

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
L. NARAYAN

) OTA Case No. 21129381
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OPINION

Representing the Parties:

For Appellant: Prakash Narayan, Representative

For Respondent: Brad J. Coutinho, Attorney

For Office of Tax Appeals: Steven Kim, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533 and 19045, L. Narayan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying innocent spouse relief to appellant for the 2012, 2013, and 2014 tax years. N. Narayan, the non-requesting spouse, was given the opportunity to join this appeal but waived his right by failing to file an opening brief.

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

ISSUE

Whether appellant has established that she is entitled to innocent spouse relief under R&TC section 18533(b), (c), or (f).

FACTUAL FINDINGS

1. On July 7, 2015, appellant and N. Narayan (collectively, the couple) filed a joint California Resident Income Tax Return (Form 540) for the 2012 tax year, reporting an overpayment of \$1,180. FTB accepted the return as filed.
2. On December 7, 2015, the couple filed a joint Form 540 for the 2013 tax year, reporting an overpayment of \$983. FTB accepted the return as filed.

3. On February 15, 2016, the couple filed a joint Form 540 for the 2014 tax year, reporting total tax due of \$109.
4. Subsequently, FTB received information that the IRS adjusted the couple's federal income tax returns for the 2012, 2013, and 2014 tax years. FTB made corresponding adjustments to these tax years based on the federal adjustments.
 - a. For the 2012 tax year, FTB issued the couple a Notice of Proposed Assessment (NPA) increasing the couple's taxable income by \$37,150.00 based on the inclusion of gambling winnings of \$1,529.00, as well as disallowing deductions for contributions of \$12,500.00 and miscellaneous deductions of \$23,121.00. The NPA proposed additional tax of \$3,445.00 and a late filing penalty of \$568.75, plus applicable interest.
 - b. For the 2013 tax year, FTB issued the couple an NPA increasing the couple's taxable income by \$79,915.00 based on the inclusion of other income of \$3,243.00 and wages of \$51,303.00, as well as disallowing deductions for contributions of \$8,726.00 and miscellaneous deductions of \$16,643.00. The NPA proposed additional tax of \$4,590.00 and a late filing penalty of \$901.75, plus applicable interest.
 - c. For the 2014 tax year, FTB issued the couple an NPA increasing the couple's taxable income by \$20,037.00, based on disallowed contributions of \$10,812.00, miscellaneous deductions of \$15,597.00, and remaining itemized deductions of \$1,612.00, as well as applying the applicable standard deduction of \$7,984.00. The NPA proposed additional tax of \$1,641.00, a late filing penalty of \$328.50, and an accuracy related penalty of \$328.20, plus applicable interest.
5. On August 15, 2020, the couple filed amended returns (Form 540X) for the 2012, 2013, and 2014 tax years. For 2012, the couple reduced their taxable income by \$9,274, applied the standard deduction, and reported tax due of \$2,488. FTB accepted the couple's Form 540X for 2012 as filed. For 2013, the couple reduced their California itemized deduction to \$0, applied the applicable standard deduction, which caused the couple's taxable income to increase by \$30,132, and reported total due of \$480. FTB did not accept the couple's Form 540X because the federal adjusted gross income accepted by the IRS exceeded the amount the couple reported on the Form 540X. For 2014, the

couple reduced their California itemized deduction to \$0 and applied the applicable standard deduction, which caused the couple's taxable income to increase by \$20,037. Appellant reported a tax due of \$1,255. FTB accepted the total tax liability reported on the couple's Form 540X but did not accept the revised total California income tax withholding credit of \$2,636.¹

6. On April 19, 2021, appellant filed with FTB an Innocent Joint Filer Relief Request for the 2012 through 2019 tax years, indicating that the couple had separated on November 1, 2015. With her request, appellant included a federal Request for Innocent Spouse Relief (Form 8857) dated April 1, 2021, requesting relief for the 2012 through 2017 tax years.² On the Form 8857, appellant indicated that she and her spouse were married but living apart since November 12, 2015. Appellant also checked boxes indicating that she was not involved in preparing returns, did not review the returns before they were filed, did not know anything was incorrect or missing, and that she was subject to domestic violence or spousal abuse. Regarding household finances, appellant wrote that everything was handled by her spouse and that she had "no knowledge" of their household finances.
7. Thereafter, FTB sent N. Narayan a Non-Requesting Taxpayer Notice. FTB did not receive any response.
8. On December 14, 2021, FTB issued appellant a Notice of Action (NOA) denying appellant's request for innocent spouse relief for the 2012, 2013, and 2014 tax years. After applying applicable credits for each tax year, the NOA states that as of the date of the NOA, the couple is jointly liable for a total of \$5,644.57: \$72.13 for 2012; \$2,906.75 for 2013; and \$2,665.73 for 2014.³
9. This timely appeal for the 2012 through 2014 tax years followed.

¹ The couple had previously reported California withholdings of \$2,141.

² It is unclear from the record whether appellant filed the Form 8857 with the IRS, and if she did, whether the IRS granted federal innocent spouse relief.

³ Appellant erroneously lists in her appeal letter that the amount at issue totals \$26,949.00 for the 2013, 2014, and 2015 tax years.

10. During the pendency of the appeal, FTB sent appellant a letter requesting additional information about her request for innocent spouse relief but did not receive a response as of the date briefing closed.

DISCUSSION

When spouses file a joint return, each spouse is jointly and severally liable for the entire tax due. (R&TC, § 19006(b).) 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).) For deficiency cases, R&TC section 18533(b) provides for traditional spouse relief; R&TC section 18533(c) provides for separate allocation relief; and, if a requesting spouse is not eligible for relief under R&TC section 18533(b) or (c), the requesting spouse may be eligible for equitable relief under R&TC section 18533(f). For underpayment cases, the requesting spouse is eligible for equitable relief under R&TC section 18533(f) only.

When a California statute is substantially identical to a federal statute (as in the case of innocent spouse statutes, R&TC section 18533 and IRC section 6015), federal law interpreting the federal statute may be considered highly persuasive with regard to the California statute. (*Appeal of Calegari*, 2021-OTA-337P.) Thus, federal authority is applied extensively in California innocent spouse cases. (*Ibid.*) Treasury Regulations relating to innocent spouse relief will apply to California law to the extent that they do not conflict with California's innocent spouse statute or regulations. (R&TC, § 18533(g)(2).)

Determinations denying innocent spouse relief are reviewed *de novo*. (*Appeal of Calegari, supra; Appeal of Pifer*, 2021-OTA-338P.) 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, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Traditional Relief

R&TC section 18533(b) provides that an individual may, with certain qualifications, elect to claim traditional innocent spouse relief when the requesting spouse satisfies all of the following five requirements: (1) a joint return has been filed; (2) the return contains an understatement attributable to an erroneous item of the non-requesting spouse; (3) the requesting

spouse establishes that when signing the return, she or he did not know of, and had no reason to know of, the understatement; (4) taking into account all facts and circumstances, it is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement; and (5) the requesting spouse files a timely request for relief no later than two years after the date FTB has begun collection action with respect to the requesting spouse. The requirements of R&TC section 18533(b) are stated in the conjunctive; a failure to meet any one of them disqualifies an individual from relief. (*Alt v. Commissioner* (2003) 119 T.C. 306, 313.)

Only the second and third requirements are in dispute. The couple filed a joint return for the 2012, 2013, and 2014 tax years. The parties do not dispute that if appellant is found to have satisfied the second and third requirements, it would be inequitable to hold appellant liable for the deficiencies. And FTB has not commenced collection actions for the deficiencies, so the requests for relief are timely and satisfy the fifth requirement.

Income Attribution

An erroneous item is attributed to the individual whose activities gave rise to the item. (Treas. Reg. § 1.6015-1(f)(1).) To satisfy this requirement, the erroneous item must be solely attributable to the non-requesting spouse. (*Appeal of Pifer, supra.*) The deficiencies primarily resulted from the denial of miscellaneous deductions (which appellant appears to concede based on the amended returns) and unreported wage income from 2014. Appellant does not argue, and the evidence does not show, that these are attributable to N. Narayan. To the contrary, the couple's 2013 amended return indicates that the omitted wage income is attributable to appellant and not N. Narayan. As such, appellant fails to satisfy this requirement.

Knowledge

The requesting spouse must show that she or he did not know (i.e., actual knowledge) and had no reason to know (i.e., constructive knowledge) of the understatement of tax. (R&TC, § 18533(b)(1)(C).) The requesting spouse has reason to know if a reasonable person in similar circumstances would have known of the understatement. (Treas. Reg. § 1.6015-2(c).) All of the facts and circumstances are considered when determining whether a requesting spouse had reason to know of the understatement. (*Ibid.*) However, if the requesting spouse establishes that she or he was a victim of domestic abuse prior to the time the return was signed, and because of the abuse did not challenge any of the items on the return for fear of retaliation, then the

requesting spouse need not prove actual or constructive knowledge. (Treas. Reg. § 1.6015-3(c)(2)(v).)

Here, with her request for innocent spouse relief, appellant included a Form 8857 indicating that N. Narayan handled the relevant tax returns and that she had “no knowledge” of their household finances. However, appellant has not provided a narrative or any further explanation about her lack of knowledge regarding any understatement. Appellant has not explained what steps she took to verify the accuracy of the couple’s tax returns at issue.

Additionally, although appellant checked boxes indicating that she was the victim of domestic violence or spousal abuse, she has not provided any documentation (such as restraining orders, police reports, medical records, doctor’s reports, injury photographs, or third-party statements) to support that assertion. Because appellant has failed to satisfy at least one of the requirements under R&TC section 18533(b)(1), appellant has not established she is entitled to traditional innocent spouse relief.

Separate Liability Relief

R&TC section 18533(c)(1) provides that an individual may limit her or his liability for a deficiency with respect to a joint return to the amount that would have been allocable to the electing individual had separate returns been filed. To qualify for separate liability relief, the requesting spouse must establish that: (1) at the time of the election, the individual is no longer married to, is legally separated from, or has been living apart for at least 12 months, from the person with whom the joint tax return was filed; and (2) the election was made no later than two years after the date on which FTB began collection activities with respect to the person making the election. (R&TC, § 18533(c)(3)(A)(i), (3)(B).) The requesting spouse has the burden of proof to establish her or his portion of any deficiency. (R&TC, § 18533(c)(2).) Any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns. (R&TC, § 18533(d)(3)(A).) If FTB demonstrates that the requesting spouse had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency that is not allocable to the individual, the election does not apply to that deficiency, unless the individual establishes that she or he signed the return under duress. (R&TC, § 18533(c)(3)(C).)

Here, although appellant has indicated that she is separated from N. Narayan, as of November 2015, she has not provided any documentation such as a court decree showing that the

couple's marriage was terminated or that they are legally separated. It is unclear from the record if appellant and N. Narayan are currently divorced, or whether they have been living apart for at least 12 months. FTB sent appellant a letter requesting additional information about her request for innocent spouse relief that would have clarified appellant's and N. Narayan's marital status, but nothing in the record indicates that appellant responded to the letter as of the date of this Opinion. Because appellant has failed to satisfy her burden in proving that she meets the first requirement, the other requirements need not be addressed. Thus, appellant has not established that she is entitled to separate liability relief.

Equitable Relief

FTB may relieve the requesting spouse from joint and several liability if the requesting spouse does not otherwise qualify for traditional innocent spouse relief or separate liability relief and, after considering all the facts and circumstances, it would be inequitable to hold the requesting spouse liable for the unpaid tax or understatement. (R&TC, § 18533(f); IRC, § 6015(f).) In evaluating requests for equitable innocent spouse relief, the Office of Tax Appeals is guided by IRS Revenue Procedure 2013-34, which sets forth a three-step process for determining whether to grant equitable relief. (*Appeal of Calegari, supra.*) First, the requesting spouse must establish that she or he meets the seven threshold conditions of section 4.01 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.01). (*Ibid.*) Next, if all seven threshold conditions of section 4.01 are met, then FTB may consider the factors in section 4.02 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.02) to determine if the requesting spouse is entitled to a streamlined determination of equitable relief. (*Ibid.*) Finally, if the requesting spouse meets the requirements of section 4.01 but does not qualify for a streamlined determination under section 4.02, then FTB may consider the nonexclusive factors set forth in section 4.03 of Revenue Procedure 2013-34 (hereinafter referred to as section 4.03). (*Ibid.*)

First, the requesting spouse must satisfy seven threshold conditions of section 4.01: (1) the taxpayer filed a joint tax return for the taxable year for which she or he seeks relief; (2) relief is not available to the requesting spouse under R&TC section 18533(b) or (c); (3) the requesting spouse applies for relief within the applicable statute of limitations; (4) no assets were transferred between the spouses as part of a fraudulent scheme; (5) the non-requesting spouse did not transfer disqualified assets to the requesting spouse; (6) the requesting spouse did not file the

tax return with a fraudulent intent; and (7) the income tax liability from which the requesting spouse seeks relief is attributable (either in full or in part) to an item of the non-requesting spouse or an underpayment resulting from the non-requesting spouse's income. (Rev. Proc. 2013-34, § 4.01, 2013-43 I.R.B. 397; *Appeal of Calegari, supra.*) However, even if the understatement, deficiency, or underpayment is attributable (in full or in part) to the requesting spouse, relief may be granted if an exception applies. (Rev. Proc. 2013-34, § 4.01; *Appeal of Pifer, supra.*) For example, as relevant here, relief may be granted if the requesting spouse establishes that she was the victim of abuse prior to the time the joint return was filed. (Rev. Proc. 2013-34, § 4.01; *Appeal of Pifer, supra.*)

Here, appellant filed a joint tax return for the tax years at issue and applies for innocent spouse relief within the applicable statute of limitations. Appellant is not entitled to relief under R&TC section 18533(b) or (c). There is no evidence showing that any assets were transferred between spouses. Thus, the first six conditions are satisfied. However, appellant has not provided any evidence showing that the liability is attributable either in full or in part to an item of the non-requesting spouse. As noted above, appellant has also not provided any documentation to support her assertion that she was the victim of domestic violence or spousal abuse. Therefore, appellant has failed to satisfy all seven threshold conditions of section 4.01, or any exceptions, and sections 4.02 or 4.03 need not be considered. Thus, appellant has not established that she is entitled to equitable relief.

HOLDING

Appellant has not established that she is entitled to innocent spouse relief under R&TC section 18533(b), (c), or (f).

DISPOSITION

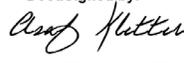
FTB’s action is sustained.

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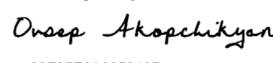
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Andrea L.H. Long
Administrative Law Judge

We concur:

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Administrative Law Judge

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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 9/28/2023