

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21057838  
A. MEJIA (APPEALING SPOUSE) AND )  
W. MEJIA (NON-APPEALING SPOUSE) )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: A. Mejia  
For Respondent: Sarah J. Fassett, Tax Counsel  
For Office of Tax Appeals: Neha Garner, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 19045 and 18533, A. Mejia (Mr. Mejia) appeals an action by respondent Franchise Tax Board (FTB) granting full innocent spouse relief to W. Mejia (Ms. Mejia) for the 2017 and 2018 tax years.

Neither party requested an oral hearing; therefore, this matter is being decided based on the written record.

**ISSUE**

Whether Mr. Mejia has shown that FTB erred in granting innocent spouse relief to Ms. Mejia for the 2017 and 2018 tax years.

**FACTUAL FINDINGS**

**2017 Tax Year**

1. FTB received information indicating that Mr. Mejia may have earned sufficient income to file a tax return. FTB’s records reflect that Mr. Mejia did not file a 2017 California tax return and that FTB issued a Request for Tax Return for the 2017 tax year on

September 12, 2019. The Request required that Mr. Mejia either file a California return by October 16, 2019, or explain why a return was not required to be filed.

2. Mr. Mejia and Ms. Mejia (collectively, the taxpayers) then filed an untimely California tax return for the 2017 tax year using the “married filing joint” filing status. The taxpayers reported tax due of \$1,310, plus interest and penalties for a total amount due of \$1,443. Taxpayers did not remit payment with their return. FTB processed and accepted taxpayers’ return.
3. FTB issued a Notice of Tax Return Change – Revised Balance imposing additional penalties and interest, which revised the taxpayers’ balance due for the 2017 tax year.
4. On November 13, 2019, FTB acknowledged receipt of taxpayers’ 2017 tax return.

#### 2018 Tax Year

5. Taxpayers filed their tax return using the “married filing joint” tax status on October 11, 2019, reporting tax due of \$317, plus interest and penalties for a total amount due of \$326. Taxpayers did not remit payment with their return. FTB processed and accepted taxpayers’ return.
6. FTB issued a State Income Tax Balance Due Notice on November 4, 2019, showing a balance due of \$327.08.

#### Collection Action

7. On December 18, 2019, FTB issued appellants an Income Tax Due Notice for the 2017 and 2018 tax years, and on January 28, 2020, Final Notices Before Levy and Lien for the 2017 and 2018 tax years were issued to Mr. Mejia and Ms. Mejia separately.
8. FTB took collection action against Mr. Mejia and Ms. Mejia for the balance owed and received a total of \$442.02 in payments which was applied to their 2017 account.

#### Ms. Mejia’s Innocent Spouse Request

9. FTB received Ms. Mejia’s request for innocent spouse relief (Form 705) on September 1, 2020. FTB acknowledged Ms. Mejia’s request on September 8, 2020.
10. On January 25, 2021, FTB issued Mr. Mejia a non-requesting spouse letter, providing him the opportunity to explain why FTB should not grant Ms. Mejia innocent spouse

relief based on the IRS grant of relief for tax years 2017 and 2018. FTB's records reflect that Mr. Mejia did not respond to the notice.

11. Ms. Mejia provided FTB with final determination letters from the IRS dated April 2, 2021, which reflects that she was granted relief for the 2017 and 2018 tax years pursuant to Internal Revenue Code (IRC) section 6015(f).
12. On April 22, 2021, FTB issued Notices of Action to Mr. Mejia and Ms. Mejia, separately, granting full innocent spouse relief to Ms. Mejia pursuant to R&TC section 18533(i).
13. Mr. Mejia then filed this timely appeal, and Ms. Mejia subsequently joined the appeal.

### DISCUSSION

Under both federal and California law, when a joint return is filed, each taxpayer is jointly and severally liable for the tax due on the aggregate income. (IRC, § 6013(d)(3); R&TC, § 19006(b).) However, an individual who files a joint return may be relieved of all or a portion of such liability if the individual qualifies as an innocent spouse. (IRC, § 6015; R&TC, §§ 18533, 19006(c).) There are several types of innocent spouse relief. As relevant to this appeal, R&TC section 18533(i)(1) provides that an individual who has filed a joint California return and has been granted federal innocent spouse relief under IRC section 6015 shall be eligible for conforming innocent spouse relief if the following three conditions are satisfied:

- The individual requests relief under R&TC section 18533;
- 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 was granted relief under IRC section 6015; and
- The individual requesting relief under R&TC section 18533(i) furnishes FTB with a copy of the federal determination that granted that individual relief under IRC section 6015.

Here, the three conditions for relief set forth in R&TC section 18533(i)(1) are satisfied. First, Ms. Mejia requested innocent spouse relief under R&TC section 18533 when she filed a completed Form 705 for the 2017 and 2018 tax years. Second, the facts and circumstances that applied to the understatement and liabilities for which Ms. Mejia's relief was requested are the same facts and circumstances that applied to the understatement and liabilities for which Ms. Mejia was granted relief under IRC section 6015(c). Third, Ms. Mejia provided FTB a copy of the final determination letter from the IRS, granting her full innocent spouse relief under IRC

section 6015(f) for both the 2017 and 2018 tax years. Since Ms. Mejia satisfied all three conditions for relief under R&TC section 18533(i), FTB was required by statute to follow the IRS determination in this matter.

However, R&TC section 18533(i) does not apply if the other individual who filed the joint return for which relief was requested submits information to FTB that indicates relief should not be granted. R&TC section 18533(i)(2) provides that information indicating that relief should not be granted is *limited to the following*:

- Information indicating that the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under IRC section 6015;
- Information indicating that there has not been a federal determination granting relief under IRC section 6015, or that the federal determination granting relief has been modified, altered, withdrawn, canceled, or rescinded; or
- Information indicating that the other individual did not have an opportunity to participate, within the meaning of IRC section 6015 and the regulations thereunder, in the federal proceeding that resulted in relief under IRC section 6015.

Mr. Mejia has not submitted any information indicating that the facts and circumstances that apply to the understatement and liabilities differ. Mr. Mejia has also not shown that the federal decision granting Ms. Mejia's relief is not yet final or has subsequently changed. In addition, Mr. Mejia has not established that he did not have the opportunity to participate in the proceeding that resulted in the IRS granting Ms. Mejia's federal innocent spouse relief. Mr. Mejia argues that he did not receive notice of the federal innocent spouse claim until after the IRS determination was final; however, Mr. Mejia has failed to provide documentation, third party statements or any explanation to support his claim. Treasury Regulation 1.6015-6(a) requires the IRS to send a notice to the nonrequesting spouse's last known address, which informs the nonrequesting spouse of the requesting spouse's claim for relief. A taxpayer's last-known address is the address that appears on the taxpayer's most recently filed and processed federal tax return, unless the IRS is given clear and concise notification of a different address.

In FTB's opening brief for this appeal, Mr. Mejia was encouraged to provide information about his mailing address when Ms. Mejia filed her federal claim for innocent spouse relief, his

mailing address when the taxpayers filed their final joint federal tax return, and any change of address information submitted to the IRS or FTB. Mr. Mejia did not opt to file a reply brief or provide evidence in support of his contention that he did not receive notice of the federal determination until after it was final. The record does not indicate that any of the three statutory exceptions to the granting of conforming relief apply in this case.

As explained above, FTB was required by statute to follow the IRS determination in this matter, and Mr. Mejia has not established any of the statutory exceptions to the granting of conforming relief under R&TC section 18533(i). Accordingly, FTB properly granted Ms. Mejia innocent spouse relief for the 2017 and 2018 tax years.

HOLDING

Mr. Mejia has not shown that FTB erred in granting innocent spouse relief to Ms. Mejia for the 2017 and 2018 tax years.

DISPOSITION

FTB’s action is sustained.

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*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

We concur:

DocuSigned by:  
*Richard Tay*  
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Richard Tay  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

Date Issued: 5/25/2023