

1 Mai C. Tran
2 Tax Counsel III
3 Board of Equalization, Appeals Division
4 450 N Street, MIC: 85
5 P.O. Box 942879
6 Sacramento, CA 95814
7 Tel: (916) 324-8244
8 Fax: (916) 324-2618

9 Attorney for the Appeals Division

10
11 **BOARD OF EQUALIZATION**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Appeal of:
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)
48)
49)
50)
51)
52)
53)
54)
55)
56)
57)
58)
59)
60)
61)
62)
63)
64)
65)
66)
67)
68)
69)
70)
71)
72)
73)
74)
75)
76)
77)
78)
79)
80)
81)
82)
83)
84)
85)
86)
87)
88)
89)
90)
91)
92)
93)
94)
95)
96)
97)
98)
99)
100)

HEARING SUMMARY
PERSONAL INCOME TAX APPEAL
Case No. 741179¹

MARIA PHILLIPS
(SANTA MARIA-DEL CAMPO)
APPEALING SPOUSE/SPOUSE REQUESTING
RELIEF
MICHAEL DEL CAMPO
NON-APPEALING SPOUSE/
NON-REQUESTING SPOUSE

<u>Years</u>	<u>Amounts Due</u>
2004	\$ 7,782.72, plus interest
2005	\$ 5,918.76, plus interest
2006	\$ 3,517.22, plus interest
2007	\$ 3,933.38, plus interest

///

¹ This matter was originally scheduled for oral hearing at the Board’s August 5-6, 2014 Culver City Board meeting, but was postponed at respondent’s request and rescheduled for the Board’s October 14-15, 2014 Culver City Board meeting. The matter was then postponed at respondent’s request and then rescheduled for the Board’s February 24-26, 2015 Culver City Board meeting. The matter was then postponed at the request of the appealing spouse and rescheduled for the Board’s June 23-25, 2015 Culver City Board meeting. The matter was then postponed due to the appealing spouse’s medical issues and rescheduled for the Board’s November 17-19, 2015 Culver City Board meeting.

1 Representing the Parties:

2 For Appealing Spouse: Maria Phillips (Santa Maria-del Campo)
3 For Non-Appealing Spouse: Michael Del Campo
4 For Franchise Tax Board: Marguerite E. Mosnier, Tax Counsel III
5

6 QUESTION: Whether respondent erred in denying appellant innocent spouse relief (ISR)
7 pursuant to Revenue and Taxation Code (R&TC) section 18533, subdivision (f), or
8 relief from joint liability pursuant to R&TC sections 19006, subdivisions (b) or (c),
9 for the 2004, 2005, 2006, and 2007 tax years.
10

11 HEARING SUMMARY

12 Background

13 Appellant and her former spouse, Michael Del Campo, claimed deductions for losses
14 related to “Blackbriar Investments” on their returns for the years at issue.² Respondent determined
15 that “Blackbriar Investments” and similar pass-through entities were tax shelters and notified the
16 taxpayers that the claimed partnership losses were likely sham transactions.³ Respondent requested
17 that the taxpayers file amended returns for the years at issue removing the losses. (Resp. Op. Br.,
18 Exh. G.) The taxpayers filed amended returns and self-reported tax due. No payments were included
19 with the filing of the amended returns. This appeal relates to the amounts of the unpaid tax that arose
20 from these amended returns.

21 2004 Tax Year

22 Appellant and Mr. Del Campo timely filed a 2004 joint tax return. On this return, the
23 taxpayers reported California adjusted gross income (AGI) of \$111,395, California taxable income of
24

25 _____
26 ² These deductions were reported on the taxpayers’ first amended joint tax return for the 2004 tax year, and the original
joint tax returns for the 2005, 2006, and 2007 tax years.

27 ³ Respondent explained that the taxpayers’ membership interest in these entities appeared to have been artificially created
28 for the sole purposes of passing fictitious losses to their personal income tax returns. Respondent explained that the
pass-through losses reported on the taxpayers’ tax returns never occurred because these entities did not exist and the
Schedules K-1 reporting their alleged share of the losses were not bona fide.

1 \$102,163, a total tax liability of \$5,385, credits and withholding totaling \$2,704, and a \$2,681 balance
2 due, which they remitted with the return. Respondent accepted the return as filed. (Resp. Op. Br.,
3 p. 2, Exhs. A & B.)

4 The taxpayers subsequently filed their first amended joint 2004 tax return on June 15,
5 2006. The taxpayers reported California AGI of \$57,180, deductions totaling \$10,316, and California
6 taxable income of \$102,163. Respondent accepted the first amended return as filed except that it
7 adjusted the California taxable income to \$46,864. This adjustment resulted in a total tax liability of
8 \$1,024, and an overpayment of \$4,361 that respondent refunded to the taxpayers on August 24, 2006.
9 (Resp. Op. Br., p. 2, Exhs. C, D & E.)

10 The taxpayers then filed their second 2004 amended joint tax return on August 15,
11 2006. According to respondent's records, this return was not accepted and respondent did not process
12 this return. (Resp. Op. Br., p. 3, Exh. F.)

13 The taxpayers then filed a third amended 2004 joint tax return on January 20, 2011, in
14 response to respondent's letter dated May 10, 2010, notifying the taxpayers regarding their use of a
15 tax shelter known as "Blackbriar Investments."⁴ This amended return reflected California AGI of
16 \$111,395, deductions totaling \$10,316, and California taxable income of \$101,079. The taxpayers
17 reported tax of \$5,449, exemption credits of \$170, additional tax of \$6, for a total tax of \$5,285.
18 They reported withholding of \$2,614, a \$90 excess SDI credit, and payments of \$2,681, for total
19 payments of \$5,385. The taxpayers reported the \$4,361 overpayment respondent previously refunded
20 to them, an accuracy-related penalty of \$852, interest of \$2,055, for a total amount owed of \$7,168.
21 Respondent accepted the third amended return as filed. As respondent's records did not reflect any
22 additional payments made to this tax year's account when the third amended return was filed, the
23 taxpayers' 2004 account reflected a \$7,168 balance due, plus interest, after this amended return was
24 processed. (Resp. Op. Br., p. 3, Exhs. G & H.)

25 2005 Tax Year

26 Appellant and Mr. Del Campo filed a timely joint 2005 California tax return. The
27

28 ⁴ As appellant and her former spouse's marital dissolution action was pending as of the date of this letter, respondent issued identical letters to both taxpayers.

1 taxpayers reported California AGI of \$49,557, California taxable income of \$43,049, a total tax
2 liability of \$820, withholding of \$3,459, and an overpayment of \$2,639. Respondent accepted the
3 return as filed and refunded \$2,639 to them on June 23, 2006. (Resp. Op. Br., pp. 3-4, Exhs. I, J &
4 K.)

5 In response to respondent's May 10, 2010 tax shelter letter, the taxpayers filed an
6 amended joint 2005 California return on January 20, 2011. On the amended return, the taxpayers
7 reported California AGI of \$96,775, deductions of \$6,508, and California taxable income of \$90,267.
8 They reported tax of \$4,336, exemption credits of \$174, additional tax of \$82, for a total tax of
9 \$4,244. They reported withholding of \$3,459, the \$2,639 overpayment respondent previously
10 refunded to them, an accuracy-related penalty of \$668, interest of \$1,587, for a total amount owed of
11 \$5,679. Respondent accepted the amended return as filed. As respondent's records did not reflect
12 any additional payments made to this tax year's account when the amended return was filed, the 2005
13 account reflected a \$5,679 balance due, plus interest, after the amended return was processed. (Resp.
14 Op. Br., p. 4, Exh. L.)

15 2006 Tax Year

16 Appellant and Mr. Del Campo filed a timely joint 2006 California tax return. The
17 taxpayers reported California AGI of \$42,717, California taxable income of \$15,793, a total tax
18 liability of \$15, withholding of \$532, and an overpayment of \$517. Respondent accepted the return
19 as filed and refunded \$517 to the taxpayers on May 24, 2007. (Resp. Op. Br., p. 4, Exhs. M, N & O.)

20 In response to respondent's May 10, 2010 tax shelter letter, the taxpayers filed an
21 amended joint 2006 tax return on January 20, 2011. On the amended return, the taxpayers reported
22 California AGI of \$84,008, deductions totaling \$15,719, and California taxable income of \$68,289.
23 They reported tax of \$2,347, exemption credits of \$182, additional tax of \$13, for a total tax of
24 \$2,178. They reported withholding of \$532, the \$517 overpayment respondent previously refunded
25 to them, an accuracy-related penalty of \$433, and interest of \$623, for a total amount owed of \$3,219.
26 Respondent accepted the amended return as filed. As respondent's records did not reflect any
27 additional payments made to this tax year's account when the amended return was filed, the
28 taxpayer's 2006 account reflected a \$3,219 balance due, plus interest, after the amended return was

1 processed. (Resp. Op. Br., p. 4, Exh. P.)

2 2007 Tax Year

3 Appellant and Mr. Del Campo filed a joint 2007 California tax return on May 23,
4 2008. The taxpayers reported California AGI of \$47,787, California taxable income of \$29,344, a
5 total tax liability of \$261, withholding of \$3,319, and an overpayment of \$3,058. Respondent
6 accepted the return as filed and refunded \$3,058 to them on June 20, 2008. (Resp. Op. Br., p. 5,
7 Exhs. Q, R & S.)

8 In response to respondent's May 10, 2010 tax shelter letter, the taxpayers filed an
9 amended joint 2007 tax return on February 28, 2011. The amended return reported California AGI of
10 \$97,687, deductions of \$18,443, and California taxable income of \$79,244. They reported tax of
11 \$3,112 and exemption credits of \$188 for a total tax of \$2,924. They reported withholdings of
12 \$3,319, the \$3,058 overpayment respondent previously refunded to them, an accuracy-related penalty
13 of \$533, and interest of \$462, for a total amount owed of \$3,658. As respondent's records did not
14 reflect any additional payments made to this tax year's account when the amended return was filed,
15 the taxpayer's 2007 account reflected a \$3,658 balance due, plus interest, after the amended return
16 was processed. (Resp. Op. Br., p. 5, Exhs. F & T.)

17 Collection Activity for All Tax Years

18 Respondent issued an Income Tax Due notice dated September 17, 2012, for the years
19 at issue after the taxpayers filed the amended returns in 2011.⁵ Respondent issued additional
20 collection notices to both appellant and her former spouse. In response to the collection notices,
21 respondent received payments totaling \$1,007.08, which were applied to the taxpayers' 2004 account.
22 (Resp. Op. Br., p. 5, Exh. U; App. Op. Br., Atths.)

23 Request for Innocent Spouse Relief

24 Respondent received appellant's October 19, 2012 Form 705, Request for Innocent
25 Filer Relief, on November 26, 2012. Appellant also submitted a statement, copies of emails
26 exchanged between herself and Mr. Del Campo, a copy of their Judgment of Dissolution dated
27 _____

28 ⁵ This notice also covered the 2011 tax year, a year not at issue in this appeal.

1 October 19, 2010, copies of amended returns for all of the tax years at issue, a copy of the
2 November 10, 2012 Final Notice Before Levy issued by respondent. According to the Property
3 Attachment to the Judgment of Dissolution, appellant and Mr. Del Campo indicated that (1) there
4 were no community debts, (2) no tax liability was confirmed to either party as a separate property
5 debt, and (3) neither party received spousal support. (Resp. Op. Br., pp. 5-6. Exh. V; App. Op. Br.,
6 Atths.)

7 In her statement, appellant stated that she and Mr. Del Campo were married in 2003,
8 they separated in March 2008, she filed for divorce in August 2008, and the divorce was final in
9 October 2010. Appellant contended that Mr. Del Campo handled the couple's finances while they
10 were married and he coordinated with a certified public accountant to prepare the original tax returns
11 for the years at issue. Appellant asserted that Mr. Del Campo did not review or explain anything to
12 her about their tax returns. She further asserted that she never met the person who prepared their
13 returns. She also contended that she cared for terminally ill family members who died in 2006 and
14 2007 and claimed that her former spouse took advantage of her emotional state during that time by
15 stealing money from their joint bank account. Appellant further asserted that Mr. Del Campo
16 incurred debt under her name during the marriage and ruined her credit. Appellant also asserted that
17 she did not benefit from any money received by Mr. Del Campo and claimed that he was addicted to
18 marijuana and prescription drugs for more than ten years. She also indicated that it was difficult to
19 contact Mr. Del Campo and for her to obtain copies of the tax returns from him. Appellant also
20 contended that she informed Mr. Del Campo that she was seeking ISR and he did not oppose it.
21 (Resp. Op. Br., p. 6; App. Op. Br., Atths.)

22 Respondent requested additional information by letter dated April 11, 2013. In
23 response, appellant provided an additional statement and a copy of an unsigned 2004 tax return and
24 resubmitted the paperwork she originally submitted with her Form 705. In the additional statement,
25 appellant indicated that she was unsuccessful in contacting the individuals and company that prepared
26 the amended 2004 and 2005 tax returns and the 2006 and 2007 tax returns. Appellant also contended
27 that Mr. Del Campo borrowed money to pay the 2004 taxes. She also contended that, when she
28 questioned her former spouse regarding money, he indicated that he was making "good money".

1 Appellant indicated that, during the marriage, she held jobs as a wage-earning employee. Appellant
2 also alleged that her former spouse has a continuing drug problem. (Resp. Op. Br., p. 6, Exhs. W &
3 X.)

4 Respondent issued a Non-Requesting Taxpayer Notice dated April 16, 2013, to
5 Mr. Del Campo to request information from him regarding appellant's request for relief for the tax
6 years at issue. Mr. Del Campo responded and asserted that the unpaid tax liability was attributable to
7 both appellant and himself because they both participated in the business transaction with a
8 Mr. Strawn that led to respondent's contacting them about filing amended tax returns and paying
9 additional tax. He also stated that appellant handled their finances and that they equally benefited
10 from the results of the tax returns they filed based on Mr. Strawn's advice. Mr. Del Campo also
11 submitted copies of emails between appellant and himself in which appellant advised him to type a
12 hardship letter to respondent, that they needed to discuss a payment plan for the taxes, and stated the
13 amount that she was able to pay per month. He also submitted an additional statement and copies of
14 bank statements and cancelled checks from their joint bank account. The statements and cancelled
15 checks covered the period from April 22, 2006 through April 20, 2007. (Resp. Op. Br., p. 7, Exhs. Y,
16 Z & AA.)⁶

17 On June 11, 2013, respondent issued a Notice of Action (NOA) to each party, denying
18 appellant's request for equitable ISR pursuant to R&TC section 18533, subdivision (f), for all of the
19 tax years at issue.⁷ Appellant then filed this timely appeal. (Resp. Op. Br., p. 7, Exh. BB; App. Op.
20 Br., Atths.)

21 Contentions

22 Appellant's Opening Brief

23 Appellant contends that she should only be taxed on her own tax liabilities as reflected
24

25 ⁶ Respondent's Exhibit AA is comprised of copies of all of the cancelled checks appellant's former spouse provided, as
26 well as the monthly bank statement for the period April 22, 2006 to May 19, 2006. Respondent states that this statement is
27 illustrative of the additional monthly statements submitted by Mr. Del Campo and respondent excluded the remaining
28 monthly statements due to the size of the exhibit. Respondent indicates that it will submit the remaining monthly
statements at the Board's request.

⁷ The NOAs denying relief to appellant erroneously omitted a reference to R&TC section 19006, subdivisions (b) and (c).

1 in her Forms W-2 and 1099, which she submitted with her appeal. Appellant requests equitable relief
2 of the remaining amount of the tax liabilities at issue. Appellant states that she was married to
3 Mr. Del Campo for almost five years. Appellant asserts that Mr. Del Campo was asked to leave the
4 marital home in March 2008 after she discovered his infidelity and drug addiction problem.
5 Appellant asserts that she was unaware of her former spouse's mishandling of their finances.
6 Appellant contends that, during the divorce procedure, she discovered why he was not able to keep a
7 long-term job and where he spent their earned income. Appellant argues that Mr. Del Campo
8 handled their finances and she wrote checks as he requested. (App. Op. Br, p. 1, Atths.)

9 Appellant contends that she filed for ISR because her former spouse was audited for
10 the 2007 and 2008 tax years. Appellant states that she only was included in the joint tax returns for
11 the 2004 through 2007 tax years. She further states that she filed a separate return for the 2008 tax
12 year because she separated in that year. Appellant contends that her request for ISR and separate
13 2008 return shows that she had no reason to believe that Mr. Del Campo would be audited. Appellant
14 asserts that she never took the time to review any paperwork and just signed the returns when her
15 former spouse asked her to do so. She further asserts that she did not suspect or benefit from
16 anything. Appellant contends that she worked multiple jobs during the marriage to pay the bills as
17 reflected in her Form W-2s. She asserts that she borrowed money from family and friends on various
18 occasions to make ends meet. Appellant also argues that, according to her calculations, had she filed
19 separately, she would have received a small refund for both 2004 and 2005. As support, appellant
20 submitted copies of 2004 and 2005 California tax returns filled out with her income alone. (App. Op.
21 Br., p. 1, Atths.)

22 Appellant contends that she sought assistance from the family courts in Orange
23 County, California by seeking a stipulation that she and her former spouse are liable for their own
24 taxes during the years of marriage. She submitted a copy of the Judgment of Dissolution dated
25 October 19, 2010. Appellant asserts that she is willing to provide statements from friends and family
26 members demonstrating that she is an honest and hardworking individual. Appellant argues that she
27 does not want to be held liable for marrying the wrong person or be held accountable for her former
28 spouse's mistakes. Appellant acknowledges that she did not review every paper she signed, but

1 asserts that she had no reason to mistrust her former spouse. Appellant asserts that she did not know
2 her rights when her former spouse was audited. Appellant asserts that she was told that she had to
3 sign the amended returns as requested by the FTB. As to her knowledge, appellant questions how
4 else she can demonstrate that she had no knowledge that there was an underpayment. Appellant
5 asserts that she was never told how the returns were filed and she just signed them without review.
6 Appellant contends that she trusted Mr. Del Campo to file the returns and was not told that they owed
7 money. Appellant further asserts that she never underpaid her taxes and always filed her returns with
8 professional tax preparation services. (App. Op. Br., p. 1, Atths.)

9 Appellant further contends that she was never told that they owed money. She
10 contends that she asked Mr. Del Campo to seek his dad's review. Appellant asserts that she had no
11 reason to believe or know that any taxes were due. Appellant asserts that she was working and
12 paying the bills and caring for her sick relatives. Appellant also contends that her Form W-2s show
13 that she was a W-2 employee and kept a steady job. Appellant asserts that she does not have access
14 to Mr. Del Campo's Form W-2 and did not know where he worked or how much he made. Appellant
15 contends that she never profited from his income, she never drove luxury cars or owned a home, and
16 she never took luxurious trips or bought expensive things. (App. Op. Br., p. 2, Atths.)

17 Non-Appealing Spouse's Opening Brief

18 Mr. Del Campo asserts that, prior to entering the mortgage industry in 2004, he
19 worked in customer service, made about \$26,000 a year, had no debt and had perfect credit. He
20 contends that, when he joined the mortgage industry, he made \$24,000 in the first month. He asserts
21 that he was referred to Mr. Strawn by others and he naively thought that Mr. Strawn would not
22 commit fraud. Mr. Del Campo states that any refunds received in connection with their tax returns
23 were spent equally by him and appellant. He contends that appellant handled the couple's finances
24 and, when they separated in 2008, appellant cleared their savings account and the funds from their
25 small side business. In support, Mr. Del Campo submitted the cancelled checks from their bank
26 account. He indicates that, other than one check he signed for their rent, the remainder of the checks
27 were signed by appellant, including the check to Mr. Strawn's company, Summit. Mr. Del Campo
28 disputes appellant's contention that he handled all of their finances. Mr. Del Campo submitted emails

1 dated June and July of 2010 from appellant to himself to show that appellant provided instructions to
2 him for amending their tax returns. He also contends that the cancelled check to Summit signed by
3 appellant and appellant's instructions show that she knew that there was going to be a tax liability.
4 (Non-Appealing Spouse's Op. Br., p. 1, Exhs. 1A, 1B, 2A & 3A.)

5 Mr. Del Campo further disputes appellant's claim that she did not profit from his
6 income and points to the cancelled checks as evidence contradicting her statement. He contends that
7 appellant drove a brand new car and, while they did not own a home due to the volatility in the
8 market, they rented a four-bedroom house in an upscale neighborhood. He further contends that they
9 went on various trips, including Mexico, Colombia, Chicago, Salt Lake City, and Park City. He
10 asserts that appellant had designer items, including a handbag collection valued at over \$1,000. He
11 asserts that appellant came from money and talked about having servants in Colombia and how her
12 relatives in Colombia did not need to work. Mr. Del Campo asserts that appellant remarried an
13 individual with money and she told him that she and her new spouse could pay the tax liability off.
14 Mr. Del Campo asserts that he was stuck with debt on two different credit cards and had only \$500 in
15 their joint checking account. He contends that he had to move back in with his parents because the
16 job market for loan officers was very bad and he eventually filed for bankruptcy. He states that he
17 currently has steady work in customer service making similar wages as he did in 2003 and is
18 struggling to make payments on this tax liability of \$255 a month. Mr. Del Campo states that, in
19 contrast, appellant has not paid anything towards this tax liability and paid lawyers to avoid the
20 liabilities. He acknowledges that it was a mistake to do business with Mr. Strawn, but he believes
21 that it was a joint mistake and appellant should be held responsible for it. Mr. Del Campo also
22 attached copies of cancelled checks. (Non-Appealing Spouse's Op. Br., Exhs. 4A & 5A.)

23 Respondent's Opening Brief

24 Respondent contends that, when appellant signed the third amended California return
25 for the 2004 tax year, and the amended returns for the 2005, 2006, and 2007 tax years, she became
26 jointly and severally liable for the self-assessed, unpaid liabilities pursuant to R&TC section 19006,
27 subdivision (b). Respondent further contends that appellant has not shown that she is entitled to
28 equitable ISR, court-ordered relief, or a revision of the joint liability. (Resp. Op. Br., p. 8.)

1 As to equitable ISR pursuant to R&TC section 18533, subdivision (f), respondent
2 notes that appellant has not satisfied the threshold requirements for relief as set forth in section 4.01
3 of IRS Notice 2012-8.⁸ Respondent contends that appellant has not satisfied the seventh threshold
4 requirement of showing that the income tax liability from which she seeks relief is attributable in full
5 or in part to an item of the other individual who signed the joint return under Section 4.01(7).⁹
6 Respondent notes that the taxpayers reported more income on each of the amended returns than they
7 reported on the prior returns. Respondent contends that appellant earned some of the income that
8 they reported on the amended returns. Respondent notes that, for the 2004 tax year, appellant and her
9 former spouse reported \$111,395 in federal AGI. Of that amount, respondent contends that \$34,712
10 is attributable to appellant.¹⁰ Respondent further contends that appellant has not shown that the
11 remaining \$76,683 (i.e., \$111,395 - \$34,712) of the income from which the 2004 tax liability arose is
12 attributable to her former spouse. (Resp. Op. Br., pp. 10-11, Exhs. H & CC.)

13 For the 2005 tax year, respondent notes that the taxpayers reported \$101,136 in federal
14 AGI. Of that amount, respondent contends that \$46,859 is attributable to appellant.¹¹ Respondent
15 further contends that appellant has not shown that the remaining \$54,277 (i.e., \$101,136 - \$46,859) of
16 the income from which the 2005 tax liability arose is attributable to her former spouse. (Resp. Op.
17 Br., pp. 10-11, Exhs. L & DD.)

18 For the 2006 tax year, respondent notes that the taxpayers reported \$86,900 in federal
19

20 ⁸ IRS Notice 2012-8 was superseded by Revenue Procedure 2013-34. Subsequent references to the IRS Notice are
21 changed to the corresponding references in the Revenue Procedure. In addition, all subsequent references to sections 4.01,
22 4.02, and 4.03, refer to the Revenue Procedure.

23 ⁹ Respondent acknowledges that appellant satisfied the first three requirements: (1) she filed a joint return for the years at
24 issue; (2) relief is not available to her under R&TC section 18533, subdivision (b) (traditional relief) and R&TC section
25 18533, subdivision (c) (separate allocation relief); and (3) appellant applied for relief within the applicable statute of
26 limitations. Respondent acknowledges, with regard to the fourth, fifth, and sixth requirements, there is no evidence to
27 suggest that any assets were transferred or that fraud was involved. (Resp. Op. Br., pp. 9-10.)

28 ¹⁰ Respondent notes that the following amounts were reported as being paid or distributed to appellant during 2004:
wages of \$34,525 from State Farm Insurance Co. (State Farm), a state refund of \$126, and a capital gain of \$28 and a
dividend of \$33 from State Farm.

¹¹ Respondent notes that the following amounts were reported as being paid or distributed to appellant during 2005:
wages of \$20,969 from State Farm, interest income of \$11 from State Form, miscellaneous income of \$5,821 from
Legion Investments (Legion), miscellaneous income of \$12,771 from F.M. Tarbell Company, pension income of \$3,255
from State Farm, and pension income of \$1,878 from State Farm.

1 AGI. Of that amount, respondent contends that \$53,031 is attributable to appellant.¹² Respondent
2 further contends that appellant has not shown that the remaining \$33,869 (i.e., \$86,900 - \$53,031) of
3 the income from which the 2006 tax liability arose is attributable to her former spouse. (Resp. Op.
4 Br., pp. 10-11, Exhs. P & EE.)

5 For the 2007 tax year, respondent notes that the taxpayers reported \$98,204 in federal
6 AGI. Of that amount, respondent contends that \$57,724 is attributable to appellant.¹³ Respondent
7 further contends that appellant has not shown that the remaining \$40,480 (i.e., \$98,204 - \$57,724) of
8 the income from which the 2007 tax liability arose is attributable to her former spouse. (Resp. Op.
9 Br., pp. 10-11, Exhs. T & FF.)¹⁴

10 Respondent contends that, as appellant failed to satisfy the seventh threshold
11 requirement, appellant is not entitled to equitable ISR. Respondent further contends that, even if
12 appellant can show that she satisfies all of the threshold requirements of Section 4.01, appellant has
13 not shown that she satisfies the streamlined determination or the facts and circumstances test for relief
14 pursuant to Sections 4.02 or 4.03, respectively. (Resp. Op. Br., p. 11.)

15 As to the streamline determination pursuant to Section 4.02, respondent contends that
16 appellant has not satisfied the economic hardship factor under Section 4.02(2) or the knowledge
17 factor under Section 4.03(3). Respondent notes that appellant has not argued that she would suffer
18 economic hardship if relief is not granted. Respondent contends that the information appellant
19 provided does not suggest any economic hardship. Respondent further contends that appellant has
20

21 ¹² Respondent notes that the following amounts were reported as being paid or distributed to appellant during 2006:
22 wages of \$80 from Venturi Staffing Partners, wages of \$2,700 from Carl J. Ferraro Jr. Insurance Agent, wages of \$1,730
23 from Washington Mutual Bank (WaMu), wages of \$3,662 from Howroyd Wright Employment Agency, brokerage
24 income of \$1,000 from State Farm, capital gain income of \$122 and dividend income of \$43 from State Farm, capital gain
income of \$114, dividend income of \$15, interest income of \$15 from State Farm, miscellaneous income of \$2,116 from
Legion, and miscellaneous income of \$41,434 from Legion.

25 ¹³ Respondent notes that the following amounts were reported as being paid or distributed to appellant during 2007:
26 wages of \$51,573 from WaMu, brokerage income of \$600 from State Farm, brokerage income of \$300 from State Farm,
27 brokerage income of \$250 from State Farm, capital gain income of \$57 and dividend income of \$13 from State Farm,
28 miscellaneous income of \$3,956 from Mona Vie, Inc., and pension income of \$975 from State Farm.

¹⁴ According to respondent's calculations, 31.16 percent of the 2004 tax liability is attributable to appellant, 46.33 percent
of the 2005 tax liability is attributable to appellant, 61.03 percent of the 2006 tax liability is attributable to appellant, and
58.78 percent of the 2007 tax liability is attributable to appellant. (Resp. Op. Br., p. 11.)

1 not shown that, when she signed the returns, she had no knowledge or reason to know, that the
2 nonrequesting spouse would not or could not pay the tax reported on the jointly filed returns.
3 Respondent contends that appellant and her former spouse filed the amended returns in response to a
4 letter from the FTB advising them that it believed the taxpayers took deductions for investments that
5 were sham transactions. Respondent contends that the available evidence shows that the taxpayers
6 did not expect to pay the self-assessed tax liabilities shown on the amended returns when they signed
7 the amended returns. Respondent notes that, in appellant's emails to her former spouse dated
8 June 21, 2010 and July 27, 2010, appellant stated that she would be able to pay a certain monthly
9 amount towards these self-assessed liabilities and requested her former spouse to write a hardship
10 letter to the FTB to be submitted with their amended returns. Respondent further notes that appellant
11 indicated that she and her former spouse should discuss a payment plan with the FTB. (Resp. Op.
12 Br., pp. 11-12, Exh. Z.)

13 Respondent further contends that, as appellant has not alleged abuse or that she was
14 subject to financial control by her former spouse, appellant does not qualify for the exception to the
15 knowledge factor for streamlined equitable relief pursuant to Section 4.02(3)(a). Respondent notes
16 that, although appellant indicated that her former spouse "handled the finances," she acknowledged
17 that she wrote checks at his direction. Respondent notes that appellant's former spouse submitted
18 copies of cancelled checks written and signed by appellant between April 2006 and April 2007.
19 Respondent contends that these checks show that appellant regularly accessed the joint checking
20 account and appeared to have full access to the couples' financial information. Respondent notes that
21 appellant has not claimed that she never questioned her former spouse about their finances or that he
22 prevented appellant from accessing financial information. Respondent further notes that appellant
23 indicated that she questioned her former spouse about the need to borrow funds to pay taxes and her
24 former spouse answered her question. Respondent contends that the totality of the evidence supports
25 a finding that appellant was not subject to financial control by her former spouse. (Resp. Op. Br.,
26 p. 12, Exh. AA.)

27 Respondent further contends that appellant has not shown that it would be inequitable
28 to hold her liable for the tax liabilities at issue based on the factors of Section 4.03. Respondent

1 acknowledges that appellant is divorced and the marital status factor favors relief. Respondent
2 contends that the economic hardship factor is neutral because appellant has not established she will
3 suffer an economic hardship if relief is not granted. Respondent further contends that the knowledge
4 factor weighs against relief. Respondent contends that the evidence in the record shows that, when
5 appellant signed the amended returns, she knew that her former spouse could not or would not pay
6 the self-assessed tax liabilities when those returns were filed or within a reasonably prompt time
7 thereafter. (Resp. Op. Br., p. 13.)

8 Respondent contends that the legal obligation factor is neutral. Respondent contends
9 that the Property Order Attachment to the Judgment of Dissolution reflects that there was no
10 community debt and no tax liability was confirmed as separate property debt. Respondent contends
11 that appellant's email statements to her former spouse during the preparation of the four amended
12 returns indicates that she believed that both she and her former spouse were both legally responsible
13 to pay the outstanding tax liabilities. Respondent also contends that the significant benefit factor is
14 neutral. Respondent contends that the expenditures shown on the monthly bank statement and the
15 cancelled checks indicate payments of routine living expenses. Respondent notes that appellant
16 asserted that she did not profit from her former spouse's income and did not drive a luxury car, own a
17 home, take any luxurious trips or buy expensive things. Respondent notes that appellant's former
18 spouse indicated that they both benefited equally from the refunds received from the FTB and spent
19 money equally. As such, respondent contends that the benefit was equally shared. (Resp. Op. Br.,
20 pp. 13-14.)

21 Respondent also contends that the compliance with income tax laws factor is neutral.
22 Respondent notes that records show appellant filed timely California and federal returns for the 2008
23 through 2011 tax years. Respondent notes that appellant did not timely pay her tax liability for the
24 2011 tax year and respondent imposed a late payment penalty for that year. Respondent notes that
25 appellant has not filed a federal or California 2012 tax return. Respondent also contends the mental
26 and physical health factor is neutral. Respondent notes that appellant has not alleged that she was in
27 poor physical or mental health when she signed the four amended returns. (Resp. Op. Br., pp. 14-15.)

28 Respondent asserts that considerable importance is assigned to the fact that both

1 taxpayers had access to their financial information, appellant's statements indicate that she knew that
2 the tax liabilities reported on the amended returns would not be paid when the returns were filed, and
3 the attachment to the Judgment of Dissolution reflects that there was no community debt and did not
4 confirm the unpaid tax liability to either appellant or her former spouse. Respondent contends that
5 the totality of the information and documentation shows that appellant is not entitled to equitable ISR.
6 (Resp. Op. Br., p. 15.)

7 Respondent further contends that appellant does not qualify for court-ordered relief
8 pursuant to R&TC section 19006, subdivision (b). Respondent contends the evidence shows that
9 appellant earned a portion of the income on which the unpaid income tax liabilities for all of the years
10 at issue in this appeal are based, and appellant would not be entitled to court-ordered relief for her
11 portion of the tax liability. Respondent further contends that appellant has not established that she did
12 not earn, manage, or control the remaining portion of the income reported on the four amended tax
13 returns. Respondent also contends that the Property Order Attachment to the Judgment of
14 Dissolution shows that the taxpayers represented that there were no community debts and that no tax
15 liability was assigned to either party as separate property debt. In addition, respondent contends that
16 the dissolution order does not satisfy the statutory requirements of R&TC section 19006, subdivision
17 (b)(2). Respondent lastly contends that appellant has not shown that she is entitled to relief from joint
18 liability pursuant to R&TC section 19006, subdivision (c). Respondent contends that appellant's
19 knowledge of the tax liability precludes her from relief under this provision. (Resp. Op. Br., pp. 15-
20 16.)

21 Appellant's Reply Brief

22 Appellant disputes Mr. Del Campo's statement that she told him that she and her new
23 spouse have the ability to pay this tax liability. Appellant asserts that, when they separated in 2008,
24 she used the money for moving expenses and to remove Mr. Del Campo's name on their vehicle.
25 Appellant contends that she and Mr. Del Campo kept a joint account right until she filed for divorce
26 and, as such, he had the same access to the bank account. Appellant contends that the funds in the
27 joint bank account were used to pay for living expenses such as telephone bills, cable bills, internet
28 bills, and utility bills. Appellant further disputes Mr. Del Campo's claim that she gave away his

1 workout equipment to her hairdresser in exchange for free haircuts. Appellant explains that
2 Mr. Del Campo knew that they needed to remove the equipment from storage and she donated it to an
3 organization. She states that she did not receive any free haircuts. As to Mr. Del Campo's assertions
4 regarding her family, appellant contends that she never bragged about money and her family
5 members are the hardest working people she knows. Appellant further disputes Mr. Del Campo's
6 assertion that she quickly remarried. Appellant contends that Mr. Del Campo delayed the divorce
7 proceedings and appellant did not remarry until three years after the divorce. Appellant also
8 questions the relevancy of Mr. Del Campo's statement that he moved back in with his parents. (App.
9 Reply Br., pp. 1-2.)

10 Appellant contends that she quit her job at State Farm and became a real estate agent
11 due to stress. Appellant disputes Mr. Del Campo's assertion that she was upset that she did not drive
12 a luxury car. Appellant claims that she requested an economical car. Appellant also contends that
13 their rental home was not in an upscale neighborhood and that the rental home was rented by her
14 mother. Appellant contends that she and Mr. Del Campo could not afford to rent a home and they
15 lived with her extended family and shared expenses with them. Appellant also disputes Mr. Del
16 Campo's claim that they went on various trips. Appellant contends that she never travelled to Mexico
17 and Colombia with Mr. Del Campo. Appellant further contends that the trips to Utah were for family
18 visits and snowboarding and were not luxurious. She asserts that various expenses were paid by
19 family and the plane tickets were paid with funds they earned from Monavie. Appellant also asserts
20 that they never went on a honeymoon because they could not afford it. Appellant further asserts that
21 she did not own luxury items, such as sunglasses and handbags. (App. Reply Br., pp. 2 -3.)

22 Appellant further disputes Mr. Del Campo's claim that she paid lawyers and contends
23 that she received legal advice from respondent's legal counsel aid department and other lawyers who
24 did not bill her for services. Appellant claims that Mr. Del Campo is fabricating statements about
25 her. She asserts that she made a mistake by marrying him. She alleges that, after the divorce, she
26 found out that Mr. Del Campo was suspended from high school, arrested for drugs, committed violent
27 offenses, used chat sites with women, and had substance abuse issues. Appellant asserts that she
28 allowed Mr. Del Campo to remain on her insurance so that he could get help for his issues at Kaiser.

1 Appellant further alleges that she asked him whether they could pay their separate share of the tax
2 liability. Appellant contends that her email to Mr. Del Campo reflects that she could afford to pay
3 \$100 towards the tax liability. She asserts that she did not know that he would file for bankruptcy.
4 She alleges that, once he filed for bankruptcy, she was informed that he was trying to clear all debt
5 and leave the debt to her. Appellant contends that there was miscommunication between her and
6 Mr. Del Campo and it's been difficult for her to come to terms with him as he continuously attacks
7 her and her family with false accusations and his responses are combative. (App. Reply Br., pp. 3-4.)

8 Respondent's Reply Brief

9 Respondent discusses the significant benefit factor in light of appellant's reply brief
10 and Mr. Del Campo's statements. Respondent contends that the assertions set forth by Mr. Del
11 Campo and appellant's responses are not supported by statements made under penalty of perjury or
12 by documentary evidence. Respondent maintains that the evidence in the record shows that the
13 taxpayers equally shared any benefit received from the nonpayment of the additional tax liability, and
14 respondent considers the significant benefit factor to be neutral. Respondent contends that the
15 parties' statements do not change respondent's position on this factor. (Resp. Reply Br., pp. 1-2.)

16 Respondent further contends that its position on the economic hardship factor remains
17 neutral. Respondent notes that appellant has not argued that she would suffer economic hardship.
18 Respondent contends that the assertions set forth by Mr. Del Campo and appellant's responses are not
19 supported by statements made under penalty of perjury or by documentary evidence. (Resp. Reply
20 Br., p. 2.)

21 Respondent also contends that, while both parties discuss separate allocation, appellant
22 is not entitled to separate allocation of the tax liabilities at issue because relief under R&TC
23 section 18533, subdivision (c), is only applicable to unpaid tax liabilities arising from an additional
24 tax assessment by respondent. Respondent contends that the tax liabilities at issue arose from self-
25 assessed amounts that the taxpayers reported on their amended returns. (Resp. Reply Br., p. 2.)

26 As to appellant's claim that she received legal advice from respondent's legal counsel,
27 respondent contends that its records do not support her claim. Respondent contends that its records
28 contain no information or documentation showing that it provided appellant with any legal advice.

1 (Resp. Reply Br., p. 3.)

2 Non-Appealing Spouse's Reply Brief

3 Mr. Del Campo alleges that appellant is "a terrible liar." He notes that her first brief
4 goes into great detail regarding his alleged control of the couple's finances and taxes. He contends
5 that he provided evidence to disprove her claims. He contends that appellant was by his side for
6 every interaction with Mr. Strawn and she referred her friends to him as well. Mr. Del Campo notes
7 that appellant did not address this knowledge in her reply brief. He contends that she was caught in
8 one of her many lies by respondent and this should make the Board question her other contentions
9 and statements. He states that he would be more than happy to state under penalty of perjury that all
10 of the statements in his briefs are true. He contends that appellant just does not want to pay the tax
11 liabilities. He asserts that she has money for everything but this debt. In contrast, he claims that he
12 qualified for the hardship program and made payments to respondent for a year. He explains that,
13 when he remarried, the FTB took his current spouse's income into consideration. As such, he and his
14 current spouse did not combine finances and he continues to pay the \$255 a month to respondent even
15 though it causes him an extreme hardship and stress on his marriage. (Non-Appealing Spouse's
16 Reply Br., pp. 1-2.)

17 Appellant's Supplemental Brief

18 Appellant contends that Mr. Del Campo continues to attack her and her family during
19 this appeals process. Appellant contends that Mr. Del Campo made various false statements in his
20 reply brief. Appellant contends that the friends he named in his reply brief resolved their tax issues
21 and these individuals were not referred to Mr. Strawn by her. As to legal advice from the FTB,
22 appellant contends that she called respondent and asked questions. Appellant also contends that she
23 never said that she was not paying but that she only wants to pay tax on her portion. Appellant also
24 takes issue with Mr. Del Campo's statement that she has money for everything. Appellant contends
25 that she pays for her living expenses and does not maintain a lavish lifestyle. Appellant also contends
26 that it is a hardship for her because of its impact on her relationship with her current spouse.
27 Appellant contends that it is not her fault that Mr. Del Campo has very little funds after paying for his
28 expenses. Appellant requests that the Board consider the character attacks made by Mr. Del Campo

1 in its determination of this appeal. (App. Supp. Br., pp.1-2.)

2 Applicable Law

3 Innocent Spouse Relief

4 R&TC section 19006, subdivision (b), provides that, when a joint return is filed, the
5 liability for the tax on the aggregate income is joint and several. When a couple files a joint return,
6 each person is treated as consenting, whether or not the person realizes it, to joint and several
7 liability. (Int.Rev. Code, § 6013(d); Rev. & Tax. Code, § 19006.) The taxpayer who controls the
8 disposition of, or receives, or spends, community income, as well as the taxpayer who is taxable on
9 the income, is liable for the tax on that income. (Rev. & Tax. Code, § 19006, subd. (a).) The entire
10 amount of tax due may be collected from either person or may be collected from both persons signing
11 the return. (Rev. & Tax. Code, § 19006.)

12 Federal and California law provide that an individual who files a joint return may be
13 relieved of all or a portion of such joint and several liability if the individual qualifies as an
14 innocent spouse. (Int.Rev. Code, § 6015; Rev. & Tax. Code, §§ 18533 and 19006.)¹⁵ There are three
15 types of ISR under R&TC section 18533: traditional relief under subdivision (b); separate allocation
16 relief under subdivision (c); and equitable relief under subdivision (f). R&TC section 18533,
17 subdivisions (b) and (c), provide a qualifying individual with relief of tax liabilities arising from a
18 deficiency (as opposed to an underpayment of reported tax). As the tax liabilities at issue in this
19 appeal arose from underpayments of tax reported on their amended returns, it appears that appellant
20 may only seek equitable relief under R&TC section 18533, subdivision (f).

21 Equitable Innocent Spouse Relief

22 R&TC section 18533, subdivision (f), provides that respondent may relieve a taxpayer
23 from a tax liability if, taking into account all of the facts and circumstances, it is inequitable to hold
24 the taxpayer liable for the unpaid tax or understatement, and the taxpayer does not otherwise qualify
25 for relief under subdivisions (b) and (c) of the statute. The taxpayer bears the burden of proving that
26

27
28 ¹⁵ When a California statute is substantially identical to a federal statute (as in the case of the innocent spouse statutes)
federal law interpreting the federal statute may be considered highly persuasive with regard to the California statute.
(*Douglas v. State of California* (1942) 48 Cal.App.2d 835, 838.) Thus, federal authority is applied extensively in
California innocent spouse cases. (Rev. & Tax. Code, § 18533, subd. (g).)

1 he or she is entitled to equitable ISR. (*Porter v. Comm'r* (2009) 132 T.C. 203, 210.) Determinations
2 to deny equitable relief are reviewed de novo. (*Wilson v. Comm'r* (9th Cir. 2013) 705 F.3d 980.)

3 Revenue Procedure 2013-34 provides guidance in determining whether to grant
4 equitable relief.¹⁶ Section 4.01 of IRS Revenue Procedure 2013-34 explains the following threshold
5 requirements for a taxpayer requesting equitable relief:

- 6 1. The taxpayer filed a joint return for the taxable year for which he or she seeks relief;
- 7 2. Relief is not available to him or her under traditional ISR or separate allocation ISR;¹⁷
- 8 3. The requesting spouse applies for relief within the applicable statute of limitations for
9 requesting relief;
- 10 4. No assets were transferred between spouses as part of a fraudulent scheme by the spouses;
- 11 5. The nonrequesting spouse did not transfer disqualified assets to the requesting spouse;
- 12 6. The requesting spouse did not file the return with a fraudulent intent; and
- 13 7. The income tax liability from which the requesting spouse seeks relief is attributable, in full or
14 in part, to an item of the individual with whom the requesting spouse filed the joint return,
15 unless a specific exception applies.¹⁸

16 The Revenue Procedure and federal court cases indicate that, if an appellant cannot
17 satisfy all of the threshold conditions, his or her claim for equitable relief should be denied. (See,
18 e.g., *Reilly-Casey v. Comm'r*, T.C. Memo. 2013-292; *Stanwyck v. Comm'r*, T.C. Memo. 2012-180;
19 *Franc v. Comm'r*, T.C. Memo. 2010-79; *O'Meara v. Comm'r*, T.C. Memo. 2009-71.)

20 Section 4.02 of Revenue Procedure 2013-34 provides the following list of factors
21 which, if met, permit a streamlined determination of ISR:

- 22 (1) the requesting spouse establishes he or she is no longer married to the nonrequesting spouse;

23 _____
24 ¹⁶ R&TC section 18533, subdivision (g)(2), provides that “[i]t is the intent of the Legislature that, in construing this
25 section . . . , any regulations that may be promulgated by the Secretary . . . shall apply to the extent that those regulations
26 do not conflict with this section or with any regulations that may be promulgated by the [FTB].” IRS regulations refer
27 taxpayers to Revenue Procedure 2000-15 (which was a predecessor of Revenue Procedure 2013-34) or other guidance
28 published by the IRS for guidance as to the application of equitable relief. (Treas. Reg., § 1.6015-4(c).)

¹⁷ The California equivalent to Internal Revenue Code (IRC) sections 6015(b) and (c) are R&TC section 18533,
subdivisions (b) and (c).

¹⁸ These exceptions include: attribution solely due to the operation of community property law, nominal ownership,
misappropriation of funds, abuse, and fraud committed by the nonrequesting spouse.

- 1 (2) the requesting spouse establishes he or she would suffer economic hardship if relief were not
2 granted;¹⁹ and
- 3 (3) the requesting spouse establishes he or she did not know or have reason to know that there
4 was an understatement or deficiency on the joint return or did not know or have reason to
5 know that the nonrequesting spouse would not or could not pay the underpayment of tax
6 reported on the joint income tax return.²⁰

7 When streamlined equitable relief is unavailable, equitable relief may be available to a
8 requesting spouse based on the following nonexclusive factors pursuant to section 4.03 of Revenue
9 Procedure 2013-34:

- 10 (1) Marital status: Whether the requesting spouse is no longer married to the nonrequesting
11 spouse as of the date the Service makes its determination. (Rev. Proc. 2013-34, § 4.03(2)(a).)
12 If the requesting spouse is still married to the nonrequesting spouse, this factor is neutral.
13 (*Id.*) If the requesting spouse is no longer married to the nonrequesting spouse, this factor will
14 weigh in favor of relief. (*Id.*)
- 15 (2) Economic hardship: Whether the requesting spouse would suffer economic hardship if
16 relief is not granted. (Rev. Proc. 2013-34, § 4.03(2)(b).) Economic hardship exists if the
17 satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable
18 to pay reasonable basic living expenses. The taxing agency will compare the requesting
19 spouse's income to the federal poverty guidelines for the requesting spouse's family size and
20 will determine by how much, if at all, the requesting spouse's monthly income exceeds the
21 spouse's reasonable basic monthly living expenses. (*Id.*) If the requesting spouse's income is
22 below 250 percent of the federal poverty guidelines, or if the requesting spouse's monthly
23

24 ¹⁹ Revenue Procedure 2013-34, section 4.02(2), provides that the economic hardship requirement for streamlined
25 equitable ISR is analyzed pursuant to Revenue Procedure 2013-34, section 4.03(2)(b).

26 ²⁰ Revenue Procedure 2013-34, section 4.02(3)(a), provides that, if the nonrequesting spouse maintained control over the
27 household finances by restricting the requesting spouse's access to financial information, and therefore, because of the
28 financial control, the requesting spouse was not able to challenge the treatment of any items on the joint return, or to
question the payment of the taxes reported as due on the joint return or challenge the nonrequesting spouse's assurance
regarding the payment of the taxes for fear of the nonrequesting spouse's retaliation, then the financial control will result
in this factor being satisfied even if the requesting spouse had knowledge or reason to know of the items giving rise to the
understatement or deficiency.

1 income exceeds the requesting spouse's reasonable basic monthly living expenses by \$300 or
2 less, then this factor will weigh in favor of relief unless the requesting spouse has assets out of
3 which the requesting spouse can make payments towards the tax liability and still adequately
4 meet the requesting spouse's reasonable basic living expenses. (*Id.*) If the requesting
5 spouse's income exceeds these standards, the taxing agency will consider all of the facts and
6 circumstances in determining whether the requesting spouse would suffer economic hardship
7 if relief is not granted. (*Id.*) The lack of a finding of economic hardship does not weigh
8 against relief, and is a neutral factor. (*Id.*)

9 (3) Knowledge or reason to know: In underpayment cases, if the requesting spouse reasonably
10 expected the nonrequesting spouse to pay the tax liability reported on the return, this factor will
11 weigh in favor of relief. (Rev. Proc. 2013-34, § 4.03(2)(c)(ii).) This factor will weigh against
12 relief if, based on the facts and circumstances of the case, it was not reasonable for the
13 requesting spouse to believe that the nonrequesting spouse would or could pay the tax liability
14 shown on the return. (*Id.*) The facts and circumstances that are considered in determining
15 whether the requesting spouse had reason to know whether the nonrequesting spouse could or
16 would pay the reported tax liability include, but are not limited to, the requesting spouse's
17 level of education, any deceit or evasiveness of the nonrequesting spouse, the requesting
18 spouse's degree of involvement in the activity generating the income tax liability, the
19 requesting spouse's involvement in business or household financial matters, the requesting
20 spouse's business or financial expertise, and any lavish or unusual expenditures compared
21 with past spending levels. (Rev. Proc. 2013-34, § 4.013(2)(c)(iii).) In addition, if the
22 requesting spouse establishes that he or she was the victim of abuse, then depending on the
23 facts and circumstances of the requesting spouse's situation, the abuse may result in certain
24 factors weighing in favor of relief when otherwise the factor may have weighed against relief.
25 (Rev. Proc. 2013-34, § 4.03(c)(iv).)

26 (4) The nonrequesting spouse's legal obligation: This factor will weigh in relief if the
27 nonrequesting spouse has the sole legal obligation to pay the outstanding tax liability pursuant
28 to a divorce decree or agreement. (Rev. Proc. 2013-34, § 4.03(d).) This factor will weigh

1 against relief if the requesting spouse has the sole legal obligation. (*Id.*) This factor is neutral
2 if the divorce decree or agreement is silent as to the parties' responsibility for the tax liability.
3 (*Id.*)

4 (5) Significant benefit to the electing spouse: If the requesting spouse significantly benefited
5 from the unpaid income tax liability or understatement, this factor will weigh against relief.
6 (Rev. Proc. 2013-34, § 4.03(e).) However, if the requesting spouse was subject to abuse or
7 financial control by the nonrequesting spouse, then this factor will be mitigated and is neutral.
8 (*Id.*) If only the nonrequesting spouse significantly benefitted from an item giving rise to an
9 understatement or deficiency, and the requesting spouse had little or no benefit, or the
10 nonrequesting spouse enjoyed the benefit to the requesting spouse's detriment, this factor will
11 weigh in favor of relief. (*Id.*) A significant benefit is any benefit in excess of normal support.
12 (Rev. Proc. 2013-34, § 4.03(e); Treas. Reg., § 1-6015-2(d).)

13 (6) The electing spouse's compliance with income tax laws: Whether the requesting spouse
14 has made a good faith effort to comply with the income tax laws in the taxable years
15 following the taxable year or years to which the request for relief relates. (Rev. Proc. 2013-
16 34, § 4.03(f).) If the requesting spouse made a good faith effort to comply with the tax laws
17 but was unable to fully comply, then this factor will be neutral. (*Id.*)

18 The additional following factor weighs in favor of equitable relief if present, but does
19 not weigh against relief if not present:

20 (7) Mental or physical health of the electing spouse: If the requesting spouse was in poor
21 mental or physical health at the time the return or returns for which the request relates were
22 filed (or at the time the requesting spouse reasonably believed the return or returns were filed),
23 or at the time the requesting spouse requested relief, this factor will weigh in favor of relief.
24 (Rev. Proc. 2013-34, § 4.03(g).)

25 No single factor is determinative, the list of factors is not exhaustive, and the degree of
26 importance of each factor varies depending on the requesting spouse's facts and circumstances.
27 (Rev. Proc. 2013-34, § 4.03(2).) Section 3.05 of Revenue Procedure 2013-34 states that, depending
28 on the facts and circumstances of the case, relief may still be appropriate if the number of factors

1 weighing against relief exceeds the number of factors weighing in favor of relief, or a denial of relief
2 may still be appropriate if the number of factors weighing in favor of relief exceeds the number of
3 factors weighing against relief. (Rev. Proc. 2013-34, § 3.05.) While the guidelines provided by the
4 Revenue Procedure are relevant to the Board's inquiry, the Board is not bound by them as the
5 Board's analysis and determination ultimately turn on an evaluation of all the facts and
6 circumstances. (See *Henson v. Comm'r*, T.C. Memo. 2012-288; *Sriram v. Comm'r*, T.C. Memo.
7 2012-91.) Equitable relief may be inappropriate even if a simple counting of factors would seem to
8 favor relief. (Rev. Proc. 2013-34, § 3.05 & § 4.03(2); *Henson v. Comm'r, supra*; *Hudgins v. Comm'r*,
9 T.C. Memo. 2012-260.)

10 Court-Ordered Relief

11 R&TC section 19006, subdivision (b), also provides relief from joint and several
12 liability based on a court order in a proceeding for the dissolution of marriage. The liability may be
13 revised by a court in a proceeding for dissolution of the marriage of the husband and wife, provided
14 that the order revising the tax liability may not relieve a spouse of tax liability on income earned by or
15 subject to the exclusive management and control of the spouse. (Rev. Tax. Code, § 19006,
16 subd. (b)(1).) The liability of the spouse for the tax, penalties, and interest due for the taxable year
17 shall be in the same ratio to total tax, penalties, and interest due for the taxable year as the income
18 earned by or subject to the management and control of the spouse is to the total gross income
19 reportable on the return. (*Id.*)

20 In addition, the order revising the tax liability: (1) must separately state the income
21 tax liabilities for the taxable years for which the revision of the tax liability is granted; (2) shall not
22 revise a tax liability that has been fully paid prior to the effective date of the order (however, any
23 unpaid amount may be revised); (3) shall become effective when the FTB is served with or
24 acknowledges the receipt of the order; and (4) shall not be effective if the gross income reportable on
25 the return exceeds one hundred fifty thousand dollars (\$150,000) or the amount of the tax liability the
26 spouse is relieved of exceeds seven thousand five hundred dollars (\$7,500), unless a tax revision
27 clearance certificate is obtained from the FTB and filed with the court. (Rev. & Tax. Code, § 19006,
28 subd. (b)(2).)

1 Relief from Nonpayment of Joint Tax Liability

2 R&TC section 19006, subdivision (c), provides that the FTB may revise an unpaid tax
3 liability as to one spouse for the payment of taxes that were reported due on a joint tax return.
4 However, the liability shall not be revised to relieve a spouse of tax liability on income earned by or
5 subject to the exclusive management and control of that spouse. (Rev. & Tax. Code, § 19006,
6 subd. (c)(1)(A).) In addition, the liability shall not be revised to relieve a spouse of liability below the
7 amount actually paid on the liability prior to the granting of relief. (Rev. & Tax. Code, § 19006,
8 subd. (c)(1)(B).) The liability may be revised only if the spouse whose liability is to be revised
9 establishes that he or she did not know, and had no reason to know of, the nonpayment at the time the
10 return was filed. (Rev. & Tax. Code, § 19006, subd. (c)(2).) “Reason to know” means whether or
11 not a reasonably prudent person would have reason to know of the nonpayment. (*Id.*)

12 STAFF COMMENTS

13 Equitable Innocent Spouse Relief

14 The tax liabilities here arose from the nonpayment of taxes reflected on the taxpayers’
15 amended joint tax returns for 2004, 2005, 2006, and 2007 filed on or about January 20, 2011.²¹
16 R&TC section 18533, subdivision (b) and (c), only provide relief of joint tax liabilities that arise from
17 a deficiency. As such, appellant may only seek relief under R&TC section 18533, subdivision (f).

18 To obtain equitable relief, appellant will want to demonstrate that, at a minimum, she
19 meets all of the threshold conditions in section 4.01 of Revenue Procedure 2013-34. If appellant
20 satisfies these threshold conditions, then appellant should discuss whether she meets the requirements
21 for streamlined equitable ISR in section 4.02 of Revenue Procedure 2013-34 or the factors for general
22 equitable ISR in section 4.03 of Revenue Procedure 2013-34.

23 With regard to the threshold conditions in Revenue Procedure 2013-34 section 4.01,
24 appellant must establish: (1) that she filed a joint tax return for the tax years she seeks relief; (2) that
25 relief is not available under traditional or separate allocation ISR; (3) that she filed for relief within
26 the applicable statute of limitations; (4) that no assets were transferred between former spouses as
27

28 _____

²¹ The 2007 amended tax return was filed on February 28, 2011.

1 part of a fraudulent scheme; (5) that the nonrequesting spouse did not transfer disqualified assets to
2 appellant; (6) that appellant did not file the return with a fraudulent intent; and (7) that the income tax
3 liability from which appellant seeks relief is attributable, in full or in part, to an item of her former
4 spouse (unless a specific exception applies).

5 The Revenue Procedure and federal court cases indicate that, if appellant cannot
6 satisfy all of the threshold conditions, her claim for equitable relief should be denied. (See, e.g.,
7 *Reilly-Casey v. Comm'r, supra*; *Stanwyck v. Comm'r, supra*; *Franc v. Comm'r, supra*; *O'Meara v*
8 *Comm'r, supra*.) The only threshold condition at issue here is the seventh condition, whether the
9 income tax liability from which appellant seeks relief is attributable, in full or in part, to an item of
10 her former spouse.²²

11 For the 2004 tax year, appellant and Mr. Del Campo reported \$111,395 in federal
12 AGI. Of that amount, it appears that \$34,712 is attributable to appellant according to the federal
13 Wage and Income Transcript. (Resp. Op. Br., Exh. CC.) In order to meet this threshold condition for
14 relief, appellant will need to show that the remaining \$76,683 of the income from which the 2004 tax
15 liability arose is attributable to her former spouse.

16 For the 2005 tax year, the taxpayers reported \$101,136 in federal AGI. Of that
17 amount, it appears that \$46,859 is attributable to appellant according to the federal Wage and Income
18 Transcript. (Resp. Op. Br., Exh. DD.) Appellant will need to show that the remaining \$54,277 of the
19 income from which the 2005 tax liability arose is attributable to her former spouse. Staff notes that
20 their amended tax return included a Schedule C for Mr. Del Campo reporting a net profit of \$17,195.
21 (Resp. Op. Br., Exh. L, p. 14.)

22 For the 2006 tax year, the taxpayers reported \$86,900 federal AGI. Of that amount, it
23 appears that \$53,031 is attributable to appellant according to the federal Wage and Income Transcript.

24
25
26 ²² There is an exception to this seventh threshold condition for instances where: (1) the attribution of the item to the
27 requesting spouse is due solely to the operation of community property law; (2) the requesting spouse merely has nominal
28 ownership of the item from which the tax liability arose; (3) the requesting spouse did not know of the nonrequesting
spouse's misappropriation of funds; (4) due to abuse prior to signing the return, the requesting spouse was not able to
challenge the treatment of any items on the return for fear of retaliation from the nonrequesting spouse; or (5) fraud
committed by the nonrequesting spouse caused the erroneous item. (Rev. Proc. 2013-34, § 4.01(7).) Staff notes that
appellant has not alleged and the current record does not support the application of these exceptions.

1 (Resp. Op. Br., Exh. EE.) Appellant will need to show that the remaining \$33,869 of the income
2 from which the 2006 tax liability arose is attributable to her former spouse.

3 For the 2007 tax year, the taxpayers reported \$98,204 federal AGI. Of that amount, it
4 appears that \$57,724 is attributable to appellant according to the federal Wage and Income Transcript.

5 (Resp. Op. Br., Exh. FF.) Appellant will need to show that the remaining \$40,480 of the income from
6 which the 2007 tax liability arose is attributable to her former spouse.

7 Mr. Del Campo asserts that the tax liability is attributable to both him and appellant
8 because they jointly decided to use Mr. Strawn's services and appellant was involved in filing the
9 amended returns. He points to the cancelled check to Mr. Strawn's company, Summit, signed by
10 appellant and appellant's emails providing him with directions to file the amended returns.

11 (Non-Appealing Spouse Op. Br., Exhs. 1A & 3A.) Appellant may want to explain, and provide
12 evidence of, the extent of her involvement in the decision to use Mr. Strawn's services.

13 If appellant can establish that she meets the threshold conditions, she should be
14 prepared to discuss whether she qualifies for streamlined equitable ISR. Under Revenue Procedure
15 2013-34 section 4.02, appellant must show that the following requirements are met: (1) appellant is
16 no longer married to the nonrequesting spouse; (2) appellant would suffer economic hardship if relief
17 were not granted; and (3) appellant did not know or have reason to know that her former spouse
18 would not or could not pay the underpayment of tax reported on the amended returns. It appears to
19 staff that the second and third requirements are at issue. Staff notes that appellant meets the first
20 requirement as she was divorced from Mr. Del Campo effective October 19, 2010.

21 With regard to the economic hardship requirement, appellant has the burden to
22 establish that she would be unable to pay reasonable basic living expenses if she was responsible for
23 partially or wholly satisfying the tax liabilities. (*Henson v. Comm'r, supra.*) Appellant asserts that
24 this situation has been a hardship on her relationship with her current husband. Mr. Del Campo
25 asserts that appellant has the funds to pay the tax liabilities, but does not want to do so. Staff notes
26 that the parties did not provide any documentary evidence or statements made under penalty of
27 perjury to support their positions. Appellant will need to provide evidence of her current income,
28 assets, expenses, and discuss whether she shares expenses with anyone else. Appellant will also need

1 to discuss whether her current monthly income is relative to 250 percent of the federal poverty
2 guidelines for her family size.²³

3 With regard to the knowledge requirement, appellant has the burden to establish that,
4 when she signed the amended returns, she did not know or have reason to know that Mr. Del Campo
5 could not or would not pay the tax liabilities reflected on the amended returns. Staff notes that the
6 emails from appellant to Mr. Del Campo in June and July of 2010 appear to show that appellant knew
7 that her former spouse would not or could not pay the tax liabilities as shown on their amended
8 returns. According to the emails and the amended returns, appellant and her former spouse prepared
9 the amended returns at issue by coordinating with appellant's CPA. In addition, appellant asserted in
10 the emails that she would be able to pay a certain monthly amount towards these self-assessed
11 liabilities and recommended that her former spouse to write a hardship letter to the FTB to be
12 submitted with their amended returns. Appellant also indicated that she and her former spouse should
13 discuss a payment plan with the FTB.

14 Staff notes that, if appellant was abused by or subject to financial control by her
15 former spouse, the knowledge factor is satisfied even if appellant had knowledge or reason to know
16 that her former spouse would not or could not pay the tax liabilities shown on the amended returns.
17 (Rev. Proc. 2013-34, § 4.02(3)(a).) However, appellant has not alleged abuse by her former spouse
18 and the evidence in the record does not appear to support a finding Mr. Del Campo subjected her to
19 financial control. It appears that appellant had regular access to the couple's financial information
20 and joint bank account as reflected by cancelled checks written and signed by appellant between
21 April 2006 and April 2007. In addition, appellant acknowledged that she had access to the couple's
22 joint bank account up to their separation in 2008 as she used funds in the joint account to pay for
23 living and moving expenses. As such, it appears that appellant knew that the tax liabilities reflected
24 on the amended returns would not be paid when the returns were filed.

25 If the Board finds that appellant has satisfied the threshold conditions in section 4.01,
26 but appellant does not satisfy the requirements in section 4.02 for streamlined equitable ISR, the
27

28 ²³ The federal poverty guidelines may be found here: <http://aspe.hhs.gov/poverty/figures-fed-reg.cfm>.

1 Board must determine whether appellant qualifies for equitable ISR under the factors listed in section
2 4.03. The parties should be prepared to discuss the following factors below and any other facts and
3 circumstances that are relevant to this determination:

- 4 1. Marital Status: Appellant and Mr. Del Campo were divorced effective October 19, 2010. As
5 respondent acknowledges, this factor favors relief.
- 6 2. Economic Hardship: It appears to staff that appellant has not provided any evidence to evaluate
7 this factor, despite respondent's request for such evidence. As noted above, appellant should be
8 prepared to provide evidence showing that she would be unable to pay reasonable basic living
9 expenses if she was responsible for partially or wholly satisfying the tax liabilities. As appellant
10 has not shown that she would suffer an economic hardship if held responsible for the tax
11 liabilities, it appears that this factor is neutral.
- 12 3. Knowledge: As noted above, the parties should be prepared to discuss and provide evidence of,
13 whether appellant, when she signed the amended returns, did not know or have reason to know
14 that her former spouse would not or could not pay the tax liabilities reflected on the 2004, 2005,
15 2006, and 2007 amended tax returns. Staff notes that appellant has not asserted or provided
16 evidence showing that she was abused by her former spouse. As for financial control, although
17 appellant contends that her former spouse handled the couple's finances and taxes, the evidence
18 in the record, as discussed above, suggests otherwise. As such, it appears that appellant knew that
19 the tax liabilities reflected on the amended returns would not be paid when the returns were filed.
20 Accordingly, it appears that this factor weighs against relief.
- 21 4. Nonrequesting spouse's legal obligation: The Judgment of Dissolution was silent as to which
22 party had the legal obligation to pay the outstanding tax liabilities for the years at issue. It
23 appears that this factor is neutral.
- 24 5. Significant benefit: Staff notes that the bank statement and cancelled checks show that the couple
25 used their funds to satisfy routine living expenses. Mr. Del Campo asserted that he and appellant
26 both benefited equally from the refunds received from the FTB and spent money equally. It does
27 not appear to staff that appellant received any benefit beyond normal support. As respondent
28 acknowledges, this factor is neutral.

- 1 6. Compliance with income tax laws: Appellant filed timely California and federal returns for the
2 2008 through 2011 tax years, but did not timely pay her state and federal tax liabilities for the
3 2011 tax year and received state and federal late payment penalties for that year. Respondent's
4 records do not show that appellant filed either a federal or California tax return for the 2012 tax
5 year. It appears to staff that appellant may have attempted to comply with income tax laws in
6 good faith. As respondent acknowledges, this factor is neutral.
- 7 7. Mental or physical health: Appellant has not alleged that she was in poor mental or physical
8 health when she signed the amended returns or when she requested ISR. As there is nothing in
9 the record to suggest that appellant was in poor mental health when she signed the amended
10 returns or when she requested ISR, this factor is neutral.

11 If appellant can establish that she satisfies the threshold conditions for relief (and
12 specifically that the income is not attributable to her), the parties will want to discuss whether,
13 considering the above factors, and any other relevant facts and circumstances, it would be inequitable
14 to hold appellant responsible for the tax liability. In weighing the factors, no single factor is
15 determinative, the list of factors is not exhaustive, and the degree of importance of each factor varies
16 depending on the requesting spouse's facts and circumstances. (Rev. Proc. 2013-34, § 4.03(2).)
17 Depending on the facts and circumstances of the case, a denial of relief may be appropriate even if
18 the number of factors weighing in favor of relief exceeds the number of factors weighing against
19 relief, and, conversely, relief may be granted even if the negative factors outnumber the positive
20 factors. (Rev. Proc. 2013-34, § 3.05; *Henson v. Comm'r, supra*; *Hudgins v. Comm'r, supra*.) Staff
21 notes that, for all of the tax years at issue, based on the evidence in the record to date, the only factor
22 favoring relief is appellant's marital status and the only factor weighing against relief is her
23 knowledge. It appears that the remaining factors are neutral.

24 The parties may wish to discuss whether the Board should consider the fact that the
25 amended returns were filed in response to respondent's letter notifying the taxpayers that they
26 claimed tax shelter items on their first amended return for the 2004 tax year and original returns for
27 the 2005, 2006, and 2007 tax years. Staff notes that, contrary to appellant's claims that she did not
28 know anything about the filing of the first amended return for the 2004 tax year and the original

1 returns for the 2005 through 2007 tax years, Mr. Del Campo provided a cancelled check signed by
2 appellant addressed to Summit. It appears to staff that appellant had knowledge of the services, as
3 she made the payment to the company.

4 Court-Ordered Relief

5 R&TC section 19006, subdivision (b), provides that respondent may adjust a
6 taxpayer's joint tax liability based on a court order. It is staff's opinion that the Board does not have
7 jurisdiction to review respondent's determination of whether this provision is applicable.

8 The Board's jurisdiction in this appeal is provided by R&TC section 18533, which
9 does not provide jurisdiction for the Board to review determinations under R&TC section 19006,
10 subdivision (b). Staff notes that subdivision (c) of R&TC section 19006 (which addresses revisions
11 of the taxpayer's liability by the FTB) provides the Board with authority to review determinations
12 under that provision, subdivision (b) (regarding court orders) does not provide the Board with
13 jurisdiction to review determinations made under subdivision (b). It appears to staff that the Board
14 does not have authority to review respondent's determination that relief is not available under R&TC
15 section 19006, subdivision (b).

16 In the event that the Board determines that it does have jurisdiction to consider an
17 appeal based on R&TC section 19006, subdivision (b), appellant would need to demonstrate that she
18 did not earn, manage, or control the income on which the unpaid tax liabilities for the tax years at
19 issue are based. Staff notes that a large portion of the income earned in the years at issue are
20 attributable to appellant, as discussed above. According to respondent's calculations, 31.16 percent
21 of the 2004 tax liability is attributable to appellant, 46.33 percent of the 2005 tax liability is
22 attributable to appellant, 61.03 percent of the 2006 tax liability is attributable to appellant, and
23 58.78 percent of the 2007 tax liability is attributable to appellant. In addition, even if appellant could
24 show that she did not earn, manage or control the remaining portion of income at issue, it appears to
25 staff that the court order revising the tax liability does not satisfy the requirements of R&TC section
26 19006, subdivision (b)(2), as it is silent regarding the tax liabilities at issue. Specifically, the
27 Judgment of Dissolution and its attachments do not separately state the income tax liabilities or the
28 amount of the revisions granted for each year. In addition, appellant has not demonstrated that

1 respondent was served with, or acknowledged receipt of, the order.

2 Relief from Nonpayment of Joint Tax Liability

3 Pursuant to R&TC section 19006, subdivision (c), respondent may revise a taxpayer's
4 unpaid joint tax liability reported due on a tax return to the extent that it is not a tax liability arising
5 from income earned by or subject to the exclusive management and control of the spouse requesting
6 relief. According to respondent's calculations, 31.16 percent of the 2004 tax liability is attributable to
7 appellant, 46.33 percent of the 2005 tax liability is attributable to appellant, 61.03 percent of the
8 2006 tax liability is attributable to appellant, and 58.78 percent of the 2007 tax liability is attributable
9 to appellant. Appellant should be prepared to demonstrate that the remaining amounts of the tax
10 liabilities for each year are attributable to Mr. Del Campo. In addition, the parties should be prepared
11 to discuss whether appellant did not know or have reason to know that Mr. Del Campo would not or
12 could not pay the tax liabilities reported on the amended returns at the time they were filed on or
13 about January 20, 2011. (Rev. & Tax. Code, § 19006, subd. (c)(2).) Staff notes that the June 2010
14 and July 2010 emails provided by Mr. Del Campo suggest that appellant knew that Mr. Del Campo
15 would not or could not pay the tax liabilities reported on the amended tax returns.

16 Additional Evidence

17 If either party has any additional evidence to present, they should provide their
18 evidence to the Board Proceedings Division at least 14 days prior to the oral hearing pursuant to
19 California Code of Regulations, title 18, section 5523.6.²⁴

20 ///

21 ///

22 ///

23 PhillipsM_mt

24
25
26
27
28

²⁴ Evidence exhibits should be sent to: Khaaliq Abd'Allah, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC: 80, Sacramento, California, 94279-0080.