

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. REYNAUD

) OTA Case No. 22029802
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OPINION

Representing the Parties:

For Appellant: A. Reynaud

For Respondent: Brad J. Coutinho, Tax Counsel III

For Office of Tax Appeals: Steven Kim, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533, 19006, and 19045, A. Reynaud (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying innocent spouse relief to appellant for taxable year 2012.

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

ISSUES

1. Has appellant established that no deficiency exists for taxable year 2012?
2. Is appellant entitled to relief pursuant to R&TC section 19006?
3. Is appellant entitled to innocent spouse relief pursuant to R&TC section 18533?

FACTUAL FINDINGS

1. Appellant and V. Reynaud (the couple) filed a timely joint 2012 California Resident Income Tax Return.

2. Subsequently, FTB received information that the IRS increased the couple's federal adjusted gross income (AGI) by \$94,964 to \$134,109.
3. FTB issued the couple a Notice of Proposed Assessment (NPA) on May 28, 2015, making comparable adjustments and proposing to assess additional tax of \$5,577.00 and an accuracy-related penalty of \$1,115.40.¹
4. The couple did not file a protest with FTB, and the NPA went final on August 17, 2015.
5. The couple's judgment of dissolution of marriage shows the couple separated on or about March 1, 2013. A marital settlement agreement attached to and incorporated into the judgment includes paragraph 9.1.3, which states that "Any deficiency assessed for any prior year in which the parties filed joint returns shall be payable by [V. Reynaud] as an individual obligation."
6. Appellant requested innocent spouse relief for the 2012 taxable year.
7. In her request for innocent spouse relief, appellant asserted that no tax was due. On appeal, appellant restates her claim that there was no tax due and states that she was "not privy to this information" when she filed the request for innocent spouse relief and requests that the matter be "closed."
8. FTB denied the appellant's request for innocent spouse relief on January 18, 2022.
9. This timely appeal followed.

DISCUSSION

Issue 1: Has appellant established that no deficiency exists for taxable year 2012?

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) R&TC section 19042 provides that if no protest is filed, the amount of the proposed deficiency assessment becomes final upon the expiration of the 60-day period following the mailing of the NPA, as set forth by R&TC section 19041. OTA

¹ FTB proposed disallowing Schedule C deductions totaling \$101,177.00 and allowing a self-employment tax adjustment of \$6,213.50, resulting in an increase to the couple's taxable income of \$94,964.00 (rounded).

has no jurisdiction to review the imposition of a final tax assessment. (*Appeal of Lewis* (85-SBE-151) 1985 WL 15921; *Appeal of Lopez* (83-SBE-110) 1983 WL 15496.) OTA has jurisdiction over an appeal from a notice of action issued upon a protest of an unpaid assessment so long as it is filed within 30 days of the date of that notice of action. (Cal. Code Regs., tit. 18, §§ 30103(a)(1), 30203(a)(1)(A).) On the other hand, OTA has no jurisdiction over an appeal from an NPA issued by FTB. (Cal. Code Regs., tit. 18, § 30104(e).)

Throughout consideration of the request for innocent spouse relief and on appeal with OTA, appellant has alleged that neither she nor V. Reynaud owe the additional tax that was assessed. For more than one reason, appellant's argument fails. First, FTB issued the NPA that assessed the additional tax based on a final federal determination on May 28, 2015. To preserve appeal rights, appellant was therefore required to protest FTB's proposed assessment prior to July 27, 2015, when the NPA became final. Appellant did not protest the proposed assessment, and FTB therefore did not issue a notice of action modifying or affirming its NPA. As such, OTA has no jurisdiction to consider appellant's claim that no deficiency exists as the time to protest and appeal has long passed.

Second, even if OTA could legally consider that claim, which it cannot, appellant has provided insufficient support for the assertion that the couple does not owe a deficiency for 2012, and unsupported assertions are insufficient to meet a taxpayer's burden of proof. (*Appeal of Gorin, supra.*) Appellant submitted a copy of Form 8879, California e-file Signature Authorization for Individuals. Appellant asserts the couple does not owe tax but rather is entitled to a refund of \$1,881 as reflected on that form. The couple's 2012 California tax return similarly reports an overpayment and refund due of \$1,881. Both forms are self-reports that appellant made prior to the federal adjustment. While FTB originally accepted the return as filed, it subsequently adjusted the tax due based on a federal determination, as reflected in the NPA. The only appealable action within OTA's jurisdiction is FTB's denial of appellant's request for innocent spouse relief, which is discussed below.

Issue 2: Is appellant entitled to relief pursuant to R&TC section 19006?

R&TC section 19006(b) provides that joint and several liability may be revised by a court order in a marriage dissolution proceeding if several conditions are satisfied. Another provision allows FTB to revise a tax liability as to joint filers except to relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the requesting spouse or

to relieve an amount that was actually paid. (R&TC, § 19006(c).) The spouse whose liability is to be revised must establish that he or she did not know of, and had no reason to know of, the nonpayment at the time the return was filed. (R&TC, § 19006(c)(2).) FTB's determination shall be based upon whether, under all the facts and circumstances surrounding the nonpayment, it would be inequitable to hold the spouse requesting revision liable for the deficiency. (R&TC, § 19006(c)(4).) FTB's determination to revise or not to revise a requesting spouse's tax liability is appealable to OTA. (*Ibid.*)

Here, a marital settlement agreement was incorporated into the couple's judgment of dissolution of marriage, which was filed on April 14, 2017. In Section 9, entitled TAXES, the provision in section 9.1.3 states that "Any deficiency assessed for any prior year in which the parties filed joint returns shall be payable by [V. Reynaud] as an individual obligation." As such, appellant has provided evidence that a court reassigned the tax liabilities between the couple, including for taxable year 2012. R&TC section 19006(b), however, gives *a court* the exclusive authority to revise the liability as to joint filers if specified conditions are met, which it appears the court did in the couple's judgment of dissolution. However, there is no statute, including R&TC section 19006(b), that requires FTB to abide by the terms of agreements made by parties to a divorce regarding the payment of California tax liabilities when FTB is not a party to the court proceeding. (See *Pesch v. Commissioner*, 78 T.C. 100, 129.) Moreover, R&TC section 19006(b) does not give authority to FTB or to OTA to modify or enforce the provisions of a court order, nor does it require FTB to follow that court-ordered adjustment. FTB is not a party to the couple's divorce action and is not bound by a court's order that affects only appellant and V. Reynaud, who are the parties in that court case.² Accordingly, appellant is not entitled to further relief under R&TC section 19006(b).

Although FTB's response to appellant's request for innocent spouse relief states that it will be reviewed under both R&TC sections 18533 and 19006, FTB's denial of relief and briefing on appeal do not discuss R&TC section 19006(c), the provision allowing FTB to revise a tax liability between joint filers. FTB however, did address all the facts and circumstances presented to it by appellant. Upon examination of those facts and circumstances pursuant to R&TC section 18533(b), (c), and (f), FTB concluded that, among other things, appellant failed to

² Appellant may be able to seek enforcement of the order from the court that issued the judgment of dissolution; namely, Los Angeles County Superior Court. OTA expresses no opinion as to the success or failure of such a claim.

establish: (1) that the understatement of tax was due solely to V. Reynaud; (2) the amount of appellant's share of the 2012 liability; and (3) that appellant did not know or have reason to know of the underpayment.

Appellant's only argument on appeal is that neither she nor V. Reynaud has a tax deficiency for 2012. Appellant does not provide argument or evidence showing why innocent spouse relief should be granted but rather states that after becoming "privy" to information, such as the refund due showing on Form 8879, that the couple did not have a 2012 tax liability. While FTB did not specifically address the provision allowing it to revise appellant's tax liability, OTA finds that FTB's reasoning behind denying appellant relief under R&TC section 18533 applies equally to a determination under R&TC section 19006(c).

The record establishes that the income earned was not subject to appellant's exclusive management and control. (See R&TC, § 19006(c)(1)(A).) The basis for the deficiency is disallowance of certain Schedule C deductions, and related adjustments for the sole proprietorship of V. Reynaud. Thus, whether appellant worked in the business or had any ties to the business, the deficiency is not attributable to a company over which she has exclusive management and control. As such, appellant is not disqualified from relief based on this provision.³

However, appellant has not established that she did not know or have reason to know that the correct tax was not paid. (See R&TC, § 19006(c)(2).) Furthermore, appellant has presented no evidence to indicate that it would be inequitable to hold her liable for the tax debt. (See R&TC, § 19006(c)(4).) Based on all the facts and circumstances as presented by appellant on appeal, appellant is not entitled to relief pursuant to R&TC section 19006(c).

Issue 3: Is appellant entitled to innocent spouse relief pursuant to R&TC section 18533?

When a married couple files a joint return, each spouse is jointly and severally liable for the tax on the aggregate income. (R&TC, § 19006(b).) However, an individual who files a joint return may seek relief from all or part of the joint and several liability if the individual qualifies for innocent spouse relief. (R&TC, § 18533(a).) The three types of innocent spouse relief

³ Although appellant did not have *exclusive* management and control of the business, the fact that V. Reynaud owned the business as a sole proprietorship is not determinative. For example, if the couple used funds from the business for personal expenses, the IRS would have disallowed the deductions. Without further information as to what types of expenses were disallowed and who incurred the expenses, OTA cannot conclude that appellant had no control over any of the income.

available are traditional innocent spouse relief, separate liability relief, and equitable relief. (R&TC, § 18533(b), (c), (f).) On the other hand, R&TC section 18533(k) provides that an individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with R&TC section 19006(b).

The evidence in the record shows that a court has revised the tax liability in a proceeding for dissolution of marriage by assigning the liability to V. Reynaud individually. Therefore, appellant may not be granted traditional innocent spouse relief, separate liability relief, or equitable relief. Consequently, appellant’s request for innocent spouse relief must be denied.

HOLDINGS

1. Appellant failed to establish that no deficiency exists for taxable year 2012.
2. Appellant is not entitled to relief pursuant to R&TC section 19006.
3. Appellant is not entitled to innocent spouse relief pursuant to R&TC section 18533.

DISPOSITION

FTB’s action is sustained in full.

We concur:

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 Asaf Kletter
 Administrative Law Judge

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 Teresa A. Stanley
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge

Date Issued: 1/9/2023