

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. WINGFIELD**

) OTA Case No. 21047575  
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**OPINION**

Representing the Parties:

For Appellant: R. Wingfield

For Respondent: Noel Garcia, Tax Counsel

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, R. Wingfield (appellant) appeals an action by respondent Franchise Tax Board (FTB) granting innocent spouse relief to appellant’s then-spouse, M. Duong (non-appealing spouse), for the 2015 and 2016 tax years.

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

**ISSUE**

Whether appellant has shown error in FTB’s grant of innocent spouse relief to non-appealing spouse for the 2015 and 2016 tax years.

**FACTUAL FINDINGS**

1. Appellant and non-appealing spouse (the couple) filed joint 2015 and 2016 California Resident Income Tax Returns.
2. FTB received information from the IRS indicating the couple failed to report income received from various sources and overstated deductions on the returns.
3. Based on this information, FTB issued Notices of Proposed Assessment (NPAs) to the couple for the 2015 and 2016 tax years.

4. The couple did not protest the NPAs and they became final.
5. The non-appealing spouse filed a request for innocent spouse relief of the liabilities stated in the NPAs. The non-appealing spouse also requested innocent spouse relief for the federal tax liability from the IRS for the 2016 tax year.<sup>1</sup>
6. FTB issued separate Notices of Action to appellant and non-appealing spouse informing them that it had approved non-appealing spouse's request for innocent spouse relief for the 2015 and 2016 tax years.
7. The IRS also granted the non-appealing spouse's request for innocent spouse relief from federal tax liability for the 2016 tax year.
8. Appellant timely appealed FTB's grant of innocent spouse relief to the non-appealing spouse, stating that he did not have the time or access to review the tax assessment and he lacked funds to pay the tax.

#### DISCUSSION

When a joint return is filed by a married couple, each spouse is jointly and severally liable for the entire tax due for that tax year. (R&TC, § 19006(b).) However, an individual may be relieved of all or a portion of such liability under the “innocent spouse” relief provisions of R&TC section 18533. There are four types of innocent spouse relief available under R&TC section 18533: traditional relief, separate liability relief, equitable relief, and federal conforming relief.

FTB determined the non-appealing spouse met the conditions for traditional relief pursuant to R&TC section 18533(b), which provides for relief of an understatement of tax attributable to the erroneous items of the other individual filing the joint return when the requesting spouse meets all the following requirements: (1) a joint return was filed for the tax year in issue; (2) the return contains an understatement of tax attributable to an erroneous item of the other spouse; (3) the requesting spouse established that in signing the return, he or she did not know of, and had no reason to know of, the understatement; (4) taking into account all facts and circumstances, it would be inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement; and (5) the requesting spouse's claim for relief is made no

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<sup>1</sup> The non-appealing spouse was not eligible to obtain innocent spouse relief for the 2015 tax year because there was no federal tax due for that tax year.

later than two years after the date FTB began collection actions against the requesting spouse. (R&TC, § 18533(b)(A)-(E).)

FTB asserts the non-appealing spouse also meets the requirements for separate liability relief for the 2015 and 2016 tax years. If an individual who has made a joint return elects separate liability relief, then the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual; in other words, the liability for the additional tax will be determined as if the individuals filing the joint return had filed separate returns. (R&TC, § 18533(c)(1), (d)(3)(A).) To qualify for separate liability relief, the requesting spouse must establish that the requesting spouse is no longer married to or is legally separated from the other individual filing the joint return, or was not a member of the same household as that individual at any time during the 12-month period ending on the date the election is made. (R&TC, § 18533(c)(3)(A)(i).) Such relief shall not apply, however, if FTB demonstrates that, at the time of signing the return, the requesting spouse had actual knowledge of an item giving rise to a deficiency which is allocable to the other individual filing the joint return and did not sign under duress. (R&TC, § 18533(c)(3)(C).)

FTB also asserts that because the IRS granted non-appealing spouse relief for the 2016 tax year, FTB is required to grant conforming relief to non-appealing spouse for that same year. R&TC section 18533(i)(1) requires FTB to provide conforming innocent spouse relief when the requesting spouse demonstrates that he or she has been granted relief by the IRS pursuant to Internal Revenue Code section 6015 for the same tax year, and the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same as those that applied to the federal determination. However, federal conforming relief does not apply where the non-requesting spouse timely provides information establishing that: (1) the relevant facts and circumstances differ for state and federal relief purposes; (2) there was no grant of federal relief or that such relief has been modified, altered, withdrawn, canceled, or rescinded; or (3) the non-requesting spouse did not have the opportunity to participate in the federal administrative or judicial proceeding that resulted in the grant of federal relief. (R&TC, § 18533(i)(2).)

Appellant does not challenge FTB's determination that non-appealing spouse has met the above conditions for granting traditional, separate liability, or conforming relief. Rather,

appellant's sole contention is that he was unable to review the NPAs to determine whether the liability stated therein was accurate and that appellant lacks the financial ability to pay the liabilities stated in the NPAs.

Office of Tax Appeals (OTA) does not have jurisdiction to consider the accuracy of the underlying tax in this appeal. Here, jurisdiction is limited to the issue of innocent spouse relief. R&TC section 19041(a) provided appellant with 60 days from the date of mailing of the NPAs to protest FTB's proposed deficiency assessments. Appellant's failure to timely protest the NPAs means that those assessments are now final. (R&TC, § 19042; *Appeal of Lopez* (83-SBE-046) 1983 WL 15496.)

OTA also lacks the authority to provide the relief sought by appellant. While FTB may settle tax debts owed to the state based on a taxpayer's ability to pay under its Offer in Compromise program, OTA is unable to "make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay." (*Appeal of Robinson*, 2018-OTA-059P.)

Accordingly, OTA finds no error in FTB's actions.

HOLDING

Appellant has not shown error in FTB’s grant of innocent spouse relief to non-appealing spouse for the 2015 and 2016 tax years.

DISPOSITION

FTB’s action is affirmed.

DocuSigned by:  
*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 3/2/2023