

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
V. MELTON) OTA Case No. 21047659
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OPINION

Representing the Parties:

For Appellant: V. Melton

For Respondent: Sarah J. Fassett, Attorney

For Office of Tax Appeals: Linda Frenklak, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 18533, 19006, and 19045,¹ V. Melton² (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying her innocent spouse relief for tax year 2014. The non-requesting spouse, P. Johnson, is not a party to this appeal; he passed away prior to the filing of this appeal.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) for an Opinion on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellant is entitled to innocent spouse relief.

¹ R&TC sections 18533 and 19006 allow a taxpayer to dispute FTB's actions on claims for innocent spouse relief under the statutory provisions applicable to protests and appeals, including R&TC section 19045.

² V. Melton is also known as V. Johnson.

FACTUAL FINDINGS

1. On October 14, 2015, appellant filed a joint 2014 California Resident Income Tax Return (return) on behalf of P. Johnson³ and herself (collectively, the couple). After applying a standard deduction and California income tax withholdings, the return reported a total tax due of \$1,372. Appellant remitted to FTB a payment of \$50 when she filed the return.
2. Attached to the return are copies of a 2014 Form W-2 issued to appellant and a 2014 joint federal income tax return (Form 1040), which listed P. Johnson as deceased. The Form 1040 reported taxable income consisting of wages and business income; and a federal Schedule C, Profit or Loss from Business, listed appellant as the sole proprietor of Bistro Blends.
3. FTB accepted the return as filed and imposed a late payment penalty, and commenced collection action. FTB issued appellant a State Income Tax Balance Due Notice dated November 27, 2019, which showed a balance due of \$507.21.
4. Appellant executed an installment agreement with FTB. FTB's records show that appellant made payments of \$1,431.80 towards the 2014 tax liability.
5. On December 27, 2019, appellant submitted to FTB a Form 705, Innocent Joint Filer Relief Request, for tax year 2014. Appellant's Form 705 identified appellant as the requesting spouse; listed her address and phone number; and identified her deceased spouse as the non-requesting spouse with a different address than hers. FTB acknowledged appellant's request for innocent spouse relief.
6. FTB sent appellant a letter dated March 25, 2020, requesting information and documents in support of her request for innocent spouse relief for tax year 2014, listing a balance due of \$511.08.
7. On April 14, 2020, FTB received appellant's response. Therein, appellant included the following: FTB's March 25, 2020 letter to appellant; the couple's marriage certificate issued on June 1, 1995; a death certificate for appellant's deceased spouse, which states that on February 4, 2015, he died from multiple gunshot wounds during law enforcement intervention; appellant's submission to the IRS requesting federal innocent spouse relief for tax years 2013 and 2014; 2014 bank statements for a business checking account for [V.] Johnson Distributing doing business as Bistro Blends, which lists appellant as the sole owner, 2014 merchant card processing statements for Bistro

³ P. Johnson passed away on February 4, 2015.

- Blends, which list only appellant's name; and 2014 bank statements for the couple's personal checking and savings account.
8. FTB sent a letter to appellant dated August 28, 2020, requesting additional information in support of appellant's request for innocent spouse relief for tax year 2014.
 9. FTB called appellant and left messages on five different occasions between August 2020 and December 2020. Appellant did not respond to FTB's August 28, 2020 letter or phone messages.
 10. FTB did not issue a Non-Requesting Spouse Notice because appellant's spouse was deceased.
 11. In a Notice of Action – Denial dated March 23, 2021, FTB informed appellant that it denied her request for innocent spouse relief pursuant to R&TC section 18533(f) and indicated that there was a 2014 balance due of \$837.56.
 12. This timely appeal followed.
 13. On appeal, FTB produced a copy of the couple's 2017 federal account transcript, which lists appellant's spouse as deceased and shows that the IRS received an innocent spouse claim on December 28, 2015, and disallowed it on December 4, 2017.

DISCUSSION

Background

When a joint return is filed by spouses, each spouse is jointly and severally liable for the entire tax due. (R&TC, § 19006(b); Internal Revenue Code (IRC), § 6013(d)(3).) Federal and California law provides, however, that an individual who files a joint return may be relieved from joint and several liability under innocent spouse statutes. (R&TC, § 18533; IRC, § 6015.) For California tax purposes, R&TC section 18533 provides four separate avenues for innocent spouse relief. Subdivision (b) provides traditional innocent spouse relief; subdivision (c) provides separate allocation innocent spouse relief; and, if a requesting spouse is not eligible for traditional or separate allocation relief, subdivision (f) provides equitable innocent spouse relief. (R&TC, § 18533(b), (c), (f).) Lastly, subdivision (i) provides conforming innocent spouse relief when the IRS granted federal innocent spouse relief under IRC section 6015 for the same tax year if certain requirements are satisfied. (R&TC, § 18533(i).) OTA has jurisdiction to review FTB's grant or denial of an individual's request for relief under R&TC section 18533(b), (c), and (f). (See R&TC, § 18533(e).) Determinations under R&TC section 18533 are made without regard to community property laws. (R&TC, § 18533(a)(2).)

When a California statute is substantially identical to a federal statute (as in the case of the innocent spouse relief statutes), federal law interpreting the federal statute furnish a guide in interpreting the construction of the California statute.⁴ (*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838 (*Douglas*)). In determining whether an individual is entitled to relief under R&TC section 18533(b), (c), or (f), the proper standard and scope of review is de novo. (*Appeal of Calegari*, 2021-OTA-337P, *Porter v. Commissioner* (2009) 132 T.C. 203, 210; *Thomassen v. Commissioner*, T.C. Memo. 2011-88.)

An individual claiming innocent spouse relief has the burden of establishing each statutory requirement by a preponderance of the evidence. (*Appeal of Pifer*, 2021-OTA-338P; *Stevens v. Commissioner*, T.C. Memo. 1988-63; Cal. Code Regs., tit. 18, section 30219(a).) Because the innocent spouse relief provisions are remedial in nature, they are construed and applied liberally in favor of the individual claiming their benefits. (*Friedman v. Commissioner* (2d Cir. 1995) 53 F.3d 523, 528-529.) Unsupported assertions, however, are not sufficient to satisfy the requesting spouse's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

Although subdivisions (b) (c), (f), and (i) of R&TC section 18533 provide four potential avenues for innocent spouse relief, neither subdivision (b) nor (c) is relevant to this appeal because these subdivisions require the existence of a deficiency due to an understatement of tax (rather than an underpayment of reported tax) and appellant's tax year 2014 account does not involve a deficiency. In addition, subdivision (i) of R&TC section 18533 is not relevant to this appeal because the IRS denied appellant federal innocent spouse relief for tax year 2014, as reflected on the 2014 federal account transcript. Thus, OTA finds the only potentially applicable subdivision of R&TC section 18533 remaining is subdivision (f).

Equitable relief under R&TC section 18533(f)

R&TC section 18533(f) provides that FTB may relieve a taxpayer from a joint tax liability if: (1) under procedures prescribed by FTB, taking into account all the facts and circumstances, it is inequitable to hold the taxpayer liable for the unpaid tax or understatement; and (2) the taxpayer does not otherwise qualify for traditional or separate liability relief (under subdivisions (b) and (c), respectively). Here, OTA finds that appellant does not qualify for relief under either subdivision (b) or (c) because the tax liability involves an underpayment of reported tax, rather than a deficiency.

⁴ Such guidance has been applied extensively in California innocent spouse cases. (See R&TC, § 18533(g)(2); *Appeal of Calegari*, 2021-OTA-337P.)

IRS Guidance Regarding Claims for Equitable Relief

In considering whether, under all the facts and circumstances, it would be inequitable to hold appellant liable for the 2014 underpayment, OTA looks to IRS Revenue Procedure 2013-34, which provides guidelines for the IRS to follow in deciding whether to grant equitable innocent spouse relief. As explained above, OTA is guided by the federal interpretation of the federal statute when it is substantially similar to the corresponding California statute. (*Douglas, supra*, 48 Cal.App.2d at p. 838). Revenue Procedure 2013-34 sets forth a three-step process for evaluating requests for equitable innocent spouse relief: (1) section 4.01 provides seven threshold conditions that must be satisfied before the IRS will consider granting equitable relief; (2) section 4.02 identifies the factors that if satisfied allow the IRS to make a streamlined relief determination to grant equitable relief; and (3) section 4.03 contains a list of nonexclusive factors that IRS will consider in determining whether equitable relief should be granted if the requesting spouse does not qualify for streamlined relief under section 4.02.

Threshold Conditions

Section 4.01 provides that a requesting spouse must satisfy each of the following conditions to be eligible to submit a request for equitable relief:

1. The requesting spouse filed a joint return for the tax year for which relief is requested;
2. Traditional innocent spouse relief or separate liability allocation relief is not available to the requesting spouse;
3. The request for relief is timely filed;
4. No assets were transferred between the spouses as part of a fraudulent scheme by the spouses;
5. No disqualified assets were transferred to the requesting spouse by the non-requesting spouse;
6. The requesting spouse did not knowingly participate in the filing of a fraudulent joint return; and
7. The income tax liability 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 unless specific exceptions apply.⁵ If the liability is partially

⁵ The income attribution exceptions are attribution solely due to the operation of community property law, nominal ownership, misappropriation of funds, abuse, or fraud by the non-requesting spouse. (Rev. Proc. 2013-34, § 4.01(1)-(7).)

attributable to the requesting spouse, then relief is considered only for the portion of the liability attributable to the non-requesting spouse.

If appellant cannot satisfy each of the seven threshold conditions, equitable relief is not available. (See, e.g., *Reilly-Casey v. Commissioner*, T.C. Memo. 2013-292; *Stanwyck v. Commissioner*, T.C. Memo. 2012-180.)

Appellant asserts that her spouse was addicted to pain medication for more than 10 years, and was killed in 2015. She contends that prior to his death, her spouse handled all the books and finances of the couple's business, and she assumed that her spouse took care of everything. Appellant asserts that at the advice of her tax preparer, she filed a balance due tax return, and when she filed the tax return, she was grieving her husband's death, had very little knowledge of taxes, business, or finances, and was not even aware that the IRS and FTB were separate entities. She also asserts that after she realized how much was owed in taxes, she set up payment plans with the IRS and FTB.

Appellant contends that she had a reasonable belief that the tax liability would be fully paid when her spouse was alive, because he continuously assured her that he was attending to all the business finances and affairs, and he obtained additional money from his family to help with finances. She asserts that she lacked knowledge of financial affairs because she was not the bookkeeper or manager for the couple's business. She also asserts that by the time she filed the 2014 return, her spouse had been killed and she was solely responsible for the business debt without the business income or another income at home. She states that she sought the only help she considered available, which was payments. To show it would be inequitable to hold her liable for the 2014 tax liability, appellant produced copies of credit union account statements for January, February, March, April, May, and June 2015, which list appellant as the sole holder of this account.⁶

Here, there is no dispute that the first six threshold conditions set forth in section 4.01 have been satisfied. The seventh threshold condition provides that the income tax liability may not be attributable to the requesting spouse unless a specific exception applies.

FTB contends that appellant has failed to establish that any portion of the unpaid tax liability was earned and attributable to appellant's deceased spouse. FTB therefore argues that

⁶ Although appellant contends that she did not receive FTB's letters dated March 25, 2020, and August 28, 2020, requesting additional information in support of her request for innocent spouse relief, she enclosed copies of FTB's March 25, 2020 letter with her submissions to FTB. In her appeal letter, appellant addresses the grounds for FTB's denial of her request for innocent spouse relief stated in the Notice of Action – Denial. In addition, FTB attached copies of the March 25, 2020, and August 28, 2020 letters to its brief and appellant was provided an opportunity to submit a reply brief but did not do so.

appellant does not satisfy each of the threshold conditions and is not entitled to equitable innocent spouse relief. Appellant asserts that her husband was the director and manager of the couple's business, [V.] Johnson Distributing, and he handled all the books and finances of the couple's business, but she has not produced any evidence that corroborates these assertions.

The record shows that [V.] Johnson Distributing was doing business as Bistro Blends. The couple's 2014 federal return reported federal taxable income consisting of reported profit for Bistro Blends, which business was listed as belonging solely to appellant on the federal Schedule C, and appellant's reported wages of \$38,871. Thus, it appears the reported income is attributable to appellant. At a minimum, appellant has not shown that the income tax liability is wholly or partly attributable to her husband or that the underpayment resulted from her husband's income. Appellant does not contend, and the evidence does not show, that any of the income attribution exceptions applies. Appellant therefore fails to satisfy the seventh threshold condition.

As discussed above, sections 4.02 and 4.03 are only relevant if each of the threshold conditions of section 4.01 are satisfied. Appellant argues on appeal that she did not know and had no reason to know of the underpayment of tax at the time she filed the 2014 return, she had a reasonable belief that the tax liability would be paid in full, and it would be inequitable to hold her liable for the tax liability. Each of these arguments is pertinent to factors set forth in sections 4.02 and 4.03, rather than section 4.01. Because appellant does not satisfy each of the threshold conditions in section 4.01, there is no need to address these arguments.⁷

⁷ FTB asserts that relief pursuant to R&TC section 19006(b) is not applicable because the couple was married at the time of P. Johnson's death on February 4, 2015. Although FTB does not address relief pursuant to R&TC section 19006(c), there is no need to discuss that section because the tax liability at issue appears to be attributable to appellant, as discussed above. Appellant would not be entitled to relief under R&TC section 19006(c) because the liability shall not be revised to relieve a spouse of a tax liability on income earned by that spouse. (R&TC, § 19006(c).)

HOLDING

Appellant is not entitled to innocent spouse relief.

DISPOSITION

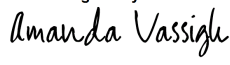
FTB's action denying appellant innocent spouse relief for tax year 2014 is sustained.


DocuSigned by:

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Josh Aldrich
Administrative Law Judge

For

We concur:

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

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Sheriene Anne Ridenour
Administrative Law Judge

For

Date Issued: 12/6/2024