to this appeal by submitting a brief during Dr. Tantuwaya’s appeal.

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

ISSUES

1. Whether FTB’s proposed assessments for the 2012 and 2013 tax years are erroneous.
2. Whether Ms. Tantuwaya is entitled to innocent spouse relief for the 2012 and 2013 tax years.

FACTUAL FINDINGS

1. Appellants filed joint California tax returns for the 2012 and 2013 tax years.
2. FTB audited both tax years and determined that: (1) the depreciation deductions related to private aircraft used by Dr. Tantuwaya's wholly owned medical corporation, Dr. [Tantuwaya] MD, Inc., an S-corporation, was calculated incorrectly for both tax years; and (2) the loss reported from the sale of stock in a company called Miasole in the 2012 tax year was improperly claimed because appellants failed to respond to FTB's requests to substantiate their basis in, number of shares of, and the purchase date of the Miasole stock.
3. FTB issued a Notice of Proposed Assessment (NPA) for each year, proposing additional tax and interest based on these determinations.
4. Appellants timely protested the NPAs. During the protest, Ms. Tantuwaya submitted to FTB a request for innocent spouse relief on February 5, 2020. Ms. Tantuwaya stated that appellants married in June 1999; appellants have two children; Dr. Tantuwaya was physically and emotionally abusive and controlled all household finances; Ms. Tantuwaya moved out of the house and filed for divorce on September 11, 2014, which was finalized on November 22, 2016; Ms. Tantuwaya received full custody of the children and a five-year restraining order against Dr. Tantuwaya; Dr. Tantuwaya is facing federal criminal charges related to illegal kickbacks from a hospital and its jailed owner; Dr. Tantuwaya purchased private aircraft for his medical practice without her knowledge; Dr. Tantuwaya oversaw the entire medical practice operations; and Ms. Tantuwaya worked for Dr. Tantuwaya as a nurse without pay. Ms. Tantuwaya submitted affidavits from herself and others supporting these facts.
5. After the protest, FTB issued a Notice of Action for each year, dated March 18, 2021, affirming FTB's audit adjustments, but determining that Ms. Tantuwaya is entitled to innocent spouse relief under R&TC section 18533(f).
6. Dr. Tantuwaya filed this timely appeal. Ms. Tantuwaya participated in the appeal by filing a brief and, therefore, joined the appeal as a party.
7. On appeal, FTB requested additional information from Dr. Tantuwaya and Ms. Tantuwaya regarding the issues in this case. Dr. Tantuwaya did not respond to FTB's questions. Ms. Tantuwaya provided responses under penalty of perjury, stating,

among other things, that she shared only one bank account with Dr. Tantuwaya, which was used to pay household bills; Ms. Tantuwaya’s “role in preparing the returns at issue was limited to forwarding information to [appellants’ accountant], which itself was provided to [Ms. Tantuwaya] by [Dr. Tantuwaya]”; any conversation Ms. Tantuwaya might have had with Dr. Tantuwaya concerning the returns was limited to her needing to sign them; Ms. Tantuwaya did not review the returns prior to signing them because she “lived in an abusive relationship and did not consider herself in a position to question [Dr. Tantuwaya] or to involve herself in any sort of financial decision-making,” and it “would have been fruitless” for her to review the returns “as any questions about [Dr. Tantuwaya’s] business dealings or financial transactions would have led directly to verbal scolding, or worse, physical abuse”; and on or about November 3, 2014, appellants executed property transfer agreements whereby Dr. Tantuwaya agreed to “indemnify and hold harmless” Ms. Tantuwaya for “any liability with respect to the debts owed and due” from Dr. Tantuwaya’s sole and separately owned business entities, including Dr. Tantuwaya’s medical corporation.

DISCUSSION

Issue 1: Whether FTB’s proposed assessments for the 2012 and 2013 tax years are erroneous.

Gross income means all income from whatever source derived, unless specifically excluded. (R&TC, §§ 17071; Internal Revenue Code (IRC), § 61(a).) The taxpayer bears the burden of proving entitlement to any deduction claimed with credible evidence. (*Appeal of Robinson*, 2018-OTA-059P.) Unsupported assertions cannot satisfy a taxpayer’s burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.) A taxpayer’s failure to introduce evidence that is within his or her control gives rise to the presumption that the evidence, if provided, would be unfavorable to his or her position. (*Appeal of Bindley*, 2019-OTA-179P.)

FTB’s proposed assessments for the 2012 and 2013 tax years are based on its determination that: (1) appellants’ claimed depreciation deductions related to private aircraft used by Dr. Tantuwaya’s medical corporation was calculated incorrectly for both tax years; and (2) appellants’ capital loss from the sale of Miasole stock in 2012 was disallowed because appellants failed to substantiate the loss.

Ms. Tantuwaya does not contend that the 2012 or 2013 proposed assessment is erroneous. Dr. Tantuwaya challenges the proposed assessments for both years by stating, among other things, that he does not understand the reason for the tax liabilities, and he relied on the tax advice of appellants' accountant. However, Dr. Tantuwaya has failed to provide any evidence establishing that the proposed assessment for either tax year is incorrect. Dr. Tantuwaya's unsupported assertions do not satisfy his burden of proof. Accordingly, FTB's proposed assessments are upheld.

Issue 2: Whether Ms. Tantuwaya is entitled to innocent spouse relief for the 2012 and 2013 tax years.

Each spouse is jointly and severally liable for the total amount of tax due on a joint return. (R&TC, § 19006(b); 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 laws. (R&TC, § 18533(g)(2).)

Determinations of innocent spouse relief are reviewed de novo. (*Appeal of Pifer*, *supra*.) Generally, an individual claiming innocent spouse relief (here, Ms. Tantuwaya) has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Ibid.*) 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

R&TC section 18533(b) allows innocent spouse relief for an understatement of tax attributable to an erroneous item of the non-requesting spouse when the requesting spouse satisfies all of the following conditions:

1. A joint return was filed for the tax year at issue;
2. The return contains an understatement of tax attributable to an erroneous item of the non-requesting spouse;
3. The requesting spouse establishes that he or she did not know of, and had no reason to know of, the understatement of tax when he or she signed the return;
4. Taking into account all facts and circumstances, it would be inequitable to hold the requesting spouse liable for the tax deficiency attributable to the understatement of tax; and
5. The requesting spouse files a request for relief no later than two years after the date when FTB began collection action with respect to the requesting spouse.

OTA finds that Ms. Tantuwaya is entitled to traditional innocent spouse relief for the 2012 and 2013 adjustments related to the aircraft depreciation deductions, and the 2012 adjustment related to the capital loss disallowance of the sale of Miasole stock.

First requirement: Ms. Tantuwaya satisfies the first requirement because appellants filed their 2012 and 2013 joint returns on October 15, 2013, and October 15, 2014, respectively.

Second requirement: The adjustments resulted in an understatement of tax. In determining whether the understatement of tax is attributable to an erroneous item of the requesting or non-requesting 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).) OTA finds that the aircraft depreciation deductions are solely attributable to Dr. Tantuwaya because they stem from his wholly owned medical corporation. With respect to the disallowed capital loss on the sale of Miasole stock, the record establishes that Dr. Tantuwaya physically and emotionally abused Ms. Tantuwaya; he exercised financial control over Ms. Tantuwaya; he did not compensate Ms. Tantuwaya for her work as a nurse in his medical practice; and he shared only one bank account with Ms. Tantuwaya which was used for living expenses. Therefore, OTA finds that the sale of Miasole stock is attributable to Dr. Tantuwaya only.

Third requirement: A requesting spouse knows or has reason to know of an understatement of tax if, at the time he or she signed the joint return, he or she had actual knowledge of the understatement of tax, or if a reasonable person in similar circumstances could be expected to know that the joint return contained an understatement of tax. (Treas. Reg. § 1.6015-2(c).) In the case of an erroneous deduction, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction. (Treas. Reg. § 1.6015-3(c)(2)(i)(B).) In determining whether a requesting spouse knew or had reason to know of an understatement, all facts and circumstances are considered, including, but not limited to, the nature of the erroneous item; the amount of the erroneous item relative to other items; appellants' financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the joint return was signed, about items on the joint return or omitted from the joint return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' joint returns. (Treas. Reg. § 1.6015-2(c).)

The Treasury Regulations provide an exception to the knowledge requirement when “the requesting spouse shows that he or she was the victim of domestic abuse prior to the time when the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the non-requesting spouse's retaliation.” (Treas. Reg. § 1.6015-3(c)(2)(v).) Claims of abuse cannot be generalized and require substantiation or at least specificity regarding the allegations. (See *Deihl v. Commissioner*, T.C. Memo. 2012-176.)

Ms. Tantuwaya satisfies the third requirement because the record establishes that Ms. Tantuwaya did not know, and did not have reason to know, of the understatement of tax when she signed the returns. Dr. Tantuwaya was the only spouse involved in the management and operation of private aircraft owned by his wholly owned medical corporation. Ms. Tantuwaya also suffered significant physical, emotional, and mental abuse before, during, and after the 2012 and 2013 tax years, which is documented by court filings and third-party sworn statements. OTA finds credible Ms. Tantuwaya's assertion that she did not review the 2012 and 2013 joint returns prior to signing them because she “lived in an abusive relationship and did not consider herself in a position to question [Dr. Tantuwaya] or to involve herself in any sort of

financial decision-making,” and it “would have been fruitless” for her to review the returns “as any questions about [Dr. Tantuwaya’s] business dealings or financial transactions would have led directly to verbal scolding, or worse, physical abuse.” The exception to the knowledge requirement for victims of abuse would therefore apply for both tax years.

Fourth requirement: Ms. Tantuwaya satisfies the requirement that, taking into account all of the facts and circumstances, it would be inequitable to hold her jointly and severally liable for the 2012 and 2013 understatements of tax. For purposes of traditional innocent spouse relief, the following equitable factors from Revenue Procedure 2013-34 serve as guidance in determining whether it is inequitable to hold a requesting spouse liable:

1. The requesting spouse’s marital status;
2. Whether the requesting spouse would suffer an economic hardship if relief is not granted;
3. Whether the requesting spouse knew or had reason to know of the item giving rise to the understatement or deficiency on the date the joint return was filed;
4. Whether the non-requesting spouse had the sole legal obligation to pay the tax liability pursuant to a divorce decree or other legally binding agreement;
5. Whether the requesting spouse significantly benefited from the understatement or deficiency (beyond normal support);
6. The requesting spouse’s compliance with income tax laws in the following tax years; and
7. The requesting spouse’s mental and physical health at the time he or she signed the return.

(*Appeal of Calegari*, 2021-OTA-337P.) No single factor is determinative, the list of factors is not exhaustive, and the degree of importance of each factor varies depending on the requesting spouse’s facts and circumstances. (Rev. Proc. 2013-34, § 4.03(2), 2013-43 I.R.B. 397.) While the guidelines provided by the Revenue Procedure are relevant to OTA’s inquiry, OTA is not bound by them, as OTA’s analysis and determination ultimately turns on an evaluation of all the facts and circumstances. (See *Henson v. Commissioner*, T.C. Memo. 2012-288; *Sriram v. Commissioner*, T.C. Memo. 2012-91.)

On appeal, FTB applied these factors and concluded that it would be inequitable to hold Ms. Tantuwaya liable for the proposed deficiency assessments for the 2012 and 2013 tax years.

OTA agrees, particularly in light of section 4.03(2)(c)(iv) of Revenue Procedure 2013-34, which provides that in the case of a requesting spouse who was the victim of abuse, “the abuse may result in certain factors weighing in favor of relief when otherwise the factor may have weighed against relief.” Due to Dr. Tantuwaya’s documented abuse of and financial control over Ms. Tantuwaya, OTA finds it would be inequitable to hold Ms. Tantuwaya liable for the understatements of tax.

Fifth Requirement: Ms. Tantuwaya satisfies the fifth requirement because she filed her request for innocent spouse on February 5, 2020, and there is no evidence in the record showing FTB commenced any collection action against her for the 2012 and 2013 proposed assessments.

HOLDINGS

1. FTB’s proposed assessments for the 2012 and 2013 tax years are not erroneous.
2. Ms. Tantuwaya is entitled to innocent spouse relief for the 2012 and 2013 tax years.

DISPOSITION

FTB’s action granting Ms. Tantuwaya innocent spouse relief for the 2012 and 2013 tax years is modified in that Ms. Tantuwaya is entitled to relief under R&TC section 18533(b). FTB’s actions are otherwise sustained.

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Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

Andrea L.H. Long

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Andrea L.H. Long
Administrative Law Judge

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